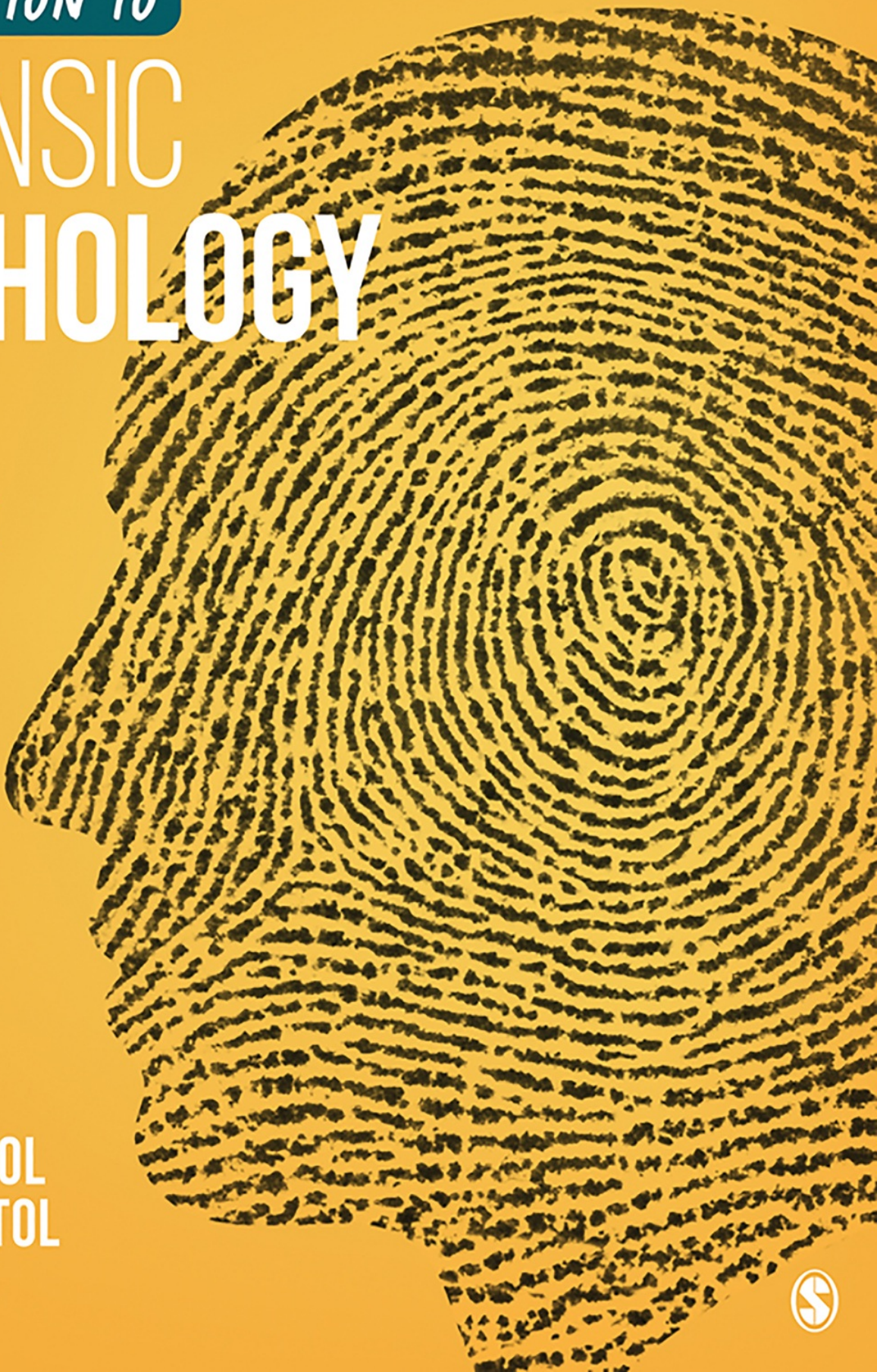
6 EDITION

INTRODUCTION TO

FORENSIC PSYCHOLOGY

RESEARCH AND APPLICATION



CURT R. BARTOL
ANNE M. BARTOL

INTRODUCTION TO FORENSIC PSYCHOLOGY

Sixth Edition

To Kai Arman, Madeleine Riley,
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Research and Application

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Anne M. Bartol, PhD



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Singapore | Washington DC | Melbourne

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2455 Teller Road
Thousand Oaks, California 91320
E-mail: order@sagepub.com
SAGE Publications Ltd.
1 Oliver's Yard
55 City Road
London, EC1Y 1SP
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B 1/I 1 Mohan Cooperative Industrial Area
Mathura Road, New Delhi 110 044
India
SAGE Publications Asia-Pacific Pte. Ltd.
18 Cross Street #10-10/11/12
China Square Central
Singapore 048423
Library of Congress Cataloging-in-Publication Data
Names: Bartol, Curt R., author. | Bartol, Anne M., author.
Title: Introduction to forensic psychology : research and application / Curt R. Bartol, Anne M. Bartol.

Description: Sixth edition. | Los Angeles : SAGE Publications, Inc, [2022] | Includes bibliographical references and index.
Identifiers: LCCN 2020042562 | ISBN 978-1-0718-1534-2 (paperback) | ISBN 9781071815335 (epub) | ISBN 9781071815328 (epub) | ISBN 9781071815311 (ebook)
Subjects: LCSH: Forensic psychology.
Classification: LCC RA1148 .B37 2022 | DDC 614/.15—dc23
LC record available at https://lccn.loc.gov/2020042562
Printed in the United States of America
This book is printed on acid-free paper.
Acquisitions Editor: Jessica Miller
Editorial Assistant: Sam Diaz
Content Development Editor: Laura Kearns
Copy Editor: Diane DiMura
Typesetter: Hurix Digital
Proofreader: Wendy Jo Dymond
Indexer: Integra
Cover Designer: Candice Harman
Marketing Manager: Victoria Velasquez

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PREFACE

This book is intended to be a core text in courses in forensic psychology, psychology and law, and similar courses that often enroll students from a variety of academic majors. The book is also addressed to general readers and mental health professionals seeking a basic overview of the field. Although many people associate forensic psychology with criminal profiling, crime scene investigation, and testifying in court, the field is much broader in scope. In fact, forensic psychology is an engaging yet difficult field to survey because of its topical diversity, wide range of application, and very rapid growth.

Forensic psychology refers *broadly* to the production of psychological knowledge and research findings and their application to the civil and criminal justice systems. Forensic psychologists may be involved in clinical practice, in consulting and research activities, and as academicians, and they work in many contexts. They may not necessarily call themselves forensic psychologists, but what they have in common is consultation with the legal system in some capacity.

The book is organized around five major subareas of the field, which often overlap (1) police and investigative psychology; (2) legal psychology, sometimes referred to as psychology and law; (3) criminal psychology; (4) victimology and victim services; and (5) correctional psychology (including institutional and community corrections for both adults and juveniles). Within, and overlapping, these major subareas are specialty areas like the rapidly emerging fields of forensic geropsychology, forensic psychology, forensic neuropsychology, and forensic family psychology.

The text concentrates on the *application* side of the field, focusing on research-based forensic practice. Throughout the book, we emphasize the professional application of psychological knowledge, concepts, and principles to the civil and criminal justice systems, including services to defendants, plaintiffs, offenders, and victims. However, the text is research based in that we include many research citations pertaining to issues discussed throughout the book.

The topics included in the text are largely dictated by what psychologists practicing in forensic settings do on a day-to-day basis. Their work, though, should rely heavily on the continuing research they or their professional colleagues are engaged in. For example, forensic psychologists conducting risk assessments must be aware of the evaluation research on the various methods and

measures that they employ. Those consulting with police must be aware of research on interviewing and interrogating both children and adults, on lineups, and on the fallibility of human memory. Those who testify as expert witnesses must be knowledgeable about the latest findings in such areas as eyewitness identification or adolescent brain development. These are but a few examples. One of the major goals of the text is to expose readers to the many careers related to forensic psychology. Students often want to discover what kinds of employment opportunities are available in their chosen major or favorite subject area as well as the challenges they will meet and the contributions they can make. In an effort to address this, we provide examples of forensic practice. And, as in the last three editions, we include personal narratives written by professionals in the field. These “Perspectives” should provide readers with information about career choices as well as helpful advice about pursuing their goals. Often, students begin and sometimes end their undergraduate days not knowing exactly what they want to do career wise. As many of the essayists will indicate, this is not unusual. Common themes in the essays are the importance of obtaining varied experiences, finding academic mentors, being open to new possibilities, taking time to enjoy one’s life, and persisting.

Material in boxes (Perspectives and Focuses) not only provides more information about career options, but also should prompt discussion on contemporary issues relevant to the practice of forensic psychology. For example, there are Focus boxes relating to mental health courts, community-oriented policing, shooter bias, juvenile risk taking, hate crimes, and the death penalty. Some boxes discuss U.S. Supreme Court decisions that are highly relevant to psychological practice—as well as to major social issues. Focus boxes also contain discussion questions, some of which may engender fierce debates in a classroom setting. For the reader not in a classroom—traditional or virtual—the questions may lead to more critical thinking and exploration.

Another major goal of the text is to emphasize the multicultural perspective that is an integral part of the day-to-day work of all practicing and research psychologists. Well-trained forensic psychologists recognize that ethnic and racial sensitivity is critical to successful practice, and they know they must be constantly vigilant to the injustices that can result from a monocultural or isolationist perspective. Although this has always been important, it is especially crucial today. Researchers in the field also must pay attention to

these issues. Recognizing the changing nature of relationships, including family relationships, is vital as well.

NEW TO THIS EDITION

The sixth edition includes a number of changes, some of which were made at the recommendation of peer reviewers. Other changes were prompted by exploding research. Inevitably, some topics straddle one or more chapters. For example, although there is a final chapter on juvenile justice and delinquency, material related to juveniles can be found in many earlier chapters as well. Likewise, risk assessment—because it is a task highly relevant to forensic psychology—is introduced early in the book but reappears in many later chapters.

Although general content from the previous edition was retained, though updated, the new edition includes the following changes:

- Updated statistics, research, and case law
- New focus boxes in most chapters; boxes retained from the fifth edition are updated
- More attention to immigration-related issues, including deportation and family separation and serving immigrant populations
- A comparison of procedures in civilian and military courts
- New material on the forensic interviewing of children
- More emphasis on forensic geropsychology and family forensic psychology
- Most recent recommendations for conducting police lineups and interviewing witnesses and suspects
- Updated threat assessment guidelines for schools
- Increased coverage of racial, ethnic, sexual, and religious discrimination, as well as bias against persons with disabilities
- More focus on mental health needs of detainees and prisoners

Many topics in this book deserve more attention than we have been able to give them here. In addition, discussion of cases, particularly Supreme Court cases, are not meant to be comprehensive but rather to illustrate important psychological concepts and considerations. Nevertheless, we hope that this introductory material will prompt readers to explore topics of interest in more depth. The text should serve as an overview of the field of forensic psychology and an invitation to learn more about this very attractive and exciting career option.

This book was concluded at the height of a global pandemic; deep-rooted concern about systemic racial and ethnic bias; economic policies that magnified disparities in health, employment, and

education; and political upheavals. Throughout the book, we have provided illustrations, reflected in research, court decisions, and anecdotal accounts. Readers have felt, directly or indirectly, the effects of this uncertainty. It is our hope that we will move forward, in a spirit of unity, to address and fix the problems of the past and the present and to assure a better world for those who inherit the future.

ABOUT THE AUTHORS

Curt R. Bartol
was a college professor for more than 30 years, teaching a wide variety of both undergraduate and graduate courses, including Biopsychology, Criminal Behavior, Juvenile Delinquency, Introduction to Forensic Psychology, Social Psychology, Profiling, and Psychology and Law. He earned his PhD in personality/social psychology from Northern Illinois University in 1972. He was instrumental in creating and launching a graduate program in forensic psychology at Castleton University and served as its director for 6 years. As a licensed clinical psychologist, he has been a consulting police psychologist to local, municipal, state, and federal law enforcement agencies for over 30 years. He has authored research papers on law enforcement and the psychology of crime. In addition to *Introduction to Forensic Psychology*, he has co-authored *Criminal Behavior: A Psychosocial Approach* (now in its 12th ed.); *Juvenile Delinquency and Antisocial Behavior: A Developmental Perspective* (3rd ed.); *Criminal and Behavioral Profiling*; and *Psychology and Law: Theory, Research, and Application* (3rd ed.). He served as editor of SAGE's *Criminal Justice and Behavior: An International Journal* for 17 years. He also co-edited *Current Perspectives in Forensic Psychology and Criminal Behavior* (3rd ed.).

Anne M. Bartol
earned an MA and a PhD in criminal justice from State University of New York at Albany. She also holds an MA in journalism from the University of Wisconsin– Madison. She taught criminal justice, sociology, and journalism courses over a 20-year college teaching career and has worked as a journalist and a social worker in child and adolescent protective services. In addition to *Introduction to Forensic Psychology*, she has co-authored *Juvenile Delinquency: A Systems Approach; Delinquency and Justice: A Psychosocial Approach; Psychology and Law: Theory, Research, and Application; Criminal Behavior*; and *Criminal and Behavioral Profiling*. She co-edited *Current Perspectives*, has served as book review editor and managing editor of *Criminal Justice and Behavior*, and has published articles on women and criminal justice, rural courts, and the history of forensic psychology.

ACKNOWLEDGMENTS

The book is dedicated to our grandchildren, who are on the cusp of being launched into a world far different from what we or their wonderful parents have experienced. We have confidence that each, in their unique way, will contribute to preserving what is most valued and to bringing about social and legal changes that are needed. Thank you, Kai, and Maddie, and Darya, and Shannon, for being who you are.

We thank the academic and professional colleagues who reviewed the fifth edition of the book and provided detailed, chapter-by-chapter commentary. Each one offered thoughtful suggestions for revision, and we hope we addressed most of them. The reviewers were

Mkay Bonner, University of Louisiana at Monroe;
Peter English, California State University–Fresno;
Laura Machia, Syracuse University;
Denise D. Nation, Winston-Salem State University; and
Ronald R. Thrasher, Oklahoma State University.

We are also grateful to the 11 psychologists who wrote about their backgrounds and experiences. Their essays capture the enthusiasm they have for their work, their continuing productivity, and their confidence in the professionals of tomorrow. It has been a pleasure to work with them, and we know that readers will appreciate their insights. We remain grateful as well to essayists from the third, fourth, and fifth editions, many of whom recommended their colleagues for this new edition. Finally, we also acknowledge the work of the numerous scholars whose research is cited throughout the book as well as investigative reporters, legal professionals, and authors whose works are also noted.

Finally, through all editions of this and other books, the SAGE family has been there for us, and we are truly appreciative. Acquisitions Editor Jessica Miller has been efficient, helpful, responsive, and patient from the outset. Her assistant, Sam Diaz, was helpful in procuring photographs used in this edition. Production Editor Rebecca Lee was there for us, patiently and professionally, from the moment the book was launched through the final stages. We cannot give enough accolades to copy editor Diane DiMura, who dealt with a massive reference file and last-minute changes without skipping a beat. Thank you so much, Diane. Finally, we appreciate the many people behind the scenes whom we have never met, including proofreader Wendy Jo Dymond, marketing manager Victoria Velasquez, cover designer Candice Harman, and the many sales

representatives who work to bring this textbook into readers' hands. We are most grateful to you all.

PART ONE INTRODUCTION

Chapter 1 • Introduction to Forensic Psychology

CHAPTER ONE INTRODUCTION TO FORENSIC PSYCHOLOGY

CHAPTER OBJECTIVES

- Define forensic psychology and trace its historical development.
- Identify career areas in the forensic sciences.
- Distinguish forensic psychology from other forensic sciences.
- Identify and describe major subareas of forensic psychology.
- Summarize the educational, training, and certification requirements to become a forensic psychologist.
- Illustrate roles and tasks performed by forensic psychologists.

Shortly before midnight on December 2, 2016, fire broke out during a party in a converted warehouse in Oakland, California, resulting in 36 deaths. Forensic investigators were called in not only to identify the bodies, but also to determine the cause of the blaze. The warehouse, known as the “Ghost Ship,” was an artists’ collective in which artists lived and shared work space. Federal investigators ruled out arson but said faulty electrical wiring could have caused the fire.

In 2017, after a man rammed his car through a crowd of people marching for social justice in Charlottesville, Virginia, killing one woman, forensic psychologists assessed his mental status, including his competency to stand trial.

Forensic experts of a different type have investigated numerous computer crimes in the 21st century, including ransomware attacks and hacking into databases containing credit card information. When the space shuttle Columbia disintegrated upon reentry into the Earth’s atmosphere in 2003 and when a bomb was detonated in New York’s Times Square in 2010, these events were investigated by scientists representing various federal, state, and private agencies. Likewise, when bombs disrupted the Boston Marathon in 2013, killing three and injuring more than 260 others, scientists examined the crime scene as well as the remnants of the incendiary materials.

Some of these incidents will be revisited in later chapters. As all indicate, the term *forensic* refers to scientific activities pertaining or potentially pertaining to law, both civil and criminal. Forensic scientists participate in the investigation of major crimes—not necessarily violent ones—and are present at many accident scenes. Forensic scientists also may offer services in civil suits, such as one where plaintiffs are claiming water contamination or challenging the effects of prescribed medication.

Forensic science has become an all-encompassing professional activity and a popular career choice among students. Nearly every profession, including psychology, has a forensic specialization. Many

people are confused about the various forensic areas and assume that professionals within these fields do largely the same thing. It will become clear in this book, however, that they do not. What they do have in common, in addition to their association with the law, is the fact that all of these fields are based on research and scientific principles. Although **Forensic psychology** is the subject of this text, it is helpful to begin with illustrations of other forensic sciences for comparison purposes.

THE FORENSIC SCIENCES

In addition to forensic psychology, the forensic fields include forensic engineering, forensic linguistics, forensic pharmacy, forensic oceanography, forensic medicine, forensic digital investigation, forensic social work, forensic nursing, forensic pathology, forensic anthropology, and forensic archaeology—and these are but a few examples. The focus of each discipline is evident from the terms. Forensic linguistics, for example, is concerned with the in-depth evaluation of language-related characteristics of text, such as grammar, syntax, spelling, vocabulary, and phraseology. Forensic anthropology refers to the identification of skeletal, badly decomposed, or otherwise unidentified human remains. Forensic pathology is that branch of medicine concerned with diseases and disorders of the body that relate to questions that might come before the court. The forensic pathologist—popularly depicted in shows such as the *CSI* series, *Bones*, and *NCIS* and in crime novels and even memoirs—examines the bodies of crime victims for clues about the victim's demise. Forensic anthropologists and forensic pathologists often work in conjunction with homicide investigators to identify the person who died, discover evidence of foul play, and help establish the age, sex, height, ancestry, and other unique features of the decedent from skeletal remains. Forensic nurses, who often work in hospital emergency departments, are nurses with special training in the collection of evidence pertinent to a crime, such as a sexual assault. Forensic pharmacists are highly knowledgeable about drugs and their interactions. Many of these professionals teach courses, offer workshops, and consult with lawyers preparing cases. They also often testify in both criminal and civil courts. Forensic laboratories are usually maintained or sponsored by governmental agencies specifically to examine physical evidence in criminal and civil matters. In 2014, there were 409 publicly funded forensic crime labs in the United States (Bureau of Justice Statistics, 2016). The scientists working in these laboratories are expected to prepare reports and provide courtroom testimony on the physical

evidence if needed. Alternatively, private laboratories, some of which operate in university settings, provide services to governmental agencies on a contractual basis or employ scientists who conduct independent research.

Scientists from both public and private laboratories may be asked to examine and testify about latent fingerprints, hair fibers, firearms and ballistics, blood spatter, explosives and fire debris, toxic material, and other pertinent evidence found at or near a crime scene or tragic accident. Some forensic labs are better at investigating certain types of evidence than others, and the news media occasionally uncover deficiencies in labs, such as the misuse of DNA evidence or the failure to process rape kits in a timely manner. On a more positive note, a lab maintained by the Food and Drug Administration (FDA) was instrumental in investigating a major product-tampering case that occurred in the United States in 1982 involving over-the-counter Tylenol capsules purchased in six different stores in the Chicago area. After seven persons collapsed and died soon after taking the pills, chemical investigation revealed that the capsules had been laced with potassium cyanide. FDA chemists developed fingerprinting-like techniques that allowed authorities to trace the cyanide back to the specific manufacturer and distributor (Stehlin, 1995). Unfortunately, despite the fact that the poison was identified and the source was traced, the perpetrator was never found, but the case did change the way we purchase and consume over-the-counter medications (Markel, 2014). Forensic examination indicated that the bottles had been removed from drug store shelves, laced with cyanide, and returned to shelves to be purchased by unknowing victims. The FDA and the manufacturer of Tylenol introduced new tamperproof packaging, which included foil seals and other safeguards to indicate to the consumer if the package had been tampered with.

Forensic laboratories also often employ scientists who specialize in **Forensic entomology**, which is the study of insects (and their arthropod relatives) as it relates to legal issues. This specialty is becoming increasingly important in both civil and criminal investigations. For example, entomological investigations of termite infestation may be used to support civil litigation dealing with real estate, pest control, or landlord–tenant disputes. In another context, forensic entomology may be useful in investigations of food contamination. Scientists try to determine where an infestation occurred (e.g., which warehouse or store), when it occurred, and whether it was accidental or the possible result of human tampering. (Whether there actually was negligence or evil intent, though, is left

to the courts to decide.) In criminal investigations, forensic entomology is used to determine the time since death (postmortem interval), the location of the death, placement or movement of the body, and manner of death.

Still another science represented in forensic laboratories is forensic document examination. This science analyzes handwriting, print fonts, the authenticity of signatures, alterations in documents, charred or water-damaged paper, the significance of inks and papers, photocopying processes, writing instruments, sequence of writing, and other elements of a document to establish authorship and authenticity. The process is often called **Questioned document examination or analysis**. The questioned document may be a check, a threatening letter, a hold-up note, a credit application or receipt, a will, an investment record, a tax form, or a medical record (R. Morris, 2000). Questioned document analysis can be applied to many types of investigations, including fraud, homicide, suicide, sexual offenses, blackmail, bombings, and arson. Questioned handwriting analysis, for example, may include the forensic examination of a signature, a handwritten letter, entries on a form, or even graffiti on a wall. A forensic document examiner (FDE) may be asked to examine and render opinions on the authorship of writing on building walls, recover engraved or obliterated writing on different types of surfaces, or determine the brand or model of keyboards, printers, embossers, inks, and printing processes (R. Morris, 2000).

An increasingly relevant electronic forensic specialty is **Digital investigative analysis** (DIA). Anyone who has experienced hard drive failure or other digital memory loss can recall the momentary panic it engenders. We now know that most “lost” data can actually be recovered. As embarrassed politicians, their staffs, and other high-profile professionals and public figures have learned, e-mail or text messages on computers, online voicemail systems, tablets, or smartphones do not inevitably disappear in cyberspace, even with the press of the delete key or the smash of a hammer. Shortly after two individuals killed 14 people in a terrorist attack in San Bernardino, California, in December 2015, digital analysts were able to find evidence that they had planned other attacks from equipment in their home that had been smashed. Today, with increases in mobile devices, electronic data can exist in multiple locations, and a skillful forensic data recovery specialist can usually find them. A digital investigative analyst has the training to seize, search, and analyze electronic media originating from a variety of operating systems pursuant to the execution of a search warrant or subpoena. Without specialized training, though, a law enforcement officer

armed with a search warrant would not be advised to open computer files from the office or home of a person suspected of bank fraud or one suspected of distributing child pornography. The major goal of the specialist or investigator is to recover the data or images without modifying them. These skills are used in a wide variety of investigations, such as fraud, embezzlement, political corruption, child pornography, identity theft, document forgery, software piracy, narcotics trafficking, money laundering, and terroristic activity.

With the creation of new technologies doubling about every 2 or 3 years (Friedman, 2016), the recovery of digital evidence becomes increasingly challenging, however. Today, forensic digital analysts examine everything digital "including desktop computers, laptops, mobile devices (cell phones and tablets), GPS navigation devices, vehicle computer systems, Internet of Things (IoT) devices, and much more" (Carroll, 2017, p. 25). Mobile phones have drawn the greatest amount of forensic scrutiny. As noted by Ogden (2017), "[w]ith mobile devices allowing consumers to communicate, socialize, bank, shop, navigate, start their car, track their health, and monitor their in-home surveillance cameras, a plethora of information is contained on these devices" (p. 11). And each year smartphones increase their security features, making them more challenging for digital investigators to decipher.

As is apparent from the preceding illustrations, forensic investigations usually require expertise in chemistry, biology, physics, or other sciences, including electronic technology. Although streaming services, television, movies, and novels provide numerous graphic examples of forensic examinations of evidence, the extensive scientific preparation required to work in forensic laboratories is usually not emphasized. The scientists depicted typically have access to state-of-the-art equipment, and they are often glamorous or have complex emotional lives, a depiction that may be quite unrealistic. Many students express a keen interest in the forensic sciences and seriously consider pursuing a career in the field without fully understanding what it is or what is required to reach their goal.

The field of forensic psychology involves a very different type of preparation and is significantly different in content, but it, too, is scientifically based. Importantly, there are many different avenues to entering this field, as will become apparent in this text.

FORENSIC PSYCHOLOGY: AN OVERVIEW

For some time, the definition of forensic psychology has been in flux. As Otto and Ogloff (2014) observe, "[p]erhaps it is surprising, given

the relatively long history and growth of forensic psychology over the past 40 years, that there is no uniform or consensual definition for this specialty area" (p. 35). In a similar way, John Brigham (1999) wrote that if a group of psychologists who interact with the legal system in some capacity are asked, "Are you a forensic psychologist?" many will say yes, some will say no, and a majority will probably admit they really do not know. Today, it is doubtful that a majority would say they do not know, but many might say, "It depends." Referring to his own testimony in court back then, Brigham noted that, when asked the question, his most accurate response would be, "Well, it depends."

As Brigham (1999) and Otto and Ogloff (2014) point out, differences in definition revolve around how narrowly or broadly the field is defined. Some of the professional literature refers to forensic psychology broadly as the *research* and *application* of psychological knowledge to the legal system, whereas some of it prefers a more narrow approach, limiting forensic psychology to the *application* and *practice* of psychology as it pertains to the legal system. Bartol and Bartol (1987) offered a broad definition:

> We view forensic psychology broadly, as both (1) the research endeavor that examines aspects of human behavior directly related to the legal process . . . and (2) the professional practice of psychology within, or in consultation with, a legal system that embraces both civil and criminal law. (p. 3)

By contrast, Roesch (cited in Brigham, 1999) suggested a narrow definition: "Most psychologists define the area more narrowly to refer to clinical psychologists who are engaged in clinical practice within the legal system" (p. 279).

It is important to emphasize that both definitions presume an underlying scientific approach. Research endeavors and clinical practice are both scientifically based. As will be noted throughout the text, the knowledge gained through carefully conducted studies finds its way into education and training programs, consulting services, and a wide range of legal settings. However, a narrow definition of forensic psychology may be too restrictive because it seems to imply a specialty called "forensic *clinical* psychology." Furthermore, it excludes—among others—clinicians who perform corrections-related tasks, such as assess inmates for parole decision-making purposes, or clinicians who offer consulting services to police departments. The broad definition, on the other hand, includes not only clinicians (also

called practitioners) but also social, developmental, counseling, cognitive, experimental, industrial/organizational, geropsychology, and school psychologists—some but not all of whom are clinicians. They conduct research in areas that are highly relevant to the law, such as eyewitness memory, forensic interviewing of children, or jury decision making. The common link is their contribution to the legal system. We recognize, however, that only a small proportion of their work may be performed in this context, so they might not consider themselves forensic psychologists. So, Brigham was correct in answering, "It depends."

DeMatteo, Marczyk, Krauss, and Burl (2009) noted that the lack of consensus for defining forensic psychology as well as the activities it comprises continued a decade later: "[T]here is considerable disagreement over the scope of forensic psychology and what activities (i.e., research, assessment, and treatment) and roles should appropriately be considered the exclusive province of forensic psychology" (p. 185). They pointed out that increasing dissatisfaction with narrow conceptualizations led the American Psychology–Law Society to endorse a broad definition, particularly one that would embrace the contributions of researchers as well as clinicians. Following these recommendations, the **Specialty Guidelines for Forensic Psychology** (American Psychological Association [APA], 2013c) promoted a broad definition, which is one we endorse and illustrate throughout this text:

> Forensic psychology refers to professional practice by any psychologist working within any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. (p. 7)

The preceding broad definition of forensic psychology focuses primarily on forensic practice, referring as it does to the application of psychology's specialized knowledge to the law. It is understood that this application must be based on solid research. The practice of forensic psychology, as it will be treated here, includes investigations, studies, evaluations, advice to attorneys, advisory opinions, and depositions or testimony to assist in the resolution of disputes relating to life or property in cases before the courts or other law tribunals. It can—and does—encompass situations before they reach the court as well as those situations following the court decision. It includes activities as varied as the following: courtroom

testimony, child custody evaluations, research on screening and selection of law enforcement candidates, and clinical services to offenders and staff in correctional facilities. It also includes research and theory building in criminology; the design and implementation of intervention, prevention, and treatment for youth offenders; and counseling of victims of crime.

For organizational purposes, we divide forensic psychology into five subspecialties: (1) police and public safety psychology, (2) legal psychology, (3) psychology of crime and delinquency, (4) victimology and victim services, and (5) correctional psychology. It should be emphasized, however, that this is for purposes of organizing the text and is not necessarily the organizational schema that is universally accepted in the field. Other scholars have adopted various methods of addressing the many ways psychology can interact with the law (e.g., Cutler & Zapf, 2015; Melton et al., 2018; Otto & Ogloff, 2014). Furthermore, we recognize and appreciate that some psychologists prefer to maintain a distinction between forensic psychology and other areas, such as correctional psychology (Magaletta et al., 2013) or police and public safety psychology (Brewster et al., 2016). This is addressed in more detail later.

Each of our subdivisions has both research and applied aspects, and psychologists conducting research in one area of forensic psychology may consult with or train practitioners in other areas. Finally, a forensic psychologist may operate in more than one of the above subspecialties. Although we separate them for organizational purposes, we do not intend to isolate them or suggest that they have little in common with one another. We discuss each subspecialty in more detail after briefly reviewing the history of the field.

BRIEF HISTORY OF FORENSIC PSYCHOLOGY

Although the growth of forensic psychology has been especially apparent since the 1970s, its history can be traced back at least to the end of the 19th century, when J. McKeen Cattell conducted a very simple psychological experiment on eyewitness testimony in a psychology class at Columbia University. Cattell merely asked his students questions such as what the weather was like exactly a week before. Surprised at the wide variation in responses—often given with absolute certainty, even though they were wrong—Cattell decided to explore in greater depth and with more sophistication both memory and the field of eyewitness identification. Numerous

psychologists subsequently undertook similar research. Some, for example, staged exercises wherein an “intruder” would enter the classroom, “confront” the professor, and leave. Students would then be asked to describe the intruder and the events that followed. To this day, both memory and eyewitness research remain of high interest to many forensic psychologists, yielding a rich store of information.

Psychologists also studied other topics that eventually produced knowledge of great value to the legal system. Research on human cognition, child development, abnormal behavior, the detection of deception, and stress are but a few examples. In the 20th century, such psychological knowledge gradually was introduced into legal proceedings in the form of expert testimony, first in civil courts and later, as the century wore on, in criminal courts (Bartol & Bartol, 2014; Otto, Kay, & Hess, 2014). In the early part of that century, psychologists also began to consult with juvenile courts and offer treatment services to juvenile and adult correctional facilities. By the start of World War II, psychologists like Lewis Terman had brought intelligence and aptitude testing to the military and some civilian law enforcement agencies. By mid-century, it was not unusual to see psychologists consulting formally with law enforcement agencies, particularly by offering services for the screening of candidates for police positions.

In the 1960s and 1970s, psychologists began to testify in courts in increasing numbers. They also joined other mental health professions in submitting amicus curiae briefs to appeals courts, offering scientific information about topics that reached the courts, such as the effects of discrimination or research on human development. They sometimes consulted with lawyers in trial preparation and jury selection, and they began to offer predictions of dangerousness under limited circumstances. Each of these areas of involvement are discussed in detail in the chapters ahead. **Focus 1.1** provides selected benchmarks in the history of forensic psychology.

Focus 1.1

Selected Historical Benchmarks Pertinent to Forensic Psychology

1893—First psychological experiment on the psychology of testimony is conducted by J. McKeen Cattell of Columbia University.

1903—Louis William Stern of Germany establishes a periodical dealing with the psychology of testimony (*Beiträge zur Psychologie der Aussage* [*Contributions to the Psychology of Testimony*])

1906—Publication of a little-known work, *Psychology Applied to Legal Evidence and Other Constructions of Law*, by George Frederick Arnold.
1908—Publication of Hugo Münsterberg's *On the Witness Stand*, arguably one of the first professional books on forensic psychology. Some scholars consider the author, a Harvard professor of psychology, to be the father of forensic psychology.
1908—Social science brief submitted to an appellate court, the Oregon Supreme Court, in *Muller v. Oregon*.
1909—Clinic for juvenile offenders established by psychologist Grace M. Fernald and psychiatrist William Healy.
1911—J. Varendonck becomes one of the earliest psychologists to testify in a criminal trial, held in Belgium.
1913—First time that psychological services are offered within a U.S. correctional facility (a women's reformatory in New York State), by psychologist Eleanor Rowland.
1917—Psychologist-lawyer William Marston develops the first "polygraph." Shortly thereafter, his expert testimony on the polygraph is rejected by a federal court (Frye v. United States, 1923) because the polygraph, as then developed, lacked general acceptance by the scientific community.
1917—Louis Terman becomes the first American psychologist to use psychological tests in the screening of law enforcement personnel.
1918—First inmate classification system developed by psychologists, established by the New Jersey Department of Corrections. New Jersey also becomes the first state to hire full-time correctional psychologists on a regular basis.
1921—First time an American psychologist testifies in a courtroom as an expert witness (*State v. Driver*, 1921).
1922—Karl Marbe, a psychology professor at the University of Würzburg, Germany, becomes the first psychologist to testify at a civil trial.
1922—William Marston becomes the first to receive a faculty appointment in forensic psychology, as "professor of legal psychology" at American University.
1924—Wisconsin becomes the first state to provide comprehensive psychological examinations of all admissions to its prison system and all applications for parole.
1929—Psychologist Donald Slesinger is appointed associate professor at Yale Law School, qualifying him as the first psychologist granted faculty status in an American law school.
1931—Howard Burtt's *Legal Psychology* is published—the first *textbook* in the forensic area written by a psychologist.

1954—U.S. Supreme Court cites social science research, including that of psychologists Kenneth and Mamie Clark, in its landmark ruling, *Brown v. Board of Education*.
1961—Hans Toch edits one of the first texts on the psychology of crime, *Legal and Criminal Psychology*.
1962—Psychologists are recognized as experts on the issue of mental illness by D.C. Court of Appeals in *Jenkins v. United States*.
1964—Psychologist Hans J. Eysenck formulates a comprehensive and testable theory on criminal behavior in the book *Crime and Personality*.
1968—Martin Reiser, the first prominent full-time police psychologist in the United States, is hired by the Los Angeles Police Department. Reiser became instrumental in establishing police psychology as a profession.
1968—The first PsyD program is established at the University of Illinois.
1972—Under the guidance and leadership of the American Association for Correctional Psychology (AACP), Stanley Brodsky, Robert Levinson, and Asher Pacht, correctional psychology becomes recognized as a professional career.
1973—The first successful interdisciplinary psychology and law program is developed at the University of Nebraska–Lincoln.
1977—*Law and Human Behavior*, the first peer-reviewed academic journal devoted to the interaction of psychology and law, begins publication.
1978—The American Board of Forensic Psychology provides board certification in forensic psychology.
1978—The American Psychological Association approves a clinical internship in corrections at the Wisconsin Department of Corrections.
1985—The American Board of Professional Psychology (ABPP) recognizes forensic psychology as a specialty.
1991—The American Academy of Forensic Psychology and American Psychology–Law Society (Division 41 of the APA) publishes *Specialty Guidelines for Forensic Psychologists*.
2001—The American Psychological Association recognizes forensic psychology as a specialty.
2006—The Committee on the Revision of the Specialty Guidelines for Forensic Psychologists recommends a broader definition that encompasses research as well as clinical practice.
2008—The American Psychological Association recertifies forensic psychology as a specialty.

2013—The *Specialty Guidelines for Forensic Psychology* are published. Forensic psychology is described as "professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters."
2013—Police and Public Safety Psychology (PPSP) is recognized by the American Psychological Association as a specialty.

In 1981, Loh observed that the relationship between psychology and law had come of age. Board certification in forensic psychology, provided by the American Board of Forensic Psychology, had begun in 1978 (Otto & Heilbrun, 2002). Shortly thereafter, the APA established Division 41, the American Psychology–Law Society (AP–LS), and that society was instrumental in prompting the APA to adopt forensic psychology guidelines in 1991 (subsequently revised in 2013). Meanwhile, the American Board of Professional Psychology (ABPP) had recognized forensic psychology as a specialty in 1985. The APA added it to its list of specialties in 2001. In 2010, Heilbrun and Brooks noted that forensic psychology had matured. They observed that "we are closer to identifying best practices across a range of legal contexts that are addressed by forensic psychology research and practice" (p. 227). A year later, Packer and Grisso (2011) noted that forensic psychology was one of the most popular specialties among psychologists entering the workforce. The growth in the field is reflected in the development of professional organizations devoted to research and practice in forensic psychology, significant increases in the number of books and periodicals focusing on the topic, the development of undergraduate and graduate training programs, postdoctoral fellowships, and the establishment of standards for practitioners working in the discipline (DeMatteo et al., 2009; DeMatteo, Burl, Filone, & Heilbrun, 2016; Heilbrun & Brooks, 2010; Weiner & Otto, 2014).

FORENSIC PSYCHOLOGY TODAY

Today, the practice of forensic psychology is evident in numerous contexts. Here are just a few examples of things that forensic psychologists may be asked to do, in addition to working in academic settings. Later in the chapter, and throughout the book, we discuss some of these tasks in more detail.

Police and Public Safety Psychology

- Assist police departments in determining optimal shift schedules for their employees.
- Establish reliable and valid screening procedures for public safety officer positions at various law enforcement, fire, first responder, fish and wildlife, police, and sheriff's departments.
- Perform fitness-for-duty evaluations of officers after a critical incident, such as a hostage-taking situation ending in multiple deaths.
- Train police officers on how to assist persons with mental illness.
- Provide counseling and debriefing services to officers after a shooting incident.
- Provide support services to the families of law enforcement officers.
- Inform police of the research evidence regarding the reliability of eyewitness identification and suggest ways of optimizing accurate memory of an event

Legal Psychology

- Conduct child custody evaluations, visitation risk assessments, and child abuse evaluations.
- Assist attorneys in jury selection through community surveys and other research methods.
- Perform evaluations of a defendant's competency to stand trial.
- Testify at a trial in which the defendant has pleaded not guilty by reason of insanity.
- Evaluate civil capacities, such as the capacity to make a will or consent to treatment.
- Submit briefs to appellate courts summarizing the research on adolescent brain development.
- Assess hardships suffered by individuals threatened with deportation during immigration proceedings.
- Consult with attorneys and other participants in military courts.

Psychology of Crime and Delinquency

- Evaluate the effectiveness of intervention strategies designed to prevent violent behavior during adolescence.
- Conduct research on the development of psychopathy.
- Consult with legislators and governmental agencies as a research policy advisor on responses to stalking.
- Consult with school personnel on identifying troubled youth who are a potential threat to other students.

- Develop a psychological measure for assessing risk of harm to self or others among persons with mental illness.

Victimology and Victim Services

- Help interview or evaluate persons who are the victims of crime or witnesses to crime.
- Conduct psychological assessments for personal injury matters related to auto accidents, product liability, sexual harassment and discrimination, medical negligence, worker's compensation, or disability.
- Educate and train victim service providers on psychological reactions to criminal victimization, such as post-traumatic stress disorder.
- Conduct forensic assessments of victims of persecution and torture for evidence at immigration hearings.
- Assess, support, and counsel those who provide death notification services.
- Educate service providers on the impact of multiculturalism when victims seek mental health and support services.

Correctional Psychology

- Assess inmates entering jail or prison for both mental health needs and suitability for treatment and rehabilitation programs.
- Assess prisoners for risk in parole decision making.
- Assess violence risk in juveniles and adults.
- Evaluate the effectiveness of programs for juvenile and adult offenders, such as victim–offender reconciliation programs, sex offender treatment, violence prevention, or health education programs.
- Conduct sexually violent predator assessments.
- Establish reliable and valid screening procedures for correctional officer positions at correctional facilities.
- Offer mental health treatment to adults and juveniles in correctional settings.

The preceding list would be shortened considerably if we were to adopt a narrower, clinically based definition of forensic psychology or apply it only to contact with the court system. In addition to the previous list, forensic psychologists teach in colleges and universities and as mentioned earlier conduct research that is relevant to the legal system.

The work settings in which forensic psychologists are found include, but are not limited to, the following:

- Private practice

- Family, drug, and mental health courts
- Military courts and immigration courts
- Child protection agencies
- Victim services
- Domestic violence courts and programs
- Forensic mental health units (governmental or private)
- Sex offender treatment programs
- Correctional institutions (including research programs)
- Law enforcement agencies (federal, state, or local)
- Research organizations (governmental or private)
- Colleges and universities (teaching or research)
- Juvenile delinquency treatment programs
- Legal advocacy centers (e.g., for immigrants, prisoners, or persons with mental illness)

Throughout this book, text boxes in most of the chapters will introduce you to professionals who are engaged in these activities and work in these settings. Although their experiences are varied, a common theme is their willingness to pursue different and sometimes unexpected paths and opportunities, leading them to their present careers. See, for example, **Perspective 1.1** in which Dr. Sharon Kelley writes about her background, her research interests, and her collaborative work with forensic scientists in other fields.

FORENSIC PSYCHOLOGY, FORENSIC PSYCHIATRY, AND FORENSIC SOCIAL WORK

Some of the tasks listed earlier are performed by mental health professionals who are not psychologists, most particularly psychiatrists or social workers. Increasingly, these three groups of professionals work in collaboration, but it is important to point out some of the differences among them.

Psychologists, particularly but not exclusively those with specialties in clinical, counseling, or forensic psychology, are often confused with psychiatrists by the public and the media. Today, the lines of separation between the two professions are becoming increasingly blurred. For example, clinical, counseling, and forensic psychologists, along with psychiatrists, all provide direct assessment and consulting services in many contexts (Neal & Grisso, 2014). Psychiatrists are medical doctors (MDs; or, in some cases, doctors of osteopathy [DOs]), who specialize in the prevention, diagnosis, and treatment of mental, addictive, and emotional disorders.

Psychologists do not hold a medical degree, although some may have earned related degrees, such as a master of public health (MPH). Another major distinction between the two has been the license to prescribe drugs, including psychoactive drugs. Traditionally, psychologists have not been permitted by law to prescribe any medication. Now, that is beginning to change. In 2002, New Mexico became the first state to allow properly trained psychologists to prescribe psychoactive drugs, or drugs intended to treat mental disorders or behavioral problems. In 2004, Louisiana became the second state to pass a law authorizing properly trained psychologists to prescribe certain medications for the treatment of mental health disorders. In that state, these practitioners are called "medical psychologists." In 2014, Illinois enacted legislation granting prescriptive authority to psychologists who have training in psychopharmacology, and Iowa and Idaho enacted similar legislation in 2016 and 2017, respectively. Psychologists in Guam and in the military also have prescription privileges. Properly trained psychologists in the Department of Defense, the U.S. Public Health Service, and the Indian Health Service are able to prescribe (Robiner, Tompkins, & Hathaway, 2020). Medical associations typically have resisted extending prescription privileges, maintaining that this will lead to abuses and decrease the quality of patient care. Nevertheless, even among clinical psychologists there is not universal support for prescription privileges or authority, although early surveys found at least a majority in favor (e.g., Baird, 2007; Sammons, Gorny, Zinner, & Allen, 2000). However, as noted by Robiner, Tompkins, and Hathaway (2020, p. 1), "[t]here remains division within the profession and a paucity of data regarding competencies, prescribing practices, and outcomes."

Many psychiatrists, like psychologists, work in a variety of forensic settings, including the court, correctional facilities, and law enforcement, but especially the first. Psychiatrists who are closely associated with the law are often referred to as **Forensic psychiatrists**. In some areas, such as issues relating to insanity determination by the courts, psychiatrists are more visible— and sometimes more preferred—than psychologists. As we discuss in a later chapter, this reflects a greater comfort on the part of some judges with the medical model approach to mental disorder (Melton et al., 2018). Nonetheless, research indicates that report quality is comparable between forensic psychologists and forensic psychiatrists across settings and types of evaluations (Pillay, Gowensmith, & Banks, 2019). In Canada, psychiatrists perform the majority of both fitness to stand trial and criminal responsibility

(Roesch et al., 2019). Roesch et al. (2019) argue persuasively for a change in Canada's criminal code that would facilitate psychology's entry into this service.

In the United States and other countries, psychologists routinely carry out these pretrial evaluations. Psychologists and psychiatrists seem to be equally involved in pretrial assessments of juveniles, while psychologists are more likely to conduct custody evaluations, consult with law enforcement, and work within the correctional system. Forensic neuropsychologists, who have expertise in brain research, assessments, and the law, are frequently consulted in both criminal and civil matters. Law-related research tends to be the bailiwick of psychologists, although some psychiatrists are also engaged in conducting and publishing such research.

Forensic social workers also can be found in the same arenas as their psychological and psychiatric counterparts. They may counsel victims of crimes or families of victims and offenders and provide substance abuse and sex offender treatment to offenders, among other functions. In many correctional facilities, social workers are part of the treatment team. Forensic social workers may be found participating in child custody evaluations, termination of parental rights, spousal abuse cases, and juvenile justice and adult corrections.

Forensic social work is the application of social work principles to questions and issues relating to law and legal systems. A professional group, the National Organization of Forensic Social Work (NOFSW), publishes the *Journal of Forensic Social Work*, which addresses contemporary forensic practice issues for practitioners and social researchers. Although some have doctoral degrees, forensic social workers typically possess a master's degree in social work (MSW) with a forensic concentration and supervised field experience. In most states, they are not recognized as experts in criminal cases but do testify in civil cases.

In all areas of forensic work, collaboration among professionals is crucial. Therefore, although our text focuses on the work of psychologists, it is important to stress that contributions from other mental health professionals cannot be overlooked and that the disciplines often work in collaboration.

From My Perspective 1.1

Blending Psychology, Law, Research, and Friendships

Sharon Kelley, PhD, JD



Sharon Kelley

I have always been curious about the law and the people who violate it. Curiosity about the law runs in my family—both of my grandfathers were lawyers and my parents inherited a keen ability to parse language and develop arguments on both sides of an issue. When I discovered the field of psychology during high school, I finally had a lens to understand and explore these interests.

I am also an animal lover and equestrian, and these passions blended easily with psychology. Try training a dog or a horse without basic principles of reinforcement. My horse, Jack, tested these principles: The first time I saw him, it took five people just to maneuver him into a stall. Jack taxed my patience and terrified me. At one point, I was ready to quit when a wise trainer helped me connect the dots between Jack's physical scars (there were several) and problem behaviors (there were . . . more than several). I resumed training with enthusiasm brought about by a new perspective. In a way, Jack was my first client and one of my best teachers; over time, his demeanor improved and he became a favorite for children's "pony rides."

As soon as I started at St. Mary's College of Maryland, I had my eye on the upper level "Psychology and the Law" course. The class opened my eyes to the research of leaders in the field, like Elizabeth Loftus's work on eyewitness misidentifications and Saul Kassin's research on false confessions, topics you will learn about in this

book. More broadly, I learned about the role of psychologists in studying the legal system and evaluating parties in legal proceedings. I was hooked. Senior year I settled on a thesis exploring false confessions and found my way into the maze of Constitutional law surrounding interrogations and confessions. I recall my good friend shooting me odd looks as I skipped social gatherings to read lengthy law review articles about *Miranda v. Arizona*. Constitutional law courses complemented my research, which culminated with interviews of police officers from surrounding jurisdictions.

I graduated from college without plans or job offers. I knew I wanted to do *something* with psychology, but my experiences with legal research created a fork in the road: graduate school or law school? I looked for internships that would clarify matters and found a (modestly) paid internship at the Bazelon Center for Mental Health Law in Washington, D.C. (Tip: When you're uncertain, take a step forward. No matter what, you'll learn something.) The Bazelon Center only cemented my passion for both psychology and law, and I naively applied to the four JD/PhD programs in existence at the time (Tip: In the world of PhD programs and law schools, apply to more than four graduate schools.)

I was offered a position in the JD/PhD program at Villanova University School of Law and Drexel University, a program now housed entirely at Drexel University. I was delighted to enter a lab under the mentorship of Naomi Goldstein, a national expert on *Miranda* rights and justice-involved youth. Through graduate school, I worked in several clinical settings: a prison, a primary care practice, juvenile justice facilities, and a psychiatric hospital. By far my favorite was the forensic assessment clinic. That year introduced me to forensic evaluations and the work of making a defendant's history and psychology understandable to lawyers and judges. Graduate school was both psychology graduate school and law school. I loved my legal internships at the Juvenile Law Center and the local Capital Habeas Unit (which handles appeals of death penalty cases). But the study of law is very different from the practice of law, and I grew increasingly confident that my future career would be in forensic psychology, with law serving as a happy accompaniment.

After completing my degrees, I accepted a postdoctoral fellowship at the University of Virginia Institute of Law, Psychiatry, and Public Policy (ILPPP), where I now remain. The fellowship provided exceptional, in-depth training in forensic evaluations of all varieties. It

also provided a small slice of time to decide what my “grown-up” research agenda would look like.

That year, my research agenda evolved in a way I never anticipated: I was given an opportunity to join a federally funded center devoted to improving the broad forensic sciences. The center was created following mounting evidence that many of the forensic sciences (e.g., fingerprint comparisons, ballistics) were underresearched and vulnerable to cognitive biases. Although this was outside my wheelhouse, I jumped at the opportunity. (Tip: Don’t be afraid to expand your wheelhouse, particularly when you have the support of good mentors and colleagues and the opportunity to work across disciplines.) Thus, for the past 5 years, I have been working with crime labs, statisticians, and other psychologists to improve forensic science disciplines.

ILPPP also gave me an opportunity to pursue my core research interests: Defendants’ rights, abilities, and experiences as they navigate the legal system. At ILPPP, I reconnected with a graduate school friend and colleague, Heather Zelle. Together, we formed a research lab that explores questions raised by local legislators and stakeholders in the mental health system as well as research questions of our own. We had previously collaborated on research related to *Miranda* comprehension, and we have continued researching and writing on the topic. More recently, born out of a pattern colleagues and I saw in some of our forensic evaluations, we began to research police interactions with people with mental illness. (Tip: Allow your clinical work to inform your research and vice versa.) We were particularly frustrated by occasions where police were called because of a psychiatric crisis, and the individual in crisis received charges as a result of the encounter (e.g., assault and battery on a law enforcement officer).

I have worked with other friends and colleagues, including others I met in graduate school, on many topics of mutual interest. (Tip: Work with your friends when you can; it’s a unique pleasure.)

I currently have the “blended” career I always aspired to: I conduct forensic evaluations with great colleagues and trainees, I’m actively involved in several lines of research, and I teach classes (primarily Forensic Psychology) at James Madison University. (Tip: I could never have planned this exact path. Stay open to opportunity and don’t be afraid to shift directions.)

As noted, Dr. Kelley is a clinical forensic psychologist at the University of Virginia’s (UVA’s) Institute of Law, Psychiatry, and Public Policy. She is an assistant professor of psychiatry and neurobehavioral sciences in

the UVA School of Medicine and an adjunct instructor at James Madison University. Outside work, she enjoys spending time with her husband, dog, and cat; reading; visiting local wineries; and leisurely walks with Jack, her childhood horse, who has retired to a nearby farm.

ETHICAL ISSUES

With the increasing opportunities available to forensic psychologists, numerous pragmatic and ethical issues also have been raised. Prescription authority, mentioned briefly above, is one example. Other ethical issues pertain to the dual relationships between the psychologist and the client, conflicts of interest, bias, participation in research, issues of confidentiality, and the tension between punishment and rehabilitation (A. Day & Casey, 2009; Murrie & Boccaccini, 2015; Neal & Brodsky, 2016; Ward & Birgden, 2009; Weiner & Hess, 2014). In recent years, contentious issues have revolved around psychologists participating in military interrogations, making recommendations in child custody cases, conducting violence risk assessments in death penalty cases, labeling juveniles as psychopathic, and establishing proper boundaries between assessment and treatment. A growing field of practice, working with undocumented immigrants subject to deportation proceedings or immigrants victimized by crime, carries with it many ethical implications, including culturally rooted misunderstandings and the applicability of psychological measures to diverse groups (Filone & King, 2015).

Like all psychologists, forensic psychologists are expected to practice in accordance with the “Ethical Principles of Psychologists and Code of Conduct” (APA, 2010a), which includes five general principles and ten standards. The latter are mandatory rules that psychologists are obliged to follow. In addition, the aforementioned *Specialty Guidelines for Forensic Psychology* (APA, 2013c), as well as a variety of other guidelines published by the American Psychological Association, should be consulted. We will visit these guidelines as they relate to material in the chapters ahead.

CAREERS IN PSYCHOLOGY

Since the 1970s, there has been an enormous expansion of the profession of psychology in general (Reed, Levant, Stout, Murphy, & Phelps, 2001) as well as forensic psychology specifically (Packer & Borum, 2013). Psychology encompasses a wide spectrum of topics ranging from engineering designs (human factors) to animal behavior, and it has a place in every imaginable setting.

Psychologists can be found in “personnel selection and training, developing user-friendly computer software, the delivery of psychological services to victims of natural and man-made disasters, the profiling of serial killers, the creation of effective commercials that increase the sale of a product, and so on” (Ballie, 2001, p. 25). In 2017, there were 117,371 members of the **American Psychological Association (APA**) (Winerman, 2017). This includes 32,527 student affiliates, 20,202 life status members, 3,987 international associates, and 3,978 community college or high school teacher associates. The APA, based in Washington, D.C., is the largest association of psychologists worldwide.

As of 2019, approximately 35,000 psychologists from the United States and abroad, whose specialties span the entire spectrum of scientific, applied, and teaching areas, were members of the **Association for Psychological Science (APS)** (www.psychologicalscience.org), the second-largest psychological organization in the United States. The APS, also based in Washington, is a nonprofit organization dedicated to the advancement of scientific psychology. In addition to the APA and APS, psychologists belong to many other professional organizations at the international, national, state, and local levels. In Canada, for example, there are approximately 7,000 members of the Canadian Psychological Association (CPA). It should be noted that the CPA groups psychologists who work in a variety of criminal justice and forensic psychology settings into a category called criminal justice psychology. This category includes corrections, law enforcement, the courts, hospitals, community mental health, and academic settings. In the United Kingdom, the British Psychological Society (BPS) had approximately 60,000 members and subscribers in 2019.

Education and Training

The number of colleges and universities that offer at least one undergraduate course in forensic psychology has grown rapidly in the United States, and many of these courses tend to be very popular (DeMatteo et al., 2016). They attract many students, whether or not they are interested in a career in psychology. This may apply to you, the reader. Criminal justice majors, sociology and social work majors, and political science majors often enroll in forensic psychology classes. A similar pattern exists in the United Kingdom, Canada, and Australia (Helmus, Babchishin, Camilleri, & Olver, 2011; Pillay et al., 2019). Most recently, Pillay, Gowensmith, and Banks wrote about developing forensic psychology training programs in South Africa. While many colleges and universities offer

undergraduate courses in forensic psychology or psychology and law, very few offer specific majors or concentrations in the field at the undergraduate level.

Students who are interested in psychology as a career become quickly aware that the bachelor's degree provides a basic foundation in psychology, but it does not adequately prepare a person to be a professional psychologist. The minimum educational requirement for psychologists is the master's degree, but students are encouraged to pursue doctoral-level training when possible. In some states, graduates of master's degree programs in psychology—with the appropriate clinical training—may be eligible for licensure as a psychological associate (LPA) or as a masters-level psychologist (MacKain, Tedeschi, Durham, & Goldman, 2002). The most common master's degrees in psychology are in clinical, counseling, or I/O psychology.

In recent years, master's-level psychologists have gained ground as practitioners, however. The APA does not discourage master's-level psychologists with degrees from accredited university programs to practice independently. This wider recognition was controversial and roundly criticized by some psychologists with more advanced degrees and broader training (N. Cummings & Cummings, 2018). Interestingly, the criticisms focus less on the need for advanced research and scientific training than on the fear that psychology's clinical orientation and mental health practice are undervalued when lesser trained practitioners are recognized. Debates such as this are not likely to be resolved in the near future.

In addition to course work at the undergraduate and master's level, various types of internships provide students with valuable opportunities to learn more about the field. As you read through this text, you may note that quite a few of the essayists featured in the Perspectives boxes mention internships during their undergraduate or early graduate years. As they pursued doctoral-level training, the internships became more advanced and involved additional responsibilities. In addition, specialization in psychology usually begins at the graduate or even postgraduate level, although many undergraduate programs offer concentrations in certain areas, such as social psychology, educational psychology, forensic psychology, or human development. Graduate programs in psychology usually offer graduate degrees in experimental, biopsychology, developmental, cognitive, clinical, counseling, school, and industrial/organizational psychology. The last four represent the more applied or practitioner's side of psychology. In 2001, forensic psychology was recognized as another applied branch or specialty in

the field, and in 2013, police and public safety psychology was recognized as still another specialty.

Graduate Training, Doctoral Level

At the doctoral level, clinical psychology attracts the largest number of students of all the applied specialties. A doctorate has long been considered the entry-level credential for the independent practice of psychology (Michalski, Kohout, Wicherski, & Hart, 2011). As noted, though, master's-level psychologists have made some gains at being capable of independent practice.

The PhD degree (doctor of philosophy) requires a dissertation and is well accepted in the academic world as appropriate preparation for scientists and scholars in many fields across the globe (Donn, Routh, & Lunt, 2000). It is regarded primarily as a research-based degree. A dissertation refers to a substantial paper based on the PhD candidate's original research, which should make a significant contribution to the research literature.

The PsyD (doctor of psychology) is a graduate degree designed primarily for students who wish to become practitioners or clinicians rather than researchers. The first PsyD program was established in 1968 at the University of Illinois (D. Peterson, 1968). Although many PhD psychologists have questioned the soundness of the PsyD since its beginnings, especially in light of its limited research focus, the degree has received increasing professional recognition in recent years and has attracted the interest of many students, especially those drawn to the intensive clinical focus of the PsyD programs. In summary, PsyD programs usually place strong emphasis on clinical training, while PhD programs place strong emphasis on understanding and engaging in scientific research. The line of demarcation between these degrees is somewhat blurred, however. Many psychologists who hold the PhD have also had clinical internships, and those who hold the PsyD have some research training. In summary, obtaining either a PhD or a PsyD requires motivation and persistence, but as many essayists throughout this book indicate, it is well worth the toil. All requirements of the doctorate can usually be completed in 4 to 6 years (of full-time study beyond the undergraduate degree). If an internship is required, it usually takes a year or longer to complete the degree. The internship setting for students interested in forensic psychology can be at sites that provide a forensic experience, such as court clinics, forensic hospitals, or assessment centers. Forensic experiences in predoctoral internship programs are becoming increasingly common (Krauss & Sales, 2014).

Licensure

According to Tucillo, DeFilippis, Denny, and Dsurney (2002), by 1977, every U.S. state had laws relating to the licensure of psychologists, and in 1990, all Canadian provinces regulated the practice of psychology. In 1987, in an effort to encourage standardized licensing requirements, the APA developed a model act to serve as a prototype for drafting state legislation (Tucillo et al., 2002). One of the chief criteria to qualify for licensing is possession of the doctoral degree. In 2014, approximately 106,500 psychologists in the United States possessed current licenses (APA, 2014a). Professional psychologists are also ethically obligated to comply with the standards pertaining to their practice, as outlined by the **"Ethical Principles of Psychologists and Code of Conduct" (EPPCC)** (APA, 2002, 2010a).

Guidelines are also offered in a number of areas associated with research and clinical practice. A good example is the *Specialty Guidelines for Forensic Psychology* (SGFP; APA, 2013c) mentioned earlier. One distinction between standards and guidelines should be made. Psychologists are expected to comply with *standards*, and there is an enforcement mechanism in place in case they do not. For example, a violation of the standards outlined in the Code of Conduct could result in a complaint to the APA's Professional Conduct Board or a state's licensing board and, ultimately, loss of one's license to practice psychology. By contrast, the *guidelines* are aspirational; psychologists are strongly encouraged—but not required—to abide by them. However, the various guidelines offered to psychologists are extremely helpful to those working in clinical as well as research settings.

Employment

Surveys are periodically done to determine where psychologists with recent doctorates find employment. One such survey (D. Smith, 2002) found that about three quarters were employed in higher education or human service settings (such as schools or hospitals). The rest were working in business, government, or private practice. About 25% of those with new doctorates found employment in academic positions at 4-year colleges and universities. Morgan, Kuther, and Habben (2005) edited an interesting book in which new doctorates in psychology wrote about the rewards and challenges they faced at the entry level of their careers. Kuther and Morgan (2013) also published a work reviewing careers in psychology in a changing world. Another very helpful book is *Career Paths in*

Psychology: Where Your Degree Can Take You, edited by Robert J. Sternberg (2017).

A survey conducted by the AP–LS (P. Griffin, 2011), one specifically related to forensic psychology, found that independent practice was the primary work setting of psychologists involved in psychology and law activities. Approximately 45% identified independent practice (e.g., conducting child custody evaluations or risk assessments) as their main setting. Another 25% worked primarily in university settings, 12% in hospital or other human service settings, and approximately 10% in government settings. It should be noted that, although psychologists will have a primary setting, many also overlap their work into other settings—as you will again find as you read the essays in this book. For example, a number of psychologists whose primary setting is a college or university also maintain private practices. Those with doctorates in psychology have a strong foundation in theory, research methodology, and analysis that allows them to work in a variety of occupations. “Rather than being stereotyped as a professor or therapist, more and more psychologists are being seen as applied scientists” (Ballie, 2001, p. 25).

The Applied Specialties

After obtaining their doctoral degrees, many psychologists, including forensic psychologists, obtain postdoctoral training in a specialty area for one or two years (Kopelovich, Piel, Michaelsen, Reynolds, & Cowley, 2019). With or without postdoctoral training, many seek to be certified as professionals in one of a number of areas of practice. Such certification typically follows years of experience as well as a demonstrated expertise. At present, 15 specialties of professional psychology have been recognized by the American Psychological Association (see **Table 1.1**). Other groups, such as the ABPP, recognize specialties as well. As should be apparent from **Table 1.1**, there can be considerable overlap in the knowledge and skills associated with various specialties, and many specialties are pertinent to forensic psychology, which is its own separate specialty. For example, specialists in clinical child psychology, family psychology, and clinical neuropsychology all may make contributions in the forensic realm. Thus, although these specialties may have distinct features, journals, newsletters, meetings, associations, and interests, they also have many things in common.

In all these practices, many psychologists find that their clients are often from cultural backgrounds, races, and ethnicities different from their own. Fortunately, this is changing as service providers

themselves are more diverse. Although members of racial or ethnic minority groups accounted for less than one fifth of the psychology workforce in 2013, the profession has become more diverse, with the proportion of minority group representation growing from 8.9% to 16.4% in the early 21st century (APA Center for Workforce Studies, 2015). It should be noted, as well, that the APA has a fellowship program that provides assistance to members of various underrepresented cultural groups to further their professional goals as well as serve diverse communities. Thus psychologists not only are encountering in their practices more persons of Latino, Asian, Native American, and Middle Eastern heritage, but they are themselves also reflecting multicultural groups. In recognition of the need to be aware of diversity and a changing society, various guidelines have been adopted in recent years (e.g., APA, 2003b, 2012).

Table 1.1

Also in recent years, psychologists and other mental health professionals have become attuned to realities facing immigrant populations. Interestingly, the immigrant population in the United States has been characterized as being at the highest and lowest ends of the educational and skills continuum (APA, 2012). Though it is seems problematic to minimize “skills” in this way, the APA was noting that immigrants represent 25% of physicians and 47% of scientists with doctorates in the United States; they also gather in the agricultural, service, farm, and construction industries—all of which require important skills. As became very clear in the pandemic of 2020, immigrants often are the frontline workers who attend to the critically ill, provide transportation, deliver food, and offer a multitude of support services, including child care and home health care to persons who are isolated.

Like all people, immigrants may experience anxiety, depression, suicidal ideation, or serious mental illness. In addition, the 21st century became a time when many are viewed with suspicion, targeted for selective prosecution, subjected to hate crimes, and—for those undocumented—separated from families or threatened with deportation. Many fear for the safety of relatives and friends facing persecution or violence in another country.

Since the turn of the century, psychologists involved in assessing or treating members of immigrant groups have reported numerous issues in both adults and children, ranging from post-traumatic stress, anxiety disorders, language barriers, and problems with acculturation. Immigrants who are undocumented often fear reporting victimization—such as domestic violence, sexual assault,

sex trafficking—so as not to bring attention to themselves. There are also social and cultural barriers to seeking mental health services. Many psychological assessment tools (e.g., certain standardized tests) were not normed on these groups and thereby lack reliability (APA, 2012). Finally, psychologists who are not themselves recent immigrants must be attuned to the possibility that they are subject to a negative worldview about immigrants that they have derived from political figures and media (Bemak & Chi-Ying Chung, 2014). We will return to some of these topics in later chapters.

FORENSIC PSYCHOLOGY AS A SPECIALTY

Education and Training Requirements

Regardless of the debate over how broadly or narrowly forensic psychology should be defined, the growth in the field is demonstrated by the continuing development of graduate programs and postdoctoral fellowships throughout the world, particularly in Canada, the United States, the United Kingdom, and Australia. As of 2017, there were about 80 forensic psychology graduate programs, at both the MA and PhD or PsyD levels across the globe. Some were campus based and others were online programs. In the United States and Canada alone, it is estimated that 41 institutions offer 68 programs in forensic psychology, "including 15 clinical PhD programs, 10 PsyD programs, 15 nonclinical PhD programs, 12 joint-degree programs . . . and 16 master's programs" (Burl, Shah, Filone, Foster, & DeMatteo, 2012, p. 49). (See **Table 1.2** for a list of graduate programs in the United States.) In addition, there are 25 existing forensic psychology postdoctoral fellowships in the United States (Kopelovich et al., 2019).

One interesting path is that taken by individuals who pursue joint-degree training—they earn both a PhD and a Juris Doctor degree in law (JD) at the same or associated institution. Some decide on a PhD and a master's degree in legal studies (MLS). The joint degree, though not necessary for forensic psychologists, is a good option for graduate students feeling a strong pull toward both psychology and law (DeMatteo, 2019). Several of the essayists featured in this textbook hold joint degrees. It is a mistake to believe you need a degree specifically in forensic psychology to work in the field, however. Many graduate programs in clinical psychology, counseling psychology, and criminal justice, among others, have forensic concentrations that provide students with academic and training opportunities in forensic psychology, whether through specific course

work or internships. Furthermore, many psychologists recommend a broad background in psychology, such as would be obtained by a clinical or counseling degree, rather than a degree in forensic psychology. Also, as noted earlier, postdoctoral fellowship opportunities are available as well. The choice one makes can depend upon numerous factors: the availability of a mentor, the content of courses offered, the opportunity for internships, funding, the geographic area, and the reputation of the program, among many considerations. In reality, there are different avenues through which to work in forensic psychology.

Most of the graduate programs in the United States concentrate on either clinical or counseling psychology or on social psychology as it relates to legal psychology or psychology and law. DeMatteo et al. (2009) recommended that doctoral level training in forensic psychology should have seven components, and this model is often taken as the guideline for curriculum development (see **Table 1.3**). Formal programs offering specific degrees in police psychology are virtually nonexistent in the United States and Canada, although there are several programs called “investigative psychology” in the United Kingdom. Furthermore, now that police and public safety psychology has been recognized as a specialty, it is likely that more academic concentrations in this area will be developed. In anticipation of this happening, the Council of Organizations in Police Psychology (COPP) has proposed educational and training guidelines (Brewster et al., 2016), which will be mentioned again in Chapter 2. Academic and research institutions in Canada have long supported research in correctional psychology, and the curricula in Canadian forensic programs reflect this strong research or empirical emphasis. Interestingly, forensic programs in the United States have been slow in giving sufficient attention to corrections and the skills needed to practice in that area (Magaletta et al., 2013). On the other hand, it is also argued that generalist skills are more helpful to practice in corrections than specialized skills, at least for the time being (Magaletta et al., 2013; Magaletta & Patry, 2020). In both the United States and Canada, however, more aggressive efforts are now made to recruit graduate students into practica that will be of benefit to both their future careers and the institutions they serve during these internship experiences (Magaletta, Patry, Cermak, & McLearen, 2017; Olver, Preston, Camilleri, Helmus, & Starzomski, 2011). It is important to mention, also, that students with psychology backgrounds often enroll in doctoral programs that confer degrees in criminal justice, criminology, sociology, and social work. Professors, practitioners, and researchers who teach in these programs make

significant contributions to this field. Moreover, these graduate programs often include PhD or PsyD psychologists on their faculty.

Table 1.2

Source: Created using data from *Guide to Graduate Programs in Forensic and Legal Psychology 2016–2017*, developed in collaboration with the Teaching, Training, and Careers Committee of the American Psychology–Law Society, Division 41 of the American Psychological Association. Updated by Apryl Alexander, PsyD, University of Denver.

Table 1.3

Source: Adapted from DeMatteo et al. (2009).

In approximately 17 states, forensic psychologists must obtain licenses or state-issued certificates in order to engage in forensic practice, such as conducting competency evaluations for the courts or assessing sexually violent offenders who may be subjected to civil commitment proceedings. Virtually all of the laws relating to certification in various states were passed after 2000, which is testament to the growth in this field. Heilbrun and Brooks (2010) have published a helpful table summarizing these statutes.

Another level of certification is "board certification," which can add stature to the credentials of individuals who are called to testify in court. On a national level, the predominant organization that provides board certification in forensic psychology (as well as other specialty areas) is the ABPP. In addition, the American Board of Forensic Psychology (ABFP) has provided board certification since 1978 and is now affiliated with the ABPP (Heilbrun & Brooks, 2010). Another certifying body is the American Board of Psychological Specialties (ABPS), which is affiliated with the American College of Forensic Examiners (ACFE). Criteria used by the various boards and organizations to grant credentials or titles vary widely (Otto & Heilbrun, 2002). According to Heilbrun and Brooks (2010), with regard to board certification, the ABFP "appears to be the most rigorous, requiring a credentials review, a work sample review, and the passing of both a written and an oral examination for all candidates" (p. 229).

RESEARCH AND PRACTICE CAREERS IN FORENSIC PSYCHOLOGY

We now discuss briefly the five major areas in the research and practice of forensic psychology to be covered throughout the text, along with two related "subareas," family forensic and forensic school psychology. Although examples of what psychologists do in

each of these areas were listed earlier in the chapter, this section offers additional details.

Police and Public Safety Psychology

Police and public safety psychology (PPSP) is the research and application of psychological principles and clinical skills to law enforcement and public safety (Bartol, 1996). The goal of this specialty is to assist law enforcement and other public safety personnel and agencies in carrying out their mission and societal functions with effectiveness and safety. Psychologists who work in law enforcement and public safety are involved in the following four areas: (1) assessment (e.g., screening and selection of personnel, fitness-for-duty evaluations [FFDEs] and special unit evaluations); (2) clinical intervention (post-shooting incidents, line-of-duty deaths counseling, deep undercover stress reactions); (3) operational support (e.g., hostage negotiation, criminal activity analyses); and (4) organization consultation (e.g., gender issues and issues related to racial or ethnic minorities, excessive force concerns, police corruption problems, workplace stressors).

Police psychologists are sometimes left out of the umbrella category of forensic psychologist, and as noted earlier, some do not consider themselves such. This field also has grown dramatically, embracing a number of national organizations, and it has achieved APA recognition as a specialty of its own. However, because of the overlap between forensic and police psychology specialties, we continue to treat it as a branch of forensic psychology for organizational purposes.

In the early years, the term *police psychology* was used, but this has given way to the broader term, which encompasses the many professions that are associated with public safety concerns, such as deputy sheriffs, fish and wildlife agents, airport security, immigration agents, marshals, constables, and many other types of state and federal agents. It also includes military personnel and private contractors. In addition, the broader terminology is a reminder that police exist not only to arrest people but also to serve and protect the public at large.

Scholars often mark the beginning of the psychology and police relationship at 1917, when Lewis Terman began testing applicants for police positions (Brewster et al., 2016). The relationship between psychology and law enforcement has waxed and waned over the years, though, with considerable forensic psychology involvement—such as in candidate screening—followed by a period of quiescence. The police community has been characterized as “tight-knit,

paramilitary, and rigid and . . . not given to innovation" (Scrivner, Corey, & Greene, 2014, p. 444). Scrivner, Corey, and Greene add that "[i]nitially, the tradition-clad agencies were uncertain about the need for psychological services, and psychologists had an uphill battle to gain credibility and develop an understanding of the law enforcement culture." Overall, though, as law enforcement agencies have become more professional and psychologists more appreciative of the demands of law enforcement work, relations between the two professions have improved and become mutually respectful. "There is little question today that psychologists have made a difference and have had an impact on the delivery of law enforcement services across the country" (Scrivner et al., 2014, p. 444).

Nevertheless, the relationship between police and the public is complicated. In the 21st century, highly publicized deaths of unarmed Blacks brought to the forefront major concerns about systemic racism in police agencies across the United States. Examples of excessive force used against civilians, even over the past decade, are not difficult to find, and we mention here only a few. In March 2020, Breonna Taylor was fatally shot in her home by police executing a no-knock search warrant for which she was not the subject In May 2020, the world saw images of an officer holding his knee on George Floyd's neck for almost 9 minutes while he lay facedown, unable to breathe. After Floyd died, people across the United States—and sometimes across the world—held peaceful marches to protest police brutality. Some states, and some local communities, immediately changed law enforcement policies relating to force and to police–civilian interactions. Then, an unarmed Jacob Blake was shot seven times in the back while getting into his car by a police officer holding on to his shirt. Blake's three young sons were in the car. We address more details about these incidents in later chapters. For the present, it is stressed that police responses to people of color is something police and public safety psychologists cannot ignore in their interactions with law enforcement.

Police and public safety psychologists will continue to perform routine duties, including preemployment psychological assessments, fitness-for-duty evaluations, special unit evaluations, hostage team negotiations, and deadly force incident evaluations. In light of recent events, routine duties will be carried out against a backdrop of increasing distrust from many in the public who support police but also recognize that numerous problems must be addressed. As of 2016, for example, 98.5% of all law enforcement agencies used psychologists to evaluate the psychological suitability of persons to

perform the functions required of a police officer before they were hired (Corey, 2017). As we note in the following chapter, perhaps it is time to demand that closer attention be paid to assessing the attitudes of candidates who may end up in positions of authority, whether patrolling streets or transmitting messages to those they supervise.

Psychologists also may be asked to do investigative-type activities, such as criminal profiling, psychological autopsies, handwriting analysis, and eyewitness (or earwitness) hypnosis. “Cop docs,” as they are sometimes called, also provide support services to officers and their families. Larger police departments usually hire full-time, in-house police psychologists, whereas the smaller departments typically use psychological consultants.

Currently, there are no formal graduate programs in the United States specifically focused on police and public safety psychology, but as mentioned earlier, with recent recognition as a specialty, this may happen soon. It is best for students entering the field to earn a doctorate in psychology and, while in the graduate program, to work with a faculty member who is involved in police psychology and has worked with the law enforcement community if possible. It is also advisable to complete a doctoral or postdoctoral internship in an agency or organization that deals directly with police organizations. Regardless of the career path taken, it is critical that a person interested in police psychology become highly familiar with the nature of police work, its policies and procedures, and gain an understanding of law enforcement culture, which we discuss in more detail in the following chapter.

Legal Psychology

Legal psychology is an umbrella term for the scientific study of a wide assortment of topics reflecting the close relationship between psychology and the law, particularly but not exclusively the courts. These topics include—but again are not limited to—comprehension of one’s legal rights, criminal responsibility (insanity defense), civil commitment, jury selection, jury and judicial decision making, child custody determinations, family law issues, eyewitness identification, and the effects of pretrial publicity on court proceedings. As treated here, legal psychology includes both research and application of behavioral and social science to criminal and civil courts.

Once they have earned their PhD or PsyD degree (or a joint JD/PhD), people with a background in legal psychology often go directly into academe or private practice, or they obtain postdoctoral positions in various agencies and research facilities like the Federal

Judicial Center, the National Center for State Courts, the Federal Bureau of Investigation, the National Institute of Justice, or the National Institute of Mental Health.

A caveat is in order, however. It is not unusual to see the terms *legal psychology, psychology and law*, and *forensic psychology* used interchangeably in academic and professional literature. Although we use *legal psychology* here as a subarea of forensic psychology, we recognize that this is not a universal approach. We also recognize the considerable overlap between legal psychology and the other subareas we have carved out. The subareas are not mutually exclusive. Eyewitness identification, for example, a rich research area for legal psychology, is of intense interest to police and public safety psychologists, who might be advising the law enforcement community on lineup procedures or the reliability of eyewitness testimony. In fact, we discuss these topics in Chapter 3, which deals with police investigative procedures. The legal psychologist is more likely than the police and public safety psychologist to be conducting *research* in these areas, however.

One of the numerous topics holding considerable interest for legal psychologists is the psychology of false confessions, a topic we also discuss in Chapter 3. Most people are aware that suspects—for a wide variety of reasons—sometimes confess to crimes they did not commit. Suspects may be afraid, may be coerced into confessing, may desire to protect the real perpetrator, may think that no one will believe in their innocence, or may even want the notoriety associated with being blamed for the crime. What surprises many people, however, is this: Some suspects who are truly innocent come to believe they are truly guilty. Research strongly suggests that skillful manipulation by law enforcement officers can lead to this form of false confession (Kassin, 1997, 2008; Kassin, Goldstein, & Savitsky, 2003; Kassin & Kiechel, 1996; Loftus, 2004). Loftus observes that “we have every reason to believe that some people who are presented with false evidence that they committed a crime might actually come to believe that they did” (p. i). Legal psychologists have been at the forefront of studying this bizarre phenomenon.

Family Forensic Psychology

Many forensic psychologists are becoming increasingly involved in family law, so much so that specializing in **Family forensic psychology** is a good career option. Note from **Table 1.1** that family psychology itself is a specialty area, recognized by the APA in 2002. The family has changed dramatically, even over the past 20 years.

The 2000 census indicated a major increase of cohabitating, single-parent, and grandparent-led families as well as increases in families formed by gay and lesbian parents and their children (Grossman & Okun, 2003). In 2007, the Centers for Disease Control and Prevention (CDC) reported that 39.7% of all births in the United States were to unmarried women. In 2012, this figure rose to half of all births (Adam & Brady, 2013). In 2013, the U.S. Supreme Court affirmed that legally married same-sex couples were entitled to federal benefits (United States v. Windsor, 2013) and also supported marriage equality in a different case (Hollingsworth v. Perry, 2013) by refusing to overturn a California court's decision to strike down a law that would have prohibited it. Finally, in 2015, the U.S. Supreme Court ruled in *Obergefell v. Hodges* that same-sex couples have the constitutional right to marry.

These social changes and changes in the law affect the formation of families; family maintenance and dissolution; and numerous legal issues relating to children, medical and employment benefits, and even end-of-life decisions. Family forensic psychologists, then, are concerned with adoption; families in all their iterations; child support; divorce, including custody, relocation, and conflict resolution; abuse; elder law, including estate planning; family business; guardianship; juvenile justice; paternity; reproductive and genetic technologies; and other areas such as termination of parental rights. Family forensic psychology is involved in civil and criminal cases when the understanding of family dynamics and family systems is essential—for example, in cases involving visitation to prisons, release programs, and the impact of sentencing on family members (Grossman & Okun, 2003, p. 166). In this capacity, family forensic psychologists have a good opportunity to educate both legal professionals and families themselves about topics such as how to resolve conflicts. In so doing, they must be careful about their use of terminology and diagnostic categories so as not to escalate already tense situations (L. Greenberg, 2018). The best known areas of family forensic psychology involve child custody, family violence, and the assessment and treatment of juveniles, all topics that are covered in some detail later in the book.

Psychology of Crime and Delinquency

The **Psychology of crime and delinquency** is the *science* of the behavioral and mental processes of the adult and juvenile offender. It is primarily concerned with how antisocial behavior is acquired, evoked, maintained, and modified. Recent psychological research has focused on a person's cognitive versions of the world, especially

the person's thoughts, beliefs, and values and how those that are inconsistent with leading a lawful life can be modified. It assumes that various criminal behaviors are acquired by daily living experiences, in accordance with the principles of learning, and are perceived, coded, processed, and stored in memory in a unique fashion for each individual.

Criminal psychology examines and evaluates prevention, intervention, and treatment strategies directed at reducing criminal or antisocial behavior. Research in crime and delinquency has discovered, for example, that chronic violence usually develops when children do poorly in school, do not get along with peers, have abusive parents, and attend schools that do not control disruptive and violent behavior (N. Crawford, 2002). Research has also found that social rejection by peers and others can lead to serious, violent offending: "A great deal of psychological functioning is predicated on belonging to the group and enjoying the benefits, both direct and indirect, of that belongingness" (Benson, 2002, p. 25). When this sense of belongingness is removed or restricted, a feeling of isolation and social exclusion occurs that tends to produce significant changes in behavior, such as an increase in aggression, violence, and other maladaptive behaviors. Under these conditions, human behavior may become impulsive, chaotic, selfish, disorganized, and even destructive. School shooters, for example, frequently express a sense of social isolation and rejection.

Researchers have also found, however, that well-designed and carefully executed prevention programs can prevent violence and a lifelong career path of crime. We discuss such programs in the chapters on crime and delinquency. Of late, applied psychologists working in school settings have found an increased need for their services, as we noted above. This has led to a keen interest in a new subdivision of school psychology.

Forensic School Psychology

A major area of research interest and practice today is **Forensic school psychology**, which relates to the intersection of psychology, the educational system, and the legal system. Forensic school psychologists may not call themselves such—they may think of themselves simply as psychologists or school psychologists. Recall from **Table 1.1** that school psychology was recognized as a specialty by the APA in 1998. If school psychologists routinely interact with a multitude of legal issues, we would consider them deserving of that additional title. Forensic school psychologists may work with local schools concerning school suspensions and expulsions, as well as

possible placement of a youth into a residential school program and its concomitant implications for the youngster's home school district. They also perform a wide variety of assessment services, including threat assessments or assessing students who may have intellectual, developmental, or emotional difficulties.

Educational programs are required for young people in correctional and psychiatric facilities throughout the country, and some states have established special school districts within these facilities (Crespi, 1990). The challenges for forensic school psychologists within these contexts are considerable. Although the primary focus of public and private schools in the community is obviously education, such education in most correctional or psychiatric settings may be secondary to the reasons for confinement.

The need for additional consultation with school psychologists within the public and private school systems across the United States took on chilling urgency in the late 1990s when a rash of school shootings made headlines. Communities across the nation that had previously had a low profile suddenly became well known because of the violence that erupted within their schools. Since then, sporadic episodes of students taking a gun to school and injuring others have been publicized. As noted later in the book, these incidents, though still rare, now occur often enough to merit the attention of forensic psychologists and other mental health practitioners who consult with school administrators about steps to take to prevent violence from occurring. In light of the increasing attention paid to school violence, threat assessments to identify youth who are potentially dangerous have become more common. We discuss threat assessments in more detail in Chapter 8.

Victimology and Victim Services

Victimology refers to the study of persons who have experienced either actual or threatened physical, psychological, social, or financial harm as the result of the commission or attempted commission of crime against them. The harm may be direct or primary (experienced firsthand) or indirect or secondary (experienced by family members, relatives, survivors, or friends because of their closeness to the victim; Karmen, 2013).

Violent victimization of children, such as terrifying abductions, school shootings, and sexual attacks, can disrupt the course of child development in very fundamental ways and can be associated with emotional and cognitive problems over the course of the life span (Boney-McCoy & Finkelhor, 1995). In adults, there is strong evidence that the effects of criminal victimization—such as assault,

robbery, and burglary—are both pervasive and persistent (Norris & Kaniasty, 1994). Until recently, psychological services were received by a very small fraction of crime victims (2%–7%; Norris, Kaniasty, & Scheer, 1990). In fact, it has only been within approximately the past 40 years that criminal victimology has become recognized as a scientific and professional field of study (Karmen, 2013). Increasingly, psychologists are beginning to play major roles in the research, evaluation, and treatment of crime victims from diverse cultural contexts and age groups. Colleges and universities now routinely offer courses, majors, and concentrations in victimology. Students wishing to pursue a research career in victimology probably should obtain a research doctorate in psychology, criminal justice, social work, or sociology. Those desiring careers as practitioners in the field would be advised to obtain a doctorate in clinical or counseling psychology or an MSW. However, there are other training opportunities and career paths as well.

Over the past 30 years, for example, the field of victim services has become a rapidly growing profession, and not all of these services are given directly to crime victims. Today, there is greater understanding of victims' issues due to legislation enacted to support victims' rights, increased funding for victim services, efforts by victim advocates, and active research in victimology. Victim services concentrating on victims of sexual assault, domestic violence, and abuse of partners, children, and older adults have especially grown in recent years, and federal and state legislation has broadened the scope of understanding and services for victims. It is hoped that public funds will continue to be appropriated for these purposes.

Correctional Psychology

Correctional psychology is a vibrant branch of forensic psychology, broadly defined, and one in which multiple career opportunities are available. However, like police and public safety psychologists, many psychologists conducting research or working in corrections prefer to not call themselves forensic psychologists. Rather, they are *correctional* psychologists. In addition, they usually agree that it is not appropriate to seek recognition for correctional psychology as a specialty area (Magaletta & Patry, 2020; Neal, 2018). However, there is lively debate about the extent to which forensic and correctional psychology overlap and whether a generalist training in applied psychology provides a better model for correctional psychology than forensic training (e.g., Magaletta & Patry, 2020; Neal, 2018, 2020). Essentially, some are concerned that PhD programs in forensic psychology or those with forensic

psychology concentrations do not adequately prepare people for the many varied responsibilities they must assume in both institutional and community corrections. “Among the leading scholars in the field [of correctional psychology] . . . the distinction between corrections practice and psychology–law or forensic training has been consistently observed, increasingly noted, and unfortunately, ignored” (Magaletta et al., 2013, p. 293). This criticism is not directed only at forensic programs but also at doctoral-level programs in psychology in general. Magaletta et al. (2013) also note,

> Few empirical studies allow us to know specifically how graduate programs introduce corrections as an area of study or a venue for practice, making it difficult to understand the link between academic programs and a psychology services workforce in corrections. (p. 292)

In their own study of 170 training directors of APA-accredited doctoral programs, Magaletta et al. (2013) found that only 1 in 3 programs reported they had one or more faculty members interested in corrections, and only 6% of the programs offered a corrections course. This is a valid point that should be taken into consideration by all directors of doctoral programs.

At the end of 2016, there were 6,613,500 adults under correctional supervision in the United States (Kaeble & Cowhig, 2017). This includes adults who were in prison, in jail, or supervised in the community, as on probation or parole. The overall number represents an 18% decline since 2009, when a decrease in the population was first noted, but declines in recent years have been very small—1.7% in 2013, 2% in 2010, and 0.9% in 2016. Despite the fact that the overall crime rate in the United States is decreasing, the number of persons under correctional supervision is not decreasing comparably. Nevertheless, the number of persons *incarcerated* is beginning to decrease, as some jurisdictions are closing prisons, reducing sentences, and developing more alternatives to imprisonment, particularly for nonviolent offenders. The prison population decreased 1.2% between the end of 2016 and 2017 (Bronson & Carson, 2019). We discuss these data as well as their implications in later chapters.

In 2020, the global health crisis associated with the novel coronavirus did not spare the prison and jail populations. In one large state (Ohio), 80% of inmates in a medium-security prison, and an unspecified percentage of staff, tested positive for the virus.

Other state and federal prisons as well as local jails experienced high positive tests and even deaths. As a consequence, decisions were made when possible to allow early release of inmates serving time for nonviolent offenses or older inmates believed to pose little threat to society.

Virtually every detainee, prisoner, or offender serving time in the community requires or could benefit from one or more of the services offered by correctional psychologists, including assessment, crisis intervention, substance abuse treatment, or reentry planning, to name but a few. Recent meta-analyses of studies also indicate that mental health treatment results in improved mental health functioning as well as better adjustments and coping skills of offenders (R. D. Morgan et al., 2012). In addition, the large number of persons with mental disorders in the nation's jails and prisons is of increasing concern to psychologists as well as other mental health professionals. Among the developments in corrections that should be watched closely is the possible renewal of support for private prisons, which had received considerable scrutiny in past years. Privately operated prisons have been controversial on a number of fronts, and research does not support their effectiveness at reducing recidivism. We discuss this issue in its many facets in Chapter 12.

As the number of opportunities for psychologists in corrections has proliferated, correctional psychology has emerged as an exciting, rewarding, and challenging field. Yet, according to Magaletta et al. (2013), many positions remain unfilled, again partly because graduate schools have not adequately promoted this career option or sufficiently prepared doctoral students through relevant coursework. On a more optimistic note, though, more correctional institutions are now offering practicum opportunities for doctoral students interested in this area (Magaletta et al., 2017).

Research psychologists who are not necessarily working within the correctional system often study the psychological effects of correctional systems on prisoner behavior. Topics include the general effect of imprisonment on special populations of offenders, such as the mentally disordered or the elderly, the effects of crowding, the effects of isolation, and the outcome of various rehabilitative programs.

Juvenile corrections is a related but also distinct area in which psychologists play important roles, as we discuss in the last chapter of the book. Juvenile corrections, both in institutions and in the community, should focus on rehabilitation—thus, assessment and treatment strategies are paramount. Basically, however,

psychologists working with juveniles and their families must be knowledgeable about recent research in adolescent development and decision making and be able to communicate that knowledge to legal professionals, including law enforcement, attorneys, judges, and others. Juvenile corrections also raises some of the same concerns as adult corrections, specifically, the assessment of risk; the effects of crowding and isolation; substance abuse programs; and work with special populations of offenders, such as juvenile sex offenders and juveniles with mental disorders and intellectual limitations.

Interestingly, psychologists who practice in adult as well as juvenile correctional settings are sometimes criticized for aligning themselves with prison administrators, and they may be confronted with ethical quandaries, such as when asked to perform custody-related functions like supervising or restraining inmates. In death penalty states, psychologists may be asked to assess the risk of future dangerousness of a person facing a potential death sentence. Lawyers representing prisoners on death row also may argue that they are not competent to be executed because they have either serious mental illness or severe intellectual disability. Courts, including the U.S. Supreme Court, have addressed these issues in recent landmark cases. Psychologists in recent years also have been asked to perform evaluations of sexual offenders at the end of their sentences, to determine whether they are eligible for civil commitment under sexually violent predator laws. These are all controversial topics that are covered in later chapters.

SUMMARY AND CONCLUSIONS

As recently as 35 years ago, the term *forensic psychology* had barely been introduced into psychological or legal literature. Today, as we have seen, it is a commonly encountered term, but it still defies definition. It is often used interchangeably with legal psychology and psychology and law. Although some favor a narrow definition limiting it to clinical practice offered to the legal system, particularly the courts, the contributions of research psychologists may be undermined by such an approach. The most recently adopted *Specialty Guidelines for Forensic Psychology* (APA, 2013c), as well as the writings of prominent forensic psychologists (e.g., DeMatteo et al., 2009; Heilbrun & Brooks, 2010; Otto & Weiner, 2013), recognize the importance of contributions from researchers, although there continues to be emphasis placed on practice. In other words, researchers are not forensic psychologists if they do not interact with the legal community. Furthermore, in some jurisdictions

one must be certified as a forensic psychologist to practice in certain arenas, such as court settings.

In addition, though, it is important to consider the context in which psychology is practiced. Limiting forensic psychology to work with courts does not recognize well enough the law-related functions performed by psychologists working with law enforcement, corrections, victims, or schools concerned about the safety of their students and staff. Finally, the many contributions of psychologists who study the psychology of crime and delinquency deserve to be included in this field, as long as their findings are available to the legal system. The law surely can benefit, for example, from research on adolescent development and decision making or research on the prevention and control of sex offending. As we note throughout the book, and as illustrated in many of the Perspective boxes, researchers on such topics often testify in court as expert witnesses and consult with lawyers and judges on a regular basis.

We have persisted, then, in advocating for a broad definition of forensic psychology, one that might divide it into the five subareas covered in this chapter, although other organizational divisions are possible. In each of the areas discussed, numerous career opportunities exist. Both undergraduate and graduate programs have rapidly seen the need for preparation for careers in forensic psychology, whether by offering degree programs in the field or by offering concentrations within a broader program, such as a doctorate in clinical, counseling, or developmental psychology. Furthermore, professionals themselves are regularly offered opportunities for licensing, certification, and continuing education as well as guidelines for practicing their profession.

In sum, the field of forensic psychology, as we define it broadly, provides ample opportunities for psychologists interested in interacting with some aspect of the law. It is an area of specialization that has developed rapidly and shows no signs of stagnation. Many of the scholars who are cited and featured in this book began their studies at a time when forensic psychology was not prominent and was not widely considered a career choice. Moreover, as recently as the turn of the 21st century, a relatively small group of forensic specialists devoted themselves full time to this field, whereas a much larger group of psychologists provided occasional forensic services or provided such services only within a circumscribed area, such as child custody evaluations (Otto & Heilbrun, 2002). Otto and Heilbrun (2002) predicted then that the field would grow, and they argued that the field must develop a plan to ensure that forensic

practice overall was well informed and competent. This plan was especially needed in the area of forensic testing and assessment. A decade ago, Heilbrun and Brooks (2010) commented on the remarkable expansion of the field noting that there had been substantial progress. In proposing an agenda for the future, they emphasized the need for interdisciplinary and intercultural collaboration, continuing improvement in the quality of forensic mental health assessments, a better integration of science and practice, and better outreach to a variety of settings. In many respects, considerable progress has been made toward reaching these laudable goals, as will be seen in the chapters ahead. Nonetheless, challenges, some new and some long-standing, confront forensic psychologists today, making the field an exciting one in which to be involved.

KEY CONCEPTS

American Psychological Association (APA) 17
Association for Psychological Science (APS) 17
Correctional psychology 29
Digital investigative analysis 5
Ethical Principles of Psychologists and Code of Conduct (EPPCC) 19
Family forensic psychology 27
Forensic entomology 5
Forensic psychiatrists 14
Forensic psychology 4
Forensic school psychology 28
Forensic social workers 14
Legal psychology 26
Police and public safety psychology (PPSP) 24
Psychology of crime and delinquency 28
Questioned document examination or analysis 5
Specialty Guidelines for Forensic Psychology 7
Victimology 29

QUESTIONS FOR REVIEW

1. Contrast the narrow and broad definitions of *forensic psychology*.
2. Contrast forensic psychology with other forensic sciences.
3. Identify the five subspecialties of forensic psychology covered in this text, and provide illustrations of the contributions of forensic psychologists in each one.
4. Explain the difference between the PhD and the PsyD degrees.

5. Give examples of any four ethical issues that might be faced by psychologists practicing forensic psychology.
6. What is meant by the term *prescription privileges* when applied to psychologists? Briefly discuss the progress psychologists have made in obtaining these privileges and discuss possible objections that might be raised.

PART TWO POLICE AND INVESTIGATIVE PSYCHOLOGY

Chapter 2 • Police and Public Safety Psychology
Chapter 3 • Psychology of Investigations

CHAPTER TWO POLICE AND PUBLIC SAFETY PSYCHOLOGY

CHAPTER OBJECTIVES

- Define and describe the common activities and tasks of police and public safety psychologists.
- Discuss police culture and emphasize that it is not necessarily homogeneous.
- Summarize the concepts of job analysis and various types of validity as they relate to the assessment of police applicants.
- Review psychological assessment methods and instruments.
- Examine the prevalence and risk factors for police suicide.
- Describe the roles of psychologists and mental health professionals in assessing and treating officers after critical incidents, such as hostage taking, mass casualties, and shootings.
- Review recent research findings on shooter bias and the use of excessive force by police.

In 2017, a police officer saved a woman from a burning car by punching out the car windows with his baton. In another state, an off-duty officer rescued a half-blind dog from a ravine.

In 2020, in the midst of a global health care crisis, police officers across the nation faced unprecedented demands, including calming fears, dispersing groups who violated orders not to congregate, transporting people to clinics and hospitals, and responding to increases in domestic violence calls.

In 2020, decades of systemic racism were symbolized in an incident, captured in real time, in which an unarmed Black man died after a police officer held a knee to his throat for 8 minutes and 46 seconds.

Law enforcement work requires many and varied skills. Like most other occupations, it attracts a range of personalities. Most who enter this occupation probably begin hoping to make a positive difference, such as by helping people or protecting child victims. Others enter with less noble motives, and if not screened out prior to becoming sworn officers, their behavior on the force should be carefully scrutinized. Training and supervision are essential elements in ensuring policing that truly protects and serves every citizen and resident, every age group, every race, every ethnicity, every gender. Nevertheless, subsequent experiences, including dealing with distrust from the community, public demands for accountability, the failings of fellow officers, as well as personal crises in their nonpublic lives, can produce stress and burnout. Faced with the realities of police work, many perform their duties admirably, but they can be helped in doing this by the police and public safety psychologists who are the topic of this chapter.

At a time when policing has come under intensive public criticism, police and public safety psychologists themselves face challenging tasks. Although they will continue to consult with law enforcement agencies in ways they have over many years—ways we cover in both this and the next chapter—they also cannot ignore nationwide concerns about police performance that have only recently come to the forefront of public attention. For some groups, these concerns have always been there. In this chapter, we begin with general information about policing, move on to discuss tasks of police and public safety psychologists, cover stress in law enforcement, and end with the important topic of officer involved shooting and the use of force.

LAW ENFORCEMENT NUMBERS TODAY

There are approximately 15,000 general-purpose law enforcement agencies in the United States, employing 701,000 full-time sworn officers (Hyland & Davis, 2019). General-purpose law enforcement agencies include municipal, county, and regional police departments; most sheriff's offices; and primary state and highway patrol agencies. General-purpose agencies do not include special-purpose agencies, such as sheriff's offices that are restricted to jail and court duties, and federal law enforcement agencies. Local police agencies make up the majority of the general-purpose police agencies, representing 80% (12,261 police departments) and employ 468,000 of the full-time sworn officers. Sheriff's offices represent 20% (3,012 agencies) of the total general-purposes law enforcement agencies, and employ 173,000 full-time, sworn officers (Brooks, 2019a). There are 49 primary state/highway patrol police agencies employing roughly 60,000 full-time sworn officers. Hawai'i does not have a state/highway patrol agency.

As noted, federal law enforcement agencies are categorized as a separate group distinct from general purpose agencies. At the end of 2016, federal agencies in the United States and U.S. territories employed approximately 132,000 full-time law enforcement officers (Brooks, 2019b), authorized to make arrests and carry firearms. The primary purpose of three quarters of federal law enforcement officers is to provide protection to the public, officials, and institutions. When members of the public think of federal officers, they are likely to think of those with high profiles, such as Federal Bureau of Investigation (FBI), Secret Service, or Border Patrol agents. Most people are not aware that there are about 83 federal law enforcement agencies that are attached to an array of government agencies.

In addition, there is a wide range of private and public safety agencies. Some are private security agencies, and others are

supported by public funding, such as campus police departments on public university and college campuses. Virtually every university and college campus, public or private, has a public safety department, whose officers may or may not be armed and may or may not be invested with police powers. Two thirds of public colleges and universities employ armed officers, which is more than double the number of private colleges that employ armed officers (Reaves, 2015). Private security personnel, some armed, also are found in hospitals, schools, corporate offices, and large retail establishments. In the past two decades, the composition of law enforcement officers across the nation has become more diverse, proportionally more female, more educated, and specialized (Bureau of Justice Statistics, 2015). In 2016, approximately 12% of full-time offices in local police departments were women (Hyland & Davis, 2019). During that same year, about 27% of full-time officers in local police departments were Black, Hispanic, or of other races and ethnicities (Hyland & Davis, 2019). Law enforcement agencies also have expanded significantly in size during this time, exceeding even the annual increase in the U.S. population (Reaves, 2012b). At the same time, officer retention has continued to be a problem, with people leaving the field or being forced to resign (Reaves, 2012b). Furthermore, in many communities across the United States, relationships between police and the public have been strained because of shootings, perceived increases in violence, fear, and the national political climate. All of these issues provide professional challenges for psychologists working with law enforcement.

Police and public safety psychology (PPSP) is the research and application of psychological knowledge and clinical skills to law enforcement and public safety. As we noted in Chapter 1, the degree of interaction between psychology and law enforcement has waxed and waned over the years. We have now reached the point, however, where psychologists play a vital and expanding role in many police and public safety agencies, as both in-house employees and community consultants (Mitchell & Dorian, 2017, 2020; Scrivner, Corey, & Greene, 2014; Trompetter, 2017). As Mitchell and Dorian (2020, p. 279) state, “[o]nce considered rare birds in the law enforcement landscape . . . today’s psychologists are integral to the effective functioning of both large and small police departments.”

POLICE PSYCHOLOGY: A DEVELOPING PROFESSION

Precisely when a partnership between law enforcement and psychology first began is unclear. To a certain extent, community

psychologists offered some type of consulting service to police, usually on an “as needed” basis, throughout the 20th century. Their earliest contributions were in the form of cognitive and aptitude testing of applicants for police positions, with psychologist Louis Terman being the first to use these methods in 1917.

Police psychology probably began in the United States as a viable profession in 1968, however, when Martin Reiser was hired as a full-time in-house psychologist by the Los Angeles Police Department (LAPD). Reiser (1982) himself modestly claimed that he was not altogether certain he was the first “cop doc.” However, there is little doubt that Reiser was the most prolific writer on police psychology in the United States throughout the 1970s. He also established the first graduate student internship in police psychology at the LAPD, in conjunction with the California School of Professional Psychology. By 1977, at least six other law enforcement agencies in the United States employed full-time psychologists (Reese, 1986, 1987).

In the years spanning the 20th and 21st centuries, numerous books and journal articles on police psychology were published in the academic literature. They included works on screening candidates for law enforcement positions, coping with stress in policing, police culture, police corruption, police suicide and relationship problems, the legitimate use of force, and women in policing, among many other topics. Notable contributions were made by Blau (1994), Kurke and Scrivner (1995), Niederhoffer and Niederhoffer (1977), Scrivner (1994), and Toch (2002). Later, books by Kitaeff (2011) and Toch (2012) continued to focus on psychological aspects of police work. Throughout these years, and into the present, a rich store of psychological research has been developed, much of which will be visited in this and the following chapter.

Recognition of PPSP as a growing profession has expanded greatly in other ways during the past decade as well. For example, in 2011, the American Board of Professional Psychology (ABPP) established a specialty board to serve as an avenue for psychologists to become certified in this field (Corey, Cuttler, Cox, & Brower, 2011). This was heralded as the “most significant event in the history of the field” (Scrivner et al., 2014, p. 447). In addition, PPSP was recognized as a specialty by the American Psychological Association in 2013. This has encouraged APA-accredited doctoral programs in clinical psychology to offer degree concentrations in police and public safety psychology. Some organizations also have developed graduate, postdoctoral, and continuing education standards and opportunities for persons planning careers in the field (Gallo & Halgin, 2011).

Currently, there are five national police psychology organizations in the United States: (1) the Police Psychological Services Section of the International Association of Chiefs of Police (IACP-PPSS), (2) Division 18 (Police and Public Safety Section) of the American Psychological Association (APA), (3) the Society of Police and Criminal Psychology (SPCP), (4) the American Academy of Police & Public Safety Psychology (AAPPSP), and (5) the American Board of Police & Public Safety Psychology (ABPP; Corey, 2013). In Canada, which has its own parallel history of police psychology, the major organization for police and forensic psychology is the Criminal Justice Psychology Section of the Canadian Psychological Association (CPA). This section is divided into several subsections, including police psychology and psychology in the courts.

As reflected in the name of the International Association of Chiefs of Police (IACP), police agencies across the world share goals and cooperate in training. Specifically related to psychology, the IACP-PPSS has established guidelines for police psychological service (e.g., IACP, 2002). The guidelines have been updated often, most recently in 2016 (Brewster et al., 2016; IACP, 2016). They cover many areas of professional practice, including preemployment psychological evaluations, psychological fitness-for-duty evaluations, officer-involved shootings, and peer emotional support during times of personal or professional crises. The Canadian Psychological Association also passed guidelines in 2013 for Canadian psychologists who conduct preemployment psychological assessments of police candidates.

Table 2.1

In sum, there is a vast and ever-expanding literature on police and public safety psychology. To help organize the material in this chapter, we adopt the approach of Aumiller and Corey (2007), who divide police psychology—and by extension police and public safety psychology—into four general and sometimes overlapping domains of practice: (1) assessment, (2) intervention, (3) operational support, and (4) organizational/management consultation. (Table 2.1 gives examples of activities associated with each domain.) Aumiller and Corey were able to identify over 50 activities or services that police psychologists may be expected to provide. These categories are virtually identical to those identified in publications of the PPSP specialty: assessment, clinical intervention, operational support, and organizational consulting (Brewster et al., 2016).

FORENSIC ASSESSMENT IN POLICE AND PUBLIC SAFETY PSYCHOLOGY

“Psychological assessment is considered a core competency for psychologists specializing in police and public safety” (Corey & Borum, 2013, p. 246). The two categories of assessments most commonly done in this context are preemployment psychological screening and fitness-for-duty evaluations. **Preemployment psychological screening** occurs when psychologists evaluate a person’s psychological suitability for police work prior to being hired. Cochrane, Tett, and Vandecreek (2003) conducted a survey of police agencies across the nation and reported that nearly 90% used psychological testing for preemployment selection. Psychological screening of candidates for police positions is mandated by law in at least 38 states (Corey & Borum, 2013). It is estimated that 100,000 preemployment assessments of law enforcement applicants are conducted by 4,500 psychologists each year in the United States (Mitchell, 2017). In **Fitness-for-duty evaluations (FFDEs)**, psychologists evaluate an employed police officer’s ability to continue performing the job, at least for the time being. This often occurs after officers have been through personally stressful experiences, either in their personal life or on the job (e.g., sudden death of a spouse, being taken hostage, or involvement in a shooting incident).
We discuss both candidate screening and FFDEs later. As Corey and Borum (2013) note, these psychological assessments should be conducted by psychologists who have a fundamental and reasonable level of understanding and who are knowledgeable about police work. This brings us to the important topics of police culture and job analysis.

Police Culture

A police psychologist does not have to be a former police officer to be an effective service provider to law enforcement agencies. However, the police psychologist must be highly familiar with and knowledgeable about what policing involves, as well as the **Police culture**, defined as the rules, attitudes, beliefs, and practices that are thought to be accepted among law enforcement officers as an occupational group. Woody (2005) notes that one of the clear requirements to be a successful police psychologist is to recognize and understand this culture, and he adds that the psychologist should reasonably accommodate it as long as it does not endanger the public safety, police ethics, or the mental, physical, or behavioral health of the officer.
Nearly all occupations have a “culture,” and persons who enter them become socialized, or learn these cultures as they progress on the job. Manning (1995) describes occupational cultures as having “accepted practices, rules, and principles of conduct that are

situationally applied, and generalized rationales and beliefs" (p. 472). The occupation of law enforcement is unique in that the working environment is not only potentially very hostile or dangerous, but officers have also been granted the legitimate power to create, display, and maintain their authority over the public (Paoline, 2003). Consequently, police officers work together to develop and maintain a unique occupational culture that values control, authority, solidarity, and isolation (L. B. Johnson, Todd, & Subramanian, 2005). As Scrivner, Corey, and Greene (2014) noted, the profession has often been characterized as highly structured, paramilitary, tight knit, and bureaucratic. The coping mechanisms prescribed by the police culture are often critical to handling the many stresses that this work environment entails (Paoline, 2003). Police, perhaps more than people in other occupations, depend on one another for the protection and social and emotional support they need to do their jobs. This can be particularly important at times when police actions come under intense public scrutiny. In 2020, two officers were arraigned and charged with simple assault after pushing to the ground a man who walked up to them peacefully during a small demonstration. The 75-year-old man fell backward, hitting his head, and blood began to flow. A line of officers walked by, some looking down at the man; one who tried to help him was told, apparently by a commanding officer, to move on. A few days later, as the two arraigned officers walked out of the courtroom, a crowd of fellow officers and members of the community cheered in support. Commentators noted that this show of solidarity did little to improve police–community relations. Nevertheless, most scholars and practitioners in the field (e.g., Kirschman, 2007; Kitaeff, 2011; Mitchell & Dorian, 2020; Scrivner et al., 2014; Toch, 2012) note that it is crucial for police psychologists to understand this about police work. They depend on one another.

Paoline (2003) perceptively observes, though, that researchers, scholars, and practitioners (including psychologists) often make the mistake of assuming that there is a single, homogenous police culture. He emphasizes that police cultures may vary in terms of the style, values, purpose, and mission of the organization itself, starting from the top down. The culture of a federal agency, for instance, is likely to be different from that of a county sheriff's department. The culture may also vary according to rank. The street cop culture is apt to be quite different from the cultures in administration and supervision. In addition, there may be "subcultures" within the ranks, with some officers adopting a different style of policing from that of others. Some supervisors may play strictly by the book, whereas

others may be flexible in interpreting departmental procedures and policies. Finally, the changing face of law enforcement as a result of recruitment of women and people of color has certainly affected the concept of police culture. Paoline notes,

> As police forces have become more heterogeneous, one would expect a single cohesive police culture to give way to a more fragmented occupational group. The modal officer of the past . . . is continually changing as the selection and recruitment of officers has diversified. (p. 208)

In short, claiming to be an expert without understanding and earning the acceptance and respect of a police agency, and without acknowledging the many facets of police culture, will likely lead to limited success for a new or inexperienced psychologist. Interestingly, although law enforcement experience is not necessary, some police and public safety psychologists choose that path after spending some years as police officers (e.g., Fay, 2015). For those without prior police experience—the majority—entry into the field of police psychology usually begins with providing limited consulting services to police agencies, such as screening and selection, or psychotherapy or counseling of police officers and their families. Ride-along programs, in which the psychologist accompanies police officers in patrol cars, are usually helpful in educating psychologists about the realities of the police experience (Hatcher, Mohandie, Turner, & Gelles, 1998). Mitchell and Dorian (2020) also encourage psychologists—most of whom are working as consultants rather than as “in-house” psychologists—to spend time with the department when possible, such as by attending department functions or meetings beyond those that are directly concerned with work as a consultant. As both exposure and experience accumulates, the agency becomes more familiar with the psychologist, and the psychologist may be asked to do many other things, such as perform FFDEs or become a member of the hostage/crisis negotiation team.

Job Analysis

The psychologist conducting assessment procedures should have a good understanding of what the job involves. The tasks required go far beyond those reflected in media and popular culture. Although some tasks are similar regardless of the agencies, others are specific to the nature of the job or the setting. In order to evaluate whether someone is a good candidate for law enforcement, one must first understand what the job entails. In order to assess whether someone is fit to return to duty, one must understand what that duty involves.

Job analysis, then, is the process of identifying and analyzing how, where, and why a particular job is done. In the context of this chapter, **Job analysis** is a systematic procedure for identifying the skills, abilities, knowledge, and psychological characteristics that are needed to do public safety work successfully. A comprehensive job analysis of a particular law enforcement agency should reveal the essential functions of the personnel,

> the working conditions unique to their respective ranks and assignments, the common and novel stressors inherent in public safety work, the normal and abnormal adaptation to occupational stress and trauma, [and] the research pertinent to resilience and recovery in public safety. (Trompetter, 2011, p. 52)

The first step is to understand what officers working within a particular agency do on a day-to-day basis. In the past, many law enforcement screening procedures were based on intuition and "gut feelings" rather than a comprehensive analysis of job requirements. Gradually, psychologists possessing research skills were asked to conduct or update job analyses. There are various procedures for doing this, but most analyses are done through interviews and questionnaires. In some cases, observations of job behavior may be necessary. Officers and supervisors are asked what is done on a daily basis; what skills and training they believe are necessary; and what temperament, personality, and intellectual capacities best fit particular tasks or responsibilities. The information gathered from a well-done job analysis is summarized as a job description that details what is done, how, and why (McCormick, 1979; L. Siegel & Lane, 1987). Without a job analysis to justify the choice of psychological measures, it is extremely difficult for the psychologist doing the screening to know what to look for—let alone measure it (Aumiller & Corey, 2007).



► Photo 2.1 A police officer speaks with a woman at the scene of a crime. Even as the officer is comforting the woman, he is obtaining information about the incident she has witnessed.
Jupiterimages/ Thinkstock

Job analyses have revealed characteristics that are desirable, and sometimes necessary, for all successful police officers. For example, successful candidates need to have good judgment and common sense, appropriate decision-making skills, interpersonal skills, a solid memory, good observation talents, and communication skills (both oral and written; Spielberger, 1979). (See **Photo 2.1**.) Integrity and trustworthiness are certainly other important traits. Overall emotional stability and the ability to remain steady under stress are also considered critical traits for successful and competent police and public safety officers (Detrick & Chibnall, 2006, 2013). Although the emphasis that each agency places on the preceding characteristics may differ slightly, they tend to be universal psychological requirements for law enforcement work.

Police psychologists who assess candidates for hire, fitness for duty, promotion, or special assignments should be familiar not only with the general literature on job analysis but also with specific requirements of the agency. For example, a department may require psychological strengths in addition to the general requirements listed earlier, such

as the ability to work in special units with victims of sexual abuse, searching for missing children, or hostage negotiation. In addition, a job analysis must be carefully done and the assessment measures that are selected should comport with the analysis. That is, the approach to selection that is ultimately used should be able to be justified by referral to the analysis. Data may be subjected to legal scrutiny concerning cultural and ethnic biases and reliability and validity of psychological testing. For example, police applicants who feel they have been unfairly evaluated may challenge the entrance exam used by the agency on the grounds that the test is not valid or is discriminatory. If it is demonstrated that the exam comports with a carefully done and nondiscriminatory job analysis, the agency is unlikely to be found at fault.

Preemployment and Post-Offer Psychological Evaluations

Nearly all law enforcement agencies are subject to law, regulations, or accreditation standards that require psychological evaluations of public safety candidates (Aumiller & Corey, 2007; Mitchell, 2017). Ideally, evaluation methods should comport with a solid job analysis, as noted in the previous section. At least 38 states mandate psychological evaluations for police officers and an estimated 72% to 98% of police agencies require psychological evaluations of their police officers (APA, 2017; Reaves, 2010). These psychological evaluations—usually in the form of personality measures that may or may not be accompanied by interviews—help ensure that the candidates are free of mental or emotional impairments that would interfere with effective, responsible, and ethical job performance as a police officer. A candidate who is severely depressed, or one who has strong paranoid tendencies or is prone to aggressive behavior with minimal provocation, is unlikely to perform well as a law enforcement officer. Consequently, psychological evaluations are necessary to identify any job-relevant risk behaviors and the presence of job-critical personal and interpersonal qualities that are likely to endanger public safety.

As mentioned earlier, the IACP Police Psychological Services Section (2016) has developed guidelines for police psychologists who conduct preemployment psychological evaluations. The guidelines spell out recommended standards for examiner qualifications, conflict-of-interest issues, and informed consent recommendations for those police candidates who undergo the examination. The guidelines also offer advice on what should be included in the psychological report and what procedures and psychological measures should be included

in the evaluation. Another valuable source of information for this purpose is an evidence-based approach that was introduced in California (Spilberg & Corey, 2017). According to Mitchell and Dorian (2020), this approach “represents a state-of-the-art achievement in this area and has impacted the practice of police psychology in much of the United States” (p. 284).

The measures used to evaluate officers have never been consistent across the United States, however. In the mid-20th century, psychologists often administered intelligence tests, and agencies used scores on these tests to help in their hiring decisions. Over the years, it became clear that intelligence tests per se were not effective measures of how an officer is likely to perform on the street. Although some psychologists continue to use these tests as a standard practice in other contexts (e.g., various court-ordered evaluations, educational assessments, and prisoner intakes), intelligence tests are not commonly used in psychological screening of law enforcement applicants. A majority of police agencies and police academies still require a written or aptitude test, though, which may or may not have been prepared with assistance from consulting psychologists. Interestingly, it has been documented that neither high intelligence nor a college education necessarily means that an individual will be a good police officer (N. Henderson, 1979; Spielberger, Ward, & Spaulding, 1979). Nevertheless, college-educated officers have been shown to have better communication skills, and they have earned promotions at a higher rate than noncollege-educated officers (Cole & Smith, 2001). Furthermore, officers with a college education also have an effect on changes in the police culture (Paoline, 2003). Most federal and state agencies, and many local ones, now require a minimum of 2 years of education beyond high school for entry into police work, and some require a 4-year college degree.

In most cases, only licensed or certified psychologists or psychiatrists who are trained and experienced in psychological assessment instruments and their interpretation should conduct candidate evaluations. As mentioned previously, it is also important that the examiners be knowledgeable about what law enforcement demands as well as the research literature on public safety. The examining psychologist should also be familiar with ethnic and cultural norms and practices among candidates applying for law enforcement or public safety positions, although such information is not always available, particularly in paper-and-pencil measures. For example, some applicants may interpret questions differently than others, and their responses may be outside the norms, but they should not be

disqualified on that basis. Finally, the examiner must be aware of developments in the law relating to the hiring of candidates. One of the most relevant laws is the Americans with Disabilities Act of 1990.

Americans with Disabilities Act of 1990 and Beyond

The **Americans with Disabilities Act (ADA)** is a far-reaching civil rights law that prohibits discrimination and mandates equal treatment of all individuals regardless of physical or mental disabilities. Its sections on employment prohibit public employers and private employers with 15 or more employees from discriminating against any qualified persons with a disability who can perform the essential (as opposed to marginal or incidental) functions of the job they hold or seek. A qualified individual with a disability is an employee or job applicant who meets the legitimate skill, experience, education, or other requirements of a job. As such, the law has a significant effect on day-to-day police practices and—for our purposes here—on screening procedures used in law enforcement. The police psychologist who designs employment screening, selection, and promotional procedures for police agencies must be familiar with all the nuances of the act as well as any case law that has emerged from its interpretation.

At the turn of the 21st century, several U.S. Supreme Court decisions limited the scope of the ADA, to the point that critics estimated that it went from protecting 43 million Americans when it was first passed to protecting 13.5 million (Rozalski, Katsiyannis, Ryan, Collins, & Stewart, 2010). In 2008, Congress amended the act to attempt to restore more protection, in the Americans with Disabilities Act Amendments Act (ADAAA). Congress also passed another law, the Genetics Information Nondiscrimination Act (GINA), which placed limits on the type of information law enforcement agencies could use in screening applicants (Scrivner et al., 2014). Although both the ADA (and ADAAA) and GINA are pertinent to a wide variety of employment situations—not just law enforcement—it is obviously crucial for police and public safety psychologists to remain up to date with changes to and requirements of these laws.

In balancing individual rights and an organization's right to know of an applicant's physical and mental fitness, the Equal Employment Opportunity Commission (EEOC) has divided disability inquiries into two stages: (1) pre-offer of employment and (2) post-offer/pre-hire. At the pre-offer stage, a police agency, for example, must not ask applicants any health or fitness questions that elicit information about disabilities. The agency *may* ask general "job performance"

questions, such as presenting a scenario and asking candidates how they would handle it. At the post-offer/pre-hire stage, a police department may make direct inquiries about disabilities and may require applicants to undergo medical and psychological examinations. Such post-offer inquiries are allowed because the employer, by making a conditional offer of employment, can rescind that offer if it can be shown that the person is unable to perform the essential functions of the job, even with reasonable accommodation.

Screening Out and Screening In

Law enforcement agencies often hope police psychologists will help them both avoid candidates who would not perform well and hire those who would be good or even exceptional. This is a challenging task, and thus far there has been more success at screening out than screening in. In fact, screening out procedures are those most commonly used by police psychologists (Varela, Boccaccini, Scogin, Stump, & Caputo, 2004). **Screening-out procedures** try to eliminate those applicants who appear to be poorly suited for work in law enforcement. For example, the candidate may be evaluated as showing signs of poor judgment and common sense or poor stress tolerance. The screening procedure may also reveal that the candidate shows an unwillingness to follow rules, exhibits difficulty working within a chain-of-command work environment, or demonstrates a lack of *basic* ability or mental acuity to perform the job in a safe and responsible manner. **Screening-in procedures**, on the other hand, are intended to identify those attributes that distinguish one job applicant as being potentially a more effective officer than another applicant. Implicit in this approach is the ability to rank-order applicants, allowing agencies to select the top candidates from a pool that passed the initial screening procedures. This approach assumes that there are traits, habits, reactions, and attitudes that distinguish an outstanding officer from a satisfactory one. Scrivner et al. (2014) observe that the development of screening-in measures has progressed in recent years. To date, though, there is little evidence that psychologists have reached the goal of establishing valid measures for ranking applicants in some hierarchical order of suitability, although some tests may be more useful than others.

Before listing instruments commonly used in police screening, and discussing one in particular, it is helpful to review the importance of validity in psychological testing. Validity addresses the question, "Does the test or inventory measure what it is designed to measure?" Although psychologists discuss many types of validity, three are of

particular relevance here: concurrent validity, predictive validity, and face or content validity.

Concurrent validity is the degree to which a test or an inventory identifies a person's *current* performance on the dimensions and tasks the test is supposed to measure. Many personality measures are called inventories rather than tests. An *inventory*, which is typically self-administered, is a list of items, often in question form, used in describing or investigating behavior, interests, and attitudes. A *test* is a standardized set of questions or other items designed to evaluate knowledge or skills.

To develop a concurrently valid inventory (or to consider using an established inventory), the psychologist should assess the personality, interests, or attitudinal characteristics of already-employed police and public safety officers to establish predictors of good performance. Typically, the inventory is administered to officers representing varying degrees of success in law enforcement work, with "success" determined by supervisor evaluations, peer ratings, or both. For example, if a high percentage of officers evaluated by supervisors as "successful" respond differently to certain questions on a scale from a group of "unsuccessful" officers, the scale is considered a good evaluator of *current* on-the-job performance. Applicants who subsequently take the inventory should obtain results that are similar to those of the successful officers in order to be assessed as suitable candidates for employment.

Research that examines the current performance of individuals already on the force has a critical limitation, however, because it ignores the important psychological characteristics of those officers who were hired but dropped out because of various problems during the course of their career path. Thus, significant segments of the population are missed. One of the primary reasons for using any screening instrument is to discover the potential dropouts or failures as early as possible in their careers, which could save both time and money for the department and better serve and protect the public.

Predictive validity is the degree to which an inventory or test *predicts* a person's subsequent performance on the dimensions or attributes the inventory (or test) is designed to measure. In other words, an instrument has predictive validity if it is able to identify which candidates will and will not succeed at law enforcement work. As a research procedure, predictive validation is more useful and rigorous than concurrent validation, but it is rarely implemented because it requires a longitudinal design in which officers must be evaluated over an extended period, usually several years. Candidates are tested during a pre-employment stage and then

followed over their careers to see how the initial testing results could have predicted eventual problems and successes. If a test or inventory is able to distinguish those who eventually perform well from those who do not, it has high predictive validity and is considered a powerful device for the screening and selection of candidates prior to entry into law enforcement.

A test or inventory has **Face (or content) validity** if its questions appear relevant to the tasks needed in law enforcement—in other words, someone looking at the inventory will attest that it seems relevant, regardless of whether it really is. Face validity refers not to what the test actually measures, but to what it superficially *appears* to measure (VandenBos, 2007). In reality, there may be no empirical support for these assumptions. However, face validity is helpful because examinees believe the exam is at least pertinent to the job for which they are applying. In addition, Otto et al. (1998) emphasize the importance of face validity for application in the legal context because any measuring instrument should look pertinent and relevant to the legal questions at hand. Judges, lawyers, and jurors may have more faith in a test or inventory with face validity. Psychologists know, though, that unless other types of validity are also ensured, the fact that a test has high face validity has little overall bearing on whether it measures what it is supposed to.

In summary, of these three forms of validity, predictive validity is the most desirable to achieve but also the most challenging to establish. Face validity is probably the easiest to establish and is also desirable, particularly if we must persuade non-psychologists of the value of an inventory. However, face validity alone is not sufficient to establish a test or inventory's ability to measure what it is designed to.

Commonly Used Inventories in Police Screening

There is a lack of consensus concerning which personality inventory or measure is most useful in the screening and selection process. Research on law enforcement screening (e.g., Cochrane, Tett, & Vandecreek, 2003) indicates that the following six personality measures are the most commonly used:

- The Minnesota Multiphasic Personality Inventory–Revised (MMPI-2) and MMPI-3
- The Inwald Personality Inventory (IPI) and IPI2
- The California Psychological Inventory (CPI 260 and CPI 434)
- The Personality Assessment Inventory (PAI)
- The NEO Personality Inventory–Revised (NEO PI-R)

- The Sixteen Personality Factor Questionnaire–Fifth Edition (16-PF)

In addition to these six, a restructured version of the MMPI—the Minnesota Multiphasic Personality Inventory-Revised-Restructured Form (MMPI-2-RF)—is increasingly being used.

To say these measures are commonly used is not to say they are necessarily the best measures, however. The jury is still out as to which is most deserving of continued use. Furthermore, many agencies make use of alternative approaches, particularly measures designed specifically for preemployment screening of police candidates (Scrivner et al., 2014; Spilberg & Corey, 2017). One example of these alternative measures is the Matrix-Predictive Uniform Law Enforcement Selection Evaluation (M-PULSE; R. Davis & Rostow, 2008). However, it is critically important for alternative tests to be validated for use in police officer selection procedures. As mentioned earlier, the approach promoted by Spilberg and Corey (2017) seems to hold considerable promise.

In the next section, we focus only on the MMPI-2 because it is—by far—the most commonly used personality assessment instrument in police screening and selection. The other assessment instruments in the above list are used by some police agencies and some police psychologists, but most police agencies and police psychologists prefer the MMPI-2 or MMPI-2-RF.

Minnesota Multiphasic Personality Inventory-Revised (MMPI-2)

For over six decades, the most commonly used psychological instrument for police and public safety preselection screening has been the **Minnesota Multiphasic Personality Inventory-Revised (MMPI-2)** (Ben-Porath, Corey, & Tarescavage, 2017). Police officer candidates often know it by its length (“that endless test”—it has 557 questions!). The MMPI-2 is a revision of the MMPI, and both were originally designed to measure psychopathology or behavioral disorders. In recent years, however, psychologists have modified the scoring of the MMPI-2 to measure positive personality traits, such as stress tolerance, emotional maturity, self-control, and judgement. Cochrane et al. (2003) discovered that the MMPI-2 was used in 70% of all surveyed police departments in the United States in preemployment screenings. This is probably a good thing, because a large amount of research has demonstrated that the MMPI-2 is a useful predictor of police officer job performance (Ben-Porath et al., 2017; Caillouet, Boccaccini, Varela, Davis, & Rostow, 2010; Detrick, Chibnall, & Rosso, 2001; Sellbom, Fischler, & Ben-Porath, 2007;

Weiss, Vivian, Weiss, Davis, & Rostow, 2013). Nevertheless, it should be emphasized that performance on the MMPI-2 should be only one factor to be considered in the overall screening or evaluation process. Other sources of information—such as background checks, performance on oral board examinations, aptitude tests, and prior law enforcement experience—are all pertinent.

In 2008, the **Minnesota Multiphasic Personality Inventory-Revised-Restructured Form (MMPI-2-RF)** was published (Ben-Porath & Tellegen, 2008). Although this inventory used 60% of the items from the MMPI-2, it should not be considered a revision of the MMPI-2 (Butcher, Hass, Greene, & Nelson, 2015). “Rather, it is a new test, made from MMPI-2 items, that has to be researched and validated to establish its own merits and not just accepted as a newer version of the MMPI-2” (Butcher et al., 2015, p. 251).

The MMPI-2-RF has 338 items and 51 scales, compared with 10 clinical and 4 validity scales on the MMPI-2. Preliminary research suggests that it appears to be a somewhat stronger measure than the MMPI-2 for predicting law enforcement officer performance (Sellbom et al., 2007; Tarescavage, Corey, & Ben-Porath, 2015, 2016). As noted by Ben-Porath, Corey, and Tarescavage (2017), the MMPI-2-RF builds on the power of the MMPI-2 with “a comprehensive, modern literature documenting associations between pre-hire scores and a broad range of job-relevant variables” (p. 69). Nevertheless, practicing psychologists prefer the MMPI-2 to the MMPI-2-RF by a 3 to 1 margin (Butcher et al., 2015). The MMPI-2-RF is intended to be used by clinicians to assist in the general assessment of adult mental disorders and treatment planning. It is not restricted only to law enforcement screening.

The MMPI-3 is scheduled to be released in late 2020 or early 2021. The goal of the MMPI-3 is to improve the questions, optimize existing scales, introduce new scales where warranted, and update the test norms. However, rather than updating the MMPI-2, the revision appears to be more an improvement of the MMPI-2-RF (Friedman & Nichols, 2017). “An MMPI-3 based on the MMPI-2-RF is not an authentic successor to the MMPI and MMPI-2 and their 70-year history of research and successful clinical use” (A. Friedman & Nichols, 2017, p. 3). Once again, the MMPI-2 is currently more widely used than the MMPI-2-RF, and will likely continue to be the most popular among psychologists for the foreseeable future (Lally & Williams, 2017; Williams & Lally, 2017).

Fitness-for-Duty Evaluation (FFDE)

Police officers, emergency personnel, crisis team members, and firefighters who witness an especially disturbing event—such as the

bodies of young children, terrorist attacks, victims of child sexual abuse or sex trafficking, plane crashes, the devastation following natural disasters, or catastrophes involving fellow officers—may exhibit intense emotional or psychological reactions. In addition, officers may experience personal crises, such as the sudden death of someone close to them or the shooting of a suspect later found not to be armed. In these situations, they may take a leave of absence or be placed on administrative leave. Following such leaves, a FFDE may be required. In other situations, the officer may have displayed behavior that is of concern, such as harassing or abusing a citizen with a firearm, displaying wide variations in mood and irritability while on duty, talk of committing suicide, or being unreliable in completing assigned tasks. In any one of these situations, the FFDE may be needed to determine whether the officer has the mental and psychological stability to continue as an effective officer on the street, at least for the foreseeable future. This requires a much more extensive assessment than the psychological screening evaluation for initial employment positions.

Psychologists are often asked to perform FFDEs for organizations in addition to law enforcement agencies. Large private corporations, federal agencies, universities, hospitals and other health care agencies, and licensure bureaus often ask them to do FFDEs (Bresler, 2010). The basic goal of any FFDE is "to ascertain to what extent an employee is, or is not, able to meet job expectations" (p. 1). However, our focus here is on FFDEs designed to serve law enforcement agencies. In addition, we focus on psychological issues instead of physical impairments; in the latter, the examination obviously requires medical personnel, such as a physician, nurse practitioner, or other qualified professional.

The order or request for the FFDE for law enforcement comes from the department supervisor or head, and the evaluation is usually conducted by a police psychologist or qualified licensed psychologist who is highly familiar with police psychology issues and research. As noted earlier, it may be ordered or requested when an officer displays behavior that raises serious questions as to whether they are fit to carry out public safety duties. For example, Anthony V. Stone (1995) estimated that the alleged use of excessive force accounted for 19% of FFDE referrals. In addition, some FFDEs are ordered because the officer displays change of behavior on the job that presumably arises from personal or job-induced stress. However, some agencies also *require* these evaluations as standard procedure after a critical incident (such as a fatal shooting), whether or not an officer displays problematic behavior. (See **Focus 2.4** later in chapter for more

information on fatal shootings.) Therefore, it should not be assumed that a request for an FFDE occurs only when there are signs that an officer is facing problems on the job.

FFDE evaluations require that the examining psychologist carefully consider the balance between the agency's need for the assessment and the officer's understandable desire for confidentiality. Supervisors are given appropriate feedback, but the psychologist also must carefully explain the limits to confidentiality to the officer being evaluated (Mitchell & Dorian, 2020). The evaluations must be done with the informed consent of the officer, but the examiner is under no obligation to explain the results to the officer. The "owner" of the FFDE is essentially the agency requesting the evaluation. On the other hand, the agency is not entitled to any more psychological information regarding an employee than is necessary to document the presence or absence of job-related personality traits, characteristics, disorders, propensities, or conditions that would interfere with the performance of essential job functions (IACP Police Psychological Services Section, 2010). Mayer and Corey (2015) emphasize that "[p]sychological FFDEs are often contentious examinations in which the employee being evaluated has much to lose, public and officer safety is at risk, and the likelihood of an administrative grievance, arbitration or litigation is high, particularly when the officer is deemed to be unfit for duty and the results are contested" (pp. 110–111).

In addition to carrying out the evaluation, the examining psychologist should recommend intervention methods or reasonable accommodations that would help improve the officer's effectiveness. These may involve counseling, retraining, or treatment. However, the psychologist conducting an FFDE should not be the one providing treatment to the officer being evaluated because this would constitute a dual relationship (assessor and treatment provider), which is frowned upon by the Ethical Standards and Code of Conduct. Scrivner et al. (2014) note that many police departments, including those that have had a pattern of inappropriate police behavior in the past, have developed an **early intervention system (EIS**) "wherein supervisors learn to recognize certain types of behavior and help the employee get assistance before a problem develops to a level that a mandatory evaluation is required" (p. 450).

The FFDE report usually includes the psychological measures used, a conclusion regarding the determination of fitness for duty, and a description of the functional limitations of the officer. In most instances, the FFDE report is provided to the department as a confidential personnel record. Periodic evaluations of the officer may

also be necessary. The IACP (2010) recommends that the psychologist conducting the FFDE include performance evaluations, commendations, testimonials, reports of any internal affairs investigation, preemployment psychological screening, formal citizen/public complaints, use-of-force incidents, officer-involved shootings, civil claims, disciplinary actions, incident reports of any triggering events, medical/psychological treatment records, or other supporting or relevant documentation related to the officer's psychological fitness for duty. The IACP further recommends that only personality, psychopathology, cognitive, and specialized tests that have been validated be used in the assessment process.

Special Unit Evaluations

Psychological assessments are also done as standard procedure for members of special teams, such as special weapons and tactics teams (SWATs) and tactical response teams (TRTs); undercover agents; and narcotics, internal affairs, and crisis/hostage negotiation teams, to determine if they are psychologically fit to undergo the pressures and possess the judgment requirements of high-stress positions. These evaluations are usually referred to as psychological evaluations for police special assignments (PEPSA; Trompetter, 2017). Successful members of SWAT teams, for example, tend to be "self-disciplined, conscientious, adherent to rules, comfortable accepting rules, conforming, and helpful" (Super, 1999, p. 422). Special units usually deal with the execution of high-risk search warrants or high-risk arrest warrants, barricaded persons, hostage situations, heavily armed offenders, terrorist acts, and suicidal persons.

It is not unusual for team members to be reevaluated periodically to identify problems before they develop into more serious behavioral patterns that would interfere with effective job performance. However, very little research has focused on the validity of assessment procedures used to aid in special team selection. Some time ago, Super (1999) indicated that "[t]here is a serious need for rigorous research regarding psychological assessment and special unit appointments" (p. 422). Since that time, the National Tactical Officers Association (2015a, 2015b) in conjunction with the IACP proposed standards for tactical police teams, and increasing efforts are taken to assess candidates for these roles as well as evaluate support services offered by the agencies.

Conclusions on Psychological Testing for Police and Public Safety Personnel

Although many different assessment techniques and personality inventories have been used in the screening, selection, and promotion of law enforcement officers, only a few have emerged as reasonably valid predictors of effective on-the-job law enforcement performance. Police officer candidates are usually administered two self-report inventories that measure abnormal and normal behaviors, a practice that is quite common for many law enforcement officer evaluations. In some cases, the revised MMPI-2 and the relatively new MMPI-2-RF can serve as both measures. Although some agencies also employ psychologists, either in-house or as consultants, to conduct interviews to help select candidates, the predominant method of interviewing is the oral board, which is conducted by department supervisory personnel, with or without in-house psychologists present.

There is increasing work on validating the various personality inventories used for both prescreening and later assessment, and some testing instruments have performed better than others in both of these domains (Corey & Borum, 2013). As Scrivner et al. (2014) write, “[i]rrespective of the tests selected for a suitable battery, it is very clear that the research component of this domain has expanded considerably, and today there is a rich literature available on assessing police candidates for psychological suitability” (p. 449). Empirical investigations evaluating relationships between initial selection standards (predictors) and the actual job performance of law enforcement officers must continually be undertaken. The two most promising and validated psychological inventories to date are the MMPI-2 and the MMPI-2-RF, although the MMPI-2 remains the more popular. The MMPI-2 has accumulated extensive research data over the past six decades, and the MMPI-2-RF is showing very promising data pertaining to the selection of law enforcement personnel.

Psychologists using any of these measures also must be aware of any research relating to how they apply to diverse populations, such as women compared with men or various ethnicities. For example, ethnic diversity sometimes does have an effect on MMPI-2 or other personality inventory scores, a factor that must be taken into account by the evaluating psychologist, though it should not affect final conclusions.

The psychologist working with a police agency for screening and selection purposes should have a strong background in and solid knowledge of psychological testing, including experience with the specific tests used. The selected test or personality inventories should also meet the criteria recommended by the “Standards for

Psychological and Educational Testing," which were developed by the Joint Committee for the Revision of the Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The intent of the Standards is to encourage the sound and ethical use of tests and to provide criteria for their evaluation. The most recent revision of the Standards was released in July 2014.

Single psychological tests as predictors of effective law enforcement performance take considerable and carefully designed research. This is partly due to the diversity and complexity of behaviors required of law enforcement officers, but it is also due to varying work situations across departments. Police duties range from preventing and detecting crime to investigating accidents, intervening in disputes, handling domestic disturbances, and responding to a wide range of requests from the public. The smaller the department, the more varied are the responsibilities of individual officers. It is not unusual to find a local, small-town law enforcement officer offering safety tips to an elementary school class and, on the same day, dealing with a violent domestic altercation. Because specialization is a luxury very small departments cannot afford, it is difficult to establish objective performance criteria on which to base predictions. Some officers may perform very competently on certain tasks while failing at others. The officer who relates exceptionally well to fun-loving teenagers may perform poorly in crisis situations involving difficult adults.

To tap the heterogeneity of law enforcement activities, screening devices should contain a number of predictors based on a multitude of behaviors, but few psychological measures are able to do this. In addition, because law enforcement work often differs from one jurisdiction to another, a test may be adequate for a given department but may not suffice elsewhere. Rural or small-town law enforcement may require different behaviors and talents from metropolitan or urban law enforcement work.

The broad scope of law enforcement, together with the urgent need for more vigorous and sophisticated methods of study, warn us that we should expect few solid conclusions in the research literature as to what are adequate predictors of success or failure in law enforcement work. As expected, the literature is littered with inconclusive or mixed results. This does not mean that reliable and valid psychological assessment is beyond reach. It may mean, though, that a successful testing program may have to be tailor-made to reflect the needs of a particular agency. In addition, it is certainly acceptable to "screen out" those candidates who exhibit

gross indicators of problems, such as mental disorder, highly aggressive or antisocial behaviors, or poor judgment.

PSYCHOLOGICAL INTERVENTION ACTIVITIES

The second major category of tasks performed by police and public safety psychologists, according to Aumiller and Corey (2007) as well as Brewster et al. (2016) includes a variety of services that provide support to individual officers, their colleagues and families, and the police organization itself. Primary examples are stress management, dealing with post-traumatic stress from shooting incidents, and preventing police suicide.

Stress Management

The management of stress became a dominant theme in police psychology from the mid-1970s to the early 1980s and remains an important consideration today. The earliest full-time police psychologists, as well as community consultants, were called on to identify and dissipate stress, which, if left unmanaged or untreated, could result in an array of psychological and physical health problems for the officer and potentially put the public at risk due to faulty judgment and decision making. *Stressors, burnout, post-traumatic stress disorder* (*PTSD*), and *critical incident trauma* became standard terms in the police psychologist's vocabulary. The focus on stress was significant because it moved police psychologists away from their traditional assessment functions and into a much larger realm of opportunity and services. Consequently, psychologists began to offer not only stress management but also crisis intervention training, hostage negotiation training, domestic violence workshops, and substance abuse and alcohol treatment.

Many researchers, as well as officers and their families, consider law enforcement to be one of the most stressful of all occupations, with correspondingly reported high rates of divorce, alcoholism, suicide, and other emotional and health problems (Finn & Tomz, 1997; Ricciardelli, 2018; Rouse et al., 2015; Santa Maria et al., 2018). Persons in many occupations may argue that they face more physical danger than law enforcement officers. Construction workers, miners, stunt pilots, firefighters, and demolition workers are all exposed to potential death or physical injury. However, perhaps few occupations encounter the wide variety of stressors, ranging from organizational demands (e.g., shift work) to the nature of police work itself (e.g., exposure to violence, suffering, and tragedy at all levels), as consistently as law enforcement. An additional source of stress in

the current political climate is the tension between police and the community they serve in communities across the country, where shootings by police have resulted in citizen distrust and, in some cases, federal investigations. We discuss this again later in the chapter when we cover police bias (including shooter bias) and the use of excessive force.

A common strategy employed in the police stress literature is to divide the occupational stressors identified by police officers into four major categories: (1) organizational, (2) task related, (3) external, and (4) personal.

Organizational Stress

Organizational stress refers to the emotional and stressful effects that the policies and practices of the police department have on the individual officer. These stressors may include poor pay, excessive paperwork, insufficient training, inadequate equipment, weekend duty, shift work, inconsistent discipline or rigid enforcement of rules and policies, limited promotional opportunities, poor supervision and administrative support, and poor relationships with supervisors or colleagues. Rural police officers and sheriff's deputies often deal with limited training, old equipment, lack of proper resources, and outdated technology (Page & Jacobs, 2011; Ricciardelli, 2018). Organizational stressors in major departments may also include antagonistic subcultures within the department, such as intense competition between specialized units, precincts, or even shifts. Being investigated by the internal affairs division is another troubling stressor.

One study from the early 2000s reveals that excessive shift work contributes to more errors in judgment and greater increases in stress than perhaps any other factor in the police environment (Vila & Kenney, 2002). Some officers work more than 14 hours a day on a regular basis, and some "moonlight" for extra income. Excessive hours on the job not only interfere with sleep and eating habits but also wreak havoc with family life and responsibilities. Furthermore, irregular hours often interfere with social get-togethers and family activities, isolating the officer even more from social support systems. Also, the organizational structure of large police departments often promotes office politics, lack of effective consultation, nonparticipation in decision making, and restrictions on behavior. In fact, organizational stressors have been considered to be the most prevalent and frustrating source of stress for law enforcement personnel (Bakker & Heuven, 2006; Finn & Tomz, 1997).

Task-Related Stress

Task-related stress is generated by the nature of police work itself. These stressors include inactivity and boredom; situations requiring the use of force; responsibility of protecting others; the use of discretion; the fear that accompanies danger to oneself and colleagues; dealing with violent or disrespectful, uncivil individuals; making critical decisions; frequent exposure to death; continual exposure to people in pain or distress; and the constant need to keep one's emotions under close control. In many rural police or sheriff's departments, the officer must deal with the situation alone or without immediate backup.

Law enforcement is frequently confronted with interpersonal violence, confrontational interactions with individuals, and emotionally charged encounters with victims of crimes and accidents (Bakker & Heuven, 2006). Police are expected to keep their emotions under control, a process that has been referred to as "emotional labor" (G. Adams & Buck, 2010; Grandey, 2000). Furthermore, they must regulate their emotional *expressions* to conform to societal norms and expectations. Although this is expected to some degree in many other occupations (e.g., lawyers, physicians, health care workers), this is especially expected of police officers on a day-to-day basis. Police officers are expected to regulate their emotions to display a facial and physical expression that is neutral, solid, and controlled. Moreover, police officers are expected to master the art of constantly switching between a more human response and the control of emotional expression (Bakker & Heuven, 2006) because sometimes a more "human" response is desired, as when an officer must inform people of the death of a loved one. Grandey calls this emotional regulation "surface acting," which is accomplished by suppressing the emotion that is actually felt (e.g., anger or sadness) and faking the appropriate emotion that the situation (or job) demands. Some researchers refer to this response as *emotional dissonance* (G. Adams & Buck, 2010). In essence, "emotional dissonance is the discrepancy between authentic and displayed emotions as part of the job" (Bakker & Heuven, 2006, p. 426). Increasing evidence supports the view that emotional dissonance has detrimental effects on health and well-being (Heuven & Bakker, 2003).

Stressful assignments, such as undercover duty or drug raids, also play a role in the stress equation. Police officers also fear air- or blood-borne diseases, either intentional (e.g., spread by terrorists) or accidental, and exposure to toxic or hazardous materials or natural occurring diseases such as COVID-19 (coronavirus; Calfas, 2020; Dowling, Moynihan, Genet, & Lewis, 2006). (See **Focus Box 2.1** for

police stress during COVID-19 crisis in 2020.) In addition, budget cutbacks and fiscal uncertainty due to the economy can result in concerns about job security and opportunity for advancement. Task-related stress also occurs when officers experience role conflict, such as being at once an enforcer of the law, a social worker, a counselor, and a public servant (Finn & Tomz, 1997). For reasons to be discussed in later chapters, there is also increasing police interaction with individuals who are mentally ill, for example, which requires special skills on the part of the officer. **Community-oriented policing (COP)**, an approach whereby police and citizens work more closely together in positive endeavors, has added new pressures, but supporters see it as a better approach than "law-and-order" policing. (See **Focus Box 2.2**.) It requires that officers "give up" a certain amount of control by "walking the beat," meeting with citizens, and adopting a service orientation more than a crime-fighting orientation. (See **Photo 2.2**.) COP does not ignore crime or public safety, but it encourages police to form partnerships with citizens to prevent crime and improve safety for the public. Although its benefits are apparent, some officers find it difficult to adapt to its accompanying changes in strategies and policies.

Focus 2.1

Policing During a Pandemic

In the first 6 months of 2020, persons who serve the public were faced with increased challenges as the coronavirus outbreak spread across the globe and was officially declared a pandemic. Health care workers; teachers; restaurant owners and servers; ministers, pastors, and priests; administrators and workers in group homes and domestic violence shelters; firefighters . . . these were but a few of the helping and service professions affected. Police and public safety officers were no exception.

Here are a few anecdotes:

- Police were called to an apartment building by a woman who complained that the children of her upstairs neighbor were too loud. The children ranged in ages from 3 to 10, schools were closed, and families were told to remain home as much as possible. The officer responding to the call tried to speak to the complaining woman from a 2-foot distance, but she continually came close to him and angrily insisted that he do something about the noise.
- Because many communities asked people to avoid gathering in groups, some police were called on to disperse groups who despite warnings gathered for block parties, pickup basketball

games, and the like. On more than one occasion, officers were jeered at, sometimes at very close range.
- The number of domestic violence calls increased, doubling in some communities.
- In some areas, officers were prepared to issue fines to people who broke the rules against social gatherings.
- In city after city, as the virus spread, police officers were both physically and emotionally exhausted because of the demands placed upon them. Many did not return to their homes after their shifts, fearful of exposing their families to the virus.

QUESTIONS FOR DISCUSSION

1. Based on information from the text, what future services will police and public safety psychologists likely be asked to provide in relation to this and possibly other health crises?
2. Is the stress brought on by the pandemic different from the job-related stress otherwise experienced by police during the course of their work?
3. In some areas, officers were prepared to issue fines to people who broke the rules. Is this an example of law-and-order policing, community-oriented policing, neither, or both? How is this question relevant to the work of psychologists who consult with police?

Perhaps the most troubling task-related stress in police work is dealing with **critical incidents**. These are emergencies and disasters that are nonroutine and unanticipated, such as an active shooter or a family hostage-taking situation involving young children. These events tend to be very stressful primarily because they threaten the perceived control of the police officers (Paton, 2006) and have the potential to cause many deaths and injuries. Critical incidents can produce a number of psychological, neurological, and physical symptoms in responding officers, including confusion, disorientation, chest pain, sweating, rapid heart rate, and loss of memory. If these symptoms occur during a critical incident, the officers must still perform their duty to the extent possible. They cannot be an excuse for unlawful police conduct, such as using excessive force.



► Photo 2.2 Officer greets children at a Night to Unite event in a mall.
Shutterstock/MicheleMidnight

Delayed post-incident stress symptoms may occur weeks or months after the incident. These delayed symptoms include restlessness, chronic fatigue, sleep disturbances, nightmares, irritability, depression, problems in concentration, and misuse of alcohol or illegal substances. In addition, officers are often concerned about how they reacted in critical incidents, and they want to know whether their psychological reactions were normal and appropriate (Trompetter, Corey, Schmidt, & Tracy, 2011). For example, confrontations that might involve the use of deadly force are rapidly unfolding, ambiguous, and highly dangerous, and after the incident, the officer is often unsure whether they performed adequately (Trompetter et al., 2011).

Focus 2.2

Community-Oriented Policing and Law and Order Policing: Can They Coexist?

Community-oriented policing (COP), an approach whereby citizens and police work as partners to improve the community, has received positive reviews from members of the public, politicians, researchers, and many law enforcement officials. As indicated in the text, COP is not always easy to implement, particularly because it seems to require that police give up some of their legitimate authority. At its best, though, COP lets police maintain their authority and fight crime while also gaining more respect from the public they are sworn to serve and protect.

In the early 21st century, two very different issues have put COP to the test in some communities. First, there were apparent increases in the targeting of people of color, not only by harassing street stops but also by outright brutality, sometimes ending in the deaths of unarmed individuals. Second, there was an effort, particularly but not exclusively by federal agents, to identify and detain undocumented immigrants. Both of these tactics were disturbing, not only to the recipients but also to members of the community who did not approve of these approaches.

“Stop-and-frisk” refers to stopping people temporarily, asking questions, and possibly doing a brief pat-down search. It is important to emphasize that police have legal authority to do this if they have reasonable articulable suspicion that crime is afoot (Terry v. Ohio, 1968). The pat-down is technically for the officer’s protection, in the event the individual has a weapon. However, stop-and-frisk policies become questionable when stops are random or are disproportionately used against certain groups. Numerous individuals —particularly young Black males—have been submitted to such stops. Police brutality, specifically in the form of excessive force, which drew extensive attention in the early months of 2020, is a related but separate problem.

The second issue, cracking down on undocumented immigrants, found federal agents and sometimes local police canvassing areas where groups of people met (e.g., support groups, soup kitchens, bars, churches) and asking for proof of citizenship. Persons who lacked documentation were then detained and many were deported. Some communities declared themselves sanctuary cities, making it clear that persons seeking asylum were welcome into their community, while federal agents seeking to detain them were not. In some communities, police and other law enforcement officials cooperated with the federal agents, while in others they resisted doing so. In California, a state law limiting cooperation with federal agents seeking to detain immigrants was challenged by the federal

government, but the U.S, Supreme Court refused to hear the case, allowing the law to remain (United States v. California, 2020).

QUESTIONS FOR DISCUSSION

1. Is it possible to achieve community-oriented policing if a stop-and-frisk policy is widely used? Is it possible to achieve it if police are charged with finding undocumented immigrants?
2. After attention was brought to systemic racism in policing in 2020, many criminal justice reforms were proposed. Some advocates of reform argued that we should not expect police to serve social service functions, such as helping persons with mental disorders during a crisis or offering support to community youth groups. Rather, police budgets could be curtailed and these public funds could be shifted to separate social service programs. Do you agree?
3. Is it possible for community-oriented policing and law and order policing to coexist?

Considerable research strongly supports the effectiveness of immediate intervention after traumatic events (Trompetter et al., 2011; A. Young, Fuller, & Riley, 2008). Moreover, it appears that this intervention is especially effective if it occurs at or near the location of the crisis (Everly, Flannery, Eyler, & Mitchell, 2001; A. Young et al., 2008), which is not easily achievable. Some psychologists work as members, advisors, or consultants on critical incident stress management (CISM) teams, also called critical incident stress debriefing (CISD) teams or crisis intervention teams (CITs). The primary focus of these teams is to minimize the harmful effects of job stress as a result of very unusual crisis or emergency situations. As we note later, however, the value of this immediate debriefing and its impact on preventing further symptoms down the line (e.g., symptoms of PTSD) is debated in the literature (Scrivner et al., 2014).

Many departments do not wait for an officer to be confronted with a critical incident. Rather, as part of candidate training, officers are provided with pre-incident education, which helps to psychologically immunize them by teaching them to anticipate and understand how traumatic events may affect them. Furthermore, with experience on the job, police officers usually go through a desensitization process whereby they become accustomed to many taxing events that can be expected to occur within the normal routine of policing. However, some traumatic events may be considered extraordinary and beyond preparation. Critical incidents most likely to cause high levels of stress include the following: the suicide or fatal shooting of a colleague, the accidental killing or wounding of a citizen by the police

officer, death or serious injury to a child or multiple children, events that draw high media coverage, and events involving a number of deaths, such as major fires, terrorist bombings, or far-reaching natural disasters such as hurricanes, earthquakes, or tornadoes.

External Stress

External stress refers to an officer's ongoing frustration with the courts, the prosecutor's office, the criminal justice process, the correctional system, the media, or public attitudes. Available data suggest that for every 100 felony arrests, 43 are typically dismissed or not prosecuted (Finn & Tomz, 1997). Although this is not necessarily a bad thing, police often find it troubling. Moreover, many law enforcement officers feel court appearances are excessively time consuming, and they are often frustrated over what they perceive as inefficiency and "unjust" court decisions.

Another example of stress from external sources is that arising from police–citizen relationships, particularly when tied to various encounters. Since 1991, when the infamous incident involving the arrest of Rodney King was captured on a video recording, many other police–citizen or police–suspect encounters have been recorded on cell phones, street cameras, and police body cameras and they are often circulated on the internet, particularly if they involved the use of force. As noted at the beginning of the chapter, this has become all the more problematic in recent years. Later in the chapter, we focus more on police use of force and psychological factors associated with it.

Another area receiving increasing attention in recent years—and mentioned in **Focus 2.2**—is law enforcement approaches to immigration. Policies and procedures regarding undocumented immigrants, children separated from their parents at borders, those awaiting reviews of their immigration status, and more, have confounded police and public safety officers in many states, and sometimes in communities within a state. Sanctuary cities were established, granting safety to immigrants and discouraging various law enforcement agencies from detaining them. Some states passed laws allowing undocumented immigrants to obtain driver's licenses and prohibiting the sharing of this information with Customs and Border Protection and Immigration and Customs Enforcement. Advocates hailed these laws as humane and sensible, enabling vast numbers of people without access to public transportation to travel freely to jobs and medical facilities while awaiting review of their status. Others, who took a more punitive stance toward immigration issues, were not supportive. Police and public safety officials could be

found in both camps, and they were often at odds with the community they served.

Personal Stress

Personal stress refers to stressors involving marital relationships, health problems, addictions, peer group pressures, feelings of helplessness and depression, discrimination, sexual harassment, and lack of accomplishment. Some officers worry about their competency to do the job well or worry about doing something against regulations. Many police officers feel that the nature of their work has an adverse effect on their home life and social life. Older officers, because of their long, stressful careers, are especially vulnerable to serious physical and mental health problems (Gershon, Lin, & Li, 2002). In addition, female officers appear to be more prone to depressive symptoms and suicide due to stress factors than male officers (Violanti et al., 2009). This finding does not imply a weakness on the part of the officer; rather, it is more likely a symptom of the traditionally male environment in which the female officer works. Although criminal justice literature frequently mentions exceedingly high divorce rates and general marital unhappiness among law enforcement officers, documentation is very difficult to obtain. Borum and Philpot (1993), in their study, found that divorce rates among police families were no higher than those found in the general population. Similar results are reported by Aamodt (2008). Yet, there is little doubt that the whole family suffers the stressors inherent in law enforcement work. In one study of 479 spouses of police officers, 77% reported experiencing unusually high amounts of stress from the officers' job (Finn & Tomz, 1997). According to Finn and Tomz (1997), the most common sources of spousal stress include the following:

- Shift work and overtime
- An officer's cynicism, need to feel in control at home, or inability or unwillingness to express feelings
- The fear that the officer will be hurt or killed
- The officer's and other people's excessively high expectations of their children
- Avoidance, teasing, or harassment of children because of their parent's job
- The presence of a gun in the home

In light of the above data, it is not surprising that police departments are increasingly hiring either full-time police psychologists or psychological, counseling, or mental health consultants who are available to consult on cases as well as offer their services to individual officers and their families. Delprino and Bahn (1988)

reported that 53% of police agencies in their sample used counseling services for job-related stress. Since that survey, police psychologists have moved from providing counseling services for stress to a broad range of law enforcement-related activities (Dietz, 2000). About one third of these agencies also hired psychologists to provide relevant workshops and seminars. In addition, many support groups for families of police officers are appearing throughout the United States, frequently at the instigation of police spouses who band together to discuss and solve common problems. In some cases, police psychologists provide therapy or group counseling sessions to spouses or other family members of law enforcement officers without the participation of the officers themselves (Trompetter, 2017).

Peer counseling programs are available in a number of departments, but many police officers prefer to work with mental health professionals who are knowledgeable about police work but who are *not* police officers themselves. Officers are often resistant to discussing with other police officers the problems that are generally unacceptable within the police culture, such as sexual dysfunction, fear of getting hurt, or an inability to use force when perceived to be necessary in the line of duty. This varies, though, because other officers distrust clinicians whom they may see as working for the police administration. In any case, it seems that psychologists must be careful *not* to try to act and talk like police officers as a means of gaining acceptance, or they may be labeled as “cop wannabes.” Nonetheless, psychologists who consult with police should not hesitate to be on the premises and allow members of the department to get to know them on a more casual basis (Mitchell & Dorian, 2020).

It is probably fair to speculate that most law enforcement officers have experienced one or more highly stressful situations, though they have not necessarily sought professional help in dealing with them. It is the atypical officer, for example, who has *never* been worried about getting hurt, *never* experienced marital or relationship problems, *never* been devastated after seeing a dead child, and *never* had sleep problems. At least one of these must have been experienced. In the following sections, we cover two situations that are less common and thus perhaps far more problematic to the individual officer who experiences them.

Post-Shooting Traumatic Reactions

A **Post-shooting traumatic reaction (PSTR)** represents a collection of emotions and psychological response patterns that may occur after a law enforcement officer shoots a person in the line of duty—which in itself is usually considered a critical incident. The traumatic

reaction is especially likely when the victim dies. Fortunately, in contrast to what is depicted in so many media portrayals of police work, most law enforcement officers complete their career without ever firing a weapon in the line of duty.

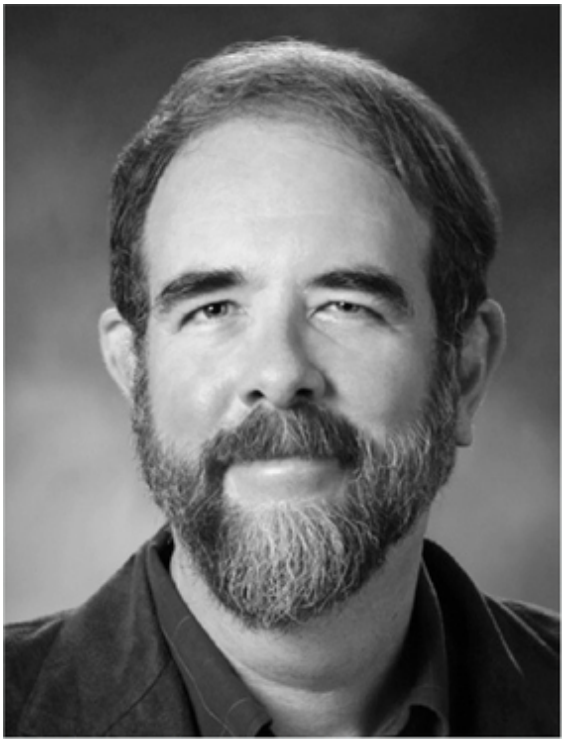
Nonetheless, officer-involved shootings are the subject of both media and psychological research on cognitive science as it applies in forensic settings (Herrera, Sharps, Swinney, & Lam, 2015; Sharps & Hess, 2008; J. Tate, Jenkins, & Rich, 2020). (See **Perspective 2.1** in which Dr. Sharps refers to his work in this area.) Stressful effects on the officers also are studied. L. Miller (1995) estimated that in the United States, two thirds of the officers involved in shootings demonstrate moderate to severe psychological problems after the shooting, and about 70% leave the force within 7 years after the incident. The most common psychological problem after a serious critical incident is PTSD. Prevalence rates of PTSD among police officers after a serious critical incident range from 7% to 19% (Brucia, Cordova, & Ruzek, 2017). According to Brucia, Cordova, and Ruzek, "[d]uty-related critical incidents most strongly associated with PTSD are killing someone in the line of duty, the death of a fellow officer, and physical assaults" (2017, p. 121).

In 2018, 106 law enforcement officers were killed in the line-of-duty incidents (FBI, 2019c). Of these, 55 as a result of felonious acts, and 51 officers died in accidents. In 2019, 89 law enforcement officers were killed in line-of-duty incidents (FBI, 2020). That year, 48 were killed as a result of felonious acts, and 41 died in accidents. Approximately 50,000 officers were victims of line-of-duty assaults. These numbers are unfortunate and not to be diminished. Nevertheless, they are smaller than the numbers of individuals who are killed by police.

From My Perspective 2.1

Eyewitness Memory and Forensic Cognitive Science

Matthew J. Sharps, PhD



Matthew Sharps

My work as a professor of cognitive psychology focuses on forensic cognitive science, especially eyewitness cognition. I came to this field from other areas of cognitive psychology almost 30 years ago, when I was asked to serve as an expert witness on memory in eyewitness cases. Eventually, I served as a consulting investigative psychologist on nearly 200 such cases. Although only a fraction of those actually went to court, I began to recognize that the principles of eyewitness cognition extend to many important areas in law enforcement and criminal justice.

Modern eyewitness research was essentially begun by Professor Elizabeth Loftus over 40 years ago. In her groundbreaking studies, she showed that the language of a given investigator's question can actually change what eyewitnesses remember or think they remember. This comes as a surprise to many people. We tend to think of our memories as reliable, permanent records, even though we know that bits and pieces are forgotten.

Yet this idea of memory is far from the truth. In 1932, psychologist Frederic Bartlett showed that memories change significantly. Over time, even over very short times, memories become briefer and details are lost, leaving only the gist of what was actually experienced. Most significantly, memories reconfigure in the direction of *personal belief*—often we remember what we *want* to have happened, rather than what actually did. Important elements of

Bartlett's research have been replicated in modern times, including in my own laboratory.

Reconfiguration is very important in eyewitness memory. In 2009, my research students and I published the first *taxonomy*, a descriptive listing, of the types of errors witnesses make regarding a realistic crime scene (Sharps, Janigian, Hess, & Hayward, 2009). The most common errors were mistakes about the clothing and physique of the suspect. Not too surprising, but the witnesses made, on average, almost two errors of these types in virtually every case! That's a lot of mistakes, enough to send a lot of people to prison wrongfully, and it's especially important to realize that our "witnesses" were sitting calmly in a well-lighted room. The memory of real witnesses, especially in relative darkness while afraid or angry, is going to be far worse.

But we were especially surprised by the next most common error type: *errors of the imagination*. The average witness made one and one quarter errors of this type, which involved, literally, *making things up!* For example, our witnesses transformed power tools into guns, at least in their own minds. They saw moustaches on clean-shaven suspects. Sometimes, they saw a male perpetrator where a female suspect was actually present, and they even remembered actions that weren't present in the stimulus items at all, such as physical movements and violent mannerisms.

Our witnesses weren't lying, and they saw our crime scenes under ideal conditions. But as suggested by the works of Bartlett and Loftus, they reconfigured the crime scenes to conform to their own beliefs. This resulted in accounts that were wrong in many important details. The importance of this finding for criminal investigations and court proceedings is hard to overestimate.

My students and I continued to study these effects. One of our studies involved what happens when witnesses tell their story several times, as is the case in every criminal investigation. We found that the first time a witness was questioned, we got more correct details than false ones. But by the third recounting, *we actually got more false than correct details*. This is because every time a witness tells a story, that retelling becomes part of the memory. Any false details accidentally included give rise to more false details, until the eyewitness account may bear little relationship to reality.

This and the rest of our work to date is summarized in my 2017 book *Processing Under Pressure*, which deals with eyewitness memory as well as with other aspects of *forensic cognitive science*. Why do I use that term, rather than just talking about eyewitness memory?

It's important to understand that *there is continuity in the nervous system*—when we find a mental process operating in one functional

domain, we're likely to find something like it operating in other realms as well. And this is absolutely the case with eyewitness cognition. It is important to realize that eyewitnesses to an event can be both police officers and lay witnesses. Then, if a case goes to trial, the cognitive witnessing of jurors also comes into play.

Consider, for example, an officer-involved shooting (OIS) in which the officer is later criminally charged. The officer's actions are based on his or her "eyewitness memory" of what the suspect did, with hands or weapon, usually less than a second ago. Later, the jurors who will judge that officer will base their judgments on their own "eyewitness memories" of what they've heard in the trial.

When we applied these ideas to OISs, we found some rather disturbing facts (Herrera et al., 2015; Sharps & Hess, 2008). First, average people, faced with a life-or-death situation, will choose to shoot an assailant wielding a handgun; but they will also shoot the same person wielding a power screwdriver. Their expectations lead them to see the screwdriver as a gun—the object is reconfigured in the direction of *personal belief*, as suggested by Bartlett.

What if the assailant has a real gun? Well, in situations in which 100% of law enforcement officers would be expected to fire on the assailant, only 11% of our potential jurors thought an officer should *ever* fire. This illustrates the huge gap between reality and personal belief in potential jurors, and it also illustrates the power of integrating the cognitive principles of eyewitness processes with those of the OIS.

In summary, forensic cognitive science is crucially important for our understanding of eyewitness processes; but the principles involved extend much farther, into virtually every aspect of law enforcement and the criminal justice system. We have even applied the principles of eyewitness cognition to the detection of bombs in counterterrorism operations, improving the ability of trainees to find improvised explosive devices significantly (Sharps et al., 2010; Sharps, Herrera, & Lodeesen, 2014).

We are just beginning to understand forensic cognitive science, and the field is growing. There is a significant need now and in the future for the work and ideas of young research psychologists and criminologists, in all relevant specialties, in this critically important area.

Professor Sharps teaches cognitive and forensic cognitive science at California State University, Fresno. He is the author of Processing Under Pressure: Stress, Memory, and Decision Making in Law Enforcement *(2nd ed., 2017) and of many articles on eyewitness processes, officer-*

involved shootings, and related topics. He has consulted on numerous criminal cases and on training for law enforcement in California and elsewhere.

The *Washington Post* has compiled a database of every fatal shooting in the United States by police in the line of duty since January 1, 2015. Since the database project began, police nationwide have shot and killed about 1,000 people each year (Tate et al., 2020). The *Post* tracks more than a dozen details describing each killing, including the race of the deceased, the circumstances of the shooting, whether the person was armed, and whether the person was experiencing a mental health crisis. Interestingly, The *Post* documented more than twice as many fatal shootings by police as recorded by the FBI in 2015, which prompted the FBI to begin changing its data collection methods on police shootings. It is important to emphasize that the fatal shootings referred to here are not considered unjustifiable, though some may be. Some also may have been preventable, but that is a separate issue that will be addressed shortly.

Shooting incidents are not the only factor in precipitating PTSD or stressful reactions in police officers. Law enforcement officers can be traumatized "by other incidents that resonated with their personal lives and struggles, as well as other types of life-threatening on-duty incidents" (Rouse et al., 2015, pp. 102–103). For example, witnessing a fatally injured child after a car accident can be highly stressful event for any police officer.

The standard operating procedure in large agencies after a critical incident—such as a shooting or other stressful event—is to immediately contact the on-duty post-shooting peer support team members and the police psychologist. The psychologist will consult with supervisors to determine whether the psychologist should arrange to meet with the involved officers at that time or see the officer at a later time. Police psychologists generally realize that many police officers have a reputation for shunning mental health services under a wide range of circumstances. L. Miller (1995) writes that some officers have a notion of the psychotherapy experience as akin to brainwashing or as a humiliating, infantilizing experience. More commonly, the idea of needing "mental help" implies weakness, cowardice, and lack of ability to do the job.

These attitudes may be changing, however, and L. Miller himself later noted (2015) that the vast majority of officers who were involved in justified deadly force encounters return to the job quite soon afterward. Despite cynicism toward mental health professionals, many agencies require that the involved officer or officers receive

immediate attention from both the peer support group and the police psychologist, regardless of the circumstances. Some agencies provide a “companion officer” as soon as possible, preferably a trusted colleague who also has been through an officer-involved shooting (Trompetter et al., 2011). Some researchers (e.g., Kamena, Gentz, Hays, Bohl-Penrod, & Greene, 2011) note that psychologists have a valuable role to play in training peer support teams. If the officers see a mental health professional after the incident, Trompetter, Corey, Schmidt, and Tracy (2011) assert that—if possible—the most effective post-shooting intervention occurs if the officer is offered privileged communication while working with the mental health professional. Nevertheless, in reality, some officers prefer to go to a respected mental health professional than to a peer support group. Both options—the professional psychologist and the peer team—should be available. (See **Focus 2.3** for related topic.)

It is also standard procedure at most agencies for the involved officer to immediately be placed on administrative leave for 3 days or longer. During that leave, it is usually common practice to recommend that the officer see the police psychologist for critical incident stress debriefings (CISDs). Usually, the CISD takes place within 24 to 72 hours after the critical incident and consists of a single group meeting that lasts approximately 2 to 3 hours (L. Miller, 1995). Thereafter, affected personnel may be seen individually or in groups. Interestingly, some research indicates that debriefing of this sort may be harmful, does not prevent PTSD, and should not be mandatory (Choe, 2005; McNally, Bryant, & Ehlers, 2003). Commenting on this research, Scrivner et al. (2014) say it is clear that further study is needed to resolve some of these issues.

Police Suicide

Data on the prevalence or frequency of police suicide are extremely difficult to obtain. Law enforcement agencies are often reluctant to allow researchers access to police officer suicide data (O’Hara, Violanti, Levenson, & Clark, 2013). However, some recent data indicate that 172 police officers died by suicide in 2018 and 228 did so in 2019 (Barr, 2020). The common assumption is that the rate of suicide among police officers is one of the highest of any occupational group in the United States (Violanti, 1996). It is estimated that twice as many officers die by their own hand as are killed in the line of duty (Violanti et al., 2009). This observation appears to be supported by the police killed in line-of-duty data reported by FBI (2020; mentioned earlier) and the data reported by Barr (2020). Moreover, most victims are young patrol officers with no record of misconduct, and most shoot themselves while off duty (L.

Miller, 1995). A study of police suicide conducted by Aamodt and Stalnaker (2001), however, suggests that the suicide rate among police officers is significantly well below the rate of suicide in the sector of the population comparable to police officers in age, gender, ethnic and racial group. Similar results were found in later studies (Aamodt, Stalnaker, & Smith, 2015; O'Hara & Violanti, 2009; O'Hara et al., 2013).

Focus 2.3

Firefighters, EMTs, and More

The term *public safety personnel* encompasses numerous individuals other than those engaged in law enforcement. Firefighters, emergency medical technicians (EMTs), paramedics, search and rescue workers, emergency dispatchers, and other first responders all keep the public safe and may come into contact with forensic psychologists. These professionals are routinely exposed to crises, disasters, danger, and life-threatening situations, often unexpectedly. They are often responsible for the recovery of the seriously injured and the dead, and in many cases, they are expected to console the family and acquaintances of victims at the scene of the tragedy. These professionals met unexpected challenges in the face of the COVID-19 pandemic in 2020 just as did police officers mentioned in **Focus 2.1**. First responders (e.g., paramedics and EMTs) were not only overwhelmed by the demands but also faced problems such as the lack of personal protective equipment, masks, and gowns. Physical distancing rules were in effect. As one responder noted, he could not even reach out to console a man whose wife died before she could be transported to a hospital.

As a result of their frequent encounters with trauma, shock, and grief, these public safety professionals—like law enforcement officers—often exhibit trauma-related symptoms of PTSD, depression, and drug and alcohol problems (Kleim & Westphal, 2011). Research reveals, for example, that 8% to 32% of first responders show signs of PTSD, usually at moderate levels (Haugen, Evces, & Weiss, 2012). It is not unrealistic to expect that this may occur as a result of the coronavirus crisis as well.

PTSD and depression, if left unrecognized and untreated, result in significant impairment and inability of public safety personnel to do their jobs effectively. Increasingly, clinical forensic psychologists and police psychologists are used in the screening, selection, training, and treatment of public safety personnel at all levels. At this point, however, while there is growing research literature on the screening and selection of law enforcement applicants, there is very little

research on these topics for first responders. Furthermore, effective treatment methods for helping public safety professionals deal with consistent encounters with trauma and tragedy are also heavily weighted toward law enforcement, and very little is directed at other public safety professionals beyond the importance of social and peer support (Haugen et al., 2012; Kirby, Shakespeare-Finch, & Palk, 2011; Kleim & Westphal, 2011). “The literature is startlingly sparse and is not sufficient for evidence-based recommendations for first responders” (Haugen et al., 2012, p. 370).

QUESTIONS FOR DISCUSSION

1. In many communities across the United States, firefighters, EMTs, and other first responders work part time or as community volunteers. Is this part-time or volunteer status likely to affect the likelihood that they will develop task-related adjustment problems?
2. Compare and contrast the work of a firefighter and a law enforcement officer. To what extent are the topics discussed in this chapter relevant to both professions?
3. Consider the work of EMTs and paramedics, such as highlighted earlier during the COVID-19 crisis. Are they as likely to have a “culture” as law enforcement officers? If yes, what might be features of that culture and how would they be transmitted? To what extent should police and public safety psychologists be attuned to this?

The study by O’Hara, Violanti, Levenson, and Clark (2013) documented that only 126 police suicides occurred in 2012, a decrease from earlier studies by the researchers in 2008 and 2009. In 2012, suicides clustered around the police group of 40 to 44 years of age with 15 to 19 years of experience. O’Hara et al. also discovered that police departments apparently did not notice warning signs of the impending suicide. Ninety-six percent of the officers seemed to slip completely “under the radar” by hiding their symptoms of distress before taking their lives. The authors write, “Law enforcement does have its own code of conduct and subculture and many officers still feel a need to disguise signs of psychological distress for fear of being perceived as ‘soft’ or weak” (p. 35).

Even though suicide rates among police officers may not be higher than found in a comparable population, suicide is still a serious and devastating problem. Each public safety officer who commits suicide leaves behind family, partners, supervisors, friends, and a depressing void within the department (D. Clark, White, & Violanti, 2012). Police suicide may result from a number of factors, including psychological reactions to critical incidents, relationship difficulties, internal

investigations, financial difficulties, frustration and discouragement, and easy access to weapons (D. Clark & White, 2017; Herndon, 2001). Rouse et al. (2015) found that alcohol abuse may play a prominent role in suicide risks for police officers, and suggested rigid cognitive thinking may also be a significant factor. Generally, cognitive rigidity refers to the inability to switch from thinking about things one way to another way. Overall, psychological research has indicated that the strongest reason for police suicide, however, appears to be difficulties in marital or intimate partner relationships, followed by legal problems and internal investigations (Aamodt & Stalnaker, 2001).

In recent years, police psychologists have worked on improving the sophisticated screening procedures and rigorous evaluations at the time of hiring, increased use of stress awareness training, better police training, increased counseling opportunities, and the many services provided by police psychologists and other psychologists working closely with police agencies. A recent study by Conn and Butterfield (2013) reported that a large segment (80%) of the new generation of police officers expressed a desire for access to mental health resources, including counseling and psychotherapy. As noted earlier, findings such as this suggest that the police cultural resistance toward mental health assistance may be changing.

OPERATIONAL RESPONSIBILITIES

A major shift in the role of police psychology in recent years has been in the area of operational support (Dietz, 2000; IACP, 2016; Mitchell & Dorian, 2020). Though assessment and intervention services continue to be crucial, psychological input has become important in many areas that were previously often overlooked or attended to only minimally. A few, listed by Scrivner et al. (2014), include liability mitigation (minimizing the likelihood of being sued), program evaluation, conflict management within the agency, training to reduce the effects of racial bias, and training to improve police performance in specific skills. Operational support also may include assisting in hostage-taking incidents, crisis negotiations, criminal investigations, and threat assessments. Investigation will be covered in some detail in Chapter 3. Here, we discuss hostage taking and crisis negotiation.

Hostage-Taking Incidents

Police and public safety psychologists often serve as consultants, either training for hostage-taking incidents or assisting during the incident itself. A *hostage situation* is characterized by a person (or persons) holding victims against their will who are used to obtain material gain, deliver a sociopolitical message, or achieve personal

advantage. Typically, the hostage taker threatens to take the lives of victims if certain demands are not met within a specified time period. A *barricade situation* is one in which an individual has fortified or barricaded themself in a residence or public building or structure and threatens violence either to the self or to others. Barricade situations may or may not include the taking of hostages. Included in the broad hostage-taking category are abductions and kidnappings, vehicle abductions (including aircraft or other forms of public transportation), school captive takings, and some acts of terrorism. Nearly 80% of all hostage situations are "relationship driven" in that perceived relationship difficulties and resentment seem to be the precipitating factor (Van Hasselt et al., 2005).

Police experts have classified hostage takers into four very broad categories: (1) political activists or terrorists, (2) individuals who have committed a crime, (3) prisoners, and (4) individuals with mental disorders (Fuselier, 1988; Fuselier & Noesner, 1990). Political terrorists, who take hostages primarily to gain publicity for their cause, are considered the most difficult to deal with. Their demands often go beyond the authority of the local police departments and usually require the involvement of federal officials. According to Fuselier, political terrorists take hostages for four basic reasons:

> (a) to show the public that the government cannot protect its own citizens; (b) to virtually guarantee immediate coverage and publicity for their cause; (c) to support their hope that after repeated incidents the government will overreact and place excessive restrictions on its citizens; and (d) to demand the release of members of their group who have been incarcerated. (1988, p. 176)

The hostage taker who committed a crime is usually trapped while committing the crime, such as robbery or domestic violence, and is trying to negotiate some form of escape. Prisoners, on the other hand, usually take hostages (typically correctional personnel) to protest conditions within the correctional facility. Persons with mental disorders take hostages for a variety of reasons but primarily to establish their sense of control over their life situations. Research suggests that more than 50% of all hostage-taking incidents are perpetrated by individuals with mental disorders (Borum & Strentz, 1993; Grubb, 2010). Consequently, the need for well-trained psychologists as part of the crisis negotiation team is becoming increasingly apparent to many police agencies. However, in many departments, consulting psychologists participate in training sessions

to prepare officers for possible hostage-taking incidents, whether or not they participate during a hostage-taking crisis.

Hostage negotiation is essentially a tactical team endeavor, which, as just indicated, may or may not involve the assistance of a psychologist (Palarea, Gelles, & Rowe, 2012). The hostage taker or takers hold and threaten others under their control, and the negotiation team may defuse the situation without other assistance. Or, hostage taking may require a tactical response, such as a SWAT team or other specialized unit, when—despite negotiation efforts—a peaceful resolution appears unlikely (Vecchi, Van Hasselt, & Romano, 2005).

Research data reveal that in about 83% of the cases, hostages are released without serious injury (Daniels, Royster, Vecchi, & Pshenishny, 2010; McMains & Mullins, 2013). Butler, Leitenberg, and Fuselier (1993) discovered that police agencies that used a psychologist on the scene or in some other capacity (e.g., phone conversation) to assess suspects reported significantly fewer incidents in which the hostage taker killed or seriously injured a hostage. More specifically, police agencies that used a psychologist reported more hostage incidents ending by negotiated surrender and fewer incidents resulting in the serious injury or death of a hostage. The data confirmed the observation that psychologists can make valuable contributions in resolving hostage incidents with a lessened chance of injury or death.

Crisis Negotiation

Crisis negotiation is very similar to hostage negotiation, except *crisis negotiation* is a more general term, involving a broad range of situations and strategies. All hostage taking is a crisis, but not all crises are hostage-taking incidents. For example, a jumper situation is a special crisis involving thoughts of suicide by a depressed or highly emotionally upset person, requiring empathy, understanding, and considerable psychological skill. Police psychologists are more directly involved in crisis than in hostage situations.

Law enforcement and public safety personnel are often present in crisis situations that do not involve hostage taking. “Crisis negotiation is closely linked to the behavioral sciences and, more specifically, to psychology” (Palarea et al., 2012, p. 281). These authors note that the knowledge, skills, and training possessed by psychologists are well suited for operational application to crisis negotiations. The negotiation task, for example, may involve talking a suicidal person down from jumping off a bridge or ledge of a high office building, where a tactical response is uncalled for. You do not usually send a SWAT team in to prevent someone from committing suicide, although

there are exceptions. One might be a “suicide-by-cop” situation, where an armed person is threatening to kill police but taunting them to kill him before he does that.

In many crisis situations, law enforcement officers can be trained by psychologists to effectively negotiate, and the crisis negotiation team —like the hostage negotiation team—may comprise both law enforcement officers and psychologists. As noted by A. T. Young (2016), “A primary negotiator endeavors to understand and have empathy for the individuals involved, allow for emotional expression, establish a relationship of trust, develop rapport, and then tries to problem solve and find solutions for the situation at hand” (p. 310). The perpetrators may be highly emotional, under the influence of drugs or alcohol, suicidal, violent, stressed, or struggling with psychological disorders (A. Young, 2016).

Gelles and Palarea (2011) and Palarea et al. (2012) point out that police psychologists have several important roles during each of three phases of crisis negotiations. They are (1) pre-incident duties, (2) intra-incident duties, and (3) post-incident duties. During the pre-incident phase, psychologists may provide psychological screening and selection of negotiators; deliver training to negotiators on the psychological aspects that are pertinent to crisis negotiations, such as active listening and persuasion techniques; and suggest strategies for a quick threat and violence risk assessment. (This should be distinguished from threat and violence risk assessments performed by psychologists in other contexts, which are complex and are discussed in later chapters.)

During the intra-incident phases, the psychologist on the premises may monitor the negotiations, offer advice on the emotional state and behavior of the individual in crisis, and assist negotiators in influencing the person’s behaviors and intentions. During the post-incident phase, the psychologist may provide stress management strategies, debriefing, and counseling services to the crisis management team. This may be especially needed if the crisis was not resolved successfully but is still relevant even if the worst possible situation was successfully averted.

Palarea et al. (2012) recommend that the psychologist involved in the intra-incident phase of the operation not be the psychologist to offer post-incident debriefing or counseling to the crisis team. As a member of the crisis team, they may be unable to maintain the necessary objectivity during the post-incident phase.

Individuals aspiring to be on the crisis-negotiation teams as psychologists, however, should realize that multiyear training—as expected of all crisis-negotiation team members—is necessary to

become an effective member of the team. This includes not only crisis negotiation training but also the appropriate level of operational experience and training (Gelles & Palarea, 2011). Part of that training may require some “street experience” such as ride-alongs with experienced officers and observations of seasoned officers in hostage or other crisis situations. “The chaos of the field or street situation, the military-like police command structure, and presence of real personal risk can come as quite a shock, no matter how professionally well trained one is” (Hatcher et al., 1998, p. 463). Negotiators should have interview and listening skills; the ability to deal with stressful situations; and an easygoing, nonconfrontational personality style (Terestre, 2005). They should be ready to be called, 24 hours a day.

In addition, psychologists aspiring to be involved in crisis negotiation should remain mindful of how individuals within various cultures and ethnicities differ (Gelles & Palarea, 2011). In recent years, there has been a discernible shift in the cultural diversity of hostage takers and other crisis situations (Giebels & Noelanders, 2004). This trend demands that psychologists increase their efforts to study and identify cultural differences in approaches to social interaction and understand how violent individuals from various cultures are likely to react to efforts to dissuade them from causing harm to their victims or themselves (Giebels & Taylor, 2009). According to Giebels and Taylor, “a more sophisticated understanding of cross-cultural communication will help police formulate culturally sensitive negotiation strategies and enhance their appreciation of why perpetrators react the way they do” (2009, p. 5). In addition, forensic psychologists and other mental health personnel can play a critical role in the training of negotiators and police officers by providing workshops and training sessions in cultural differences in persuasive arguments during crisis negotiations.

In years past, an estimated 30% to 58% of law enforcement agencies with a crisis or hostage negotiation team used a mental health professional in some capacity, of which 88% were psychologists as opposed to psychiatrists, social workers, and other professionals (Butler et al., 1993; Hatcher et al., 1998). More recently, the use of psychologists on crisis/hostage negotiation teams appears to be on the increase (Call, 2008; Mitchell & Dorian, 2020; Scrivner et al., 2014; Van Hasselt et al., 2005).

CONSULTING AND RESEARCH ACTIVITIES

In describing the roles of the consulting police psychologist, Aumiller and Corey (2007) mention the development of performance appraisal systems, which “involves the design and development of organizational policies, processes and instruments for measurement and feedback of individual job performance” (p. 75). These activities are intended to improve performance and help in the career development of the individual officer. In some cases, they may be used in promotional considerations. Consulting psychologists may also be expected to participate in the resolution of interpersonal conflict among individuals within the organization or between the department and the community.

Consulting psychologists often do some training and education to assist agency personnel in optimizing their leader, management, and supervisory effectiveness (Aumiller & Corey, 2007). In recent years, many departments in the United States, the United Kingdom, and Canada have asked psychologists for assistance in training officers in such areas as interviewing witnesses and suspects (Brewster et al., 2016; Eastwood, Snook, & Luther, 2018, 2019). We discuss this more in Chapter 3. In general, consulting and in-house psychologists are frequently shifting their roles to meet the crisis or problems that must be dealt with on an ongoing basis. In this section, we discuss a few of the concerns police administrators might have, including creating opportunities for women and persons of different ethnicities on the force and confronting problems involving excessive force and corruption.

Gender and Racial/Ethnic Issues

Before the 1970s, many police departments did not hire non-whites (Cole & Smith, 2001), and female officers, few in number, were often restricted to specified duties, such as processing female arrestees or interviewing child witnesses. However, the makeup of departments and assigning women to limited duties changed beginning in that decade.

Improvements in racial and ethnic diversity in local police departments nationwide have been noted over the past 20 years. The largest increase in recent years has been Hispanics or Latinos. In 2016, about 10% of full-time sworn officers in the United States were Hispanic men, and 2% were Hispanic women (Hyland & Davis, 2019). During that same year, 9% of full-time officers were Black men and 3% were Black women. As might be expected, the larger police departments were more ethnically diversified. In large police departments, an estimated 16% of male officers were Black and 5% of female officers were Black. Also in large departments, 21% were Hispanic male officers and 6% were Hispanic female officers. In the

federal system, across many law enforcement agencies, people of color made up one third of officers with arrest and firearm authority in 2016 (Brooks, 2019b).

On the whole, ethnic and racial groups are better represented in law enforcement than are women. At the turn of the 21st century, women still remained a small minority in law enforcement nationwide, comprising only 11.5% of active duty police officers in the United States (FBI, 2016a), a figure that is about 3 percentage points higher than in 1990. In large departments, women account for 16% of the sworn officers (Hyland & Davis, 2019). In small and rural departments (fewer than 100 police officers), women comprise an even smaller number—8% of the officers (Hyland & Davis, 2019). However, law enforcement opportunities appear to be increasing for women in recent years. For example, the number of female officers in local police departments grew by 36% from 1997 to 2016, increasing from 10.0% to 12.3% (Hyland & Davis, 2019). In major metropolitan areas and in cities where a few women are chiefs, the percentages may be higher. In both the federal law enforcement system and sheriff's departments across the nation, 14% of officers with arrest and firearm authority in 2016 were women (Brooks, 2019a, 2019b).

The major long-term impediment to women gaining a greater proportion of representation in law enforcement agencies across the country is the common perception that policing is a male-oriented profession, requiring physical strength and a display of physical prowess for many of the tasks. This perception seems to hold even though women are as capable at police work as men. Moreover, female police officers are far less likely than male officers to use excessive force, while maintaining effective policing strategies (Bergman, Walker, & Jean, 2016). However, women who might be attracted to law enforcement work may be reluctant to apply when a department has the reputation of being hostile toward women or has a high female officer turnover rate.

Researchers also have found that women are making some progress in acquiring promotions and administrative positions, although they have traditionally encountered resistance from police managers, supervisors, and administrators (S. E. Martin, 1989, 1992). At the turn of the century, less than 4% of supervisory positions were held by female officers, though the percentages were higher in larger departments (National Center for Women & Policing, 2002). In 2016, approximately 3% of local police chiefs nationwide were female, but in the largest departments 6.5% police chiefs were women (Hyland & Davis, 2019). Also worth noting, in 2013, women headed seven major

law enforcement agencies in Washington: the D.C. Metropolitan Police, the U.S. Park Police, the U.S. Marshal's Service, the Secret Service, the FBI Washington field office, Amtrak Police Department, and the Drug Enforcement Administration (DEA). In 2018, Carla Provost became chief of the U.S. Border Patrol, after being acting chief for a short period. She was the first woman to lead the agency in its 93-year history but did not remain in the position long. She became eligible for retirement and stepped down in January 2020. To this day, women hold about 12% of all agent positions.
Interestingly, Worden (1993) found very few differences between male and female officers in their *attitudes* toward policing. She wrote,

> Overall, female as well as male police officers were predictably ambivalent about restrictions on their autonomy and the definition of their role, only mildly positive about their public clientele, complimentary of their colleagues, and unenthusiastic about working conditions and supervisors. (p. 229)

She suggested that much of this gender similarity in policing may be due to occupational socialization, a process that seems to wash out many of the major differences in gender roles. *Occupational socialization* refers to the learning of attitudes, values, and beliefs of a particular occupational group (Van Maanen, 1975). Recall that earlier in the chapter we discussed the concept of an occupational culture as it relates to police. In general, women have the ability to become socialized into the police culture as successfully as men. An increase in their numbers, however, can also have a positive effect on that culture.
Accumulating research, both in the United States and internationally, indicates that the style of law enforcement used by women as a group may be more effective than the policing styles employed by men as a group (Bergman et al., 2016; Bureau of Justice Assistance, 2001). For example, many law enforcement administrators, peer officers, and members of the public are convinced that female officers are more skillful at defusing potentially dangerous, difficult, or violent situations (Balkin, 1988; Seklecki & Paynich, 2007; Weisheit & Mahan, 1988). They are also less likely to become involved in incidents of excessive force (Bureau of Justice Assistance, 2001). Worden (1993) found that female police officers seem to be guided more by altruistic and social motives than men, who tended to be more motivated toward the financial rewards of the occupation.

Female officers *as a group* generally possess better communication and social skills than their male colleagues and are better able to facilitate the cooperation and trust required to implement a community policing model (Bergman et al., 2016; Bureau of Justice Assistance, 2001). It is important to stress group rather than individual differences, because many male officers also possess communication and social skills and can adapt well to a community policing model. Women also may respond more effectively than men in situations involving violence against women (such as domestic abuse or sexual assault), although more research is needed in the area. Some research (e.g., Rabe-Hemp & Schuck, 2007) suggests that female officers may be at greater risk of being assaulted in domestic violence situations, especially when the assailant is drug or alcohol impaired. Nevertheless, hiring more women is likely to be an effective way of addressing the problems of excessive force and citizen complaints and also of improving community policing in general. It should also reduce the problem of sex discrimination and sexual harassment by changing the climate of the agency.

Shooter Bias and Excessive Force

As indicated at various points throughout the chapter, law enforcement agents today are under considerable public scrutiny. Both the entertainment and the news media, along with social media, are not hesitant to portray bad cops, particularly those who use excessive force in carrying out their duties. Although force is justifiable in many circumstances, examples of its overuse are not difficult to find. Today, with the help of portable video equipment such as smartphones, police–citizen encounters are often recorded and circulated, letting the world see behavior that has long been familiar in some communities.

In the summer of 2014, Eric Garner, a Black man allegedly selling cigarettes illegally on a street corner, was confronted by several police, placed in an illegal chokehold by a white officer, and subsequently died. A grand jury refused to indict the officer in Garner's death, but he was later removed from the force. "I can't breathe," the words uttered by Garner, became a rallying cry during nationwide protests of police brutality following that and similar incidents. These protests continued well into 2020, the year another unarmed Black man, George Floyd, was held facedown while police investigating the passage of a counterfeit $20 bill restrained him, one officer by kneeling on his neck. Floyd also died, and four officers were fired and charged with second degree murder or manslaughter. A trial date for all four officers was set for March 2021.

The vast majority of police carry out their work responsibly, legally, and humanely. However, there are multiple other illustrations of questionable or illegal actions taken by police, often but not exclusively against Black men. Shortly before the George Floyd incident, police executing a “no-knock warrant” entered the home of Breonna Taylor, a Black woman, and shot her dead. Taylor, a 26-year-old EMT, was not the subject of the warrant. During the same period, Ahmad Aubrey was jogging and confronted by three white men—one a former law enforcement officer. Aubrey was shot to death. The details of each of these incidents, along with many others through the years, cannot be repeated here. In the following sections, however, we address research that makes it clear that many problems continue to require public attention.

Shooter Bias

Police bias against racial/ethnic groups has been a major area of concern for some time. Members of these groups are stopped, questioned, and frisked on streets, and they are disproportionately pulled over for traffic violations on the nation’s highways. Various reports indicate that police appear to use greater force with Black than white suspects (Hyland, Langton, & Davis, 2015), and additional data suggest that Black suspects are about five times more likely than white suspects to be killed by the police (Correll et al., 2007). According to some research, Black and Latino suspects are subjected to force earlier during police interaction, while white suspects are subjected later during the interaction (K. Kahn, Steele, McMahon, & Stewart, 2017). At its worst, racial bias by law enforcement leads to excessive or fatal force. In the United States, there have been multiple occasions where law enforcement officers have “shot and killed unarmed Black men after reportedly thinking the suspect was armed” (Sim, Correll, & Sadler, 2013, p. 291).

Bias against groups—commonly thought of as holding racial stereotypes—is culturally ingrained, and law enforcement officers are no more or no less likely than others to hold stereotypical views (K. Kahn & McMahon, 2015, and references within). It is important to recognize that even well-intentioned people have implicit biases, which are outside their sphere of awareness. The biases themselves do not lead to “bad” action; that is, if we recognize that we have biases and take steps to reduce them, we can temper our actions accordingly.

Media reports and research on police shootings continually suggest that the interpretation of a person as dangerous, and the decision to shoot, will vary as a function of the person’s race or ethnicity. Psychologists have conducted many laboratory studies in which they

examined some of the complexities in the decision to shoot during an encounter with a criminal suspect. These research projects are important because they provide specific information on improving law enforcement training designed to reduce the shootings of unarmed suspects or innocent civilians. We highlight some of this research next. (Also, see **Focus 2.4** for a summary of other research on this topic.)

Focus 2.4

Shooter Bias

It is well-documented that police officers rarely discharge their weapons in the line of duty. "[T]he discharging of one's weapon in the line of duty is a rare and profound event that almost always leaves a psychological trace on the officer involved" (L. Miller, 2015, p. 107, citing multiple references). Firing a gun does not always result in a death, but when it does an investigation of this "officer-involved shooting" invariably follows. The majority of these incidents of deadly force are found to be justified, but in some, officers are charged with crime. Both indictments and convictions are rare.

Extensive publicity in recent years has focused on lethal shootings of minorities, particularly Black men and youth. Although guns are almost always used, the weapon also may be a knee, as it was in the death of George Floyd. Victims like Floyd, Michael Brown, Walter Scott, Breonna Taylor, Tamir Rice, Ahmad Aubrey, and others have become symbols of systemic racial bias displayed by some members of the law enforcement community. It is widely recognized that racial bias exists throughout society, sometimes explicitly but more often implicitly. Forensic psychologists are not immune to implicit bias, a point made in Chapter 1. When bias produces discriminatory behavior, this becomes a problem. Is bias at the root of decisions to use force, including shooting members of a racial/ethnic group? Not surprisingly, a number of psychologists and criminologists have conducted research examining the decision to shoot.

Following are highlights of some of this research. You will note that some findings seem to be contradictory.

- Officers of any race or ethnicity are equally likely to be involved in a deadly force incident (McElvain & Kposowa, 2008; Salerno & Sanchez, 2020).
- Personal philosophies of chiefs and other supervisory personnel, not the level of crime in the community, are determinants of police shootings (Fyfe, 1988; H. Lee & Vaughn, 2010)
- Training and experience are effective in minimizing the effect of implicit bias (Correll et al., 2007; Sim et al., 2013).

- In simulated experiments, police demonstrate less bias in shooting than community samples, including college students (Correll et al., 2007).
- Racial bias tends to be demonstrated more in response time (i.e., how long it takes to make a decision) than in the ultimate decision to shoot (W. Cox, Devine, Plant, & Schwartz, 2014; Salerno & Sanchez, 2020).
- Officers use more deadly force against Blacks than whites (Goff & Kahn, 2012; A. Hall, Hall, & Perry, 2016; Sim et al., 2013).
- The quality and amount of dispatcher information received by the responding officer(s) has a major influence on police decisions to shoot (D. Johnson, Cesario, & Pleskac, 2018; P. Taylor, 2019).
- Black boys are seen as older by police and less innocent than white boys (Goff et al., 2014; Hall et al., 2016).
- Black and Latino suspects were subjected to force earlier during police interaction, while white suspects were subjected later during the interaction (K. Kahn et al., 2017).

In general, the literature on shooter bias shows mixed results, with some indicating little overall bias when other factors are controlled, while other research suggests strong racial stereotyping. What are we to make of these different and sometimes divergent findings? Although research on the extent of disparate treatment must continue, it is clear that effective training of police to recognize their implicit biases and to exercise cognitive control in making decisions is essential (K. Kahn & McMahon, 2015).

QUESTIONS FOR DISCUSSION

1. These are just a few conclusions from research relating to shooter bias in policing. Find and discuss results of a recent study on this topic. Is it consistent with the research highlighted here?
2. Laurence Miller (2015, p. 104), notes that most actual shooting scenarios involve “petty criminals, mentally disordered subjects, domestic violence escalations, or the posturings of young-and-dumb juveniles.” Assuming Miller is correct, how might this affect the officer who did the shooting?
3. In the quote in Question 2, is Miller justifying the shootings?

In a series of research projects, Correll and his colleagues (Correll, Park, Judd, & Wittenbrink, 2002; Correll et al. 2007) examined some of the variables in police decisions to shoot unarmed persons. The primary goal of the studies was to identify the specific conditions that might prompt what has become known as **Shooter bias**. Shooter bias generally refers to an implicit racial bias among law enforcement officers to shoot Black juveniles or adults. In their early research,

Correll et al. (2002) designed four separate studies that used a simplified videogame, “which roughly simulates the situation of a police officer who is confronted with an ambiguous, but potentially hostile, target, and who must decide whether or not to shoot” (p. 1315). In the video game, images of a young male who is either armed or unarmed, and either African American or white, appears unexpectedly in a variety of contexts. The video game allowed the researchers to present an ambiguous and threatening target similar to what a police officer might face when arriving at a dangerous crime scene.

In three of the studies, Correll et al. (2002) used college undergraduates (who were predominately white) as participants. In a fourth study, the researchers gathered 52 adults from bus stations, malls, and food courts in Denver, Colorado.

In all four studies, results indicated that shooter bias exists. “Both in speed and accuracy, the decision to fire on an armed target was facilitated when that target was African American, whereas the decision not to shoot an unarmed target was facilitated when that target was White” (Correll et al., 2002, p. 1325). Shooter bias was present among white college students (Studies 1–3) and among a community sample that consisted of both whites and African Americans (Study 4). The researchers concluded that ethnicity influenced the shoot/don’t shoot decisions primarily because of violent or dangerous traits commonly associated with African Americans within the American culture. These cultural biases appeared to significantly influence the participants’ perceptions of an ambiguous and threatening target. As summarized by A. Hall, Hall, and Perry (2016), these racial stereotypes appear to be “held by the general population, and they are not specific to law enforcement agents or Whites alone” (p. 178).

In a subsequent study, Correll et al. (2007), using the same videogame setup, compared the shooting decisions of police officers and community civilians (DMV workers). In this investigation, police differed from the community members on several critical variables. The officers clearly did better than community members on several measures. Police officers “were faster to make correct responses; they were better able to detect the presence of a weapon . . .; and they set a significantly higher criterion for the decision to shoot, indicating a less ‘trigger happy’ orientation” (p. 1020). However, police officers were similar to the community sample in one specific measurement. Although police officers were faster than community participants in making correct responses in shoot/don’t shoot decisions involving *armed* Black or *unarmed* white targets, they were

as slow as the community sample when the targets were *unarmed* Black or *armed* white men.

The tendency for the police officers to be slow in decision making to shoot/don't shoot in the second condition may have been due to the officers' stereotypical tendency to associate aggression, anger, and violence with Blacks (Salerno & Sanchez, 2020). Although Correll et al. (2007) interpreted this latency in responding as a sign of racial bias, they also admitted that police are usually trained to hold their fire when they are uncertain or to wait for greater clarity when the situation is more ambiguous than usual. Consequently, the video may have been ambiguous rather than presenting a clearly biased scenario.

Dispatcher Information

Interestingly, recent research reveals that the information provided to officers by dispatchers is extremely critical in situations that may be ambiguous. D. Johnson, Cesario, and Pleskac (2018) examined the critical importance of dispatcher information that police officers receive before arriving at an emergency situation. Johnson et al. hypothesized that lethal force may be more likely to occur when officers (especially novice ones) have little advance information or have misinformation about the person(s) they encounter.

The researchers first surveyed the type of information dispatchers typically relay to responding officers. "Officers responding to an emergency call typically receive, at minimum, demographic information about the person in question from dispatch" (p. 617). For example, the dispatcher might relay physical descriptions of a person's sex, race, age, weight, hair color, and clothing. In the case of a possible crime, dispatchers routinely ask the caller whether weapons are present, and they immediately pass this information to the officers.

Johnson et al. (2018) used three laboratory studies to test how dispatch information and police experience affected the decision to shoot. The researchers focused on race and presence of a weapon. Johnson et al. consistently found that giving "incorrect dispatch information increased the likelihood that participants mistakenly shot unarmed men" (p. 619).

A classic example of dispatch misinformation is exemplified by the shooting of Tamir Rice in 2014, a case that has since received nationwide attention. Tamir was a 12-year-old African American boy who was throwing snowballs and playing with a realistic-looking, airsoft-style pellet handgun (which fired plastic pellets) in a park in Cleveland, Ohio. The pellet handgun belonged to an older friend who allowed Tamir to carry it temporarily while the friend took care of an

errand. The gun, a Colt replica, was a few years old. Although the handgun had an “orange safety tip, intended to distinguish it from a pistol that fired real bullets, it had been removed or had fallen off” (Dewan & Oppel, 2015, p. A1). While in the park, the boy played around with the toy handgun, repeatedly pulling it out of his pocket until someone called 911 to inform the dispatcher that there was a male in the park pointing a gun at people.

The 911 caller was calm throughout the report, even pausing to exchange pleasantries with the dispatcher. The caller also said the person with the gun was “probably a juvenile” and twice emphasized that the “gun” was probably fake. Nevertheless, the dispatcher reported the incident as a “Code 1,” indicating the incident was the police department’s highest level of urgency. The dispatcher did not inform the responding officers that the caller indicated the gun was probably a fake, and that the carrier was probably a juvenile.

Two Cleveland police officers arrived at the scene, drove the police vehicle very close to the picnic area where the “suspect” was located. One of the officers immediately got out of the car and within seconds shot the preteen in the abdomen from point-blank range. It was unclear whether and when the officer gave any warnings because there were discrepancies in his subsequent accounts to investigators and to a grand jury. He said he shot because he feared his life was in danger. He also said he thought the boy look around age 20, 12 years older than he was. Remember, the dispatcher failed to mention to the officers that the caller said the male was “probably a juvenile.” Hall et al. (2016) report that research finds that Black boys are commonly perceived to be older and less innocent than white boys, and this “adult-like” quality makes them “appear to be more appropriate candidates for greater use of police force” (p. 176). In research conducted by Goff, Jackson, Di Leone, Culotta, and DiTomasso (2014), for example, both civilians and police officers perceived Black youths nearly 5 years older than they were.

A grand jury investigation produced no criminal charges against the officers, apparently due to the critical miscommunications between the dispatcher and the officers. Dewan and Oppel (2015) write that “with the county sheriff’s office reviewing the shooting, interviews and recently released video and police records show how a series of miscommunications, tactical errors and institutional failures by the Cleveland police cascaded into one irreversible mistake” (p. A1). The officer who shot Tamir Rice was eventually fired two and a half years after the incident. He was fired not because of the shooting incident but because he had provided false information in his original application to the department. After investigations, both the

dispatcher and the officer who drove the police car were suspended for brief periods. The officer who fired the shot was hired by another police department in Ohio in 2018.

Based on their research data, Johnson et al. (2018) concluded that racial bias in shooting decisions, as observed in laboratory studies, might be more likely when an officer is relatively untrained, has no dispatch information about a person, and has to make the decision in a short amount of time (p. 617). The researchers add, “Considerable research has stressed that stereotypes are more likely to be used in situations where information is ambiguous” (p. 618).

Nonfatal Excessive Force

When the level of force exceeds what is considered justifiable under the circumstances, it is called **Excessive force**. Excessive force is unacceptable and illegal behavior demonstrated by an individual officer or group of officers, or it might be a pattern and practice of an entire law enforcement agency. In many instances, excessive force probably reflects some combination of both. However, the line between excessive and justifiable force is not a clear one to draw. Sometimes, changes in policy are needed to specify what is and what is not allowed. The “chokehold,” which by 2020 was allowed in some departments and banned in others, is a case in point.

Studies reveal that when male police officers use what the public believes is excessive force or threaten force, the public trusts them less and perceives the officers to be less effective (Salerno & Sanchez, 2020). Female officers are less likely to use force in general compared to male officers, but when female officers do use force, the public tends to believe it is probably justified and not excessive (Salerno & Sanchez, 2020). This finding indicates that when female officers use force, the public perceives their behavior to be a result of the dangerous external situation that requires the force rather than due to any personal, internal traits. On the other hand, when male officers use force, the public often attributes their behavior to internal traits, such as a tendency to be aggressive and emotionally reactive.

A comprehensive source of information about police use of force is the Bureau of Justice Statistics (E. Davis, Whyde, & Langdon, 2018). This is a survey of police and public contacts based on interviews with residents rather than on police records. According to Davis et al. (2018) in 2015, 53.5 million U.S. residents age 16 or older had contact with the police. (See **Table 2.2**.) Among those residents who had contact with the police, nearly 1 million experienced threats or use of force. About 3.51% perceived the force as excessive. Men were more likely than women to experience threats or the use of

force, and Blacks and Hispanics were more likely than non-Hispanic whites. According to Davis et al., examples of threats or nonfatal excessive force include the following:

- Threatening to use force
- Handcuffing
- Pushing, grabbing, hitting, or kicking
- Using a chemical or pepper spray
- Using an electroshock weapon
- Pointing a gun
- Using some other type of force (such as threatening to arrest)

A 2010 study by the Cato Institute (summarized by Granot, Balcetis, & Stern, 2017) discovered that “approximately one in every 100 American police officers was accused of misconduct, most of which were incidents of excessive force” (p. 177). However, once again it is important to distinguish between true excessive force and justifiable force. To illustrate, a report released by the Department of Justice in 2006 revealed that there were 26,556 citizen complaints about police use of force involving large state and local law enforcement agencies (Hickman, 2006). About 8% of these complaints were supported by investigations and were sufficient enough to justify disciplinary action against the officer or officers. The remainder of the complaints were not supported or were unfounded. Without further evidence to the contrary, they would then be presumed to be justifiable force. Nevertheless, the 8% figure remains a troubling one. When nearly 10% of citizen complaints are found worthy of disciplinary action against officers, this is a problem for both police and the community they serve.

Table 2.2

Source: Davis et al. (2018).

Other research involving force, both justifiable and excessive, is worth noting as well. The National Institute of Justice (NIJ; K. Adams et al., 1999) released an earlier report summarizing what is known about police use of force. The report found the following:

- Police use force infrequently.
- Police use of force typically occurs at the lower end of the force spectrum, involving grabbing, pushing, or shoving.
- Use of force typically occurs when police are trying to make an arrest and the suspect is resisting.

Police psychologist Ellen Scrivner (1994), in a report sponsored by the NIJ, investigated some of the psychological attributes characteristic of officers who engage in excessive force. Police psychologists assigned to conduct fitness-for-duty evaluations should be knowledgeable about the behaviors outlined in the report. Scrivner

identified five different officer profiles that are prone to excessive force complaints or charges:

1. Officers with personality patterns that reflect a lack of empathy for others and antisocial, narcissistic, and abusive tendencies
2. Officers with previous job-related experiences such as involvement in justifiable police shootings
3. Officers who experienced early career-stage problems having to do with their impressionability, impulsiveness, low tolerance for frustration, and general need for strong supervision
4. Officers who had a dominant, heavy-handed patrol style that is particularly sensitive to challenge and provocation
5. Officers who had personal problems such as separation, divorce, or perceived loss of status that caused extreme anxiety and destabilized job functioning

In a more recent study, Trinkner, Kerrison, and Goff (2019) found that officer cynicism may be a key variable in officers' use of excessive force. *Police cynicism* is defined "as a pessimistic and suspicious perspective towards their job, the public, and society in general" (Caplan, 2003, p. 304). It is similar to psychological "burn out." Moreover, it "is a progressively evolving characteristic of even the most idealistic police officers" (Caplan, 2003, p. 304).

Trinkner et al. (2019) surveyed 784 patrol officers and sergeants of a large urban police force over a period of 8 weeks. The survey revealed that cynical officers not only are more likely to distrust the public, they are more prone to engage with community members in hostile, aggressive, forceful ways. Trinkner et al. write, "In this respect, one would not expect them to support the department's use of force policy or engaging with the public in a fair and respectful manner to the same degree as less cynical officers" (p. 431).

Trinkner et al. (2019) also found that female officers were more likely to support fair and just policies compared to male officers. They also discovered the officer's age made a difference in the use of excessive force. Older, more experienced officers were less likely to use coercive, forceful policing compared to their younger colleagues.

There are other factors that influence the tendency of law enforcement to use force—whether justifiable or excessive—beside officer personality. For example, police are more likely to use force in neighborhoods that are known for high crime rates and previous encounters with difficult suspects (Reyes & Houston, 2019; Terrill & Reisig, 2003). Reyes and Houston also note that age, income, race, and education level also influence the level of force used by police, "with male, youth, minority, and lower-income suspects found to be more likely to have higher levels of force used against them to effect

an arrest" (p. 315). Use of force is also likely to occur if the suspect resists arrest (Terrill, Leinfelt, & Kwak, 2008). In addition, the psychological or mental status of the suspect may also be a factor in the amount of force used in an encounter with police.

The studies described focused primarily on the psychological profiles of individual police officers. It was not intended to give attention to the properties of entire police organizations that may implicitly (or explicitly) promote or condone excessive force within their ranks. For example, an agency may have an aggressive policing policy that encourages confrontational tactics that increase the probability of violence on the part of officers as well as members of the public. As K. Adams et al. (1999) stated, "[a] major gap in our knowledge about excessive force by police concerns characteristics of police agencies that facilitate or impede this conduct" (p. 11). Adams and his colleagues further assert that many formal aspects of the organization—such as hiring criteria, recruit training, in-service programs, supervision of field officers, disciplinary mechanisms, operations of internal affairs, specialized units dealing with ethics and integrity, labor unions, and civilian oversight mechanisms—plausibly are related to the levels of officer misconduct.

As suggested earlier, police and public safety psychologists should realize that, in some cases, the law enforcement agency itself might be a major factor in implicitly encouraging the use of excessive force by its officers. Police training, both at a police academy and on the job, is another extremely important component. Officers who have not been taught appropriate deescalation tactics, for example, may find it tempting to resort to force when it should not be needed. Agencies that have not banned or severely limited the use of chokeholds also may be more likely to attract citizen complaints. Possibly, agencies may be placed on a continuum signifying the degree of aggressive policing they advocate in the community. At one pole, the agency advocates that minimum force be applied when dealing with suspects, but at the other pole, the agency encourages force—and, if necessary, something approaching excessive force—in dealing with the suspects.

In summary, research data consistently show that most police officers do not engage in excessive force in dealing with the public, but even a small minority that does becomes problematic for both the public and the law enforcement agency. Fortunately, an "early warning system," used by an increasing number of departments, can help supervisors identify problem officers early and intervene through counseling or training to correct problem behaviors (S. Walker, Alpert, & Kenney, 2001), not only those related to the use of force.

Early warning systems of various types are increasingly being introduced into police agencies nationwide (Scrivner et al., 2014). They are data-based management tools, usually consisting of three basic phases: (1) selection, (2) intervention, and (3) post-intervention monitoring (Bartol & Bartol, 2004). The criteria by which officers are placed in an early warning category vary from agency to agency but usually include some threshold combination of citizen complaints, civil litigation, firearms discharge or use-of-force reports, high-speed pursuits, and resisting-arrest incidents (S. Walker et al., 2001). Preliminary research on the effectiveness of early warning systems suggests that they are effective, especially if used in combination with department-wide attempts to raise standards of performance and improve the quality of police services. Unfortunately, as has been demonstrated in recent years, agencies nationwide vary widely on the extent to which they develop standards and monitor behavior of individual law enforcement officers.

Police Corruption

The term *police corruption* covers a wide range of illegal behaviors that represent a violation of the public trust. Accepting bribes, confiscating drugs or drug money, planting evidence, and soliciting sexual activity in exchange for giving a suspect a “break” are all illustrations. Can police psychologists assist departments in selecting out candidates who are likely to be engaged in corrupt activities? The Defense Personnel Security Research Center (PERSEREC) conducted one of the most extensive studies on the ability of personality measures to predict police corruption and misconduct. The PERSEREC began the Police Integrity Study in 1992, using four commonly used personality inventories in law enforcement: the MMPI-2, IPI, 16-PF, and CPI. Sixty-nine departments met all the prerequisites for participation and supplied personality test data on 878 officers, 439 of whom demonstrated misconduct and 439 of whom did not. (The departments were asked to identify equal numbers from each group.) The preemployment personality inventories most frequently administered to those officers when they originally applied to their respective departments was the MMPI-2 (92.7%), followed by the CPI (41.0%), 16-PF (11.2%), and IPI (11.0%). (These percentages will total more than 100% because many departments administered more than one personality inventory during the screening and selection stage.)

Overall, the study concluded that the personality data could only modestly identify later misconduct (including the use of force discussed earlier) or corruption. The few personality inventories that had any success tended to indicate that those officers who engaged

in misconduct or corruption during their careers not surprisingly had more of the following characteristics:

- Difficulty getting along with others
- Delinquent or problem histories in their police careers
- Indications of maladjustment, immaturity, irresponsibility, or unreliability

Basically, the study found that the *single* best predictor of corruption was not a personality measure administered prior to hire, but rather misconduct on the job after employment had begun and usually relatively early in the officer's career.

In other words, none of the preemployment psychological tests then being used by law enforcement departments appeared to offer a general scale or dimension that could reliably and validly differentiate officers at the beginning of their career who were likely to violate the public trust later in their career (Boes, Chandler, & Timm, 2001). As mentioned earlier in the chapter, these tests, particularly the MMPI-2, continue to be used. This is not to question their use; it is simply to emphasize that they do not predict corruption. Rather, the *strongest* predictor was post-hire misconduct. Officers who got into trouble for misconduct early in their careers were most likely to be punished for later acts of corruption. Furthermore, the study found that the decision of whether or not to engage in acts of corruption is largely shaped by environmental factors, such as opportunity combined with the values particular police subcultures allowed or that were condoned by certain departments.

SUMMARY AND CONCLUSIONS

Individual psychologists have consulted with various law enforcement agencies in the United States throughout the 20th century, but police psychology as a subfield of applied psychology was not officially recognized until the late 1960s or early 1970s. Since then, it has expanded rapidly and is more commonly referred to as police and public safety psychology. It was recognized by the APA as a specialty in 2013. The many professional organizations devoted to this work and the increasing number of publications in the professional literature attest to the fact that police and public safety psychology is thriving.

Police psychologists today participate in the screening and selection of law enforcement candidates, conduct promotional exams and fitness-for-duty evaluations, provide counseling services to officers and their families, offer workshops in stress management, and assist in hostage negotiation training, among many tasks. They are also increasingly more involved in consulting with administrators in areas like optimal shift schedules, training for special operations, program

evaluation, or conflict management within the agency. In addition, there is a rich store of psychological research on topics relating to law enforcement work, most of which is conducted by academic or legal psychologists. Examples of such research topics include police handling of those with mental disorders, excessive force, adaptations to stress, gender differences in policing, police response to crisis situations, racial bias, police interrogations, and reliability and validity of various instruments for use in screening. Police and public safety psychologists can bring this research to the attention of the police agency.

The screening and selection of police candidates has been a fundamental task of police and public safety psychologists. Psychologists typically administer and evaluate psychological tests designed to identify desirable characteristics (screening in) or detect problem behaviors (screening out). Before deciding on how to perform this task, the psychologist must have a thorough understanding, not only of police culture, which may be variable, but also of the requirements of the specific job at hand. Some qualities are common to all good officers—for example, compassion or remaining calm in the face of danger. In other situations, such as assessments for work in special units, specific competencies may be required.

We gave particular attention to the MMPI-2, which is by far the most commonly used measure for screening police candidates, but other measures are available as well. Some agencies also ask police psychologists to conduct in-person interviews, different from the department's own interviews or oral board exams. It is important, though, that the approach taken be empirically validated and that the tests conform to federal laws such as the Americans with Disabilities Act and its revision. Candidate screening has traditionally focused more on detecting problems or pathology than on identifying positive features that predict success in law enforcement. In recent years, more tests have been developed with a goal of identifying the positive features. These must be continually subjected to validation, however.

Police work ranks high among stressful occupations. We discussed a number of occupational stressors that officers encounter, including those that are organizational, external, task-related, and personal. Police psychologists not only study the effects of stress, but also provide direct service to officers and their families. Critical incidents—such as hostage-taking situations, mass casualties, or police shootings—are good examples of task-related stress. Both in-house and consulting police psychologists are often asked to assist officers who have experienced a critical incident. When unaddressed stress

reaches high levels, there is danger of major dysfunction in personal relationships or police suicide. Although research does not support a higher incidence of suicide among police than among the general population, when suicide occurs, it has a major impact on the police community.

Racial bias among police has received increasing attention in recent years, particularly in relation to highly publicized shootings of unarmed Black suspects. Implicit bias is not unique to law enforcement officers; it is a characteristic shared by many if not most individuals as a result of cultural indoctrination. In public safety officers, however, bias that is reflected in discriminatory actions is unacceptable and illegal. A substantial amount of research has been done on this topic. Research indicates that police as a group do treat some individuals, particularly Blacks, more harshly than other racial groups. This is demonstrated in police stops, arrests, use of force, and even in lethal actions. “Shooter bias,” which has been substantiated in several current studies, refers to an officer’s tendency to use deadly force (even if it does not result in death) disproportionately against persons of color. However, studies also indicate that training can attenuate the effects of implicit bias.

We reviewed both classic and recent research on police use of force, including excessive force. Research suggests that officers who received excessive force complaints were more likely to have displayed personality factors like lack of empathy or narcissism, showed evidence of behavior problems early in their careers, had heavy-handed patrol styles, and experienced marital or other relationship problems. However, it is important to emphasize that the culture within a department, as well its policies, also may encourage the use of force, even in excessive amounts. Many departments have now adopted early warning systems to offer peer and professional support to officers who may be showing signs of problem behaviors, but it is equally important to be alert to an agency’s own approach to interacting with the community it serves.

Like excessive force, corruption is unlikely to be predicted before a candidate is hired. Research on police corruption indicates that it is often related to the environment of the department—it is not typically associated with a single officer. Once again, focus on individual officers to the exclusion of considering the entire agency, or sectors within in, is not likely to solve this problem. Assessment measures given by psychologists are unlikely to predict eventual corruption, although consulting psychologists can help alleviate stressful events that may be associated with a pattern of misconduct.

KEY CONCEPTS

Americans with Disabilities Act (ADA) 45
Community-oriented policing (COP) 54
Concurrent validity 46
Critical incidents 55
Early intervention system (EIS) 50
Early warning systems 77
Excessive force 74
External stress 57
Face (or content) validity 47
Fitness-for-duty evaluations (FFDEs) 41
Job analysis 43
Minnesota Multiphasic Personality Inventory–Revised (MMPI-2) 48
Minnesota Multiphasic Personality Inventory-Revised-Restructured Form (MMPI-2-RF) 48
Organizational stress 53
Personal stress 58
Police culture 41
Post-shooting traumatic reaction (PSTR) 59
Predictive validity 47
Preemployment psychological screening 41
Screening-in procedures 46
Screening-out procedures 46
Shooter bias 72
Task-related stress 54

QUESTIONS FOR REVIEW

1. What have researchers learned about “police culture”?
2. Why is job analysis an important task for police and public safety psychologists?
3. Briefly describe the MMPI-2 and MMPI-2-RF.
4. Give examples of each of the four types of stressors that are common in law enforcement.
5. Provide examples of five racial/ethnic minority or gender issues relating to law enforcement.
6. Other than candidate screening, describe any three special evaluations that might be conducted by a police psychologist.
7. List at least five findings of the research on racial bias in policing.
8. Discuss the common psychological reactions police may have to a shooting incident.
9. In the Scrivner study, what five different officer profiles were prone to excessive force complaints?

CHAPTER THREE PSYCHOLOGY OF INVESTIGATIONS

CHAPTER OBJECTIVES

- Explore the many ways psychology contributes to investigations of crime.
- Define and distinguish among five types of profiling.
- Examine the history, methods, limitations, and problems of profiling.
- Review research on eyewitness identification.
- Review methods of police interviewing and interrogation.
- Examine the psychology of pretrial identification methods, such as lineups and show-ups.
- Discuss types and incidents of false confessions.
- Review the psychology of detecting deception.

The investigation of crime offers a multitude of both research opportunities and practical activities for the forensic psychologist. Some of these relate directly to identifying the perpetrator or helping police understand the behavioral aspects associated with the crime, such as how victims are targeted. Others focus on the methods police use before or after suspects have been apprehended, such as gathering eyewitness accounts. Interviewing and interrogating, which often involve the ability to detect deception, are other illustrations. As we will see in this chapter, forensic psychologists are making significant contributions to these areas, both in helping train law enforcement officials and in providing the legal profession with research findings.

This work is encompassed under the broad term **investigative psychology (IP)**, minted by David Canter, the director of the International Centre for Investigative Psychology at the University of Liverpool. Canter and his colleagues believed that there was "a wealth of psychological literature that can be drawn upon to aid in the contribution to the psychology of investigations" (Alison & Canter, 1999, p. 9). Basically, IP is a scientific approach designed to improve our understanding of criminal behavior and the investigative process (P. Taylor, Snook, Bennell, & Porter, 2015).

To date, IP studies fall into three broad categories: (1) the nature of offender behavior, (2) the social psychology of group crime and terrorism, and (3) the cognitive psychology of investigative decision making by law enforcement investigators (P. Taylor et al., 2015). In this chapter, we focus on two of these three—the nature of offender behavior and the investigative process used by law enforcement. IP "provides a framework for the integration of many aspects of psychology into all areas of police and other investigation, covering all forms of crime that may be examined by the police as well as areas of activity that require investigation that may not always be

considered by police investigators, such as insurance fraud, malicious fire setting, tax evasion, or customs and excise violations and even terrorism" (Canter & Youngs, 2009).

From a psychological perspective, three fundamental questions characterize all criminal investigations (Canter & Alison, 2000), assuming that an individual has not been caught in the act of committing a crime. The questions are as follows: (1) What are the important behavioral features associated with the crime that may help identify and successfully prosecute the perpetrator? (2) What inferences can be made about the personal characteristics that may help identify the offender? (3) Are there any other crimes that are likely to have been committed by the same person? These questions are central to the psychology of investigations in their early stages when the perpetrator of a crime is unknown. Answering these questions may or may not involve the task of profiling, which is so fascinating to the public, the media, and many students of forensic psychology. We begin with this topic but emphasize that it is but one aspect of IP. In fact, Canter (2019) disavows the term *offender profiling*, both because it suggests that psychologists possess abilities beyond what is realistic and because it is not broad enough to encompass the realm of investigative psychology.

PROFILING

Profiling is a technique that tries to identify the behavioral, cognitive, emotional, and demographic characteristics of a person based on information gathered from a wide range of sources. Note that broadly speaking, it is not restricted to criminal matters, as we emphasize below. When it refers to crime, profiling attempts to describe an *unknown* person, but it is also used to chronicle the behavioral patterns, thought features, and emotional characteristics of a *known* person. Many professionals who are engaged in this activity today prefer to call themselves behavioral analysts rather than profilers. Behavioral analysis connotes a more scientific activity, and in some agencies, a behavioral analyst is given more credence than a profiler. In reality, they may or may not have been trained in the same way. We continue to use the more common term, but we emphasize that continuing efforts are needed to render profiling a scientific enterprise.

Despite its enormous public and media interest—including depictions of profilers in the entertainment media—profiling is not a *frequent* investigative activity of the police and public safety psychologists discussed in Chapter 2. Torres, Boccaccini, and Miller (2006) found that less than 25% of trained psychologists and psychiatrists thought profiling was scientifically reliable and valid. Interestingly, though,

there may be a tendency to embrace profiling under different names, such as those mentioned above: behavioral analysis, investigative psychology, or criminal investigative analysis. The Torres et al. (2006) survey discovered that forensic professionals who were asked to evaluate the term *criminal investigative analysis* believed the procedure was significantly more reliable and valid than those professionals asked to rate the term *profiling*. The authors' findings support the position that when we attach a more scientific-sounding name to this practice, profiling is viewed more favorably. A similar view appears to be held by the courts (Cooley, 2012; Risinger & Loop, 2002). According to Torres et al., "Many professionals who engage in profiling work believe that profiling testimony is more likely to be admitted into court when it is called something other than profiling" (p. 53).

In the following, we focus on the types of profiling and summarize some of the research on where it can be helpful in investigations. The public has many questions. Is profiling useful? Successful? How exactly is it done? Are some profiling techniques more acceptable than others, and how does one distinguish a "good profiler" from one who might be seeking media attention?

Broadly speaking, we can divide profiling into five categories: (1) crime scene profiling (also called criminal profiling, offender profiling, behavioral analysis, or criminal investigative analysis), (2) geographical profiling, (3) suspect-based profiling, (4) psychological profiling, and (5) equivocal death analysis (also called the psychological autopsy). Although there is some overlap among the types—such as with crime scene profiling and geographical profiling—we believe the division helps in understanding the various and complex distinctions among the different methods (Bartol & Bartol, 2013). (See **Table 3.1** for definitions of the various forms of profiling and their weaknesses.)

Crime Scene Profiling

In an episode of a popular cable network show, police called in a self-described profiler to help them investigate a series of rapes that had stymied them for several months. The profiler rapidly reviewed reports of the crime scenes, looked at the evidence that had been left behind, and read reports of interviews with the victims. Within a few hours, the profiler was able to pinpoint where the perpetrator likely lived, how old he likely was, and when he was likely to strike again. Police then found and arrested a suspect, who was subsequently charged with four rapes and convicted.

This may make for good media entertainment, but it is unrealistic. Yet virtually every form of entertainment media offers its version of a

profiling show, and profilers make regular appearances in the news, particularly when serious crimes occur. Clearly, some have credibility, but others do not.

Table 3.1

Despite the media attention and popular TV and film depictions of highly successful and probing profilers employing sophisticated techniques to identify the offender, reality is far from that picture. If the number of actual success stories in profiling were compared to the total number of misses or failures, the ratio of hits to misses might be close to chance. Fallon and Snook (2019) assert that criminal or offender profiling "is a dubious practice and that its use by law enforcement agencies should be prohibited until there is compelling empirical evidence that it works" (p. 8). Furthermore, Fallon and Snook point out that criminal profiling not only may be a waste of time and resources, it "could misdirect investigators and cause them to pursue unhelpful leads" (p. 25). Nevertheless, as noted by Fox and Farrington (2018), offender profiling "has exploded in popularity as both an investigative technique and a topic for many books, chapters, reports, and journal articles over the past several decades" (p. 1263). In addition, training in *behavioral analysis*—one of the terms often preferred—has become more extensive and rigorous. Therefore, although many psychologists and other scholars are skeptical of the profiling endeavor, it should not be rejected outright as having no value.

Crime scene profiling is assumed to have been developed by the FBI in the early 1970s to provide investigative assistance to law enforcement in cases of serial homicide or serial rape (Homant & Kennedy, 1998). At that time, the Federal Bureau of Investigation (FBI) opened its training academy in Quantico, Virginia, and established its Behavioral Science Unit (BSU), which is now called the Behavioral Analysis Unit (BAU). Even earlier than that, police investigators occasionally consulted behavioral scientists for help in hard-to-solve crimes—such as the case of New York's Mad Bomber in the 1950s and the Boston Strangler in the 1960s (Bartol & Bartol, 2013; M. Greenburg, 2011). The FBI's approach, however, was the first systematic effort in the United States to make profiling a routine part of law enforcement investigations.

Profiling developed rapidly in the United Kingdom during the same period, chiefly as a result of the work of social psychologist David Canter, who as mentioned above ultimately established a Centre for Investigative Psychology. Also as mentioned, Canter avoided the term *profiling*, and he steered away from the clinically based approach that was emphasized by the FBI at that time. He chose,

rather, to focus on a data-based method for investigating criminal activity. Today, crime scene profiling has expanded to various countries across the globe, especially the United Kingdom, Canada, Finland, Australia, the Netherlands, Germany, and South Africa (Goodwill, Lehmann, Beauregard, & Andrei, 2016). The United Kingdom and Canada have led the way in profiling research, whereas research endeavors in the United States have dropped off in recent years.

Regardless of whether it is clinically or statistically based, crime scene profiling requires describing some of the significant behavioral, cognitive, emotional, lifestyle, and demographic features of an unknown person believed to be responsible for a series of crimes. Fox and Farrington (2018) define crime scene (or offender) profiling as "an investigative tool used primarily by law enforcement, psychologists, academics, and consultants to help identify the major personality, behavioral, and demographic characteristics of an offender based upon an analysis of the crime scene behavior" (p. 1247). In other words, the crime scene characteristics at best should link up generally with who the offender is; at least, they should help police understand something about the crime. In most cases, the profile sketch is based on characteristics and evidence gathered at the crime scene as well as reports from victims or witnesses, if there are any. Based on this information, the profiler tries to predict characteristics and habits of the offender and where and how the person's next crime may occur, assuming that another crime will be committed.

Although crime scene profiling is not limited to serious and violent crimes, to the public it is often associated with serial murder. In that context, crime scene profiling, at its best, is not about entering "the evil mind of the serial killer" but has more to do with discovering how victims are chosen, how they are treated, and what forensic evidence is left at the crime scene or on the victim that will assist in apprehending the offender. One of the most common misconceptions about crime scene profiling is that profilers make predictions or assumptions about an offender's personality (Rainbow & Gregory, 2011). Unfortunately, some do. However, conclusions and descriptions of an unknown offender's personality not only lack reliability and validity, but the statements also often do not help police identify potential suspects. It does not help to tell police that the perpetrator is likely to be masochistic, for example; telling them of possible behaviors *associated* with masochism is more helpful.

Another common misconception is that crime scene profiling is an established scientific enterprise. This probably springs from

information found in the entertainment media, especially popular programs such as the *CSI* series, *Criminal Minds*, and *Mind Hunter*, or movies like the classic *Silence of the Lambs*.

Crime scene profiling is most often undertaken when investigators have few clues that could help solve the case and they are making little headway in identifying potential suspects. To a very large extent, the profiling process is dictated by the quality of the data collected on previous offenders who have committed similar offenses. For example, if the profiler believes, on the basis of research, that most burglars are men, are under 30, and commit their burglaries within a 20-mile radius of where they live, these are helpful clues in searching for suspects. Based on previous data, the profiler also may suggest that the person is likely to be a young, unmarried, male blue-collar worker with highly aggressive tendencies who makes frequent appearances on the bar scene, or a female semiskilled worker who is a substance abuser. Perhaps the perpetrator is even more likely to be a middle-age loner with a steady income who seldom draws attention to himself. Note the importance of the word *likely* in each of these comments. Crime scene profiling—even in its most sophisticated form—rarely can point *directly* to the person who committed the crime. Instead, the process should help develop a reasonable set of hypotheses for identifying the persons who might have been responsible for a crime or series of crimes. This may be very helpful during the investigative process, but as Fallon and Snook (2019) emphasize, information provided by the profiler may misdirect police and perhaps even lead them to suspect innocent people. The eventual identification of the primary suspect should be accomplished through competent police work.

As noted earlier, crime scene profiling is not and should not be restricted to serial murder nor to serial sexual assaults. It has considerable *potential* value when applied successfully to crimes such as arson, terrorist acts, serial burglary, robbery, internet crimes, computer hacking, and white-collar crimes such as bank fraud or embezzlement.

In most instances, a series of crimes thought to be committed by the same person or persons is most likely to draw an attempt at profiling, especially if law enforcement investigators are baffled concerning potential suspects. If done correctly, the profile should at least eliminate very large segments of the population as suspects. If the profile proves helpful to investigators, it also can suggest that a series of crimes has been committed by the same person, even if investigators had not necessarily considered that. This is a process called linkage analysis. **Case linkage analysis (CLA)** is a method of

identifying crimes that are likely to have been committed by the same offender because of similarities across the crimes (Bennell, Bloomfield, Emero, & Musolino, 2013; Bennell & Canter, 2002; Woodhams, Bull, & Hollin, 2010). The research on CLA focuses on two fundamental assumptions of crime linkage: behavioral consistency and behavioral distinctiveness (Davies & Woodhams, 2019). According to Davies and Woodhams, an "offender's behaviour must be similar enough that it can be recognised across a series of offences and distinctive enough that it can be distinguished from other offenders' behaviour" (p. 169).

Like crime scene profiling in general, CLA has its supporters as well as its detractors (Risinger & Loop, 2002). However, CLA has begun to emerge as one of the more promising techniques for offender profiling. According to Fox and Farrington (2018), following an extensive review of the research literature on offender profiling, "results indicate that in general, CLA can be used successfully to link crimes in an offense series committed by a single offender" (p. 1263). Fox and Farrington maintain that if more well-executed research is conducted on CLA across countries and cultures the overall generalizability and accuracy of CLA are likely to improve. Fox and Farrington also note that in recent years, research on the reliability and validity of offender profiling in general has increased dramatically, and most of the research has been conducted by psychologists (Fox & Farrington, 2018), whether or not they consider themselves forensic psychologists.

Nevertheless, although professional profilers are expected to offer advice that is methodologically sound and based on empirical research and psychological principles, profiling is not even close to achieving the status of a scientific enterprise at this stage in its development (Fallon & Snook, 2019; Fox & Farrington, 2018; Kocsis, 2009; Rainbow & Gregory, 2011; Snook, Cullen, Bennell, Taylor, & Gendreau, 2008). Criminal profiling as portrayed by popular media is certainly entertaining for the public but "there are many questions that need to be answered for it to become a more credible and scientific field" (Fox & Farrington, 2018, p. 1248). The procedures, terminology, and methods used in crime scene profiling are anything but clear. As Fox and Farrington (2018) write, "[i]t is important to note that (1) there is not a single agreed upon definition for offender profiling used by all in the field, and (2) there are other related (and arguably synonymous) terms/concepts, including criminal profiling, criminal investigative analysis, and personality profiling, which are also used in the field based solely upon author preference and

background, not substantive differences in terminology or meaning" (p. 1247).

Unfortunately, many profilers often rely too heavily on "gut feelings," believing they have special knowledge and experience to put the pieces of the puzzle together and much too little on science. The tendency to rely heavily or exclusively on gut feelings, intuition, hunches, or subjective experiences in forming an opinion, puts offender profiling in serious jeopardy in the eyes of the judicial system. Consequently, courts in the United States, Canada, Australia, and the United Kingdom are requiring criminal profiling to meet a rigorous standard in order to be admitted as valid scientific evidence (see, generally, Bosco, Zappalà, & Santtila, 2010, for a review of this important issue). For example, profiling has very rarely been admissible in the British legal system as expert evidence because of its lack of established reliability and validity (Gregory, 2005). In the United States, the situation varies, often depending upon the credentials of the profilers or the degree to which they can persuade the court that their testimony is based on reliable and valid scientific principles (Bartol & Bartol, 2013; J. A. George, 2008; Risinger & Loop, 2002). Standards for admitting scientific evidence in courts are discussed in more detail in Chapter 4.

In addition, there seems to be a tendency for some police investigators to interpret ambiguous information sometimes contained within profiles to fit their own biases about the case or the suspect. They select those aspects of the profile that they perceive as fitting the suspect while ignoring the many conclusions and predictions that do not seem to fit.

> If a suspect does arise during the investigation, officers may wish to actively ignore the information that does not fit the suspect, or perhaps unwittingly exaggerate the merits of the information that might fit and not appreciate the extent to which the information could fit a wide range of individuals. (Alison, Smith, & Morgan, 2003, p. 193)

The strong preference to have one's views confirmed is known as **Confirmation bias**. "When it operates, it places us in a kind of closed cognitive system in which only evidence that confirms our existing views and beliefs gets inside; other information is sometimes noticed but is quickly rejected as false" (Baron & Byrne, 2000, p. 8). In short, confirmation bias is the tendency to notice and remember information that lends support to our views on something, such as a

suspect. It is a tendency that might be prevalent not only in the subjective interpretations of a profile but also in its creation. Despite these limitations, crime scene profiling or offender profiling "appears to be on a positive trajectory in terms of the use of more scientific and statistical methods, data analyses, and evaluations of our work" (Fox & Farrington, 2018, p. 1263). This statement was based on an analysis of 426 publications on offender profiling published from 1976 through 2016. Based on their analyses, Fox and Farrington (2018) identified three research endeavors in offender profiling that show considerable promise in moving the field into a more scientific focus: investigative psychology as advocated by Canter (2011); case linkage analysis as outlined by Bennell and his colleagues (Bennell & Canter, 2002; Bennell, Mugford, Ellington & Woodhams, 2014; K. Davies & Woodhams, 2019); and evidence-based offender profiling as studied by Fox and Farrington (2012, 2015). As long as research on crime scene profiling remains on the current trajectory, this form of profiling has a good chance of becoming a meaningful and valuable scientific endeavor. Nevertheless, the warnings issued by Fallon and Snook (2019) should be heeded, and many scholars are cautious about accepting its validity prematurely.

Geographical Profiling

Offending patterns often occur or cluster within certain geographical areas, such as a specific area of a city. There are two major ways these crime patterns may be analyzed: geographical profiling and geographical mapping. **Geographical profiling** refers to the analysis of geographical locations associated with the spatial movements of a *single* serial offender, whereas **Geographical mapping** is concerned with analyzing the spatial patterns of crimes committed by numerous offenders over a period. The first is more closely related to forensic psychology, but we emphasize that both procedures may be used in tandem or together. In a sense, geographical mapping focuses on identifying the "hot spots" of certain types of crime. The procedure has been used in Europe since the first half of the 19th century and began to be used in the United States during the early 1900s. It continues today in more sophisticated fashion and is often demonstrated in popular law enforcement shows like *NCIS* and its spin-offs. It is not unusual for urban police departments to train some officers as geographical mappers or to hire someone who specializes in that task, either full-time or as a part-time consultant. Geographical profiling—as opposed to mapping—focuses on the offender rather than only on spatial crime patterns. It is a method of identifying the area of probable residence or the likely area of the

next crime by an unknown offender, based on the location and spatial relationships among various crime sites (Guerette, 2002). Whereas a *crime scene profiler* hypothesizes about the demographic, motivational, and psychological features of the offender, the *geoprofiler* concentrates on developing hypotheses on the approximate location of the offender's residence, base of operations, and where the next crime may occur. It is usually used when a series of crimes are occurring—such as burglaries, car thefts, arsons, sexual assaults, bombings, bank robberies, child abductions, or murders—and the primary suspect is believed to be one person or a small group.

Although it may not seem that geographical profiling has much to do with psychology, the enterprise can be tied to psychological principles, such as the need to operate within one's comfort zone or the desire to commit crime as far away from one's home as possible. A good example of a psychological connection with geographical profiling is the "hunting patterns" theory proposed by Rossmo (1997). From a large database of criminal offenders, Rossmo suspected that offenders often have known movement patterns or comfort zones in which they operate. He developed a computer program called *Criminal Geographic Targeting* (CGT), which created a topographical map assigning different statistical probabilities to areas that fall within an offender's territory. From that information, the offender's residence or base of operations may be estimated. Rossmo's theory is most relevant to serial offenders, particularly violent offenders like those who rob or sexually assault. We will return to Rossmo's approach in Chapter 9.

Rossmo (1997) recommended that geographical profiling be combined with criminal or crime scene profiling for maximum effectiveness in developing probabilities for offender identification. In addition, he admonished that geographical profiling is essentially an investigative tool that does not necessarily solve crimes but should help in the surveillance or monitoring of specific locations.

Suspect-Based Profiling

Whereas crime scene and geographical profiling examine features of a current unsolved crime, **Suspect-based profiling** is derived from the systematic collection of behavioral, personality, cognitive, and demographic data on previous offenders. In most instances, the suspect-based profile summarizes the psychological features of persons who *may* commit a crime, such as drug trafficking, detonating a bomb, or hijacking a plane, based on features of past individuals who have committed similar crimes. The end product of suspect-based profiling should describe people from various offender

groups. “For example, someone driving at a certain speed, at a certain time of day, in a certain type of car, and of a certain general appearance may fit the profile of a drug courier and be stopped for a search” (Homant & Kennedy, 1998, p. 325). Under the law, though, police must have at least reasonable articulable suspicion to make such a stop—in the earlier example, driving considerably over the speed limit would be enough. However, “general appearance,” as used in the previous quote, is far more problematical. It may refer to patterns of suspicious behavior, age, or manner of dress, but it also unfortunately has referred to race or ethnicity.

Probably the best-known and most controversial type of suspect-based profiling is **Racial profiling**, which refers to

> police-initiated action that *relies on* the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity. (Ramirez, McDevitt, & Farrell, 2000, p. 53, emphasis added)

Profiling of this type is illegal—courts have determined that police action cannot be taken against a person just because that person is Black or Latinx, for example. As we noted in Chapter 2, stop-and-frisk policies have been ruled unconstitutional when it was documented that police relied on race or ethnicity in stopping and questioning citizens rather than on suspicious behavior. Stop-and-frisk programs across the United States have been scrutinized by civil liberties groups, citizens, public officials, and courts for their possible infringement on constitutional rights. Numerous people today—particularly people of color—relate their experiences of being stopped by police in this manner, sometimes repeatedly.

In the 21st century, immigration has emerged as a hot-button political issue, particularly but not exclusively in states bordering Mexico. The combination of high unemployment rates and concerns about drug trafficking led to a desire among some for a “crackdown” on people entering the United States illegally or remaining here after temporary visas have expired. Note that two separate problems are identified here: (1) cross-border transportation of illegal drugs and (2) immigration status that is not documented. It is obvious that, though drug trafficking is a problem, people who seek to enter the United States are not typically drug dealers—they are doing so in search of a better way of life. Many also are refugees seeking asylum from repressive regimes or safety after suffering from environmental

disasters. By 2020, the government's inhumane approach to immigration, particularly in light of family separation policies and efforts to speed up deportations, led some communities to establish sanctuary cities, discouraging ethnic profiling and offering safe havens to immigrants awaiting review of their status. Recall that in 2020, the U.S. Supreme Court declined to hear a case that challenged California's law prohibiting law enforcement officials from helping federal agents take custody of immigrants, thus leaving the law in effect (United States v. California, 2020).

Ethnic and racial profiling has been used beyond the detection of drug couriers or undocumented immigrants, and profiling also has been extended to religious groups, most particularly Muslims. Since the terrorist attacks of September 11, 2001, and subsequent crimes (e.g., Boston Marathon bombing in 2013) ethnic, racial, or religious groups who fit the "profile" of terrorists have been subjected to more scrutiny by law enforcement officers and more extensive security screenings in airports or at immigration checkpoints. Critics of these security measures believe that, even if all passengers are subjected to searches of their baggage and possessions, persons of Middle Eastern descent are more likely to be taken aside for more invasive body scans or pat-downs. Moreover, some convicted individuals—including the so-called Shoe Bomber, Richard Reeve, and Colleen R. LaRose, otherwise known as "Jihad Jane"—did not conform to the profile. Both were convicted of terrorist activities and sentenced to federal prisons. Suspect-based profiling is not a major activity of forensic psychologists who consult with law enforcement. We include it here only to distinguish it from other forms. However, some psychologists have offered services intended to help in screening airline passengers. Ekman (2009) conducted extensive research on identifying suspicious behavior that was then used to develop passenger screening programs in some airports. He himself cautioned, however, that 9 out of 10 persons who display suspicious behavior have perfectly innocent reasons for this behavior. And as noted by Bradshaw (2008), "[m]any travelers may be subjected to undue attention simply because they have a fear of flying, feel intimidated by being scrutinized by uniformed screeners or are carrying items that could cause them shame, such as legal but erotic literature" (p. 10).

Psychological Profiling

In the psychology of investigations, **Psychological profiling** refers primarily to gathering information—usually on a *known* individual or individuals who pose a threat or who are believed to be dangerous. In some cases, the identity of the individual is unknown, but the person

has made a clear threat to do harm to some specified target, such as by sending an anonymous letter. The target may be a person, a group, an organization, or an institution. Psychological profiling in this context is also used to assess the risk that someone will be violent in the future, even though they may not have made an explicit threat. There are two primary and overlapping procedures used in psychological profiling: **Threat assessment** and **Risk assessment**. Threat assessment is used to determine if an actual, expressed threat is likely to be carried out; risk assessment is used to determine if a person is dangerous to self or to others. Both of these assessments are accomplished through various evaluation measures, background checks, observations, and interviews. It is important to stress that forensic psychologists conduct risk and threat assessments for purposes other than investigation, and there is a rich store of research in both areas. We discuss them in more detail in the chapters ahead.

We must emphasize that some threats made by known individuals are classified as crimes and do not typically require psychological profiling. In those cases, police have probable cause to arrest and turn the threat maker over to prosecutors. For example, it is a federal crime to threaten the president, members of Congress, and other federal officials. More specifically, it is a federal crime to threaten to murder a U.S. official with intent to impede, intimidate, or interfere with the performance of public duties . . . or with intent to retaliate for performing official duties.

Prior to and during presidential impeachment hearings of 2019, some people across the country made threats to members of the U.S. House of Representatives, sometimes online, charges were sometimes brought, and some people were convicted. As late as 2020, charges were brought against a Connecticut man who on the eve of the first public impeachment hearing threatened to kill Representative Adam Schiff, who led the hearings.

In state statutes, a threat may be a crime if someone willfully threatens to kill or injure someone with sufficient specificity that the person threatened is placed in reasonably sustained fear of their safety—or the safety of their family. Such state statutes have been scrutinized with some fearing that they impinge upon First Amendment rights. In 2020, the U.S. Supreme Court refused to hear a case that would have addressed that issue (Kansas v. Boettger, 2020).

However, many threats are issued in contexts that are less specific and do not lead to criminal charges. “I swear I’ll kill her if she breaks up with me.” “If they don’t leave me alone, I’ll blow up this whole

school," and many more. These are the types of threats that are most likely to come to the attention of forensic psychologists performing threat assessments. They are discussed later in the book.
In addition to risk and threat assessment, psychological profiling also occurs outside the psychology of investigations. Researchers, for example, often prepare profiles of a specific group of offenders—for example, the spouse abuser, the batterer, the child sex offender, the firesetter, or the stalker. Some psychologists, particularly those who are more clinically based, are highly engaged in preparing these types of profiles, with varying degrees of success. In addition, some forensic psychologists testify about profiles in court. Profiling of this type may be useful to investigators deciding whether a particular suspect "fits the profile" of a certain type of stalker or a certain type of sex offender. However, they also may mislead investigators and must be approached cautiously. We discuss profiles of this type in chapters where specific crimes are covered, such as stalking, sex offending, and domestic assault.
Finally, a more clinical enterprise must be mentioned. Mental health practitioners, such as psychologists or psychiatrists, sometimes prepare an extensive report on the psychological characteristics of one known individual. This is a speculative process, based on available documents as well as interviews, including at times interviews with the subject, although such personal interviews are rare. Psychological profiling of this type has a long history of use by military and intelligence organizations (Ault & Reese, 1980; Omestad, 1994). Profiles have been prepared of individuals as varied as Adolf Hitler, Osama Bin Laden, international leaders, and U.S. presidents and other political figures. Although these profiles may make for interesting reading, they have very little scientific validity and are not the type of profiles we give attention to in this text.

The Psychological Autopsy

The final category of profiling discussed herein is the **Psychological autopsy**, which refers to a procedure that is done following a death in order to determine the person's mental state prior to the death. Survivors may want to know whether a loved one's death was an accidental drug overdose or a suicide. Survivors may request the investigation for insurance purposes or to establish whether an institution (e.g., the military or a workplace) might have contributed to the suicide. In other cases, what appears to be a suicide might actually be a homicide. Interestingly, research indicates that psychological autopsies can be of therapeutic value to survivors (Ebert, 1987; Henry & Greenfield, 2009).

The psychological autopsy was originally devised to assist certifying officials in clarifying deaths that were initially ambiguous, uncertain, or equivocal as to the *manner* of death (Shneidman, 1994). The method was first used in 1958, when the Los Angeles medical examiner/coroner Theodore J. Murphy consulted Edwin S. Shneidman, director of the LA Suicide Prevention Center, for assistance in determining the cause of an unusually high number of equivocal, or unexplained, deaths. Shneidman is generally credited with first using the term *psychological autopsy*.

The postmortem psychological analysis is also called the **Reconstructive psychological evaluation (RPE)**, or **Equivocal death analysis (EDA)** (Poythress, Otto, Darnes, & Starr, 1993), but *psychological autopsy* is commonly used. The EDA, or the equivocal death psychological autopsy (EDPA), is usually reserved for those investigations conducted by law enforcement officials, especially the FBI, who primarily examine the crime scene material and other information directly available to the police (Canter, 1999; Poythress et al., 1993). An *equivocal death* is one where the manner of death is unknown or undetermined, and it is believed that about 5% to 20% of all deaths are equivocal (Shneidman, 1981; T. J. Young, 1992). The term *manner* has special significance in any death investigation. Basically, “the manner of death refers to specific circumstances by which a death results” (La Fon, 2008, p. 420). There are five generally accepted manners of death: natural, accident, suicide, homicide, and undetermined (La Fon, 2008).

Today, the psychological autopsy is primarily undertaken in an effort to make a reasonable determination of what may have been in the mind of the deceased person leading up to and at the time of death —particularly if the death appears to be a suicide. La Fon (2008) identifies two basic types of psychological autopsy: suicide psychological autopsy (SPA) and EDPA. The goal of the SPA is to identify and understand the psychosocial factors that contributed to the suicide. In this case, suicide has been established (e.g., witnesses may have seen the person shooting themself), but the person conducting the autopsy must try to discern the reasons why they did this. The goal of the EDPA, on the other hand, is to clarify the manner (or mode) of death and to determine the reasons for the death. It may not be a suicide. Although the cause of death is generally clear, the manner is often unclear (T. J. Young, 1992). For example, T. J. Young gives the example of a parachutist who falls to the ground from an altitude of 5,000 feet and dies as the result of multiple injuries. In this case, an investigator cannot immediately ascertain whether the parachute malfunctioned (accident) or whether

the parachutist intentionally jumped with a bad parachute (suicide). Alternatively, the parachute may have been tampered with by someone else (homicide), or the parachutist may have suffered a heart attack during the jump (natural).

In most instances, the psychological autopsy is done for insurance purposes. Although some insurance policies do compensate the family if the death is determined to be suicide, many policies do not. Consequently, if the manner of death is equivocal, it is in the best financial interest of the insurance company to hire a forensic psychologist to do a complete psychological autopsy to determine whether the death was more likely the result of suicide or some other cause. A vast majority of the psychological assessments to uncover a person's thoughts and feelings prior to their death have been done in the United States, usually in civil or criminal litigation (Canter, 1999). In recent years, many product-liability lawsuits have revolved around whether certain drugs can be blamed for suicides of both adults and juveniles. According to the U.S. Food and Drug Administration (FDA), at least 130 prescription drugs can produce suicidal thoughts or actions (Lavigne, McCarthy, Chapman, Petrilla, & Knox, 2012), but this does not mean that a court will agree that a particular drug was directly responsible for a person's suicide. Nevertheless, some plaintiffs have been successful in winning suits or have arrived at settlements based on the results of psychological autopsies.

According to La Fon (2008), the U.S. military is one of the major consumers of psychological autopsies: "Each branch of the Armed Forces, including the Navy, Army, and Air Force, [has] the task of conducting an EDPA for every equivocal death that occurs either on base property or to military personnel" (p. 422). Both civilian and military forensic psychologists conduct these autopsies, and they are conducted both in cases of equivocal death and suspected suicide. In most cases, the beneficiaries of the deceased military personnel receive remuneration regardless of the cause of death. Interestingly, there is evidence that the suicide rate among military personnel during and after deployment in Iraq and Afghanistan was higher than during any other war or occupation. Increasing numbers of suicides by military personnel both during and after deployment prompted mental health advocates and some military leaders and politicians to call for more support and treatment programs for military personnel and veterans. More recent data indicate that nearly 24 per 100,000 soldiers commit suicide, "exceeding the suicide rate in the general U.S. population for the first time in decades" (Zuromski et al., 2019, p. 672).

Two recent studies by Nock et al. (2017) and Zuromski et al. (2019) used large-scale psychological autopsies to discover whether growing military suicides could have been prevented. The researchers relied on the next of kin and Army supervisors for the information gathering concerning the circumstances surrounding the suicide and whether the decedent sought mental health services. Nock et al. found that "Most soldiers who die by suicide have identifiable mental disorders shortly before their death and tell others about their suicidal thinking, suggesting that there are opportunities for prevention and intervention" (p. 2663). The Zuromski et al. study sought to better understand why treatment availability and utilization was not working in reducing the inordinate number of suicides. Zuromski et al. discovered that there were substantial attitudinal barriers and stigma attached to seeking mental health services for many soldiers contemplating and eventually completing suicide. The researchers concluded that addressing the stigma attached to seeking mental health services in the military may be critical in the prevention of soldier suicides.

In legal contexts, the psychological autopsy is frequently conducted to reconstruct the possible reasons for a suicide and ultimately to establish legal culpability on the part of other persons or organizations. For example, a psychological autopsy may be sought where it was necessary to ascertain whether certain events on the job affected the person—such as various kinds of harassment by fellow workers or supervisors—or whether certain job-related accidents prompted the eventual suicide. Failure of the company or organization to have adequate policies and procedures in place for handling problems of this sort may be sufficient reason to find the company liable.

Although some progress has been made in determining the reliability and validity of the psychological autopsy, much work still needs to be done, and even psychologists who conduct such autopsies are concerned about this issue (Snider, Hane, & Berman, 2006). Some research reveals that the psychological autopsy has considerable promise for determining suicide intentions of the deceased (Portzky, Audenaert, & van Heeringen, 2009). Of course, the quality of the psychological autopsy will depend significantly on the training, knowledge, experience, and clinical acumen of the investigator (J. L. Knoll, 2008). There is, though, no agreed-upon protocol for performing one. Poythress et al. (1993) further warned that those who conduct reconstructive psychological evaluations should not assert categorical conclusions about the precise mental state or actions suspected of people at the time of their demise. They noted

that, at best, conclusions and inferences drawn in these reconstructions are informed speculations or theoretical formulations and should be labeled as such.

EYEWITNESS EVIDENCE

Police officers routinely interview witnesses to a criminal incident, including victims themselves. Typically, this task requires attempts at identifying the offender, especially facial and other physical features. It also involves asking witnesses or victims to recount events that transpired before, during, and after the incident. These tasks require the accurate recall and recognition of something or someone that was observed, often for the first time and often under stress.

The identification of suspects by victims and witnesses begins as soon after the offense as possible. Investigators usually obtain verbal descriptions of the perpetrators or show photographs to obtain a preliminary identification. In some instances, the police will have witnesses and victims look over photos of individuals with previous criminal records, either to identify the specific offender or to obtain an approximation of the offender's appearance. Police agencies routinely ask witnesses to examine a group of photographs (photo boards, photo spreads, photo arrays, mug shots) that are fairly well matched to the physical characteristics described by the witnesses, including the person the police suspect to be the guilty party if they have a suspect in mind or in custody. These procedures vary by jurisdiction, however, and not all are allowed by all agencies. Furthermore, once a suspect is in custody, live lineups may be used. We discuss lineups and other identification procedures later in the chapter.

Eyewitness perception and memory are among the most heavily studied processes in experimental psychology and are extremely relevant to the practice of forensic psychology. For over 100 years, psychological research has continually underscored the fact that memory and recall of past events are at least partially unreliable and highly susceptible to numerous influences. In reference to eyewitness testimony in forensic settings, Frenda, Nichols, and Loftus (2011) write, "In the wake of more than 30 years of research, an ever-growing literature continues to demonstrate the distorting effects of misleading postevent information on memory for words, faces, and details of witnessed events" (pp. 20–21). Today's researchers continue to study this phenomenon, find new paradigms for studying the limitations on memory, and suggest methods for improving it (e.g., Douglass & Smalarz, 2019; Luke, Crozier, & Strange, 2017; Sauer, Palmer, & Brewer, 2019; Sharps, 2017; Strange & Takarangi, 2012). (See **Perspective 3.1** in which Dr. Douglass discusses the

importance of research to help bring about changes in the legal system.)

Though we focus in this chapter on eyewitness identification as it is gathered by investigators, it is important to emphasize also that eyewitness testimony is one of the most influential pieces of evidence admitted into the courtroom, especially if the witness claims to have actually seen an offender committing a crime. Jurors appear to have a strong tendency to accept eyewitness testimony at face value, even if the testimony is contradicted by other types of forensic evidence (e.g., fingerprints, blood type, DNA). “Few categories of evidence are as compelling to members of a jury as eyewitness evidence, a fact long acknowledged by judges” (Semmler, Brewer, & Douglass, 2012, p. 185). Lindholm, Jönsson, and Liuzza (2018) posit, “Eyewitness testimony tends to be one of the most compelling but also most unreliable types of evidence in criminal case trials, and the question of how to tell whether a particular memory is reliable has challenged psychologists for decades” (p. 534).

In two surveys conducted by Simons and Chabris (2011), nearly 40% of those surveyed believed that the testimony of a single confident eyewitness should be enough to convict a criminal defendant. Simons and Chabris conclude, “This discrepancy between science and popular beliefs confirms the danger of relying on intuition or common sense when evaluating claims about psychology and the mind” (p. 6). Other studies find that U.S. law students and undergraduate students have very limited knowledge about factors that affect the reliability of eyewitness memory (Wise & Safer, 2010). These findings strongly suggest that the same misconceptions also exist in jurors and perhaps many court officials. In a study by Elizabeth Loftus (2013), she found that potential jurors held many beliefs that are contradicted by psychological science. Interestingly, it appears that U.S. defense attorneys are more knowledgeable about eyewitness memory than prosecuting attorneys or judicial personnel, and their knowledge corresponds well with that held by memory experts (S. Magnussen & Melinder, 2012; Wise, Pawlenko, Meyer, & Safer, 2007; Wise, Pawlenko, Safer, & Meyer, 2009).

From My Perspective 3.1

Applying Psychological Science to Solve Problems of the Legal System

Amy Bradfield Douglass, PhD



Amy Douglass

As a high school student, I had plans to become a clinical psychologist. I enjoyed learning about people and saw myself as someone who could help others work through their problems. I thought I would enjoy clinical practice based on my childhood experience creating a fictitious therapist whose most frequent client primarily complained about living with two brothers, a not-so-thinly disguised window into my own childhood drama. I typed up fictitious therapy sessions in which the young client complained about having to sit between the brothers on long car rides. Conveniently for me, the fictitious therapist focused more on empathizing with her young client than on encouraging her to see things from the brothers' perspective.

Luckily for my potential future clients, these carefully laid career plans changed during my junior year at Williams College when I took a course from Dr. Saul Kassin titled Psychology and Law. Before taking that course, I had no idea that an interface between psychology and law existed. I was fascinated to learn about the ways in which psychological science explains counterintuitive phenomena like false confessions and highly confident (but wrong) eyewitnesses. Even more appealing to me was the fact that psychological knowledge could solve problems in the legal field. I loved the fact that psychological science could generate specific, practical solutions for use in a wide array of contexts, from courtrooms to interrogation

settings to identification procedures. I saw these solutions as a mechanism to redress systemic injustice manifested in many domains, not least of which is high incarceration rates for individuals living in poverty, people of color, and those defendants with intellectual disabilities.

After graduating from Williams, I enrolled in a PhD program at Iowa State University where my primary advisor was Dr. Gary Wells, whose seminal work on eyewitness identifications continues to shape the field. My first project in graduate school was testing whether comments from a lineup administrator distort eyewitnesses' retrospective confidence, that is, their reports of how confident they were at the time they initially described the suspect, before even seeing a lineup. This focus on retrospective certainty was important because an eyewitness's confidence at the time of the initial identification is an appropriate cue to accuracy. What we found was that a simple comment from a lineup administrator ("Good, you identified the suspect.") inflated witnesses' recollections of how confident they *remembered being* at the time of their identification, thereby obscuring a potentially useful cue to identification accuracy. This effect is particularly problematic when witnesses have identified the wrong person: in that context, inflated confidence could lead to a wrongful conviction. The relevance of this problem is highlighted in DNA exonerations where innocent people were convicted on the strength of confident (but wrong) eyewitness identifications.

Since this finding was originally published in 1998, it has been replicated in labs around the world and with real witnesses. Moreover, recommendations for collecting immediate confidence reports, without input or feedback from investigators, are now common in procedural guidelines for collecting eyewitness evidence. Therefore, this corpus of research serves as an excellent example of laboratory-based research directly connecting to consequential, practical solutions for the legal system.

I continue to be motivated by research designed to generate specific solutions for problems in the legal system. For example, current research supported by the National Science Foundation is being conducted with Drs. Neil Brewer and Carmen Lucas at Flinders University (Adelaide, Australia). This research finds that the speed at which a co-witness makes an identification influences the likelihood that the second co-witness will choose someone from photo spreads in which the suspect does not appear. This finding suggests witnesses should be protected from learning how quickly a co-witness made an identification decision.

Today, I work with undergraduate students at Bates College on additional research related to psychology and law. I also teach Psychology and Law, modeled after that formative course I took as an undergraduate. Although some of my students pursue careers in psychology and law, many do not. Therefore, my goals for the course are broader than simply preparing students for a career in the field. Essentially, I want students to remember their psychology and law course when they serve as jurors, talk to family and friends about the legal system, and weigh choices in voting for political candidates. My hope is that understanding what psychology teaches us about the legal system—and the solutions that psychology generates—can prepare students for a variety of future roles in the legal system.

Dr. Douglass graduated from Williams College with a BA in psychology and from Iowa State University with a PhD in social psychology. She is Professor of Psychology at Bates College, where she teaches courses in statistics, psychology and law, and psychology of religion. She and her husband, Luke, a forensic psychologist, live in Maine with their twin daughters.

One of the most troubling aspects of eyewitness identification is that approximately 1 out every 4 witnesses shown a lineup selected the wrong person (Wells, Kovera, Douglass, Brewer, Meissner, & Wixted, 2020). Additional research suggests that "perhaps as many as 50% of identification decisions may be inaccurate" (Brewer, Weber, & Guerin, 2020, p. 77). These findings have been confirmed through both lab experiments and field studies. Field studies are examination of lineups conducted by police in actual cases. In laboratory-based experimental studies, individuals are exposed to a simulated crime, and then volunteer witnesses are asked details about the crime. Numerous research findings have documented that eyewitnesses either mistakenly describe details about a perpetrator or even add information that is simply not accurate (Sharps, 2017; Sharps, Janigian, Hess, & Hayward, 2009). As Dr. Sharps noted (see again **Perspective 2.1** in Chapter 2), the witnesses are not lying. Rather, they are integrating their own cognitive constructs into the events they describe.

"Starting in the 1990s, DNA was used to test claims of innocence in selected postconviction cases and a cascade of exonerations of innocent people began to unfold" (Wells et al., 2020, p. 4). To date, there have been 367 DNA exonerations, with 21 of the 367 serving on death row at the time of their exoneration (Innocence Project, 2020). Sixty-nine percent of the cases involved eyewitness

misidentifications. (See Innocence Project, **Focus 3.3**, later in the chapter.)

The evidence is clear: Humans continually alter and reconstruct their memories of past experiences in the light of present experiences, rather than store past events permanently and unchangingly in memory. That is, people rebuild past experiences to better fit their understanding of events. Memory, especially of complex or unusual events, involves the integration of perceptual information with preexisting experiences, as well as with other subjective relevant information that may be introduced at a later time. In this sense, memory is very much a reconstructive, integrative process, developing with the flow of new experiences and thoughts. This perspective is called the **Reconstructive theory of memory**, first proposed by Bartlett (1932) and expanded by many other research psychologists. The theory states that memory recall is subject to distortion by other intervening cognitive functions, such as individual perceptions, social influences, beliefs, and new knowledge, all of which have the potential to promote errors and distortions in recall. People are basically unaware of their memory processes. They are, of course, aware of the content of memory, but there is every reason to believe they are not aware of the many transformations that occur during acquisition, retention, and retrieval. Although witnesses may remember certain aspects of an event or person, they are not conscious of the complex neurological encoding, decoding organizing, storing, interpreting, and associating that preceded their current memory of that event or person(s). In addition, there are usually ample opportunities for witnesses to encounter additional information after the event and then integrate and reconstruct it unknowingly into their original memories. Therefore, even the most well-intentioned witness may err and unconsciously distort their identification and details about the event. To some extent, this explains the very different accounts of the same event that are provided by witnesses who are “absolutely positive” about what they saw. Furthermore, witnesses can become highly susceptible to the misinformation they may receive from leading and suggestive questioning during the investigative process (Berkowitz & Loftus, 2018; Loftus, 2017; Wells et al., 2020). The vast array of potential distorting influences on eyewitness memory leads us to the next section on estimator variables and system variables.

Estimator and System Variables

Over the past 40 years, Wells (1978, 1993; Wells et al., 2020) and his colleagues have been leading researchers in examining the accuracy of eyewitness evidence. Much of this research has been

guided by Wells's important distinction between two major classifications of the influences on eyewitness memory: estimator variables and system variables. **Estimator variables** pertain to potential sources of eyewitness error that are beyond the control of the criminal justice system. They occur during or soon after a crime, and usually before investigators begin gathering evidence. Examples include stress levels experienced by the witness during the crime, the distance between the witness and the crime scene, the viewing conditions (weather conditions, day or night), cross-race identifications, and the length of time during which the witness observed the offender (see **Table 3.2** for examples of estimator and system variables). We emphasize that the table presents just a few examples; at least 20 estimator variables are reported in the research literature (Wilford & Wells, 2013). (See also **Focus 3.1** highlighting cases where estimator variables may be suggested.)
System variables were originally defined as variables in eyewitness identifications that influence the accuracy of eyewitness identifications over which justice system has (or can exert) control (Wells et al., 2020; Wilford & Wells, 2013). More recently, the definition has been broadened "to include factors under the control of the justice system that *relate* to (as opposed to *influence*) the accuracy of eyewitness identifications" (Wells et al., 2020, p. 6). Wells and his colleagues use the example of feedback from an investigator administering a lineup. Though the feedback may not directly influence accuracy, it can have an effect on the confidence the witness has about the identification.
System variable errors obviously come into play some time after the witness has experienced the criminal event. Examples include suggestive interviewing techniques, misinformation provided by investigators, or the bias composition of the lineup. These errors are essentially preventable, provided criminal justice personnel follow appropriate pretrial identification procedures and methods. The careful and competent collection of pretrial information from witnesses will minimize system variable errors.
Most eyewitness-identification research in forensic psychology has focused on system variables, primarily because they can be controlled and handled more effectively in improving eyewitness accuracy (Wixted & Wells, 2017). More importantly, by conducting research and educating the justice system about the pitfalls of eyewitness memory and testimony, forensic psychologists and other professionals can reduce the possibility of innocent people being convicted and imprisoned. "The reliability and integrity of eyewitness identification evidence is highly dependent on the procedures used by

law enforcement for collecting and preserving the eyewitness evidence" (Wells et al., 2020, p. 3).

Table 3.2

We begin by elaborating on some examples of estimator variables, and then move on to examples of system variables as applicable to pretrial identification procedures.

Identifying the Face

Courts—particularly criminal courts—rely heavily on eyewitness recognition as critical evidence either for or against the defendant. An accumulation of scientific studies, however, demonstrates that the accurate recognition of a relatively unfamiliar face is an extremely complex and error-ridden task (Bartol & Bartol, 2004, 2013). Research also reveals that the accuracy of facial recognition depends greatly on the type of face being recalled. For reasons largely unknown, some faces are easier to identify than others. Highly unique faces, for example, are better recognized than plain or average faces (Chiroro & Valentine, 1995; M. E. Cohen & Carr, 1975; MacLin & Malpass, 2001). Faces that are high and low in attractiveness also are easier to recognize than faces judged to be of medium attractiveness (Shepherd & Ellis, 1973). Because attractiveness is subjective, this may not be a helpful finding. Not surprisingly, the longer or more frequently a person views a face, the better its recognition at a later time (MacLin, MacLin, & Malpass, 2001).

In some cases, computerized or artist drawings of the face from descriptions supplied by the eyewitnesses or victims are done to help identification—these are called **Facial composites**. However, studies have shown that constructing and viewing facial composites may hinder identification accuracy and one's memory for the suspect's face (Topp-Manriquez, McQuiston, & Malpass, 2016). In other words, after spending time with the artist, carefully trying to describe a perpetrator's face, the witness may find it more difficult to identify the live face, such as in a lineup or photo array.

Focus 3.1

Eyewitness Identification: Courts Weigh In

As noted in the chapter, eyewitness testimony can be very fallible. Though eyewitnesses may be credible and think they are accurate, they may be wrong. A long line of psychological research makes this clear. Criminal defendants often ask courts to take this into consideration, by allowing expert testimony on eyewitness research or by asking judges to instruct jurors that eyewitness testimony may not be perfect. Defendants are not often successful in having judges

grant these requests, and appeals courts are rarely sympathetic, as the following two cases illustrate.

Barion Perry was accused of theft of car stereo amplifiers. A couple called police after noting suspicious activity from their third-floor apartment window. Police arrived on the scene, handcuffed Perry, and began to question him while he stood near a police car. One officer went to the callers' apartment, and—from the apartment window—a woman identified Perry as the perpetrator. (She was later unable to identify him in a photo array, but the initial identification was allowed as evidence.) Perry's lawyers argued that this was an unnecessarily suggestive procedure, a "show-up" with only one suspect. Perry was convicted and received a 3-to-10 year sentence. His case ultimately reached the U.S. Supreme Court (Perry v. New Hampshire, 2012). The American Psychological Association (APA) filed a lengthy brief in his support, highlighting the long line of psychological research on eyewitness misidentification. In an 8–1 decision, the Court ruled against Perry, with the majority focusing on the fact that police did not deliberately set up a show-up identification; therefore, it was not unnecessarily suggestive. It just happened that Perry was standing outside the police car when the witness looked out the window. Justice Sonya Sotamayor dissented, highlighting the many documented problems with eyewitness identification and noting that there were many sources of suggestiveness, not simply police-orchestrated procedures. The fact that Perry was the only person standing near the police car, and in handcuffs, was impermissively suggestive, she noted.

The facts in Payne v. Commonwealth of Virginia (2016) were quite different. Deante Payne was convicted of two counts of robbery and the use of a firearm during a felony. His conviction was based solely on the testimony of the victim, who was accosted in an apartment laundry room by two men after arranging to buy a laptop computer. One man held a gun; the other held a knife to the victim's side. Payne was charged by prosecutors as having the gun, but he denied being involved in the crime and suggested that a third person might be involved. (Police interviewed the third person, and one detective mentioned in an e-mail that this individual looked like Payne, but the e-mail was not allowed into evidence.)

Because Payne was indigent, his defense counsel requested funds to pay for an expert to testify on the unreliability of eyewitness testimony. That request was denied by the trial judge. Before the case went to the jury, Payne's lawyer asked that the judge instruct jurors that they could consider such factors as the effect of lighting or the stress on the victim and how that might influence his identification

of the perpetrator. The judge refused to do that, saying such information would only confuse the jury. Payne was convicted and received a sentence of 9 years. On appeal, the APA also submitted briefs on Payne's behalf. Higher courts in Virginia said the trial court had not erred in refusing to instruct the jury, and the U.S Supreme Court refused to hear the case.

QUESTIONS FOR DISCUSSION

1. Is it reasonable for trial judges to refuse to instruct a jury on a matter because it might be too confusing? Is it reasonable for a judge to deny funds to have an expert testify on eyewitness identification research?
2. We do not highlight these two cases to suggest that the witnesses were inaccurate in their identification or to suggest that the defendants did not commit the crimes they were accused of committing. Why then are these cases highlighted?
3. In each of these cases, the defendant was a Black man. Is that relevant? Would your answer change if you were told that the witnesses were white?
4. Based on the brief case descriptions provided, what estimator variables might be relevant to these two scenarios?

Unconscious Transference

On occasion, witnesses identify persons they have seen at some other time and place as the perpetrators of a more recent crime. This phenomenon, called **Unconscious transference**, occurs when a person seen in one situation is confused with or recalled as a person seen in another situation. It is called "unconscious" because people do not realize they are doing it. A witness may have had limited exposure to a face (e.g., in a food market) and, on seeing the face at a later time, may conclude that it is the offender's. Loftus (1979) believes that unconscious transference is another feature of the fallible and malleable nature of human memory, where earlier input becomes "tangled" with later input. As we noted earlier, research has continually shown that human memory is not like a videotape or smartphone that stores things exactly as seen. Rather, memory is continually changing or being revised in line with our cognitive beliefs and versions of the world. Most psychologists would agree that "memory is a risky route to figuring out the past" (Turtle & Want, 2008, p. 1245).

The phenomenon of unconscious transference illustrates that it is highly possible that a fast-food worker who is witness to a robbery of the restaurant might incorrectly identify as the perpetrator an occasional customer who may have some of the features of the

actual culprit. However, for unconscious transference to occur, the previous encounters with the innocent face must have been relatively brief. Frequent encounters with customers by the witness are unlikely to trigger unconscious transference involving those particular customers.

Own-Race Bias (ORB) or Cross-Race Effect (CRE)

There is now considerable evidence that people are much better at discriminating between faces of their own race or ethnic group than faces of other races or ethnic groups (Bartol & Bartol, 2015). Researchers call this phenomenon **Own-race bias (ORB)**, own-race effect, or increasingly more often, **cross-race effect (CRE)**. Scientific research across a wide band of cultures and countries has documented this effect, and it exists across diverse ethnic groups (Hugenberg, Young, Bernstein, & Sacco, 2010; Meissner & Brigham, 2001; Sporer, 2001). Unfortunately, it accounts for many identification errors, or false alarms. *False alarms* refer to any situation where a witness identifies the wrong person as the offender. Although the frequency of false alarms seems to be increasing in our society, racial attitudes or prejudices do not seem to account for this phenomenon in a majority of cases (Meissner & Brigham, 2001). Nonetheless, it is disturbing that such a high number of DNA exonerations based on mistaken identification involved that of Black suspects who had been identified by white witnesses (Innocence Project, 2014).

Although there are several possible explanations for ORB or CRE, the most popular is called the **Differential experience hypothesis**. The hypothesis states that individuals will have greater familiarity or experience with members of their own race and will thus be better able to discern differences among its members. Furthermore, it is the frequency of meaningful and positive contacts with other races that develops the skill to differentiate among racial or ethnic faces (MacLin & Malpass, 2001; Yarmey, 1979). For example, having close friends of other races or ethnicities is more likely to promote better facial recognition than having frequent but casual exposure. Furthermore, additional support for the differential experience hypothesis is provided by studies that show that training in face familiarization significantly reduces a cross-race bias or effect (Hancock & Rhodes, 2008; Sangrigoli, Pallier, Argenti, Ventureyra, & de Schonen, 2005; Tanaka & Pierce, 2009). The typical witness to a crime has not had such training, however.

Disguises

It is common practice that offenders disguise their appearance when committing a crime that involves confronting the victim(s), such as a robbery. The offender may wear a mask, sunglasses, a hood, a knit hat, a wig, or some combination of these various disguises. Research indicates that even a relatively simple disguise can effectively reduce eyewitness identification accuracy (Pezdek, 2012).

Weapon Focus

Not all details of a crime are equally remembered by witnesses, because certain novel, complex, ambiguous, or emotionally arousing features draw more attention than others. Blood, masks, weapons, and aggressive, violent actions are more likely to be noticed than clothing, hairstyle and color, height, speech characteristics, or facial features. A gun pointed at the witness (or victim) is highly likely to draw more intense scrutiny than most other features of a crime. This phenomenon is known as **weapon focus** or the **weapon effect**. Specifically, weapon focus refers to the concentration of a victim's or witness's attention at a threatening object while paying less attention to other details and events of a crime. Weapon focus is relevant because the victim or witness may be less likely to recognize the face of the perpetrator or remember other important details about the criminal event. People who are highly fearful or anxious at seeing the weapon are more likely to experience weapon focus than less stressed individuals.

Effects of Alcohol and Drugs

Very few studies have examined the effects of alcohol or drugs on eyewitnesses, even though alcohol has been shown across a wide range of studies to impair memory performance significantly (J. Evans, Schreiber Compo, & Russano, 2009; E. Palmer, Flowe, Takarangi, & Humphries, 2013). Nevertheless, the research is somewhat equivocal. For example, a study by Schreiber Compo et al. (2012) suggests that intoxicated witnesses may be as accurate as sober ones.

In real-life crimes and accidents witnesses are often under the influence of alcohol, some substance, or both. For example, in a survey completed by law enforcement officers, it was found that it was not unusual for them to interview witnesses who were under the influence, even under the influence of multiple substances (J. Evans et al., 2009). Vredeveldt, Charman, den Blanken, and Hooydonk (2018) write, "Law enforcement officers in the United States estimate that approximately 18% of witnesses are under the influence of

marijuana, whereas 24% are under the influence of multiple substances" (p. 420). In the J. Evans et al. (2009), study, a majority of the officers were convinced that intoxicated witnesses often provide the most detailed and accurate information immediately after the incident, while still intoxicated.

Witnesses who were intoxicated at the time of the incident are less likely to be asked to testify in court compared to "sober" witnesses. This is because jurors, attorneys, and judges tend to believe that intoxicated witnesses are less credible than sober witnesses (J. Evans & Schreiber Compo, 2010). Thus, it would seem important for researchers to continue examining this issue, both as it applies to alcohol and to other drugs.

Being under the influence of alcohol or marijuana also affects the confidence eyewitnesses have in their own report. Witnesses who have high confidence in their identifications are well received by prosecutors and jurors, despite the fact that high confidence does not necessarily go hand in hand with accuracy. In a recent study (Pezdek, Abed, & Reisberg, 2020) researchers found that marijuana users were less confident in their identifications than controls, but still had high confidence. However, marijuana impaired their awareness, and their identifications were inaccurate.

The estimator variables discussed earlier are but a few of the possible influences on human memory of persons and events surrounding a crime that are not in control of investigators. We turn now to system variables, which have received considerable attention from researchers, especially as they pertain to pretrial identification methods.

Forensic psychologists have long known that pretrial identification methods are especially vulnerable to biases and error, and many forensic researchers emphasize that mistakes made by victims or witnesses are honest ones. Witnesses truly believe that the individuals they are identifying are the culprits or that the events they are recalling are accurate. However, the exact methods used by police, ranging from very blatant practices to more subtle innuendo, can influence the witness's identification.

Suggestive Questions

Eyewitnesses to criminal events may be very accurate, but in some or perhaps many cases they are highly inaccurate about what they saw and heard. "Memories for events that never occurred are readily confused with memories for actual events, and mistaken eyewitness identifications are readily confused with accurate eyewitness identifications" (Wells & Loftus, 2013, p. 627). Unfortunately, investigators may not know how to interview eyewitnesses without

contaminating their observations by asking leading and highly suggestive questions. For example, a police officer may have heard another witness mention an unusual tattoo on the neck of the suspect. The officer may then ask another witness, “What color was the tattoo on his neck?” Even if the witness did not notice the tattoo at the time, they are apt to include the tattoo in their later description of the suspect.

In essence, the manner in which a witness is interviewed by an investigator can undermine the accuracy of a witness’s statement. Forensic research indicates that witnesses are quite susceptible to the misinformation effect (Loftus, 2017), either through media coverage of the incident, other witnesses’ commentary on the incident, or through suggestive or leading questioning during the police interview.

Finally, an approach that has been shown to be especially effective in eliciting reliable information from cooperative respondents is the **cognitive interview (CI)** (Fisher & Geiselman, 1992; Rivard, Fisher, Robertson, & Mueller, 2014). The CI is a method that utilizes memory retrieval and communication techniques aimed at increasing the amount of accurate information, particularly from witnesses, informants, and victims. Noting that a robust literature has demonstrated its effectiveness, Wells et al. (2020) recommend that investigators be trained in this protocol. The CI has also been shown to be of significant value in gaining information in both criminal investigation and intelligence gathering contexts (Swanner, Meissner, Atkinson, & Dianiska, 2016). **Focus box 3.2** provides more information.

Loftus (2013) and Wells et al. (2020) emphasize that the legal system as well as the public are showing greater appreciation of both laboratory and field eyewitness research when informed of its results. Courts also are increasingly more willing to allow experts on eyewitness research to testify in criminal cases, although typically only if the defendants are able to afford them.

Focus 3.2

The Cognitive Interview

The cognitive interview (CI) represents a significant improvement in eliciting relevant information, particularly from witnesses and victims. In the typical (noncognitive) interview, the police interviewer dominates the conversation and the interviewee plays a subordinate role. The police will ask a number of specific, short-answer, true or false questions until the interviewer has exhausted their list (Fisher & Geiselman, 2010). In addition, the interviewer will often interrupt to

ask follow-up questions which are usually leading or suggestive. In many cases, the interviewer is focused on completing the predetermined written checklist required by the department.
In order to obtain as much pertinent information about the incident as possible, the CI takes a very different approach. For example, the interviewer is encouraged to allow the witness to dominate the narrative as much as possible. In CI, the investigative interviewer skillfully and gently guides the witness (or victim) through a number of steps (Fisher & Geiselman, 2010). During the early stages, interviewers try to build rapport with the witnesses and allow and encourage them to describe their emotions at the time of the incident. Four retrieval prompts designed to restore the original state of the experience are then used. The first prompt is to ask an open-ended question of what happened, without interruptions. In the second prompt, witnesses or victims are asked to close their eyes and try to recount the incident again. Studies of the CI have revealed that eye closure leads to more focused concentration and better accuracy (Vrij, Mann, Jundi, Hillman, & Hope, 2014). Vrij, Mann, Jundi, Hillman, and Hope write, “eye closure frees up cognitive resources that would otherwise have been involved in monitoring the environment and subsequently improves memory” (p. 861). The third prompt asks witnesses to retell the story in reverse order, from the end to the beginning. The reverse order helps improve the memory of the incident as well as correct errors of omission. The fourth prompt asks a witness to describe the event from the perspective of others (Memon, Meissner, & Fraser, 2010).
According to Fisher and Geiselman (2010), the CI has demonstrated effectiveness in improving witness memory in many studies in the United States, England, Germany, and Australia. It has been shown to be effective across cultures, types of witnesses (young, old, cognitively impaired) and kind of event to be recalled (crime, accident, daily activities).

QUESTIONS FOR DISCUSSION

1. Someone skeptical of the CI approach might raise objections. What might some of these objections be?
2. Some but not all supporters of the CI interview advocate it for suspects as well as for victims and witnesses. Is it likely to be successful for each of these groups?

LINEUPS AND PHOTO SPREADS

The manner in which lineups are conducted varies widely across police jurisdictions (Brewer et al., 2019). “The witness may be presented with a lineup that consists of a live parade, a series of still

photos, or a video of head shots turning from side to side. The number of lineup members can vary (usually from six to 12), and they might be presented either simultaneously or sequentially (i.e., one after other)" (p.76). Eyewitness research also has shown that suggestive lineup procedures like suggestive questioning can have enormous effects on eyewitness testimony (Wells & Loftus, 2013). When police have a suspect in custody, it is not unusual to place the suspect in a lineup with other individuals, in the hope that a victim or other witness will be able to identify the suspect as the perpetrator. (See **Photo 3.2**.) This is called a **Simultaneous lineup**. The individuals also may be shown to the witness one by one, a procedure called a **Sequential lineup**. Which lineup procedure is more accurate? As noted by Moreland and Clark (2016), early studies indicated that the sequential lineup demonstrated a large accuracy advantage over the simultaneous lineup. However, later studies, beginning in 2012, began to show that simultaneous lineups may be more accurate (e.g., Dobolyi & Dodson, 2013; Mickes, Flowe, & Wixted, 2012). At this point, "the simultaneous-sequential debate is far from settled" (Moreland & Clark, 2016, p. 280). Even more commonly, though, with or without someone in custody, police show photos or video clips of each individual, simultaneously or sequentially. As just noted, forensic psychologists have traditionally recommended greater use of the sequential approach, and it is becoming more common, particularly for photo arrays (Police Executive Research Forum [PERF], 2013). Interestingly, law enforcement agencies report their most commonly used methods for eyewitness identification are the photo lineup or photo array (94.1%); show-ups (61.8%—discussed later); composite sketches (35.5%); mugshot books (28.8%); and the live lineup (21.4%; PERF, 2013). Regardless of which method is used, we must keep in mind all the previously mentioned problems with eyewitness identification (e.g., identifying a face, the fallibility of memory, cross-race effect).



► Photo 3.2 Example of a simultaneous lineup, where a witness or victim would be asked to identify a perpetrator if he is in the lineup. iStock/RichLegg

Forensic psychologists have been particularly interested in research on the live lineup because this is where mistaken identification seems more likely to occur. In the live lineup, the witness or victim may be influenced by the comments or behavior of police or by the construction of the lineup itself. Interestingly, courts do not necessarily rule for a defendant, even if the lineup was a suggestive one. Other factors are taken into account, such as whether the witness was confident, how much time had elapsed between the crime and the identification, and whether the witness's description of the perpetrator was consistent over time. However, the U.S. Supreme Court, in a number of cases, has ruled that a lineup may not be *impermissibly* suggestive. As noted in *Perry v. New Hampshire*, discussed in **Focus 3.1**, a lineup or show-up is not impermissibly suggestive unless it is set up to be that way by police, however.

Live lineup members in particular should fit the description the witness gave police. In other words, they should have similar characteristics—such as age, height, physical stature, race, hairstyle, and facial hair—that were included in the original witness description. If the witness remembered the offender as a 6-foot, 6-inch individual with black, curly hair and a beard, the lineup is obviously biased if only one person in five fits that description. This would be an example of **Composition bias**.

Another area of pretrial identification that must be closely monitored is that of **Commitment bias**. This is the concept that, when a witness has initially identified a face, even an incorrect one, they will be more likely to choose that face again. Commitment bias is most likely to occur when witnesses are eager to please police investigators and when they further assume that the police have good evidence against someone in the identification process. Because of commitment bias, a witness who initially identifies a suspect, but who has some doubt, is more likely to identify the suspect in subsequent exposures with greater conviction. In other words, each time the witness identifies the suspect as the perpetrator of the crime, the witness becomes more convinced that this was indeed the person who committed the crime.

The tactics taken by police during the lineup proceeding also may influence the witness or victim. For example, an officer may subtly nod or may ask, “Are you sure?” This behavior communicates approval or disapproval of the choice made. To avoid this possible influence, forensic psychologists (e.g., Steblay, Dysart, & Wells, 2011; Wells, 1993) advocate that the person conducting the lineup be unaware of the identity of the suspect—an approach called the double-blind lineup. If the lineup conductor is not aware of the identity of the suspect, they cannot give subtle cues to the witness or victim. Realistically, a double-blind lineup may be difficult to carry out, particularly when a sufficient number of personnel are not on the premises. In addition, an officer who has established a good relationship with a witness might be reluctant to hand over the identification procedure to a lineup conductor (Sauer et al., 2019).

One controversial pretrial identification procedure is called the **Show-up**. “This is an identification procedure in which police present a single suspect to the eyewitness(es) to see if the eyewitness(es) will identify that person as the perpetrator” (Wells, 2001, p. 795). Unlike the lineup, there are no distractors or foils in a show-up procedure. A *distractor* or *foil* is anyone in the lineup who is not the suspect. A show-up is legal in the United States as long as it occurs soon after the offense (within hours) or under circumstances that would make a

lineup impracticable or impossible. For example, if a crime victim is hospitalized and not likely to live, police may bring in a suspect for identification (Stovall v. Denno, 1967). This is not a frequent scenario, though. Show-ups are more likely to occur when police drive a victim by someone on the street and ask whether that is the perpetrator, or when they interview a witness and point out another person with whom police are talking. This is similar to what happened in *Perry v. New Hampshire*, although we cannot say police "pointed out" Perry standing near the police car. As noted earlier, the PERF (2013) survey reveals that show-ups are a very common method of securing eyewitness identification nationwide.

Research indicates that show-ups are far more likely to lead to mistaken identification than lineups (Wells, 2001). This is because in a lineup, the error of mistakenly identifying a suspect is spread out among the foils and distractors. Even in a sequential lineup, the witness is aware that other possibilities will be presented. In the show-up situation, on the other hand, there is only one choice, right or wrong. To confirm and formalize the identification, show-ups are often followed by a live lineup once the suspect is in custody. Although this is a reasonable precaution, confirmation bias is likely to be at work. The victim or witness has already identified an individual as the perpetrator and is unlikely to change their identification at a later time.

In 2001, the American Psychology–Law Society, in an effort to make certain that forensic psychologists and personnel in the criminal justice system were aware of ways to improve lineup procedures, published a comprehensive document known as the "Police Lineups" white paper (Wells, 2001). To protect the rights of everyone accused of crime, the white paper made four recommendations for implementing valid procedures in conducting lineups or photo spreads (see Wells et al., 1998). First, the panel recommended that the person *putting together* the lineup or photo spread know which member is the suspect; however, the person *administering or conducting* the lineup should *not* know. In addition, the eyewitness should be informed that the person administering the lineup does not know which person is the suspect in the case. This recommendation is designed to prevent the witness from looking for subtle clues or identifying information from the officer administering the lineup. This has come to be called the **Double-blind lineup**, mentioned above. It indicates that neither the witness nor the officer administering it is aware of the true suspect. Second, eyewitnesses should be clearly told that the suspect might *not* be in the lineup or photo spread. Under these conditions, the witness will not feel compelled to make

an identification if they do not believe the suspect is in the lineup. Third, the suspect should not stand out in the lineup or photo spread as being clearly different from the distractors, based on the eyewitness's (or eyewitnesses') previous description. Fourth, a clear statement should be taken from the eyewitness at the time of identification, prior to any feedback from the police that would inform the witness whether they had chosen the "right" suspect. This last recommendation is based on the observation that witnesses are often susceptible to inadvertent or intentional communication about the suspect during the lineup or immediately after it occurs. Findings from the white paper were incorporated into a 44-page government guide for law enforcement officers working with eyewitness identification (Reno, 1999).

Since these recommendations were made, numerous forensic psychologists, legal scholars, and prisoner advocacy groups have pushed for changes in the procedures used in police lineups. The sequential lineup is preferred by many, but other researchers are concerned that it may result in guilty persons not being identified because the witness may believe a better match will appear (S. E. Clark, 2012). Many agencies thus allow the witness to go through the photo array or view the live sequential lineup more than once. However, some research suggests that care must be taken with allowing multiple laps through the choices because these multiple viewings (more than two) lead to guessing and placing innocent suspects at risk (Horry, Memon, Wright, & Milne, 2012; Steblay, Dietrich, Ryan, Raczynski, & James, 2011).

Supporters of sequential lineups also assert that the double-blind procedure, whether the lineup is sequential or simultaneous, has the greatest likelihood of avoiding misidentification and protecting suspects who are truly innocent. As noted previously, if the person conducting the lineup is unaware of the identity of the suspect, they cannot give even subtle cues to the witness. At least two states (New Jersey and North Carolina) and several jurisdictions (e.g., Madison, Wisconsin; Boston, Massachusetts; Virginia Beach, Virginia) have implemented the sequential double-blind as standard procedure in lineups (Innocence Project, 2010). Approximately one third of jurisdictions that use photo or live lineups now use a sequential procedure (PERF, 2013), but most of these do not use the double-blind approach, apparently because it is difficult to find an officer who does not know the identity of the suspect. Interestingly, most agencies have no written policies for conducting eyewitness identification procedures, although large agencies (with 500 or more

sworn officers) are more likely to have such a written policy (PERF, 2013).

In an effort to incorporate the rapidly growing forensic research and commentary since the original “white paper” on eyewitness identification procedures published by Wells et al., in 1998, Wells et al. (2020) updated the original scientific paper on lineups. The updated scientific review paper endorses the original white paper’s four recommendations for pretrial identifications but expands the number of recommendations to nine (see **Table 3.3**). The original four recommendations were largely restricted to issues that occurred *only* during the lineup itself. The new five recommendations cover broader territory. “For example, new recommendations concern matters that occur *before* the commencement of an identification procedure, including consideration of when it might be unwise to conduct an identification procedure, the problem of repeated identification procedures with the same witness and suspect, and the importance of conducting a proper interview of the witness prior to conducting the identification procedure” (Wells et al., 2020, p. 8).

Table 3.3

Source: Adapted from Wells, Kovera, Douglass, Brewer, Meissner, and Wixted (2020).

POLICE INTERVIEWING AND INTERROGATION

As should be evident from the above material on eyewitness identification, the interviewing of persons with possible information about a crime is fundamental to law enforcement work. It is not unusual for someone police believe may be involved with a crime to be invited to the station. If they go voluntarily and are free to leave when they get there, they are obviously not in custody. It is unknown to what extent police interview people who later become suspects, either during the interview or at a later date. If they do become suspects, the interview process becomes accusatory and is properly called an *interrogation*. When that point is reached, the individual is not free to leave and must be advised of their legal rights prior to continued questioning. Obviously, if police have probable cause to believe someone committed a crime, an arrest is made and person must be advised of legal rights, again prior to questioning. As we note later in the chapter, a surprising number of people waive these rights.

Interrogation is most often initiated when there is weak or incomplete evidence against the suspect. The primary aim is to obtain a confession or to gain information (usually incriminating evidence) that

may lead to a conviction. Approximately 80% of criminal cases are solved by less than a full confession (O'Connor & Maher, 2009), however. Nevertheless, once interrogation is used, it is successful in gaining at least some incriminating evidence about 64% of the time (Blair, 2005; Leo, 1996).

Experienced police interrogators use a wide variety of methods and techniques that are tailored to their personality and style. Research has identified 71 unique interrogative techniques used by law enforcement that fall under six major headings (C. Kelly, Miller, Redlich, & Kleinman, 2013). (See **Table 3.4**.) Nevertheless, most have been trained in a dominant method—the **Reid method**—which is taught in police academies across the United States (Inbau, Reid, Buckley, & Jayne, 2004, 2013). Approximately one half of all police investigators in the United States have been trained in the Reid method of interrogation (Cleary & Warner, 2016; Kostelnik & Reppucci, 2009). Skillful and legally useful interrogation involves the application of psychological principles and concepts, and a wealth of psychological research exists in this area (e.g., Crozier, Strange, & Loftus, 2017; Kassin et al., 2010; Madon, More, & Ditchfield, 2019). Police and public safety psychologists also serve as consultants, by training officers in methods of interview and interrogation.

Table 3.4

Source: Table adapted from C. Kelly, Miller, Redlich, and Kleinman (2013).

Accusatorial Versus Information Gathering Approaches

Research on police interrogations has focused on the effectiveness of two different approaches: the **Accusatorial approach** (primarily used in the United States) and the **Information-gathering approach** (developed in the United Kingdom, J. R. Evans et al., 2013; Meissner, Redlich, Bhatt, & Brandon, 2012). The accusatorial approach is best represented by the Reid method mentioned earlier. However, numerous researchers have criticized the Reid method for a variety of reasons, but especially because of its strict accusatorial tone (Kassin et al., 2010; L. King & Snook, 2009). As stated by Kassin et al. (2010) "the modern American police interrogation is, by definition, a guilt-presumptive and confrontational process—aspects of which put innocent people at risk" (p. 27).

It is important to note that the Reid method incorporates both interviewing and interrogation, but both Reid techniques have been extensively criticized. For example, the method includes a behavioral analysis interview, which is designed partly to build rapport but also to

detect deception. However, as Madon et al. (2019) point out, the manual encourages police to rely on nonverbal behaviors that are not supported by research on deception: “The behavioral analysis interview . . . trains police to infer truthfulness from suspects who occasionally lean forward, but to infer deception from suspects who slouch” (p. 56). Madon et al. note other problems with this method. We discuss the detection of deception later in the chapter.

The Reid method of interrogation, following interviewing, is highly confrontational, pitting police interrogators against the suspect who is typically placed under stressful conditions. Now the overall direct purpose is to obtain a confession rather than acquire information. In this approach, the interrogator is instructed to maintain psychological control, use psychological manipulation whenever possible, and ask straightforward “yes” or “no” questions. It requires several steps that include (a) custody and isolation, (b) confrontation, and (c) minimization. In the custody and isolation step, the suspect is detained in a small interrogation room and left long enough to experience the uncertainty, the stress, and the usual insecurity associated with police custody and interrogation. We have all seen this approach, with the suspect sitting alone in a small room, observed through a one-way mirror, waiting tensely for a detective to enter and begin the questioning. The confrontation step focuses on the interrogator accusing the suspect of the crime, expressing certainty in that accusation, citing real or manufactured evidence, and preventing the suspect from denying the accusations as much as possible. Minimization—which may come into play at any time—involves a “sympathetic” second interrogator morally justifying the crime to the suspect, saying anyone else in that situation would probably do the same, and expressing sympathy with the suspect’s understandable predicament. The presumption here is that the suspect is likely to believe that more lenient and understanding treatment will be given once they confess.

“Conceptually, this [interrogation] procedure is designed to get suspects to incriminate themselves by increasing the anxiety associated with denial, plunging them into a state of despair, and minimizing the perceived consequences of confession” (Kassin & Gudjonsson, 2004, p. 43). However, although the approach may result in obtaining confessions, the method can also lead to false confessions, a topic we cover later. In addition, Reid-like, confrontation methods are often used by police in questioning children and adolescents suspected of committing crimes, a practice that has been criticized because of the vulnerability of this age group

(Cleary, 2017; Cleary & Warner, 2016; Reppucci, Meyer, & Kostelnik, 2010).

Canada and Western European countries, by contrast, often use less confrontational "interrogation," which many prefer to call investigative interviewing. Those asking the questions may believe the individual they are questioning is guilty, but they avoid confrontational behavior. The tenor of the interrogator or investigative interviewer focuses on gathering information about the crime (Beune, Giebels, & Taylor, 2010; Bull & Milne, 2004). This approach is designed for investigators to take a more neutral role by probing the suspect's knowledge through open-ended questions (in contrast to the yes/no questions) and a more informal conversational style. Unlike the accusatorial style, the information-gathering approach avoids trickery and deceit as much as possible. The "bait question," through which police tell a suspect that they have evidence they really do not have, is often expressly forbidden. This bait questioning has been found to produce misinformation (Luke et al., 2017). The nonconfrontational, information-gathering technique emphasizes rational arguments and being kind as methods of persuading the interviewee to provide information.

In one of the very few studies examining the two methods to date, J. R. Evans et al. (2013) found that the information-gathering approach yields more relevant and useful information than the accusatorial approach. In addition, some researchers (e.g., Meissner et al., 2012) believe that the information-gathering approach will lead to substantially fewer false confessions.

One illustration of the information-gathering approach is the **PEACE model**, which was developed in the United Kingdom in the early 1990s and is gaining acceptance in Europe, Canada, Australia, New Zealand, and some parts of the United States (Bull, 2019; Starr, 2013). The acronym PEACE stands for Planning and Preparation; Engage and Explain; Account; Closure; and Evaluation. According to Starr, "[b]y 2001, every police officer in England and Wales had received a basic level of instruction in the method" (p. 48). Cleary and Warner (2016) note that "the PEACE model is considered a successful alternative to accusatory interviewing and has . . . expanded to additional nations and organizations" (p. 271).

In this approach, police use the interview to gather evidence and information rather than to obtain a confession. They are told not to focus on the nonverbal behavior of the person being interviewed—such as signs of anxiety. Interestingly, they are not allowed to bluff or suggest that they have evidence that they do not have—which is very different from what the Reid method allows.

In the PEACE model, which has similarities to the cognitive interview discussed above, the interviewers are encouraged to establish rapport, use open-ended questions, and “address contradictions via the strategic presentation of evidence” (Swanner et al., 2016, p. 296). The research literature strongly indicates that the PEACE model and similar information-gathering approaches are effective methods for eliciting more useful information from both cooperative and reluctant individuals (Swanner et al., 2016).

Recently, and interestingly, some police agencies (including the Royal Canadian Mounted Police [RCMP]) have modified their interview models to incorporate both accusatorial and information-gathering aspects. For example, though information-gathering is stressed, the newer models allow interviewers to (a) use minimization techniques, (b) mischaracterize the evidence, and (c) ask leading questions. Referring to this as a “toolbox approach” that is not supported by scientific evidence, researchers urge caution because these new models can lead to false confessions (Snook et al., 2020).

In summary, though, the confrontational Reid and similar models are so firmly established in police procedure in the United States that they are unlikely to disappear or even be modified substantially anytime soon. Many police are resistant to giving up this cherished approach. Furthermore, courts—including the U.S. Supreme Court—have by and large been supportive of police interrogation methods, unless they involve the most flagrant violations. Nevertheless, with more exposure to alternative, information-gathering methods, and with more evidence of the incidence of false confessions resulting from accusatorial interrogation strategies, future modifications may occur.

The U.S. Supreme Court, as suggested earlier, has granted law enforcement wide latitude in trying to obtain confessions from suspects (see, generally, Leo, 1996). Despite the landmark ruling in Miranda v. Arizona (1966) establishing the basic rule that suspects in custody must be informed of their right to remain silent and their right to an attorney prior to being questioned, many criminal suspects do not understand these rights and often waive them. Courts have allowed police to lie or trick suspects, such as by pretending they have eyewitness testimony or evidence that does not exist. This is sometimes referred to as bait questioning—and as noted earlier, such questioning is not allowed in PEACE model versions of investigative interviewing. Research on bait questioning indicates that it is psychologically coercive (Kassin et al., 2010) and even affects how juries respond to evidence down the line (Luke et al., 2017).

A confession must be freely and voluntarily given if it is to be used as evidence; it cannot be coerced. Even if a suspect waives the right against self-incrimination, that waiver must be voluntary, knowledgeable, and intelligent. Police agencies often require a signed waiver before allowing the interrogation of a suspect in custody without a lawyer's presence. Even so, many legal psychologists are concerned about the potential for psychological coercion, and they have explored whether suspects truly understand the significance of their *Miranda* rights. A long line of research in developmental and legal psychology (e.g., Grisso, 1981, 1998; Rogers, Harrison, Shuman, Sewell, & Hazelwood, 2007; Rogers et al., 2009, 2010; Smalarz, Scherr, & Kassin, 2016) indicates that many individuals, including but not limited to juveniles and persons with mental disorders or deficiencies, have difficulty understanding the significance of the *Miranda* warning that is routinely given in the United States. Researchers in Canada have reached similar conclusions with respect to police cautions (Eastwood & Snook, 2010; Eastwood, Snook, Luther, & Freedman, 2016). Even words that are typically used in these warnings—words like *consult*, *entitled*, *interrogation*—are unfamiliar to many suspects, and the role of the lawyer is often not understood.

Smalarz et al. (2016), reviewing research 50 years after the *Miranda* case was decided, argue that "even well-adjusted, intelligent adults are at risk of succumbing to police pressure during custodial interrogation" (p. 455). They suggest both research approaches and policy proposals that might make it more likely that the constitutional rights of suspects be protected. The most practical, as they note, is to videotape all interrogations, a practice that not only provides an accurate and objective record for judges and juries, but also has been shown to reduce the coercive tactics used by police during interrogation (p. 458).

Interrogation of Juveniles

Interestingly, research has revealed that interrogators use the same tactics to interrogate adolescents as they do for adults (Cleary & Warner, 2016; Feld, 2013; Meyer & Reppucci, 2007; Reppucci, Meyer, & Kostelnik, 2010). However, developmental and forensic psychologists have long known that adolescents are fundamentally different from adults biologically, cognitively, and psychologically (Cleary, 2017; Steinberg, 2017, 2020), a topic we discuss more fully in Chapter 7. "These developmental changes that all youth—regardless of legal involvement—experience during adolescence hold the potential to powerfully impact youth perception, behavior, and decision making inside the interrogation room" (Cleary, 2017, p. 119).

Cleary and others have emphasized that adolescents are basically ill equipped to withstand the pressures and stresses of interrogation. Moreover, they often fail to adequately comprehend their constitutional rights, including those protected by the *Miranda* warnings.

Neurodevelopmental research has demonstrated that the adolescent brain is not fully developed until the early to mid-20s. These findings have significant implications for how the tactics of interrogators should be applied when dealing with juveniles. Researchers have both suggested ways of making these rights more understandable to juveniles (Eastwood et al., 2016) and developed specific instruments for measuring both adult and juvenile comprehension of their rights (Rogers et al., 2007, 2009, 2010).

In addition, there is growing evidence that because of their neurological and psychosocial immaturity, adolescents are more prone to giving false confessions (Steinberg, 2014a), a topic to be discussed below. They appear to be especially prone to fall for the interrogative strategy of "minimization," in which the alleged behavior is downplayed by the interrogator. ("If I were in your shoes, I probably would have done the same thing.") Juveniles are thus led to believe that the interrogators will be more lenient and release them from custody sooner if they cooperate and admit to the alleged behavior. A sobering example is the real-life case of the Central Park 5, five teenagers who were convicted of attacking and raping a jogger in 1989. They were later exonerated but not before one had served 11 years and four had served 7 years in prison. Defense lawyers argued unsuccessfully that their confessions were false, produced by coercive interrogation techniques. Thirteen years after the crime, a prisoner serving a sentence for three rapes and a murder confessed to the attack. His unique knowledge of the crime and a DNA match on the samples recovered from the victim resulted in the original convictions of the teenagers being vacated. A film based on the case, *When They See Us*, was released in 2020.

Cleary (2017), following the work of Laurence Steinberg, whose research is covered in later chapters, outlines three interrelated factors that are important in understanding the differences between adolescents and adults during interrogation: (1) reward sensitivity, (2) self-regulation, and (3) future orientation. In reference to *reward sensitivity*, adolescents are far more sensitive to immediate rewards than adults are. They are more attentive to the good things and more willing to take risks to get them immediately. During the long and stressful experience of interrogation, the immediate reward of getting to go home is a powerful one for the adolescent. Research by Drizin

and Leo (2004), for example, found that “getting to go home” was one of the most frequent reasons cited for adolescents to falsely confess to a crime they had not committed. A lack of *self-regulation* (self-control) will likely allow the adolescent to take the immediate reward to go home in place of maintaining innocence in the face of the unpleasant confrontation of interrogation. The lack of *future orientation* allows the adolescent to prefer going home immediately without considering the future consequences of admitting guilt. Adolescents “tend to be focused myopically on short-term gains and losses rather than the longer-term consequences for their actions” (Kassin, Perillo, Appleby, & Kukucka, 2015, p. 253). To a large extent, the reward sensitivity aspect of adolescent development appears to override the ability to suppress immediate inappropriate actions in favor of long-term appropriate ones (Casey & Caudle, 2013).

FALSE CONFESSIONS

In recent years, a Sundance channel series, *Rectify*, followed the life of a man who confessed to and was convicted of the murder of a young girl when he was 18 and then sentenced to death. He had spent 19 years on death row before being exonerated based on DNA evidence. The series depicted his adjustment to freedom and his struggles to cope with his experiences, build new relationships, and repair relationships with his family. It also depicted, in flashbacks, his life on death row. But viewers of the series sometimes wondered why he would have confessed to something he did not do.

Rectify is a fictional account, but it is not an unrealistic one. As a result of recent DNA exonerations, it has become increasingly clear that a disturbing number of convictions were the result of such false confessions gained through questionable procedures or illegal tactics (Kassin et al., 2007, 2015). A false confession “is an admission to a criminal act—usually accompanied by a narrative of how and why the crime occurred—that the confessor did not commit” (Kassin et al., 2010, p. 5). These DNA exonerations and other high-profile cases leading to the convictions of innocent people have prompted increased scrutiny of police interviewing and interrogation methods and strategies (DeClue & Rogers, 2012). We must emphasize that only a percentage of DNA exonerations involved false confessions, however. Some research suggests that between 16% and 25% of DNA exonerations have involved false confessions (Garrett, 2011; Kassin et al., 2015; O’Connor & Maher, 2009), while a majority have involved inaccurate eyewitness testimony, a topic covered above. However, inaccurate eyewitness identification may be a significant factor in false confessions because suspects confess falsely after

having been told that an eyewitness identified them. (See **Focus 3.3** for discussion of the Innocence Project.)

In a summary of the research literature, Kassin and Wrightsman (1985) identified three types of **False confessions**: (1) voluntary, (2) coerced-compliant, and (3) coerced-internalized. The first type, **Voluntary false confessions**, refers to a self-incriminating statement made without any external pressure from law enforcement. As noted earlier, it should not be assumed that everyone who confesses falsely to a crime was induced to do so by police.

The coerced-compliant and the coerced-internalized false confessions, as their names imply, involve pressure from police officers and sometimes from other persons as well. Research has indicated that skillful manipulation, deception, or suggestive tactics under stressful conditions may lead to false confessions (Gudjonsson, 1992; Kassin, 1997). Persons with mental disorders or intellectual disability are often asked more questions during the interrogation process and are not surprisingly more confused by the experience (Redlich, Kulich, & Steadman, 2011). They are also more likely to give false confessions than those without these conditions (Redlich, Summers, & Hoover, 2010). Under the stressful circumstances associated with interrogations, even innocent people may come to believe that they committed crimes. Kassin attributes much of the coerced false confession phenomenon to such psychological concepts as compliance and internalization, processes first identified by Kelman (1958). *Compliance* is a form of conformity in which we change our public behavior—but not our private beliefs or attitudes—to appease other people or reduce social pressure or threats from others. *Internalization*, on the other hand, refers to changes in our private thoughts or beliefs that occur because we sincerely believe in the issue or perspective.

Focus 3.3

The Innocence Project

It is now clear that some people who are serving time in prisons have been wrongfully convicted. The Innocence Project is an independent nonprofit organization whose mission is to free these individuals and to reform the system that is responsible for their imprisonment. In some cases, the convictions are partly attributable to “false confessions” or to other incriminating statements made to police, but in the majority of cases the individuals have consistently maintained their innocence. Eyewitness misidentification is the key factor in most exonerations.

The Innocence Project was founded in 1992 by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University. DNA testing is the primary means the Project has employed, and by 2020, approximately 360 people in the United States had been exonerated. At least 18 of these individuals had been sentenced to death.

According to the project's website (www.innocenceproject.org), eyewitness misidentification played a role in 71% of convictions that were ultimately overturned. Judges and juries had weighed this eyewitness testimony heavily at their trials. Invalidated or improper forensic science, inadequate defense, government misconduct, false confessions, and the testimony of informants also play a role in DNA cases that are ultimately overturned.

A small portion involved false confessions, and not all were police induced. Those that were include one in which the father of five children was submitted to 15 hours of interrogation and had no sleep for 34 hours before he provided false statements to police that resulted in his conviction for killing his wife. He spent 10 years in prison before being exonerated (R. J. Norris & Redlich, 2010). The true perpetrator ultimately confessed. In another example, a man with mental illness was led to believe he was helping police "smoke out" the real killer of a 16-year-old girl by confessing falsely that he had killed her. As noted in the text, research has found that persons who are mentally ill are more likely than those who are not to give false confessions.

What happens to individuals who are exonerated? The answer is not clear, and there is likely wide variation in their success at rebuilding their lives. Furthermore, not all states provide financial compensation for the years they have been imprisoned. An early study (R. J. Norris & Redlich, 2010) indicated that only 27 states, the District of Columbia, and the federal government provide for such post-exoneration reparation, but at that time only 60% of 250 exonerated individuals had been compensated.

QUESTIONS FOR DISCUSSION

1. Go to the website of the Innocence Project and discuss any two recent cases highlighted there.
2. Should persons wrongly convicted of crime be compensated for the time they have spent in prison? If so, what is the best form of compensation?
3. What role or roles do forensic psychologists have in preventing false confessions?

Coerced-compliant false confessions, Kassin (1997) concludes, are most likely to occur after prolonged and intense interrogation

experiences, especially in situations when sleep deprivation is a feature. The suspect, desperate to avoid further discomfort, admits to the crime even though this person knows they are innocent. Some of the original suspects in the Central Park case apparently confessed at the urging of a parent or because they believed they would then be free to go home after being held at the police station for many hours. Other suspects have confessed to a crime after being told police had incriminating evidence against them, such as that a witness had identified them or their fingerprints were at the scene of the crime. These are examples of compliance without internalization.

Coerced-internalized false confessions, on the other hand, occur when innocent persons—who are tired, confused, and highly psychologically vulnerable—come to believe that they actually committed the crime (Kassin, 1997; Kassin & Kiechel, 1996). This is an example of compliance eventually developing into an internalization of the belief. In addition, the pressures to confess may not necessarily originate from police officers but may come from family members, friends, religious figures, and colleagues who communicate to the suspect that they will feel better by doing the right thing and admitting to the offense (or atoning for sins; McCann, 1998).

Numerous individuals cleared by DNA evidence never confessed to their crimes; on the contrary, they maintained their innocence from the moment of their arrest. However, as the DNA exonerations came rolling in, many stories did involve false confessions and how they were obtained. “Many of these stories recount horrific tales of psychologically—and, in some cases, physically—abusive interrogations of children and adults, including many who were cognitively impaired” (Kassin et al., 2007, p. 382). These stories and other high-profile cases have underscored the important role that psychologists can play in the research, investigation, and prevention of wrongful convictions (Kassin et al., 2010). Kassin (2008) contends that throughout the criminal justice system, confessions are met with naïve and uncritical acceptance. He finds that this naïveté is strongly buttressed by five myths, which we summarize in **Table 3.5** along with research findings that dispel them.

Table 3.5

Source: Adapted from Kassin (2008).

At this point, no one can accurately estimate the rate of police-induced false confessions across the United States or elsewhere, or the number of wrongful convictions caused by false confessions (Kassin et al., 2010; Leo & Ofshe, 1998), but the research clearly

indicates that people can be induced to confess even if they are innocent. As Snook et al. (2020) emphasize, false confessions may occur when police use interviewing techniques that are accusatorial. However, we should not blame police for all false confessions. Madon et al. (2019) conclude, based on research findings, that some innocent suspects may underestimate their peril or be shortsighted in their thinking, believing that they will not ultimately be convicted. As mentioned previously, though, it should be understood at the outset that most convictions are the result of the evidence acquired at the crime scene or through witness reports rather than through interrogations and a confession from the suspect.

Nevertheless, when a suspect does confess, the confession is universally treated as damning and compelling evidence of guilt; it is likely to dominate all other case evidence and lead to a defendant's conviction (Leo & Ofshe, 1998). As a society, then, we should be particularly wary of the false confession, as well as the confession that is coerced. According to Leo and Ofshe, American police are poorly trained about the dangers of interrogation and false confession. This is one important service that police psychologists should be able to provide, and there is considerable evidence that they are beginning to do that (DeClue & Rogers, 2012; Lassiter & Meissner, 2010; Malloy, Shulman, & Cauffman, 2014). In addition, forensic psychologists have been very active in researching what factors influence false confessions (Meissner et al., 2012; Redlich, 2010). Most police are exposed to only a cursory review of interviews and interrogation at the police academy and receive more extensive training when they become detectives or interrogation specialists at the police agency. However, as we learn in the next section of the chapter, police investigators are often convinced of their ability to tell who is lying and who is not during interviews and interrogations. This confidence stems from some combination of on-the-job experience and police training programs that promise increased accuracy in deception detection (Kassin et al., 2007; Madon et al., 2019). Some programs claim an 85% accuracy rate after the training.

Unfortunately, research continually reveals that training does not produce reliable improvement. In a majority of research findings, the accuracy rate of police investigators and other professionals improved only slightly better than chance after the training (Kassin et al., 2010).

Summary

The spate of prisoners who have been cleared in recent years as a result of DNA evidence suggests that something went wrong as they were processed through the criminal justice system. Although many

things could have gone wrong (e.g., inadequate assistance of counsel, misidentification by eyewitnesses), the interrogation process itself could have been flawed.

Meissner, Hartwig, and Russano (2010) recommend that, given the number of training manuals and training programs that promote flawed interrogation methods, the ability to offer more effective and sound alternatives is of critical importance. These researchers call for a systematic research-based approach that identifies promising interrogation techniques with which "truth" can be established (Meissner, Russano, & Narchet, 2010). Their proposal urges police psychologists and other researchers to seek opportunities to partner with police investigators in developing interrogation techniques. This integrative approach has proved very successful in the United Kingdom and Canada, as we noted earlier in discussing the PEACE model (see also Bull & Soukara, 2010, and Snook et al., 2020).

Meissner and Lassiter (2010) propose five recommendations for reforming police interrogations:

1. Record, preferably on video, all interrogations from beginning to end.
2. Prohibit the use of psychologically manipulative interrogation tactics that have been shown to produce false confessions.
3. Protect vulnerable persons (e.g., juveniles, persons with mental disorders or intellectual disabilities) in the interrogation room.
4. Ensure the appropriate administration (knowing and intelligent waiver) of *Miranda* rights prior to interviewing a suspect.
5. Train law enforcement investigators regarding factors that contribute to false confessions.

Taking such preventive measures would not only increase public confidence in police, but would also make it far less likely that evidence, including confessions, obtained during the interrogation or interview process will be challenged or disallowed at the final trial proceeding.

DETECTION OF DECEPTION

Entertainment media often portray police interviewing witnesses or suspects as being able to tell when they are telling the truth, often through their nonverbal behaviors. As in portrayals of profiling, the media presentation does not mesh with reality. Most forensic psychologists urge caution in dealing with nonverbal behaviors; although some behaviors may suggest that an individual is not telling the truth, there is no sure way to ascertain this. Licking one's lips may indicate nothing more than the fact that one is nervous or thirsty, and it is not unusual to be nervous if one is being interviewed or questioned by law enforcement officials.

Deception is behavior that is intended to conceal, misrepresent, or distort the truth or information for the purpose of misleading others. Obviously, the ability or procedure to detect deception would be an invaluable tool for any investigation. Furthermore, the global threat of terrorism “has led to an increased emphasis on the detection of deception in public places, including country borders, security checkpoints, airports, bus terminals, train stations, shopping malls, and sport venues” (Vrij & Granhag, 2014, p. 936).

The detection of deception or lying is an area of psychological research that has the potential to make highly meaningful contributions to investigations ranging from intelligence gathering to criminal interrogations in cases involving both violent and nonviolent crime. However, a majority of the deception research so far has not been particularly promising. “Decades of research indicates that humans are poor lie detectors, rarely achieving accuracy rates above chance level” (Verigin, Meijer, Vrij, & Zauzig, 2019, p. 1). Attempts to identify reliable deception techniques have shown an accuracy level of 54% to 57% (Logue, Book, Frosina, Huizinga, & Amos, 2015). In addition, professionals—such as police officers and psychologists—are often no more accurate than laypersons (Gongola, Scurich, & Quas, 2017). More surprising, adults do not appear any better at detecting deception in children than they are at detecting deception in adults (Gongola et al., 2017). And the age of the child does not seem to matter.

Psychological Research on Deception

Research psychologists have identified three basic processes involved in deception: (1) emotion, (2) behavioral control, and (3) cognitive load (Vrij, 2008; Vrij, Granhag, & Mann, 2010; Zhang, Frumkin, Stedmon, & Lawson, 2013). For many years, it was assumed that emotions were the best indicator of deception. A lie has traditionally been associated with two different types of emotion: guilt and fear of detection (Vrij et al., 2010). It is commonly believed that deception is indicated if a person is nervous and anxious, especially during questioning. For instance, eye contact avoidance, excessive eye blinking, profuse sweating, unusual amount of face touching and rubbing, shaking hands or twitching legs, and nail biting are often assumed to be physical, emotional signs of fear or guilt. However, in recent years, research studies have consistently found that these behavioral patterns are not reliable cues for deception. For example, researchers have found that, rather than avoiding eye contact, liars tend to display more deliberate eye contact than truth tellers (Mann et al., 2013). Furthermore, one of the most important findings reported during the past decade is that very few people—

whether professional experts or laypersons—are able to detect deception with much accuracy when relying on emotion-based cues (van Koppen, 2012).

Still, most people—including police investigators—are convinced that they are able to tell who is lying and who is not (Vrij, Akehurst, & Knight, 2006), if not on emotion-based cues, then certainly on nonverbal or behavioral ones. In fact, the more experienced the police investigator, the more they tend to overestimate their ability to detect deception accurately (Gunderson & ten Brinke, 2019). Their results are not impressive either.

According to Vrij et al. (2010), one of the reasons why people make errors in lie detection is that they fail to take into consideration the full complexity of deception. The research on behavioral control cues has generally focused on what attributes make a good liar. Vrij and his colleagues note that good liars possess at least 18 attributes that render deception difficult to identify. These attributes include a lack of guilt or fearful feelings, self-confidence, and good acting ability. In addition, this area of research contends that not only do good liars try to continually monitor their own behavior, but they also monitor the interviewer's reactions to their answers to the questions asked (Burgoon, Blair, & Strom, 2008; Vrij et al., 2010; Zhang et al., 2013). Therefore, studies suggest that good liars are fully aware of the common belief that nonverbal cues may signify deceit and thus concentrate on controlling them, such as controlling their own bodily indicators of guilt and nervousness. In summary, the research to date strongly suggests that neither emotions nor nonverbal cues are decent guides for identifying deception.

Vrij and Granhag (2007, 2012) argue that verbal cues may well be better guides. They believe that (1) concentrating on the verbal patterns of the suspect and (2) analyzing the manner in which the interviewer handles the questions will lead to improved deception detection. Vrij and Granhag further maintain that interviewers should create a **Cognitive load** on the person being interviewed. In other words, interviewers and interrogators should try to increase the workload of the suspect when answering questions. This is because lying requires considerable cognitive effort, as the deceptive person must actively suppress truthful information and construct and remember false information (Carrión, Keenan, & Sebanz, 2010; Vrij et al., 2008; Vrij, Granhag, Mann, & Leal, 2011). Moreover, liars usually find it very difficult to provide much additional detail to their story, whereas truth tellers usually do not. Essentially, liars often try very hard to keep their story as simple as possible (Granhag & Strömwall, 2002). An effective approach for increasing cognitive load

is to ask questions that the suspect does not anticipate or to ask for more detail to the story (Lancaster, Vrij, Hope, & Waller, 2013). Another approach might be to ask the suspect to tell the story in reverse order (Vrij & Granhag, 2012). This approach increases cognitive load because it runs counter to the usual sequence of telling stories and is therefore more challenging for the suspect. This verbal approach is referred to as **Cognitive lie detection** (Vrij, Fisher, & Blank, 2017).

Recent research has demonstrated that the cognitive lie detection approach produces superior results in accuracy detection (67%), lie detection (67%), and total detection (truth and lie detection together of 71%) compared to the usual methods of detection of truth detection (57%) lie detection (47%), and total detection (56%; Vrij et al., 2017). The results indicate that using the cognitive lie detection method increases the chances of classifying individuals correctly as being either truth tellers or liars.

A somewhat different approach is taken by Levine (2014, 2020) who also has done extensive research on the detection of deception. Interestingly, Levine discovered that people are far better at identifying truthfulness than they are at identifying lying. Levine proposes a theoretical explanation for this, which he refers to as **Truth default theory** (TDT).

Levine finds that humans are far better at detecting truthfulness because they have developed, over the centuries, a strong tendency to "default to truth." That is, most of us have a built-in set of assumptions that people are usually being honest. We believe this unless they give us reasons to suspect otherwise. "The idea is that as a default, people presume without conscious reflection that others' communication is honest . . . The possibility that a message might be deception often does not come to mind unless suspicion is actively triggered" (Levine, 2014, p. 381).

He believes that this tendency may explain why deception research over the years has continually found that humans are poor or marginal at detecting lies or when they are being deceived. The deception research has traditionally focused on having participants (usually college students) identify which other participants (also college students or actors) are lying to them. The literature continually concludes that people are just not very good at detecting deception across a wide range of situations.

The contemporary writer Malcolm Gladwell (2019) brings attention to Levine's theory, noting that logically humans should be good at detecting when we are being deceived. "Logic says that it would be very useful for human beings to know when they are being deceived.

Evolution, over many millions of years, *should* have favored people with the ability to pick up the subtle signs of deception. But it hasn't" (p. 72). Gladwell further notes that just about everyone is terrible at detecting dishonesty, including police officers, judges, therapists, FBI agents, "even CIA officers running big spy networks overseas. *Everyone*" (p. 72).

Levine, though, as Gladwell notes, believes the phenomenon whereby one defaults to the truth is highly adaptive in any given human society because it enables efficient communication, cooperation, and trust among societal members. Even though the presumption of honesty makes us vulnerable to occasional deceit, continual suspicion of dishonesty would likely lead to a society full of conflict and distrustful relationships. Of course, there are social lies (as opposed to serious lies) which are intended to benefit or avoid harm to others, such as expressing an appreciation of an unwanted gift or giving a false compliment to a friend (Gunderson & ten Brinke, 2019). "Social lies grease the wheels of social interaction, and, although social norms suggest that lying is necessarily bad, telling the truth under all circumstances can be equally offensive" (Gunderson & ten Brinke, 2019, p. 79).

Although TDT provides some insight into why many experiments on deception have continually found that humans are poor at detecting deception, the theory does not help forensic psychologists, police investigators, and other investigative personnel identify those individuals who are trying to deceive. Although we have discussed the detection of deception primarily in the context of investigative interviewing in this chapter, forensic psychologists are sometimes faced with the daunting task of determining whether an individual is faking mental illness symptoms, incompetence, or psychological injury in many other settings, a phenomenon known as **Malingering**. This is the deliberate production of false or grossly exaggerated physical or psychological symptoms to achieve a particular goal (Rogers & Shuman, 2000). A criminal defendant may try to fake a mental illness in order to avoid prosecution or to get a lighter sentence. However, this does not happen only in the criminal context. For example, in a civil suit, someone may want to win monetary compensation by exaggerating psychological damages suffered in a car accident. We discuss malingering in various criminal and civil contexts in chapters ahead.

The Polygraph

Perhaps a more scientific method of attempting to detect truthfulness is the polygraph, commonly called the "lie detector." It is "scientific" in the sense that it involves an instrument that records heart rate, blood

pressure, breathing rate, and skin conductance. However, it has *not* been scientifically established to detect lies or deception. The polygraph detects only the neurophysiological responses that often accompany emotional reactions to guilt, shame, and anxiety. *Skin conductance* refers to how well the skin conducts a small, imperceptible electrical current that is affected by slight changes in perspiration. One of the assumed telltale indicators of lying is increased perspiration. Presumably, when one tries to deceive, there are telltale bodily or physiological reactions that can be measured with sophisticated equipment and detected by a trained examiner called a polygrapher. In addition to observing the physiological measures, the skillful polygrapher makes behavioral observations and notations to infer truth or deception in the subject being examined.

There is little doubt that the polygraph can accurately measure and record the physiological responses of the peripheral nervous system. Whether it can detect actual lying and deception is another matter. As William Iacono (2008), one of the foremost researchers in this area, notes, “[i]t is generally recognized that there is no physiological response that is uniquely associated with lying” (p. 1295).

The first crude lie-detection machine was invented by the psychologist William Marston, who also rather astonishingly created the character of Wonder Woman. During its early beginnings in the United States, Marston’s polygraph and others like it were used almost exclusively in criminal investigations. As noted by Iacono and Patrick (2014), polygraph testing was commonly used when the question at hand could not be resolved by the available evidence. However, as criminal suspects became more aware of their right not to incriminate themselves, and as civil libertarians challenged the instrument’s validity, the use of the polygraph became less common. The typical polygraph examiner in the United States today does not have graduate psychological or research training, nor are all polygraph examiners licensed or graduates of accredited schools. As posited by Iacono and Patrick (2014), “it is unlikely that a forensic psychologist has administered a polygraph” (p. 613). They go on to emphasize that “polygraphs are administered by polygraphers who work in a profession that is largely disconnected from psychology and informed little by psychological science” (p. 613).

Furthermore, Congress severely limited the extent to which private employers can use the polygraph with the passage of the Employee Polygraph Protection Act (EPPA), enacted in 1988. This law has, in effect, ended preemployment polygraph screening by *private* employers as well as the periodic testing of employees to verify their

good behavior (Iacono & Patrick, 1999). However, we still see examples of suspects volunteering to take a polygraph to clear their names or use of the polygraph in counterintelligence investigations. For the most part, however, the major uses of polygraph testing are in personnel selection or screening by government agencies and certain strategic industries, such as nuclear energy. The federal government exempted itself from coverage of the EPPA and has expanded the use of polygraph testing because of recent concerns about terrorism and national security (Iacono & Patrick, 2014). Furthermore, polygraph screening of police, law enforcement, and governmental security applicants has either remained at the same level or increased in recent years. Almost 30 years ago, Meesig and Horvath (1995) reported that approximately 99% of the large police agencies and 95% of the small police departments in the United States required the polygraph as an integral and indispensable part of their preemployment screening procedures. There is little reason to believe that this observation is any less true today (C. Hart, 2020).
One of the problems with the polygraph is the weight that juries are likely to attach to polygraph evidence (Iacono & Patrick, 2014), although some research has questioned this assumption (Myers, Latter, & Abdollahi-Arena, 2006). That is, if the polygraph evidence shows the defendant may be lying, there is a strong tendency for the jury to assume the defendant is guilty. “Unlike other types of evidence a jury may hear, polygraph evidence has the potential to usurp the jury’s constitutionally mandated task of deciding guilt” (Iacono & Patrick, 2014, p. 649). Consequently, criminal courts usually have excluded polygraph testimony on the grounds that it may unduly influence jury decision making.
However, in some cases, polygraph evidence can be admitted in a criminal hearing or trial in one of two ways. Basically, since a defendant cannot be forced to take a polygraph, the defense must introduce it. In one situation, polygraph evidence can be introduced with prior stipulation or approval of both the prosecution and the defense (Myers et al., 2006). Typically, under this condition, “the defendant may take a polygraph test with the agreement that the prosecutor will drop the charges if the test is passed, but may enter the test results into evidence without objection if the test is failed” (Myers et al., 2006, p. 509). About half the states allow this stipulation. The second way polygraph evidence may be introduced in a trial is when the defense asks to include the polygraph test results in the trial over the objection of the prosecution. Under these conditions, a pretrial hearing is typically held to determine if the judge will allow the results to be admitted into evidence. In these cases, the

defense believes that polygraph evidence that demonstrates the defendant is not lying improves its case for a not-guilty verdict. Interestingly, despite the ongoing refusal by the courts to allow polygraph results into evidence except under unusual circumstances, the study by Myers et al., referenced earlier, reveals that jury-eligible adults did not find polygraph evidence to be persuasive in influencing their verdicts.

Research on the Polygraph

Many researchers continue to be very wary of the polygraph and its overall accuracy. Historically, professional field polygraphers have claimed extraordinary accuracy rates, ranging from 92% to 100% (Bartol & Bartol, 2004). Most biopsychologists, forensic psychologists, and research psychologists find these statistics to be highly questionable. In addition to occasional arithmetic errors, none of the published reports gave any details of the methods and procedures used or of the criteria used to decide accuracy rates. Currently, the research conducted under laboratory or controlled conditions indicates that the correct classification of truthful and deceptive examinees ranges between 70% and 80% (Krapohl, 2002; Vrij & Fisher, 2016). However, the accuracy can be increased slightly through careful and intensive training of the examiner. Furthermore, in lab studies, computerized polygraph systems, in contrast to human evaluations, are slightly more accurate for detecting both truthful and deceptive respondents (Kircher & Raskin, 2002). Although many polygraphic research studies are available, they are subject to debate when conducted by polygraphers themselves rather than independent researchers (National Research Council, 2003).

The specific technique used has come under extensive research scrutiny. Several dominant approaches are used, the most widely adopted being the **Control Question Technique (CQT)**, also referred to as the Comparison Question Test. According to Iacono (2009, p. 229), “almost all practicing polygraph examiners assert that [the CQT] is nearly infallible.” Interestingly, polygraph researchers who are not affiliated with the polygraph profession are generally nonsupportive of the CQT (Iacono & Patrick, 2014). The CQT juxtaposes questions that are relevant to the crime with “control” questions—or questions whose truthful answers are known to the examiner. Physiological responses that differ from responses on control questions are then regarded suspiciously. Although the actual CQT is, of course, far more complex than we present here, its essential feature is the comparison of physiological responses, which only a trained examiner is able to interpret. However, critics of the CQT argue that its reliability and validity have not been sufficiently

established through independently conducted research that is separate from the research conducted by the polygraphers themselves.

Researchers are more favorably disposed toward the **Guilty Knowledge Test (GKT)**, one developed by the polygraph expert David Lykken (1959). Although this test is not widely used in the United States, it is used in other countries and is strongly endorsed by researchers (Ben-Shakhar, 2002; Iacono & Patrick, 2014). The GKT requires that the polygrapher have access to information about the crime that would be known only to the perpetrator and has not been reported to the public. For this reason, it is best at "clearing" innocent suspects because they are unlikely to exhibit damaging physiological responses to questions revealing details of the crime (Iacono, 2009). The test is impractical, however, because it is often difficult for examiners to obtain details that have not yet been widely circulated. Despite its strong research support, polygraphers do not generally get trained in the GKT and almost invariably use the CQT in conducting their examinations.

In recent years, there has been growing interest in the use of the polygraph in the supervision and treatment of sex offenders (Grubin, 2002, 2008; Iacono & Patrick, 2014). It is believed that the polygraph —compared with case records or offender self-reports—provides more complete and accurate information about an offender's history, sexual interests, and offense behavior, thereby enabling more effective and targeted treatment strategies (Grubin, 2008). Some mental health and criminal justice professionals also think the polygraph is helpful in monitoring behavior and achieving adherence to prevention goals. One survey estimated that in the United States, polygraph examinations were used with 70% of community sex offenders in 2002 (R. J. McGrath, Cumming, & Burchard, 2003). In England, legislation was passed in 2007 that mandated polygraph testing of sex offenders by the probation service on a trial basis (Ben-Shakhar, 2008; Grubin, 2008).

The use of polygraph testing for sex offenders has been criticized, however. As pointed out by Grubin (2008), the criticism has centered on three main issues: (1) concerns regarding how the examinations are conducted, (2) the lack of scientific validity of the procedure, and (3) ethical concerns. Ben-Shakhar (2008) asserts that there are many major flaws in the reliability as well as other scientific shortcomings in polygraph examinations of sex offenders. Some forensic clinicians, however, continue to argue that the polygraph is highly useful in the management and treatment of convicted sex offenders.

In summary, the polygraph is used in a variety of contexts today, but it should not be regarded as a determining factor to detect truth or deception. Although there are highly trained polygraphers, there are many who are not. Forensic psychologists do not often engage in this practice, and although some forms of the technique have received better reviews than others, independent research does not support its reliability or its validity at detecting deception. Polygraph evidence is generally not acceptable in criminal courtrooms unless the defendant requests that such evidence be admitted. Its use in hiring is also questionable, even though many law enforcement agencies require the polygraph before candidates are accepted for training.

SUMMARY AND CONCLUSIONS

The psychology of investigations is a fertile area for research and practice. It began officially in the United States with the work of the FBI's Behavioral Science Unit and in the United Kingdom with the investigative psychology propounded by psychologist David Canter. It focuses on identifying features of a crime and likely characteristics of its perpetrator. The generic term *profiling*, as used in this chapter, is subsumed under this topic, but many psychologists who consult with police during the crime-solving process prefer not to be called "profilers." We discussed five overlapping forms: crime scene profiling (often called criminal or offender profiling), geographical profiling, suspect-based profiling, psychological profiling, and the psychological autopsy. It is important to realize, though, that these terms are very often used interchangeably in the literature. In addition, profiling may be used in areas that do not involve criminal investigation, particularly in the case of psychological profiling and psychological autopsies.

Crime scene profiling, though not a dominant activity performed by most forensic psychologists, has gained considerable media attention. If done correctly, it can provide statistical probabilities of features of an individual, including an offender, but it is far from a foolproof procedure. Many if not most forensic psychologists who engage in this endeavor prefer to call themselves behavioral analysts, and there is continuing interest in promoting a more scientific approach to the procedures they employ. Nevertheless, some researchers have expressed considerable skepticism about this type of profiling.

Geographical profiling analyzes spatial characteristics to yield probabilities of a perpetrator residing or offending in a particular location. It is used primarily to solve serial crimes, in which a pattern of offending occurs over time. It is more likely to yield positive results

when combined with crime scene profiling, although we must caution that the scientific status of the latter remains in question.

Suspect-based profiling—which gathers together characteristics most likely to be possessed by someone committing a certain crime—is extremely controversial because the characteristics used have included race, ethnicity, and religious affiliation. When these characteristics are at the forefront of the profiling activity, they are illegal.

Psychological profiling focuses on describing the characteristics of a known individual or individuals, and it may or may not have anything to do with crime. A psychological profile may be extensive, based on a multitude of documents, reports, psychological measures, and interviews with the person or others who know the person, or it may be quite simple, based on just a few measures. Mental health professionals have offered psychological profiles of individuals ranging from American presidents to notorious serial killers. These profiles may be interesting to read, but they are rarely submitted to empirical scrutiny.

Psychological autopsies—more formally called reconstructive psychological evaluations—are performed after a person has died and the manner of death is uncertain or equivocal. The psychologist conducting the autopsy tries to reconstruct the victim's behavior and thought processes leading up to the death. This procedure is often used in cases of apparent but questionable suicide. As yet, there is no established, standard method for conducting a psychological autopsy, and its validity has yet to be demonstrated.

The psychology of investigations also includes research and practice in broader areas, such as eyewitness identification, lineups, interviewing and interrogation, the detection of deception, and polygraphy, Essentially, we have included in this chapter a variety of areas in which practicing and research psychologists have much to offer law enforcement agencies in their investigations of crimes.

One of the most consistent findings in experimental psychology is the fallibility of memory and its impact on eyewitness recollection of events. For over 100 years, researchers have documented that the testimony of eyewitnesses, especially witnesses to traumatic events, may be believable, but it is often not reliable. Multiple witnesses to one event often report different versions of the event, even when they firmly believe their own version is the accurate one. In the criminal justice area, errors in eyewitness recall have led to wrongful convictions and even to false confessions. Continuing research in this area is gradually brought to the attention of the courts, and police are

sometimes trained in more effective interviewing skills to minimize the problems in eyewitness identification.

In recent years, psychologists have made significant research contributions relating to the construction and administration of police lineups, both live lineups and photo arrays, but some of that research is equivocal. For example, while a long line of research initially supported the sequential lineup over the simultaneous lineup, recent research has challenged that, and the matter of which method is better remains unsettled. Double-blind lineups—where neither the witness nor the officer conducting the lineup is aware of the identity of the suspect—are highly recommended, though. Most recently, researchers have issued nine recommendations for improving the way lineups are conducted. Some research recommendations have been incorporated into government guidelines used by law enforcement officers nationwide, but many agencies do not have written policies for conducting lineups.

The methods used by police in interviewing and interrogating suspects also have received considerable attention in forensic psychology. Three main problems can be identified: Many people, including juveniles, do not understand their constitutional rights, many confess to crimes because they are coerced, and some people confess to crimes they have not actually committed. Legal psychologists have been critical of the dominant method of interrogation advocated in the United States, and many are recommending a shift to a less confrontational form of questioning in order to lessen the likelihood of coercion and false confession. Researchers also have looked carefully at the ability of anyone—including police officers—to detect deception in others. Traditional beliefs about nonverbal behavior have given way to beliefs that other methods are more fruitful. For example, rather than focusing on someone's fidgeting behavior, interviewers could increase the cognitive load by asking them to review their actions on a given day in backward sequence. Some legal psychologists also note that encouraging people to tell their story in an open-ended manner provides more information that can then be reviewed for accuracy.

The polygraph, as a method of detecting deception, is used in a wide variety of criminal and civil contexts, and the training and expertise of polygraphers varies widely across the profession. In law enforcement, the polygraph is used primarily in the selection of candidates for law enforcement positions. Forensic psychologists are not the examiners, however. The polygraph is used much less in criminal investigation because courts have generally found its results

inadmissible, although there are exceptions. Police may still administer polygraphs if suspects willingly take them.
The dominant method is apparently the CQT, though questions are raised about its validity. Many researchers favor the GKT, but it is an impractical tool because it requires that the polygrapher know details of the crime that are not generally known to the public. Like the other techniques discussed in this chapter, the polygraph has not garnered impressive research results with respect to reliability and validity. Nevertheless, some researchers do support its use in limited situations and when administered by highly trained polygraphers.

KEY CONCEPTS

Accusatorial approach 107
Case linkage analysis (CLA) 85
Coerced-internalized false confessions 113
Coerced-compliant false confessions 112
Cognitive interview (CI) 101
Cognitive lie detection 117
Cognitive load 116
Commitment bias 103
Composition bias 103
Confirmation bias 86
Control question technique (CQT) 120
Crime scene profiling 84
Cross-race effect (CRE) 99
Differential experience hypothesis 99
Double-blind lineup 104
Equivocal death analysis (EDA) 91
Estimator variables 96
Facial composites 97
False confessions 111
Geographical mapping 87
Geographical profiling 87
Guilty Knowledge Test (GKT) 120
Information-gathering approach 107
Investigative psychology 81
Malingering 118
Own-race bias (ORB) 99
PEACE model 108
Psychological autopsy 90
Psychological profiling 89
Racial profiling 88
Reconstructive psychological evaluation (RPE) 91
Reconstructive theory of memory 95

Reid method 106
Risk assessment 89
Sequential lineup [live or photo] 102
Show-up 104
Simultaneous lineup [live or photo] 102
Suspect-based profiling 88
System variables 96
Truth default theory 117
Threat assessment 89
Unconscious transference 99
Voluntary false confessions 111
Weapon focus (weapon effect) 100

QUESTIONS FOR REVIEW

1. What three questions are central to the process of investigative psychology?
2. Distinguish among the five types of profiling covered in the chapter.
3. Distinguish between geographical profiling and geographical mapping.
4. List five findings from the research on eyewitness identification.
5. List any six recommendations made by researchers to increase the reliability of identifications made in lineups.
6. What are the three types of false confessions?
7. What suggestions have psychologists offered for improving the police interviewing and interrogation process?
8. In light of research findings on deception, how can investigators best detect deception on the part of persons being interviewed?
9. List any five findings from the research on the polygraph.

PART THREE LEGAL PSYCHOLOGY

Chapter 4 • Consulting and Testifying
Chapter 5 • Consulting With Criminal Courts
Chapter 6 • Family Law and Other Forms of Civil Litigation

CHAPTER FOUR CONSULTING AND TESTIFYING

CHAPTER OBJECTIVES

- Describe the court system.
- Explain the judicial process.
- Describe the roles of forensic psychologists at various stages.
- Define and describe what is meant by *expert testimony*.
- Discuss the legal standards for the admission of scientific evidence in the courtroom.
- Examine confidentiality and ultimate issue testimony as they relate to expert witnesses.
- Summarize forensic risk assessment.

In a case in which a woman was accused of killing her partner, a man who she said was abusive throughout their relationship, a psychologist for the prosecution testified that the victim did not have the characteristics of a batterer.

In another case, a psychologist supported the civil commitment of a sex offender after he had served his sentence, testifying that in her opinion the offender was a continuing danger to society.

And at a sentencing hearing, a psychologist told the court that a young offender had potential for rehabilitation and recommended he be offered treatment while on probation in the community.

The psychologist is a common sight in the courtroom today, both on the witness stand and, less frequently, sitting at the defense, prosecution, or plaintiff tables as a jury or trial consultant. Even when psychologists are not actually in the courtroom, their presence may be felt in the reports they have prepared or sworn statements they have made that are entered into the court record. In a criminal case, the judge setting bail or handing down a sentence may have access to a psychological report assessing a person's risk of violence or the likelihood that he would benefit from substance abuse treatment in a community setting. Likewise, psychological reports may be available in civil cases, such as when judges make child custody decisions. Very early in the case, when attorneys are gathering information and preparing their trial strategy, they may call psychologists for research information on issues relevant to the case in question (e.g., eyewitness memory, effects on children of custodial arrangements, traumatic brain injury). Psychologists also may be called to testify during a deposition. **Deposition** refers to proceedings during which potential witnesses are questioned by attorneys for the opposing side, under oath and in the presence of a court recorder, although typically away from the courtroom. For example, lawyers for a plaintiff in an employment-discrimination suit may depose the psychologist who administered and evaluated promotional exams.

Although psychologists have long offered assistance to attorneys preparing cases, psychology's entry into the courtroom itself did not come easily. Until the 1960s, psychiatrists were the only mental health experts recognized in many courts. Those courts that *did* welcome psychologists tended to limit their tasks to very specific areas, such as reporting on the results of intelligence tests or personality inventories. Criminal courts were particularly reluctant to accept expert testimony from a nonmedical professional when a defendant's criminal responsibility or sanity was in question. Because mental disorder was considered a disease, the professional with a medical degree—the psychiatrist—was believed to be the appropriate expert. Although there were exceptions, for the most part, the courtroom was the province of the psychiatrist in such cases, not the psychologist.

In 1962, however, a federal appeals court in *Jenkins v. United States* ruled that the lack of a medical degree did not automatically disqualify psychologists from providing expert testimony on the issue of mental disorder. With proper credentials, they could do so. After the *Jenkins* case, psychologists began to testify not only on issues relating to mental disorder but also on a wide range of issues about which they were conducting research. To some extent, they had done that in the past, but the decision in the *Jenkins* case opened the door even wider. Thus, they began to testify on subjects as diverse as the influence of pretrial publicity on juries, memory, the reliability of eyewitness identification, stereotyping, and the influence of advertisements on consumers. As noted in Chapter 3, psychologists with expertise in research on memory and cognitive processing are highly sought by the legal system today.

This chapter offers many additional examples of forensic psychologists working directly in courtroom settings, testifying, or consulting with lawyers at tasks relevant to the judicial process. Although most of us are familiar with the appearance of a courtroom either from personal experience or from media portrayals, knowledge of how courts are set up and how a case proceeds through various stages is less common. Therefore, the chapter begins with a brief overview of the structure and process in both criminal and civil courts along with illustrations of how psychologists may interact with the legal system at each phase of this process. The focus is on courts in the United States, but readers should be aware that similarities exist between U.S. courts and those in other countries, particularly western democracies.

COURT STRUCTURE AND JURISDICTION

In the United States, federal and state courts exist side by side, independently of one another, sometimes in the same geographical location. In most sizable cities, one can find municipal or county courts in one building and the federal court building not too far away. This **Dual court system** exists to recognize the unity of the nation as a whole, on one hand, and the sovereignty of the 50 individual states on the other. Among their many functions, federal courts interpret and apply the U.S. Constitution and acts of Congress, settle disputes between states or citizens of different states, and deal with such specialized matters as bankruptcies, copyrights, and patents. Some federal courts deal with immigration issues; others deal with matters arising under the Foreign Intelligence Surveillance Act. Persons accused of violating federal criminal laws are also processed in federal courts. State courts interpret and apply state constitutions and laws passed by state legislatures. They also settle disputes between citizens or between the government and citizens within the state.

In general, courts, federal and state, are either established under the U.S. Constitution or the constitutions of the various states, or are created as needed by Congress or state legislatures. The constitution or the legislative enactment also specifies the court's jurisdiction, or authority. All courts have **Subject matter jurisdiction** and **Geographical jurisdiction** as outlined in the law. For example, a family court may have authority over divorce, custody, adoption, and delinquency matters (subject matter jurisdiction) in a given county within the state (geographical jurisdiction). Many courts have only **Limited jurisdiction**, or limited authority, meaning that they can only settle small disputes or deal with preliminary issues in a major case. By contrast, courts of **General jurisdiction** have broad authority over a vast array of both simple and complex cases, both civil and criminal. **Appellate jurisdiction** refers to a court's authority to hear appeals regarding decisions of lower courts.

The federal and state systems intersect when a case moves—or attempts to move—from the state court to the federal courts. Although there are a variety of ways in which this can happen, perhaps the most common is when an individual has lost their case after having exhausted all appeals in state courts. If a substantial federal question has been raised, the case may be heard in the federal courts. For example, when a state law is said to violate the U.S. Constitution or to otherwise impinge on federal law, the federal courts may ultimately decide whether it truly does. Thus, in Obergefell v. Hodges (2015), the U.S. Supreme Court declared that state bans against same-sex marriage violated the Fourteenth

Amendment due process and equal protection clauses. Most recently, the Court ruled that the Civil Rights Act of 1964 protected individuals of all sexual orientations and gender identities from employment discrimination (Bostock v. Clayton County, 2020).
In the following sections, we cover some differences between federal and state courts. We also briefly mention important issues that have come to attention in recent years, some of which will be revisited in later chapters.

Federal Courts

The structure of the federal court system is actually quite simple, especially at the appellate level, with one Supreme Court—the court of last resort—and 13 Circuit Courts of Appeal. (See **Figure 4.1**) At the trial court levels are courts of general jurisdiction (U.S. district courts) and limited jurisdiction (e.g., bankruptcy courts).

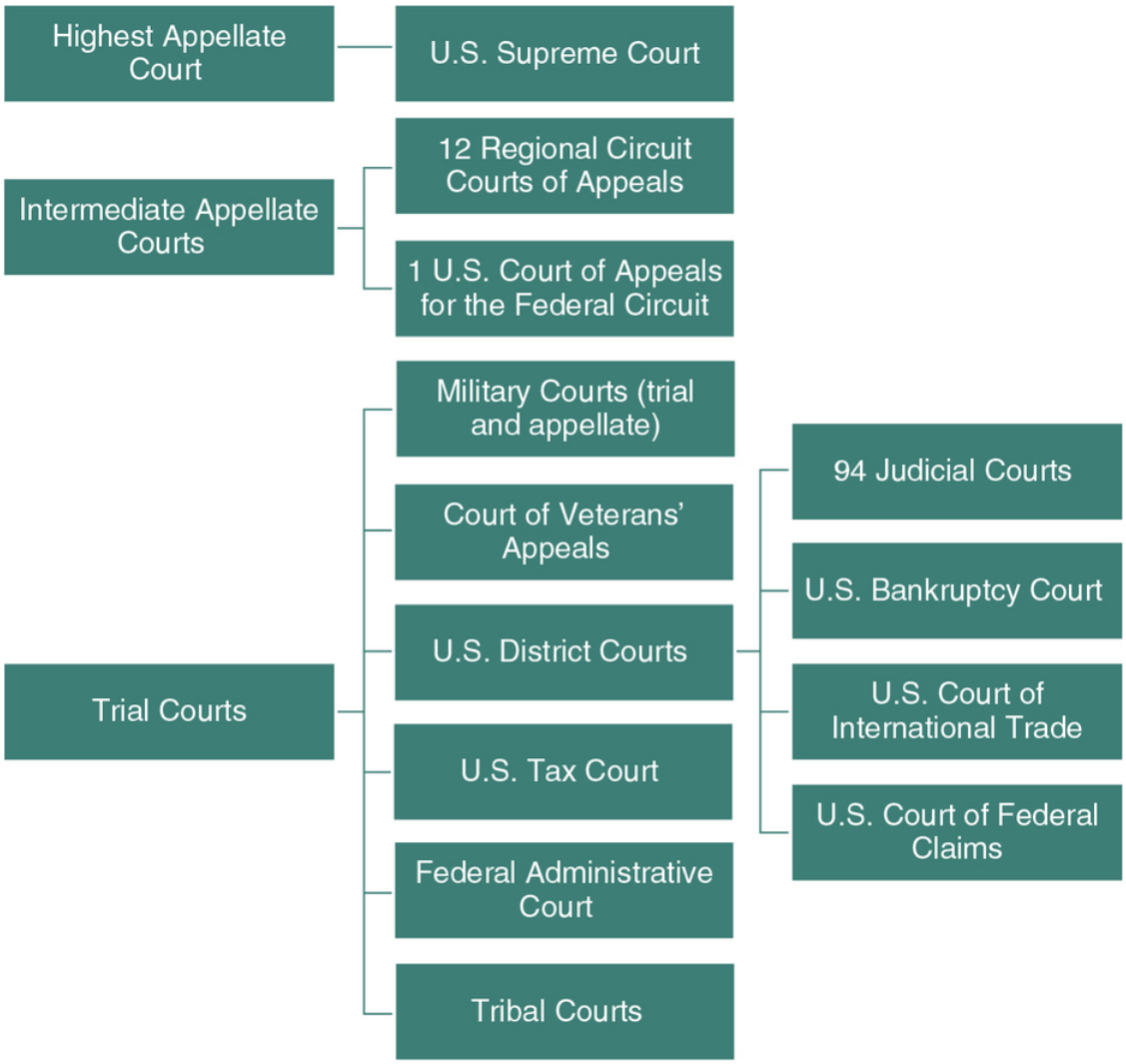


*Figure does not include courts that are outside the judicial branch (e.g., immigration courts).

Description

Figure 4.1 Structure of the Federal Court System*

*Figure does not include courts that are outside the judicial branch (e.g., immigration courts).

Some judges—those appointed under Article III of the Constitution—have lifetime appointments, contingent on good behavior, making theirs a highly desirable position. Judges in legislative courts—those appointed under Article I of the Constitution—have time-limited rather than lifetime appointments. Tax courts, the court of appeals for Veterans' claims, and the court of appeals for the Armed Forces are examples of Article I courts.

In addition to the earlier-mentioned courts, some federal courts are considered part of the executive branch of government and are typically under the Justice Department. One such example is the approximately 64 immigration courts which in late 2019 were staffed

with about 400 judges. Among other immigration-related matters, these courts have the important role of deciding whether persons charged with violating immigration laws or persons seeking asylum should be deported or allowed to remain in the United States (see **photo 4.1**).



► Photo 4.1 Migrant woman and child deported from the U.S. arriving in Guatemala City on 12/27/19.
ORLANDO ESTRADA/Contributor/Getty Images

In recent years, immigration courts have been overwhelmed with cases, giving long waiting periods to many immigrants seeking entry into the United States. Also in recent years, controversial government efforts to quickly deport undocumented immigrants including by speeding them through court processing, has led to the emergence of sanctuary cities across the country, as noted in Chapter 3.

In an important immigration-related case, (Department of Homeland Security v. Regents of the University of California, 2020), the Supreme Court in a 5–4 vote rejected government efforts to phase out legal protections for over 600,000 "dreamers," young people who were brought to the United States illegally by their parents. Now primarily young adults who grew up and were educated in the United States, dreamers live and work throughout the country in virtually every occupation, including as teachers, health care workers, and technicians. Many have children born in the United States. Dreamers were given protection from deportation in 2012 by the Obama administration's Deferred Action for Childhood Arrivals (DACA) program. Under this program, they are required to report their location and renew their worker status every 2 years. The Trump administration challenged the DACA program and vowed to end it. The majority of the Supreme Court did not say the program itself could not end; however, the government did not follow correct legal procedures for gradually ending it. Therefore, although the decision was an important victory for dreamers, there is still possibility that the DACA program will be revisited by the Court in the future.

History, including very recently, has numerous examples of vacancies on the federal bench sometimes because of political delays in Senate confirmation of Article III judges nominated by the sitting president. Vacancies in all federal courts have often become major political issues, particularly in situations where the U.S. Senate fails to confirm a presidential nomination. On the other hand, the Senate has also hurriedly filled judicial slots, as it did in confirming Justice Amy Coney Barrett to the U.S. Supreme Court in October 2020, following the death of Justice Ruth Bader Ginsburg in September.

It should be noted that the Supreme Court has virtually unlimited discretion as to whether it will accept a case for review. The U.S. Supreme Court decides to hear about 80 cases of the 7,000 requests that are submitted to the Court each year. Generally, the Justices decide another 50 cases without hearing arguments—that is, on reviewing documents alone. The cases they select to hear usually

address constitutional issues or federal law, particularly when federal courts of appeal have come to different conclusions.

Four of the nine Supreme Court Justices must agree to hear a case, known as granting certiorari. If they decide not to hear a case (denial of certiorari), no reason is usually given. Occasionally, one or more Justices will dissent from the decision not to hear a case, stating for the record that it should have been heard. At the end of the Court's 2019–2020 term, the Court denied certiorari in approximately 10 cases involving gun laws, primarily relating to gun control. The Court also declared a gun case moot, meaning the matter had been settled without need for judicial involvement. Throughout the text we refer to many Supreme Court cases, particularly those that are relevant to psychological concepts, research, and practice.

State Courts

Compared with federal courts, state court structures can be quite complicated. No two state court systems are identical, leading to the often-made comment that we have 51 very different court systems in the United States: the federal system and the systems of each of the 50 states. Nonetheless, common features exist. Like the federal system, all states have trial and appellate courts, with the trial courts being divided into those of general and limited jurisdiction. Courts at the lowest level of jurisdiction are overseen by a justice of the peace or a magistrate who presides over minor civil and criminal matters. This level also may include municipal courts—sometimes called traffic courts, night courts, or city courts. These lower courts typically cannot conduct major civil trials or felony trials.

At the next level are county courts, which have been called the "workhorse of the average judiciary" (Abraham, 1998, p. 155). County courts are courts of general jurisdiction, handling a wide range of both civil and criminal cases. Every state also has a court of last resort, which is the highest appellate court in that state, and some states have two, one for criminal appeals and one for civil appeals. Not all have *intermediate* appeals courts, though. In addition, states often have a variety of **Specialized courts**, which deal only with particular matters. Examples include family, drug, mental health, veterans', and domestic violence courts. Most recently, some large urban areas are establishing human trafficking courts (often associated with juvenile courts). They are intended to provide counseling and support services to persons, regardless of gender, who have been arrested for prostitution associated with the sex trafficking industry (P. L. Brown, 2014). Specialized courts are often of particular interest to psychologists because of the subject

matter with which they deal. A primary example is the mental health court (see **Focus 4.1**).

State courts also present an often-confusing array of physical structures, terminology, and individuals with an equally confusing array of titles and roles. Some court proceedings are conducted at a table in the basement of a town hall at 10 p.m., whereas others are conducted in dignified, velvet-curtained surroundings. Increasingly today, court proceedings— particularly at the early stages of a case —are conducted electronically. A person being detained in jail, for example, may "appear" before a judge for a bail-reduction hearing. However, the individual who was charged with a crime is in the jail, and the judge is in a courtroom 5 miles away. Via various electronic media, the judge may reduce the bail and communicate the conditions under which the person is being released. In 2020, in the midst of the COVID-19 health crisis, many court buildings—both state and federal—were closed, trials were rescheduled, and sentencing hearings were postponed. In addition, numerous proceedings were conducted at a distance. Although telehearings of this nature have been praised for bringing more efficiency to court proceedings, groups advocating for crime victims also point out that they often deprive victims of their right to speak out, such as to oppose bail.

Military Courts

Rarely coming to attention are military courts, one of a number of specialized courts in the federal system. They deal not only with matters relating to crimes such as theft or sexual assault, but also with offenses that are unique to the military, such as unauthorized absence, desertion, failure to obey orders, or conduct unbecoming (Coyne, 2019). These courts have played prominent roles in the entertainment media, including award-winning films (e.g., *A Few Good Men*). Furthermore, there have been highly publicized actual cases in recent years, including that of Bowe Bergdahl, who deserted his post in Afghanistan in 2009, was captured by insurgents, and held hostage until 2014. He pleaded guilty to desertion in 2017. The military judge did not sentence him to prison but fined him $10,000 and issued a dishonorable discharge. Another high-profile case was that of Edward Gallagher, a Navy SEAL acquitted in 2019 of murdering an Islamic State prisoner but convicted of posing with the man's corpse.

There are numerous differences between rules and procedures in military and civilian courts (Coyne, 2019; Fulton, 2019), Some of these differences are highlighted in **Table 4.1**. Though we do not cover military courts in detail in this text, it is important for readers to

be aware that there is a great need for the services of forensic psychologists in that environment (C. Stein & Younggren, 2019).

Table 4.1

Source: Author prepared table, using information from Military Justice Act of 2016 and, generally, Stein and Younggren (2019).

Civil and Criminal Courts

The distinction between criminal and civil courts essentially refers to the type of case being heard. In large courthouses, specific rooms are set aside for criminal proceedings and others for civil cases. In small communities, the same courtroom may be used for a criminal trial one week and civil proceedings the next. Furthermore, the same judge may be presiding over all. Administrative courts deal primarily with rules and regulations made and enforced by government agencies. Because forensic psychologists are most likely to have contacts with generic civil and criminal courts, we focus on these in this text.

Civil and criminal cases can be distinguished according to who brings the action and, to a lesser extent, the disputative versus punitive nature of the proceedings. In a civil case, two or more parties (litigants) approach the legal system, often seeking resolution of a dispute. In the most common of civil actions, the plaintiff seeks relief or a remedy from the defendant (who may also be called the respondent), maintaining that they have been personally harmed. This relief or remedy could come in the form of a court injunction (an order to stop some practice), a protective order (such as an order to remain beyond a certain distance from an individual), or damages (a money award) for losses suffered. Although civil cases are normally between private individuals or organizations, governments also may be involved. For example, a state may file a civil action against an employer for allegedly discriminatory hiring practices, in violation of the state's antidiscrimination laws. A criminal case, on the other hand, involves an alleged violation of rules deemed so important that the breaking of them incurs society's formal punishment, which must be imposed by the criminal courts. In a criminal case, the government, represented by the prosecutor, brings the action against the individual, called the defendant.

Focus 4.1

Mental Health Courts

Mental health courts are a possible solution to the vexing problem of crime—typically minor crimes—committed by individuals with mental disorders. While serious crimes allegedly committed by persons with mental illness gain media attention, these are not the usual offenses.

Their crimes are more typically trespassing, burglary, public intoxication, petty larceny (e.g., shoplifting), or simple assault (e.g., shoving or hitting).

Although mental health courts may deal with both felony and misdemeanor charges, they do not all operate the same way. For example, there may be differences among them in how they are administered and in monitoring, confidentiality, and linkage with adequate treatment and support services. Most involve an immediate screening by a mental health clinician or team, which then makes a treatment recommendation to the presiding judge. Defendants or their guardians may have to consent to go to this specialized court, but avoiding placement in a traditional jail setting is a strong incentive for doing so. Some mental health courts accept defendants only after they have pleaded guilty to a criminal offense. In that case, the judge orders mental health treatment as a condition of probation and supervises the progress of this treatment. Ideally, psychologists or other mental health professionals associated with the court work cooperatively with the judge to follow the individual through the course of treatment but the extent to which this occurs varies across different courts (Canada, Barrenger, & Ray, 2019).

There are over 400 mental health courts operating in the United States (Goodale, Callahan, & Steadman, 2013). When these courts first came on the scene, observers expressed a range of concerns (Goldkamp & Irons-Guynn, 2000; Hasselbrack, 2001; Steadman, Davidson, & Brown, 2001). It was feared that judges had too much power over decisions that should be made by clinicians, that there was not sufficient time for mental health professionals to conduct comprehensive assessments, and that resources were not available to provide recommended treatment. In recent years, however, mental health courts have been evaluated and received good reviews, presumably appeasing some of the earlier fears (Heilbrun et al., 2012; Luskin, 2013; Morgan, Mitchell, et al., 2016).

Nonetheless, because there are so many differences among them, researchers have just begun to identify features that are most likely to lead to successful outcomes. Canada, Barrenger, and Ray (2019) reviewing research on mental health courts in 14 states, suggest that participants with felony charges or combined felony and misdemeanor charges were at no greater risk of recidivism than those with misdemeanor only charges. Other researchers have examined factors relating to termination or failure to complete (Han & Redlich, 2018; Hiday, Ray, & Wales, 2014). Han and Redlich (2018) found less racial disparity in mental health courts than in traditional courts. Other outcomes, such as time spent in jail and adequate

linkage with community support services, all need further exploration. Noting the wide differences among mental health courts, Canada et al. (2019) called for national or international standards or clear guidelines for these important courts.

Mental health courts and other problem-solving courts continue to face numerous challenges, including adequate funding. Like the mental health courts, drug courts have been subjected to many evaluation studies and meta-analyses and have received positive reviews (Hiller et al., 2010), but mixed reviews are not uncommon (Morgan, Mitchell, et al., 2016; Shannon, Jones, Perkins, Newell, & Neal, 2016). It is obvious that continuing research is needed to judge their effectiveness as well as that of newer special courts, such as human trafficking and veterans' courts.

QUESTIONS FOR DISCUSSION

1. What are the advantages and disadvantages of having courts that specialize in certain groups of individuals, like persons with mental disorders, substance abusers, or veterans charged with crimes?
2. Are some groups of individuals more deserving or more needful of special courts than others? Offer arguments and cite research in support of your answer.

Sometimes, the lines between civil and criminal cases are blurred. In most states, for example, if a juvenile is accused of committing a crime, the juvenile will most likely be brought to a juvenile or family court, which is considered a civil rather than a criminal setting. Juvenile courts are more informal and are typically closed to the public. However, they include aspects of criminal proceedings. For example, the juvenile has a right to a lawyer and the opportunity to confront and cross-examine the accuser and other witnesses. Disputes between private persons or organizations, such as breaches of contract, libel suits, or divorce actions, are clearly civil cases. Certain actions, however, can incur both civil and criminal penalties. This often happens in cases involving corporate malfeasance: for example, the offshore oil spill in the Gulf of Mexico, which cost the lives of 11 oil workers and is now recognized as the worst environmental disaster in U.S. history; and civil and criminal charges filed against major banks and credit card companies. Furthermore, persons charged with crimes—and sometimes those not charged—might be sued in civil courts by victims or their families, even if their criminal case ends in acquittal. Noteworthy are suits filed by victims of sexual crimes, whether or not the perpetrators were charged and convicted. In recent years, for example, victims of sexual offenses by high-profile celebrities and clergy have sued. In

the past decade, civil cases in which victims of sexual assaults have sued their abusers have been heavily publicized. Although victims traditionally have been able to sue their abusers only within a given period (e.g., 1 or 2 years after the abuse), some jurisdictions now have opened the way for victims of even long-ago abuses to bring their claims to the courts. We discuss this issue in more detail in Chapter 9.

Despite media coverage suggesting the opposite, most cases reaching the courts are civil rather than criminal, and civil cases are often more complex. The backlog of civil disputes is very high, and the process of achieving settlement can be tedious. In addition, civil courts deal with extremely emotionally wrenching issues, including the assaults mentioned above, personal disputes that occur among family members, and other intensely personal matters such as those requiring end-of-life and other medical decisions.

THE JUDICIAL PROCESS

The judicial process consists of a series of steps or stages through which litigants proceed. In high-profile or complex cases, the process can be very lengthy, sometimes taking years to complete, especially in civil cases. In the 1990s, tobacco and asbestos litigation cases threatened to immobilize the courts. Even relatively simple cases can get bogged down in the courts, however. These delays can be problematic in both criminal and civil cases, for all parties involved and for many different reasons. For example, in criminal cases, evidence deteriorates, and both crime victims and defendants are held in abeyance. The defendant also may be confined in jail, unable to post bail. In civil cases, both plaintiffs and defendants have their lives on hold until the court proceedings have been terminated. On the other hand, delays also can be functional, such as when they encourage a settlement, allow more extensive investigation, or uncover new witnesses who may come forward and help absolve an innocent defendant.

It is helpful for our purposes to divide the judicial or court process in both criminal and civil cases into four broad stages: (1) pretrial, (2) trial, (3) disposition, and (4) appeals. Various court appearances and hearings can occur at each of these stages, and there are many illustrations of what psychologists can contribute. In the following discussion, we emphasize those proceedings at each stage that are most likely to involve the assistance of the forensic psychologist. Unless otherwise specified, the discussion relates to both civil and criminal cases. As noted earlier, however, some specialized courts, including military courts, operate very differently. In addition, although we describe a process that is typical in civilian courts across the

United States, the proceedings and what they are called may vary across jurisdictions.

The Pretrial Stage

The courts can become involved in a *criminal* case very early when police contact a judge or a magistrate to obtain a *warrant* to search or to arrest a suspect. In recent years, a particular type of warrant—the "no-knock" warrant—has become very controversial. This warrant allows police to enter a person's home without knocking or otherwise announcing their presence. Commonly used in drug cases, the "no-knock" warrant gained notoriety in 2020 when police executing such a warrant entered a home and shot to death a Black woman who was not the subject of the warrant. The incident—one of numerous incidents that raised concerns about police practices—was followed by widespread national calls to banish the use of "no-knock" warrants.

Most arrests and many searches do not require warrants, however. For example, an officer does not need a warrant to arrest someone who is observed committing a crime, and courts have allowed a variety of "warrantless" searches of persons, homes, and possessions (e.g., during a lawful arrest, in exigent circumstances, or to prevent the destruction of evidence). Police cannot search a person's cell phone without a warrant; however (Riley v. California, 2014), nor may they place a GPS tracking device on a vehicle without first obtaining a warrant (United States v. Jones, 2012) or obtain cell phone records from a third party, such as a service provider, without a warrant (Carpenter v. United States, 2018). In general, though, a court's first contact with a criminal case is either at the initial appearance or the arraignment. However, in the federal system and some states, the prosecutor must obtain an indictment from a grand jury very early in the process. The **Grand jury** is a body of citizens that reviews the evidence provided by the prosecutor and decides whether there is sufficient evidence to indict (formally accuse) the individual. Although grand juries rarely come to public attention, this changes when a grand jury decides not to indict an individual in a controversial case, such as a police shooting.

People who are arrested must be given an **Initial appearance**—typically within 24 hours—if they are held in jail rather than released or cited to appear in court at a later date. (see **photo 4.2**) At this initial appearance, a judge or magistrate must ensure that there are legal grounds to hold the individual, such as probable cause to believe the person committed the crime charged. Because jail detention can be an extremely stressful occurrence, detainees may be screened for evidence of mental disorder or psychological crisis.

Although jail officers or social caseworkers can perform this initial screening, a consulting psychologist or psychiatrist may be called in if a detainee appears to be in major psychological crisis. Some large jails have psychologists, psychiatrists, or other mental health professionals on staff, but the typical jail setting employs them on a contract or as-needed basis. As indicated earlier, communities across the United States are experimenting with mental health and other problem-solving courts to divert some defendants away from traditional criminal courts.



► Photo 4.2 A judge addresses a defendant escorted to court by a deputy sheriff.
iStock/Alina555

The next pretrial step relevant to psychological practice is the **Arraignment**, an open proceeding at which formal charges are read. The arraignment can occur very soon after the arrest or even months later. At the arraignment, the presiding judge asks defendants if they understand the charges, informs them of their right to counsel, and asks them to enter pleas, although pleas are not required at that point.

If defendants plead not guilty, the presiding judge must decide whether to release them before further proceedings, typically by setting a bail amount to ensure that they will return to court when

required. It should be obvious to readers that bail setting places many defendants at a major disadvantage: the person with limited economic resources cannot afford bail. Numerous jurisdictions have attempted bail reform in recent years, trying to give judges more leeway to reduce bail amount or specifying that no bail will be required for minor offenses. In some situations, judges can consider the dangerousness of the defendant and can deny bail altogether (called preventive detention) if the person is a risk of flight or is considered highly dangerous. Forensic psychologists may be asked to do a risk assessment, a topic we return to later in the chapter.

In criminal courts, it is not unusual for persons charged with minor offenses and even many felonies to plead guilty at arraignment or shortly thereafter and receive an immediate fine or sentence, though sentencing also may be delayed. In fact, in serious or high-profile cases, sentencing typically *is* delayed. Some defendants also plead *nolo contendere,* indicating that they will not contest the charges but are not admitting their guilt. For purposes of the criminal law, a nolo contendere plea has the same effect as a guilty plea; that is, a conviction is entered on the record.

Since the 1990s, forensic psychologists and psychiatrists have given considerable attention to the issue of a person's competency to plead guilty (Grisso, 2003; Melton, Petrila, Poythress, & Slobogin, 2007). This is an important matter because approximately 90% to 95% of criminal defendants plead guilty at arraignment or change their not-guilty plea to guilty before a trial date (Neubauer, 2002; Redlich, Bibas, Edkins, & Madon, 2017). Another possible plea—one highly relevant to forensic psychology—is not guilty by reason of insanity (NGRI), which is actually a not-guilty plea accompanied by notice that insanity will be used as a *defense.* When an NGRI plea is being considered, the forensic psychologist or psychiatrist is typically asked to examine the defendant and determine whether an insanity defense could be supported. This evaluation—called a criminal responsibility (CR) or mental state at the time of the offense (MSO) evaluation—is usually requested or arranged by the defense lawyer. A separate inquiry, to determine whether the defendant is competent to stand trial, may be conducted at the request of the defense lawyer, the prosecutor, or the presiding judge. Criminal responsibility and competency examinations are covered in detail in Chapter 5.

The not-guilty plea sets the trial process in motion. The next step is one or more pretrial hearings, most of which take little time. As mentioned earlier, today these proceedings increasingly occur at a distance, virtually. Some pretrial hearings can be quite involved, however, with witnesses, arresting officers, and other parties

presenting evidence. Numerous decisions may be made during these hearings. They include whether evidence (e.g., an eyewitness identification or a confession) is admissible, whether a trial should be moved because of extensive pretrial publicity, whether a youth should be transferred to juvenile court (or to criminal court), whether a defendant is competent to stand trial, and as noted earlier whether bail should be denied because of the alleged dangerousness of a defendant.

Forensic psychologists are involved extensively during the pretrial stage in both juvenile and adult criminal cases. In cases where a judge must decide whether a juvenile's case should be heard in criminal court or in juvenile court, psychologists frequently assess the juvenile and file a report (or testify) as to the juvenile's level of development and ability to be rehabilitated. As noted earlier, when the mental health of a defendant is in question, the psychologist is again called on to perform an assessment. If a defendant is subsequently determined not competent to stand trial, psychologists may be involved in treating the defendant to restore competency—although the psychologist treating the defendant should not be the forensic psychologist who evaluates the defendant's competency.

The pretrial process in *civil* cases has parallels to the above but many differences as well. The plaintiff's lawyer files a complaint outlining the alleged wrong and the desired remedy. The defendant (or respondent) is served with the complaint and is given a time limit in which to respond. As in criminal cases, there may be extensive negotiation between parties. In addition, there are also depositions and pretrial conferences with the judge in an attempt to facilitate a settlement. There are numerous opportunities for forensic psychologists to be involved in civil cases, such as by consulting with one or the other attorney in the preparation of a case (Piechowski, 2019). A neuropsychologist, for example, may be asked to conduct a variety of tests on a plaintiff who is suing their employer alleging that hazardous work conditions resulted in a near-fatal accident and substantial injury to the brain. We will encounter many other examples in the pages ahead.

The **Discovery process** is an important component of the pretrial process in both criminal and civil cases. This requires each side to make information at its disposal available to the other side in the preparation of its case. The exact type of information to be made known to the other side as well as the period in which this is made known are regulated by statute, and states vary. However, there is a constitutional requirement, established in the U.S. Supreme Court case Brady v. Maryland (1963), that prosecutors inform defense

lawyers about information that might *exculpate* (or help clear) the defendant. Unfortunately, there is anecdotal evidence and case law from many jurisdictions that the *Brady* decision has been interpreted in different ways and that the obligation is often not honored. For example, prosecutors may say the source of the exculpatory evidence is not reliable and therefore the evidence does not have to be turned over. Some prosecutors have also waited until the last possible moment before turning over the information, placing the defense lawyer at a disadvantage. Some but not all states have limited this practice. Defense lawyers are not bound to inform prosecutors of evidence that might *inculpate* (or work to the detriment of) their clients. However, if the defendant plans to raise a defense based on mental state (e.g., insanity or duress), the defense lawyer is expected to share the contents of a *court-ordered* psychological evaluation with the prosecutor.

As part of the discovery process, depositions may be required. The deposition, attended by lawyers for both parties, is part of the court record, and information therein may well reappear at the trial. Potential witnesses are questioned in the presence of a court reporter, but there is no judge. Depositions can be grueling processes for forensic psychologists. They are often lengthy and attorneys have great leeway in the questions they ask. Attorneys can object to a question posed, but with no judge there is therefore no ruling on that objection.

There is very little available research on actual depositions, but professional literature does offer some advice. For example, forensic psychologists who are deposed are advised to review the transcript of a deposition very carefully, in the event that clerical errors might have been made (Otto, Kay, & Hess, 2014). In general, however, this is a topic that is “ripe for investigation” (Marion, Kaplan, & Cutler, 2019, p. 327).

The Trial Stage

In both criminal and civil cases, trials follow a similar pattern of stages. If it is to be a trial by jury (as opposed to a trial before only a judge, called a **Bench trial/court trial**), the first step is to select jurors from a jury pool that is representative of the community. The process of selecting jurors from a pool for a particular trial is relevant to those forensic psychologists who serve as trial consultants to lawyers. In all jury trials, potential jurors are questioned by lawyers and sometimes by the presiding judge. This process, formally called the **Voir dire**, is done to uncover bias and to attempt to produce an objective jury. Most states do not allow extensive questioning of potential jurors regarding their backgrounds and attitudes, however

(Lieberman, 2011). Therefore, although the voir dire allows lawyers to select individuals whom they believe will be sympathetic to their case, there are limits to what it can uncover. When jury consultants are involved, they have often gathered information about potential jurors from public records or even from interviews with their acquaintances. The lawyer can then use this information in forming questions to ask of a potential juror, but the judge will not necessarily allow them. The consultant also may sit at the defense or prosecution table and make inferences based on a potential juror's nonverbal behavior or reaction to questions. These inferences are then communicated to the lawyer who has hired the consultant, and the lawyer must decide whether to "strike" the individual from the jury.

Lawyers have two avenues by which to strike or remove a potential juror. One, the **Peremptory challenge**, allows the lawyer to reject a potential juror without stating a reason. Based on a "gut feeling" or on the recommendations of a consultant, a lawyer may decide that a given individual would not be receptive to the lawyer's side. The U.S. Supreme Court has placed some limitation on these challenges, ruling that they may not be exercised on the basis of race or gender (Batson v. Kentucky, 1986; *J. E. B. v. Alabama,* 1994). For example, a lawyer cannot remove all women from a jury because the lawyer believes women would not be sympathetic to his client. If the presiding judge suspects that this is being done, the judge must inquire into the lawyer's reasons to ensure that the peremptory challenge is not being used in a discriminatory fashion. In two recent U.S. Supreme Court cases on this issue, Foster v. Chatman (2016) and *Flowers v. Mississippi* (2019), the Court affirmed the importance of avoiding racial discrimination in the jury selection process. The facts of each of these cases merit some attention.

Foster, an 18-year-old Black man, was convicted in Georgia of murder of an elderly white woman in 1986 and sentenced to death. Prior to selecting jurors, prosecutors had clearly highlighted the race of Black individuals on their list of potential jurors. They then used their peremptory challenges to remove four Black persons from the jury during voir dire. Records also indicated how they had prepared to justify these removals by citing other reasons, which the Court found were nonpersuasive. By a 7–1 vote, the Court sent the case back to Georgia for a new trial. Prosecutors announced they would seek the death penalty once again. A new trial was tentatively set for the end of January 2021.

Flowers was a death row prisoner whose lawyers filed multiple appeals on his behalf relating to the composition of his jury. Flowers was convicted of killing four people in a furniture store in 1996. He

was tried six times, but each conviction was overturned because the prosecutor had systematically used his peremptory challenges to remove Black jurors. The U.S. Supreme Court had sent an earlier appeal back to the lower court, which found no fault in the jury selection process. Defense lawyers persisted in appealing the case. When the case again reached the U.S. Supreme Court in 2019, Flowers's conviction was overturned by a 7–2 vote, with Justices Thomas and Gorsuch dissenting. It is worth noting that the same prosecutor tried the case for each trial, and altogether 41 of 42 potential jurors who were removed through the exercise of a peremptory challenge were Black. In 2020, Curtis Flowers was released on bond after spending 20 years in prison, and the state attorney general reviewed the case to decide how to proceed considering its complex background. Specifically, not only was there misuse of peremptory challenges. There were also conflicting witness statements, and one witness recanted his statement that Flowers had confessed to the crimes while in jail. In September 2020, prosecutors announced they were dropping the case in the interest of justice.

The second avenue for striking a potential juror is the **Challenge for cause**. Here, a specific reason for removing the individual is offered. For example, the potential juror may have had a past relationship with one of the parties or may even be an outspoken advocate on a matter that is crucial to the case at hand. A potential juror who has already formed a strong opinion of the case is also apt to be removed "for cause."

During the opening arguments, the presentation of evidence, the cross-examination of witnesses, and the closing arguments, forensic psychologists who serve as trial consultants may continue to sit near the defense or prosecution table, conducting tasks similar to those performed during jury selection. Alternately, they may be working behind the scenes helping an attorney in ongoing case preparation, including the preparation of witnesses. The most visible role for psychologists during the trial as well as the pretrial is that of expert witness. These topics are covered in some detail in the pages ahead.

The Disposition Stage

In a criminal case, when a judge or jury renders a verdict of not guilty, the case is over and the defendant is free to go, unless the defendant has been found not guilty by reason of insanity. If the defendant is convicted, however, a decision must be made whether to incarcerate the individual and, if so, for how long. In death penalty cases, a separate proceeding occurs during which the jury must

decide whether to impose the ultimate penalty or an alternative life sentence.

At this disposition stage—commonly called sentencing—judges may order convicted offenders to undergo treatment, such as substance abuse treatment or psychological treatment. The role of forensic psychologists at sentencing can be a critical one. They may be asked to evaluate a defendant's potential for responding favorably to such treatment. The psychologists also may be asked to assess the risk for violent behavior, a topic to be discussed shortly.

In civil cases, when a verdict favors the plaintiff, a judgment is handed down, specifying the remedy to be borne by the defendant or respondent. In deciding on a remedy, judges and juries often consider testimony relating to the psychological harm a plaintiff may have suffered. This is not unusual in cases involving work injuries, sexual harassment, or harm suffered from defective products, to give just a few examples. It should be noted that the juvenile process—which is civil—also might involve a "sentence," which is called a **Disposition** in juvenile courts. Here, psychologists may be asked to offer opinions on the type of rehabilitative strategies that could be used for a particular juvenile. A recent highly publicized case involved the robbery and killing of an 18-year-old college woman. Three adolescent males, intent on committing robbery, accosted the woman. Two of the three allegedly held her down or stabbed her, but the third—the youngest of the three at age 14—did not. He was processed in juvenile court, where a judge sentenced him to a secure juvenile facility where he would receive psychological and possibly substance abuse treatment. The older boys were to be tried in adult court.

In many felony cases, sentencing judges will have obtained a **Presentence investigation (PSI)** report. This is a document that has been prepared by an agent of the criminal justice system (typically a probation officer) or by a private firm. The PSI is a social history that includes information about the offender's family background, employment history, level of education, substance abuse, criminal history, medical needs, and mental health history, among other factors. PSI reports often include a *victim impact statement,* which is a summary of what the victim suffered—both physically and emotionally—as a result of the crime. Victims themselves as well as people close to them also have the right to speak out at sentencing. Psychologists who have examined the offender or the victim may submit a report that is appended to the PSI report. Alternatively, information obtained by psychologists may be included within the document itself.

The Appellate Stage

Neither civil nor criminal cases necessarily end with the trial and disposition stages. Defendants who are losing parties have a variety of options for appealing their convictions, their sentences, or the judgments against them. A person convicted of a crime may appeal the conviction on a number of grounds, including police errors, mistakes made by judges or attorneys during the pretrial or trial stages, faulty instructions given to the jury, or inadequate assistance of counsel. Likewise, sentences may be appealed for being disproportionate to the crime committed or on the basis of errors made during the sentencing hearing. The vast majority of criminal appeals are unsuccessful; roughly 1 out of 8 criminal appellants wins on appeal (Neubauer, 2002). A "win" does not mean that the convicted person will be free, however. When appeals courts rule in favor of convicted offenders, they almost always order new trials, a resentencing, or a lower court review of the case consistent with the appellate court's decision.

It should be noted that a prosecutor cannot appeal a not-guilty verdict (this would violate the Constitution's prohibition against double jeopardy), but prosecutors can sometimes appeal a sentence that is considered too lenient, though this is very rarely done. Death sentences must be appealed at least once, by law. If the first appeal is unsuccessful, public defense lawyers and groups who oppose the death penalty often continue seeking grounds for appeal until the moment of execution. The grounds do not necessarily involve irregularities in sentencing. They may involve new evidence, the death row inmate's mental state, who can be present in the execution chamber, or the manner in which the execution will be carried out. Today, one common area of appeal in death penalty states is the lethal injection drug protocol used to put prisoners to death. Opponents of the death penalty have argued that one drug in particular—midazolam—commonly administered as the first drug in a three-drug protocol—did not sufficiently dull the senses and constituted cruel and unusual punishment in violation of the Eighth Amendment. A widely publicized botched execution in Oklahoma in 2014 and other midazolam-related executions in Florida, Ohio, and Arizona led some judges to stay executions, and in Ohio, then governor John Kasich delayed scheduled executions until a suitable drug protocol could be found. In 2015, however, the U.S. Supreme Court ruled 5–4 that Oklahoma's drug protocol did not violate the Constitution (Glossip v. Gross, 2015). *Bucklew v. Precythe* (2019) was another lethal injection case lost by the prisoner. (See **Table 4.2** for a selected list of cases mentioned in this chapter.)

Table 4.2

Most recently, execution by lethal injection has become a federal issue as well. The Department of Justice announced that federal executions would be resumed in July 2020, after approximately 20 years during which no federal executions took place. In June, four death row inmates scheduled to die in July were able to persuade the Court to "fast track" their combined case. The Court agreed to consider the validity of the federal execution protocol, and in June 2020, it ruled 7–2 that the executions could proceed. Eight federal executions quickly followed. A number of other death penalty cases, particularly those involving psychological issues, are covered in chapters ahead.

Appeals of civil cases often revolve around a defendant's appeal of a judgment or a jury award. Jury awards may be compensatory or punitive; compensatory damages are based on the actual harm the plaintiff suffered, while punitive damages are intended to place extra punishment on the person responsible. Defendants have often appealed large damage awards—particularly punitive awards—and some judges have reduced these awards. Legal psychologists have been very involved in studying how jurors arrive at these awards and the factors that lead to excessive awards that are later reduced. Interestingly, however, research reveals that "overall, jurors perform relatively well in determining liability and damages" (Robbennolt, Groscup, & Penrod, 2014, p. 468). Citing a number of studies on this issue, Robbennolt et al. (2014) also note that punitive damages are "infrequently sought, infrequently awarded, typically not extremely large, and rarely collected in the amounts awarded" (p. 471). Judgments in civil cases also are notoriously difficult to enforce, and when defendants do not comply, plaintiffs must initiate further legal action. "The arduous process of litigation may prove to be only a preliminary step to the equally protracted travail of collecting the award" (Neubauer, 1997, p. 331).

Although researchers are avidly interested in this area, the appellate stage is not one in which individual forensic psychologists frequently operate—although some consult with attorneys when they are preparing their appeals. However, psychological and other professional groups often submit amicus curiae briefs. In addition, the individual forensic psychologist may have considerable stake in the outcome. In some cases, the psychologist's role during the earlier stages of the case may itself be in question. For example, persons convicted of child sexual abuse have appealed their convictions, arguing that psychologists who had interviewed alleged victims unduly influenced their testimony. In other cases, convictions have

been overturned and individuals granted a new trial because of questionable credentials or testimony presented by a mental health expert.

Amicus Curiae Briefs

An important connection between forensic psychologists and the appellate stage is the filing of **amicus curiae** (friend of the court) **briefs**. An amicus brief is a document filed by interested parties who did not participate directly in the trial but either have a stake in the outcome or have research knowledge to offer the appellate court (Saks, 1993). Amicus briefs are typically filed by organizations on behalf of their members. The American Psychological Association (APA), for example, has over the years filed closed to 200 briefs in state and federal appellate courts on topics such as involuntary civil commitment, marriage equality, sexual orientation, gender identity, affirmative action, eyewitness testimony, false confessions, professional licensing, child testimony in sexual assault cases, the forced medication of inmates, and the effects of employment discrimination. Recently, the APA, together with the American Psychiatric Association, filed briefs with the U.S. Supreme Court in *Kahler v. Kansas* (2020), suggesting that the Constitution requires states to allow a traditional insanity defense in criminal court. The Court rejected that argument. The APA along with other groups also filed briefs in the three cases that resulted in the landmark 2020 decision affirming that the Civil Rights Act of 1964 forbidding employment discrimination on the basis of sex applies to persons of all sexual orientations and gender identities (*Bostock v. Clayton County*, *Altitude Express v. Zarda*, and *R. G. and G. R. Funeral Homes v. EEOC*). (See **Focus 4.2**)

Focus 4.2

A Victory for LGBTQ Rights

In a landmark decision in 2020, the U.S. Supreme Court ruled that gay and transgender individuals are protected from employment discrimination (*Bostock v. Clayton County, Altitude Express v. Zarda*, and *R.G. and G.R. Funeral Homes v. EEOC*). The 6–3 decision surprised some observers who thought the decision might be very different because of the makeup of the Supreme Court. Nevertheless, two “conservative” Justices aligned with four “liberal” Justices—and the decision itself was written by a conservative justice, Justice Gorsuch, who was, at the time, one of the two newest members of the Court. In reaching their decision, the Justices considered three separate cases.

Gerald Bostock was a child welfare advocate fired from his county position in Georgia, a job he had held for a decade, shortly after he joined a gay softball team. Donald Zarda was a skydiving instructor in New York for several seasons. He was fired after revealing that he was gay. Aimee Stephens was a transgender woman who worked as a funeral director in Michigan for 6 years, presenting as a man. She was fired when she revealed her gender identity and announced she would be living as a woman. Bostock, Zarda, and Stephens lived in different states and apparently did not know one another, but they all sued, with their lawyers arguing that these actions by the employers violated Title 7 of the Civil Rights Act of 1964, which prohibits workplace discrimination on the basis of sex. The astute reader will notice, by the name of the case that reached the Supreme Court, that Bostock was the only one of the three to lose his case at lower levels. The 11th Circuit Court of Appeals dismissed his case, ruling that gay persons were not protected by Title 7. In the other two cases, Zarda and Stephens won in the 2nd and 6th Circuit Court of Appeals, respectively. Ultimately all three individuals prevailed in the U.S. Supreme Court's ruling. Sadly, both Zarda and Stephens had died before the decision was announced in June 2020—Stephens only a month before.

The issue in the case was whether protections against employment discrimination guaranteed by the Civil Rights Act applied to all sexual orientations and gender identities. The Court's majority said it did. The APA, along with several other professional mental health and human rights groups, joined in an amicus brief, which cited other court decisions that prohibited discrimination in the workplace on the basis of sex (e.g., Price-Waterhouse v. Hopkins, 1989). The brief also cited numerous scholarly sources on sex, sexual orientation, gender identity, and both sexual and gender stereotyping. The brief emphasized that sexual and gender minorities face significant harmful stigma in the workplace.

QUESTIONS FOR DISCUSSION

1. What is the difference between sexual orientation and gender identity? What is the importance of combining these three cases into one major ruling?
2. Obtain the amicus curiae brief submitted by the APA and summarize the arguments made in support of Bostock, Zarda, and Stephens.
3. This was an employment-related case. Does it leave questions unanswered about discrimination on the basis of sex, sexual orientation, or gender identity in other contexts?

4. Related to Question 3, the Supreme Court has already ruled in favor of a baker who, citing personal religious beliefs, refused to make a wedding cake for a gay couple (*Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 2018). That 6–2 decision is not considered a resounding victory for the baker, primarily because the Court believed members of the state's civil rights commission expressed hostility toward religion. If they had not expressed such hostility, would the Court have decided differently?

In this and the following two chapters, we will turn our attention to a discussion of specific tasks assumed by psychologists in their interaction with the civil and criminal courts. In this chapter, we discuss psychologists' work as trial consultants, both in preparation for the trial and during the trial itself; their participation as expert witnesses; and their important task of conducting risk assessments.

TRIAL AND LITIGATION CONSULTATION

Psychologists often consult with key players in the judicial process, particularly lawyers. There appears to be no shortage of tasks to perform, both before the trial and during the trial itself, and the work can be quite lucrative. Although members of other professions can and do serve as **Trial consultants** (e.g., sociologists, economists, political scientists), the majority of them are psychologists (Strier, 1999). They do not necessarily consider themselves "forensic psychologists," however, despite the fact that they work in the forensic arena. On the other hand, many research-based forensic psychologists are increasingly performing roles as consultants to attorneys at different stages of the judicial process and even earlier, such as during police investigations. Some trial consultants are associated with major, nationwide consulting firms based in metropolitan areas. Many trial consultants also are themselves lawyers.

Trial or jury consultants often have backgrounds in industrial psychology or social psychology, but this is not a requirement. The two main areas in which they work are jury selection and assisting the lawyer during the trial process. Increasingly, consultants help attorneys at a variety of trial-preparation tasks, such as preparing witnesses and making decisions about particular trial strategies (Boccaccini, 2002; B. Myers & Arena, 2001). As an example, a lawyer might wonder what type of mental health professional to contact for the purpose of testifying about the effects of post-traumatic stress disorder. In the role of trial consultant, the psychologist would offer suggestions. The psychologist also might help prepare these experts for the trial or help the attorney interpret

clinical reports provided by mental health practitioners. In addition, once a jury has been seated, the consultant may inform the lawyer about existing jury research.

Again, though, the case that actually goes to trial is the exception. The great majority of both civil and criminal cases (often over 90%) are resolved through negotiation or mediation. The cases that do go to trial are often high-profile cases in which the defendants (both criminal and civil) have a good deal to lose if the verdict does not come out in their favor. In the criminal context, they may be cases in which the defendant is truly innocent, despite the fact that probable cause to believe they committed the crime has been established. They may be death penalty cases or cases that would incur a long prison sentence. In the civil context, cases that go to trial may involve highly emotional situations in which one or both sides do not wish to compromise, such as litigation over custody of dependent children or the contesting of a will. They also may be those in which a corporate defendant stands to lose millions of dollars or even faces corporate dissolution if found to be at fault. The highly litigated cases against BP and Haliburton after the oil spill in the Gulf of Mexico are examples. Other examples are product liability suits, where plaintiffs have received high awards, although, as mentioned, research suggests that excessive awards are not the norm (Robbennolt et al., 2014). Nevertheless, when stakes are high, defendants (and occasionally prosecutors) with the financial means to do so are willing to assume considerable expense to hire experts to assist them in their jury selection and other trial-preparation work.

Scientific Jury Selection

An unknown number of trial consultants help lawyers select jurors that will most likely favor their side of the litigation. When this process is more than something based on “gut feelings,” the consultants may make use of **scientific jury selection (SJS)**. This is the application of social science techniques in an effort to find a jury that will be favorably disposed toward one’s case. This process may include attitude surveys within the community in an attempt to determine representative views on matters dealing with the upcoming case. For example, defense lawyers representing a corporate client being sued for illegally dumping hazardous wastes might want to know how members of the community in general view corporate crime. More important, what are the demographic profiles of persons who are friendly toward corporations? And what of the anti-corporation individual? What type of individual is most likely to be favorably disposed toward someone suing a large corporation? Those who practice SJS try to answer such questions by reviewing relevant

research, studying the makeup of the community from which jurors are drawn, and observing the behavior of potential jurors, among other techniques. SJS is an expensive and time-consuming process. Trial consultants who engage in it often conduct surveys, set up focus groups, interview community members, and employ other research strategies to try to help predict who will likely be a good juror for their client.

At the pretrial stage, lawyers are also concerned about the effect of publicity that could be prejudicial to their client's case. Thus, trial consultants may be asked to conduct surveys of the community and collect evidence of negative publicity, which would support a motion for a change of venue (change in the location of the trial). During the trial itself, consultants sometimes also use **shadow juries**—groups of people similar to the jurors in demographic characteristics and possibly attitudes. Shadow jurors are consulted on a regular basis to see how they are reacting to various aspects of the proceedings. Once the trial is over, consultants may be asked to conduct posttrial interviews with members of the jury who agree to be interviewed. This allows insight not only into the decision making of the jurors, but also into the effectiveness of the strategies engaged in by attorneys during the trial itself.

Interestingly, it is believed that consultants who are knowledgeable about SJS techniques are used in all major trials (Lieberman, 2011). Examples of major trials are those that attract extensive publicity—such as high-profile criminal cases—or pit individuals against corporations. Most criminal trials, even though a life sentence may be at stake, are not likely to see the involvement of a trial consultant of that type unless the defendant is a recognized public figure or the crime was especially heinous, such as the Boston Marathon bombing in April 2013.

For those trials that do involve SJS techniques, it is not clear precisely which of the techniques is being employed. That is, researchers have not examined the extent of use of surveys as opposed to shadow juries or interviews, or in some cases a combination of many different methods. In the Boston Marathon case, the defense commissioned geographical studies in an attempt to show that jurors were not being randomly chosen from communities within and surrounding the city. Based on these studies, they argued that the trial should be moved to a different location—but it was not. The defendant was ultimately convicted and sentenced to death, but his lawyers continue to appeal his case. In fact, one argument they have made is that the judge did not move the trial.

The complexity of the SJS process in any one case is obviously dependent upon the resources of the client. It is also unclear what determines “success” when SJS is used. Because no two trials are equivalent with respect to the facts of the cases, the performance of the attorneys, the makeup of the jury, the rulings of the trial judge, or the quality of the evidence, it is impossible to conclude that SJS was a determining factor in the outcome of any given trial. It should be recognized as well that a history of research on juries indicates that the strength of the evidence presented to them is the main variable that affects their decision.

Witness Preparation

Trial consultants also help attorneys prepare witnesses and determine effective strategies for presenting evidence and persuading jurors (B. Myers & Arena, 2001). In preparing for the trial date, attorneys on each side of the conflict often meet with the witnesses they will be calling to the stand. This is done “to review, discuss, and sometimes modify the substance and delivery of their anticipated testimony” (Boccaccini, 2002, p. 161). In the case of lay witnesses who are not accustomed to a courtroom appearance, this prior meeting with lawyers (or sometimes with trial consultants) is considered an important step to avoid “surprises” in the testimony and to lessen the courtroom-related stress that witnesses may experience. Although attorneys are obviously concerned about the substance of a witness’s testimony, they also are concerned about the presentation. The task of preparing witnesses may be shared with a trial consultant, part of whose task is to coach an individual in how to be a persuasive, confident witness. Finkelman (2010) emphasizes that “ethics require that preparation is limited to presentation techniques, rather than attempting to alter factual circumstances” (p. 14). Even psychologists serving as expert witnesses may benefit from being coached.

Certain aspects of witness preparation are controversial because they may reinforce in the witness a memory that is actually quite weak. Recall the discussion about commitment bias in Chapter 3. An initially uncertain witness can be led to be very certain by police statements that imply approval of the witness’s lineup identification (Douglass & Jones, 2013; Douglass & Smalarz, 2019). In a similar fashion, rehearsal of one’s testimony during witness preparation is likely to increase one’s confidence in that testimony. Research on eyewitness testimony indicates that jurors are more likely to believe or find credible a witness who speaks clearly and appears highly confident (Penrod & Cutler, 1995). Nevertheless, confidence and accuracy do not necessarily go hand in hand. Although prosecutors

seek witnesses with high confidence, high-confidence identifications are not equally likely to be correct (Pezdek, Abed, & Reisberg, 2020; Reisberg, 2014). (See **Perspective 4.1** in which Dr. Reisberg discusses research and consulting in this and other areas.) Suggestive questioning by attorneys or trial consultants also might lead witnesses to recall details that they did not initially remember. "Objectively false but subjectively true testimony can be created when a witness's memory of an event is distorted during the course of witness preparation, leading them to give unknowingly false or misleading testimony" (Boccaccini, 2002, p. 166). In fact, as emphasized in Chapter 3, eyewitness memory itself, even without the benefit of witness preparation, is extremely fallible. Such information has been a principal source of evidence in both criminal and civil cases. The expanding psychological research in the area, however, indicates that the judicial system should carefully examine some of its assumptions about eyewitness testimony. As noted earlier, psychological research has strongly suggested that evidence gained through eyewitness questioning and testimony is often teeming with inaccuracies and misconceptions, regardless of how certain the eyewitness claims to be (Douglass & Jones, 2013; Loftus, 2013; Strange & Takarangi, 2012, 2015).

The Voir Dire

During the trial itself, trial consultants perform a different group of tasks. The first stage of the trial is the jury selection process, technically called the *voir dire.* This involves the questioning of potential jurors to best ensure a nonbiased jury. Here, the pretrial research done by the trial consultant—if it was done—is put to practical use, as lawyers use their allowable challenges and try to remove from the jury persons who will not likely be sympathetic to their side and select those who would be. The consultant may suggest voir dire questions to lawyers and make inferences about prospective jurors based on their responses or even on their nonverbal behavior (Strier, 1999).

From My Perspective 4.1

Improving the Legal System Through Psychological Science
Daniel Reisberg, PhD



Daniel Reisburg

If you're a research psychologist specializing in memory, sooner or later you're likely to get a phone call that runs like this:

"Hi, I'm an attorney in your city, and I have a case that hinges on memory. Can you help me?"

That's the way many of us get drawn into the legal system. Then, once you've participated in a case or two, word spreads from lawyer to lawyer that you're available. Your academic colleagues also learn that you're taking on legal cases, and they'll send some of their "overflow" cases your way.

That's how I started working with the legal system and now, many court appearances later, this is a large part of my professional activity. The cases I work on often involve memory for faces (and therefore identification evidence). They often involve memory for a sequence of events (and so, perhaps, a bystander's description of a shooting or a child's report on what a neighbor allegedly did to her). Sometimes the cases involve police having asked a suspect to describe what he allegedly did at some previous time, with the police exerting some pressure to shape the recall and thereby obtain a confession.

My own research provided an obvious platform for this work. Early on (with research partner Friderike Heuer), I studied how people remember the emotional events they've experienced. Later, I did a number of studies examining factors that can make an identification

more or less reliable (including a recent study, with Kathy Pezdek and Erica Abed, on the impact of cannabis intoxication on face memory). I want to emphasize, though, that you can work as a courtroom expert even if you yourself didn't do the research on the topic at hand. The reason is that testimony cannot rely just on the expert witness's own studies. In fact, I'm sometimes challenged, during cross, with "But are these YOUR studies?"—with the implication that, if I'm reporting on someone else's data, I shouldn't be testifying at all. But this is just wrong, and it's not a legitimate challenge. In the scientific world, the results don't "belong" to anyone, and it really doesn't matter if the studies were conducted by you, your best friend, or your worst enemy. What matters is whether the studies were conducted properly. If they were, any scientist has to take those results seriously, should be guided by the results, and can draw on them in testimony.

To work as an expert, then, you obviously need to know a lot of psychology, including a lot of basic science (like the material you'd encounter in a course on cognitive or social psychology) and also a lot of science specifically focused on aspects of the legal system. But you also need thick skin and not only in the courtroom. For example, in reading through police reports, you'll learn more than you ever wanted to know about how awful human beings can sometimes be to each other.

Then, if you appear as a courtroom expert, you'll discover that testimony often bears no resemblance to the interactions that might take place, say, in an academic seminar. In your initial testimony, the attorneys generally want to hear your description of the relevant science, and so they allow you to educate the judge and jury. But, in cross-examination, it's rare that attorneys challenge the expert on issues of substance—in part because they don't have the relevant expertise. (I cannot imagine a trial in which I'm asked, "Dr. Reisberg, aren't you aware that the data set for Experiment 2 had a platykurtotic distribution?") Instead, experts are often attacked on a personal level—with extensive questioning, for example, about whether they're being paid for their testimony. In short, testimony is not, and was never designed to be, an easy activity.

Even so, I wholeheartedly encourage young psychologists to find ways to participate in the legal system—as expert witnesses, or consultants, or perhaps as scientifically sophisticated attorneys. The reason, in part, lies in how much experts can achieve. There are, of course, many concerns about the U.S. legal system. (It's deeply troubling, for example, that the United States keeps more people behind bars than any other country, both pretrial and after conviction,

with no apparent benefit for public safety.) But, as a psychologist working as an expert, I've been able to tackle part of the problem, and, in various ways, I think I have made a contribution. I've helped the legal system to correct some horrible errors (cases in which people were in prison for crimes they did not commit). I've helped to keep some actually innocent people from being convicted in the first place. I've helped some judges to gain a better understanding of memory-based evidence and perhaps convinced them to abandon mistaken beliefs they'd held for years. And, on the other hand, I've helped many defendants realize how powerful the evidence against them really was—and so brought them to a position in which they could make more realistic, more sensible decisions about their legal options.

More broadly, consider what psychology as an academic discipline has accomplished. Research psychologists have helped improve the way in which identification evidence is collected in many countries. We've helped to improve the ways in which children are questioned, with the clear aim of helping and protecting children who have been victimized (while also doing all we can to avoid false accusations arising from memory errors or leading questions). Researchers have persuaded some investigators to change the way suspects are questioned, to get more and better evidence. Psychologists have also made huge progress toward finding ways of spotting lies, when someone tries to deceive investigators. In short, we are making a real difference, and overall psychologists have done much to improve the legal system in many countries.

My work in this domain is immensely important to me. It's intellectually engaging and valuable for our society. I truly hope that readers of this book will join me in this endeavor!

Dr. Reisberg is Reed College's Patricia & Clifford Lunneborg Professor of Psychology Emeritus. He has provided training seminars for police, defenders, prosecutors, and judges. He consults broadly on legal matters and has testified in court on a range of issues, including eyewitness' identifications, the reliability of children's memories, and the evaluation of confession evidence. He has written many articles and books, including The Science of Perception and Memory: A Pragmatic Guide for the Justice System *(2014).*

One crucial aspect is the question of whether potential jurors may be biased against a racial, ethnic, religious, or gender group to which the defendant belongs. How likely is it that such bias will be detected during the voir dire? Additionally, can a juror set aside such a bias

and decide the case based solely on the evidence? If bias is voiced in the jury room, the defendant's constitutional guarantee of a fair trial by an impartial jury is compromised. Indeed, in 2017, the U.S. Supreme Court issued a crucial decision that highlights the importance of selecting unbiased jurors (Pena-Rodriguez v. Colorado, 2017). Pena-Rodriguez was charged with harassment and attempted groping of two teenaged girls. During jury deliberations, a juror described as a former law enforcement officer commented that the defendant obviously committed the crime because he was Mexican, and Mexicans took what they wanted. The juror also stated that one of the witnesses on Pena-Rodriguez's behalf was an "illegal," despite the fact that the witness was a U.S. citizen who traveled to Mexico. After the defendant was convicted, two jurors reported the comments, and Pena-Rodriguez requested, but was denied, a new trial. Appellate courts denied his request, noting that jury deliberations were secretive, and inquiry into verdicts was unacceptable. Past cases also had allowed jury verdicts to stand despite evidence that some juries had displayed inappropriate behavior (e.g., drinking beer during lunch, using illegal drugs, or falling asleep in court).

However, the U.S. Supreme Court did not agree with the lower courts. By a vote of 5–3, the Court ruled that racial or ethnic bias in the jury room was a different matter. In that case, the bias was extreme, so the guarantee of a fair trial superseded the tradition of secrecy in jury deliberations. Presumably, had the trial judge been informed of the juror's comments before the verdict was announced, an inquiry into their deliberations would have been warranted. After the conviction, Pena-Rodriguez should have been granted a new trial. Thus, although racial and ethnic bias may not be easy to detect in *choosing* jurors, if evidence of such bias emerges from jury deliberations the presiding judge—if informed—must become proactive. Otherwise, the constitutional guarantee of a fair trial has not been met.

Trial Consultation: The Main Concerns

Research psychologists tend to be very skeptical of some forms of trial consulting, most particularly the aspect of attempting to select jurors sympathetic to one's case. As mentioned above, some aspects of witness preparation also raise concern. With respect to scientific jury selection, comments by Ellsworth and Reifman (2000) are representative: "Jury researchers have searched in vain for individual differences—race, gender, class, attitudes, or personality—that reliably predict a person's verdict and have almost always come up empty handed" (p. 795). In a similar vein, law professor John Conley

(2000) expressed wonderment “at the vast sums of money that lawyers and clients expend on jury-selection ‘experts’ who purport to produce psychological profiles of ‘ideal’ jurors for particular cases” (p. 823).

Trial consultation can take many other forms, however, and increasingly forensic psychologists are seeing it as an important part of their work. In consulting with attorneys, they are able to educate them about psychological research and, it is hoped, bring more justice to the judicial system as a whole (Brewer & Douglass, 2019; Cutler & Zapf, 2015; Reisberg, 2014; Reisberg & Davis, 2019).

EXPERT TESTIMONY

In addition to working behind the scenes or sitting in the courtroom as trial consultants, psychologists also may be found on the witness stand, testifying as expert witnesses in a wide range of cases. This very visible role has produced extensive research and commentary and has been the subject of three significant Supreme Court decisions directly on the matter and a multitude of cases in lower federal and state courts. Together, the three U.S. Supreme Court decisions (Daubert v. Merrill Dow Pharmaceuticals, Inc., 1993; General Electric Co. v. Joiner, 1997; Kumho Tire Co. Ltd. v. Carmichael, 1999)—collectively referred to as the *Daubert* trilogy—articulate the standard to be applied by federal courts in deciding whether expert testimony should be admitted if it is challenged by the opposing lawyer. Many states—over half—have adopted a standard identical to or closely related to *Daubert* (Fournier, 2016; Parry & Drogan, 2000).We discuss *Daubert* in more detail shortly.

Expert testimony may occur in a variety of pretrial hearings, during both civil and criminal trials, delinquency proceedings, or during sentencing or disposition hearings. In each of these contexts, the role of the expert witness is to help the judge or the jury in making decisions about matters that are beyond the knowledge of the typical layperson. Most jurors and judges, for example, are not versed in neurology and the fine workings of the brain. Thus, a neuropsychologist may be called to testify about the effects of physical trauma—such as a severe head injury—on brain functioning. Likewise, most jurors and judges are unfamiliar with the psychological effects of ongoing physical abuse or experiencing a highly traumatic event such as a rape or a kidnapping; in such cases, experts on child abuse or on post-traumatic stress disorder (PTSD) might be called to the stand. Psychologists also have valuable information to convey to courts relative to eyewitness identification, human perception and memory, the credibility of child witnesses, and the effect of divorce on children.

Eyewitness testimony and the role of memory in many contexts has seen a very strong line of research. As emphasized at several points in this and the previous chapter, the fallibility of eyewitness accounts is well recognized (Cutler, 2015; Loftus, 2013; Zajac, Dickson, Munn, & O'Neill, 2016). Recall that in Chapter 3 we covered pretrial identification procedures that police use to charge a suspect. Once a witness or victim has identified a suspect, they are typically committed to this identification, even with some doubt that this was the person they did indeed see. Many social and experimental psychologists have studied how memory works and ways to promote its accuracy (Brewer & Douglass, 2019; Pezdek et al., 2020; Reisberg, 2014; Sharps, 2017; Strange & Takarangi, 2015). The knowledge they have obtained can be used, not only in training law enforcement, but also in consulting with attorneys and testifying as experts in the courts. For many years, though, courts were reluctant to accept this social science evidence. However, persistent efforts by eyewitness researchers as well as mounting evidence of wrongful convictions based on misidentifications suggests that these legal obstacles to the admission of social science evidence in this area may be diminishing (Newirth, 2016).

Clinical psychologists are also frequently called to testify about the results of evaluations they have conducted. In the criminal context, for example, psychologists often conduct court-ordered evaluations of a defendant's competency to stand trial or mental state at the time of the crime. In these situations, the psychologist will submit a written report to the judge and the attorneys. If the parties do not agree with the psychologist's conclusions, or if the judge wishes additional information or clarification, the psychologist may then be called to testify. In highly litigated cases—such as in a serious violent crime or a custody dispute—another clinician may be called to testify as well. This sometimes sets up the so-called "battle of the experts," where experts for each side report different findings or even reach opposing conclusions. Nevertheless, studies have found that opposing experts "weakly affect jurors' ultimate verdicts in criminal cases or damage awards in civil cases" (McAuliff & Groscup, 2009, p 37).

Early research with mock juries suggests that the response to expert testimony is lukewarm or guarded, rather than wholeheartedly supportive (Nietzel, McCarthy, & Kerr, 1999), and that clinical testimony is favored more than the research-based testimony provided by academicians (D. Krauss & Sales, 2001). In a survey of 488 adult residents in one state, Boccaccini and Brodsky (2002) found that the public was far more likely to believe expert witnesses who worked with patients rather than those who engaged in

academic activities. Respondents also were more likely to believe experts who received no payment for testifying. The survey also found there was some preference for those who came from the community, rather than flown in from afar. However, the preparation and demeanor of the expert are crucial components. Experts who present themselves as knowledgeable but not arrogant, and who resist giving ultimate opinions on legal issues unless pressed to do so may be highly sought by judges and litigants alike (Brodsky, 2013; Melton et al., 2018). Expert testimony will be covered again in the chapters ahead, as we cover specific topics. For the present, it is important to look at issues that are common to all such testimony.

Legal Standards for the Admission of Scientific Evidence

To qualify as expert witnesses, psychologists must first establish their credentials, including the requisite advanced degree, licensing or certification if relevant, and research or practical experience in areas about which they are testifying. In each case, it is left to the discretion of the trial judge to accept or reject an individual's qualifications as an expert, subject to review by appellate courts. However, laws in some states require specific credentials or licensing to perform some of the evaluations and subsequently testify in court proceedings (Heilbrun & Brooks, 2010).

Even though an expert has the professional background to qualify for certification as an expert witness, it is possible that the presiding judge will not allow the evidence the expert has to offer. Under federal law and the laws of the states that have adopted similar standards, if the opposing lawyer challenges the introduction of the evidence, the judge must decide whether the evidence is reliable, legally sufficient, and relevant to the case at hand. This was the standard for federal courts announced by the U.S. Supreme Court in its 1993 decision, *Daubert v. Merrill Dow Pharmaceuticals, Inc*. The ***Daubert* standard** replaced an earlier standard (announced in Frye v. United States, 1923), which was loosely known as the **General acceptance rule**. According to that earlier standard, the expert's evidence must have been gathered using scientific techniques that had reached a general acceptance in the science field. Once that standard had been met, all relevant testimony would be admissible. Over the years, the *Frye* standard lost favor because—among other things—it was considered too stringent, presenting an obstacle to the introduction of evidence that had not yet reached "general acceptance." On the other hand, there was also concern from those who believed that the *Frye* standard was not scientific enough. In the

Federal Rules of Evidence, adopted in 1975, Congress provided a different standard. The pertinent rule, Rule 702, did not require general acceptance, but it did require that evidence be relevant and reliable. Even relevant information could be excluded, however, if it would serve to prejudice the jury. In the *Daubert* case, the Supreme Court supported the standard set by the Rules of Evidence. It ruled that expert evidence must be relevant, reliable, and legally sufficient and that its probative value must outweigh its prejudicial value. In essence, the Court required that federal judges act as gatekeepers, scrutinizing expert evidence very carefully before admitting it into court. It did not completely denigrate the "general acceptance" criterion, however. Rather, it announced that general acceptance by the scientific community could be taken into consideration in deciding whether evidence was reliable. General acceptance should not, however, be a *necessary* condition. Some commentators have described the *Daubert* guidelines more succinctly, suggesting that they focus on testability, peer review, error rate, and general acceptance (Fournier, 2016).

The *Daubert* case and the federal rules of evidence apply to federal courts. State courts are free to adopt their own rules of evidence, but in practice many use federal rules as a model. Approximately 30 states use *Daubert*-like criteria for the admission of scientific evidence. Approximately 14 states still use a general acceptance standard, however (Hunt, 2010). Interestingly, research also indicates that many judges, even after *Daubert,* rely heavily on general acceptance in deciding whether to admit evidence, even if they give some attention to the other scientific criteria. Other courts, though, have moved away from the general acceptance standard and are giving close scrutiny to the scientific foundation of the evidence that is offered (Ogloff & Douglas, 2013). In the first instance, if the expert is professionally qualified, the judge is influenced by whether or not the method or information the expert is offering (e.g., a particular risk assessment instrument) has general acceptance in the scientific community. In the second instance, even if the expert is professionally qualified, the judge expects they will demonstrate that the risk assessment measure is relevant and reliable.

Despite the preceding discussion, it is important to emphasize that a judge will not conduct a review of the relevance and reliability of the expert's testimony in all cases. Judges typically apply the *Daubert* standard only when an attorney challenges the *introduction* of the evidence. Shuman and Sales (2001) write that

> like most other rules of evidence, *Daubert* relies on trial lawyers to identify issues of admissibility (e.g., the reliability of the expert testimony) and choose whether to raise them before the trial judge, to present on issues of credibility to the jury, or to ignore these issues. (p. 71)

Shuman and Sales add that a lawyer may not recognize that certain expert testimony is based on unreliable methods; alternatively, the methods used by the lawyer's own expert may be just as faulty. In neither case would the lawyer be likely to challenge the opposing expert. In still another scenario, the lawyer may wait until the opposing expert is on the witness stand and within view of the jury before questioning the credibility of the information. Finally, pretrial *Daubert* motions cost money, take up court time, and require judges and lawyers to master science as well as the law. For all of the above reasons, Shuman and Sales state, motions to exclude scientific evidence are not likely to become enthusiastically embraced in the nation's courtrooms.

Despite these predictions, judges on the whole do seem to be excluding more evidence than before *Daubert* (McAuliff & Groscup, 2009). However, McAuliff and Groscup emphasized that, though judges are more likely to exclude evidence now than they did before *Daubert,* this careful scrutiny did not mean judges were admitting valid evidence or excluding "junk science." "The past 15 years of social scientific research and legal commentary have revealed critical limitations in the ability of legal professionals and laypeople to identify flawed psychological science in court" (p. 48).

In the years since the *Daubert* decision, considerable research and commentary has addressed the Court's assumption that judges, who rarely have a scientific background, would be able to evaluate scientific evidence. Kovera, Russano, and McAuliff (2002) maintain that most judges and jurors are similar in their ability to identify flawed expert evidence because neither has received formal training in the scientific method. They further maintain that such individuals cannot differentiate between valid and flawed research. Jurors, as the research has consistently indicated, are highly unlikely to be able to distinguish the flawed research, even when an opposing expert highlights these flaws (Cutler & Penrod, 1995; Cutler, Penrod, & Dexter, 1989). Neither jurors nor judges nor lawyers typically can understand the importance of control groups or appreciate the relative merits of small and large sample sizes (Kovera et al., 2002). Based on their research using judges and attorneys as participants,

Kovera and her colleagues concluded that it remains likely that some "junk science" will make its way into the courtroom and that some valid evidence will be excluded.

Other research produces more positive findings, including research indicating that federal judges are more likely than state judges to understand the confusing aspects of the *Daubert* standard (e.g., the error rate). On the whole, however, there is wide variability in application of *Daubert* in both federal and state courts, and in both, some judges appear to ignore the standard altogether, even when mandated to apply it (Fournier, 2016).

Although the fallout from the *Daubert* decision continues to be investigated, expert witnesses face additional challenges in the courtroom. As many commentators have remarked, testifying in court is not an exercise for the faint of heart. Expert witnesses—just like lay witnesses—face the possibility of being subjected to grueling cross-examination. Even very low-profile trials or pretrial proceedings can produce anxiety for the expert being subjected to sharp cross-examination. Some experts also struggle with their concerns about confidentiality and "ultimate opinion" testimony.

The Confidentiality Issue

The obligation to maintain confidentiality in the patient–therapist relationship is fundamental. In the courtroom setting, though, confidentiality is not absolute. When clinicians have been asked by the court to evaluate a defendant, the results of that evaluation are shared among the judge and the lawyers. In these situations, the clinician's client is the court, not the individual being examined. The evaluation also may be discussed in the open courtroom if the clinician is called to the stand. In such cases, persons who have been evaluated have been warned of the limits of confidentiality at the outset of the evaluation. Even the confidentiality of test data is not guaranteed if the client signs a release or if the court orders that it be released. It is not unusual, though, for the written psychological report to be redacted (certain portions blacked out) or sealed so that it does not appear in the final case record.

Under both the "Ethical Principles of Psychologists and Code of Conduct" (EPPCC) and the "Specialty Guidelines for Forensic Psychology" (APA, 2013c), clinicians are expected to inform the individual of the nature and purpose of an evaluation, as well as who will be receiving a report. They also should ensure that the individuals are informed of their legal rights. In many cases, however, the person has been ordered to undergo an examination by the court. As Ogloff (1999) notes,

> if the person [being assessed] is not the client, the psychologist owes no duty of confidentiality to that person, but, because of the requirement of informed consent, must make the fact known to the person being assessed that the information to be obtained is not confidential. (p. 411)

Nonetheless, even if notified of the limits of confidentiality, the individual in reality has little choice in submitting to the evaluation ordered by the court. In addition, the individual may suffer harm as a result of the psychologist's participation in the evaluation process (Perlin, 1991). However, the mental health practitioner can conduct the examination over the client's objection, without obtaining consent. When it is not evaluation but rather psychotherapy or treatment that is at issue, all courts recognize the patient–therapist privilege, although it is not absolute. The U.S. Supreme Court, for example, has firmly endorsed confidentiality in federal courts (Jaffe v. Redmond, 1996). Redmond was a police officer who shot and killed an allegedly armed suspect who she believed was about to kill another individual. The suspect's family sued, maintaining that he was not armed and that Officer Redmond had used excessive force, a civil rights violation. When the plaintiffs learned that Redmond had attended counseling sessions with a psychiatric social worker after the shooting, they subpoenaed the social worker, who confirmed that the officer had been a patient. However, the social worker refused to answer specific questions about treatment. The judge in the case refused to recognize a therapist–patient privilege and informed the jury that they were entitled to presume that the testimony would have been damaging to Redmond's case. The jury found for the plaintiffs, but the Seventh Circuit Court of Appeals threw out the verdict.

In its 7–2 decision, the U.S. Supreme Court affirmed the appeals court's decision. The Justices not only recognized the importance of the psychotherapist–patient privileged communication but also placed licensed social workers under this protective cloak. The Court did not consider the privilege absolute—or totally protected under all conditions—but it also did not specify when it would *not* apply. It is likely, however, that restrictions of the psychotherapist–patient privilege in federal courts would be similar to those in the states. For example, the privilege generally does not apply when patients voluntarily introduce their mental health into evidence. Confidentiality also is not protected when a patient sues the therapist because the therapist is entitled to use otherwise privileged information to defend themself (Ogloff, 1999).

Ultimate Issue or Ultimate Opinion Testimony

The testimony provided by expert witnesses is different from that provided by lay witnesses. Recall that a main role of the expert is to assist triers of fact (judges and juries) in matters about which they would not otherwise be knowledgeable. In most jurisdictions, *lay* witnesses can testify only to events that they have actually seen or heard firsthand. Their opinions and inferences are generally not admissible. *Expert* witnesses, on the other hand, testify to facts they have observed directly, to tests they may have conducted, and to the research evidence in their field. Moreover, the opinions and inferences of experts not only are admissible but are also often sought by the courts.

However, there is considerable debate among mental health professionals about the wisdom of offering an opinion on the "ultimate issue." The **Ultimate issue** is the final question that must be decided by the court. For example, should the expert provide an opinion about whether the defendant was indeed insane (and therefore not responsible) at the time of his crime? Should the expert recommend which parent should be awarded custody? Should the expert declare that a defendant is competent to be executed? Should the expert recommend that a juvenile's case be transferred to criminal court? It is quite clear that courts frequently request and hope for such opinions (Melton et al., 2018). In one study, even despite a statutory prohibition on ultimate opinion testimony in insanity cases, judges and prosecutors said they had a strong desire for clinical opinion (Redding, Floyd, & Hawk, 2001). Defense attorneys were less likely to support this.

Those who oppose ultimate issue testimony (e.g., Melton et al., 2018) believe—among other things—that it is highly subject to error. The expert may misunderstand the law; may apply hidden value judgments; or may believe a particular outcome is best for an individual, even if legal criteria are not met. A clinical psychologist, for example, may truly believe that an individual needs to be placed in a secure mental health facility and treated for a serious mental disorder, even if the person does not technically meet the criteria for institutionalization. Thus, the psychologist might offer the opinion that the individual is not competent to stand trial, knowing that if the individual is ruled incompetent, they will most likely be sent to a mental hospital and will receive some treatment. This is not to say that the psychologist is trying to evade the law; they may truly believe the person is incompetent in a clinical sense, without fully understanding the legal criteria for incompetency.

A related issue is that of possible bias on the part of the expert, a bias that may be subconscious, but that may nonetheless influence

the expert's own conclusions. Murrie and his colleagues (e.g., Murrie & Boccaccini, 2015; Murrie, Boccaccini, Guarnera, & Rufino, 2013) have conducted research that suggests an "adversarial allegiance," or the fact that experts can be biased in favor of the side that has hired them, even without intending to be. In a similar fashion, Neal and Brodsky (2016) refer to the "bias blind-spot" to which all mental health professionals are subject. Such biases and allegiances may affect not only ultimate issue testimony but also assessments of risk, a topic to be covered later.

Opponents of ultimate issue testimony also fear the undue influence of the expert on the fact finder. They stress that decisions such as whether an individual was insane at the time of the crime or whether a father or a mother should be awarded custody of a minor child are legal decisions. Asking the expert to express an opinion suggests that great weight will be placed on that opinion, when in fact the decision must be made by a judge or a jury and must be based on legal factors. However, judges often seek the expert's opinion and sometimes press for it if the expert resists providing it. Furthermore, laws in some jurisdictions require that an expert provide an opinion (Melton et al., 2018).

There is partial research support for the assumption of undue influence. Research suggests that the expert's opinion heavily influences judges in *pretrial* situations but not judges or juries at the *trial* stage. On issues such as competency to stand trial or the dangerousness of a defendant (warranting a denial of bail), the influence of the expert is substantial (Melton et al., 2018). The same is true in civil matters, such as child custody cases. This may be one reason why opposing experts are important, to offset an advantage gained by one side; in many pretrial situations, however, only one expert is called upon, typically at the request of the court. In other words, in pretrial situations the opposing attorneys may agree to have a court-appointed clinician examine the defendant. Trial jurors, however, do not seem to be unduly swayed by the opinions of experts (McAuliff & Groscup, 2009; Nietzel, McCarthy, & Kerr, 1999). Those who favor testimony on the ultimate issue (e.g., Rogers & Ewing, 1989) argue that judges often depend on it and that such testimony can be carefully controlled, particularly by means of effective cross-examination. They note also that judges and lawyers are becoming increasingly sophisticated about possible sources of error in an expert's opinion; to believe otherwise is to insult their intelligence. Furthermore, in pretrial proceedings in both criminal and civil cases, judges typically ask an opinion of the clinician who has been appointed by the court and who is acceptable to both parties.

These court officers have come to value and trust the professional's opinion as a result of having that person involved in past cases. Finally, forensic psychology has developed rapidly, and many graduate and postgraduate programs now offer internships, specialized training, and other opportunities for psychologists and other clinicians to learn the laws. As a result, the quality of evaluations has improved significantly over the past decade. Nevertheless, reflecting the lack of consensus on the matter of ultimate issue testimony, the American Psychological Association has not taken a stand on whether it should be provided, even when courts request it. The 2010 "Guidelines for Child Custody Evaluations in Family Law Proceedings" (APA, 2010b), for example, specifically refer to the lack of consensus. Guideline 13 notes that psychologists "seek to remain aware of the arguments on both sides of this issue . . . and are able to articulate the logic of their positions on this issue." The guideline also states that, if they choose to make child custody recommendations, these recommendations are derived from sound psychological data and address the psychological best interests of the child. In addition, they should "seek to avoid relying upon personal biases or unsupported beliefs." Interestingly, the "Specialty Guidelines for Forensic Psychology" (APA, 2013c) neither encourage nor discourage ultimate issue testimony. Whereas an earlier version of the guidelines noted that professional observations, inferences, and conclusions must be distinguished from *legal* facts, opinions, and conclusions, the 2013 version emphasizes that psychologists strive to provide the basis and reasoning underlying their opinions as well as the salient data or other information that was considered in forming them (Guideline 11.04). This change may be in recognition of a developing trend for courts to require clinicians to identify the factual bases for conclusions and opinions they offer (Zapf, Roesch, & Pirelli, 2014).

Surviving the Witness Stand

It is important to emphasize that many forensic psychologists never testify in court proceedings. Furthermore, even those who consult often with lawyers, say a small percentage of the cases they help with (5%–10%) involve courtroom testimony. When it does, they must do so with aplomb and leave with their own mental health intact. Yet, this testimony can be a stressful experience. Cross-examination by an opposing attorney is particularly discomfiting. As noted by Dr. Reisberg (**Perspective 4.1**), cross-examination is often more personal than content based, such as by asking experts if they are being paid to appear. Although this and other tactics may seem inconsequential, they can affect the jury's perceptions of the expert.

Forensic psychologists, like other expert witnesses, may enter the courtroom totally confident in their professional knowledge and the evidence they are about to present. However, faced with the grueling questions of a legal adversary and frustrated with legal rules of evidence that limit their testimony, they may wish for a very quick end to a painful experience.

Despite the pitfalls, numerous forensic psychologists have learned to navigate the landscape of the courtroom and have developed the skills needed both to provide the court with specialized knowledge and to respond to cross-examination in a calm, professional manner. This is crucial, because it is not unusual for cross-examining attorneys to berate or insult experts, their field of study, or methods used in their research. The professional literature contains ample advice for psychologists preparing to testify as expert witnesses (e.g., Brodsky, 2013; Otto et al., 2014). Today, most graduate programs with specializations in forensic psychology offer courses or workshops on testifying in court.

Other scholars have offered advice not only for the witness stand, but also for a wide range of meetings and proceedings that are part of the trial preparation process (e.g., Heilbrun, 2001; Heilbrun, Marczyk, & DeMatteo, 2002; A. K. Hess, 2006; Reisberg, 2014). Expert witnesses are urged to establish a communicative relationship with the attorney who has called them early in the legal process so that each side will know what can realistically be expected from the other. Experts are also advised to answer only the question addressed to them and to see their role as an educator. “Thus, the expert witness’s goal should be to communicate what he or she did, learned, and concluded—all using language and concepts that the decision maker can understand” (Otto et al., 2014, p. 739).

Pretrial *preparation* is essential, and psychologists should not allow themselves to be persuaded to enter the courtroom without advance notice and sufficient preparation time (Otto et al., 2014; M. Singer & Nievod, 1987). They are advised to gather information carefully, pay attention to details of the case and the legal issues involved, remain impartial, and keep clear, organized notes (Chappelle & Rosengren, 2001). Many expert witnesses today maintain that well-prepared PowerPoint exhibits are helpful if not essential, although these can have the effect of dulling the attention of the fact finder, particularly the jury, if they are not visually appealing. Experts also should be aware that their notes, correspondence, and tape recordings may be made available to attorneys for both sides under the rules of discovery. At some point in the proceedings, considering *Daubert* and other relevant cases, either the judge or the opposing attorney may

inquire whether the techniques or theories on which the expert is relying have been scientifically evaluated. Although judges seem to be particularly concerned about the expert's credentials and whether the information would assist the trier of fact, judges and attorneys also may quiz the experts on such matters as error rates and reliability, as well as general acceptance. Thus, in the process of preparing their testimony, expert witnesses must take care to address these questions.

Expert witnesses are also advised to pay particular attention to their nonverbal behavior in the courtroom. Any behaviors that suggest arrogance, confusion, hostility, or anxiety are to be avoided. Chappelle and Rosengren (2001), reviewing the literature on expert testimony, remarked that the need to maintain composure is a theme in this literature. The knowledge offered by the expert is more likely to be accepted by judge and jury if the expert projects a professional, confident, and respectful persona. As Otto, Kay, and Hess (2014), observe, the expert should never exhibit frustration or anger.

THE ASSESSMENT OF RISK

Forensic psychologists are very often asked to predict the likelihood that a particular individual will be "dangerous" to themself or to others. In contemporary psychology, this enterprise is referred to as risk assessment, most commonly *violence* risk assessment (K. S. Douglas, Hart, Groscup, & Litwack, 2014). It is one of the most common tasks performed by forensic psychologists, and it is also extensively researched. In the context of this chapter, risk assessment can happen at several points in the judicial process, including very early in the proceedings, when a court is deciding to detain a suspect or release the suspect on bail. It can also occur at the sentencing phase, when a judge is deciding between incarceration and probation. Risk assessment is crucial in the sentencing process in at least two death penalty states, where the sentencer must take into account the "dangerousness" of the individual being sentenced.

Violence risk assessment will be relevant in many later chapters as well. Thus, the populations on which violence risk assessments are done vary across several legal contexts and situations (K. S. Douglas et al., 2014; Hanson, 2005, 2009; Skeem & Monahan, 2011). In addition to bail and sentencing decisions mentioned earlier, the risk of violence becomes an issue in deciding whether someone should be held in a psychiatric hospital or other confined setting against their will; in that case dangerousness to self as well as to others are important considerations. Skeem and Monahan note that "risk assessments for workplace violence and violent terrorism are also

becoming increasingly common" (p. 38). Finally, risk assessments are conducted in correctional institutions, a process that may focus on whether the individual is dangerous to self or others at the facility. Parole boards often want to know the probability that an inmate will reoffend if released, and probation officers make use of risk assessment to try to judge the likelihood of recidivism (Ricks, Louden, & Kennealy, 2016).

Can Violence Be Predicted?

Can psychologists or any other clinicians predict violent behavior with any degree of confidence? Some clinicians who were called to testify in criminal and juvenile courts during the last quarter of the 20th century were quick to say that they could make such predictions. "On a scale of 1 to 10, with 10 being the most dangerous, this person is an 11," one psychiatrist who testified in many death penalty cases was fond of saying. Others made statements such as "For his own good, this juvenile must be locked up; he will definitely commit more crimes if not institutionalized." These types of predictions were cited in court cases (e.g., Barefoot v. Estelle, 1983) in which individuals challenged their bail denials, their sentences, or their confinements. For the most part, courts have allowed clinicians to make predictions but have also acknowledged their fallibility. In a juvenile case, Schall v. Martin (1984), for example, the U.S. Supreme Court recognized that predictions of behavior were imperfect and fraught with error but ruled nevertheless that they had a place in the law. The case involved juveniles who were held in secure detention prior to their delinquency hearings, even if they were not accused of committing violent acts, partly because there was a serious risk that they would commit more illegal activity if allowed to remain free.

Today, forensic psychologists are careful to point out the fallibility of behavioral prediction. Although they acknowledge that prediction is an important aspect of the services they provide to courts and other institutions, they are carefully guarded in their conclusions. When it comes to predicting violence, virtually everyone now prefers the terms *risk assessment* or the *assessment of dangerousness potential* rather than prediction of dangerousness. The words *risk* and *potential* communicate the important point that in their evaluation, psychologists are providing courts or other agencies with a probability statement that a given individual will behave in an inappropriate manner. The probability assessment may be based on clinical judgment or on certain "predictor variables" that are in the individual's background. For example, past violent behavior, age, lack of an adequate system of social supports, alcohol or other substance abuse, and a history of serious mental disorder together are good

indicators that a person is likely to be violent once again (Monahan, 1996).

In addition, Borum, Fein, Vossekuil, and Berglund (1999) point out that dangerousness is not viewed as a personality trait that cannot change. More sophisticated models of risk assessment view dangerousness as highly dependent on situations and circumstances, constantly subject to change, and varying along a continuum of probability. Someone who was considered potentially dangerous at one point in his life may have experienced life changes that make it unlikely he will continue to be a danger to self or others. This observation is often made in the case of assessment risk of dangerousness in sex offenders who have served their prison sentence and are being subjected to civil commitment, a topic to be addressed in the next chapter. Scholars concerned about the overuse of this type of commitment (e.g., Vogler, 2019) believe that some instruments used to predict risk of future offending assume that such future criminal behavior is inevitable.

Clinical Versus Actuarial Prediction

There has been long-standing debate about the relative merits of clinical and statistical (actuarial) risk assessment (K. S. Douglas & Ogloff, 2003; McEwan, Pathé, & Ogloff, 2011; McGowan, Horn, & Mellott, 2011; Melton et al., 2018). Predictions of violence based on clinical assessments—which rely on clinical experience and professional judgment—have not fared well compared to actuarial assessments. For over 50 years, statistical models that rely on measurable, valid risk factors have been, in a majority of cases, superior to clinical judgment or professional opinion (Hanson, 2005, 2009; Meehl, 1954). Early research almost invariably supported the use of actuarial prediction over clinical. However, actuarial instruments had shortcomings, which were often noted by mental health practitioners who wanted to retain some aspect of clinical judgment in their assessments. Heilbrun, Marczyk, and DeMatteo (2002, p. 478) summarized their concerns as follows. Actuarial instruments, they say,

- focus on a small number of factors and may ignore important factors that are idiosyncratic to the case at hand (e.g., recent legal or medical problems);
- are passive predictors, focusing primarily on relatively static variables, such as demographics and criminal history;
- may include risk factors that are unacceptable on legal grounds, such as race or sex, and may ignore risk factors that have unknown validity but are logical to consider (such as threats of violence);

- have been developed to predict a specific outcome over a specific period in a specific population, and they may not generalize to other contexts; and
- have a restricted definition of violence risk and cannot address the nature of the violence, its duration, its severity or frequency, or how soon it may occur.

Heilbrun et al. add that clinicians themselves—unless they are sufficiently schooled in psychometric theory and research—may tend to overuse or underuse the actuarial instruments. Although the authors acknowledge the value of risk assessment instruments, they also caution forensic psychologists not to undermine the role of clinical judgment in their assessments of risk. Nevertheless, they conclude, "the problem with the judgment-based approaches is that they are inherently speculative" (p. 478).

Even so, many clinicians today argue very persuasively that these statistical measures must be balanced with sound, clinical judgment developed through years of experience and training. Furthermore, after reviewing recent risk assessment research, including a number of meta-analyses conducted over the last decade, K. S. Douglas, Hart, Groscup, and Litwack (2014) question the long-standing assumption about the superiority of actuarial data, noting that in some situations, *structured* clinical judgment—more commonly termed **Structured professional judgment (SPJ)**—may be a better alternative. Clinicians who use an SPJ approach generally abide by various guidelines for conducting a comprehensive clinical evaluation of violence risk for a particular individual in a particular context (K. S. Douglas et al., 2014). SPJ guidelines include gathering critical information, identifying the presence of risk factors, evaluating their relevance, and developing scenarios in which the person being evaluated might or might not be violent. As K. S. Douglas et al. phrase it, "evaluators need to consider what kinds of violence the examinee might perpetrate, for which motivations, against which victims, with what kinds of consequences, and at which times" (p. 415). This gives some weight to the above comment that clinical judgment is inherently speculative. SPJ-oriented clinicians also develop and recommend management plans for preventing potential violence and communicate these to whoever requested the evaluation. This is not to say that clinicians using a more actuarial approach do not offer such recommendations, however.

Dynamic and Static Risk Factors

An important concept in risk assessment is the distinction between dynamic risk factors and static risk factors (Andrews & Bonta, 1998; Andrews, Bonta, & Hoge, 1990; Beech & Craig, 2012; A. McGrath &

Thompson, 2012). Risk factors are individual characteristics believed—to varying degrees—to be associated with or predictive of antisocial behavior. **Dynamic risk factors** are those that change over time and situation. For example, substance abuse and negative attitudes toward women have potential for change, in contrast to **Static risk factors**—like one's age at the onset of antisocial behavior. Static risk factors are historical factors that have been demonstrated to relate to offending potential. In short, dynamic factors can change, whereas static factors cannot. Researchers who support SPJ note that actuarial risk instruments focus more on static factors and tend not to include dynamic factors, while SPJ encourages evaluators to consider them. "The SPJ model helps clinicians decide how often to reevaluate risk factors and how to link risk assessment to risk management" (K. S. Douglas et al., 2014, p. 397).

Dynamic factors can be subdivided into stable and acute (Hanson & Harris, 2000). (See **Table 4.3** for examples.) **Stable dynamic factors**, although they are changeable, usually change slowly and may take months or even years, if they change at all. Consider, for example, one's attitudes about violent pornography or one's long-time association with deviant peers. **Acute dynamic factors**, on the other hand, change rapidly (within days, hours, or even minutes), sometimes dependent upon mood swings, emotional arousal, and alcohol or other drug-induced effects. Hanson and Harris (2002) found that acute dynamic factors, such as anger and subjective distress, were better predictors of the tendency of sex offenders to reoffend than were the more stable dynamic factors, such as the sex offender's attitudes about women. Nonetheless, both are risk factors to be addressed not only in prediction of future offenses but also in the treatment of sex offenders.

Risk Assessment Instruments

Risk assessments should only be conducted by psychologists or other mental health professionals who have been trained to administer various measures and perform a comprehensive assessment of the behavioral, emotional, and cognitive features of the person in question. Today, many instruments are available to psychologists engaged in the risk assessment enterprise, and the research literature now contains numerous studies evaluating them (e.g., Churcher, Mills, & Forth, 2016; K. S. Douglas et al., 2014; Quinsey, Harris, Rice, & Cormier, 2006; Viljoen, Shaffer, Gray, & Douglas, 2017). Although some who perform these assessments may not use the instruments that are available for this purpose, not doing so may leave an examiner open to criticism if the results of the

assessment are challenged. By the same token, however, examiners should be certain that the instruments they choose have empirical support in the research literature.

The instruments are typically designed by gathering information on a large group of individuals within a target population (e.g., violent offenders, paroled offenders, youths in detention, or patients in a mental institution). On the basis of data from that group, the researcher identifies key variables (e.g., age of onset of antisocial behavior, history of violence) that are associated with the behavior of concern. People are then rated on the number of these variables they have in their present lives or backgrounds, with some factors being weighted more heavily than others. An individual with a score below the cutoff for a particular risk assessment instrument would be judged as being at a high risk of offending.

As noted earlier, the empirical literature has consistently supported the superiority of actuarial or statistical data over clinical data in the prediction of human behavior, particularly if the clinical data are unstructured. In this context, unstructured means that the clinician is not using research-based guidelines in the assessment but is instead relying heavily on personal experience. Some studies have suggested that psychologists who rely on unstructured clinical judgment were incorrect 2 out of every 3 times when trying to predict an individual's violent behavior (Vitacco, Erickson, Kurus, & Apple, 2012). However, actuarial instruments are not perfect, and some forensic psychologists were not comfortable with the use of risk assessments that were based heavily on static factors and did not incorporate professional judgment sufficiently. This led to the development of instruments that included some clinical judgment. Risk assessment now exists on a continuum, with completely unstructured clinical judgment on one end and completely structured assessment on the other; in between are partially structured assessment instruments (Skeem & Monahan, 2011). Today, in light of stalking laws, restraining orders, hate crime laws, and increased concerns about workplace and school violence, mental health professionals have been asked to provide forensic assessments of potential violence in a wide variety of settings. Moreover, professionals are not being asked simply to assess risk for general violent behavior but rather to assess risk for specific types of violence, such as domestic and sexual violence. We mention some of these instruments in future chapters in which specific crimes are covered.

Table 4.3

In summary, forensic psychologists need to remain alert to the ongoing debate and research literature on the various types of risk assessment instruments, their strengths and their weaknesses. Virtually all research is nonsupportive of *unstructured* clinical judgment, but structured professional judgment is gaining more adherents. K. S. Douglas et al. (2014) maintain that, contrary to previous opinion, "clinical judgments of risk—*so long as they are derived in a structured context, such as that provided by the SPJ model*—are as or more accurate compared to actuarial predictions of violence" (p. 426; emphasis added). Calling this a "liberating finding" (p. 426), they note that this allows risk assessment research to develop more expansively, such as determining how clinicians decide which risk factors are most relevant in a given case; how dynamic factors can change over time; the role of protective factors (e.g., individual resilience, family support); and whether risk factors can be applied equally across gender, racial, and ethnic backgrounds.

Risk assessment—particularly violence risk assessment—is a heavily researched and highly practiced activity in forensic psychology. Debates about the form it should take continue to occur with great frequency in the professional literature. The topic is introduced in this chapter because it is an enterprise so commonly performed by forensic psychologists in consulting with courts. However, it appears in many contexts and in both civil and criminal situations. We will revisit it in chapters ahead, as it pertains to these various contexts.

SUMMARY AND CONCLUSIONS

The main purpose of this chapter has been to introduce the structure and process in criminal and civil courts along with some of the specific tasks performed by forensic psychologists in those settings. We reviewed court structure, discussed basic concepts relating to criminal and civil cases, and provided illustrations of the work psychologists do at each of the major stages of the court process. The focus was almost exclusively on civilian courts, but we included some information on military courts as well, not only because of their importance in the judicial system but also because they provide many opportunities for forensic psychologists—opportunities to educate, to consult, and to testify. In the chapters ahead, these court-related tasks are described in greater detail.

Some psychologists are actively involved in trial or litigation consultation. In this capacity, they assist lawyers in tasks as varied as preparing witnesses for trial, identifying effective tactics for cross-examination, or helping to select jurors who are most likely to be sympathetic to the lawyer's side. This last process, referred to as scientific jury selection, is used in some form in major trials,

particularly those that attract heavy media publicity. The success of scientific jury selection is undetermined, primarily because its effects are difficult if not impossible to measure. Most research has determined that juror behavior cannot be predicted.

Psychologists who consult with attorneys during the preparation of cases do not invariably testify in court. It is often remarked that about 10% of the time, they do, either at trial or at a variety of pretrial and posttrial proceedings (e.g., a bail hearing, a sanity hearing, a sentencing hearing). It is now clear that all experts—from the physical, behavioral, and social sciences, as well as those representing medicine and law—fall under the mantle of science identified in the *Daubert* case, at least in federal courts. Courts in most states also have adopted *Daubert* or highly similar standards as well. Since *Daubert,* many judges are scrutinizing and rejecting expert testimony more than before, although some are more likely to focus on whether the evidence will assist the trier of fact and whether it has general acceptance in the scientific community.

The present chapter also covered issues that cause some psychologists to pause before agreeing to participate in court proceedings. Some psychologists are not comfortable divulging information that in other contexts would be confidential, even though they are allowed to do so by law. However, when psychologists are asked to conduct an evaluation, the client is often not the individual being evaluated but the court. In that case, copies of the psychologist's report are sent to the court as well as to attorneys on both sides of the case. The patient–therapist relationship is different from the relationship between the examiner and the person being evaluated. Courts have respected patient–therapist confidentiality, but even that may give way in certain situations when balanced against other interests.

Some forensic psychologists also resist being pressed for an opinion on legal matters or being subjected to grueling cross-examination by an opposing lawyer. Yet each of these is a routine occurrence in courtroom appearances. Judges often want to know the psychologist's conclusion as to whether an individual is competent to stand trial, whether someone is insane, or who would be the better of two parents in a custody battle. Technically, these are legal issues—the "ultimate issues" to be decided by the court, not the psychologist. Although some forensic psychologists are willing to express these opinions, others find them out of their purview. Nevertheless, the trend today appears to be to offer such an opinion if requested, as long as one is ready to carefully explain the facts on which that opinion is based.

A major undertaking for forensic psychologists is to conduct risk assessments—more specifically violence risk assessments—which are then communicated to representatives of the legal system. In the chapters ahead, risk assessments will be met again. Although the assessments are loosely called predictions of dangerousness, most psychologists emphasize that they cannot truly predict human behavior. They can, however, offer probabilities that certain behavior will occur. Methods to assess risk have developed rapidly. Whereas the use of unstructured clinical judgment was common in the past, this was replaced by the development of risk assessment instruments that were actuarial, or statistically based. Actuarial instruments identify risk factors (e.g., age of onset of antisocial behavior) that clinicians take into account in deciding on the probability that a given individual will engage in violent behavior in the future.

Actuarial assessments were almost universally viewed in the research literature as superior to unstructured clinical judgment, but they had shortcomings, as noted in the chapter. Furthermore, there is resistance to relying heavily on statistical data, increasingly available in computerized form, to make bail or sentencing decisions. Many psychologists have sought a combination of the best aspects of both actuarial and clinical assessments of risk, while avoiding the weaknesses of both. Over the past decade, instruments based on structured professional judgment were developed. These instruments provide guidelines to the clinician to incorporate risk factors while also allowing for their professional judgment of the individual being assessed in light of the particular circumstances of the case. It is argued, as well, that judges should be allowed discretion in both bail setting and sentencing to take into consideration individual factors about the person who stands before them.

Today, forensic psychologists have a range of risk assessment instruments from which to choose. We stressed the importance of being aware of the research literature on which method of risk assessment is used. This is not only professionally responsible but is also crucial if the forensic psychologist expects to testify in a court proceeding. The instruments used may be scrutinized by a court in keeping with *Daubert* guidelines. Many psychologists also indicate that the assessment of risk should be accompanied by suggestions for managing that risk whenever possible.

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QUESTIONS FOR REVIEW

1. What is the significance of *Jenkins v. United States* to forensic psychology?
2. Review the main steps or stages of the judicial process and provide illustrations of tasks forensic psychologists might perform at each one.
3. What are amicus curiae briefs, and why would a psychological association or organization want to file them?
4. Scientific jury selection is used in major cases but is not prevalent in the typical criminal or civil case. Give at least three reasons why this might be so.
5. Discuss the tasks psychologists perform in witness preparation. What are the pros and cons of psychologists participating in these tasks, particularly as they relate to lay witnesses?
6. Briefly explain the difference between the *Frye* general acceptance standard and the *Daubert* standard for evaluating

expert testimony.
7. Summarize each side of the argument as to whether an expert should provide an opinion on the “ultimate issue.”
8. Explain the differences between actuarial assessments, clinical assessments, and structured professional judgment as they relate to assessments of risk.

Descriptions of Images and Figures

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There are three levels of court, from bottom to top, as follows:

- Trial court
  - Military Courts, trial and appellate
  - Court of Veterans’ Appeals
  - U.S. District Courts
    - 94 Judicial Courts
    - U.S. Bankruptcy Court
    - U.S. Court of International Trade
    - U.S. Court of Federal Claims
  - U.S. Tax Court
  - Federal Administrative Court
  - Tribal Courts
- Intermediate Appellate Courts
  - 12 Regional Circuit Courts of Appeals
  - 1 U.S. Court of Appeals for the Federal Circuit
- Highest Appellate Court
  - U.S. Supreme Court

CHAPTER FIVE CONSULTING WITH CRIMINAL COURTS

CHAPTER OBJECTIVES

- Describe typical roles of psychologists consulting with the criminal courts.
- Explain the legal standards for competency and criminal responsibility.
- Summarize the psychological inventories and testing instruments used in evaluating competency and criminal responsibility.
- Discuss research on insanity and its outcome.
- Identify the role of forensic psychologists at the sentencing stage of criminal cases.
- Outline the roles and dilemmas for psychologists in capital sentencing.
- Outline the roles and dilemmas for psychologists in assessing sex offenders.

Six people were killed and others, including a member of the U.S. Congress, were injured during a “meet and greet” outside a supermarket in Arizona in 2011. The perpetrator was initially found incompetent to stand trial and was hospitalized and treated with antipsychotic medication against his will. He was then brought back to court and found competent. After pleading guilty, he was sentenced to life in prison without parole.

Twelve people were killed and dozens injured when a gunman opened fire in a crowded theater during a midnight showing of a Batman film in 2012. The perpetrator displayed bizarre behavior prior to the crime as well as in court. Diaries he kept included disjointed meanderings and disturbing drawings, and he had a vacant facial expression in the courtroom. He pleaded not guilty by reason of insanity, but a jury found him guilty. He was given 12 life sentences without the possibility of parole.

A woman with no prior arrests, but with a history of neurological problems, drove her car onto a city sidewalk and into a group of people, killing one man and injuring several others. Devastated by the incident, she pleaded guilty to careless and negligent driving, death resulting. Prior to her sentencing, she was evaluated by a neuropsychologist who confirmed to the court that she had suffered a traumatic brain injury in her early 40s, which likely had residual effects on her coordination. The judge considered this a mitigating factor and gave her the minimum sentence allowed under the law.

The preceding scenarios, reporting on actual court cases, illustrate some of the most common roles performed by psychologists and psychiatrists consulting with criminal courts: competency

evaluations, assessment of mental state at the time of the offense (criminal responsibility or sanity evaluations), and presentencing evaluations. In these roles, the clinicians conduct **Forensic mental health assessments (FMHAs)**. A vast store of professional literature exists offering guidance, much of which is cited in the chapter. Most recently, attention has been given to conducting evaluations in the digital age (Batastini & Vitacco, 2020). Clinicians also perform risk assessments, discussed in the previous chapter, to aid judges in bail decision making or at sentencing. As we will note, risk assessments are in some cases controversial (e.g., relative to bail setting or sex offender civil confinement) or highly complex (e.g., in the death penalty context).

This chapter is devoted primarily to competency, criminal responsibility, and sentencing. In addition, we cover in this chapter the controversy surrounding the civil commitment of some sexual offenders after they have served their criminal sentences, a topic that reminds us of the interrelationship between criminal and civil courts.

COMPETENCY TO STAND TRIAL

By far, the most common FMHAs are those assessing **Competency to stand trial** (CST), also referred to as fitness to stand trial or fitness to proceed. Estimates of the number of evaluations throughout the United States yearly range from 25,000 to 50,000 (Gowensmith, 2019; Gowensmith, Frost, Spelman, & Therson, 2016; Zapf, Roesch, & Pirelli, 2014). These evaluations can occur in jail, in a psychiatric hospital, or in the community. Zapf et al. (2014) also observed that—when considering both community and institutional evaluations—the typical cost of a competency evaluation for one defendant is $5,000.

Nationwide, about 4 out of 5 defendants evaluated for CST are found competent (Pirelli, Gottdiener, & Zapf, 2011). When found not competent—roughly 20% of those evaluated—efforts are made to restore defendants to competency, usually in the forensic unit of a psychiatric hospital. Such hospital beds are not always available, however, and defendants found incompetent may languish in jail, without appropriate treatment, until they can be transferred to a more appropriate setting (Gowensmith, 2019). A conservative estimate of restoration costs in an institution is $36,250 for a 3-month period. Considering the estimated number of defendants evaluated nationwide, Zapf et al. (2014) estimate upward of $700 million annually is spent for both evaluation and restoration costs in the United States (p. 286). Numbers and figures such as these have

led many scholars to remark that we have a competency crisis, and to suggest alternative approaches to evaluation as well as restoration (Gowensmith, 2019).

There are several reasons why competency evaluations are so common. First, questions about a defendant's competence can arise at many different stages of the criminal process, and defendants get evaluated and reevaluated. In a case to be discussed again below (Cooper v. Oklahoma, 1996), questions about competence were raised five different times, the last time at Cooper's sentencing hearing. In another case, Indiana v. Edwards (2008), the defendant had three competency hearings and two hearings on whether he could represent himself at trial. Many other defendants whose cases have been highly publicized in local or national media had multiple competency evaluations and hearings before their cases reached the trial stage. Interestingly, it has been documented that competency evaluations are not necessarily followed by a competency hearing. In other words, the presiding judge accepts the results of the evaluation, providing both sides stipulate to the evaluator's opinion (Melton et al., 2018; Roesch & Golding, 1980). Also, when defendants are found incompetent to stand trial and sent for restoration, a second evaluation is needed when they are believed to be restored to competence.

Second, an unknown number of criminal defendants are reevaluated over a period of years after their first cases have been resolved because they are charged with additional crimes. It is important to stress that competency evaluations routinely involve defendants charged with relatively minor crimes (Pirelli et al., 2011). In virtually every state, certain defendants charged with misdemeanors or lesser felonies are well known to police, the judicial system, and the mental health system. They continually appear before the court, are sent for competency evaluation, are found incompetent to stand trial (or competent), are hospitalized (or not), have charges dropped (or plead guilty), spend time on probation (or in jail), and go forth into the community until their next criminal charge. The mental health courts mentioned in Chapter 4 are intended to prevent the perpetuation of this revolving-door process by diverting primarily nonviolent individuals with mental disorders from the criminal process and providing community supervision and meaningful treatment.

Third, the competency question can be raised not only by a defense attorney, but also by the prosecution or the judge. Although the issue is most likely to be raised by the defense attorney, all are officers of the court and arguably expected to ensure fairness for

the defendant. Judges who fail to grant a request for a competency evaluation are subject to reversal of this ruling if a defendant is convicted and appeals the conviction. The need for competency is a principle so ingrained in the law that if there is any suspicion that a defendant is not competent, an evaluation should be ordered.
Finally, developments in forensic psychology itself may explain the frequency of competency evaluations. As we discuss later in the chapter, the evaluation process has been made considerably simpler with the development of competency assessment instruments and the training of graduate and postgraduate students in making these assessments. Despite this, there is also evidence that lawyers do not always seek competency evaluations for their clients, even when they suspect incompetency (S. Hoge, Bonnie, Poythress, & Monahan, 1992; Murrie & Zelle, 2015), a decision that seems to be in conflict with the spirit of the law. This is particularly likely to occur in less serious cases, and several reasons may account for it, including a lawyer's resistance to having the client institutionalized, the time and cost involved, or a genuine belief that the client is better served if the case is disposed of quickly through a plea bargain. Finally, lawyers also may fail to recognize that a deficit such as an intellectual disability may render a defendant not competent to participate in the court proceedings (Murrie & Zelle, 2015).
However, some have argued that in recent years lawyers may be more likely, rather than less likely, to seek competency evaluations as they become more aware of the importance of this issue for their clients (Gowensmith, 2019). This has led to an increasing demand for competency related services. In an incisive article, Gowensmith (2019) has pleaded for more outpatient competency restoration services that would be of benefit both to defendants and to the legal system as a whole. (See **Perspective 8.1** in Chapter 8, in which Dr. Gowensmith writes about his research interests.)
It should be noted that although courts and statutes continue to use the term *competency to stand trial,* the psychological research literature is increasingly replacing the term with **Adjudicative competence** (e.g., Mumley, Tillbrook, & Grisso, 2003; Nicholson & Norwood, 2000). This is in response to the theory proposed by Richard Bonnie (1992), who suggested that CST must involve both "competency to proceed" and "decisional competency." As Bonnie stated, courts to that point had focused almost exclusively on the competency to proceed without thoroughly taking into account the complex decisional abilities that are required of defendants in a wide variety of contexts—for example, competency to plead guilty, to represent themselves, and to engage in plea bargaining. Since that

time, the U.S. Supreme Court weighed in on competency in a few other areas, as we note shortly. The term *adjudicative competence* also is broad enough to subsume a wide range of abilities defendants are expected to possess. For example, if defendants want to waive their rights to lawyers, the law says they must be competent to do so. If they plead guilty to a crime—and thereby waive their right to a trial with all of the due process protections that a trial entails—they must be competent to do so. Criminal defendants have much to lose in the face of criminal prosecution (e.g., their freedom and sometimes their lives). Therefore, the law guarantees them a number of substantive and due process protections, including the right to a lawyer during custodial interrogation, the right to a lawyer at every critical stage of the criminal proceedings, and the right to a jury trial in most felony and some misdemeanor cases. Again, if they waive these rights, they are supposed to be competent to do so. Thus, a confession, which is a waiver of one's right to remain silent, is not valid if it is not made voluntarily. Appellate courts have consistently reiterated that a waiver of constitutional rights must be knowing, intelligent, and valid.

Legal Standard for Competency

The standard for competency to stand trial was announced by the Supreme Court in the 1960 case *Dusky v. United States* and has been adopted in most states. A similar standard exists in Canadian courts and in the United Kingdom, based on court cases in those countries (Ramos-Gonzalez, Weiss, Schweizer, & Rosinski, 2016) as well as in courts across the globe (Kois, Chauhan, & Warren, 2019) In the *Dusky* case, the Court ruled that defendants are competent to stand trial if they have "sufficient present ability to consult with [their] lawyer with reasonable degrees of rational understanding . . . and a rational as well as a factual understanding of the proceedings" (p. 402). Competency requires not only that defendants understand what is happening, but also that they be able to assist their attorneys in the preparation of their defense. This has become known as the two-pronged ***Dusky* standard**. Many scholars have pointed out that the Supreme Court did not give enough attention to the *level* of competency required in a particular case (e.g., Brakel, 2003; Roesch, Zapf, Golding, & Skeem, 1999). For instance, a defendant might meet the standard for competency if charged with retail theft in a straightforward case. However, the same defendant, charged with manslaughter and facing what is expected to be a protracted trial, might not meet the standard. Therefore, the clinician assessing a defendant's CST must not only consider a person's

overall ability to understand charges and help the defense attorney, but must also consider the complexity of the specific case. (See **Table 5.1** for list of *Dusky* and other competency-related cases.)
The Supreme Court has ruled (Godinez v. Moran, 1993) that the *Dusky* standards apply to other competencies as well, such as the competency to waive one's *Miranda* rights, plead guilty, or engage in plea bargaining. Again, some mental health professionals believe that this one-size-fits-all approach leaves much to be desired. Guilty pleas, they argue, should be scrutinized very carefully because of their implications. The waiver of a number of constitutional rights that a guilty plea entails requires decisional competence that many defendants simply do not have.

Table 5.1

Evaluating Adjudicative Competence

Forensic psychologists evaluate defendants for adjudicative competence in a number of different settings. For example, a brief competency screening may be carried out very early in criminal processing while the defendant is being held in jail. Defendants also may be evaluated in the community, on an outpatient basis, while on pretrial release.
Although outpatient evaluations are on the increase, partly because of the cost factor (Zapf, Roesch, et al., 2014), many defendants are still evaluated while in jail or while hospitalized in a forensic unit of a psychiatric facility. Outpatient *evaluation* is far more common than outpatient *treatment,* however. In other words, the estimated 20% of defendants who are found incompetent to stand trial are usually hospitalized for treatment, whether or not they were evaluated in the community. This is beginning to change, with more treatment options available in the community, as we will note shortly.
Despite a large body of research on competency, Golding (2016) concludes that to date, very little research tells us why defendants are evaluated or adjudicated as incompetent to stand trial. We do know, though, that persons referred for competency evaluations tend to be those with a past history of mental disorder or those presenting signs of current mental disorders. The typical evaluation is conducted when defendants are deemed to have a mental disorder, such as schizophrenia or psychosis (Mumley et al., 2003). Therefore, competency evaluations often are prompted by a defendant's past history of psychiatric care, institutionalization, bizarre behavior at arrest, or attempt to commit suicide while held in detention. On the other hand, intellectual disability, emotional distress, or even advancing age might also lead to questions about a

defendant's competence. In such situations, the individual is less likely to require hospitalization in a mental health facility during the evaluation process.

As noted earlier, the request for an evaluation may come directly from the defense attorney or from any officer of the court, including the prosecuting attorney or the judge. It is important for forensic psychologists to note the difference. When the defense requests and pays for the evaluation, it is a private evaluation rather than a court-ordered one. The client is the person being examined and the report goes to the person's representative, the defense attorney. Depending on the evaluation's results, the attorney may or may not share the report with the prosecutor. When the evaluation is court ordered, the client is the court, even if ordered at the request of the defense attorney. Motions for court-ordered examinations may be made by the defense attorney (whose client is unable to pay for a private evaluation), the prosecutor, or the judge. The examiner should expect that the report of a court-ordered evaluation will be shared among all parties.

Research indicates that most competency evaluations are court ordered and that no more than one evaluation is performed (Melton et al., 2018). "Competing" evaluations are not the norm. In high-profile cases, such as those that might involve a life sentence or the death penalty, competing evaluations are more likely. When there are no opposing experts, though, judges almost always accept the recommendation of the clinician conducting the evaluation (Cochrane, Herbel, Reardon, & Lloyd, 2013; Cruise & Rogers, 1998; Melton et al., 2018). Some researchers report agreement rates that are well over 90% (Cruise & Rogers, 1998; Zapf, Hubbard, Galloway, Cox, & Ronan, 2002). In at least this pretrial context, therefore, clinicians seem to have considerable influence on the courts. If there is more than one evaluator and they disagree as to whether the defendant is CST, the judge is more likely to find the defendant incompetent (Gowensmith, Murrie, & Boccaccini, 2012). This is likely because, when there is doubt, the judge prefers to err on the side of caution.

As in all forensic mental health evaluations, the assessment of adjudicative competence should begin with a notice to the person being evaluated of the limits of confidentiality and the purpose of the evaluation (see **Focus 5.1** for a list of factors common to all evaluations; see also Heilbrun, Grisso, & Goldstein, 2009). As noted earlier, unless the psychologist is hired directly by the defense attorney for an appraisal of their client's competency and general mental status, the competency report will be shared among the

attorneys and the presiding judge. For this reason, examiners are often reminded to carefully limit the report to the defendant's present status and not to include information that might provide details about the crime itself (Grisso, 1988; Roesch et al., 1999; Zapf et al., 2014).
Focus 5.1

Factors Common to FMHAs
Although forensic mental health assessments (FMHAs) are conducted for a wide variety of reasons, they should have at least the following features in common:
Before meeting with the person being assessed, the examiner should

- understand the purpose of the referral;
- decline to conduct the evaluation if there is a conflict of interest or if the examiner has ethical or moral objections to participating;
- gather background information and records when available;
- be knowledgeable about the law relative to the assessment;
- clarify and agree on the method of payment and when it will be made; and
- clarify when a report is needed and to whom it should be submitted.

Before conducting the evaluation, the examiner should

- explain its purpose to the person being evaluated;
- stress that this is not a treatment relationship;
- explain the limits to confidentiality;
- warn the examinee of the possible uses of the examination;
- tell the examinee who will be getting copies of the report; and
- obtain the examinee's written consent, if consent is needed.

The examiner's written report should

- be clearly written and free of slang or excessive jargon;
- be submitted within a reasonable time after the evaluation has been completed;
- state the purpose of the report, identify the legal issues, and note who requested the report;
- specify documents reviewed and any tests/inventories that were administered;
- state clearly the basis for any conclusions reached; and
- be submitted with an awareness that a variety of individuals will see the report.

QUESTIONS FOR DISCUSSION

1. All these factors are important, but could some be considered more important than others? If so, which ones and why?
2. Discuss any problems that may arise in addressing the factors listed as “before conducting the evaluation.”

The examination process itself varies widely according to the examiner’s training and theoretical orientation. As Cruise and Rogers (1998) stated some time ago, “there is no clear consensus on a standard of practice for competency evaluations” (p. 44). Likewise and more recently, Golding (2016) points out that no one approach or assessment procedure suffices for assessments when it comes to competency evaluations, “[S]o in supervision, I encourage professionals to develop their own professional identity by crafting a methodology that reflects both professional practice standard and their own views” (p. 75). Some examiners conduct only a clinical interview, whereas others conduct an interview and administer a variety of objective or projective measures—such as standard psychological tests of intelligence or measures of personality. Other examiners use a variety of competency assessment measures, which will be discussed shortly.

Traditionally, though, competency evaluations tended to include a good deal of information that was irrelevant to the issue of whether the defendant was competent to stand trial (Grisso, 1988). Later, with more guidance provided to clinicians, misconceptions about competency evaluations lessened and reports improved in quality (Roesch et al., 1999). Moreover, more courts began to require that examining clinicians cut to the chase and provide a basis for any of their conclusions. Nevertheless, despite the suggestion that the quality of reports is improving, a study of reports submitted to judges in one state found that only 25% were of high quality (Robinson & Acklin, 2010).

Guidelines and suggestions for evaluating competencies are widely available to clinicians (e.g., American Psychological Association [APA], 2012; Golding, 2016; Grisso, 2003; Murrie & Zelle, 2015; Zapf, Roesch, et al., 2014). For example, examiners should review the case records available before proceeding with the evaluation and consider the context in which they are evaluating the defendant. Mental status is not the only consideration because a person with a mental disorder may be perfectly competent to understand the legal process and assist their attorney. As Zapf, Roesch, et al. (2014) observe, “it is quite possible that too many evaluators inappropriately rely on traditional mental status issues without considering the functional aspects of a particular defendant’s case” (p. 291).

Although guidelines are widely available, it is uncommon for mental health professionals to receive intensive training specifically directed at evaluating adjudicative competence or sanity, a concept closely related but very distinct. Postdoctoral forensic programs may offer courses, and clinicians may attend workshops as part of continuing education requirements, but there is no guarantee that examiners nationwide have the specific expertise that would seem to be needed. The exception may be in the state of Virginia, where the great majority of psychologists and psychiatrists who perform these evaluations have taken a 5-day training course at the Institute of Law, Psychology, and Public Policy. Despite common training, a recent review of 3,644 competency evaluations (Murrie, Gardner, & Torres, 2020) found variability in the methods used and conclusions reached. The researchers did not question the quality of the evaluations, however.

Competency Assessment Instruments

Over the past 40 years, researchers have developed and tried to validate a variety of instruments for the assessment of competency to stand trial. Pirelli, Gottdiener, and Zapf (2011) identified at least 12 such instruments. Unfortunately, there is "scant scientific evidence for the reliability and validity of many of the adjudicative competence measures" (Poythress & Zapf, 2009, p. 320), and they do not seem to be widely used. Murrie et al. (2020) found that only 5.4% of 3,644 reports they examined used any psychological testing, and only 1.3% used forensic assessment instruments such as those described later. When psychological testing was used, it was most likely to be intelligence testing, testing for feigned symptoms, or personality measures. As with risk assessment instruments, practitioners should be aware of the research evidence pertaining to any competency assessment instrument they use. Moreover, "all existing forensic assessment instruments are 'tools' in the sense that none are meant to be solely relied upon" (Golding, 2016, p. 75). Some competency assessment tools are screening instruments generally taking under 30 minutes to administer, whereas others are more elaborate instruments based on both interviewing and test administration. Screening instruments serve as quick appraisals to determine if someone is potentially incompetent; if so, they are then referred for a more extensive examination. Also available is a computer-assisted tool—the CADCOMP (Computer-Assisted Determination of Competency to Proceed), which is heavily based on the defendant's self-reports of their background, legal knowledge, and behaviors (Barnard et al., 1991). A number of reviews of these

assessment instruments are available (e.g., Pirelli et al., 2011; Zapf, Roesch, et al., 2014; Zapf & Viljoen, 2003). Although we do not provide a comprehensive review here, we will discuss a few of the instruments for illustrative purposes.

The Competency Screening Test (CST)

The **Competency Screening Test (CST)** (Lipsitt, Lelos, & McGarry, 1971) is a sentence-completion test that is intended to provide a quick assessment of a defendant's competency to stand trial. The test taps the defendant's knowledge about the role of the lawyer and the rudiments of the court process. For example, defendants are asked to complete the following: "When a jury hears my case, they will . . ." If defendants score below a certain level, they are evaluated more completely. The test's main advantage is the ability to screen out quickly the obviously competent defendants. According to Roesch, Zapf, Golding, and Skeem (1999), the test has a high false-positive rate (53.3%), identifying many competent defendants as incompetent. Because persons so identified in a screening test are likely to be hospitalized for further evaluation, this presents a significant deprivation of liberty for the defendant who would otherwise be free while awaiting trial. Based on its potential for misclassifying defendants, scholars are wary of recommending the CST as the sole method of screening (Zapf, Roesch, et al., 2014).

The MacArthur Competency Assessment Tool—Criminal Adjudication (MacCAT-CA)

The MacArthur Foundation Research Network on Mental Health and the Law initially developed the MacArthur Structured Assessment of the Competencies of Criminal Defendants (MacSAC-CD; Hoge et al., 1997). This was a rather cumbersome research tool that led to a shorter instrument, the **MacArthur Competency Assessment Tool—Criminal Adjudication (MacCAT-CA)**, containing 22 items. Defendants are provided with a vignette describing a situation in which a person is charged with a crime and are asked questions about it. They are also asked questions about their own situation. Shortly after its introduction, the MacCAT-CA began to receive good reviews as being superior to other assessment instruments (Cruise & Rogers, 1998; Nicholson, 1999; Zapf & Viljoen, 2003).

Evaluation of Competency to Stand Trial—Revised (ECST-R)

The ECST-R was developed by Rogers, Tillbrook, and Sewell (2004). It is an interview-based instrument that focuses on the *Dusky* standard, such as by inquiring into the degree to which defendants

understand the role of their lawyers. A main feature of this instrument is its ability to detect malingering (faking) in defendants who want to be found not competent. The ECST-R represents “the first formal competency assessment instrument created specifically to serve, in part, as a screener of feigned incompetency” (Zapf, Roesch, et al., 2014, p. 299). The instrument has high interrater reliability and is likely to remain an important tool in the competency evaluator’s armory.

Other Measures of Competency

Several measures also receiving positive research attention are actually revisions of earlier tests. The **Interdisciplinary Fitness Interview–Revised (IFI-R)** (Golding, 1993) reflects both research on competency instruments and holdings in various competency-related court cases. Interestingly, the IFI-R demonstrated high reliability among examiners as well as attorneys (Zapf, Roesch, et al., 2014). For screening purposes, another instrument, the Fitness Interview Test–Revised (FIT-R; Roesch, Zapf, & Eaves, 2006) has also been highly rated. The IFI-R and the FIT-R are basically semi-structured interviews intended to help examiners explore the broad spectrum of psychological abilities associated with competency (Golding, 2016). Although earlier versions of each of these measures did not receive favorable results, the revisions have demonstrated more promise.

As indicated earlier, and despite the continuing development of forensic assessment instruments, they do not appear to be widely used in forensic practice (Borum & Grisso, 1995; Murrie et al., 2020). This may be partly due to the fact that there is not sufficient scientific reliability or validity for many of these instruments (Poythress & Zapf, 2009). As Golding (2016, p. 77) observed, “Unfortunately, little research on the comparative validity of various competency assessment approaches is available to guide forensic examiners in their selection of assessment tools.”

In similar fashion, Kois, Chauhan, and Warren (2019, pp. 300–301) observe that time-consuming and expensive testing protocols are not needed for this purpose. “Overdependence on psychological testing can dilute rigorous use of the forensic method, which combines skilled interviewing with third party contacts and a thorough review of all relevant collateral information.”

Assessment of Malingering

Virtually every type of forensic mental health assessment requires some appraisal of possible malingering on the part of the person being evaluated. It is, according to Kois et al. (2019, p. 303) “an

important clinical consideration that warrants special attention in forensic settings." With respect to competency evaluations, criminal defendants may pretend they have symptoms of a serious disorder for a variety of reasons (e.g., delay proceedings, get a case dismissed, avoid a trial altogether). Rogers (1997) has described malingering as a response style in which the individual consciously fabricates or grossly exaggerates their symptoms. He observes that this is understandable in the light of the individual's situation. The obvious example is the offender who pretends to be mentally ill, believing that the judge is less likely to sentence him to prison. In the competency context, a defendant may pretend to have symptoms of a mental disorder to postpone the trial or avoid going to trial altogether—unaware that symptoms of a mental disorder do not equate with incompetency. Although we discuss malingering in this chapter, it should not be assumed that this problem is limited to the criminal context. As we note in Chapter 6, individuals being assessed in civil cases may be equally motivated to feign symptoms. Forensic psychologists have at their disposal a variety of validated tests for detecting malingering. The Structured Interview of Reported Symptoms (SIRS; Rogers, 1992, 2012) is a well-regarded instrument for detecting the malingering of psychotic symptoms. As noted above, Rogers and his colleagues (Rogers, Tillbrook, & Sewell, 2004) later developed a competency assessment instrument that includes screening for malingering. Using that instrument, Vitacco, Rogers, Gabel, and Munizza (2007) found suspected malingering in about one fifth of a sample of persons evaluated for competency to stand trial. Although a number of assessment instruments have the power to detect malingering, it may not be advisable to use them in competency evaluations unless researchers have applied them specifically to that context.

Restoration to Competency

As noted earlier, research indicates that approximately 20% of defendants referred for competency evaluations nationwide are initially found incompetent. However, these percentages vary widely across jurisdictions, as well as across the setting of the evaluation. For example, Pirelli et al. (2011), in their meta-analysis, found incompetency determinations as low as 7% and as high as 60%. Murrie et al. (2020) found that 38.8% of the reports they reviewed opined that the defendant was not competent. The study could not determine the court decision on competency, partly because the reports were redacted and did not contain identifying defendant information. However, as noted, judges typically accept the

evaluation result, so this figure is within the range of other research. Jurisdictional differences can be attributed to a number of factors, including variations in examiner training, the extent to which judges scrutinize requests for evaluations, and the availability of pretrial mental health services, to name but a few (Zapf, Roesch, et al., 2014).

Another reason for the jurisdictional differences may be the burden of proof—in some jurisdictions, defendants bear the burden of proving their incompetency, while in others the prosecutor must prove the defendant is competent (see **Focus 5.2** for a review of the burdens of proof). This subtle distinction suggests that, where the burden is on the defendant, it may be more difficult to be found incompetent, assuming that is what the defendant wishes. Fortunately for these defendants, the Supreme Court has ruled that the burden of proof cannot be greater than a **Preponderance of the evidence** (Cooper v. Oklahoma, 1996).

Focus 5.2

Legal Burdens of Proof

In adversary proceedings, legal decisions require that proof be established at a specified level.

BEYOND A REASONABLE DOUBT

This is the standard of proof required in all criminal proceedings as well as delinquency proceedings when a juvenile is charged with a crime. It is proof that is just short of absolute certainty. “In evidence [it] means fully satisfied, entirely convinced, satisfied to a moral certainty” (H. C. Black, 1990).

CLEAR AND CONVINCING EVIDENCE

This is the standard required in some civil proceedings, such as when the state wishes to commit an individual to a psychiatric hospital against their will. It is an intermediate standard, resulting in “reasonable certainty of the truth of the ultimate fact in controversy. Clear and convincing proof will be shown where the truth of the facts asserted is highly probable” (H. C. Black, 1990).

PREPONDERANCE OF THE EVIDENCE

This is proof that one side has more evidence in its favor than the other. It is “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not” (H. C. Black, 1990). It is the standard required in most civil suits and may be relevant to criminal

proceedings as well. For example, when states require criminal defendants to prove they are incompetent to stand trial, they cannot require this by a standard more demanding than a preponderance of the evidence.

QUESTIONS FOR DISCUSSION

1. Think of a jury deliberating a criminal case, where the prosecution must prove the defendant is guilty beyond a reasonable doubt. Why is this such a difficult standard to meet, and why is the standard so high?
2. Should a criminal defendant raising an insanity defense have to prove they were insane (by definition, at the time of the crime), or should the prosecutor be required to prove that the defendant was *not* insane? Why is the distinction important?
3. What about a defendant who claims they are incompetent to stand trial? Should that defendant be required to prove incompetence or should the prosecutor be required to prove the defendant is competent?

Charged with the murder of an elderly man, Cooper was originally ruled incompetent to stand trial (IST). He was subsequently treated in a mental institution for 3 months and then was found competent. His behavior during the competency hearing and the trial was bizarre at best. He refused to wear civilian clothes during his trial, claiming that these clothes were burning him, so he wore prison overalls. He crouched in a fetal position and talked to himself during much of the trial. However, the state of Oklahoma at the time required **Clear and convincing evidence** of a defendant's incompetence, and the judge in the case concluded that Cooper had not met that burden. The Supreme Court emphasized that though states could require defendants to establish their incompetence, Oklahoma's clear and convincing evidence requirement was too high a burden for the defendant to bear. Put another way, Cooper's behavior may not have demonstrated his incompetence by clear and convincing evidence, but it would be difficult to argue that it was not demonstrated by a preponderance of the evidence. In other words, it was more likely than not (the preponderance standard) that Cooper was incompetent to stand trial. Obviously, a state could not require a defendant to prove incompetence **Beyond a reasonable doubt**, the most stringent standard of proof.

Persons found incompetent to stand trial tend to be those with a history of institutional treatment or diagnosis of a serious mental disorder. The majority of persons found incompetent to stand trial are those suffering from schizophrenia and psychotic symptoms

(Morse, 2003). Although mental disorder seems to be a requirement for most incompetency determinations, mental disorder itself—even serious mental disorder—is not *sufficient.* However, research also suggests that a clinical diagnosis, when included in a competency evaluation report, is a strong predictor of a finding of incompetence (Cochrane, Grisso, & Frederick, 2001).

Forensic psychologists are often advised not to include diagnoses in their reports (APA, 2012; Golding, 2016; Golding & Roesch, 1987; Grisso, 1986). This is because diagnoses are often subjective, and they are labels that can carry undue weight with judges, lawyers, and juries who are not mental health professionals. In the case of competency evaluations, courts need to be made aware of the functional abilities of the defendants, and as noted previously, the reports should be crafted to the requirements of that particular case. Even with an established and valid diagnosis, a defendant may understand the legal process and be able to help the defense attorney, while other individuals *without* an established diagnosis, who do not have a mental disorder, may not be able to understand the process or help their attorneys. Put another way, they may not be able to function as defendants. Consider, for example, the case of a person who is significantly intellectually deficient, or the defendant who is temporarily cognitively impaired due to depression because he killed a child while driving his car. However, some courts continue to be swayed by a mental disorder diagnosis alone, while others rule defendants competent *despite* a serious mental disorder.

Once an individual has been found IST, efforts are made to restore the person to competence so as to proceed with the trial. This is usually achieved through the administration of psychotropic medication, which is discussed later. Clinicians typically are asked to make some assessment of the likelihood that an individual will be restored to competency or even estimate how long this will take. As Murrie and Zelle (2015) observed, though, this is asking quite a bit. "Historically . . . most authorities have concluded that clinicians are not particularly skilled at making predictions about an individual's restorability" (p. 147). If restoration is highly unlikely, the state must decide whether to drop the criminal charges and, if necessary, initiate involuntary civil commitment proceedings, which might mean the person is sent to a psychiatric hospital or mandated to receive treatment on an outpatient basis.

We should note that the vast majority of individuals initially found incompetent are restored to competency in a relatively short period, usually within 3 to 6 months (Colwell & Gianesini, 2011). Nevertheless, there are many examples of defendants who were

found IST and who are held in institutions for seemingly lengthy periods (Gowensmith, 2019) because sufficient restoration services are not available. Gowensmith documents increases in competency restoration demands in several states, increases ranging from approximately 38% to approximately 73%. In one state, the rate of competency restoration cases increased 129%. In some states, civil liberties groups such as the American Civil Liberties Union (ACLU) have sued on behalf of incompetent defendants whose treatment was delayed due to waiting lists in state psychiatric facilities. In early 2016, for example, Pennsylvania reached a settlement with the ACLU both to create new treatment spots and to allocate funds for housing for outpatient restoration (National Psychologist, 2017).

In a 1972 case, *Jackson v. Indiana*, the U.S. Supreme Court placed a limit on the confinement of defendants found incompetent to stand trial, ruling that they could not be held indefinitely if there was no likelihood that they would be restored. However, they can be subjected to civil commitment, as mentioned earlier. In most states, periodic hearings are held to assess an incompetent defendant's status; defendants are kept institutionalized as long as some progress is being made. Some states do not allow incompetent defendants to be held for longer than the maximum sentence they would have served had they been convicted. On the other hand, there is resistance in some states to releasing individuals who were found incompetent to stand trial but are deemed nonrestorable, even if they do not strictly meet the requirements for continued civil commitment (S. Hoge, 2010).

Competency restoration need not be done in an institution, although in some states the law requires this. Furthermore, some states have time limits on the hospitalization (R. D. Miller, 2003). Like competency evaluations, treatment for incompetent defendants can be provided in community settings, and this is occurring in increasingly more cases. Outpatient Competency Restoration Programs (OCRPs) are advocated by many forensic psychologists today and are receiving more research attention. In some states where these programs are available, inpatient treatment is considered a last resort, only for persons with serious mental illness or charged with violent crimes. Recent research suggests that competency restoration in the community is effective, cost efficient, and less likely to fail compared to inpatient restoration (Gowensmith et al., 2016).

Current research is beginning to address specific factors that predict success at competency restoration (Gay, Vitacco, & Ragatz, 2017). Gay et al. (2017) found certain psychotic and neuropsychological

symptoms predicted nonrestoration. A diagnosis of intellectual disability and a greater number of psychotic and manic symptoms also make it unlikely that competency will be restored (Mossman, 2007). What appears most troublesome, however, is the lack of information about how defendants found IST are restored to competency, either in institutional settings or in the community. According to Roesch et al. (1999), "[t]he disposition of incompetent defendants is perhaps the most problematic area of the competency procedures" (p. 333). In the late 20th century, prominent researchers observed that IST defendants were rarely treated differently from other hospitalized populations (Roesch et al., 1999; Siegel & Elwork, 1990). Indeed, the predominant method still seems to be through medication for the underlying mental disorder (Murrie & Zelle, 2015; Zapf & Roesch, 2011). However, Murrie and Zelle (2015) note that informal surveys suggest that larger facilities serving IST defendants include education on legal concepts and the trial process. Nevertheless, they add, "our field knows surprisingly little about where, how, and how effectively competence restoration services are delivered" (2015, p. 148).

In recent years, much attention has been given to the plight of individuals with intellectual disabilities who are arrested and processed by the criminal justice system. Intellectual disability does not guarantee that an individual will not be held responsible for a crime; indeed, prisons and jails in the United States are believed to hold a substantial number of convicted offenders with intellectual deficits, and some are on death row. Furthermore, as Zapf, Roesch, et al. (2014) have noted, persons with a mild intellectual disability may try to "hide" this disability, even from their lawyers. Thus, the issue is not raised either in pretrial evaluations or in mitigation for the offense, if the individual is convicted.

However, when individuals with intellectual disabilities are found IST, restoration is unlikely to occur because of the chronicity of their condition. S. D. Anderson and Hewitt (2002) reported on an education program in Missouri that specifically addressed the restoration needs of these defendants. The program consisted of a series of classes in which defendants learned about the legal system and participated in role-playing activities. The competency training had very little success, with only one third of all defendants restored to competency. The defendant's IQ contributed to the outcome, but the IQ score was just short of reaching statistical significance. According to the researchers,

> [p]ersons with certain levels of [intellectual disability] may inherently lack the skills needed to actively participate in trial proceedings. Abilities such as abstract reasoning, decision-making, and so forth are not only difficult to teach but are extremely difficult to learn. (p. 349)

Once again, this speaks to the importance of mental health courts and their ability to divert some individuals from the criminal process.

Drugs and the Defendant Found Incompetent to Stand Trial

Medication is the primary approach taken to restore incompetent defendants to competency. Antipsychotic or psychoactive drugs have improved significantly in effectiveness, but they still may produce unwanted side effects including nausea, headaches, loss of creativity, inability to express emotions, and lethargy in some individuals. Therefore, because of these feared side effects, some individuals found incompetent to stand trial may challenge the government's right to give them this medication. In other cases, this may be a defense strategy to buy time to prepare a defense or delay taking the case to trial.

In recent years, the involuntary administration of these drugs has received considerable national attention. A high-profile case in 1998 involving the alleged shooter of Capitol police officers Jacob Chestnut and John Gibson; a U.S. Supreme Court case, Sell v. United States (2003); and many lower court cases have revolved around this issue. As mentioned at the beginning of the chapter, the man responsible for deaths in Arizona in 2011, Jared Loughner, was unsuccessful in his attempt to refuse medication to restore him to competency.

Sell v. United States (2003) involved a defendant found IST who refused to take antipsychotic medication during his hospitalization for competency restoration. Sell was a former dentist who was charged with fraud, and he had a history of mental disorder and bizarre behavior, including once calling police to report that a leopard was boarding a bus. During an earlier period of hospitalization, he had taken antipsychotic medication and claimed to have suffered negative side effects. Sell's case proceeded through a number of administrative and court hearings. Staff at the federal medical facility, as well as a federal magistrate, determined that he was dangerous to others and therefore required involuntary medication.

He had apparently become infatuated with a nurse and had inappropriately accosted her, though he had not physically harmed her. A district court judge and the Eighth Circuit Court of Appeals both ordered the medication on different grounds. These courts did not consider him dangerous, but they did approve the forced medication to render him competent to stand trial.

In 2003, the Supreme Court sent the case back for further inquiry (Sell v. United States, 2003). According to the Justices, Sell's dangerousness had not been established, a fact that had been noted by the federal district court and the court of appeals. Moreover, those courts had not sufficiently reviewed the possible trial-related risks and side effects of the medication. The Court stated,

> Whether a particular drug will tend to sedate a defendant, interfere with communication with counsel, prevent rapid reaction to trial developments, or diminish the ability to express emotions are matters important in determining the permissibility of medication to restore competence.

Therefore, the Court allowed medication to restore a defendant to competency against his will but not until a hearing was held to determine the need for that medication. The Court did not specify that this should be a *court* hearing, however, which was a critical issue in Jared Loughner's case.

After he was found incompetent to stand trial for the Arizona shootings, Loughner was institutionalized to be restored to competency. His lawyers argued that he should not be forced to take medication. Furthermore, they argued that the decision regarding whether he could be medicated against his will should be made in a court proceeding, not an administrative hearing held in the psychiatric facility. Loughner lost this fight. He was medicated, presumably against his will, and was restored to competency. In August 2012, after having been ruled competent to stand trial, he pleaded guilty and was sentenced to life without the possibility of parole. In similar fashion, Dylann Roof—who killed nine people during a prayer meeting in Charleston, South Carolina, in 2015—was unsuccessful in his attempt to avoid medication.

Sell's alleged crimes (Medicaid fraud, mail fraud, and money laundering) were not violent. However, the crimes committed by Loughner and Roof were. The crimes allegedly committed by Eugene Russell Weston, the shooting death of two Capitol police officers and the wounding of two others in the summer of 1998,

were violent as well. Like Sell, Weston had a history of mental disorder that included serious delusional symptoms, and he was found incompetent to stand trial. Also, like Sell, he resisted taking the medication that was intended to restore him to competence. He languished in federal detention for
3 years, unmedicated, while his lawyers argued before various courts that he should not be forced to take medication against his will. In July 2001, a federal court of appeals carefully reviewed his claims and ultimately ruled that the government's strong interest in bringing this defendant to trial overrode his right to remain free of psychoactive drugs and therefore allowed the medication. The Supreme Court refused to hear the case, leaving the decision of the lower court standing.

Weston's case differs from Loughner's and Roof's cases in that he was never brought to trial. Forced medication did not restore him to competency. Six years after the offense, in 2004, a court suspended his criminal case because he was not making progress toward competency, but the court did not dismiss the charges, and he remained hospitalized. Ten years after the offense, in 2008, Weston asked for a judicial hearing on his mental state; he appeared via teleconference before a judge but was denied his request to be released. Today, over 20 years after the offense, Weston apparently remains hospitalized in a federal medical facility and has never been brought to trial.

The medication controversy extends to the trial process itself. Although defendants often respond well enough to medication to render them competent to stand trial, continual medication during the trial itself (if their case goes to trial) may be warranted. In other words, to remain competent, the defendant must continue to be medicated. Yet the medication itself may affect the defendant's ability to participate in the proceedings, as the Supreme Court observed in the *Sell* case. Medication also creates an interesting conundrum for defendants who have raised an insanity defense. We will return to this issue after introducing the concept of insanity and its assessment.

INSANITY

People cannot be held responsible for crimes of they did not possess the "guilty mind"—or **Mens rea**—that is required at the time the criminal acts were committed. The law recognizes a number of situations under which an action that would otherwise be criminal is either justified or excused. For example, if someone acts in self-defense, believing they are in imminent danger of grave bodily harm,

they will not be held responsible provided a judge or jury agrees with those perceptions. Self-defense, then, is a justification. A police officer who kills an armed suspect who is a threat to the officers or others is justified for that killing. Under different scenarios, people may be excused rather than justified because they did not possess the necessary mens rea. As an example, if a person is forced to rob a convenience store while a loved one is being held hostage, the person is robbing under duress. When it is a mental disorder that robs the individual of a guilty mind, the law refers to this as **Insanity**. Insanity excuses criminal conduct but does not justify it.

The distinction between insanity and competency to stand trial is crucial. Competency refers to one's mental state *at the time of the criminal justice proceedings* (e.g., when waiving the right to a lawyer, pleading guilty, standing trial). Sanity (or criminal responsibility) refers to mental state *at the time of the crime.* It is possible for a person to be insane yet competent to stand trial or sane but incompetent. Obviously, it is also possible for people to be both insane and incompetent or sane and competent. Furthermore, in contrast to competency to stand trial, where the *Dusky* standard is universal, there is no uniform standard for determining insanity. This was made clear in the latest Supreme Court decision on insanity, Kahler v. Kansas (2020), to be discussed shortly.

Sanity evaluations are different from the competency evaluations discussed above and are thought to occur far less frequently, though the exact number is difficult to determine. Sanity evaluations are also called *criminal responsibility* (CR) or *mental state at the time of the offense* (MSO) evaluations, so we use these terms interchangeably. Many defendants indicate that they will use the insanity defense but ultimately do not, presumably after evaluations do not support it. Forensic psychologists may find that certain people have a mental disorder, but they may not meet the criteria for insanity in that jurisdiction. For example, the person who rammed his car into counterprotesters in Charlottesville, Virginia, in 2017, killing one young woman, had a mental disorder, but he did not meet the criteria that would support an insanity defense in Virginia.

Insanity Standards

Federal and state courts use a variety of "tests" to determine the extent of criminal responsibility, the most common being knowledge of the difference between right and wrong as well as awareness that what one is doing is wrong. The tests are typically named after court cases, for example, Durham v. United States (1954) and Regina v. M'Naughten (1843), but they have been modified to such an extent

over the years that it is best to describe them according to their main elements. For example, a statute may specify cognition, appreciation, compulsion, all of these, or something in addition. In federal law, the **Insanity Defense Reform Act (IDRA)** sets the standard for insanity cases in federal courts. (see **Table 5.2** for examples of insanity tests and **Table 5.3** for a selected list of court cases). Importantly, all tests require that a documented mental disorder first be shown.

Table 5.2

Table 5.3

Although there is similarity in state statutes, almost all are worded slightly differently. Interestingly, in Kansas v. Kahler (2020), the case to be discussed briefly, the dissenting opinion included a helpful appendix listing the statutes by state. In some states, even if a person knew the difference between right and wrong and was aware that what they were doing was wrong, evidence of an inability to control behavior satisfies the standard. This is sometimes referred to as the *volitional prong,* and it acknowledges that, by virtue of a serious disorder, the individual was unable to conform their conduct to the requirements of the law. For example, in these states a person who—as the result of a mental disorder—is compelled by "voices" to kill the victim could be excused. These states are in the minority, with only 16 accepting a volitional prong (A. M. Goldstein, Morse, & Packer, 2013).

The U.S. Supreme Court has given wide latitude to states to decide their own insanity standards, upholding a state's very rigid approach (Clark v. Arizona, 2006). Four states, Idaho, Montana, Utah, and Kansas do not recognize the insanity defense, although they still allow defendants to demonstrate that a severe mental illness deprived them of the guilty mind (mens rea needed to commit a crime). In its latest insanity-related ruling, Kahler v. Kansas (2020), the Court did not accept the argument that an insanity defense was constitutionally required.

That case involved a serious crime in which four family victims were murdered. According to the court record, Karen Kahler filed for divorce from James Kahler in early 2009 and moved out of the house with their three children (a 9-year-old son and two teenage daughters). James Kahler became "more and more distraught." On Thanksgiving 2009, he drove to the home of a grandmother, where the family was staying. He first shot Karen Kahler and allowed his son to flee. He then proceeded through the house and shot the grandmother and the two daughters.

According to the amicus curiae brief filed by five mental health organizations, including the APA, experts for both the prosecution and defense agreed that Kahler exhibited major depressive disorder and suffered from other disorders, including paranoid and obsessive-compulsive tendencies. The defense expert believed Kahler “felt compelled” and “couldn’t refrain from doing what he did.” Kansas removed the insanity defense from its statutes in 1995, but it allowed a defendant to raise mental illness to show that he lacked the culpable mental state required—the mens rea or guilty mind. Did he know what he was doing when he committed the crime? Kansas does not recognize any additional way that mental illness can produce an acquittal, such as not appreciating the wrongfulness or not being able to control his actions. Kahler was convicted and, despite bringing in his mental illness for the jury to consider at sentencing (allowed under Kansas law), he was sentenced to death. He appealed his conviction, with his lawyers arguing that he was deprived of due process because Kansas did not have an insanity defense statute that would have allowed him to raise other mental illness issues.

When the case reached the U.S. Supreme Court, both the majority and dissenting opinions referred at length to the history of the insanity defense and its various iterations across the states and the federal government. Both sides also noted that there was no single standard for determining insanity across the United States. The Court majority (6–3) said it was not up to the courts to insist on any one standard or require any standard at all. Justice Kagan, writing for the majority, noted that mental illness could still be taken into consideration at sentencing. Writing for the dissenters, Justice Breyer noted that mental illness rarely if ever renders people incapable of knowing what they are doing. It can render them incapable of appreciating the wrongfulness, but Kansas’s statute would not allow that to absolve the defendant. The dissenters also noted that allowing consideration of mental illness at sentencing was not the solution for someone who was legally insane in the first place. Dissenters did not say Kahler was insane, just that he should have been tried in a different manner.

The few states that have eliminated the insanity defense obviously have made it more difficult for people with mental illness to be absolved of criminal responsibility. However, even when an insanity defense is allowed, it is rarely successful, as several examples to be discussed shortly will illustrate. Over the past 30 years, changes in the federal law as well as numerous state laws have made it more difficult for defendants pleading not guilty by reason of insanity to

win acquittal. The following are a few reasons why it is harder for defendants today to be acquitted:

- The federal government and most states now no longer allow defendants to claim they could not control their behavior; if they knew the difference between right and wrong, they can still be held responsible.
- The federal government and most states now require defendants to prove their insanity, either by clear and convincing evidence or a preponderance of the evidence. (Recall that defendants arguing they are *incompetent to stand trial* cannot be required to prove this by clear and convincing evidence.)
- As noted above, a minority of states (Idaho, Montana, Utah, and Kansas) have abolished the insanity defense, and now the U.S. Supreme Court has ruled that it is not constitutionally required. In Nevada, the defense was abolished, but the supreme court of that state later ruled that the *state* constitution required it (Finger v. State, 2001).
- In federal courts and in some states, forensic examiners are not allowed to express an ultimate opinion on whether the defendant was insane. (Many examiners prefer not to do this anyway.)
- Public opinion polls indicate that members of the public have little sympathy for the defense, often believing that defendants get off too easily. This is especially the case when they are charged with serious violent crimes.

In approximately 20 states, an alternative verdict of **Guilty but mentally ill (GBMI)** or guilty *and* mentally ill can be returned. This interesting but troubling verdict form allows judges and jurors a middle ground, supposedly reconciling their belief that the defendant "did it" with their belief that the person "needs help." As Melton et al. (2018, p. 226) state, "[t]he one goal it may achieve is relieving the anxiety of jurors and judges who otherwise would have difficulty deciding between a guilty verdict and a verdict of NGRI."

A GBMI verdict makes little difference in the life of the person who obtains it, however. Defendants found guilty but mentally ill are still sent to prison and—on the whole—are no more likely to receive specialized treatment for their disorder than other imprisoned offenders (Borum & Fulero, 1999; Bumby, 1993; Zapf, Golding, & Roesch, 2006). Some states (e.g., Pennsylvania) are more likely to offer treatment for GBMI prisoners, however. Nevertheless, "[v]irtually all commentary concerning the GBMI verdict has been scathingly negative for the reasons suggested: The verdict is

unrelated to criminal responsibility, and it does not guarantee any special psychiatric treatment" (A. M. Goldstein et al., 2013, p. 458).

Juries and the Insanity Defense

Research indicates that juries sitting on cases involving the insanity defense rarely apply the tests for insanity, so changes in standards may not be that significant. As Zapf, Golding, Roesch, and Pirelli (2014) observe, "researchers have found that it is typically inconsequential whether jurors are given *any* test or standard" (p. 339). Rather, insanity cases appear to be decided more on moral grounds or on what jurors believe is the "right" decision rather than on correct legal grounds. Put another way, "their own implicit theories of insanity and responsibility guide their interpretation of the admittedly vague and nonspecific linguistic terms of insanity standards" (Zapf et al., 2014, p. 339).

A good illustration may be the Colorado theater shooting in 2012 in which the perpetrator killed 12 people and injured many others. There was considerable evidence that James Holmes had a serious mental illness that affected his behavior. He kept notebooks of his bizarre fantasies; was diagnosed with a schizoid personality disorder, depression, and a social anxiety disorder, among other problems; and had vacant looks during his court appearances. He pleaded not guilty by reason of insanity, but was convicted. Another example is Andrea Yates, the woman who drowned her five children in a bathtub in 2001. Although she had a long history of mental illness, a jury convicted her. Years later, in a second trial before a judge, she was acquitted and was subsequently sent to a mental hospital, where she remains to this day.

Anecdotal reports also suggest that juries have difficulty grappling with the insanity defense. In a recent case in which a psychologist was killed in her office, the jury apparently debated the insanity issue for about ten days and ultimately could not decide on a verdict, so the judge declared a mistrial. In the defendant's second trial, a new jury found him guilty. In a high-profile case involving the 1979 abduction and murder of a 6-year-old boy, Etan Patz, an arrest was made 33 years after the event occurred. The defendant, who had a history of intellectual disability and mental illness, had confessed to police. Although lawyers argued that the confession was coerced, they also raised the insanity defense. The jury deliberated 18 days (although it is unknown how much of this deliberation focused on the insanity issue) and could not reach a unanimous decision. The judge declared a mistrial. In a second trial, the defendant was convicted. (See **Focus 5.3** for more information about this case.) However, in a

different scenario, a 19-year-old woman was acquitted in a brutal stabbing of a taxi driver after a psychologist testified that she had suffered from delusions and hearing voices for many years; he called her the face of mental illness. A jury found her not guilty by reason of insanity after little deliberation.

Focus 5.3

A Long-Unsolved Child Abduction

On May 24, 1979, 6-year-old Etan Patz left his home in the SoHo District of New York City to walk to the school bus, carrying a small tote bag decorated with elephants. He never got to school or returned home. The case drew national attention. Flyers with his picture were pasted on poles, and Etan became one of the first missing children to have his face displayed on a milk carton. Neither the tote bag nor his body was ever found. He was declared legally dead in 2001.

In 2013, some 36 years after the disappearance, 54-year-old Pedro Hernandez went on trial for the child's abduction and murder. That trial was declared a mistrial, and Hernandez was tried again in October 2016 and convicted 4 months later. The case presents numerous issues relevant to the work of forensic psychologists.

Hernandez was an 18-year-old high school drop-out at the time of the boy's disappearance. He worked at a bodega in Etan's neighborhood, a store the child passed every day on his way to the school. Although he was usually accompanied by an adult, the day he disappeared he had pleaded with his mother to allow him to walk to the bus by himself—something that was not unusual for children at that time. Police interviewed hundreds of individuals, including Hernandez, and they even pursued one suspect who was acquainted with the family indirectly through a babysitter. That suspect, Jose Ramos, was eventually convicted and imprisoned for child sexual abuse in a separate case, but police could not tie him to Etan's disappearance.

Hernandez moved to New Jersey shortly after Etan disappeared. Over the years, he told a number of people, including his fiancée and members of a church group, that he had killed a child while in New York, but there were differences in the accounts he gave them. He was married and divorced and then remarried. He appeared to lead a simple life and was apparently never in trouble with the law. He did, though, have mental issues, including intellectual disability and diagnosed personality disorders.

In about 2012, Hernandez's brother-in-law contacted police and said he thought Hernandez had committed the crime over 30 years ago.

Detectives interviewed and interrogated Hernandez for several hours. He told them he had lured Etan into the bodega by offering a soda, had taken him to the store basement, choked him, placed his body in a plastic bag and a box, and disposed of the box in garbage. He denied sexually assaulting the child and said Etan was alive when he was placed in the bag. In addition, Hernandez said he hid the tote bag Etan carried behind a refrigerator. Neither the boy's body nor any of these items were ever found. Hernandez's prosecution in 2013 was based on his confession to police and the statements he had made to relatives and acquaintances.

Defense attorneys tried unsuccessfully to suppress the confession, saying that it was not freely given. They also raised an insanity defense, focusing on both his intellectual deficiencies and his mental disorder. A personality disorder made it difficult for him to separate reality from fiction, so he may have come to believe he had indeed killed Etan, the defense said. Finally, defense lawyers also advanced an opposing theory: Ramos, the convicted child sexual abuser, who was then in prison, had actually committed the crime. This man had supposedly admitted to killing a boy who could have been Etan. Defense attorneys were not allowed to call him as a witness, but they were allowed to present this alternative theory to the jury.

As noted in the text, the jury deliberated for 18 days but could not reach a verdict. One juror believed his fellow jurors were not open to considering the defendant's fragile mental state or that someone else might have committed the crime. The juror also believed that police had coerced the confession from a vulnerable individual and that other witnesses to the defendant's confessions had not been credible. The judge declared a mistrial.

Hernandez was once again tried in October 2016. Jury deliberations in this second trial began almost 4 months later, in early February 2017. After deliberating for 9 days, the jury convicted Hernandez of kidnapping and murder. In April 2017, he was sentenced to 25 years to life in prison.

QUESTIONS FOR DISCUSSION

1. Review the material on false confessions in Chapter 3. It is of course possible that Hernandez's confession was false. Is it likely? Why or why not?
2. Why do you think people who first heard the claims made by Hernandez that he had killed a child in New York apparently did not come forward years ago?
3. Defense lawyers also raised the insanity issue. The disappearance occurred in 1979, and the first trial was held over

30 years later. What problems would that present for an NGRI defense? How would the time lapse affect a criminal responsibility evaluation?

Incidence of Insanity Defense

Cases in which defendants actually plead not guilty by reason of insanity (NGRI) are rare, comprising a mere 1% to 3% of all felony criminal cases (Golding, Skeem, Roesch, & Zapf, 1999). In high-profile cases, defendants may indicate that they will use the insanity defense but decide not to do it later in the process. Furthermore, despite media publicity surrounding the insanity defense—one commentator (Perlin, 2003) has referred to it as the "media darling"—the defense is usually not successful. Most defendants who argue that they were not criminally responsible are found guilty, which may be one reason why individuals who initially indicate they will use the defense change their mind. Another reason is that defendants who are acquitted on this basis do not go free, as we will discuss shortly.

The rates of acquittal vary widely by jurisdiction, though. Some multistate surveys have found acquittal rates of 20% to 25% (Cirincione, Steadman, & McGreevy, 1995). Although a "success" rate of 1 in 4 may surprise some observers, acquittal does not bring freedom to NGRI defendants. The defense may be used in both misdemeanor and felony cases, and it is sometimes used to obtain treatment for an individual who might not otherwise qualify for civil commitment.

Assessment of Criminal Responsibility

The evaluation of a defendant's criminal responsibility at the time of the crime is widely recognized by clinicians as an extremely complex one, as are the methods used for doing so (Gardner, Murrie, & Torres, 2018). Rogers (2016) writes that assessments of criminal responsibility "represent the most challenging forensic assessments within the criminal domain" (p. 112). Furthermore, forensic psychologists intending to carry out these evaluations must be "solidly grounded in the relevant case law, legal formulations, and specialized methods" (p. 97). Note that these assessments are, by definition, retrospective. The clinician must look back and try to gain some understanding of the defendant's state of mind at the crucial point in the past when the crime was committed. This may be weeks or even months after the event itself. In the Pedro Hernandez case (Focus 5.3) it was over 30 years. According to Golding et al. (1999), the clinician must determine whether and what sort of disturbances

existed at the behavioral, volitional, and cognitive levels and clarify how those disturbances relate to the criminal act. Melton et al. (2018) have likened the clinician's role to that of an investigative reporter, who gathers information and documents from a wide variety of sources. Likewise, Shapiro (1999) notes that in addition to a clinical interview, the evaluator should obtain copies of police reports, hospital records, statements of witnesses, any past psychological tests, and employment records, if possible.

All of the cautions mentioned in our discussion of competency evaluations (and the principles in Focus 5.2) apply here as well. One point on which clinicians seem to lack consensus, though, is the appropriateness of conducting **Dual-purpose evaluations**. It is not unusual for clinicians to conduct evaluations of a defendant's competency to stand trial and criminal responsibility at the same time. In fact, statutes in many states encourage this practice. Judges will frequently order both a competency evaluation and a **criminal responsibility evaluation** "to see whether an insanity defense could be supported." In one study (Warren, Fitch, Dietz, & Rosenfeld, 1991), 47% of competency evaluations also addressed questions of sanity. Although this seems like an efficient and cost-saving practice, it poses problems, and some scholars have been extremely critical of the process (e.g., Melton et al., 2018; Roesch et al., 1999; Zapf, Roesch, et al., 2014). They emphasize that competency and criminal responsibility are very separate issues requiring separate determinations. This message may be getting out to the legal community, particularly when very serious cases are involved. The judge who ordered a competency evaluation of Jared Loughner, for example, made it very clear that that evaluation was to be limited to the issue of competency and not include an appraisal of his sanity.

According to Roesch et al. (1999), it is "cognitively almost impossible" for a judge to keep competency and sanity distinct when the reports are combined. In addition, an evaluation of criminal responsibility is likely to include a good amount of background information that should be irrelevant to the limited question of whether the defendant is competent to stand trial. Nevertheless, dual-purpose evaluations of this nature are routinely performed (Chauhan, Warren, Kois, & Wellbeloved-Stone, 2015; Kois, Wellbeloved-Stone, Chauhan, & Warren, 2017). Kois, Wellbeloved-Stone, Chauhan, and Warren call for continuing research on these evaluations, their outcomes, and their implications.

Instruments for Evaluation

Clinicians have access to forensic assessment instruments similar to those discussed in the competency evaluation process to help in their CR evaluations. They are not intended to be used exclusively, but rather to be incorporated into a broader assessment of criminal responsibility. Scholars recommend that evaluators use multiple sources of data, such as information from third parties, interviews with the defendants, and more traditional psychological tests (Goldstein et al., 2013; Zapf, Golding, et al., 2014).

By far, the most dominant forensic instruments related to insanity are the **Rogers Criminal Responsibility Assessment Scales (R-CRAS)**, developed by Richard Rogers (1984). Defendants are rated on a number of characteristics, including psychopathology, reliability of their report of the crime, organicity, cognitive control, and behavioral control. Rogers has used a quantitative approach and notes that the R-CRAS has been validated through a series of empirical studies (Packer, 2009; Rogers & Sewell, 1999; Rogers & Shuman, 1999).

Another instrument, the **Mental State at the Time of the Offense Screening Evaluation (MSE)** (Slobogin, Melton, & Showalter, 1984), is, as its name implies, a way of both screening out the clearly not insane and screening in the "obviously insane" (Zapf, Golding, et al., 2014). The MSE encourages "an observation of the person's appearance and grooming, and an assessment of orientation according to person, place, time, and situation" (Foote, 2016, p. 417). The forensic psychologist should also take note of the person's psychomotor activity, behavior, attitude, and emotional responses during the examination. The psychologist may also test short-term and long-term memory. The subject's history should be included in the examination.

Compared with the R-CRAS, the MSE has received less research attention. Zapf, Golding, et al. (2014) report that there have not been any published studies of its reliability, although its validity was established by Slobogin et al. (1984). However, "given the lack of research on its reliability and the limited validity data available, the MSE should be viewed as a guide for evaluators to ensure that relevant areas of inquiry are addressed" (Zapf, Golding, et al., 2014, p. 327) and used as only one of many sources of data.

Research is sparse about the extent to which any of the above instruments are used, but one recent study found no use at all. B. Gardner, Murrie, and Torres (2018), examining 1,111 court-ordered sanity examinations in Virginia over a 1-year period, found that even standard psychological testing was rare, occurring in only 2% of cases. In that small number of cases, the instruments used were

personality or intelligence measures. No reports mentioned the instruments specifically intended for the assessment of sanity. (See **Table 5.4** for more information about this study.)

Table 5.4

Source: Gardner, B. O., Murrie, D. C., & Torres, A. N. (2018).

Most experts agree that these evaluations are complex and require the review of archival data, police reports, interviews with the defendant and relevant acquaintances, and multiple other sources of information (Melton et al., 2018; Zapf, Golding, et al., 2014). Partly due to their complexity, these assessments are often requested of only one clinician. In the typical insanity case, the court appoints an evaluator at the request of the defense. Some criminal defendants considering an insanity defense are able to afford a private examiner, without asking the court to appoint one, but this is believed to be unusual. Once the defense receives the results of the report, a decision is made whether to plead NGRI. If an NGRI defense is planned, then the court-appointed evaluator's report is shared with the court and the prosecution. Often, and again typically, prosecutors agree to accept the evaluator's findings and accept the plea. In some cases, particularly very serious or high-profile cases, the prosecutor may request a separate evaluation.

With the exception of studies like Gardner et al.'s (2018), the actual content of sanity evaluations has received minimal research attention in recent years, but those studies that have been done have been of substantial interest. Gardner et al. did not question the quality of the evaluations, though they raised concern that some did not adequately make the connection between the defendant's mental disorder and the insanity standard in the state. And, though they also did not question the quality of evaluations, Gowensmith, Murrie, and Boccaccini (2013) found reason to question their *reliability*. These researchers studied actual evaluations performed by panels of psychologists and psychiatrists in Hawai'i, a state that requires three separate independent evaluations. The researchers found that the mental health professionals were unanimous in their recommendation in only 55.1% of the cases and were most likely to agree when defendants had a psychotic disorder or had been psychiatrically hospitalized in the past. Neither the discipline of the evaluator (psychiatrist or psychologist) nor the ethnicity of the defendant explained differences in the evaluators' opinion.

Insanity Trials

Once a defense attorney has received a clinician's report suggesting that an insanity defense could be supported, the attorney hopes for

a verdict that the client is not guilty by reason of insanity. As in the competency context, this is a legal decision, not a clinical decision, and it is one that must be rendered by a judge or a jury. Some research indicates that judges are more sympathetic to the insanity defense than are juries, so a bench trial is more likely to result in a not-guilty verdict than a jury trial (Callahan, Steadman, McGreevy, & Robbins, 1991). As noted above, juries also have been found to have many negative attitudes toward, as well as misconceptions about, the insanity defense (Golding et al., 1999; Perlin, 1994; Skeem, Eno Louden, & Evans, 2004). They often do not realize, for example, that defendants found NGRI do not often "go free" but are subject to civil commitment and hospitalization. In *Shannon v. United States* (1994), lawyers argued that their client, who was tried in a federal court, had the right to a jury instruction that would inform jurors that the defendant would not be freed if found not guilty by reason of insanity. The U.S. Supreme Court did not agree, although it acknowledged that in some circumstances informing the jury might be warranted. This would be left to the judge's discretion.

A critical issue pertains to the case of the medicated defendant. As we noted earlier, defendants found incompetent to stand trial are typically given psychoactive medications to restore them to competency. However, to maintain trial competency, defendants may need continued medication. Thus, during their trials, juries see them in a calm, often emotionless state that is far different from the mental state they claim they were in at the time of the crime. In Riggins v. Nevada (1992), the Supreme Court ruled that defendants using an insanity defense have a right to be seen by a judge or jury in their natural, nonmedicated state. Yet, as noted in the section on restoring individuals to competency, medication is the primary method used, and continued medication may be needed to maintain the person's stability during the trial.

Treatment of Defendants Found Not Guilty by Reason of Insanity

Defendants found not guilty by reason of insanity are rarely be free to go. All states and the federal government allow a period of civil commitment in a mental institution or, less frequently, on an outpatient basis. Some states along with the federal government do require that the person be evaluated for possible hospitalization within a 2-week period, and that the evaluation be conducted in a secure setting. In practice, hospitalization is the most common outcome of a finding of not guilty by reason of insanity, and also in

practice, numerous individuals found NGRI are hospitalized for longer than the time they would have served had they been convicted (Golding et al., 1999). John Hinckley, who was acquitted after shooting President Ronald Reagan and seriously wounding Press Secretary James Brady and two law enforcement officers, remained hospitalized for over 30 years, although he was eventually allowed visits to his mother's home in nearby Virginia. In 2016, Hinckley was released permanently. Brady, who was brain damaged as a result of the shooting, was a strong advocate of gun control legislation along with his wife, Sarah, for the remainder of his life. He died in August 2014 at the age of 73; Sarah Brady died less than a year later, in April 2015.

Civil commitment of a person found not guilty by reason of insanity cannot be automatic, however. A hearing must be held to document that the individual continues to be mentally disordered, in need of treatment, and a danger to self or others. Commitment also cannot be indeterminate, without periodic reviews of the need for commitment. Most states require NGRI patients to prove they are no longer mentally ill and dangerous in order to be released, and this is not easy to do, particularly when the individual was originally charged with a violent crime. However, an individual cannot be held solely based on dangerousness if there is no longer evidence of mental illness (Foucha v. Louisiana, 1992). Recall that persons found incompetent to stand trial are hospitalized with the goal of being restored to competency so that the legal process may continue. Especially in serious cases—usually those involving the deaths of victims—the state has a strong interest in bringing them to trial. In the case of persons found NGRI, the state cannot retry them—this would be an example of double jeopardy, which is in violation of the Constitution. Thus, if they are institutionalized, they receive treatment that is usually indistinguishable from the treatment received by other hospitalized patients.

In recent years, though, some states have crafted programs that are particularly directed at persons found NGRI, both in psychiatric hospitals and in community settings. Furthermore, aware that many insanity acquittees have "significant lifelong psychopathological difficulties" (Golding et al., 1999, p. 397), some states discharge individuals on a conditional basis and provide follow-up and monitoring services in the community, which can be specialized and more effective than what they received in the hospital setting (Vitacco et al., 2008). Forensic psychologists play an important role in helping to decide whether release is appropriate in each case. (In

Perspective 5.1, Dr. Vitacco writes about conducting evaluations for this purpose.)
From My Perspective 5.1

Evaluating Persons Found NGRI for Conditional Release
Michael J. Vitacco, PhD, ABPP



Michael Vitacco

As a board-certified forensic psychologist, I am frequently asked to opine on an individual's likelihood of committing acts of violence or criminal behavior if they are to be discharged from a secure forensic setting. In my practice, this is one of the most commonly asked psycholegal questions; however, risk assessments permeate many areas of the legal system. For example, risk assessment is often indispensable when determining if someone meets civil commitment criteria as a sexually violent predator or if someone is an appropriate candidate for parole or probation. Assessing the risk of violence is also important at capital sentencing. As you can see from the above examples, forensic psychologists should be well versed in methods of risk assessment if they are to take these types of cases, most of which have extremely high stakes.

For this essay, I provide examples from risk assessments focusing on the suitability of an individual adjudicated not guilty by reason of insanity (NGRI) to return to the community, referred to as conditional release. This area of risk assessment has piqued my interest in recent years both clinically and through research. Such evaluations, although frequently requested, are far from mechanistic, in that they

typically involve a plethora of information that can be in conflict. Integrating data from multiple sources can be quite challenging. When I conduct these evaluations, one of the most intriguing aspects is the individual interview. The interview often yields critical information about an individual's risk, albeit often in unconventional ways. One of the factors that warrants consideration is that the individual usually has a desire to leave the secure hospital, so they will present in ways most favorable to themselves. In a recent case, I evaluated someone for potential conditional release after being found NGRI of serious charges including assault and battery only several months earlier. From the outset of the evaluation, he was putting his best foot forward to convince me that despite a history replete with serious violence, he was a low risk. Toward the end of the second interview, he informed me he had the solution to minimize future risk—he was going to convert to a new religion and this conversion would "miraculously" enable him to desist from future violence. Clearly, I was unconvinced a transition to religion would be sufficient to make him a "low risk."

When conducting risk assessments, in addition to one or more interviews, the forensic psychologist must choose the most appropriate risk assessment instrument that will be profitable in opining on someone's future risk. Fortunately (or unfortunately, depending on your perspective) there is an armamentarium of instruments designed to provide data on future risk. It is important to pick the appropriate instrument for the referral question. When the referral question is conditional release, I fall back to standard instruments that allow the integration of historical (static) with clinical (dynamic) variables that allow for nuanced consideration of how these factors contribute to a person's current risk. In addition, skilled evaluators often consider anamnestic factors, which are unique and specific to this individual's risk. For instance, in a recent case, the individual's primary victims were female treatment providers, and this specific risk factor may not have been adequately captured on risk assessment instruments. This risk factor warranted extensive consideration when making a recommendation to the court if this individual was an appropriate candidate for conditional release and how to develop a release plan that decreases access to potential victims. One other factor I always consider is if the person I am evaluating has protective factors, or factors that mitigate risk. Employment possibilities, family connections, or rapport with a treatment provider are all protective factors that can decrease an individual's propensity to engage in violence.

The final step in the process is communicating the results to the court. I have found there are many wrong ways to communicate said results. For example, it is important to avoid jargon in reports and testimony in order to disseminate information to relevant individuals. To be effective one must be clear and concise. Testimony can be an anxiety-provoking experience with legitimate concerns over social and professional judgment. In testimonial experiences, I have found solace in the sage advice of a good colleague who stated, “We have the easiest job in court, all we need to do is tell the truth.”

Dr. Vitacco is a professor in the Institute of Public and Preventive Health and in the Department of Psychiatry and Health Behavior at Augusta University. He teaches in the area of mental health law and has published on forensic assessment topics including malingering, violence risk assessment, and the use of social media as collateral data in forensic evaluations. He recently co-edited a book titled Forensic Mental Health Evaluations in the Digital Age.

Many researchers have studied **Conditional release** (e.g., Callahan & Silver, 1998; Dirks-Linhorst & Kondrat, 2012; Manguno-Mire et al., 2007; Stredny, Parker, & Dibble, 2012; Wilson, Nicholls, Charette, Seto, & Crocker, 2016). Two recent longitudinal studies of large numbers of insanity acquittees in two separate states, Connecticut and Oregon, have found that conditional release was an effective approach, and recidivism was low, providing adequate community supervision occurred (Norko et al., 2016; Novosad, Banfe, Britton, & Bloom, 2016). There are indications, not surprisingly, that the nature of the crime affects the likelihood that a person found NGRI will be released. For example, persons acquitted of homicide were found less likely to be released than those acquitted of other offenses (Dirks-Linhorst & Kondrat, 2012). Callahan and Silver (1998) studied conditional release in four states and found variations in crime seriousness; diagnoses; and, interestingly, in demographics, depending on the state. In general, the research indicates that persons who are conditionally released are less likely than convicted offenders to commit new crimes, and they are more likely to have their conditional releases revoked and be rehospitalized than to be incarcerated (A. M. Goldstein et al., 2013).

Self-Representation: A Separate Issue

Criminal defendants have the right to be represented by lawyers in all criminal prosecutions if there is the possibility of even one day

incarcerated (Gideon v. Wainwright, 1963; Argersinger v. Hamlin, 1972). This means that if a criminal defendant cannot afford a lawyer, one will be assigned. Note that adequate representation, not perfect representation, is what is guaranteed.

In some criminal cases, defendants choose to waive the right to an attorney and to represent themselves. This, too, is a right guaranteed under the U.S. Constitution (Faretta v. California, 1975) but one that is exercised by very few criminal defendants. To paraphrase a well-worn but perhaps too cynical bromide, “the man who chooses to defend himself has a fool for a lawyer.” Alternatively, some defendants choose to ignore the advice of their attorneys and proceed with a defense that the attorney believes is not in their best interest.

There are many high-profile criminal cases that lead scholars to question the wisdom of allowing criminal defendants who presumably have mental disorders to take such an approach. Theodore Kaczynski (the Unabomber) was an apparently delusional defendant who rejected the advice of his attorney to plead NGRI. He subsequently pleaded guilty and avoided a death sentence, but had he taken his attorney’s advice, he *might* not have been convicted (though he almost certainly would have been institutionalized). Colin Ferguson, who opened fire on a Long Island commuter train in 1993, killing 6 people and injuring 19 others, was allowed to waive his right to a lawyer and represent himself during his trial. Although he suffered from a paranoid personality disorder, he was competent to stand trial. Ferguson rejected the advice of his attorney that he plead NGRI, then insisted on defending himself, and was allowed to do so. He was convicted and remains imprisoned to this day, serving life sentences, and he is often sent to isolation for violating prison rules.

Many scholars and observers believe that the trial of Colin Ferguson was an embarrassment to our system of justice (Perlin, 1996). “Ferguson proceeded to represent himself in a fashion that observers unanimously considered bizarre” (Slobogin & Mashburn, 2000, p. 1608). During the trial, he made rambling statements, proposed conspiracy theories, and tried to call then-president Clinton as a witness. Some 15 years after the Ferguson case, the Supreme Court ruled that a defendant who was competent to stand trial was not necessarily competent to serve as his own lawyer (Indiana v. Edwards, 2008). In other words, a judge can deny the request of a defendant who wants to serve as his own lawyer, clearly has a mental disorder, but is still competent to stand trial. Had the Ferguson case occurred after *Indiana v. Edwards*, would a judge

have been inclined to override Ferguson's decision to serve as his own lawyer?

In a later case, Zacarias Moussaoui, the man known as "the 20th 9/11 hijacker," spent over 4 years in jail before finally pleading guilty to a variety of conspiracy charges. During those years of pretrial detention, he refused to enter pleas, fired his attorney, was ordered to undergo psychological evaluations, was found competent, and was given permission to represent himself (a permission the judge later withdrew), among many other pretrial machinations. Moussaoui eventually decided to plead guilty. After doing so, he gave testimony detrimental to his own interests at his sentencing hearing, against the advice of his attorney.

Most recently, Dylann Roof, convicted in the 2015 Mother Emanuel church killings in Charleston, South Carolina, initially wanted to represent himself during his *federal* trial, after having gone through several competency hearings and ultimately being found competent. He changed his mind, had lawyers during the trial, but represented himself during the capital sentencing phase. He rejected the advice of stand-by lawyers that he introduce evidence of his mental state. (A stand-by lawyer is one appointed by the judge to offer advice as needed to defendants who choose to represent themselves in criminal proceedings.) Instead, Roof told the jury to disregard anything they heard from his lawyers about his mental state during his trial, said he did not have psychological problems, and pontificated about the need to keep the white race pure. Roof was sentenced to death, but attorneys continue to appeal his conviction and death sentence. In April 2017, Roof pleaded guilty to the nine murders in state court and was sentenced to consecutive life sentences. He also received three consecutive 30-year sentences. He is now held in a federal prison. Although it is unclear whether the federal execution will occur, Roof almost assuredly will spend the rest of his life in prison.

OTHER PSYCHOLOGICAL DEFENSES

Although we have covered in detail the insanity defense, it is important to stress that criminal defendants may raise other defenses that are relevant to forensic psychology. For example, particularly in the handful of states that do not allow the insanity defense, defendants may maintain that certain psychological disorders robbed them of the mens rea (guilty mind) required to be held responsible for their crimes (A. M. Goldstein et al., 2013). As seen in Kahler v. Kansas (2020), though, this is an extremely limited

criterion that does not address other issues related to mental disorders.

In some cases, defendants maintain that they can be held only partially responsible—in other words, they had diminished capacity as the result of a mental disorder. Some specific, mental health-related defenses that have been raised include post-traumatic stress disorder (PTSD), automatism (e.g., sleepwalking), substance abuse disorders, dissociative disorders, duress, and extreme emotional disturbance, to name but a few.

The extent to which judges and juries are receptive to these claims varies from jurisdiction to jurisdiction. In recent years, PTSD has become more acceptable as a complete or partial defense, particularly in the case of veterans, with growing awareness of the problems associated with military service and multiple deployments (Gates et al., 2012; J. K. Wilson, Brodsky, Neal, & Cramer, 2011). Most recently, traumatic brain injuries (TBIs) suffered either in military service or throughout a career in contact sports have gained attention. Any of the preceding conditions may involve assessments from forensic psychologists and may result in very early diversion from court processing (e.g., referral to mental health or other specialized courts), acquittal, or favorable consideration at the sentencing stage.

SENTENCING EVALUATIONS

At sentencing, psychological and psychiatric input is the exception rather than the rule, but it is becoming more common, particularly if the sentencing judge is interested in knowing an offender's amenability to substance abuse treatment or sex offender treatment. Psychologists and psychiatrists also may be asked to assess psychoneurological factors that could mitigate the degree of responsibility of the defendant. Clinical input also may be sought in death penalty cases, particularly when statutes require that the jury take into account the future dangerousness of the person being sentenced, as is the case in at least two death penalty states.

Criminal sentencing in the United States went through a period of reform during the last quarter of the 20th century. Until that time, sentencing was primarily indeterminate, with offenders being sent to prison for a range of years (e.g., 5 to 10). Indeterminate sentencing was based on a rehabilitative model of corrections; it was assumed that prisoners would be provided with rehabilitative services while in prison and that they would be released when they had made sufficient progress. Alternatively, offenders could be placed on probation to serve their sentences in the community, but again with

the assumption that rehabilitation would be offered. The psychologist or psychiatrist might be asked to evaluate the offender and offer a recommendation for treatment, which would then be forwarded to correctional officials.

Although rehabilitation remains an important consideration, and although offenders in most states are still given a sentence range, rehabilitation is no longer the dominant consideration in the sentencing schemes of the federal government and approximately 15 states today. These jurisdictions have adopted determinate sentencing, which attempts to make the punishment fit the crime and have an offender serve the sentence they supposedly deserve, regardless of individual characteristics and the extent to which rehabilitation is accomplished. The sentencing discretion provided to the judge in these states is usually quite limited; judges are generally given guidelines that look primarily at the seriousness of the crime and the individual's prior record in determining the appropriate sentence. A major criticism of determinate sentencing focused on harsh penalties doled out to drug offenders, which contributed to overcrowding in many of the nation's prisons. In recent years, prison systems in some states have been so crowded that courts have stepped in and ordered states to reduce their prison populations (e.g., Brown v. Plata, 2011). We discuss this again in Chapter 12. In states with determinate sentencing, courts may still consider evidence of diminished mental capacity or extreme emotional distress and may reduce the sentence that would otherwise be imposed. In addition, psychologists may be called on to assess risk or to testify as to whether the individual might benefit from specific types of treatment, such as substance abuse, anger management, or sex offender treatment. In short, sentencing evaluations may focus on treatment needs, the offender's culpability, or future dangerousness (Melton et al., 2018).

Regardless of whether the jurisdiction has determinate or indeterminate sentencing, however, the forensic psychologist might be called in to assess an offender's *competency* to be sentenced. There is very little literature on this as a separate competency assessment, and we have virtually no information on how often it occurs.

In those states where indeterminate sentencing is still in effect, the psychologist may play an especially crucial role. The defense attorney is the legal practitioner who is most likely to contact the clinician. The attorney is trying, in this context, to craft the best sentencing package for the client. Thus, a lawyer trying to keep the client in the community rather than imprisoned might offer to the

court a report from a forensic psychologist suggesting that the client would likely benefit from substance abuse treatment, which is only intermittently available in the state prison system.

Among the most problematic/difficult/controversial assessments for forensic psychologists involve the sentencing of sex offenders. Psychologists have conducted extensive research on the nature, causes, and treatment of sexual offending. Because of their expertise, psychologists are often asked to provide assessments of convicted sex offenders to help courts decide on a just punishment. In many jurisdictions, these evaluations are known as “psychosexual assessments.” They are typically very broad based, with the psychologist providing a wealth of background information, test results, observations, and—in some cases—risk assessments. Psychosexual assessments also typically include recommendations for treatment and for managing any risk believed to be posed by the offender. For example, if an offender will almost assuredly be sent to prison, the evaluator may indicate that he is a good candidate for a sex offender treatment program known to be available in the prison system. For an offender who may be placed on probation, the evaluator might suggest that the supervising probation officer pay close attention to his employment status because he was particularly vulnerable to committing offenses during periods in which he was not working.

Heilbrun, Marczyk, and DeMatteo (2002) warn clinicians to be very careful in using some of the typologies to classify sex offenders in their reports to the courts. Although the typologies may be useful in clinical practice and may be intuitively appealing, few have received empirical support. Typologies also offer convenient and catchy “labels” that may follow an offender throughout his prison career, again with little validity. An offender tagged by professionals as a “sadistic rapist” or a “fixated child molester” may encounter adjustment problems in prison over and above the problems faced by inmates with more innocuous or “normal” labels—burglar, killer, or even rapist. In addition, the typologies may unjustly confine an offender to a higher security level than is warranted or limit his opportunity for participation in work programs or for early release. According to Heilbrun et al. (2002), more promising than typologies are the risk assessment scales that have been developed specifically for sex offenders, As will be seen shortly, these also have been strongly criticized (e.g., Vogler, 2019). As with other risk assessment instruments, care must be taken to choose the appropriate instrument and to be sure it is used in combination with other methods of assessment. It should be emphasized that both

the ethical code of the APA (1992, 2002) and the *Specialty Guidelines for Forensic Psychology* (APA, 2013c) make it clear that psychologists should use validated instruments. Furthermore, they should acknowledge the limitations of the instruments they do use. Finally, they should communicate their findings in a manner that will promote understanding and avoid misleading comments that will lead the sentencing judge to draw unwarranted conclusions about the offender.

Capital Sentencing

In 2020, 28 states, along with the federal government, authorized the death penalty, though in many states there have been no recent executions. Until very recently, the last federal execution was in June, 2001, when Timothy McVeigh was put to death for the Oklahoma City bombing in which 168 people died. However, nearly 20 years later, in 2020, federal executions were again scheduled, and the U.S. Supreme Court allowed them to proceed.

Public opinion for the death penalty is declining, although gradually, and there are many reasons why the public is increasingly skeptical (Haney, Weill, & Lynch, 2015). In the last decade alone, approximately eight states have banned this option or formally suspended all executions. These include Maryland, Washington, Delaware, Connecticut, Illinois, and Colorado. Reasons for not being supportive of this ultimate penalty are multiple, ranging from awareness of wrongful executions to the cost of carrying it out.

In those states that continue to sentence offenders to death, future dangerousness may or may not be a consideration. Where future dangerousness is relevant, some psychologists have provided opinions as to whether the person is likely to be a risk to society.

In cases in which offenders face a potential death sentence, forensic psychologists and other forensic professionals also may work with the defense team to present arguments for mitigation, a process known as **Death penalty mitigation**. *Mitigation* in this sense means to reduce the sentence by avoiding the death penalty. In a recent Supreme Court case (Cone v. Bell, 2009), a Vietnam-era veteran went on a crime spree during which he killed an elderly couple; he was ultimately convicted and sentenced to death. The Supreme Court vacated the death sentence, stating that the veteran's drug addiction and his diagnosed PTSD should have been considered as mitigating circumstances by the sentencing jury.

Death penalty mitigation investigations are comprehensive psychobiological evaluations of potential neuropsychological deficits, mental disabilities, mental disorders, and conditions that may have

affected a defendant's criminal actions. The psychologist also may be asked to provide a more general evaluation of the offender's psychological functioning to learn whether there is anything that might lessen the offender's culpability for the crime.

Some clinicians, however, also work with the prosecutor who seeks evidence *against* mitigation or evidence of **Aggravating factors** associated with the crime. Thus, if a psychologist or psychiatrist gives the opinion that the individual is not intellectually disabled or is likely to engage in serious violent behavior, this would bolster the prosecutor's argument against mitigation. This aspect of capital sentencing is particularly controversial, and it may create ethical problems for some psychologists. Some researchers have suggested that the psychopath designation should not be used at this phase of the criminal process. Psychopaths are widely believed to be cold, unfeeling, nonresponsive to treatment, and—of course—dangerous. More recent research suggests that these assumptions are not necessarily valid, as we will discuss in later chapters.

Although mitigating factors vary among jurisdictions, most mitigators are phrased in legislation in terms that invite the participation of forensic practitioners (Melton et al., 2018). For example, many jurisdictions allow mitigation circumstances to include intellectual disability or mental or emotional distress. A childhood marred by extensive abuse, neuropsychological deficits, and—as noted above—PTSD are other examples of mitigating factors that should be taken into account (Ring v. Arizona, 2002).

The Court also ruled in several cases that a death sentence cannot be imposed upon or carried out against two groups of convicted offenders: those with severe mental illness (Ford v. Wainwright, 1986) and those with severe intellectual disability (Atkins v. Virginia, 2002). Determining the extent of mental illness or intellectual disability requires the input of forensic psychologists and other mental health professionals.

In the *Atkins* case, the Court gave little direction to states as to how to determine intellectual disability that would spare a person being sentenced to death (or executed after sentencing if the matter had not been taken up earlier). However, questions about an offender's mental illness or intellectual disability often arise after they had spent many years on death row, as part of the appeals process.

Interestingly, it is intellectual disability that has been more likely to reach the Court since the 2002 *Atkins* decision. In 2014, for example, the Court ruled that intellectual disability should not be determined solely on the basis of an IQ score (Hall v. Florida, 2014). In 2017, the Court waded further into this issue by ruling that a

state's method of determining intellectual disability must be in keeping with current professional standards (Moore v. Texas, 2017). Texas relied on a system that looked at both IQ cutoffs and such criteria as whether the local community considered the individual mentally deficient. In Moore's case, although he had received IQ scores ranging substantially below 70 as well as above that cutoff, he played pool and held jobs to earn money. Courts in Texas considered him sufficiently astute to be put to death, even though he met the criteria for intellectual disability by current professional standards. The Supreme Court did not approve of Texas's approach. According to Heilbrun et al. (2002), "[c]apital sentencing evaluations are among the most detailed and demanding forensic assessments that are performed" (p. 116). The clinician is asked to provide a broad-based report that will presumably assist in determining whether a person convicted of a capital crime should be sentenced to death. Some psychologists have strong moral objections to participating in any phase of a death penalty case, with particular antipathy toward assessing risk at the sentencing stage. Many also do not choose to participate in assessments of competency for execution, which occur later in the criminal process, as the execution date is approaching. Evaluations of competency to be executed are discussed in Chapter 12.

In sum, the role of the forensic psychologist at capital sentencing is both crucial for obtaining possible evidence in mitigation and controversial for its contribution to the jury's prediction of dangerousness. In at least two death penalty states, sentencing juries are asked to consider the risk of future dangerousness in their decision making. Cases in which the death penalty is a possible outcome are unique. As the Supreme Court has so frequently observed in its death penalty opinions, death is different, and there is a bright line separating capital from noncapital cases. In *Furman v. Georgia* (1972), where the death-is-different principle was first expressed, the Court noted that death is "an unusually severe punishment, unusual in its pain, in its finality, and in its enormity." The bright line that separates death penalty cases from those in which death is not a possible outcome is one that many psychologists prefer not to cross. Yet, others believe that they are in a unique position to document the existence of mitigating factors that may spare a convicted offender the death sentence.

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

It should be obvious that people convicted of sex offenses do not get life sentences. The average sentence for rape, usually considered the most serious such offense, is thought to be about 7 years. When children are the victims, or when the person has been convicted in the past, the sentence will likely be much longer. In addition, there is a range of sex offenses and different degrees that vary in severity. Nevertheless, most sex offenders eventually become eligible for parole; some serve their entire sentence incarcerated and then are released.

In the 20th century, some states began to find a different way of controlling sex offenders other than imprisonment. At first, a variety of "sexual psychopath" laws were passed, diverting minor sex offenders (e.g., exhibitionists) as well as persons who were homosexual to psychiatric institutions, under the guise that they were "sick" (Prentky, Barbaree, & Janus, 2015; Vogler, 2019). Today, of course, one's sexual orientation or gender identification is protected under the law, but sex crimes are not. When arrested, prosecuted, and convicted, the most serious sex offenders are imprisoned. However, approximately 20 states and the federal government have found a way of controlling some offenders past the time they have served their sentences through **sexually violent predator (SVP) statutes**. Under these laws, as the date of their release from prison approaches, some sex offenders are committed to psychiatric hospital settings, supposedly for treatment, now under the assumption that they are dangerous.

The first estimates of the number of individuals detained or committed under these laws ranged from 1,300 to 2,209 (La Fond, 2003). That estimate doubled, to about 4,500, shortly thereafter (Aviv, 2013). Janus and Walbek (2000) report that these commitment schemes are exceedingly expensive, with the annual cost per patient ranging from $60,000 to $180,000. This does not include the cost of commitment proceedings or capital costs for constructing needed facilities. Numerous legal, ethical, and practical issues have been raised about this practice. However, the U.S. Supreme Court has allowed it, provided the offender has a history of sexually violent conduct, a current mental disorder or abnormality, a risk of future sexually violent conduct, and a mental disorder or abnormality that is connected to the conduct (Kansas v. Hendricks, 1997). In *Kansas v. Hendricks,* the Court held that dangerous sexual predators may be civilly committed against their will upon expiration of their prison sentences. In Kansas v. Crane (2002), the Court added that the state also has to prove that the individual has *some inability* to control his behavior. (The Kansas Supreme Court had

ruled that the individual had to be found *unable to control* his dangerous behavior; the federal Court ruled that this was too heavy a burden for the state to bear.) In its most recent ruling on the civil commitment of sex offenders (United States v. Comstock, 2010), the Court allowed the *federal* government also to hold violent sexual offenders beyond their prison sentence if they were mentally ill. The government could either keep them in federal facilities or transfer them to state mental institutions, with a state's permission. They are, however, entitled to periodic reviews of their mental status. The forensic psychologist or psychiatrist may be called in to assess this status.

As a result of these and other developments, training sessions, workshops, and publications are now available to offer guidance to psychologists conducting evaluations of individuals thought to be sexually violent predators (e.g., Heilbrun et al., 2009). Interestingly, the American *Psychiatric* Association has publicly denounced the practice of civil commitment for sex offenders and refuses to provide guidance for psychiatrists who are involved in these evaluations (Phenix & Jackson, 2016). To date, the American *Psychological* Association has neither denounced nor strongly advocated the practice, and psychologists do perform evaluations of sex offenders facing involuntary civil commitment and testify in court about their results.

Although the involuntary civil commitment of SVPs technically comes under the purview of civil law, it is so closely related to the criminal justice process and to the violence risk assessment enterprise discussed in Chapter 4 that we cover the topic here. Forensic psychologists may face a number of dilemmas relative to the assessment of sexually violent predators both when they are initially committed and when their continuing status is assessed. The usual concerns about the assessment of risk, including the use of specialized instruments with sexual offenders, must be considered. Although progress has been made on risk assessment in a number of contexts, the enterprise is by no means on solid empirical ground. In a theoretical article on this issue, Vogler (2019) emphasizes that static risk factors identified in many risk assessment instruments leave little room for sex offenders to be considered anything but dangerous. In other words, risk assessment instruments that do not give sufficient attention to the possibility that sex offenders can change almost guarantee that a sex offender will remain institutionalized. This is an important point to make in all legal contexts, but when it comes to sexually violent predators, there are additional ethical considerations. Because of the nature of this type

of crime, courts are highly likely to err on the side of caution and to accept any documentation provided by the clinician; the high numbers of offenders who have been committed under these statutes suggest that commitment is not difficult to achieve. “[T]he operative rule in sex offender commitments seems to be that if at least one expert says that the respondent is dangerous, then a finding to that effect will be made by the court” (Janus & Meehl, 1997).

It is also important to note that commitment does not require evidence of a recognized mental disorder; mental “abnormality” is sufficient. Researchers have found that many sex offenders do not suffer from mental disorder or mental illness, despite the fact that many if not most mental health practitioners believe all sex offenders need treatment (W. L. Marshall, Boer, & Marshall, 2014). In an analysis of sex offender commitment in Minnesota, Janus and Walbek (2000) learned that more than half of the 99 men in the study for whom diagnostic information was available had not been diagnosed with a sexual deviation disorder. Although other diagnoses were present (e.g., dementia, 2%; antisocial personality disorder, 26%; substance abuse or dependency, 52%), 10% had no diagnosis other than substance abuse or dependency. It should be noted that the civil commitment of persons other than SVPs requires a diagnosis of mental disorder or illness; a substance abuse or dependency diagnosis would not qualify. Under United States v. Comstock (2010), civil commitment in the federal system also requires the finding of a mental disorder. Interestingly, in a review of available research from various jurisdictions, McLawsen, Scalora, and Darrow (2012) found that persons who are civilly committed under SVP laws have lower proportions of serious mental illnesses than other civilly committed groups.

Minnesota’s sex offender program, which is approximately 20 years old, was upheld in 2017 by a federal appeals court after a lower court had ruled it unconstitutional. It is apparently rare for sex offenders in Minnesota to be released from the program—only one person has ever been permanently discharged, and only seven were given conditional releases in recent years. Altogether, 721 people were held in the program as of 2017.

An additional concern expressed in the literature is the possible lack of treatment that accompanies SVP commitment (Janus, 2000; McLawsen et al., 2012; Wood, Grossman, & Fichtner, 2000). Although the statutes typically include a provision that treatment will be offered if available, most statutes do not guarantee that this will occur. “Nevertheless, many states claim that sex offender

commitments are aimed at treatment, and that they are providing effective—or at least state of the art—treatment" (Janus & Walbek, 2000, p. 347). Minnesota and Florida, both of which have many treatment beds, are among them. Critics of these commitment statutes maintain that they are really being used to extend punishment rather than provide treatment (La Fond, 2000). In other words, treatment is a secondary purpose.

Still another concern is that sex offender commitment seems to result in very lengthy confinement. Janus and Walbek (2000) observed that committed sex offenders almost never get released. They note that, "[a]s a practical matter, the burden of proof to support discharge is a heavy one" (p. 346).

The preceding are only some of the many issues that have been raised about the wisdom and ethics of involuntary civil commitment for sexually violent predators. Psychologists are likely to be involved in both the assessment and the treatment (if provided) of sexual offenders. Some evaluators may assume, when conducting risk assessments, that treatment will be provided once the individual is civilly committed. As we have seen, this is not necessarily the case. In addition, as we will discuss again in Chapter 12, the *effectiveness* of sex offender treatment programs is still very much in question, even though there is positive movement in this area. Although forensic psychologists do not set social policy, they should be aware of the research and the continuing controversy regarding this matter.

SUMMARY AND CONCLUSIONS

This chapter has reviewed a wide variety of tasks performed by forensic psychologists in their interaction with criminal courts. The available research suggests that the dominant tasks revolve around the various competencies that criminal defendants must possess to participate in criminal proceedings. Competency to stand trial, competency to waive the right to a lawyer, competency to plead guilty, and competency to be sentenced are examples.

There appears to be no consensus about how competency evaluations should be conducted, but most guidelines and publications indicate that the traditional clinical interview by itself does not suffice. Although some psychologists administer traditional psychological tests, instruments specifically designed to measure competency are now widely available. Some are designed as screening instruments to quickly identify persons who are obviously competent, while others are more extensive measures to identify the specific functional abilities that are lacking. Nevertheless, these instruments are not widely used. The results of the competency

evaluation appear to have a significant effect on a judge's decision, with judges almost always agreeing with recommendations offered by the examiner. If there is more than one examiner and they do not agree, judges are most likely to find the defendant not competent.
Psychologists also conduct sanity evaluations, more formally known as assessments of criminal responsibility or of mental state at the time of the offense. These evaluations are far more complex than most evaluations of adjudicative competence—but there are exceptions. Furthermore, many researchers and practitioners believe the two types of evaluations should be conducted separately, though they often are not. The assessment of criminal responsibility requires the collection of a large amount of background data, interviews with the defendant, and contacts with other individuals who may be able to provide insight into the defendant's state of mind when the crime was committed. The decision as to whether a defendant was sane at the time of the offense—and therefore can be held responsible—may be made by a judge or a jury, applying a variety of rules adopted by states and under federal law. Over the last quarter century, both states and the federal government have made it increasingly difficult for defendants to mount a successful insanity defense, such as by narrowing the rules or placing the burden on the defendant to prove insanity by clear and convincing evidence. Four states have abolished the insanity defense, and the Supreme Court has ruled that such a defense is not required under the U.S. Constitution.
A controversial topic relating to both competency and insanity is the administration of psychoactive medication against an individual's will. Medication is the dominant way of treating incompetent defendants to render them competent to stand trial. However, medicated defendants may suffer a variety of side effects, some of which may interfere with their capacity to participate in the trial process. The U.S. Supreme Court has indicated that extreme care must be taken before medicating defendants against their will to restore them to competency. When defendants are charged with very serious crimes and the state has a strong interest in pursuing the case, however, forced medication is allowed as long as the court has carefully considered the merits of the argument. The Court has ruled, though, that defendants have a right not to be medicated during their trials if they are pleading not guilty by reason of insanity and want jurors to see them in their natural, nonmedicated state.
Psychologists also consult with criminal courts as judges are preparing to sentence an offender. These sentencing evaluations are conducted primarily to determine whether the offender would be a

good candidate for a particular rehabilitative approach, such as substance abuse treatment or a violent offender program. Sentencing evaluations also may involve assessments of risk, however, because courts are often interested in an appraisal of the convicted offender's dangerousness. These assessments are particularly controversial in death penalty cases.

The chapter ended with a discussion of "sexually violent predators" and their indeterminate commitment to civil mental institutions. About half the states and the federal government now allow such a commitment, provided that the offender is dangerous and has a mental disorder or some *mental abnormality*—a very broad term that has been criticized by many scholars. Although statutes often indicate that treatment will be provided, it is widely suspected that the primary intention of these statutes is to keep certain sexual offenders incapacitated. And, although some states and the federal government do provide intensive treatment for sex offenders committed under these statutes, the reality is that it is very difficult for a sex offender under such civil commitment to be released. The civil commitment of sexual offenders after their prison terms have expired remains a controversial topic to many mental health professionals, including forensic psychologists.

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QUESTIONS FOR REVIEW

1. List at least five competencies in criminal suspects and defendants that might have to be assessed by forensic psychologists.
2. List at least five aspects that are common to all FMHAs.
3. Why are the following cases significant to forensic psychology: *Riggins v. Nevada, Jackson v. Indiana,* and *Foucha v. Louisiana?* What are any three other significant cases covered in this chapter?
4. Provide illustrations of how changes in federal and state statutes have made it more difficult for defendants pleading not guilty by reason of insanity.
5. Compare the assessment of competence to stand trial and that of sanity/criminal responsibility.
6. What is the role of the forensic psychologist in (a) capital sentencing and (b) sexually violent predator proceedings?
7. What arguments can be made for and against the involuntary civil commitment of sex offenders at the conclusion of their prison sentences?

CHAPTER SIX FAMILY LAW AND OTHER FORMS OF CIVIL LITIGATION

CHAPTER OBJECTIVES

- Describe the roles and responsibilities of psychologists working with civil courts.
- Examine the roles of psychologists and other mental health professionals in family and probate courts, including child custody evaluations, visitation arrangements, and relocation requests.
- Discuss the roles of psychologists and neuropsychologists in evaluating civil capacities.
- Identify the many facets of personal injury claims, particularly those relating to employment.
- Analyze the issues involving competence to consent to treatment.
- Examine the many questions and problems concerning involuntary civil commitment.
- Explain the challenges of psychologists and other mental health professionals in evaluating the effects of sexual and gender harassment.

Monica and Boris had been married for 9 years when they decided to end their marriage after many counseling sessions. It was to be a no-fault divorce, but each wanted sole custody of their three children. Each parent had a career, and both believed they could provide more stability for the children, with liberal visitation rights given to the other parent. What was intended to be an amicable divorce turned into a bitter custody battle. A family court, aided by reports from psychologists, was obliged to make the ultimate custody decision.

Marguerite, a 73-year-old widow and retired health care professional, lived alone in the home she and her husband had occupied for many years. She was financially independent and in good physical health, but over the past year she showed signs of significant mental deterioration. Her son believed he should take control over her financial affairs as well as possible future health care decisions. Over her objections, he asked to be appointed her guardian. Psychologists were asked to evaluate Marguerite's capacity to make decisions in her own best interest.

At this point in the text, it should be apparent to readers that forensic psychology relates to law in numerous contexts and that it can be a complex undertaking. As has been observed, "[t]he legal system is fraught with details and specialized rules that often may appear to conflict with or contradict each other" (Younggren, Gottlieb, & Boness, 2020, p. 247). Younggren et al. (2020) note that forensic psychologists have an ethical obligation to understand and abide by these rules, as well as their roles as consultants within this system.

They add that, in light of the complexity of the law, many forensic psychologists prefer to specialize in one area.

In this chapter, we focus on the work of forensic psychologists who interact with the civil system. Within that system, some specialize in the custody or capacity evaluations illustrated earlier. Others perform appraisals of testamentary capacity, assessments of disability for purpose of employment compensation, or the capacity to request medical assistance in dying. Some evaluate the extent of harm suffered by persons who were victims of sexual harassment. Many forensic psychologists who work in the civil realm engage in a variety of these activities (Piechowski, 2019).

The chapter focuses on the civil courts in state systems that most often work with psychologists and other mental health practitioners (MHPs) in many different contexts, particularly family courts and probate or surrogate's courts. Nonspecialized courts of general jurisdiction, like county or district courts, also hear cases pertinent to this chapter (e.g., negligence suits). In addition, but to a lesser extent, we cover areas where federal courts are likely to be involved, such as discrimination cases that allege violations of federal laws like the Civil Rights Act of 1964 and its amendments.

Because no two state systems are exactly alike, there are variations in both the structure and the process of these courts on a nationwide basis, but we address in this chapter how they generally operate.

Family courts hear cases involving family law, such as divorce, child custody and support, visitation rights, relocation, and domestic abuse such as requests for restraining orders or orders of protection. (These orders also may be issued by criminal courts, however.) Juvenile delinquency proceedings are held in some family courts, while in other states, a separate juvenile court is charged with this function. In some jurisdictions, family courts also handle guardianship and civil capacity or incompetence hearings, while other jurisdictions leave these matters to probate courts.

Probate courts, also called surrogate's courts in some states, handle such legal matters as wills, decedents' estates, trusts, conservatorships, and guardianships. Among other things, the probate court administers and ensures the appropriate distribution of the assets of a decedent, evaluates the validity of wills, and enforces the provisions of a valid will. The probate court's responsibility for enforcement and compliance "varies from jurisdiction to jurisdiction, program to program, case to case, and event to event" (National College of Probate Judges, 2013, p. 14).

In this chapter, we will not deal with juvenile delinquency issues, even though as mentioned earlier they may be handled by family courts.

Delinquency, and the juvenile justice process in general, will be separate topics covered in Chapter 13. Juvenile courts came on the scene long before family courts, specifically at the turn of the 20th century. Although there were some early attempts in the 1900s to create a family court separate from juvenile court, it was not until the 1970s that the movement for a court specifically to handle family law issues began to take hold across the United States (Adam & Brady, 2013). Today, family courts do not usually deal with juvenile delinquency cases if there is a separate juvenile court, though some still do.

FAMILY OR DOMESTIC COURTS

Working within the family court system is an exciting and dynamic process, full of intellectual challenge (Kaufman, 2011). It can also be emotionally draining, such as when psychologists are asked to conduct child custody evaluations (CCEs), also referred to as parenting evaluations. With increasing frequency, psychologists and other MHPs are providing an array of services in family law cases. Modern family courts—sometimes called *domestic courts*—are the venue for litigating divorce proceedings and making custody decisions, but as noted these proceedings also may occur in courts of general jurisdiction (e.g., superior courts or district courts, depending on the state). Family courts also have the power to remove neglected and abused children from their homes and place them into temporary custody of the state, such as in foster homes, as well as the power to revoke parental rights permanently. In domestic violence situations, family court may be the place where a victim seeks a temporary or permanent restraining order against an abuser. Adoptions are finalized in family or probate courts. Similarly, contested wills, decisions about competency to make medical decisions, and involuntary commitments to mental institutions come under the jurisdiction of some—but not all—family, probate, or surrogate courts. In light of the powers listed earlier, it is not surprising that psychologists and other MHPs play a significant role in the day-to-day operation of these courts and that family forensic psychology, discussed shortly, is a rapidly developing specialization. We must be careful not to equate family forensic psychologists with family psychologists, though. Although some family psychologists provide services to the legal system, the majority likely do not. They are, rather, clinicians who give counseling and treatment to families, often during times of crisis. Younggren et al. (2020) emphasize that forensic psychologists must distinguish their roles as consultants and evaluators from their roles as treatment providers. Although many psychologists perform in both of these arenas, they must be careful

not to cross the boundaries with the same clients. Put another way, someone operating in their role as a forensic family psychologist is ethically bound not to provide psychological treatment for the person or persons they are evaluating for legal purposes. Similarly, Benjamin and Kaslow (2020) present a model for consulting with families in high conflict situations before these families enter into legal proceedings.

S. M. Lee and Nachlis (2011) provide a handy summary of the roles played by psychologists and other MHPs in family courts. They include coaches, review experts, consultants, and mediators, in addition to their roles as expert witnesses and evaluators. (See **Table 6.1** for a summary.) These roles are becoming increasingly complex, and skillful forensic psychologists must remain highly knowledgeable about the legal standards, precedents, and rulings that apply to the specialty area in which they practice. They must also keep fully informed about the research and clinical literature on child and adolescent development, forensic psychology, and relevant family dynamics. Finally, those psychologists who become expert witnesses in these courts face an additional challenge. The fact that courts now scrutinize scientific evidence in such matters as the effect of divorce on children or the quality of custody evaluations has raised the bar for expert testimony (Ackerman & Gould, 2015).

Table 6.1

Source: Adapted from S. Lee and Nachlis (2011), Kaufman (2011), and Zapf (2015).

Family courts can be dangerous places for court officers, other court personnel, and participants, because of the high emotion and occasional anger and dissatisfaction of the litigants. Unfamiliarity with the court proceeding can create highly stressful situations, which is one reason why the coaching role played by mental health participants is so important. In addition, many litigants in family courts are not represented by attorneys (Adam & Brady, 2013). Partly because of the high emotion, family courts—like criminal courts—have increased security measures, including metal detectors and scanners at entry points. Even so, verbal clashes and minor physical altercations are not uncommon. There may be high conflict between parents and sometimes between attorneys (Ackerman & Gould, 2015).

FAMILY FORENSIC PSYCHOLOGISTS

In June 2003, the *Journal of Family Psychology* published a special issue devoted to the intersection of family psychology and family law. According to the editors of this special issue, its primary goal was “to introduce readers to new and emerging opportunities for research

and practice in the areas where family psychology and family law overlap" (Grossman & Okun, 2003, p. 163). Since that time, family practice in forensic psychology has increased dramatically. In addition, family forensic psychologists publish accounts of their experiences, review relevant research, and offer advice to their colleagues on a wide range of issues relating to family law (e.g., L. Greenberg, 2019; H. King, 2018).

Family psychologists—whether clinicians or researchers—have extensive knowledge about human development and systems theories. Forensic psychologists have knowledge and expertise in assessment and consultation with courts and legal professionals. They also know legal theories and procedures that relate to clinical practice and have experience at providing expert testimony. Family forensic psychologists, then, represent a combination of the knowledge and skills of forensic psychologists and family psychologists.

Family forensic psychologists are invaluable in many respects. They often acquaint judges and attorneys with research on the changing nature and changing face of the family. Since the turn of the 21st century, for example, an increasing number of children live with relatives, including aunts and uncles, older siblings, grandparents, or friends of a parent, and many parents today are unmarried. Family court judges have admitted to being unprepared though not unwilling to deal with these changes in family composition (Bridge, 2006). They benefit from learning, for example, that extended family members on the premises are often beneficial to a child's stability and that children of same-sex partners are at least as well adjusted as children of heterosexual partners. Family court professionals also must be sensitive to the needs of persons from diverse cultural backgrounds, including immigrant populations, some of whom face fears of deportation (Bemak & Chi-Ying Chung, 2014).

In sum, family forensic psychology can make contributions in all the following areas: adoption; divorce, child custody, and visitation; conflict resolution and mediation; juvenile justice; assessment of parental fitness; termination of parental rights; elder law and estate planning; child–parent relationships when parents are imprisoned; guardianship; reproductive rights and technologies; and family violence. Because all of these issues are increasingly being adjudicated in family courts and other specialized courts, family forensic psychologists should continue to be in high demand.

We turn now to coverage of a dominant area in which family forensic psychologists operate, child custody evaluations.

CHILD CUSTODY EVALUATIONS

According to the last available census, in the United States about half of all first marriages end in divorce within 15 years (U.S. Census Bureau, 2011b). Although the divorce rate has decreased slightly in recent years, it still remains high, hovering around 40% (Poladian & Holtzworth-Munroe, 2019). Second marriages have higher rates of separation or divorce than first marriages (U.S. Department of Health and Human Services, 2012). Today, a divorce is relatively easy to obtain, legally if not emotionally. In the past, grounds for divorce centered primarily on one party being at fault (e.g., adultery, physical or mental cruelty, desertion) or incapable of performing marital duties (e.g., imprisoned). Today the two parties typically agree that their differences are irreconcilable, and divorces are granted with no fault placed on one or the other. Rules for obtaining a divorce are governed by state laws. When children are involved, state laws also require that custody be determined for all dependent children under the age of 18 (Symons, 2013), though this does not usually involve courts making the determination. Although it is estimated that children are involved in about 40% of divorces (L. S. Horvath, Logan, & Walker, 2002; Krauss & Sales, 2000), the majority of these do not require a judge to make the custody decision.

It must be noted, though, that custody decisions, both between parents and with court involvement, also may be needed when the parents are not married. Today, the rate of non-marital childbearing is rising. It has been estimated that two fifths of births in the United States are to unmarried mothers (Y. Chen & Meyer, 2017). This does not tell us whether the mother and biological father were in a relationship, however. However, Poladian and Holtzworth-Munroe (2019) point out that in 2013 alone, 41% (two fifths) of children born in the United States were born to unmarried parents. Research suggests that children born of unmarried parents “are at increased risk for experiencing parental separation” (p. 281). Two unmarried adults may have one or more children together. If they terminate the relationship, each parent may believe they should have custody of the children, and they may go to court to seek this. Until a court makes a final decision, the child or children may go back and forth between the two parents, just as may occur in a situation where the parents were married. Thus, while we refer in this section to children of divorce, it is not only in divorce situations that custody decisions are needed. In addition, those seeking custody may be other than the parents—for example, grandparents, aunts and uncles, or unrelated friends.

It is generally agreed among lawyers, judges, psychologists, and other mental health professionals that the most contentious areas

faced by family courts are those involving divorce and child custody, most particularly when custody is contested, and typically, as noted earlier, it is not. Custody is not contested because parents, alone or with the help of a mediator, have agreed on a mutually satisfactory custody arrangement. Studies suggest that courts make decisions in 6% to 20% of all divorce cases (Melton, Petrila, Poythress, & Slobogin, 2007; 2018). Overall, data suggest that over 90% of divorce custody cases are settled without formal court involvement (Symons, 2013).

When the divorcing parents cannot come to a reasonable agreement concerning the custodial arrangement for the children, a court will order a **Parenting evaluation** or assessment of parenting plans. The term *parenting* is gradually replacing *custody* in legal and clinical literature, but we use them interchangeably in this chapter. When parenting plans are needed, the courts usually turn to MHPs to conduct the evaluation. Research suggests that psychologists are, by far, the most preferred professional for **Child custody evaluations (CCEs)** (Bow, Gottlieb, & Gould-Saltman, 2011; Bow & Quinnell, 2001; M. Mason & Quirk, 1997). However, many courts use mental health practitioners who are associated with public court service agencies, such as master's-level psychologists or clinical social workers (Horvath et al., 2002). Bow et al. (2011) continue to find that family law attorneys prefer doctorate-level psychologists who assume an objective and neutral position in their evaluations to do the CCEs. They also prefer psychologists who possess good communication skills, have had several years of child custody evaluation experience, and demonstrate solid presentation skills on the witness stand. Nonetheless, as noted by H. King (2018, p. 581), "[t]he most useful CCE assesses specific parenting, the impact of psychopathology, symptoms and behaviors problematic to parenting, and describes their impact on the child to develop a picture of the various members of the family and their relationships."

Psychologists have access to many professional articles and books on the topic of child custody evaluations (Stahl, 2014). In a comprehensive article, Ackerman and Gould (2015) reviewed both legal developments and available research on a range of custody-related topics. In addition, the American Psychological Association (APA; 2010b) "Guidelines for Child Custody Evaluations in Family Law Proceedings" is a valuable resource. The Guidelines strongly emphasize that psychologists should remain familiar with specific laws and court rulings governing the practice and nature of child custody adjudication within the locality where they administer the evaluation. Equally important, the Guidelines urge forensic

psychologists to maintain an up-to-date understanding of child development and family dynamics, child and family psychopathology, the impact of divorce on children, and the specialized child custody research literature. Zibbell and Fuhrmann (2016) summarize well the Guidelines and professional requirements when they write,

> Child custody evaluators require specialized skills in interviewing adults and children, an understanding of child/adolescent development and family dynamics, current knowledge of research in areas relevant to the questions asked by the court, and familiarity with the relevant family law statutes and cases in the jurisdiction in which they practice. (p. 401)

Interestingly, Bow et al. (2011) discovered that lawyers specializing in family law believe that the least important component of CCEs is the psychological testing of the parents and the child, even though psychological testing of the child and parenting questionnaires are commonly administered (Stahl, 2014). In a comprehensive review of child custody evaluations, for example, H. King (2018) lists a number of personality measures and checklists that are both recommended and not recommended for use. She also discusses a variety of emotional problems and mental disorders of parents that can be problematic in their request for custody, based on a careful review of the literature on these problems. (See **Table 6.2**.) Importantly, King warns that some of these problems may be situational rather than chronic. If situational, they are less likely to have a long-term negative effect on the children.

Table 6.2

Source: Adapted from H. King (2018).

Nevertheless, psychological tests are only one component of the assessment process and, as H. King (2018) is careful to note, diagnoses should be made guardedly if at all. The CCE also includes interviews with children and parents, parent–child observations, and a review of information from collateral sources (e.g., school records; teachers; nannies; criminal court records, if relevant). If psychological tests are used, the attorneys expect the psychologists to be clear concerning the limits of psychological testing in forensic contexts and to limit their use to that of making hypotheses or as supportive data of their overall findings. In addition, a majority of the attorneys (64%) want the psychologist to make recommendations about who should get custody, and an overwhelming majority (79%) believe that recommendations should be offered concerning the custodial

arrangements following the divorce. Family law attorneys also had some advice for forensic psychologists conducting CCEs. They urged psychologists to follow child custody evaluation guideline standards closely and to draw conclusions and make recommendations that are logical, pragmatic, and based on the best interest of the child standard (discussed later).

As noted above, individuals other than the child's biological or adoptive parents sometimes seek custody. In fact, family courts have seen an unprecedented explosion in both custody and visitation requests from stepparents, grandparents, other relatives, gay and lesbian partners of deceased biological or adoptive parents, cohabitating but non-married parents who have split up, family friends, and surrogate mothers (Grossman & Okun, 2003; Stahl, 2014). One parent or other relatives of the child may be involved in a custody dispute following the death of a parent. Thus, forensic psychologists and other MHPs may be asked for their assessments. Although these have similarity to parenting evaluations, different factors must be taken into consideration, particularly if the child has had little contact with the person or persons seeking custody.

Although legal parents clearly have both constitutional and statutory rights to be involved in their children's lives, the rights of other individuals, including grandparents, are not universally well defined. The U.S. Supreme Court has denied grandparents a *constitutional* right to see their grandchild over the objection of the child's competent mother (Troxel v. Granville, 2000), but statutes in many states have recognized that grandparents should not completely be barred from their grandchildren, except under rare circumstances (e.g., grandparent has abused the grandchild). Moreover, in the *Granville* case, the mother had not totally deprived the grandparents of visitation privileges but had refused to allow more than one visit every month. Thus, although the decision did not represent a victory for grandparents, it is unclear what would have been decided had the mother refused to allow *any* visits.

Finally, a state agency, such as a child protective or child welfare agency, may request a temporary or permanent custody determination when it believes the parents have been abusive or neglectful. It should be noted that child welfare agencies typically have very broad powers to place children in foster homes. Their decisions to do that—made by child welfare caseworkers who sometimes employ subjective criteria in concluding there was neglect—are rarely challenged successfully in court. Forensic psychologists are not typically involved, although the psychologist may be asked to assess the child's emotional and intellectual functioning.

Courts exercise greater oversight in the case of a decision to remove children permanently from the care of their parents. This requires first a **Termination of parental rights**, then a decision as to who should have custody of the child or children (e.g., an agency, which places the children in a foster home, or an adoptive couple). Such terminations are rare and should occur only in cases of gross physical or emotional abuse. It must be demonstrated at least by clear and convincing evidence that parents are unfit to care for the child or children (*Kantosky v. Kramer*, 1982). Parental rights have been terminated when the custodial parent is a substance abuser, the child or children are at risk of being grossly neglected, and the parent makes no progress toward rehabilitation. Termination most typically follows a period of time when the child has been in foster care. In some states, statutes require that termination be considered after a specified period of time in foster care, allowing the child to be placed for adoption rather than remaining in foster care for an indefinite period. Parental rights are not terminated when parents of young children are incarcerated, however. In such cases, dependent children are placed in foster care, preferably with relatives or friends of the incarcerated parent if the other parent is absent, also imprisoned, or deceased.

Mental health professionals are less likely to be called in when children are placed in foster care than when rights are terminated permanently. Melton et al. (2018) emphasize the complex nature of this issue, and they note that psychologists should not provide an ultimate opinion on whether rights should be terminated. They also warn that psychologists should not determine whether abuse or neglect actually occurred—this being an investigative function, nor should they indicate that a parent "fits the profile" of an abuser. Rather, the psychologist should focus upon the needs of the child, the existing relationship between the child and the parent, and services that could be provided if the relationship were to be terminated.

Custody Standards

Historically, courts have relied on a number of different standards for determining child custody, but today the dominant one in all states and the District of Columbia is the **Best interest of the child (BIC) standard**. The primary legal standard introduced over a century ago was the **Tender years doctrine**, in which it was presumed that the children, particularly girls and very young children, were best left in the care of the mother. An early appellate case (People v. Hickey, 1889) suggested that even if the father was without blame, he had an "inability to bestow on [the child] that tender care which nature

requires, and which it is the peculiar province of the mother to supply" (Einhorn, 1986, p. 128). Today, the tender years doctrine has given way to the BIC standard, which does not presume that either parent is naturally better than the other. Nevertheless, in the vast majority of custody cases, the mother receives primary custody (Gould & Martindale, 2013).

The BIC standard has been criticized in much of the literature as too vague and too likely to lend itself to subjectivity on the part of the decision maker. Efforts to limit this subjectivity have been made both by state legislatures and through court decisions. For example, Ackerman and Gould (2015) note that in 40 states, the statutes list particular factors to be considered in deciding what is in the child's best interest; in six states, court decisions have listed factors; in four states, it is left to the judge to consider which factors to take into consideration. In general, though, there is lack of consensus about what is meant by best interest of the child. This lack of consensus has led some commentators—and some courts—to propose additional measures or even standards to either expound on best interest or replace it completely.

Krauss and Sales (2000) proposed a slightly different standard, the **Least detrimental alternative standard**. They argued that psychological knowledge cannot determine which custody arrangement is truly in the child's best interest. At best, psychological knowledge can help in identifying which arrangement would do the least harm. Psychological assessment instruments, according to Krauss and Sales, tend to be pathology focused, identifying deficits more than strengths. In that sense, a custody evaluation would be more efficient at "screening out" the custody arrangement that would create problems for the child rather than making a determination that one parent would be better than the other. Interestingly, representatives of family forensic psychology suggest that the legal principle should be the best interest of the child *in relation to the family* (Grossman & Okun, 2003).

Still other modifications that have been proposed and have sometimes surfaced in court decisions are the approximation rule and the friendly-parent rule. The **Approximation rule** encourages the court to look at how much caretaking has occurred in the past from each parent and to make a decision which most closely approximates that past involvement. Although this may seem sensible, it does not take into consideration a child's changing developmental needs. The **Friendly-parent rule** presumes that it is best for children of divorce to remain in touch with both parents. For that reason, custody is weighed toward the parent who is most likely

to encourage contact with the noncustodial parent, rather than to try to limit that contact. In some states, judges are expected to abide by the rule either because of precedent (past court decisions) or because this is called for in the state statutes. Judges and mental health practitioners who try to abide by a friendly-parent rule do so out of concern about the child's alienation from the noncustodial parent. However, this may overlook the fact that, in some cases, continuing contact with the noncustodial parent might not be in the child's best interest. In other words, the more inappropriate parent may present a veneer of being friendly toward the other parent in an effort to gain custody, while the more appropriate parent will not display friendliness toward the parent they believe is not a good influence on the child.

It is becoming increasingly apparent, though, that children themselves would like some input into the custody decision, although they generally do not want to be the ultimate decision makers (Parkinson & Cashmore, 2008). Even if the decision is not ultimately what they hoped it would be, if they perceive the process as being a fair one and if their wishes were taken into consideration, they are more likely to be better adjusted to the placement decision (Ackerman & Gould, 2015; Parkinson & Cashmore, 2008; Stahl, 2014).

Another consideration in deciding what is in the best interest of the child centers around race, ethnicity, and culture in custody disputes. As noted by Maldonado (2017), "[c]ustody statutes generally do not expressly authorize courts to consider the parents' racial, ethnic, or cultural background" (p. 213). However, Maldonado (2017) emphasizes that often judges do consider these in making their decisions regarding custody determinations. This observation includes a parent's language ability or immigrant status. "However, there is a risk that judges, custody evaluators, and practitioners will assess parenting attitudes and behaviors in accordance with dominant, predominantly White middle class norms" (p. 214). Maldonado further points out that many judges and custody evaluators have implicit biases they do not recognize, despite what might be genuine efforts to be impartial and fair. Like all human beings, these professionals look for and process information that is consistent with their cognitive preferences. For example, any of the following might lead some evaluators to look less favorably on a parent: the parent has a multitude of tattoos and piercings; the parent is an atheist; the parent is vegan; the parent wants the child to be homeschooled; the parent uses poor grammar; the parent is partially blind; the parent works at night; the parent is bisexual; the

parent has limited education. None of these factors is relevant to the custody decision without further evidence that the child might be harmed as a result (e.g., if the parent works at night and the child is left alone).

The APA's Guidelines for Child Custody Evaluations (2010b) advise psychologists to be "aware of their own biases, and those of others, regarding race, gender, gender identity, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status" (p. 865). However, implicit biases are biases that individuals are not consciously aware of, and they may creep into custody evaluations unless evaluators carefully scrutinize their own internal standards and beliefs. It is not enough to recognize one's biases, however. Mental health practitioners must adopt concrete strategies to overcome these biases, such as by participating in training about the importance of objectivity or by critically examining their own conclusions (Neal & Brodsky, 2016).

In summary, no unitary standard for granting custody is a perfect one. Deciding what is in the best interest of the child sounds sensible, but the process of arriving at that determination remains highly subjective, vague, and controversial (Gould & Martindale, 2013). A number of researchers have noted that custody evaluations—compared with other psychological services—are disproportionately associated with ethical problems and complaints to state licensing boards (Bow & Quinnell, 2001; Kirkland & Kirkland, 2001). Ackerman and Pritzl (2011) found that close to 60% of the psychologists in their sample had received board or ethics complaints relating to child custody evaluations, 17% had been threatened with violence, and 11.1% had had property destroyed.

In reference to court acceptance of psychological evaluations, the APA (2010b) states in its Guidelines, "The acceptance and thus the overall utility of psychologists' child custody evaluations are augmented by demonstrably competent forensic practice and by consistent adherence to codified ethical standards" (p. 863). Standards of good or best practice are also important to psychologists providing services to the family or probate court. Standards of good practice include such things as obtaining the necessary consents from all involved parties, communicating what the process of evaluation will entail, clarifying payment arrangements and limits of confidentiality, and making clear to the parties how the final report will be disseminated. Many of these points can be communicated by a written document given to the lawyers and parents at the outset (Symons, 2013).

The Ultimate Issue Question

Like the psychological evaluations discussed in the previous chapter (e.g., competency, criminal responsibility), custody evaluations also raise the “ultimate issue” question. Should examiners make recommendations as to which parent should be given custody of the child or as to whether parental rights should be terminated? The aforementioned Guidelines (APA, 2010b) do not take a position on this beyond advising psychologists to be aware of both sides of the ultimate issue controversy and their own biases in making these recommendations. This caveat is particularly relevant when we consider the changing definitions of family that go beyond the traditional definition of individuals related by blood or marriage. Some scholars (e.g., Melton et al., 2018; Tippins & Wittmann, 2005) argue that the ultimate issue should be decided by the judge and not the psychologist. Others (e.g., Rogers & Ewing, 2003) maintain that psychologists should be able to offer recommendations about the ultimate issue as long as their conclusions are based on sound, acceptable data.

Despite the debate, how do forensic psychologists in the field actually handle recommendations concerning the ultimate issue in child custody situations? In a survey conducted by Ackerman and Pritzl (2011), it was found that the majority of forensic psychologists (59%) were in favor of testifying on the ultimate issue. However, the survey also revealed that this percentage was a *slight* decline from the previous survey conducted in 1997 (66%). Ackerman and Pritzl concluded that, “[a]s time progresses, it appears as if more and more psychologists are moving away from testifying to the ultimate issue” (p. 626). Nonetheless, it was also noted that, in many cases, the judge will insist on the psychologist answering the ultimate issue question, sometimes even under the threat of contempt. In some jurisdictions, recommendations regarding the ultimate issue are expected, and failure to offer them will lead to a substantial reduction in future court appointments for CCEs (Bow et al., 2011). Since the APA (2002) ethical code advises psychologists not to make recommendations beyond their assessment data, Bow and his colleagues find that the ultimate issue may create “a significant ethical dilemma for conscientious evaluators who wish to adhere to their ethical standards and want to help families resolve their differences” (p. 309).

Interestingly, Stahl (2014) notes that it is common for evaluators to make other recommendations, not just as to who should obtain custody. For example, an evaluator may recommend interventions such as counseling for parents or children, substance abuse interventions, mediation to resolve ongoing issues, or other

interventions relevant to the family. In the final analysis, however, it is the judge's decision to accept or reject any of the evaluator's recommendations. Nonetheless, research indicates that judges agree with the ultimate custody opinion, if one is offered. (See **Focus 6.1** for discussion of family court issues in one state.)

Focus 6.1

Family Court—Some Sad Outcomes

Family courts today present numerous challenges for forensic psychologists, as well as other professionals working in those settings. Many persons who appear before those courts are in crisis and in need of services which too often cannot be, or are not, offered. As noted in the chapter, many family court dockets today are overloaded, and family court judges make decisions on a wide range of issues. Here, we focus on those dealing with child custody, visitation, or relocation.

In a lengthy investigative journalism series (Bragg, 2020), the writer reviewed thousands of pages of family court documents, interviewed present and past judges, lawyers, psychologists, child protective workers, domestic violence experts, and petitioners in family court cases in one state. The series was apparently prompted by the death of five children whose families had been processed through these courts since 2014. In all five cases, a parent filed a petition alleging that a former romantic partner or spouse was a danger to their child. In all cases, action was delayed and the child died in the care of the alleged dangerous partner. One mother, whose child was killed by an ex-partner after a judge allowed visitation, became a social activist determined to advocate for change in the state's family court system. Included in her reform measures is a better system of forensic evaluations.

Interestingly, some psychologists and other mental health practitioners interviewed in the series mentioned that standards for custody evaluations and other decision making were not universal and that evaluators too often went by gut instincts. In one case, a prominent psychologist was critical of another psychologist's failure to interview collateral witnesses who were knowledgeable about the allegedly dangerous parent. The series also exposed failures by child protective services workers, including delays in investigating accusations of abuse.

Deaths of children in situations like these are rare. Nonetheless, death is not the only negative outcome. As depicted in the series, children were often shuttled from adult to adult, and sometimes

across different states and over several years, while the family court case remained unresolved.

QUESTIONS FOR DISCUSSION

1. The state is not mentioned here, because the same could be said of family court systems in many if most other states. Furthermore, we have summarized only briefly some of the points that are made in this excellent investigative series. Access family court statutes, procedures, and/or case law in your legal jurisdiction. Are there similarities to what was discussed earlier?
2. The details of the abuses suffered by the children in these cases were horrific, including children dying of burns and smoke inhalation, gunshot wounds to the head, or beaten to death. In all cases there were substantial warnings raised by the petitioners and brought to the attention of the court. What argument can be made in support of a court that grants custody or allows visitation despite the warnings?
3. Documents reviewed for the above series were obtained from grieving parents, exhibits in lawsuits, and confidential sources. Family court records, including the evaluations conducted by forensic psychologists and other mental health professionals, typically are confidential. Should they be?

Methods of Evaluation in Child Custody Cases

The court order that starts the process of custody evaluation is frequently vague and open ended (Zervopoulos, 2010). “Often, the order is barely specific, citing only the parties to be evaluated, the psychologist appointed to conduct the evaluation, and the evaluation’s general purpose—at times, the purpose, unwritten, is only implied” (Zervopoulos, 2010, p. 480). Although the psychologist may be allowed considerable latitude on how to proceed and what information and data to collect, it is recommended that the psychologist seek clarification from the court or from attorneys for further information and relevant documents if clarification is needed (Zibble & Fuhrmann, 2016). What’s more, the psychologist’s report is often the most important document the court considers when making a decision on what is in the best interest of the child. In some cases, however, the court order does ask the psychologist to evaluate situations of specific concern, such as allegations of sexual or physical abuse, intimate partner violence, or possible mental disorder in one of the parents. In these legal contexts, the courts are best served when the evaluating psychologists focus their assessments

on matters before the court. In cases where sexual abuse is alleged, for example, the psychologist would likely interview the alleged victim as the most important beginning in the evaluation, followed by interviews and assessments of the alleged perpetrator and a careful review of the records, including arrest records, medical records, and child welfare reports. Likewise, if intimate partner or other domestic violence is alleged, the examiner would conduct careful interviews and review official records, such as available police reports and restraining orders.

The APA Guidelines (2010b) emphasize, “Multiple methods of data gathering enhance the reliability and validity of psychologists’ eventual conclusions, opinions, and recommendations” (p. 866). In conducting child custody evaluations, psychologists often use a variety of psychological inventories, interview questionnaires, and tests to evaluate parents, guardians, and children. Standard practice also calls for multiple sources of information, including electronic records, face-to-face contact and observation of family interactions, interviews with the parents and child, and the collection of collateral information from people knowledgeable about the family. (See **Photo 6.1**.) Ackerman and Gould (2015) note that significant others in the children’s lives, particularly stepparents, also should be interviewed. Relevant documents and records, such as medical, mental health, legal proceedings, and educational records are frequently collected. This information forms the basis of the psychologist’s report, conclusions, and recommendations. The psychologist, for example, may come to the conclusion that one or the other parent is depressed, and the depression is serious enough to hamper parenting abilities. Zervopoulos (2010) aptly summarizes the Guidelines for the psychologist facing this situation when he writes that they “require that psychologists focus their parenting evaluation conclusions on parenting capacity, the psychological and developmental needs of the child, and the resulting fit” (p. 482). In other words, the psychologist would best serve the family if they consider all factors, including—most importantly—the needs of the child.



► Photo 6.1 Parents and child sometimes meet together with evaluators in custody situations. The costs and benefits of holding such group meetings must be carefully considered.
iStock/Prostock-Studio

Eve, Byrne, and Gagliardi (2014) asked judges, lawyers, social workers, psychologists, and other professionals experienced in parenting assessments what they thought constituted “good parenting.” Based on the results of their surveys, the researchers were able to identify six broad categories to help define good parenting that may be useful in custody, visitation, and relocation proceedings. The categories are (1) insight, (2) willingness and ability, (3) day-to-day versus long-term needs, (4) child’s needs before own, (5) fostering attachment, and (6) consistency as well as flexibility. Insight refers to understanding one’s role as a parent. Willingness and ability emphasizes that good parenting requires the motivation and skills to provide adequately for the basic needs of the child. In assessing the day-to-day factor, one considers whether the parent tries daily to meet the child’s physical, emotional, and cognitive needs. However, the parent also must support and encourage the child to become an independent person in the long term. Putting the child’s needs before one’s own means the parent must be able to sacrifice personal needs for the overall welfare of the child. Fostering attachment refers to developing an interactive attachment between

the parent and the child on an ongoing basis. Consistency represents setting healthy limits and boundaries for the child on a consistent basis, while flexibility signifies the ability of the parent to adapt to the changing developmental needs of a child. Good parents, according to many professionals, achieve a balance between consistency and flexibility. Not all the professional literature agrees that these six categories are the best signs of good parenting, but Eve et al. (2014) do offer a beginning base for further research.

Assessment Measures

Psychological testing can have a profound effect on how psychologists arrive at their final assessments and recommendations. The instruments used may measure intelligence, personality, attitudes, cognitive impairment, and psychopathology. As noted by Erickson, Lilienfeld, and Vitacco (2007), these measures vary substantially in their ability to evaluate the suitability of the parents and the needs of the children, and they warn that some are inappropriate for the assessment of adults or children involved in family court litigation. Melton et al. (2018), mentioning several specific tests, are even more forceful in their warning: “The evidence for reliability and validity of these measures as they pertain to custody evaluations is limited. Indeed, we have found no methodologically sound research, published in refereed scientific journals, to support the use of these or similar measures in child custody decision making” (p. 552).

Several studies have examined the methods used by psychologists in conducting custody evaluations as well as the professional time allocated to the process (e.g., Ackerman & Ackerman, 1997; Bow & Quinnell, 2001; Keilin & Bloom, 1986; LaFortune & Carpenter, 1998). These studies suggest that evaluators progressed from relying almost exclusively on interview data (Keilin & Bloom, 1986) to using a wide range of assessment measures, including tests developed specifically for custody evaluations (Bow & Quinnell, 2001). As noted, however, many of these tests and methods themselves have been criticized for not being grounded in sufficient research before being used in practice (Ackerman & Gould, 2015; Erickson et al., 2007; Krauss & Sales, 2000; Melton et al., 2018).

Over the past decade, however, some agreement seems to have been reached as to how to approach an evaluation. “There are fewer and fewer areas of professional disagreement in the literature addressing how to conduct a child custody assessment. In fact, there is an emerging consensus about how evaluations should be conducted” (Ackerman & Gould, 2015, p. 427). What appears in the literature is not necessarily translated into practice, however, and

there continues to be wide variability in the quality of custody or parenting evaluations, leading to frustration on the part of judges and attorneys (Ackerman & Gould, 2015).

Visitation Risk Assessments

Closely related to custody is the issue of visitation, and visitation recommendations are almost invariably included in custody assessments. Ideally, children should have access to both parents, and each parent also has the right to be involved in their child's life. However, it is not uncommon for a custodial parent to challenge or request a change in the visitation rights of the noncustodial parent. This usually occurs under the premise that the noncustodial parent is emotionally or physically damaging the child—or presents a strong risk of inflicting such harm. (Again, see **Focus 6.1** for illustrations.) In some high-profile media cases, the custodial or noncustodial parent has absconded with the child or children, claiming that this was done to protect the child from abuse by the other parent. More than a few such cases have landed the child or children on a federal registry of missing children.

Consequently—in addition to custody evaluations—psychologists and other mental health practitioners are sometimes asked to conduct **Visitation risk assessments** to help courts decide whether visitation rights should be limited or abrogated completely. For example, on the basis of such an assessment, the family court judge may decide to require that all visits be supervised by the child's social service caseworker or by a court-appointed guardian.

The psychologist conducting the visitation risk assessment ideally interviews both parents and, depending on the circumstances and the child's age, may also interview the child. The psychologist's role is to determine whether there is evidence of a psychological problem or behavior pattern that would likely lead to inappropriate and potentially harmful interactions between parent and child. Like the custody evaluations discussed earlier, there is no "standard of practice" for visitation risk assessments. However, there is more research available on custody evaluations than on visitation risk assessments.

Parental Relocation

Another important role involving forensic psychologists encompasses the issue of **Parental relocation**. Cases involving relocation represent one of the most difficult types in all of family law (Atkinson, 2010). Often, the custodial parent wishes to move with the children to a new location following separation or divorce. When the noncustodial parent challenges this move, a court battle may follow. Parents who want to move usually have good reasons for doing so, such as better

employment opportunities, a desire to be near their extended family, or to be near a new partner who needs to locate elsewhere (Atkinson, 2010). On the other hand, a custodial parent may want to move to punish the other parent and alienate them from the child or children. In a majority of cases in which relocation is challenged, the other parent is still involved with the child (or children) in some capacity, even if it is only occasional visitation.

It is important to emphasize that state statutes vary widely in reference to relocation, however. “In some jurisdictions, there is a presumptive right to move by a custodial parent, whereas in other jurisdictions, the burden is on the parent requesting to relocate to show that the move is in the child’s best interest. In still other jurisdictions, every relocation matter is considered on a de novo basis (i.e., a new hearing on the best interests of the child)” (Stahl, 2014, p. 153). Most of those states have statutes and case law that instruct what factors are to be considered before their courts decide whether children may relocate with their parent. (See **Table 6.3** for examples.) Generally, but again not in all jurisdictions, the *noncustodial* parent may move or change jobs without asking permission from the court or from the custodial parent. It is another matter when the custodial parent’s planned relocation is some distance away from the noncustodial parent. In these situations, the custodial parent may do so only with the consent of the former spouse (or partner) or with the express approval of the court, or both. “Twenty-five of the 37 states with relocation statutes explicitly require that the parent seeking relocation give notice to the other parent, usually by certified mail with return receipt requested” (Atkinson, 2010, p. 565). If the noncustodial parent opposes the move, it creates a conflict between the custodial parent’s need for self-determination and the noncustodial parent’s interest in maintaining meaningful contact with the child.

Developmental psychologists are beginning to recognize that a relocation move is only one factor in a long line of events, experiences, and changes that are likely to have significant impacts on a child’s life. The developmental age of the child, the distance of the proposed move, the extent of the noncustodial parent’s involvement in the child’s daily activities, and the nature of the parents’ conflict that resulted in a divorce are all key factors that require careful scrutiny in the relocation evaluation (Austin, 2008a, 2008b). The evaluating psychologist is expected to pay close attention to the developmental age of the relocating child. Very young children may appear not to be negatively affected by the move, but as they grow older, they may be confused as to why it occurred and,

depending upon their relationship with the custodial parent, may strongly resent that it happened. Children between the ages of 8 and 12 years are more likely to show better adjustments to the move, primarily because they are better equipped with the cognitive and language skills necessary to maintain a long-distance relationship with the other parent and understand the dynamics of divorcing parents (J. B. Kelly & Lamb, 2003). Adolescents, on the other hand, often strongly resist the move, usually because they have strong ties to school, their peers, and athletic teams or clubs. Nevertheless, the child's age is only one of many factors to be considered, as seen in **Table 6.3**.

Table 6.3

*Based on statutes or case law in states where specific factors are outlined.

Research on Custody Arrangements

Forensic psychologists involved in custody proceedings are invariably advised to be aware of research developments relevant to custody decision making. Recall that judges and lawyers often press for a recommendation, even though psychologists are also advised to avoid giving one. Regardless of whether or not they provide an opinion on the ultimate issue, psychologists and other MHPs should be knowledge about research findings.

Custody arrangements tend to fall into one of four patterns: (1) sole custody, (2) divided custody, (3) split custody, and (4) joint custody, and all have been subjected to research. These four arrangements are based on two fundamental categories of parental or caregiver's decision-making authority: legal and physical. **Legal parental authority** refers to decisions about the child's long-term welfare, education, medical care, religious upbringing, and other matters significantly affecting their life. **Physical parental authority** denotes the authority to make decisions affecting only the child's daily activities, such as decisions concerning whether the child can have an overnight at a friend's house, play baseball or softball, attend a birthday party, or have access to the parent's car.

Of the four custody arrangements, *sole custody* is the most common. It is when one parent has both legal and physical authority and the other parent does not, although the noncustodial parent usually retains visitation rights. In the United States, as noted above, mothers are overwhelmingly granted sole custody. In 2009, for example, 82% of custodial parents were mothers with sole custody (U.S. Census Bureau, 2011b).

Divided custody refers to arrangements where each parent is granted legal and physical parental authority on a rotating basis. For example, the arrangement may have the child or children living with one parent for 6 months of the year, and the other parent for the next 6 months, as long as the same school system is involved. When the two parents live in different geographical locations, the division of custody is typically made in accordance with the school year or vacations. If the parents live geographically close to one another, the alternating periods may have short time spans (e.g., one parent on weekends, the other on weekdays). *Split custody* refers to an arrangement where one or more children go with one parent, and other children go to the second parent. This is most likely to occur when the children are far apart in ages, such as adolescents and grade or preschoolers. *Joint custody* is where both parents share legal and physical decision authority, but the children live predominately with one parent who will have physical authority to make the day-to-day decisions. In some joint custody arrangements, disagreement and conflict between the parents emerges, often over the physical authority issue. In these situations, the court may grant *limited joint custody,* where both parents share legal authority, but one parent is awarded exclusive physical authority and the other is granted liberal visitation rights. Family courts usually try to recognize some variant of joint or shared parenting that encourages frequent and continuing contact of the child with both parents (Connell, 2010).

Forensic psychologists and legal professionals are beginning to recognize the value of having children participate in the decision-making process that directly affects their own lives and welfare (Lehrmann, 2010). This is especially important for older children who are capable of reasoned judgment. The forensic psychologist should be cognizant of this consideration, but must also realize that the legal perspective is different in these matters from the psychological one. "From a legal perspective, children lack decision-making power in most respects, although children's choices carry legal weight in various contexts" (Lehrmann, 2010, p. 474). In some legal contexts, the appointment of legal counsel to protect the rights and wishes of the child may be necessary.

As noted earlier, psychologists and other mental health practitioners conducting custody evaluations should be aware of the vast store of research on the effects of divorce and custody arrangements (e.g., Bricklin & Elliot, 1995; Johnston, 1995; Maccoby, Buchanan, Mnookin, & Dornsbusch, 1993; Wallerstein, 1989). Much of this research is dated, however, and today's rapid changes in economic opportunities, ethnic and cultural considerations, mobility, and social

services suggest caution in relying on past studies. Moreover, sifting through this research can become an exercise in frustration because—as Krauss and Sales (2000) observed—methodologically sound studies have reached different conclusions. Particularly equivocal has been research comparing joint custody to sole custody arrangements (e.g., Bauserman, 2002, 2012; Gunnoe & Braver, 2001), leading to conclusions that no one arrangement is clearly superior to the other. In an important recent article addressing much of that research, Nielsen (2017) focuses on the decades-long assumption that joint custody is not warranted if there is conflict between the parents. Reexamining the research in this area, she concludes that the quality of relationship between the child and the parents is a better predictor of positive outcomes than a conflict-ridden relationship between the parents, unless the conflict is major. Put another way, if the child has a healthy relationship with each parent, joint custody can work even if the parents are not "amicable." It is obvious that conducting a competent child custody evaluation requires the skillful integration of both scientific knowledge and clinical acumen (Gould & Martindale, 2013).

FORENSIC PSYCHOLOGY AND CIVIL LITIGATION

It has become commonplace to state that we are a litigious society, seeking redress through the courts for a wide range of alleged wrongs done to us by others. In addition to the family issues discussed above, there are many ways in which we may approach the civil courts. These include—but not limited to—a civil rights claim, a claim of a breach of contract, intellectual property claim (e.g., a patent case), a prisoner case, or a labor case (e.g., unfair labor practices). Courts also consider alleged wrongs on such matters as defamation, invasion of privacy, toxic harm, and personal injury, to name but a few. As we shall learn in this section, the redress sought is typically some form of financial compensation.

In civil cases, the person filing the lawsuit is called the **plaintiff**, and the person or organization alleged to have caused the harm is called the defendant or **Respondent**. In order to get some form of relief, the plaintiff files a civil lawsuit. A plaintiff alleging emotional distress is subject to being evaluated not only by a clinician contacted by their lawyer, but also by a clinician hired by the defendant. In the usual case, the plaintiff hires the psychologist.

The most common civil suit is the **Tort**, which is the legal term for a civil wrong in which a plaintiff alleges some negligence on the part of the defendant. A tort exists when certain elements are proven in

court. Consequently, a tort is a proven wrongful act that may be subject to recoverable damages in a civil lawsuit (Foote & Lareau, 2013). As Drogin, Hagan, Guilmette, and Piechowski (2015) summarize, a plaintiff must prove four elements:

1. Duty—that the defendant had an affirmative responsibility to do something or not to do something,
2. Breach—that the defendant failed to meet that responsibility,
3. Harm—that something bad—some identifiable injury—must have happened to the plaintiff, and
4. Causality—that the defendant's wrongful behavior was the source of the injury. (p. 472)

In most civil cases, forensic psychologists retained by attorneys would be expected to evaluate (a) whether the plaintiff was harmed by the defendant and (b) if the plaintiff was harmed, the type and degree of harm the plaintiff suffered (Foote & Lareau, 2013). In a majority of cases, the forensic psychologist focuses the evaluations on the type and extent of functional impairment suffered by the plaintiff. This approach is considered a more productive strategy than rendering, for example, a psychiatric diagnosis based on the *DSM-5* (*Diagnostic and Statistical Manual of Mental Disorders*, fifth edition) criteria, such as a generalized anxiety disorder or a major depressive disorder. This is because a psychiatric diagnosis is usually not legally effective in establishing compensable damages. Furthermore, as pointed out by Drogin et al. (2015, p. 496), the *DSM-5* itself stresses that the diagnoses are intended for clinicians, public health professionals, and researchers and cautions against using them to meet the needs of the courts. Functional impairment on the other hand, relates to what people can and cannot do in their basic daily home and employment requirements. More important, functional impairment not only affects the plaintiff's quality of life, but may also prevent the plaintiff from performing the job that was held prior to the damage.

The types of relief sought by plaintiffs generally fall into one of three categories: (1) an injunction, (2) a specific performance requirement, or (3) monetary compensation (Foote & Lareau, 2013). An **Injunction** request is where the plaintiff desires the ongoing harmful behavior to stop. In the specific performance requirement request, the plaintiff wants the defendant to do something the defendant is supposed to or required to do, such as provide reasonable accommodation in the workplace for a person with a documented disability. In most civil cases, however, the plaintiff pursues some form of financial compensation for alleged harm suffered.

Damages fall into two principal classifications: compensatory and punitive. **Compensatory damages** are intended to make up for the harm suffered by the plaintiff. **Punitive damages** are assessed when the harm done is so grave that the judge or jury believes the defendant should receive extra punishment. The main goal of punitive damages is to deter the defendant from further harmful action and to discourage others from committing similar harmful acts in the future (Lenton, 2007). In order to receive a damages award, the plaintiff must first be able to show some physical, emotional, or mental injury as a result of the actions of the respondent. Furthermore, the plaintiff must also prove that the defendant either committed the harmful act intentionally or at least was negligent. Similar to family and custody cases, a vast majority of other civil cases are settled out of court, before they would go to trial. Many claims by plaintiffs that are disputed by defendants assert that they suffered cognitive injuries or emotional harms as a result of the defendant's actions (Foote & Lareau, 2013), and these are cases where forensic psychologists usually are retained.

Forensic psychologists may participate in the early stages of a civil case by guiding the mediation process, evaluating plaintiffs and defendants, or consulting with attorneys. Later, if the case goes to trial, the psychologist may testify as an expert witness. Psychologists also may be called as expert witnesses in these civil suits to testify more generally on the effects of the alleged wrong, without examining the plaintiff. For example, in a civil suit alleging discrimination on the basis of gender—a civil rights violation—a psychologist with research expertise on gender stereotyping may be called as an expert witness. As we noted in Chapter 4, researchers continue to examine the effects of the *Daubert* standard with regard to the admission of expert testimony in the courtroom. Thus far, it appears that lawyers are questioning expert testimony, and judges are scrutinizing it more carefully and rejecting more such testimony than they were in the years before the *Daubert* decision (McAuliff & Groscup, 2009). However, the research is mixed as to how accurate these decisions are. (See **Perspective 6.1** in which Dr. Groscup refers to conducting research on legal decision making.) As McAuliff and Groscup write,

> [t]he fact that judges are scrutinizing expert testimony more carefully and excluding it more frequently after *Daubert* says nothing about the accuracy of their decisions. None of the research we have reviewed has provided any evidence that

> judges are admitting valid science and excluding junk science. (p. 28)

Finally, in addition to participating directly in civil cases, psychologists have over many years conducted extensive research relating to the courtroom workgroup, that is, judges, lawyers, and juries (e.g., Eisenberg & Heise, 2011; Kovera & McAuliffe, 2000; Robbenolt, Groscup, & Penrod, 2014). For example, Robbenolt et al. (2014) focused on civil juries and concluded, after reviewing the research and citing numerous cases, that the jury decision-making process, if not perfect, was “at least orderly” (p. 481) but in need of additional examination. These writers also examined existing research on jury reform efforts, such as allowing jurors to take notes, ask questions of witnesses, or discuss the case before formal jury deliberations began. While systematic research in these areas is in its infancy, it has promise for being valuable to the legal system in many contexts.
From My Perspective 6.1

Say “Yes” and Don’t be Afraid to Explore
Jennifer Groscup



Jennifer Groscup, JD, PhD
When I was applying for college in the fall of my senior year of high school, I thought I wanted to be a senator. So, of course, my top choice was Georgetown University, sitting in the epicenter of national politics in Washington, D.C. Fortunately for the country, I took a

psychology course as a fun elective in the spring of my senior year. Part of the work of the course was to conduct experiments on a topic of our choosing. At the height of the “abstinence” movement in the 1980s, my group decided (obviously!) that we should survey people about whether they believed birth control should be taught in high school—with half of the researchers dressed as pregnant teenagers. Never underestimate the power of research to inspire. I was hooked! Time to explore . . .

Once I started college, I was certain I wanted to major in psychology, but I had no idea in what area of psychology I was truly interested. Until I took Criminal Behavior. It sounded “cool,” so I said “yes” to exploring it. The class was taught by Fr. Anthony Pinnizotto, a priest with a PhD in psychology who worked with the FBI’s Behavioral Science Unit in Quantico. Can you imagine? It was 1991—the year of *Silence of the Lambs*—and the world was obsessed with serial killers and profilers, and here I was taking a class from one (a profiler, not a serial killer). The textbook we used was Bartol and Bartol’s *Criminal Behavior*. It was my first introduction to psychology and the legal system. The class was nothing short of amazing, and I left convinced that I wanted to be a profiler.

When I was a senior, I signed up to do my senior thesis with Fr. Pinnizotto on serial killers. He knew I was interested in pursuing this as a career, and as a result, he did what I consider to be a very “priestly” thing for me. He gave me a book about police detective practice he suggested I use in my thesis. It was related to my topic, but it was not at all academic and was barely useful. It did, however, contain about 50 pages of color photographs of dead bodies in various states of decay and for various reasons. Want to know what a “floater” looks like after six months in the water? I can tell you because of that book. The clear message he was trying to give me was that seeing the things in that book in real life would be my life if I chose that career. Thanks to his kind act, I did not.

At the same time, I was taking Psychology and Law with Professor Norm Finkel. The course material ignited my interest in even more of the field, but it was an opportunity he gave me that really sealed the deal. He had a line in his syllabus, something like “If you want to get involved in psychological research, come see me!” I thought, why not? Turns out, that was the best poorly thought out decision I ever made. Saying “yes” to that seemingly simple and inconsequential offer started the snowball rolling that became my calling in life and my career. I found my passion—I wanted to do research and teach. I did research with him for my entire senior year and for the 3 years after graduation until I went to the joint degree program in psychology

and law at the University of Nebraska–Lincoln to get my PhD and my law degree. My goal was to become an academic at a school like where I went to college. Again, I found my path through my excitement about research.

Now, I teach at a small, liberal arts college, and I try to instill the same passion for psychology and law in my students that I was fortunate to receive. I include the offer about joining me for research in my syllabus for every class I teach, just like Norm Finkel did for us. Every time a student says “yes,” I get the chance to help them explore their interests in the field.

Doing research in my lab is an experience in exploration—of topics that is. For example, I started my career researching jury decision making, and some of that research focused on the media in the form of pretrial publicity. That interest in the media, psychology, and law has now morphed into an area of research focusing on obscenity law. My interest in judicial decision making about expert testimony has morphed into an interest in decision making about searches and seizures. I don’t abandon the old areas of research, but I always try to explore the new ones. So, when you see something that interests you, say yes! Don’t be afraid to explore new areas of your interest. You never know what “yes” will lead to your passion in life!

Dr. Groscup teaches in the psychology and legal studies departments at Scripps College, the Women’s College at the Claremont Colleges. She was 2019–2020 President of the American Psychology–Law Society, Division 41 of the American Psychological Association. Her ever-evolving research interests are in legal decision making by judges, jurors, and attorneys. In her spare time, she enjoys running half marathons, competitive baking, and aggressively crafting with her daughter.

In the remainder of the chapter, we overview a few civil law areas where forensic psychology plays an important role, with the caveat that there are many other such areas. Those to be discussed encompass personal injury claims that include a psychological component; civil capacities, which includes the capability to make a will or take care of oneself; the competence to consent to treatment or to refuse treatment; and issues involving involuntary civil commitment other than the type covered in Chapter 5. We also cover the increasingly important topic of evaluating sexual and gender harassment, especially in the workplace. We begin with personal injury claims.

Employment Compensation, Disability, and Personal Injury Claims

Employment compensation laws were passed to avoid extensive tort actions brought by employees who were injured in the course of their work. The legal framework of personal injury cases is defined largely by the law of torts. “Tort law recognizes a claim for monetary damages when one breaches duty of care owed to another and proximately causes them harm” (S. Greenberg, Otto, & Long, 2003, p. 412). In passing these employment compensation laws, Congress and state legislatures recognized the formidable task faced by injured workers pitted against their powerful employers. Employees suing would have to prove some fault on the part of their employers. This was a long, involved process that rarely resulted in a successful claim and often left the worker and the worker’s family in poverty (Melton et al., 2018).

Although **Employment compensation claims** involve physical injuries, psychological injury or emotional distress is also typically asserted. To use a hypothetical example, Jason is employed by a roofing company that often repairs roofs that were damaged by severe weather conditions. While replacing shingles on a roof that is three stories high, Jason is caught by a wind gust and swept off, suffering extensive back injuries. In addition to this physical injury, Jason claims extreme emotional distress that includes fear of heights manifested in an inability to climb ladders, take escalators, or accompany his 10-year-old son on a chairlift at a ski area. Note that Jason is not claiming that his employer was at fault for dispatching him to repair the roof on a high-wind day. He is merely stating that he should be compensated for his lost wages, the physical and neurological effects of the fall (e.g., debilitating back pain, recurring headaches), and the life changes necessitated by his fear of heights. On the other hand, an employer may be responsible for the harm suffered by employees, in which a civil suit might ensue. In the preceding scenario, for example, if Jason was equipped with inadequate safety gear and was dispatched to repair the roof on an exceptionally windy day, it could be argued that his employer breached an affirmative duty to protect his employee and was the cause of his painful injury. In that case, the issue might reach the tort stage rather than be settled as an employment compensation case. Interestingly, this very issue of employer liability came to the forefront in 2020 in connection with the coronavirus crisis. Consider the four elements mentioned earlier: duty, breach, harm, causality. Beginning in the spring, many states were placed in “lockdown mode” because

of the very fast spread of the illness, which led to a variety of difficult symptoms, hospitalizations, and deaths. In most but not all parts of the country people were urged to remain home, avoid large groups, wear facial coverings, and work from home if possible. Essential businesses remained open. Gradually, states that had issued restrictions began to reopen—some had not closed down in the first place. Although people wanted to return to work, there was widespread fear that they would return to an unsafe working environment. Employers to varying degrees followed guidelines that were not always clearly communicated by local, state, and federal governments. The question then became, If an employer requires one to return to work but the worker is exposed to the virus, becomes sick, and even subsequently dies, is the employer liable in any way?

Congress at one point tried to address this through legislative action. For example, some stimulus bills aimed at providing financial help to businesses included provisions that businesses could not be sued if they took reasonable precautions to keep their employees safe and communicated to them risks of coming back to work. Those who opposed those provisions believed that automatically cutting off the option to sue was unfair to workers because phrases such as "reasonable precautions" could be interpreted too subjectively. As of the fall of 2020 this issue had not been resolved.

Evaluations of mental injury—both psychological and neurological harm—also occur in a wide variety of personal-injury litigation that is not necessarily employment related (Piechowski, 2014). On an increasing basis, attorneys and judges look to psychologists and other MHPs for assistance in better understanding the claims of plaintiffs who allege that they have suffered emotional damage in situations outside of their place of employment (S. Greenberg et al., 2003). For example, mental health is included in "pain and suffering" and "emotional distress" claims by individuals who were injured in car accidents or in a fall in a neighbor's yard. Plaintiffs also claim psychological and neurological harm from exposure to environmental contaminants or from defective products. In these cases, "the court seeks the assistance of mental health professionals in such personal injury cases based on the assumption that the plaintiff's psychological functioning and adjustment is a complicated matter that is beyond the understanding of attorneys, judges, and juries" (S. Greenberg et al., 2003, p. 411).

Regardless of whether the assessment involves psychological or neurological harm— and often both—the assessment of disability conducted by the forensic psychologist is crucial and complex

(Drogin, Hagan, Guilmette, & Piechowski, 2015; Piechowski, 2011, 2014, 2019). It involves not only identifying mental or neurological disorders but also identifying the legally relevant functional abilities that have been affected.

Neuropsychological Damages

In cases where specific neuropsychological damages are alleged, a neuropsychologist or a forensic psychologist specializing in neuropsychology may be retained. In fact, the area within clinical neuropsychology that has shown the greatest growth explosion is **Forensic neuropsychology** (Bush, 2017; Otero, Podell, DeFina, & Goldberg, 2013). Recall from **Table 1.1** in Chapter 1 that clinical neuropsychology in 1996 became the first specialty area in professional psychology. This explosion is due partly to the increased demand by the legal system for expert testimony capable of identifying neuropsychological deficits. In civil litigation, the greatest growth has occurred in cases that involve traumatic brain injuries (TBIs), such as those suffered in motor vehicle accidents (Otero et al., 2013) and concussions in sports-related events. Considerable monetary compensation is often sought by the plaintiffs in these cases. Interestingly, a study in the *Journal of the American Medical Association* (Mez et al., 2017) reported that brain damage was found in 87% of donated brains of 202 deceased football players, including 110 of 111 brains of professional football players. The study concluded that the more professionally the person played, the more severe the brain injury.

In forensic settings, a neuropsychologist may be retained by an attorney, the court, or other public or private parties, such as insurance companies (Leonard, 2015). In criminal matters, they may be retained by prosecution or defense attorneys. The forensic neuropsychologist is expected to be objective and show no allegiance or responsibility to any one side or individual. In fact, in forensic work in general, the psychologist–patient relationship found in clinical settings is assumed not to exist (Leonard, 2015; Younggren et al., 2020). All mental health professionals also must guard against implicit bias and the bias blind spot (Neal & Brodsky, 2016). In civil proceedings, forensic neuropsychologists assess people of a wide range of ages, from preschoolers to older people.

A variety of standardized tests and inventories may be used by the forensic neuropsychologist to collect information and make inferences concerning brain and behavior relationships. This comprehensive evaluation is usually undertaken when the TBI or other neurological damages appear serious and complicated in scope. A comprehensive evaluation may entail “objective measures

of cognitive performance with historical, neurological, psychiatric, medical, and other diagnostic information by a clinician with competence in neuropsychological assessment" (APA, 2014d, p. 48). In some cases, however, the examination may not require a comprehensive evaluation. "The nature of the examination may range from a relatively brief clinical interview to a comprehensive examination that includes extensive psychological test administration" (Otero et al., 2013, p. 507). Otero et al. (2013) further report that modern technology, such as magnetic resonance imaging (MRI), functional MRI (fMRI), positron emission tomography (PET), computerized tomography (CT), and diffusion tensor imaging, has reduced much of the standardized testing relied on in the past to *localize* the brain damage. However, when it comes to identifying neurocognitive processes or ability, standardized neuropsychological tests are usually heavily utilized. This is because the testing and other assessment techniques applied during the assessment enable the forensic psychologists to provide supporting evidence or to refute the claims made by the plaintiff that they are suffering from brain or other neurological damage.

Before evaluators even begin the forensic evaluation, however, they must fully understand the relevant law in order to identify those issues before the court that are psychological in nature and about which they can offer expert opinion (S. Greenberg et al., 2003; Grisso, 2003). Furthermore, forensic evaluations for mental and neurological damages and the accompanying report usually must be both retrospective and prospective in nature. These reports are retrospective in that the evaluator tries to determine how much damage (if any) was done and the specific cause; they are prospective in the sense that the evaluator must make some judgment about future functioning: Will the plaintiff be able to function as the plaintiff did prior to the claim? In the case of employment compensation claims, what is the extent of the loss in earning capacity suffered by the plaintiff? If the injury is work related, all information pertinent to the workplace is relevant to the inquiry.

Psychological Tests Used for Personal Injury Claims

As emphasized by Greenberg et al. (2003), not all personal injury examinations require the same assessment instruments. Neuropsychologists generally use neuropsychological measures, but they may depend on other standardized tests as well. Melton et al. (2018) point out that personality inventories are helpful, particularly if they can be compared with inventories taken before the injury

occurred. In addition, they remind the psychologist to investigate the extent of physical injury, using neurological tests if needed, in addition to mental injury. Furthermore, the evaluator should be attuned to the possibility of post-traumatic stress disorder.

As we noted in Chapter 5, malingering and the exaggeration of symptoms have received considerable attention in the research literature (e.g., Gothard, Rogers, & Sewell, 1995; Mossman, 2003; Rogers, 1997). In forensic evaluations for criminal court proceedings, such as competency to stand trial and criminal responsibility evaluations, the possibility that a defendant is malingering must be assessed (Kois, Chauhan, & Warren, 2019). Relevant to the present chapter, in all mental injury evaluations, psychologists and other clinicians must be concerned about the possibility that the individual being evaluated is "faking" symptoms or presenting them as being much worse than they are. More comprehensively, malingering is "the intentional production of false or grossly exaggerated physical or psychological symptoms that are motivated by external incentives such as financial compensation" (Drogin et al., 2015, p. 477). Put more simply, plaintiffs making personal injury claims may exaggerate their symptoms in order to win their suit against an employer, a business, a neighbor, or a physician who allegedly harmed them. Malingering and deception are especially prevalent in disability claims where individuals seek compensation for work-related injuries (Piechowski & Drukteinis, 2011), and much of the research on malingering detections has been done by neuropsychologists (Drogin et al., 2015). Detection of malingering thus becomes an important function of the forensic psychologist in many contexts. Butcher and Miller (1999) emphasize that there is no foolproof way to assess malingering, although the MMPI-2 appears to have valid indicators. Many commentators have noted that clinical judgment alone cannot detect malingering and that a variety of measures must be considered, depending upon the alleged impairment (Carone & Bush, 2013; Guilmette, 2013; Heilbronner, Sweet, Morgan, Larrabee, & Millis, 2009).

Butcher and Miller (1999) also advise the evaluator to be extremely conscious of the role of the individual's lawyer: "One of the most problematic factors encountered in forensic assessment is the tendency of many attorneys to guide their clients through a desired strategy for responding to psychological test items" (p. 110). They advise clinicians to try to determine whether the individual has been "coached" by the lawyer and the extent and nature of the coaching. Basically, the individual should be asked what they have been told. The final report should reflect how this coaching might have affected

the results of the examination. In addition, lawyers today often want to be in the examination room along with their client. “This tactic raises important practice and policy concerns as well as personal discomfort and logistical complications for the evaluator” (Drogin et al., 2015, p. 499). As Drogin et al. (2015) indicate, there are two sides to this argument. For example, having an observer may interfere with the evaluation process, but it also may protect the evaluator from complaints.

After a comprehensive discussion of mental injury evaluations, Melton et al. (2018) conclude with three general points about communicating with the courts relevant to these assessments. First —and as mentioned previously—they urge clinicians to not rely overly on diagnoses because these will not explain why a particular individual reacted in a particular way to the particular events. Second, they emphasize that a longitudinal history of the impairment, its treatments, and efforts at rehabilitation is necessary. Third, they maintain that conclusory information should be avoided. Clinicians should provide descriptive reports of their findings but allow the legal decision makers to decide the critical legal question of whether the plaintiff should be compensated.

Not all civil cases involve wrongs or torts like those discussed earlier. Litigants often approach courts with claims for employment benefits, health benefits, insurance, or veterans’ benefits that they believe have been unjustly denied. To discuss these would take us far afield from the main topics in this section of the chapter. Another important topic, however, is the psychological evaluations of civil capacities, to which we now turn our attention.

CIVIL CAPACITIES

Many psychologists, including neuropsychologists, perform civil capacity evaluations (sometimes referred to as civil competency evaluations) as part of their clinical work, and they report the result of their evaluations to attorneys and sometimes testify in court proceedings. In one survey of practicing neuropsychologists, they reported that capacity issues arose in 75% of their cases (Demakis & Mart, 2017). The professional literature often uses the term *competency* to refer to a court’s legal decision and the term *capacity* to refer to a psychologist’s assessment of a person’s decision making ability (Lichtenberg, Qualls, & Smyer, 2015). Nevertheless, in much of the research as well as in practice, the terms are used interchangeably. Capacity (or competency) evaluations are not limited to older individuals, of course, but with the aging of the U.S. population, the frequency of these evaluations will certainly rise (Demakis, 2012; Galietta, Garcia-Mansilla, & Stanley, 2014;

Mossman & Farrell, 2015; Quickel & Demakis, 2013). MHPs will be asked to evaluate whether people were or are capable of making critical decisions in their own best interest.

Persons who have reached adulthood are presumed to be capable of making these decisions. Likewise, they are expected to take responsibility for decisions that resulted in disastrous consequences. This decisional autonomy extends to such areas as consenting to medical treatment, joining a cult, engaging in a business contract, enlisting in the military, drafting a will, refusing medication or life-prolonging treatment, or consenting to participate in psychological or medical research.

The presumption that one is capable of making decisions can be nullified if it can be demonstrated to the satisfaction of a court that the person was not mentally or physically competent at the time the decision was made (or is being considered). In most jurisdictions, the party claiming that a person is not competent bears the burden of proving that by a preponderance of the evidence, but some jurisdictions require clear and convincing evidence, which is a higher standard. Put another way, if you want to challenge Uncle David's testamentary capacity, you have to prove that at the time he drafted his will, he was not able to make the decision to give all of his money to the person he met just 6 months ago. When a court determines that an individual is or was not competent, it invalidates a decision that was made (e.g., the terms of a will or a decision to forego medical treatment). If the person is still alive, the court will usually appoint a guardian to decide what is in the person's best interest. We focus more on testamentary capacity next.

Testamentary Capacity

One decision that is frequently challenged—though not often successfully—is the ability to make a will, called **Testamentary capacity**. In most states, this would come under the purview of a probate court. As Slovenko (1999) has noted, making a will actually requires only minimal competency and is an easy task. Others (e.g., K. Shulman, Cohen, & Hull, 2005) suggest that it is an advanced activity mediated by higher cognitive functions.

Today, people are encouraged to make wills at relatively young ages, particularly if they have children, and to update them periodically as assets or their life situations change. Testamentary capacity usually comes into question when the testator (will-maker) is an older person, whether or not this is a first will or one that has been revised. Few would disagree that when it comes to testamentary competence, the older adult population is an unusually high-risk group and presents a number of unique challenges for the evaluator (Regan &

Gordon, 1997). Some older adults have a collection of potential incapacities, such as mental illness, dementia, poor judgment, and variety of concurrent medical illnesses. Others, of course, have few if any such limitations. Fortunately, the law is not concerned with whether people are functioning at their highest level of mental or psychological functioning at the time the will is completed. The law requires only that one be "of sound mind" when making a will. Specific requirements are that individuals (1) know they are making a will, (2) know the nature and extent of their property, (3) know the objects of their bounty, and (4) know how their property is being divided (Melton et al., 2018). As Melton et al. point out, it is possible for someone to be forgetful, addicted to narcotics or alcohol, have a mental disorder, or have a low threshold of cognitive functioning yet still be capable of making a will.

It is presumed, then, that people—including older adults—are competent or capable when making a will. According to Mossman and Farrell (2015, p. 541), suspicions about capacity are most likely to arise in four situations: (1) when the person's will is strikingly different from previously expressed wishes, (2) when the person had a mental or neurologic disorder that could impair thinking and judgment, (3) when the person was dependent on others and particularly vulnerable, or (4) when the person changed the will several times, apparently to control the actions of others who were critical to the person's well-being.

The evaluation of testamentary capacity is usually retrospective, in that it occurs after a person has died. If so, it requires the evaluator to interview those who knew the individual, review any available records, and draw inferences about the individual's mental state at the time the will was formulated. In many respects, it is similar to the psychological autopsy (discussed in Chapter 3), although far less detailed (Drogin & Barrett, 2013). As usual, the forensic psychologist would be expected to review, with counsel's guidance and support, the relevant statutes, regulations, and case law pertinent to the jurisdiction where the testamentary capacity assessment is conducted (Drogin & Barrett, 2013).

The evaluations are not all retrospective, however. That is, in some situations, lawyers advise their clients to be evaluated for testamentary capacity at the time they execute their wills. Psychological assessment would especially be warranted if the individual exhibits signs of dementia, has a mental disorder that includes periods of cognitive incapacity, or has some intellectual disability. One instrument, the Legal Capacity Questionnaire (LCQ; A. Walsh, Brown, Kaye, & Grigsby, 1994) assesses a person's

competence to make a will. It is an easily scored instrument intended for use by lawyers, not by psychologists. However, a variety of general mental capacity psychological measures may be used by forensic psychologists who engage in this enterprise, including measures of mental disorders, dementias, and neurological problems. In addition to choosing a test or measure to use, however, the examiner reviews records, interviews collateral sources (e.g., family members), and, of course, the individual. Sample questions that might be asked include the following: “Would you describe your financial assets for me and tell me about their value?” “How do you get along with your relatives?” “Who are the important people in your life now?” “Tell me about how you decided to choose the people who will inherit from you” (Mossman & Farrell, 2015, p. 546).

Testamentary capacity is only one of many situations in which the forensic psychologist may perform assessments. Cognitive deficits and dysfunction are relevant in other matters, such as making financial and health care decisions, an issue we discuss shortly. In 2014, the APA published the “Guidelines for Psychological Practice With Older Adults.” The Guidelines were necessary because psychological science and clinical practice in the area of psychology and aging have expanded rapidly, and geropsychologists are in great demand. “Clinicians and researchers have made impressive strides toward identifying the unique aspects of knowledge that facilitate the accurate psychological assessment and effective treatment of older adults as the psychological literature in this area has burgeoned” (APA, 2014d, pp. 34–35).

An appreciable minority of older persons exhibit significantly impaired cognition, such as dementia, that significantly affects functional abilities. “The prevalence of dementia increases dramatically with age, with approximately 5% of the population between ages 71 and 79 years and 37% of the population above age 90 suffering with this condition” (APA, 2014d, p. 43). During the early stages of dementia or periodic bouts of severe mental illness, the psychologist or other MHP may be asked to evaluate the person, not only for the capacity to execute a will, but also for the need for guardianship.

Legal Guardianship Determinations

A guardianship is a legal right given to an individual to be responsible for the care and needs of a person deemed fully or partially incapable of providing for the person’s own care and needs. Minor children are presumed to be incapable, but for adults, the person seeking a guardianship (also called a conservatorship) must prove that an individual lacks the capacity to care for self, either due to cognitive impairment, mental disorder, or serious physical disability. In most

jurisdictions, the guardianship may be plenary or limited. Plenary or full gives the guardian control over finances, residences, health care, and legal matters (Galietta et al., 2014).

Our focus in this section is on aging adults who, under certain conditions, demonstrate declining cognitive and decision-making abilities that may hinder their capacity to carry out certain tasks for daily living. Frequently, cognitive impairment leads to an increase in susceptibility to financial fraud and scams, an apparent inability to make reasonable decisions, and signs of considerable dependence on others, which may also lead to exploitation.

On the other hand, many persons of advanced age are perfectly capable of making decisions that affect their health and their financial status, even though these decisions may not be favored or recommended by those around them. Health care and financial decisions are the two categories that are most likely to be challenged in courts and most likely to require the assessment of mental health professionals.

Some people have a durable power of attorney and advance directives for handling the possible loss of cognitive ability later in life. In a *power of attorney* document, the individual appoints an agent or agents (usually a family member) to manage financial affairs, make health care decisions, and conduct other business when the person shows significant declines in cognition, planning, and decision-making abilities. Advance directives are discussed later in the chapter.

When an aging parent or other relative begins to show signs of mental deterioration, and in the absence of a signed power of attorney document, a family member or other party, such as a friend or even acquaintance, may ask for legal guardianship. In order to act as someone's legal guardian, the first step is to go to court to have the person declared incompetent or incapable based on a psychological expert's opinion. However, a guardian can only be appointed if the court hears sufficient evidence that the person lacks decision-making capacity in some or all areas of life. Again, everyone other than a child is presumed capable; the burden of proof is on the person seeking guardianship. In other words, persons seeking guardianship must demonstrate that the mental capacity is lacking.

A guardianship assignment may take effect immediately or sometime in the future. In many cases, guardians need to report to the court annually to affirm that they are meeting the assigned responsibilities outlined by the court. As might be expected, however, there is considerable variation in the application of guardianship statutes from jurisdiction to jurisdiction.

Not all states require or expect psychological evaluations for guardianship proceedings, but in those that do the court will typically ask for one that is designed to identify the extent of the declining mental conditions and to suggest options for how to proceed. The psychologist who conducts these evaluations or presents testimony to the court will be expected to indicate current competencies and predict future declining mental conditions. The clinical assessment should focus on the range of *functions* that the person can perform, not the nature of any mental disorder or diagnosis. “Thus, although it takes time and thought to do so, the clinician should try to pinpoint and describe precisely the tasks the allegedly incompetent person can and cannot do” (Melton et al., 2018, p. 361).

In addition, psychologists should identify in what ways people may be helped in performing certain tasks on their own. These guardianship determinations are important, and they present “a delicate balance between preserving individual freedom and autonomy and protecting individuals from harm and exploitation” (Quickel & Demakis, 2013, p. 155). “It is easy to forget that the very nature of guardianship can deprive an individual of fundamental rights of choice, movement, and association, and even life and death decisions, authorized and enabled through state power” (Reinert, 2006, p. 40). In the guardianship legal context, Drogin and Barrett (2013) assert that from the forensic psychologist’s perspective, “the stakes may be no less dire than those encountered in the course of criminal law matters” (p. 301). They suggest that psychologists evaluating guardianships might find the APA’s (1998) “Guidelines for the Evaluation of Dementia and Age-Related Cognitive Decline” helpful.

In summary, forensic psychologists can make significant contributions to the welfare and quality of life for individuals who need competently done evaluations regarding guardianships. Another challenging undertaking in competence evaluations is the assessing of competency or capacity to consent to treatment.

Competence to Consent to Treatment

Perhaps even more frequent than evaluations of testamentary capacity and guardianships are evaluations of a person’s ability to make decisions regarding medical and psychological treatment. These decisions require informed consent, which generally means that the individuals must be told of the possible consequences of treatment (disclosure), must be mentally capable of understanding what they are consenting to, and must be doing so of their own free will, without coercion. Each of these three elements is scrutinized separately by courts when questions of informed consent come before them. Interestingly, research suggests that disclosure is

particularly problematic. "The most general thing that can be said about disclosure in health and mental health settings is that there is rarely adherence to the spirit of informed consent" (Melton et al., 1997, p. 352). Melton et al. note that consent forms are lengthy and beyond comprehension, patients often lack information about alternative treatments, and negative information (e.g., about side effects) is often omitted. A variety of explanations are offered for this failure to adhere to the spirit of disclosure requirements. For example, treatment providers may want to protect their patients from excessive worry, or they may fear that they themselves will appear professionally weak by not knowing precisely how the patient will react to the treatment. Obviously, the quality of disclosure is an important component in a subsequent evaluation of consent to treatment. That is, if the individual did not receive sufficient information about treatment alternatives or about the risks associated with the treatment, the consent was not informed.

Measures of Competence to Consent to Treatment

The competence of persons who are mentally ill to consent to treatment has been studied extensively by researchers associated with the MacArthur Foundation (e.g., P. Appelbaum & Grisso, 1995; Grisso, Appelbaum, Mulvey, & Fletcher, 1995). Their research has, in turn, been the subject of considerable scholarly comment (see, generally, Winick, 1996). The MacArthur Competence Study (P. Appelbaum & Grisso, 1995) assessed and compared decision-making competence in three groups: persons hospitalized with serious mental illness, persons hospitalized with medical illness, and community volunteers who were not patients. Despite some decision-making deficits, those hospitalized with mental illness were still capable of making decisions, as reflected on measures of decision-making ability. The exceptions were patients with schizophrenia who had severe psychiatric symptoms; nevertheless, the majority of patients with schizophrenia still performed adequately. Hospitalized patients with depression demonstrated intermediate levels of decision making. The MacArthur researchers developed a tool—the **MacArthur Competence Assessment Tool–Treatment (MacCAT-T)**, which is distinct from the MacCAT-CA described in Chapter 5—for use by clinicians who evaluate treatment competence. The interview format allows clinicians to test decision-making competence in four areas: (1) ability to state a choice, (2) ability to understand relevant information, (3) ability to appreciate the nature of one's own situation, and (4) ability to reason with the information provided.

Although the MacCAT-T has received favorable reviews and commentary (e.g., Lichtenberg et al., 2015; Mossman & Farrell,

2015; Winick, 1996), some researchers and scholars have issued cautionary notes. Kirk and Bersoff (1996) suggest that the instrument sets too low a standard for decision-making competence, focusing as it does on competencies rather than disabilities. In other words, using the instrument, too many individuals would be found to make competent decisions in their best interest, and their decisional disabilities would be overlooked. Kapp and Mossman (1996) believe there are inherent problems in any attempt to construct a universal test of decisional capacity to make medical choices. Despite this and other concerns, the MacCAT-T has earned mostly positive reviews, although no one suggests that it or any other single measure be used to the exclusion of others. Other instruments include the Mini-Mental State Examination (MMSE), the Geriatric Depression Scale, and the Alzheimer's Disease Assessment Scale. Both commentators and test developers—including developers of the MacCAT—emphasize that scales should be used in conjunction with professional clinical judgment. On the whole, the MacCAT-T has an extensive research base supporting its reliability as well as its use with different diagnostic groups (Mossman & Farrell, 2015).

Lichtenberg et al. (2015) note that none of the instruments that are designed to assess capacity in older adults investigate the values they hold: "It is important to understand the older adult's long-held and cherished values that might affect the health decision the older adult is making, through review of any legal documents created to guide health decisions, direct discussion with the older adult, and communication with informants" (p. 561). The same could be said of cherished values that might affect financial decisions. An important factor in evaluating older adults is to recognize their needs for autonomy. Although protecting them is often paramount to decision makers, this should not be the sole consideration. For these reasons, the clinical skills that can uncover these values during an interview are indispensable to the assessment process.

Incapacitation: Special Condition

Another decisional competency area that has been controversial involves persons who are comatose or cognitively incapacitated and in a permanent vegetative state. Obviously, they cannot make decisions in their best interest. However, if their wishes are known, they will generally (although not invariably) be honored.

Toward the end of the 20th century, two very tragic cases brought this issue to public attention and were ultimately settled in courts (In re Quinlan, 1976; Cruzan v. Director, 1990). In both cases, parents of young women wanted to remove their daughters, who had long been comatose, from life support. Courts required proof that this was what

the women would have wanted. Later, a Florida case also gained national attention, pitting the husband of a comatose woman against her parents. Terry Schiavo was in a vegetative state after suffering cardiac arrest and irreversible brain damage in 1990, despite numerous attempts to revive her. After 8 years, her husband asked to have her feeding tubes removed. The woman's wishes were not known, and husband and parents differed on what they would be. The case went through numerous court proceedings, including being denied review by the U.S. Supreme Court. Schiavo's husband ultimately was successful in his pleas; the tubes were removed; and Schiavo died in March 2005, 15 years after her tragic collapse. These cases—and similar situations in other states—prompted many people to prepare **Advance directives** in case they should become physically incapacitated. Today, advanced directives are common, but they vary in their specificity. Do not resuscitate (DNR) orders indicating that one does not wish to receive cardiopulmonary resuscitation if one's heart stops beating are not uncommon and are found in medical records of many hospital patients, nursing homes, and assisted-living facilities. Less common are detailed personally written instructions to cover a wide variety of possible situations, including dementia or the need for intubation. In some cases, family members or other interested parties have challenged advance directives, maintaining that the incapacitated person was not mentally competent at the time the directives were formulated. In these situations, the forensic clinician is asked to make an assessment similar to that involved in testamentary capacity.

Medical Aid in Dying

A controversial issue that has some similarities to the right to refuse treatment, but that is not identical in nature, is the issue of medical assistance in dying. This issue came to nationwide attention in late 1990s, when Oregon became the first state to pass what was then referred to as a "Death with dignity" law. The law gave a competent individual believed to be within 6 months of death the right to obtain regulated drugs from a physician in order to hasten that death. Although the U.S. Supreme Court has made it clear that competent individuals have a constitutional right to refuse life-prolonging treatment, it has not thus far supported medical assistance in dying as a constitutional right. It has, however, upheld Oregon's law (*Gonzales v. Oregon*, 2006). At this writing, nine states (Oregon, Vermont, Washington, California, Hawai'i, Montana, Colorado, New Jersey, and Maine) along with the District of Columbia allow terminally ill, competent individuals to request, and physicians to administer, medication that will help them die. Similar bills have been

introduced in many other states. (See **Focus 6.2** for more information.) Medical assistance in dying is permitted in Canada but restricted to Canadian citizens, as well as in other Western nations (e.g., Switzerland, Belgium). The Netherlands has an extremely liberal policy, requiring no proof of a terminal illness.

In the United States, the matter remains very controversial. Those who oppose it refer to it as *physician assisted suicide*, a term rejected by supporters. Opponents raise numerous objections, many centering around possible coercion of persons who are dying, and they argue that other options, such as limiting pain and offering palliative care, are better approaches. Supporters of **Medical aid in dying** argue that the autonomy of the individual should be respected, and knowing that the option is available brings comfort to both the individual and those who are close. Statistics from states that have the laws in effect indicate that small numbers of people request such assistance, and of those who do, very few actually exercise the option.

Since the first aid in dying legislation was passed, research has examined a number of issues relating to medical aid in dying and have offered guidelines to psychologists involved in these decisions (Shaffer, Cook, & Connelly, 2016; Werth, Benjamin, & Farrenkopf, 2000). Weir (2017) found that both rational decision making and depression existed in a sizeable portion of persons who sought aid in dying. S. Johnson et al. (2015) studied the decision making of psychologists who evaluated requests for aid in dying and learned that they were likely to support the decision if the patient was competent. Interestingly, the psychologist's personal experience with suicide (e.g., knowledge of someone who had tried to or had committed suicide) had a greater effect on their decision than any other personal characteristic.

Interestingly, dominant professional groups have taken different stances. The APA has neither endorsed nor opposed medical assistance in dying (APA, 2017) but has offered actions for psychologists to take in this regard. These include monitoring both legal and research developments, advocating for palliative care and quality end-of-life care, and recognizing their own views on this complex issue. By contrast, the American Medical Association (AMA) as late as 2019 expressed its opposition to medical assistance in dying in its annual meeting. The group persists in calling it "physician assisted suicide" despite the fact that there is division among the membership itself both in this terminology and the acceptance of the practice.

Focus 6.2

Compassion and Choice: Is There a Right to Medical Aid in Dying?
In 1997, Oregon became the first state to pass what was then referred to as a "Death with Dignity" law. The law enabled persons who were terminally ill and approaching death to request help from a physician in hastening it. Since then, as noted in the text, **Medical aid in dying** has been allowed in eight other states and the District of Columbia. Bills have been introduced to pass similar laws in many other states, including Maryland and New York. No two state laws are identical, but as a group, they require that the person be emotionally competent and terminally ill with a prognosis of 6 months or less. Typically two but sometimes three physicians must accede to the request (one prescriber and one or two consulting physicians). The statutes also avoid referring to this as "physician-assisted suicide." If there is suspicion that the person is not mentally competent or psychologically stable enough to make the decision, a mental health professional must be consulted. The laws also allow physicians to opt out—that is, they can refuse to prescribe the medication. Finally, the laws state that the individuals themselves must ingest the drugs. Also typically, the patient must be fully informed of the progress of the illness, and there must be safeguards in place to prevent a rash decision and improve the quality of end-of-life care. Typically, the patient must make that request on more than one occasion.
Virtually all research on this issue indicates that in the states where this is allowed, a very small number of people (1% of people with terminal diagnoses) have been prescribed drugs for the purpose of ending their lives, and only about one third of those who receive them actually use them. Reports from several different states indicate that cancer and ALS are the most common conditions people have when they seek help in ending their lives.
As discussed in the text, although end-of-life evaluations for competence have received some attention in the literature, this is not an active area for forensic psychologists. Nevertheless, as medical aid in dying gains more adherents, mental health practitioners as a group may see more involvement.

QUESTIONS FOR DISCUSSION

1. Review the arguments that might be offered by someone who is opposed to medical assistance in dying.
2. Assuming one is in favor of medical assistance in dying, should it be extended to persons who have incurable diseases but are believed to have more than 6 months to live? For example,

should a person with ALS or a diagnosis of early Alzheimer's disease be able to obtain drugs to hasten their death?
3. Explain how an evaluation of one's competence to make an end-of-life decision might end up in a court proceeding.

Aid in dying laws and favorable court rulings have spurred the need for a new form of psychological assessment: the evaluation of competency to make decisions that will hasten one's death. **Hastened death evaluations** began to be discussed in the forensic psychology literature around the turn of the 21st century, along with proposed guidelines for conducting them (e.g., Allen & Shuster, 2002; Werth et al., 2000). Thus far, however, there is little evidence that they are a common undertaking by forensic psychologists. This is perhaps because medical professionals who are willing to provide assistance in dying (and many are not) do not question the competence of the patients who request it.

INVOLUNTARY CIVIL COMMITMENT

Closely related to competency to consent to or avoid treatment is the issue of hospitalizing individuals for psychological or psychiatric treatment against their will. Every state allows such commitment, both on emergency and extended bases. The typical statute allows an emergency commitment of 3 to 10 days and an extended commitment for a 3- to 6-month period subject to recommitment proceedings. When people are recommitted, their status must be reviewed at specified intervals. In recent years, though, the number of beds available for involuntary commitment has decreased, and many mental health advocates bemoan accompanying problems, such as waiting lists for beds in psychiatric facilities or patients with severe mental illness being treated in emergency rooms of public hospitals.

Although standards vary somewhat depending on the state, the party seeking the commitment always has to prove by at least clear and convincing evidence that the individual is mentally ill and in need of treatment (Addington v. Texas, 1979). Interestingly, in the case of intellectual disability, however, commitment to a care facility can be achieved by a less rigid standard, preponderance of the evidence (Heller v. Doe, 1993). Whether the individual has a mental disorder or an intellectual disability, the person must be deemed a danger to self or others *or* so gravely disabled that this person is unable to meet their basic needs. It should be noted that, although individuals have a right to legal representation at commitment hearings, there is evidence that lawyers often function paternalistically or maternalistically instead of advocating for the legal rights of their clients (Perlin & Dorfman, 1996). This is not unlike the situation of

lawyers representing juveniles in delinquency proceedings, when they believe it is in the juvenile's interest to obtain treatment rather than aggressively forcing the state to prove the juvenile's guilt beyond a reasonable doubt.

An extremely controversial area in involuntary commitment is the civil commitment of sexual predators, addressed in Chapter 5. Less controversial, but still of concern, are the civil commitments of persons found incompetent to stand trial but not restorable to competence or of persons not guilty by reason of insanity (NGRI). The latter are less controversial because the length of commitment is decreasing in many jurisdictions, with increases in conditional release. These topics were addressed in Chapter 5 as well and will not be revisited here.

The U.S. Supreme Court has ruled that persons who are seriously "mentally disordered" are unable to consent "voluntarily" to being institutionalized (Zinermon v. Burch, 1990). Burch, a person with a mental disorder who was found wandering along a highway in a highly disoriented condition, had signed forms voluntarily admitting himself into a mental institution, where he remained for about five months. He later sued the state, maintaining that he was not competent to sign his admission forms. The Supreme Court agreed, declaring his original admission invalid because, in his severely mentally disordered state, he could not have validly consented. Accordingly, persons who are unable to make competent decisions must be admitted to mental institutions via the involuntary commitment route described earlier (Slovenko, 1999). Despite this decision, however, it is doubtful that psychiatric facilities scrutinize voluntary admissions to determine whether the person seeking admission has the capacity to make that decision (Melton et al., 2007).

Outpatient Civil Commitment

Civil commitment also can be achieved on an outpatient basis—in fact, statutes often require this least restrictive alternative if it can reasonably be provided. Courts are empowered to issue **Outpatient treatment (OT) orders**, also called community treatment orders (CTOs), and occasionally orders of non-hospitalization (ONH). These orders typically require that the individual live in their own home or alternative group or foster home and comply with a medication regimen. The resulting effect on the individual is referred to as **Assisted outpatient treatment (AOT)**. If the person does not comply with the treatment order, they are subject to psychiatric hospitalization.

Outpatient civil commitment has been a hot topic in the research literature, probably surpassing interest in institutional confinement (Lareau, 2013; Winick & Kress, 2003). The creation of laws enabling such commitment is often spurred by a tragic event, such as the death of journalist Kendra Webdale in 1999, which produced New York's "Kendra's Law." Webdale was pushed into the path of a subway train by a man who had been diagnosed with schizophrenia, had a history of violence, but was not taking medication. Kendra's Law allows judges to order individuals to receive psychiatric treatment in the community for up to 6 months; in 2013, this period was expanded to 1 year. At the end of the specified period, they may or may not be reevaluated. Until recently, most states required that an outpatient order be based on showing that the individual was both mentally disordered and dangerous to the self or others. However, some states are now beginning to allow outpatient orders without the dangerousness component. Called **Preventive outpatient treatment (or commitment)**, this approach allows the state to intervene before the individual's condition becomes worse (Lareau, 2013). "The new broadened criteria still require mental illness, but instead of the dangerousness standard, they require a need for treatment to prevent further deterioration that would predictably lead to dangerousness based on the individual's illness history" (Hiday, 2003, p. 11). Hiday (2003) adds that the person must be judged unable to seek or comply with treatment voluntarily. In addition, like the outpatient orders based on a dangerousness standard, it must be determined that the individual can survive safely in the community with available supervision. Supervision or monitoring is a crucial component in outpatient commitment. Although some research questions its effectiveness (Pfeffer, 2008), other studies emphasize positive results when appropriate monitoring occurs (Swanson et al., 2013).

Schopp (2003) and Lareau (2013) provide additional descriptions of outpatient civil commitment that help clarify the situations under which it occurs. In sum, outpatient commitment can take three forms. First, persons who were institutionalized under civil commitment statutes requiring mental disorder and the dangerousness standard are *conditionally released* to the community; if they fail to meet the conditions of their release, they are subject to being returned to the institution. We discussed this briefly in Chapter 5, where the conditional release of persons found NGRI was discussed. Second, persons who are eligible for institutional confinement under the civil commitment statutes are given an alternative mandatory treatment status in the community, rather than being institutionalized. This is

considered the *least restrictive alternative.* Third, persons who would not qualify under the dangerousness standard but who are considered to need treatment to prevent further deterioration are assigned to *preventive commitment.* The last—an option available in about 10 states—is the most controversial among those concerned about civil liberties, because the commitment standards are less stringent than customary civil commitment standards (Lareau, 2013). Researchers are continuing to explore the effectiveness of involuntary outpatient treatment, which is increasingly being used in all three forms described earlier. The main questions revolve around whether individuals can be "coerced" to get better; in other words, does treatment "work" if a person is forced to get it? Equally important is whether the mental health system is equipped to provide it.

In reviewing this literature, Hiday (2003) notes that early studies almost invariably found positive outcomes on a number of factors. For example, patients ordered to outpatient treatment had lower rehospitalization rates, better compliance with medication and other treatment, and generally better adjustment in the community than comparison groups of patients, such as those who were discharged without outpatient orders. Hiday also reports on a second generation of research, conducted in North Carolina (Swartz, Swanson, & Hiday, 2001) and New York City (Steadman, Gounis, & Dennis, 2001), that is more empirically based, including random assignment to outpatient commitment and non-outpatient commitment groups. Both groups received mental health and social services in the community. The North Carolina study again found that patients under outpatient orders had significantly more positive outcomes than those not under these orders. The New York study, though, found no significant differences, a finding that Hiday attributes to technical problems in the research. She notes that, despite the study's conclusions, New York State's Department of Mental Health remains supportive of outpatient commitment and reports positive outcomes for patients under those orders—including declines in harmful behavior and homelessness and an increase in medication compliance.

As noted earlier, the most recent research suggests outpatient commitment is cost effective and produces positive results, but monitoring is an essential component (Swanson et al., 2013; Swartz, Swanson, Steadman, Robbins, & Monahan, 2009). This can be challenging to do, though, particularly when the patient moves to another community or another state and does not contact a mental health provider. Nevertheless, when monitoring occurs, outpatient treatment is not only cost effective, but people who are treated in the

community also recover faster, have fewer relapses, deteriorate less from dependency fostered by hospitalization, and maintain employment better than similar patients who are treated in hospital settings (Swartz et al., 2009).

Not everyone is supportive of outpatient commitment, however, particularly when it is not based on dangerousness criteria. Such preventive commitment raises many legal questions without ensuring that effective treatment will be provided (Pfeffer, 2008; Winick, 2003). Persons who would otherwise not qualify for civil commitment are forced to take medications and comply with other treatment regimens against their will, and it appears that they often feel pressured to do so. A study (Pridham et al., 2016) analyzed 23 articles and 14 empirical studies on this matter and found that coercion was widely perceived. Civil libertarians see this as a dangerous expansion of the already overwhelming power of the state. The New York study (Steadman, Gounis, et al., 2001), which reported no differences between those subjected to mandatory treatment and those who were not, provides additional support for this perspective—if forced treatment is no better than voluntary treatment, why force treatment? Such debates among reasonable people have a long history in the literature on civil commitment and will not likely be resolved in the near future.

It is also important to note that the research supportive of any form of outpatient commitment generally indicates that such treatment is effective only if it continues for a period of at least 6 months and is accompanied by the provision of intensive services (Winick & Kress, 2003a). Some maintain that the treatment should span years rather than months (Durham & La Fond, 1990). Thus, psychologists who are providing treatment to patients under such orders should be aware of the need to sustain these services. And, as suggested earlier, if patients intend to move away, referrals should be made to mental health services at their destination.

Role of Forensic Psychologists

Regardless of the nature of the involuntary commitment (inpatient or outpatient and its variations), the assessment skills of forensic psychologists are required to help determine whether the individual meets the standards for commitment. If a showing of dangerousness is required, the psychologist again engages in the risk-assessment enterprise we have discussed above and in earlier chapters. Melton et al. (1997, 2007) warn that this is an area where clinicians must exercise extreme caution, considering the inadequate legal representation provided to so many individuals and the potential loss of freedom they are encountering. Demonstrating the presence of

mental illness and determining treatment needs of the individual are probably the easiest of the clinician's tasks. The accompanying assessment of dangerousness (or risk) is more formidable. All of the cautions about risk assessment referred to in earlier chapters should be recalled here as well.

The individual's potential for dangerousness to self involves an assessment of suicide risk. Clinicians should be informed about general research on demographics of suicide (e.g., males at higher risk, married persons at lower risk) as well as the individual's own clinical history. Interviews with the individual also may uncover *suicide ideation,* or fantasies of killing oneself. Both the frequency and intensity of such ideations should be considered. However, as Melton et al. (1997, 2007) note, the track record of MHPs at predicting suicide is very poor. They urge clinicians to refer to the person's risk compared with others in the population rather than simply state that the person is a danger to self.

We now shift our attention to the increasingly important topic of sexual and gender harassment. More recently, gender harassment has especially drawn attention from the civil court system.

SEXUAL AND GENDER HARASSMENT

Sexual harassment may be broadly defined as unwelcome sexual advances, requests for sexual favors, and other unwanted verbal or physical conduct of a sexual nature (Hellkamp & Lewis, 1995; Till, 1980). Civil claims of sexual harassment arise most frequently in employment and educational contexts, where harassment qualifies as discrimination in violation of Title VII of the Civil Rights Acts of 1964, amended in 1971. This is an important point to emphasize: harassment is a form of discrimination, and federal law prohibits discrimination in the workplace, in hiring, in education, and in public accommodations, among many contexts. In the years since, courts and government policies differed as to whether Title VII's prohibition against employment discrimination in the workplace applies to LGBTQ individuals. In 2020, the U.S. Supreme Court, in a 6–3 decision, ruled that Title VII did indeed apply to individuals of all sexual orientation and gender identities (*Bostick v. Clayton County*). (Recall that this case was discussed in Chapter 4.) Although the three cases that were at the root of that decision involved firing of employees, not harassment, it is logical that all individuals are equally protected against sexual harassment.

In recent years, more courts and commentators have indicated that **Gender harassment** should also be included under a broad definition of sexual harassment (Kabat-Farr & Cortina, 2014; Leskinen, Cortina, & Kabat, 2011). This is behavior directed at individuals who

appear to violate their so-called gender roles, such as women who work in a previously all-male environment; women who are assertive, competent, and persistent; or men who are perceived as weak or emotional. Gender harassment does not necessitate unwelcome advances or a request for sexual favors; it too, though, conveys a degrading attitude toward the individual at whom it is directed. Gender harassment examples include female- or male-bashing jokes, comments that women do not belong in management or that men have no place in childcare, and crude gender-related terms of address (e.g., denigrating a coworker as a “hussy” or “male whore”; abat-Farr & Cortina, 2014, p. 60). Thus, a pattern of making derisive comments about the ability of women to do a job or comments like “Shouldn’t you be at home making dinner for your husband?” further illustrate gender harassment. In essence, gender harassment parallels the legal concept of hostile environment harassment (Kabat-Farr & Cortina, 2014).

Within the past decade, public attention has focused on incidents involving high-profile individuals including entertainers, businesspeople, cable personalities, studio executives, and public officials, to name but a few. Social movements (e.g., “Me Too”) have supported the filing of more civil suits. Also coming to attention are sexual assault and sexual harassment in the military and on college and university campuses. In 2013, for example, the Department of Defense released a report that over a 1-year period more than 26,000 cases of assault or harassment occurred; fewer than one fifth were investigated, and perpetrators rarely punished. The years since have seen increasing concern about this issue in academe. Though we do not deal with data in detail, here, it is important to stress that forensic psychologists have roles to play in consulting, researching, and educating legal practitioners, as well as evaluating those who file claims against their abusers, when evidence of psychological harm is required.

When harassing behaviors reach extremes, or when individuals are denied promotions because they do not cooperate with a harasser, this is when the legal system is most likely to be brought into the picture, but numerous claims are settled out of court, typically with the respondent not admitting guilt. Although public figures accused of sexual harassment often claim they will countersue (e.g., for defamation), this rarely occurs. Instead, the matter is settled quietly with plaintiffs receiving some financial compensation and often signing nondisclosure agreements, indicating they will no longer pursue the case and will not reveal further information.

To qualify as illegal in the workplace, the behavior must be more than irritating or mildly offensive. It must be severe and pervasive, so much so that it alters conditions of the victim's employment. In many sexual harassment cases, an employer or supervisor has offered a promotion in exchange for sex or, alternately, has threatened a demotion if denied. The conduct also must be objectively offensive—or offensive to a reasonable person—not just subjectively offensive to the plaintiff (Harris v. Forklift Systems, Inc., 1993). Examples of such conduct from actual court cases include the following: a fellow worker posting pictures of erect penises on women's lockers; a supervisor ordering a clerk to reach into his (the supervisor's) pocket for change; constant repetition of extremely vulgar jokes, even after a request that these cease; consistent, noticeable ogling of a person's body, particularly focusing on women's breasts or the genital area; and sending images of violent pornography and degradation of women via office computers. If we add gender harassment, examples might include some of the above, as well as persistent comments that criticize a male teacher for coaching girls' basketball teams, telling women they cannot do a job as well as men can, and excluding the sole woman—or the sole man—from significant group work assignments.

It is important to emphasize that sexual harassment is "sex neutral," in that both women and men can be victims (Oncale v. Sundowner Offshore Services, 1998). As noted earlier, following the Supreme Court's latest decision, this should include all persons, regardless of sexual orientation or gender identity. At this point, almost all research uses a binary classification (women/men), but it is suspected that specific distinctions will be adopted in future research.

Stockdale, Sliter, and Ashburn-Nardo (2015) note in a research review that women are more likely than men to experience harassment, but "incidence rates for men are not trivial" (p. 522). Finally, although plaintiffs typically seek compensation for mental anguish and pain and suffering (e.g., anger, anxiety, loss of self-esteem, fear, or feelings of humiliation), extensive psychological harm need not be demonstrated for a plaintiff to prevail (Harris v. Forklift Systems, Inc., 1993). In other words, the Supreme Court has recognized that some victims of sexual harassment may experience its negative effects without also experiencing debilitating psychological deterioration.

In sum, then, psychologists have a variety of tasks to perform relating to sexual harassment. They may consult with employers in setting up educational programs on the topic. They can provide guidance to employers and training to employees so that harassment

will be prevented (Stockdale et al., 2015). Such consultation would include both education in the laws relating to discrimination and the psychological theory that helps explain it, such as research on stereotyping.

They may also offer counseling services to victims of harassment. In the present chapter, we discuss their role in civil suits. Either side—plaintiff or defendant—might hire a psychologist to evaluate the claims of emotional distress made by the plaintiff. The psychologist is also asked to address the question of whether the particular behavior of the defendant, if it did occur, could reasonably lead to the mental injury experienced by the plaintiff. In these examinations, the evaluator is asked not only to document the disorder but also to eliminate other possible causes that are unrelated to the alleged harassment. Both clinical and research psychologists also might be called as expert witnesses to testify on gender stereotyping or on the general psychological effects of sexual or gender harassment.

So far, psychology and the law have largely neglected gender harassment in comparison to traditionally defined sexual harassment, but it is likely to become more of a key issue in civil suits in the future (Kabat-Farr & Cortina, 2014). Gender harassment is especially relevant when considering the experiences of women in mostly male settings and workplaces. Gender harassment "alienates and isolates women, reducing their access to information and opportunities . . . and involves interpersonal derogation, scorn, and rejection" (Kabat-Farr & Cortina, 2014, p. 60).

Finally, it should be noted that the alleged victim in a sexual harassment suit may be compelled to undergo a mental health evaluation at the request of the respondent. Compelled examinations occur when the plaintiff claims any more than ordinary distress as a result of the harassment. For example, they may claim that the actions of the respondent not only were irritating or embarrassing but also caused a mental disorder, such as a major depressive disorder (Kovera & Cass, 2002) or post-traumatic stress disorder. In compelled evaluations, the respondent asks the court to order an evaluation by a clinician contacted by their attorney and must show good cause for why the plaintiff should undergo it. Kovera and Cass (2002) note that courts tend to deny motions for a compelled examination if the disorder occurred in the past rather than being current. Furthermore, "simply claiming emotional damages does not put one's mental health into controversy and thus does not warrant a compelled mental health examination" (p. 99). Rather, motions are more likely to be granted if the plaintiff meets a number of criteria, such as claiming *severe* disorder and signifying intent to put forth

their own expert to substantiate any claims. A compelled evaluation is likely to open the way for a psychologist to gain information about sexual history, including sexual abuse, and this information is then made available to the opposing party. As in all evaluations, then, it is critical that the examining clinician inform the person being evaluated of the potential use of the report.

SUMMARY AND CONCLUSIONS

As we have stated throughout these early chapters, there is no shortage of tasks for forensic psychologists to perform in a given context. Consultation with the civil courts is no exception. In this chapter, we have attempted to provide a representative sampling, but several areas were left untouched or only lightly addressed. For example, forensic psychologists participate in a wide variety of personal injury litigation and disability evaluations other than the employment compensation claims that were highlighted here. Likewise, forensic psychologists participate in discrimination suits other than sexual harassment, such as race, age, disability, and gender discrimination in both employment and non-employment situations.

Family law has changed dramatically over the past quarter century, particularly in light of changes in the definition of *family* and the many contemporary issues that have developed. The types of decisions to be made have remained essentially the same, regardless of the makeup of the family: Family court judges decide which parent or which caretaker gets custody of a child or children, they decide on visitation arrangements, and they decide whether to allow a custodial parent or guardian to relocate the children to a different geographical area. It is important to stress, however, that in the vast majority of divorces, parents arrive at a mutually acceptable agreement in these matters without having to litigate them in the courts.

When court intervention is needed, psychologists, sometimes called family forensic psychologists, help by conducting custody evaluations, alternatively called parenting evaluations. Many psychologists consider these among the most difficult and controversial assessments to make. They are emotionally laden, have engendered ethics complaints, and raise numerous questions as to what is the proper standard to apply. The dominant best interest of the child standard, though logical and commendable, is also vague and subjective. A major concern in custody disputes is the instruments that are sometimes used to assess parental abilities, as few have been submitted to empirical validation. Furthermore, because there is no one clearly identified preferred custody

arrangement, psychologists must be cautious about research that suggests one form of custody is superior to another.

We covered a variety of contexts in which psychologists are involved in other civil matters, such as the assessment of civil capacities in various contexts. These include assessment of testamentary capacity and of competency to make medical decisions, such as decisions to consent to treatment, refuse treatment, or even hasten one's own death. With the aging of the population, the capacity of individuals to make decisions in their own best interest is likely to be assessed even more.

The chapter also included discussion of involuntary civil commitment, most particularly commitment to outpatient treatment. This form of commitment is increasing in virtually every state, but it raises important questions about the civil liberties of individuals who would otherwise not be eligible for institutional confinement. Many forensic psychologists are supportive of this form of commitment, primarily because it allows individuals to receive needed treatment in a community setting. Thus far, research on outpatient treatment effectiveness has demonstrated positive results, particularly if the treatment continues beyond a 6-month period and is accompanied by intensive services. In many cases, however, it is difficult to maintain continuity and adequate monitoring.

We ended the chapter with discussion of research and issues relating to sexual and gender harassment. Forensic psychologists can provide guidance to employers and can train employees so that harassment will be prevented. Evaluations of persons who bring sexual harassment claims should be done with extreme caution, particularly if they are compelled evaluations.

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QUESTIONS FOR REVIEW

1. Provide three findings from the research literature on custody evaluations and the effects of custody arrangements on children.
2. Define the following: *BIC standard, tender years doctrine, least detrimental alternative standard*, and *friendly-parent rule*.
3. Summarize the reasons why custody or parenting evaluations are considered among the most difficult forensic evaluations.
4. List any five civil capacities that may be assessed by forensic psychologists.
5. Give illustrations of when a forensic psychologist might be asked to assess competence to consent to treatment or to refuse treatment.
6. What is a hastened death evaluation?
7. What is AOT? What has research demonstrated about its effectiveness?
8. Both sexual harassment and gender harassment are forms of discrimination. Although gender harassment can be considered a form of sexual harassment, what is the distinction?

PART FOUR CRIMINAL PSYCHOLOGY

Chapter 7 • The Development of Delinquent and Criminal Behavior
Chapter 8 • Psychology of Violence and Intimidation
Chapter 9 • Psychology of Sexual Violence

CHAPTER SEVEN THE DEVELOPMENT OF DELINQUENT AND CRIMINAL BEHAVIOR

CHAPTER OBJECTIVES

- Define crime and juvenile delinquency.
- Define antisocial behavior, conduct disorder, and antisocial personality disorder.
- List the offenses for which juveniles are most frequently charged.
- Explain the developmental approach to criminal behavior.
- Examine executive functions and their importance to antisocial behavior.
- Summarize developmental theories of Terrie Moffett and Laurence Steinberg.
- Describe U.S. Supreme Court cases pertaining to adolescent offending.
- Identify developmental factors most relevant to criminal behavior.
- Specify the relationship between ADHD and delinquency.
- Summarize research on adult psychopathy and juveniles with psychopathic characteristics.
- Describe the key features of the triarchic psychopathy model (TriPM)
- Explain callous-unemotional (CU) traits and their connection to psychopathy.

“You can’t go to jail for what you’re thinking.”
“Well, there was probably bad judgment involved, but she didn’t commit a crime!”
“He’s just a kid, he can’t be held responsible for something he didn’t really mean to do. Those boys are only 9 years old; they didn’t know the gun was loaded, and they were both fooling around with it. It’s tragic that one lost his leg, but it was an accident.”
The preceding quotes represent actions or thoughts that do not qualify as crime. It’s true that you can’t go to jail for what you’re thinking, even if you are thinking of poisoning your boss. It is not a crime to exercise poor judgment unless that judgment leads one to conduct that is criminal. Contrast the poor judgment of spending your entire paycheck on one lottery ticket versus thinking you can fool the Internal Revenue Service and not file an income tax return, for example. And in the case of the 9-year-old boy, he did not commit a crime if he truly thought the gun was not loaded and did not intend to harm his friend. (His parents could, though, be sued in a civil court for negligence, depending upon the circumstances surrounding the case.)
One of the many roles of forensic psychologists is to evaluate juveniles and adults who are accused of or convicted of committing crimes. For that reason it is important that forensic psychologists

become very familiar with the psychological research on the development of criminal behavior.

A crime is “an intentional act in violation of the criminal law committed without defense or excuse, and penalized by the state as a felony or misdemeanor” (Tappan, 1947, p. 100). In other words, criminal behavior is intentional behavior that violates a criminal code—it did not occur accidentally, and the person’s action cannot be justified (as in self-defense) or excused (as if the person was insane). To convict someone of a criminal offense, the prosecution (the government) generally must prove that the defendant committed a *voluntary act (actus reus)* intentionally or with a *guilty* state of mind (*mens rea*). The statute defining the offense will specify what actions and what mental states (together called “elements”) constitute a particular crime (La Fond, 2002). If a case goes to trial, the judge or jury can convict the defendant only if the prosecutor proves all elements beyond a reasonable doubt. However, if a defendant pleads guilty or does not contest the charges, the prosecutor is spared the burden of proving guilt, but a conviction is still entered on the record.

The spectrum of criminal behavior is extremely wide, ranging from minor offenses like criminal trespass to murder. In recent years, the public has become much more aware of corporate and political crimes, categories of offenses that have long captured the interest of criminologists who believe that extensive harm can be perpetrated by those holding extreme wealth or political power. Major corporations have been involved in serious accounting improprieties that misled and betrayed investors. Fraud in the banking industry, insider trading, violations of human rights, and bribe-taking and lying by public officials are examples of other criminal offenses that began to receive more public attention at the turn of the 21st century. Environmental disasters have demonstrated still more criminal activity as well as civil negligence that resulted in great harm. Readers are undoubtedly aware of numerous other instances, on international, national, state, and local levels.

Our intention in this chapter, as well as in this text, is to focus on antisocial offenses that presumably produce the greatest harm to society. Although many people from all socioeconomic groups break criminal laws, only a small percentage of them become persistent offenders who commit numerous serious crimes, including crimes of a violent nature. An even smaller number of people commit the unusual, high-profile crimes that gain media attention, such as the individual who randomly opens fire on shoppers in a mall or students and teachers in a school. Because psychologists have been particularly interested in studying these two groups, and forensic

psychologists most likely to come into contact with them, we focus on them in this text. As a result, other crimes that also produce great harm to society (e.g., many political and environmental crimes) are given less attention.

In the present chapter, we discuss people who demonstrate a habitual, persistent offending history of committing serious crimes. We especially concentrate on those offenders who have had a *lifelong* criminal career of engaging in a wide variety of criminal offenses. Good examples of repetitive, chronic offenders are the life course–persistent offender discussed in the section on juvenile delinquency and the criminal psychopath. What are the processes and factors involved in the development of serious, lifelong offending? The overall purpose of the present chapter is to try to answer that question. In Chapters 8 and 9, we narrow our focus to specific crimes such as murder, sexual assault, and other serious crimes that lend themselves particularly well to psychological research and theory. They are also important topics for forensic psychologists, who frequently perform risk assessments of people charged with these offenses.

Empirical research indicates that persistent antisocial behavior does not *usually* begin in adulthood but rather quite early in life, with signs sometimes appearing even during the preschool years (Moffitt, 1993a, 1993b). Consequently, the best place to start is by examining the developmental trajectory of the emerging juvenile offender.

It is important to avoid the temptation to seize on one cause or single explanation of crime, though. "The crime problem" *as a whole* can be attributed to any number of broad societal factors—the availability of handguns and assault weapons, racism, poverty, media glorification of violence, sexism, and an emphasis on obtaining power and material goods are examples. The cause of a *given individual's* criminal behavior is unlikely to be one-dimensional as well. What may at first appear to be relatively straightforward and simple is typically complex when studied by researchers or assessed and treated by clinicians. The causes of crime and delinquency are multiple and probably result mostly from a complicated interaction of many different influences.

THE JUVENILE OFFENDER

Definition of Juvenile Delinquency

Juvenile delinquency is an imprecise, social, clinical, and legal label for a broad spectrum of law- and norm-violating behavior. At first glance, a simple legal definition appears to be adequate: *Delinquency is behavior against the criminal code committed by an individual who*

has not reached adulthood. But the term *delinquency* has numerous definitions and meanings beyond this one-sentence definition. In some states, the legal definition also includes status offending, which is not behavior against the "adult" criminal code but is behavior prohibited *only* for juveniles. For example, running away, violating curfew laws, and truancy all qualify as juvenile **Status offenses**.

In addition, social, legal, and psychological definitions of delinquency overlap considerably. Social definitions of delinquency encompass a broad gamut of youthful behaviors considered inappropriate, but not all are technically crimes. These youthful behaviors include aggressive actions, truancy, petty theft, vandalism, substance abuse, and even incorrigibility. The behavior may or may not have come to the attention of the police and, in fact, often does not. If the behavior is known to the police, it is not unusual for "social delinquents" to be referred to community social service agencies or to juvenile courts, but these youth do not fit the legal definition of delinquent unless they are found at a court hearing to have committed the crime for which they are charged, if their behavior did indeed constitute a crime. Therefore, *legally speaking, a* **Juvenile delinquent** is one who commits an act against the criminal code *and who is adjudicated delinquent by an appropriate court.* The legal definition is usually restricted to persons younger than age 18, but in some states persons up to age 21 can be designated youthful offenders, meaning that they are likely to get leniency at sentencing. In addition, all states allow juveniles—in some cases as young as age 10—to be tried as adults in criminal courts under certain conditions and for certain offenses.

Psychological or *psychiatric* definitions of delinquency include the symptom-based labels of "conduct disorder" or "antisocial behavior." **Conduct disorder** (often abbreviated **CD**) is a diagnostic designation used to represent a group of behaviors characterized by *habitual* misbehavior, such as stealing, setting fires, running away from home, skipping school, destroying property, fighting, or being cruel to animals. Under this definition—like the social definition discussed above—the "delinquent" may or may not have been arrested for these behaviors, and some are not even against the criminal law. CD is described more fully in the most recent *Diagnostic and Statistical Manual of Mental Disorders* (*DSM-5*) of the American Psychiatric Association (2013). The *DSM* has traditionally been regarded as a decision-making tool for clinicians and as a guidepost for researchers (Moffitt et al., 2008). As noted in earlier chapters, forensic psychologists are often advised to avoid using diagnoses when possible in the evaluations that will be available to the courts.

Nonetheless, the *DSM-5* remains as an important resource for them as well as other mental health practitioners.

The term **Antisocial behavior** is usually reserved for serious habitual misbehavior, which involves actions that are directly harmful to the well-being of others. Both antisocial behavior and conduct disorder should be distinguished, however, from **antisocial personality disorder (ASP**, also referred to as **APD**), which is a psychiatric diagnostic label reserved primarily for *adults* at least 18 years of age who displayed conduct disorder as children or adolescents and who continue serious offending well into adulthood. The *DSM-5* recognizes four categories of ASP which may occur alone or in combination: (1) aggression to people and animals, (2) destruction of property, (3) deceitfulness, and (4) serious violations of rules.

Although psychologists use the terms conduct disorder and antisocial behavior, a growing number of them describe and try to understand crime and delinquency through developmental, cognitive, and even biopsychological processes. For example, Terrie Moffitt's (1993a) developmental theory explains crime from a developmental perspective, and Robert Hare's (1996) concept of criminal psychopathy offers an intriguing delineation of the emotional, cognitive, and biopsychological factors involved in repetitive, serious offending over a lifetime. As we discuss later in the chapter, Hare and his followers believe that there are fundamental differences in brain functioning between the true psychopath and the "normal" population. More recently, Professor Laurence Steinberg and his colleagues (Steinberg, 2007, 2014a; Steinberg, Cauffman, Woolard, Graham, & Banich, 2009; Steinberg & Monahan, 2007) have gathered revealing scientific evidence on adolescent cognitive and psychosocial development and how these relate to decision making, peer influence, and impulsivity. The research by Steinberg and his colleagues is often included in amicus curiae briefs submitted to courts by the American Psychological Association (APA) and cited in subsequent court opinions (e.g., juvenile sentencing cases). We review each of these perspectives shortly.

Finally, it is important to emphasize that a substantial portion of juveniles who are taken into custody by police, charged with crimes, held in detention, appear before courts, and are subsequently placed on probation or in out-of-home placements have mental health needs, including in some cases, serious mental disorders. Some research has placed these figures as high as 60% or suggests that half of all of these youth have experienced adverse childhood experiences (Janopaul-Naylor, Morin, Mullin, Lee, & Barrett, 2019).

This topic is addressed in Chapter 13, which focuses on juveniles in the justice system.

THE NATURE AND EXTENT OF JUVENILE OFFENDING

The amount of delinquent behavior—both what is reported and what is unreported to law enforcement agencies—is essentially an unknown area. We simply do not have complete data on the incidence of juvenile delinquency, broadly defined. However, although incomplete, we do have some statistics collected by law enforcement agencies, the courts, and juvenile correctional facilities.

Unlawful acts committed by juveniles can be divided into five major categories:

1. Unlawful acts against persons
2. Unlawful acts against property
3. Drug offenses
4. Offenses against the public order
5. Status offenses

The first four categories listed above are comparable in definition to crimes committed by adults. Juvenile status offenses, on the other hand, are acts that are not illegal if committed by an adult and that can be dealt with only by a juvenile or family court. However, these courts are increasingly shying away from dealing with status offenses, and the government keeps only limited statistics. Typical status offenses range from misbehavior, such as violations of curfew, underage drinking, running away from home, and truancy, to offenses that are interpreted very subjectively, such as unruliness and ungovernability (beyond the control of parents or guardians). Interestingly, a major source of crime data in the United States, the Uniform Crime Reports (UCR), stopped collecting data on runaways in 2010. We discuss the UCR later. In the early 2000s, when status offenses were still reported by law enforcement agencies, the most common were underage drinking (92%), running away from home (40%), ungovernability (11%), and truancy (10%; Sickmund, 2003). The juvenile justice system historically supported differential treatment of male and female status offenders. Adolescent girls, for example, were often detained for incorrigibility or running away from home, while the same behavior in adolescent boys was ignored or tolerated. In recent years, as a result of suits brought on behalf of juveniles, many courts put authorities on notice that this discriminatory approach was unwarranted. In the first decade of the 21st century, the arrest rate for status offenses of runaways was about equal for girls and boys (Puzzanchera, 2009; H. N. Snyder,

2008). Changes in juvenile justice policies have led to new approaches to juveniles, however. As noted above, there is less emphasis on keeping official statistics on running away from home and other status offenses, although a few jurisdictions still do. For some time, there was a trend to initiate girls' courts, which were offshoots of juvenile or family courts intended to meet specific needs of adolescent girls, particularly those who were engaged in juvenile prostitution (P. L. Brown, 2014). Most recently, some jurisdictions have established specialized human trafficking courts that deal more humanely with youth victims of sexual trafficking who were arrested for prostitution or drug offenses.

Youth crime data are collected from a mixture of sources: (1) official records of police arrests, such as the Federal Bureau of Investigation's (FBI's) UCR; (2) reports from victims, such as the National Crime Victimization Survey (NCVS); (3) self-reports of delinquent involvement, in which national samples of youth are asked to complete questionnaires about their own behavior, such as in the National Youth Survey (Elliott, Ageton, & Huizinga, 1980) and Monitoring the Future (MTF); (4) juvenile court processing, as reported by the National Center for Juvenile Justice (NCJJ); (5) juvenile corrections, as reported in the monograph *Children in Custody* (*CIC*); and (6) probation and parole statistics, as reported in various governmental publications.

The last three sources of information have the major disadvantage of greatly underestimating the number of actual offenses because so many cases are either undetected or dismissed before reaching the courts. Some of the positive reasons for this include parental involvement, negotiations, and community programs, as a result of which many youthful offenders are diverted before they go to juvenile court. The most complete official nationwide compilation of juvenile offending is the FBI's UCR, which keeps records of crimes reported to police as well as arrests. Consequently, we will touch briefly on the juvenile offending data presented in this document, even though these data have many shortcomings. However, knowledge about the UCR will be useful in discussing adult crime as well.

The Uniform Crime Reports (Crime in the United States)

The FBI's **Uniform Crime Reports (UCR)**, first compiled in 1930, has traditionally been the most frequently cited source of U.S. crime statistics. The UCR contains accounts of crime *known to law enforcement* agencies across the country, as well as *arrests.* It does not include conviction data; it is strictly law enforcement information

and does not tell us anything about whether individuals arrested were found guilty. The UCR and the annual Crime in the United States Report are available on the FBI website at www.fbi.gov. The UCR compiles U.S. crime statistics in what is called the Summary Reporting System (SRS). As will be noted shortly, though, even that source of information will disappear soon.

The UCR tabulates information on crime in several ways, including by age, gender, and race of persons arrested, as well as city and region of the country where crimes are reported and arrests occur. The two major divisions of serious crimes are classified as violent crimes and property crimes. The four offenses that qualify as violent are (1) murder and nonnegligent manslaughter, (2) rape, (3) robbery, and (4) aggravated assault. The four offenses that qualify as property are (1) burglary, (2) larceny-theft, (3) motor vehicle theft, and (4) arson. **Table 7.1** illustrates the distribution of juvenile arrests for these offenses for 2018.

The UCR is not the sole method of recording police data on reported crimes and arrests. Since 1989, the FBI has collected data through the **National Incident-Based Reporting System (NIBRS)**. The NIBRS currently collects data on crime incidents and arrests within 58 categories of offenses, including extortion, identity theft, kidnappings, and animal cruelty. The system is designed to provide a more detailed description on each crime. For each offense known to law enforcement within these categories, incident, victim, property, offender, and arrestee information are gathered when available. The NIBRS allows law enforcement to provide the circumstances and context for the crime. The long-term goal of the NIBRS was to modernize crime information and address many of the shortcomings that had been identified in the UCR. Many aspects of the UCR, for example, were not comprehensive and detailed enough to be helpful in understanding the nature of crime in the nation. On January 1, 2021, the FBI will retire the UCR Summary Reporting System (SRS) and use the more thorough NIBRS format for tabulating the nature and extent of criminal offenses within the United States. In the sections that follow, we continue to cite some of the offending data reported in recent versions of the UCR.

Before proceeding, it is extremely important to emphasize that criminal justice data themselves must be approached cautiously in light of evidence that persons of color are treated very differently than whites. For example, in many communities, it is far more likely that a Black youth will be taken into custody by police than a white youth who is demonstrating the same behavior. In some, Latinx youth

face similar discriminatory treatment. Thus, when we consider official statistics, these discrepancies must be kept in mind.

Table 7.1

Source: Federal Bureau of Investigation (2019a).

Nationally, juveniles made up about 6.8% of the persons arrested for violent and property crime in the United States during 2018 (FBI, 2019). It should be noted that juveniles are arrested in greater numbers than their proportions in the population, but this is partly due to the fact that they often commit their crimes in groups, including crews and gangs. Juveniles were arrested for 9.8% of the violent crime and 12.1% of the property crime in 2018. It should also be emphasized that crime and arrest rates move in cycles, often due to the social, economic, and political climates within a society at any given point in time.

Despite concerns about juvenile crime, both crime and juvenile antisocial behavior have decreased since their peak period in 1990 (Arnett, 2018). Juvenile crime rates, both violent crime and property crime, have shown a steep decline, more than declines in other age groups. It is also important to note that a small percentage of offenders are responsible for a large proportion of the total crimes committed (Chaiken, 2000; Coid, 2003). This is true whether we are referring to juveniles or adults. In any given population, the most persistent 5% or 6% of offenders are responsible for at least 50% to 60% of known crimes (Farrington, Ohlin, & Wilson, 1986; Lynam, 1997). On the other hand, many reported serious offenses never result in police contact. Self-report surveys—those in which people report their own offending—suggest that serious, repetitive juvenile offenders escape detection about 86% of the time (Elliott, Dunford, & Huizinga, 1987). These figures clearly indicate that measures of juvenile offending substantially underestimate the overall juvenile crime rate, though the rate is decreasing. The adult crime rate is underestimated as well, because many crimes committed by adults are not reported to police, and unlike juveniles, adults are not often asked to report their own offending. Finally, frequent offenders usually do not specialize in any one particular kind of crime, such as theft, larceny, or drug trafficking. Instead, they tend to be involved in a wide variety of offenses, ranging from minor property crimes to highly violent acts.

THE DEVELOPMENTAL PERSPECTIVE

Over the past three decades, the contemporary study of crime and delinquency has adopted a developmental perspective. If we follow groups of individuals from birth to adulthood, we learn a great deal about how antisocial behavior develops (Hartup, 2005). There is solid

research evidence, for example, that serious, persistent delinquency patterns and adult criminality begin in early childhood. Researchers have discovered discernible differences between young children who ultimately became serious delinquents and those who did not. For example, there are differences in childhood experiences, biological and genetic predispositions, social skills, and expressions of feelings for others. Although there is often resistance to considering biological and genetic factors as contributors to antisocial behavior, a substantial body of research indicates these factors cannot be overlooked (Berryessa, Martinez-Martin, & Allyse, 2013). (See **Perspective 7.1** in which Dr. Berryessa writes about her interdisciplinary research interests.) For example, the emerging developmental approach emphasizes the neurological, biological, mental, emotional, and social influences on children and how these in turn may affect the emergence of delinquency and adult criminal behavior.

Perhaps the most fruitful approach is to conceptualize development as following a path or trajectory. Research has strongly supported the hypothesis that people follow different developmental pathways in their offending or non-offending histories. Some youth, for example, engage in defiant and disobedient behavior at very young ages, and this sometimes progresses into more severe forms of violence and criminal behavior during adolescence and young adulthood (Dahlberg & Potter, 2001; Frick, Ray, Thornton, & Kahn, 2014). Other youth display early signs of cruelty to animals, bullying, firesetting, and substance abuse, and these behavioral patterns continue well into adulthood. Many young people display very few signs of antisocial behavior during their childhood but participate in some vandalism, theft, alcohol consumption, and drug experimentation during adolescence. Developmental theory has clearly been the most instrumental in identifying and documenting the various developmental pathways and trajectories related to antisocial behavior.

From My Perspective 7.1

Neuroscience, Genetics, Mental Illness, and More

Colleen Berryessa, PhD



Colleen Berryessa

My road to becoming a professor of criminal justice was inevitable but definitely a bit winding. I really don't remember a time when I wasn't interested in studying the relationship between psychology and crime. I was Nancy Drew for Halloween as a child, played judge and jury with my stuffed animals, and ate up true crime TV. Going into an occupation that was crime related felt inescapable, but it took me several years and experiences to figure out I wanted to go into academe.

In fact, I didn't even know what it meant to get a PhD and be a professor until my senior year of college. Before that, recognizing my fascinations, I thought a natural extension of that interest would be law, and I entered Harvard with plans to major in government and then become a lawyer. My dad had gone to law school, and I assumed I would too. However, although I did end up majoring in government, I found myself disinterested in most of my political science classes and even several law-oriented internships over summers in college.

In one internship, part of the time was spent sitting in court observing cases. I did not find the doctrinal aspect of law thought-provoking, but the *social* aspect of law, specifically the interaction of judges, attorneys, defendants, and jurors in the courtroom, was fascinating. I began to gravitate toward psychology courses. After finishing government major requirements, I took as many courses as I could in neuroscience, psychology, and psychiatry, particularly focusing on social psychology, neuroscience, and mental illness as related to criminality. I ended up taking so many psychology classes that I was

able to complete secondary study in mind, brain and neurobiology of behavior. Recognizing my interests in psychology, I wrote an interdisciplinary senior thesis on the civil commitment of sex offenders and how such legislation may be impacted by neuroscience. The topic combined criminal justice policy and psychology. For the first time, I performed real research and realized that I *loved* it.

At this point, several people recommended that I look into PhD programs but, at age 21, I still didn't know what I really wanted to study. My interests were very interdisciplinary, mixing criminal justice, social psychology, mental health, and neuroscience, and I needed some time off to gather my thoughts on both whether academe was for me and exactly *how* I wanted to study the topics that I loved. I always share these feelings with my current students and tell them that there is no shame in taking a few years off—in fact, I feel fortunate that I did. Taking time off before getting my PhD helped me hone exactly what I wanted to study. If I had gone straight into a PhD program after graduation, I might not have chosen the right program or have ended up where I am today.

The 3 years before graduate school taught me not only what I liked but also what I didn't like. After graduation from Harvard, I first worked as a research assistant at the Police Executive Research Forum in Washington D.C., researching, writing, and helping in the production of publications and research projects funded by the Department of Justice on issues in law enforcement. That job taught me that though I loved research I definitely did not enjoy doing it on law enforcement topics if they did not have a psychology focus as well.

I was then very fortunate to become a research fellow for an interdisciplinary center on the ethical, legal, and social implications of genetic research at Stanford University. This experience was really the difference maker and solidified that my true love was the *intersection of criminal justice, neuroscience, mental health, and social psychology*. There I received amazing mentorship and conducted my own empirical research on how judges, jurors, attorneys, and others in the criminal justice system perceive science and offenders with different psychiatric disorders. During my time at Stanford, with some good advising, I was able to identify specific interdisciplinary PhD programs that would allow me to study all the topics that I wanted. Even so, psychology programs were too broad, while most criminology programs did not focus on the aspects of criminal justice of which I was most interested. After a lot of research and conversations, I ultimately recognized that the individualized

aspect of the PhD program in Criminology at the University of Pennsylvania, with Dr. Adrian Raine as my advisor, was the perfect place for me to study my varied interests.
Now, as a professor, I study the very things that were of interest to me as an undergraduate. I use multidisciplinary methods to research discretion in the criminal justice system. Social contexts, societal attitudes toward mental disorders, and psychobiology all may affect legal decision making and the criminal justice system. I am so happy that I was able to have a variety of experiences in school and employment before getting my PhD. Some much-needed time off can help you really find yourself and ultimately can make all the difference.
Dr. Berryessa is an assistant professor at the Rutgers University School of Criminal Justice. Her research, utilizing both quantitative and qualitative methods, examines discretion in the criminal justice system and how it may affect responses to criminal offending, specifically in courts. She graduated from Harvard University with a BA in Government and Mind, Brain, and Behavior, was a CIRGE research fellow at Stanford University, and received her PhD in criminology from the University of Pennsylvania.
Before we cover the developmental perspective on delinquency and antisocial behavior, and the rest of the material in the chapter, it is important we review the important concept of executive function. Executive function plays a crucial role in the development of crime and delinquency, especially from a forensic perspective. For example, executive functioning emerges as very instrumental in the cognitive skills necessary for adolescents—as well as adults—to understand and exercise their legal rights, such as remaining silent after being given *Miranda* warnings, requesting the assistance of a lawyer, or plea bargaining (Fountain & Woolard, 2018; Steinberg, 2017).

Executive Function (EF)

Executive function (EF) refers to a cognitive system in the brain that is “essential for successfully navigating nearly all of our daily activities” (H. R. Snyder, Miyake, & Hankin, 2015, p. 1). It is involved in problem solving and the regulation of one’s thoughts, actions, and emotions. Because there are three different cognitive processes involved (see **Table 7.2**), the plural term is often used, as in the following: “Executive functions (EFs) make possible mentally playing with ideas; taking the time to think before acting; meeting novel, unanticipated challenges; resisting temptations; and staying focused” (Diamond, 2013, p. 135). In other words, EF allows us to regulate emotions and to think flexibly and creatively. It is also an important concept for understanding aggression and antisocial behavior

because “people with executive function deficits are less able to override maladaptive response inclinations in order to maintain more appropriate and personally beneficial behavior” (Zeier, Baskin-Sommers, Racer, & Newman, 2012, p. 284).

Current research and theory indicate that executive functioning resides predominantly in the prefrontal cortex (front part of the brain just above your eyes). The prefrontal cortex develops a rich network of neurological pathways during development that enable it to communicate and perhaps control many regions of the brain. As we will learn later in the chapter, the development of these pathways peaks during adolescence and levels off during young adulthood.

As noted earlier, EF is multidimensional and consists of at least three core cognitive processes: (1) working memory, (2) cognitive flexibility (or flexible thinking, creativity), and (3) inhibitory control (or self-control or self-regulation). **Working memory** is memory that keeps information in mind so it can be put to use. An example would be translating instructions into action, such as receiving directions on how to find a house or place while you are walking. Once you receive directions—say from someone you asked along the way—you then walk to the described location. This is working memory in action. It is also important to realize that working memory is different from short-term memory. For example, if you are asked to remember a series of numbers, and then asked to repeat them, this process represents short-term memory. However, if you are asked to repeat the numbers in reverse order, this process is an example of working memory because you had to “work” on reversing the remembered number series. Diamond (2013) describes working memory as “critical for making sense of anything that unfolds over time, for that always requires holding in mind what happened earlier and relating to what comes later” (p. 143). Basically, working memory is important for problem-solving and reasoning.

Cognitive flexibility refers to the ability to think about something in more than one way. It “involves being flexible enough to adjust to changed demands, or priorities, to admit you were wrong, and to take advantage of sudden, unexpected opportunities” (Diamond, 2013, p. 149). It is the opposite of rigidity. Cognitive flexibility includes the skills inherent in verbal fluency, creativity, planning, and judgment.

Inhibitory control is also called self-control or **Self-regulation**. “Inhibitory control . . . involves being able to control one’s attention, behavior, thoughts, and/or emotions to override a strong internal predisposition or external lure, and instead do what’s more appropriate or needed” (Diamond, 2013, p. 137). Inhibitory control prevents us from being at the mercy of our impulses, old habits, and

an assortment of negative temptations. Furthermore, it requires the ability to follow rules, modulate emotions, and delay gratification. Inhibitory control “is the brain’s brake. It stops us from saying or doing stupid things” (Amen, 2017, p.14).

There are significant differences among people in executive functioning, as well as the rate of EF development (Miyake & Friedman, 2012). The ability to hold “information in mind” develops very early in development, perhaps as young as 9 to 12 months (M. A. Bell & Cuevas, 2016), but the continuing development of this cognitive process is slow throughout childhood and does not reach maturity until age 17 or beyond (Diamond, 2016; Igazság, Demetrovics, & Cserjési, 2019). Cognitive flexibility is believed to reach maturity between ages 18 and 19, and inhibitory control begins a dramatic maturation process between the ages 10 and 18, or even later for many individuals. Ongoing research suggests that the three core cognitive processes of EF are not fully mature as a group until late adolescence or young adulthood (N. R. Friedman et al., 2016). EF development can be slowed or damaged by a number of risk factors, including the quality of parenting (M. A. Bell & Cuevas, 2016) and disadvantageous environments (Caughy, Owen, & DeLuna, 2016; McClelland, Leve, & Pears, 2016). EF can also deteriorate with age or be damaged, such as following a traumatic brain injury, stroke, or exposure to toxic environments. Stress may also have significant deteriorating effects on EF capacity and influence the ability to think clearly, especially during adolescence (Igazság et al., 2019). Shields, Sazma, and Yonelinas (2016) found that acute stress impaired working memory and cognitive flexibility. EF impairments are also associated with many forms of psychopathology (H. R. Snyder et al., 2015), including conduct disorders and psychopathy (Nelson & Foell, 2018; Yang & Raine, 2018). Not surprisingly, studies have also reported strong links between those individuals with symptoms of attention-deficit/hyperactivity disorder (ADHD) (discussed later in the chapter) and poor executive functioning (Brocki, Eninger, Thorell, & Bohlin, 2010; Gidron, Sabag, Yarmolovsky, & Geva, 2020; M. Miller & Hinshaw, 2010).

A developing and well-functioning EF has been found to be a robust predictor of achievement and academic success (Ahmed, Tang, Waters, & Davis-Kean, 2019; Anthony & Ogg, 2019; Nguyen & Duncan, 2019). For example, Diamond (2016) writes, “EF skills have been repeatedly found to be more important for school readiness than IQ or entry-level reading or math” (p. 18). The inhibitory control system appears to be especially important. “Children who start school with relatively poor inhibitory control tend to blurt out the

answer, jump out of their seats, take things from other children, and have difficulty paying attention and completing their assignments" (Diamond, 2016, p. 21). They are frequently getting scolded and are highly susceptible to receiving poor grades. An increasing number of recent studies consistently finds that EFs are critical for success from preschool through college, and also job prosperity (Diamond, 2016). In addition, one of the most frequent observations in the research literature is that poor academic performance is a strong predictor of antisocial behavior and delinquency (Cornell & Heilbrun, 2016). Moreover, inhibitory control is probably the most important EF component for understanding juvenile offending and delinquency. Several studies of children and adolescents have documented a strong relationship between different aspects of EF and antisocial behavior (Moffitt et al., 2011; A. B. Morgan & Lilienfeld, 2000; Nigg, Quamma, Greenberg, & Kusche, 1999; Séguin & Zelazo, 2005; Tremblay, 2003). In fact, poor executive functioning is one of the hallmarks of antisocial personality disorder (Zeier et al., 2012). By contrast, children and adults with good executive functions are well organized, diligent, focused on completing tasks, and skillful in their approach to solving problems (Buckner, Mezzacappa, & Beardslee, 2003). They are adept at focusing attention, able to concentrate well, and flexible in their thinking. All these features are the opposite characteristics of those persons who manifest persistent and violent offending histories.

EF is important in understanding aggression and antisocial behavior because "people with executive deficits are less able to override maladaptive response inclinations in order to maintain more appropriate and personally beneficial behavior" (Zeier et al., 2012, p. 284). An increasing number of studies of school-age children, adolescents, and adults have found significant relationship between deficits in EFs and antisocial behavior (S. Brown, Gottschall, & Bennell, 2015; A. Morgan & Lilienfeld, 2000; Nigg & Huang-Pollock, 2003; Piehler et al., 2014; Raine, 2002; Syngelaki, Moore, Savage, Fairchild, & Van Goozen, 2009; Tremblay, 2003).

Table 7.2

Acting without thinking of the consequences, sometimes referred to simply as risk-taking, is also believed to be closely associated with deficits in executive function (Romer, 2010; Romer et al., 2011). Acting without thinking is a form of impulsiveness that is the focus of neurobehavioral theories of early risk for substance abuse problems and other type of risk-taking behavior as adolescents. (See **Focus 7.1**, on the apparent decline in risk-taking behavior in adolescents in recent years.)

Focus 7.1

Juvenile Risk Taking Decreases: Why?

Juvenile crime continues to be of concern, but scholars agree that it has decreased substantially over the last 20 years, both in the United States and globally. In 1990, juvenile crime was at an all-time high, and some alarmists even railed against “super-predators” in our midst. As developmental theories highlighted in the text indicate, adolescence in particular seems to be a time period when youthful risk taking and emotional lability promote antisocial behavior, most of it nonviolent in nature.

Interestingly, juvenile risk taking—the negative type—has decreased in recent years. Negative risk taking includes not only criminal activity, but also such behaviors as substance abuse, unprotected sex, and hazardous automobile driving. After documenting recent decreases in each of these four areas, Arnett (2018) hypothesizes that rise in electronic media use has led to both a decline in unstructured socializing and a decline in overall risk behaviors, including criminal activities.

Arnett considers other possible explanations for the decreases in risk-taking behavior among adolescents. Perhaps, he says, changes in public policies have been effective. These include rises in the minimum drinking age, changes in sex education, or the effectiveness of programs like DARE or Scared Straight. Or perhaps, adolescents today have closer ties to their parents, such as through intensive parenting or better monitoring. Citing evidence, Arnett dismisses these possibilities.

Social media use, he hypothesizes, is the most likely explanation. Many adolescents today spend hours every day away from unstructured physical contact with their peers. Although they may be in school or involved in sports activity, much of their “free” time is spent gaming online, communicating with others via Instagram, Snap-chat, Tik-Tok, and other social media platforms. There is less unstructured time during which otherwise risk-seeking adolescents could engage in antisocial activities.

QUESTIONS FOR DISCUSSION

1. Assuming that decreases in adolescent negative risk taking are real, which of the above three hypotheses—changes in public policies, ties to parents, rise in electronic communication—is the most likely explanation?
2. Discuss each hypothesis separately, weighing its merits. Note that Arnett dismisses two of the three hypotheses. What research do you think he cites in doing so?

3. Other than these three hypotheses, what else might shed light on decreases in adolescent negative risk taking?
4. In the text, the concept of positive risk taking is discussed, though as noted it has received far less research than negative risk taking. Would you expect a similar decrease in positive risk taking? Why or why not?

It may be too simplistic to equate acting without thinking with *all* risk taking, however. Perhaps it is better to make distinctions between positive and negative risk taking—and acting without thinking may be most closely associated with the latter. As Duell and Steinberg (2019, p. 48) have observed, "[r]isk is a general construct that is not restricted to illegal or dangerous behaviors." Positive risk taking—a concept that has yet to be carefully defined or adequately researched—deserves continuing attention. Recognizing that adolescents as a group are more likely to take risks than adults, Duell and Steinberg emphasize that many risks are socially acceptable: Enrolling in a challenging academic course or trying out for a sports team are but two examples. Interestingly, research has shown that the two forms of risk taking are associated, and that sensation seeking is a trait shared by both (Duell & Steinberg, 2019). Put another way, the adolescent who engages in socially acceptable, constructive, but risky behaviors, such as training for a marathon, may also take more negative risks, such as driving dangerously.

In sum, although risk taking can occur at any age, it appears to be a component of the normal adolescent development process, and it can be positive as well as negative. As yet there seem to be no personality differences between those more inclined to take negative risks and those inclined to take positive risks (Duell & Steinberg, 2019).

Executive function and its three components play important roles in the two prominent, contemporary approaches to explaining delinquency: the dual developmental pathway model proposed by Terrie Moffitt (1993a, 2006, 2012, 2018), and the dual neurodevelopmental model of adolescence, proposed by Laurence Steinberg (2008, 2010a, 2010b, 2016). We discuss each of these perspectives next.

The Moffitt Developmental Theory

Seminal research conducted by Terrie Moffitt (1993a, 1993b) indicated that delinquency could be best understood if we viewed it as progressing along two developmental paths, one that began early in a child's life and launched the child into a career of lifetime offending and one that was restricted to adolescence. In reference to the 1993a study, Eme (2020) writes, "The initial paper and

subsequent expansion triggered a cascade of research on types of criminal offending, thereby making it one of the most researched and most influential of all developmental theories of antisocial behavior" (p. 1). Because the Moffitt theory is one of the dominant theories in the psychology of crime and delinquency today, it is important that we cover it in some detail. We must emphasize at the outset that, although most of Moffitt's research identifies the *two* paths that will be covered, more recent research by Moffitt and many other scholars strongly suggests that a two-path theory, though still viable, is not totally sufficient. However, it is a good place to begin.

On one path, we see a child (almost always male) developing a lifelong trajectory of delinquency and crime beginning at a very early age, probably around 3 or even younger. Moffitt (1993a) reports that

> across the life course, these individuals exhibit changing manifestations of antisocial behavior: biting and hitting at age four, shoplifting and truancy at age ten, selling drugs and stealing cars at age sixteen, robbery and rape at age 22, and fraud and child abuse at age 30. (p. 679)

These individuals, whom Moffitt calls **Life course–persistent offenders (LCPs)**, continue their antisocial ways across all kinds of conditions and situations. The occasional hitting by a 4-year-old is not cause for concern; if it persists, though, it may be. Moffitt (1993a, 1993b) finds that many LCPs also exhibit inherited or acquired neurological problems during their childhoods, such as difficult temperaments as infants, attention deficit disorders or hyperactivity in elementary school, and additional learning problems during their later school years. Some of these neuropsychological problems are present before or soon after birth and most likely "exacerbated by rearing in a high-risk environment characterized by disrupted attachment bonds, inadequate parenting, maltreatment and poverty" (Eme, 2020 , p. 1). Longitudinal studies reveal that these neuropsychological problems particularly affect verbal intelligence, executive functions, and memory in LCPs (Carlisi et al., 2020). "Collectively, this evidence suggests that individuals on the life course–persistent trajectory have neuropsychological vulnerabilities, which alongside external environmental factors, deny them the opportunity to gain prosocial life skills that promote desistance from antisocial behavior, and are likely to be linked to underlying neurobiological differences" (Carlisi et al., 2020, p. 246). These same children may develop judgment and problem-solving deficiencies

(both represent EFs) that become apparent when they reach adulthood.

LCPs generally commit a wide assortment of aggressive and violent crimes over their lifetimes. Moreover, LCPs as children miss opportunities to acquire and practice prosocial and interpersonal skills at each stage of development. This is partly because they are rejected and avoided by their childhood peers and partly because their parents and other caretakers become frustrated and may give up on them (Coie, Belding, & Underwood, 1988; Coie, Dodge, & Kupersmith, 1990; Moffitt, 1993a). Furthermore, disadvantaged living conditions, inadequate schools, and violent neighborhoods are factors that are very likely to exacerbate the ongoing and developing antisocial behavioral pattern, although research also indicates that these socioeconomic factors can be mediated by supportive parenting (Odgers et al., 2012).

Based on available data, the number of LCPs in the male juvenile offender population is estimated to be somewhere between 5% and 10% (Carlisi et al., 2020; Eme, 2020; Moffitt, 2018; Russell & Odgers, 2015). “Less than 10% of males should show extreme antisocial behavior that begins during early childhood and is thereafter sustained at a high level across time and across circumstances, throughout childhood and adolescence” (Moffitt, 1993a, p. 694). Less than 2% of females can be classified as early starters in a persistent career of crime (Coid, 2003; Eme, 2020). Most recently, Moffitt (2018) also notes that “there is good evidence that LCP behavior is characterized by difficulties in the brain’s mental functions, particularly its verbal and executive functions” (p. 10). In addition, LCPs not only exhibit antisocial behavior throughout their lifetimes, they also show poor life outcomes. “LCP lifestyle often culminates in illness, hospitalization, sickness. disability, and premature mortality” (Moffitt, 2018, p. 5). A poorly integrated EF also contributes to employment failures, substance abuse, marital discord, and faulty social relationships.

The great majority of “delinquents” are those individuals who take a second path: They *begin* offending during their adolescent years and generally *stop* offending somewhere around their 18th birthday. In essence, these adolescent delinquent behaviors arise from peer, brain developmental, and social environmental factors, and the offending tends to be temporary. Moffitt labels these individuals **Adolescent-limited offenders (ALs)**. Moffitt (1993a) estimates that a majority of adolescents are involved in some form of antisocial behavior during their teens, but then it stops as their brain matures neurologically and they approach the responsibilities of young

adulthood. Recall the earlier discussion about risk-taking behavior; risk taking—both negative and positive—is a normal feature of adolescence. However, not every AL offender stops offending at the same age, and some continue on after their 18th birthday, especially if they become “snared” by substance abuse and addiction (Moffitt, 2018).

The developmental histories of the ALs do not demonstrate the early and persistent antisocial problems that members of the LCP group manifest. Interestingly, the frequency—and, in some cases, the violence level—of the offending *during the teen years* may be as high as that of the LCP youth, however. In effect, the teenage offending patterns of ALs and LCPs may be highly similar during the teenage years (Moffitt et al., 1996):

> The two types cannot be discriminated on most indicators of antisocial and problem behavior in adolescence; boys on the LCP and AL paths are similar on parent-, self-, and official records of offending, peer delinquency, substance abuse, unsafe sex, and dangerous driving. (p. 400)

That is, a professional could not easily identify the group classification (AL or LCP) simply by examining juvenile arrest records, self-reports, or the information provided by parents *during the teen years.* It is estimated that the prevalence of AL antisocial behavior during the teen years is greater than 25% in the United States (Carlisi et al., 2020; Moore, Silberg, Robertson-Nay, & Mezuk, 2017). Studies also show that teens who self-report absolutely no delinquent acts are rare (Moffitt, 2018).

According to Moffitt, the AL delinquent is most likely to be involved in offenses that symbolize adult privilege and demonstrate autonomy from parental control, such as vandalism (usually school property), theft, drug and alcohol offenses, and other status offenses like running away or truancy, but the offenses usually lack the cruelty and violence typical of LCPs. Although the offending frequency may be similar in both LCPs and ALs, the cruelty, violence, and seriousness of the offenses found in LCPs is usually not found in ALs.

In addition, AL delinquents may engage in crimes that are profitable or rewarding, but they also have the ability to abandon these actions when more socially approved behavioral patterns become more rewarding and acceptable to significant others. For example, the onset of young adulthood brings new opportunities, such as leaving high school for college, obtaining a full-time job, and entering a relationship with a prosocial person. AL delinquents are quick to learn

that they have something to lose if they continue offending into adulthood. During childhood, in contrast to LCP children, AL youngsters have learned to get along with others. Research has consistently shown that social rejection by peers in the elementary school grades is a potent risk factor for the development of antisocial behavior problems in adolescence and adulthood (Dodge & Pettit, 2003; Laird, Jordan, Dodge, Pettit, & Bates, 2001). Therefore, by adolescence, AL youth usually have a satisfactory repertoire of academic, social, and interpersonal skills that enable them to "get ahead" and develop lasting relationships. Their developmental histories and personal dispositions allow them the option of exploring new life pathways, an opportunity not usually afforded the LCP youth. A recent neuropsychological study by Christina Carlisi et al. (2020) revealed that LCPs are neurologically different from ALs. The study involved brain scans (magnetic resonance imaging [MRI]) of both individuals classified as either LCPs or ALs based on informant-reported and self-reported conduct problems from the ages of 7 years to 26 years. The study was designed to determine total brain surface area and the thickness of the cortical areas of the brain of each individual. The researchers detected that the life course–persistent group had smaller surface area and thinner cortex in brain regions associated with executive function, motivation, and emotional regulation compared to the adolescent-limited group. Although these brain structures are highly heritable, the researchers were reluctant to rule out the importance of environmental factors, such as substance abuse, socioeconomic status, environmental toxins, head-injury history, and parental neglect and abuse. EF deficits, for example, can result from moderate to severe malnutrition, exposure to environmental neurotoxins (e.g. lead, mercury), brain injury, and prenatal exposure to drugs, nicotine, and alcohol.

A Possible Expansion of Moffitt's Two-Path Theory

Despite the appeal of the two-path theory, and a substantial body of research that supports it, a parallel body of research suggests that a simple dual developmental path may not adequately capture all the variations in criminal careers (Chung, Hill, Hawkins, Gilchrist, & Nagin, 2002; Donnellan, Ge, & Wenk, 2000; Moffitt et al., 2002). Using data from three studies of crime and delinquency conducted in London, Philadelphia, and Racine, Wisconsin, some researchers (D'Unger, Land, McCall, & Nagin, 1998; Nagin, Farrington, & Moffitt, 1995; Nagin & Land, 1993) identified four developmental paths that perhaps more comprehensively reflect the reality of offending patterns. The four paths are (1) the ALs, (2) the LCPs (also called "high-level chronic offenders"), (3) the low-level chronic offenders

(LLCs), and (4) those with a non-offending pattern (NCs). The ALs followed Moffitt's (1993a, 1993b) hypothesized offending pattern, beginning in their early teens, peaking at around age 16, and then showing a steady decline during their late teens and early adulthood (Nagin et al., 1995). The LLCs, on the other hand, exhibited a rise in offending through early adolescence, reached a plateau by mid-teens, and remained at the same offending level well past age 18. The LCPs demonstrated their usual pattern of beginning antisocial behavior early and remaining at a high level throughout their lifetimes. Interestingly, research by H. R. White, Bates, and Buyske (2001) suggests that it might be meaningful to introduce a fifth category, characterized by youth who engage in relatively little delinquency in early adolescence but for whom delinquency increases from late adolescence into adulthood.

Moreover, researchers also are exploring differences in the antisocial trajectories of males and females over the life course (e.g., Odgers et al., 2008), referred to as the **Gendered pathways approach**. Moffitt (Moffitt & Caspi, 2001) found evidence that her theory fit both males and females, and Odgers et al. (2008) found evidence of LCP and AL pathways in both genders as well. However, although there were many similarities, noteworthy differences also were found, as mentioned shortly. Odgers et al. found that LCP boys and girls were similar on risk factors during childhood, such as those related to social, family, and individual neurodevelopmental variables (e.g., high family conflict, hyperactivity, low family economic status, reading difficulties). Studied at age 32, both LCP men and women were engaging in serious violence and experiencing significant problems in emotional and physical health. Interestingly, both women and men on the AL pathway still had problems but to a lesser extent. They demonstrated little continuity in their antisocial behavior into adulthood. However, AL women still demonstrated significant deficits in economic status at age 32. The researchers concluded that the overall prognosis for LCP offenders was poor, but for AL girls, "interventions should focus on factors that may ensnare antisocial adolescent girls into a pathway to poor economic outcomes as women" (Odgers et al., 2008, p. 707).

Other researchers (e.g., Fontaine, Carbonneau, Vitaro, Barker, & Tremblay, 2009) have found significantly lower percentages of girls falling squarely into the theory, particularly on the LCP path. In addition, scholars focusing on gendered pathways refer to differences in risk factors between girls and boys that can lead to a later onset of antisocial behavior in girls. In sum, the topic of

gendered pathways represents one that should be of continuing interest to scholars.

Steinberg's Dual-Systems Model

Developmental psychologist Laurence Steinberg and his associates have formulated a theoretical model that offers an intriguing *neurological* explanation for Moffitt's adolescence-limited offenders. The model is based on an increasingly large collection of empirical studies from developmental psychology and neuroscience. Steinberg (2008, 2010b) hypothesizes that reward seeking and impulsivity develop along different timetables and have different neurological influences during adolescent and young adult development. "The inconvenient truth in adolescence brain science is that different structures, regions, circuits, systems, and processes mature along different timetables" (Steinberg, 2016, p. 345). Moreover, the differences in the timetables help account for the well-known high levels of risk taking during adolescence. Steinberg's model is known as the **developmental dual systems model.**

Over the past two decades, Steinberg as well as other developmental psychologists have been immersed in research on the adolescent brain and its development (e.g., Albert, Chein, & Steinberg, 2013; Casey, Getz, & Galvan, 2008; Luna & Wright, 2016; Steinberg, 2007, 2020). A crucial discovery, on the basis of sophisticated technological advances such as functional magnetic resonance imaging (fMRI), is that the brain develops in a number of ways throughout one's life but no more rapidly than during adolescence (Cleary, 2017; Steinberg, 2017). In recent years, these and other high-resolution imaging technologies have allowed neuroscientists and neuropsychologists to map significant differences in brain maturation in children, adolescents, and adults (Luna & Wright, 2016). MRI evidence also is being used increasingly in a variety of court cases (L. Miller & Lindbergh, 2017). These technologies require no injections or medications, are noninvasive, painless, and safe, and are well suited for the study of brain development and changes across all age groups.

In summary, developmental experts once thought that the human brain became fully developed by age 12 (Raeburn, 2004). Current neuroscience and psychological research, however, find that the human brain does not reach full maturity until approximately age 25 or beyond. These studies are especially important for forensic psychologists. For example, it is becoming increasingly clear that adolescents cannot be held to the same legal standards of criminal responsibility as adults. Psychological research on human development consistently discovers that adolescent cognitive,

emotional, and psychological capacities are in flux throughout the adolescent and young adult years. As noted by Grisso et al. (2019), this forensic-developmental research has contributed to policy changes in many states (e.g., increasing the use of diversion programs or raising the age at which juveniles are automatically treated as adults) and to U.S. Supreme Court decisions barring the death penalty for juveniles as well as mandatory life without parole sentences. We will discuss some of these decisions shortly.

Steinberg's dual systems theory focuses on the maturation of two different realms, the socioemotional network and the cognitive network of the brain. Essentially, in adolescence the two develop on different paths and at different speeds. The *cognitive-control* network is typically well developed by mid-adolescence, but its efficiency is hampered by the *socioemotional* network. The socioemotional network pertains to the influence of peers and emotional arousal. In the presence of peers or under conditions of emotional arousal, for example, "the socioemotional network becomes sufficiently activated to diminish the regulatory effectiveness of the cognitive-control network" (Steinberg, 2007, p. 56). Put another way, by age 16, the reasoning ability of adolescents is similar to that of adults, but their decision making is influenced by immaturity in the socioemotional realm. In other words, there is a temporal gap between the maturation of the two systems (C. Burt, Sweeten, & Simons, 2014). Steinberg maintains that the socioemotional network of the brain is sensitive to social and emotional stimuli and is "remodeled in early adolescence by the hormonal changes of puberty" (2007, p. 56).

Steinberg (2008) asks two fundamental questions about the high risk-taking propensity of teens which we discussed above: Why does risk-taking behavior increase between childhood and adolescence? And, why does risk taking decline between adolescence and adulthood? He theorizes that risk taking increases between childhood and adolescence because of developmental changes in the socioemotional system. The specific regions of the brain believed to be involved include a complex neurological network consisting of the amygdala, nucleus accumbens, orbitofrontal cortex, medial prefrontal cortex, and superior temporal sulcus. These neurological changes lead to significant increases in reward-seeking and stimulation-seeking activity during adolescence.

On the other hand, risk-taking behavior *declines* between adolescence and adulthood because of developmental changes in the cognitive control system, which is primarily located in the front areas of the brain, called the prefrontal cortex. The cognitive control system basically represents the executive functions described earlier

in the chapter, especially the inhibition control function. These growth changes, Steinberg contends, improve the person's capacity for self-regulation and regulate the socioemotional system. Cognitive control refers to "the ability to persist in goal-directed behavior in the face of competing cognitive and behavioral demands and is a crucial component of self-regulation" (Zeier et al., 2012, p. 284). The increase in reward-seeking needs occurs early and is relatively abrupt, whereas the increase in self-regulatory competence occurs gradually and is not usually complete until an individual has reached their mid-20s (see **Figure 7.1**).

Steinberg argues that risk taking and criminal behavior during adolescence can be best understood and explained by the interaction between the socioemotional and cognitive control systems. From his perspective, the observed high and abrupt risk-taking behavioral patterns of adolescence are primarily due to increases in sensation seeking that are linked to increases in neurotransmitter activity within the socioemotional system areas of the brain. The neurotransmitter dopamine and an increase in dopamine receptors are largely responsible for these changes. Dopamine is considered the "feel good" neurotransmitter found in the central nervous system. On the other hand, the emergence of the cognitive control system lags behind the socioemotional system. The gradual development of cognitive control or self-regulation systems during adolescence and early adulthood is linked to neurological and network maturation in the frontal lobe, especially the prefrontal regions. Research confirms the hypothesis that adolescents tend to recruit the cognitive control system less selectively and efficiently than do adults (Steinberg, 2008, 2016).

As a general rule, and as most parents and caretakers have learned, adolescent behavior is characterized by impulsiveness, sensation seeking, a lack of future orientation, and strong susceptibility to peer pressure and influence. As noted by Sunstein (2008), "adolescent risk-taking leads to seriously impaired lives and even premature deaths" (p. 145). (See **Photo 7.2**.) Teenagers "know" they should not drive at speeds of over 95 miles an hour, they "know" the harm in smoking tobacco, they "know" they shouldn't engage in unprotected sex, they "know" the dangers of mind-altering drugs, but nevertheless many, both adolescent boys and adolescent girls, still engage in risky behaviors.

Impulsivity and rapid mood swings, so characteristic of many teens, are likely associated with immature cognitive control mechanisms, which take time to develop during the adolescent and young adult years. Sensation seeking "refers to the tendency to seek out novel,

varied, and highly stimulating experiences, and the willingness to take risks in order to attain them" (Steinberg et al., 2008, p. 1765). Developmental psychologists have long observed that teens as a group lack a "future orientation," though this is not meant to be a criticism. Compared with adults, they are more likely to focus on the here and now and less likely to think about the long-term consequences of their decisions or actions. When they do think about the long-term consequences, they are inclined to give less weight to future effects than to immediate risks and benefits (E. Scott & Steinberg, 2008). Moreover, as highlighted by Moffitt's theory, risk taking during the teen years may also involve committing a variety of criminal acts. Self-report studies have revealed that nearly 90% of adolescent boys admit to committing offenses for which they could be incarcerated (E. Scott & Steinberg, 2008).

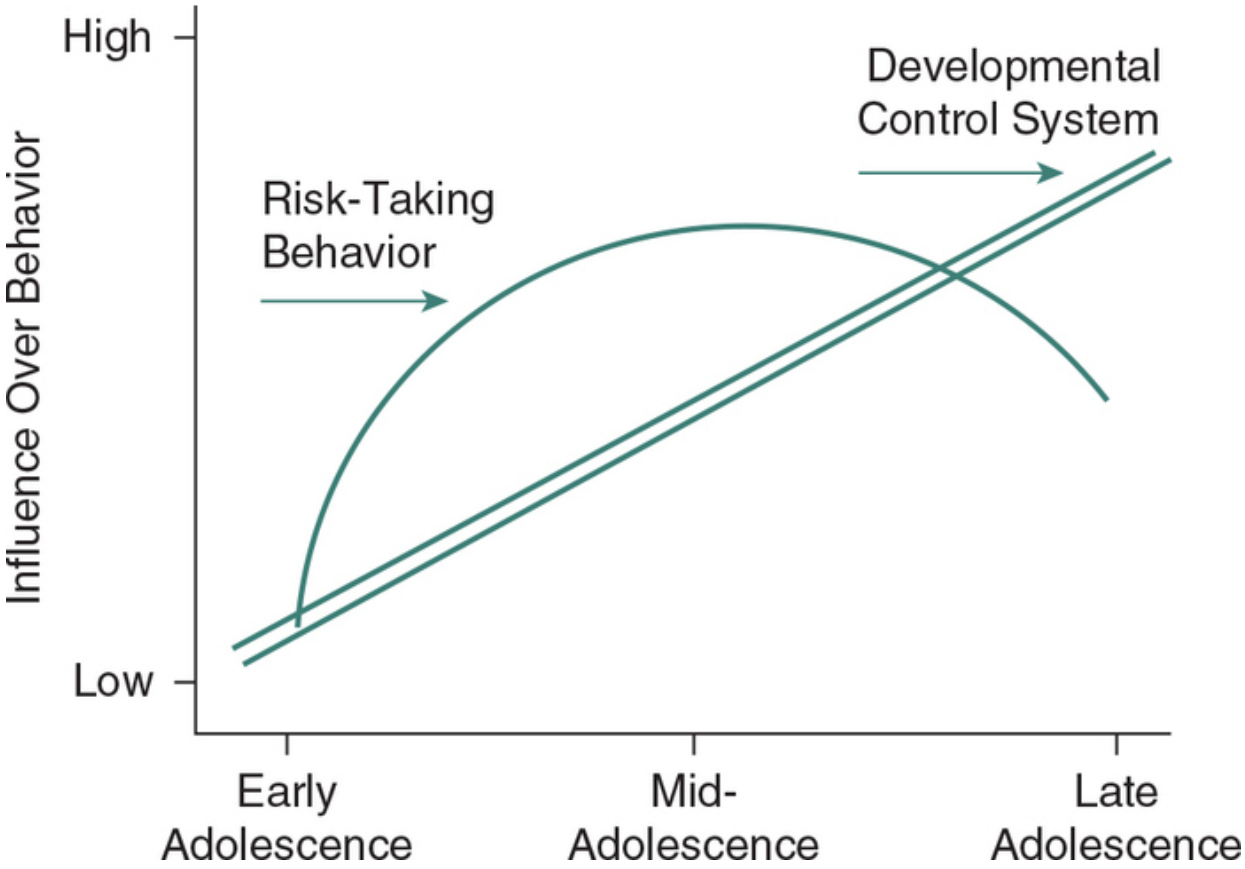


► Photo 7.1 Teenagers at a house party.
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Considerable research evidence supports the conventional wisdom that adolescents are more oriented toward peers and more responsive to peer influence than to the influence of adults (E. Scott & Steinberg, 2008). The increased importance of peers leads teens to modify their behavior in order to fit in and receive peer approval. Furthermore, numerous studies have consistently shown that

susceptibility to peer influence plays a significant role in instigating adolescents to engage in antisocial behavior (K. Erickson, Crosnoe, & Dornbusch, 2000; E. Scott, Reppucci, & Woolard, 1995). Risky behaviors and most crimes committed by adolescents are usually committed in groups and are seldom premeditated (K. C. Monahan, Steinberg, & Cauffman, 2009; Warr, 2002; Zimring, 1998). In fact, both Moffitt (1993a) and Steinberg (2014a) contend that adolescents' desire to impress and be accepted by peers are the core reasons for most delinquency. The greater prevalence of group risk-taking behaviors and criminal offending is probably due to the fact that adolescents spend more time with their peer groups than adults do (Steinberg, 2008).

Steinberg believes resistance to peer influence is achieved by cognitive control of the impulsive reward-seeking behavior (the socioemotional system). Steinberg and Monahan (2007) found that gains in self-reported resistance to peer influence continue to age 18 and beyond. However, the impact of peers on risky behavior continues to be very evident even among college undergraduates averaging 20 years of age (M. Gardner & Steinberg, 2005). As the cognitive control system matures, however, conditions of heightened arousal in the socioemotional system that in earlier years led to risk taking are increasingly controlled. As mentioned previously, this maturity is largely completed by the mid-20s in most individuals. "Some things just take time to develop, and mature judgment is probably one of them" (Steinberg, 2008, p. 100).



Description

Figure 7.1 Steinberg's Dual System Model

Steinberg emphasizes that not all teens exhibit dangerous, harmful, or reckless behaviors. As we have noted earlier in the chapter, individuals follow different developmental trajectories and reach different levels of maturity at different ages (Steinberg, Graham, et al., 2009). In addition, as we discussed above, risk taking itself exists on a continuum ranging from negative to positive (Duell & Steinberg, 2018). And a wide assortment of factors influences sensation-seeking and risky behavior, including opportunities to engage in antisocial risk taking, parental and adult supervision levels, individual temperamental differences, and availability of alcohol and drugs. These same factors also play an important role in the early formation of persistent or life course antisocial behavior.

In sum, there is growing scientific evidence that intellectual maturity is reached several years before psychosocial maturity (Steinberg, Cauffman, et al., 2009). However, cognitive ability is not the same as cognitive control. As mentioned, adolescents age 16 or older have basically the same logical reasoning abilities and verbal skills as adults. In addition, "adolescents are no worse than adults at perceiving risk or estimating their vulnerability to it" (Steinberg, 2008,

p. 80). They “know” that some behaviors are dangerous. However, even though they can articulate the risks involved, the socioemotional system takes over in certain situations, especially in the presence of peers. These situations are most likely to occur when adolescents are emotionally aroused, absent adult supervision, and facing choices with apparent immediate rewards and few obvious or immediate costs—the very conditions that are likely to undermine adolescents’ decision-making competence (Steinberg, 2007). “The adolescent brain is bad at some things (impulse control) but very good at others (learning)” (Steinberg, 2016, p. 345).

Steinberg’s dual systems theory provides an excellent conceptual platform for understanding the AL offenders and why teenagers often engage in risky, dangerous behavior, even when they know better. Fortunately, risky behavior in most cases fades as the individual gets older. For the serious, persistent offender, however, violent antisocial behavior persists well into adulthood. Studies consistently underscore the fact that specific early behavior problems frequently precede the development of serious antisocial behavior.

It should be noted that very similar models have been developed by Beatriz Luna and Catherine Wright (2016), known as the driven dual system model, and by B. J. Casey and associates (Casey & Caudle, 2013; Casey, Getz, & Galvan, 2008), called the maturational imbalance model. Both models are dual models that view the interaction between the socioemotional system and the cognitive control system as being slightly different. Similar to Steinberg’s model, the development of these two models was greatly helped by neuroimaging technologies.

Steinberg (2016) and his colleagues have recently completed a study of approximately 5,500 young persons (ages 10 to 30) from 11 different countries characterized by considerable cultural diversity. The results underscore the validity of the dual system model in explaining risk taking and offending behavior across cultures. The study found compelling evidence that sensation-seeking peaked at late adolescence, whereas self-regulation (executive functions) increases in a steady linear pattern through adolescence and young adulthood.

The Social Brain and Peer Influence

The growing number of neuroimaging studies mentioned earlier are also discovering that brain development and function significantly affect how adolescents view and interpret their social world. This field of study, called **Social cognition**, refers to how individuals process, store, and apply information about other people and their social interactions. Social cognition allows us to make inferences about

another person's intentions, feelings, and thoughts (Adolphs, 2009). In addition, social cognitions, which are developed by the social brain, appear to be strongly influenced by one's culture and ethnic background. For example, adolescents pay close attention to facial expression in others, such as the direction of gaze and emotional expressions. During adolescence, face processing of the social-cognition system becomes more specialized in line with the norms of the culture with which the person is most familiar. The "eye-roll" is likely to communicate different things within various cultures.

The *social brain* develops rapidly throughout adolescence, before stabilizing in early to mid-20s (Kilford, Garrett, & Blakemore, 2016). As Luna and Wright (2016) emphasize, "[a]dolescence is a time of increased socialization when bonding with peers and potential romantic partners takes priority over established family relationships" (p. 106). Due to ongoing changes in social brain development, adolescence is a period of heightened sensitivity to socio-cultural signals in the social environment (Blakemore & Mills, 2014). Several neuroimaging studies have revealed significant changes in adolescent social brain networks associated with social cognitions of face processing, peer evaluation, and peer influence (Blakemore & Mills, 2014).

One thing is clear: Peer evaluations of adolescents affect their feelings of social or personal worth, especially for adolescents between the ages of 13 and 17 years. In their desire to be accepted by their peers and avoid rejection, adolescents are often driven to engage in risky, dangerous, and even criminal behavior. "Studies of peer rejection in adolescence . . . repeatedly find that peer rejection is associated with worsened mood, increased distress and increased anxiety compared to child and adult groups" (Kilford et al., 2016, p. 113).

Although peer influences are largely associated with negative outcomes, they also can have a positive influence on behavior (Kilford et al., 2016). Peers can help one another get through rough times and encourage others to do the right thing. Parents or guardians also provide a protective effect on risk taking in adolescence, especially if they keep appropriate tabs on their behavior and with whom they associate. Gang affiliations and association with peers who encourage and engage in risky, criminal behaviors are examples where parents and other adults can play protective roles.

U.S. Supreme Court Cases Pertaining to Adolescent Offending

Recent research on adolescent brain development has had considerable influence on social policies and even legal issues. It is important that forensic psychologists be fully aware of these research findings. As Luna and Wright (2016) point out, developmental neuroscience and neuroimaging studies have played crucial roles in informing the juvenile justice system, especially as it relates to sentencing involving the death penalty and life without parole. Neuroscience and psychological research findings are increasingly making their way into trial and appellate courts, primarily by way of amicus curiae briefs as discussed in Chapter 4. In a number of cases, the U.S. Supreme Court has cited the work of developmental and neuropsychologists.

In the landmark U.S. Supreme Court case Roper v. Simmons (2005), the Court abolished the juvenile death penalty for anyone age 17 or under at the time of their crime, a decision partially based on oral arguments and briefs that highlighted information from neuroscience and developmental psychology. Steinberg (2017) writes that "many experts consider *Roper* to be the single most important case in the history of the American legal system's treatment of juveniles" (p. 411). "Before *Roper* neuroscience had not played a role in decisions about developmental differences between adolescents and adults—understandably, given how little published research there was on adolescent brain development prior to 2000" (Steinberg, 2017, p. 411).

Shortly after the death penalty for persons who committed their crimes as juveniles was disallowed, the Court took on another sentencing issue involving juveniles, life without the possibility of parole. To many, this is essentially a death sentence (Stevenson, 2014), and it should be emphasized that about half the states do not allow that sentence for persons who commit a crime as a juvenile. States also vary in the minimum amount of time that must be served before one is eligible for parole consideration.

In Graham v. Florida (2010) and its companion case *Sullivan v. Florida*, the Court cited adolescent brain development in ruling that a sentence of life without parole was cruel and unusual punishment for those who committed their crimes during adolescence, at least when the crime was not murder. Later, in cases that did involve murder (Miller v. Alabama and Jackson v. Hobbs, 2012; the two cases were joined in the ruling), the Court again cited developmental research and ruled that a *mandatory* life without parole sentence violated the due process rights of the juvenile, because it did not allow the sentencing judge to take into consideration the possibility that the juvenile had rehabilitative potential. Writing the majority opinion,

Justice Kagan reaffirmed the views expressed in *Roper* and *Graham* that adolescents have "a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk taking" (*Miller v. Alabama*, p. 8). Justice Kagan continues to refer to *Roper* and *Graham*, where the Court had noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adults minds," especially in "parts of the brain involved in behavior control" (*Miller v. Alabama*, p. 9). Furthermore, since *Roper* and *Graham*, "an ever-growing body of research in developmental psychology and neuroscience continues to conform and strengthen the Court's conclusions. It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance" (*Miller v. Alabama*, p. 9, footnote 5). (See **Focus 7.2** for additional discussion of these cases.) In a later case, Montgomery v. Louisiana (2016), the Court clarified that *Miller* barred life without parole for all but the rarest of offenders. We discuss that case again shortly.

An as yet undecided question with regard to giving juveniles a life without parole sentence is what test a judge should use before imposing one. Note that the preceding cases do not completely prohibit life without parole. Many advocates for juveniles say the bar should be set very high, and that sentencing judges should have to find "permanent incorrigibility," a phrase used in the *Montgomery* case. The Supreme Court is scheduled to take up that question in its 2020–2021 session, when it hear arguments in *Jones v. Mississippi*. Brett Jones was a 15-year-old boy convicted of stabbing his grandfather to death after a fight the two had. He was given a sentence of life without parole when a judge determined he did not have rehabilitative potential. Amicus curiae briefs filed in the case maintain that the Eighth Amendment prohibits a life without parole sentence for a juvenile unless the sentencing judge finds the juvenile was permanently incorrigible. Interestingly, extremely lengthy sentences may have the same effect as life without parole sentences. In a case decided after *Miller v. Alabama,* the California Supreme Court ruled that a 110-year sentence given to a juvenile who was 16 years old at the time of his crimes (three attempted murders) was a constitutional violation (People v. Caballero, 2012). Under that sentence, the prisoner would not have been eligible for parole for 100 years. Nevertheless, very long sentences are not constitutionally prohibited. In one case, a judge sentenced a juvenile to consecutive terms that would guarantee he would not get out of

prison until age 112. The case was appealed to the U.S. Supreme Court, but the Court declined to hear it (*Bostic v. Dunbar*, cert. denied 2018).

Focus 7.2

Three Juveniles: What Were They Really Like?

Evan Miller was 14 when he and a 16-year-old friend beat a man and set his trailer on fire. Evan was convicted of murder and sentenced to life imprisonment without parole. Terrance Graham and Joe Sullivan were not convicted of murder. Graham was 16 when he and others tried to rob a restaurant. He was placed on probation, then violated probation by entering a home, again with others. Sullivan was a 13-year-old who committed a series of mostly nonviolent offenses until a judge declared that the juvenile system was incapable of doing anything with him. His case was transferred to criminal court. Like Miller, Graham and Sullivan were given sentences of life without parole.

The cold facts outlined in U.S. Supreme Court cases are obviously disturbing. Juveniles commit serious crimes, and some commit crimes over and over. Nonetheless, Supreme Court opinions do not always include details that can be found in investigative reporting, scholarly journals, or contemplative writings.

In Brian Stevenson's nonfiction book *Just Mercy* (2014), we meet Evan Miller while he is serving the beginning of his life sentence. We learn about his childhood punctuated with abuse and suicide attempts. We learn that Miller's victim was an adult male who played cards with the two boys and sent them to buy drugs. We learn that Miller's friend struck a plea deal with the prosecutor and was given a parole-eligible sentence. We learn that the prosecutor in the case wanted to put Miller in the electric chair even though—at 14—he was too young to be sentenced to death. Miller is revealed as a boy who talks to his lawyer about sports, books, his family, music, anything to prolong the prison visit. As Stevenson notes, "[n]ot long after he first arrived [at the maximum-security correctional facility], he was attacked by another prisoner, who stabbed him nine times. He recovered without serious physical problems but was traumatized by the experience and disoriented by the violence" (p. 266).

Stevenson, founder of the Equal Justice Initiative, writes about meeting other juvenile lifers, like Graham and Sullivan, sometimes years after they were sentenced. Most of them, he writes, were confused about their own adolescent behavior. "Many had matured into adults who were much more thoughtful and reflective; they were

now capable of making responsible and appropriate decisions" (p. 266).

Of Terrance Graham, Stevenson writes, "[a] a result of his new arrest, the judge revoked Terrance's probation and sentenced him to die in prison" (p. 271). Joe Sullivan, whom Stevenson met when Sullivan was 31, had mental disabilities, had a highly unstable home life, and had been placed in various foster homes. His juvenile offenses—almost all of the misdemeanor variety—were often committed with older teens. At age 13, he was described as a serial recidivist by prosecutors, and a judge deemed him a lost cause. "Joe, just one year into his own adolescence, was sent to adult prison, where an eighteen-year nightmare began. In prison he was repeatedly raped and sexually assaulted. He attempted suicide on multiple occasions. He developed multiple sclerosis, which eventually forced him into a wheelchair" (Stevenson, 2014, p. 259).

As discussed in the text, these three juveniles—by then men—won their cases at the U.S. Supreme Court level. Judges no longer can automatically sentence juveniles to life without parole without careful consideration of factors that might point to rehabilitative potential. However, at least for the time being, life without parole remains an option if it is decided otherwise.

QUESTIONS FOR DISCUSSION

1. Which of the details revealed by Stevenson—if any—are legally irrelevant? If any of the details are relevant, are they relevant to conviction, to sentencing, or both?
2. Psychology entered into these cases during the appellate phase, where amicus curiae briefs detailed research on adolescent development. Would forensic psychologists have other roles as well?
3. Bryan Stevenson's book, *Just Mercy*, has deservedly won many literary awards. Read the book and discuss how it connects to forensic psychology.
4. Are Terrance Graham, Evan Miller, and Joe Sullivan still alive? Are they in prison?

After the life without parole decisions, another question became, did these apply retroactively? In other words, what about persons sentenced long before these decisions were announced? Would they be able to have their sentences reconsidered? Montgomery v. Louisiana (2016) answered that question in the affirmative, while again noting the importance of developmental differences between juveniles and adults as reported in neuroscience and developmental psychological studies. When he was age 17, Henry Montgomery killed a deputy sheriff in West Baton Rouge, Louisiana, and received

a mandatory sentence of life without parole. The crime occurred in 1963, so by the time the Supreme Court issued its ruling, Montgomery was 69 years old. Writing for the majority, Justice Kennedy stated that "[i]n light of what the Court has said in *Roper, Graham*, and *Miller* about how children are constitutionally different from adults in their level of culpability, . . . prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and if it did not, their hope for some years of life outside prisons walls must be restored" (*Montgomery v. Louisiana*, p. 10).

Essentially, the Court ruled in *Montgomery* that the earlier Court decision in the *Miller* case should apply retroactively to those individuals sentenced prior to 2012. That is, individuals currently serving life without parole sentences for crimes they committed as juveniles may request that their sentences be reconsidered or that they be evaluated for parole. Montgomery had been a model inmate over the years and had taken advantage of rehabilitation programs when they were offered. However, parole boards reconsidering his sentence denied his request in 2018 and 2019. In 2019, two members of a three-member parole board ruled in his favor, but under that state's law, parole decisions must be unanimous.

In summary, "[w]ithin the past decade . . . juvenile law has increasingly looked to scientific findings regarding the differences between adolescents' and adults' brains to make informed, scientifically based legal decisions in cases involving delinquents" (Luna & Wright, 2016, p. 92). Forensic psychologists must be extensively familiar with this research and be ready to inform the court and its participants about the developmental and neuroscientific findings concerning the different maturational trajectories of the adolescent brain. Furthermore, as pointed out by researchers (e.g., S. L. Anderson, 2016; Luna & Wright, 2016) adolescence is also the most vulnerable period for the emergence of a variety of psychological disorders, such as anxiety disorders, mood disorders, eating disorders, personality disorders, drug abuse, and psychosis. In fact, the average age of onset for serious psychological disorders is age 10 (Steinberg, 2014a). In the next sections, specific developmental factors that are believed to be most closely linked to antisocial patterns well into adulthood are presented.

DEVELOPMENTAL FACTORS IN THE FORMATION OF PERSISTENT CRIMINAL BEHAVIOR

Disruptive behavior is a term that has been applied to a variety of actions that create problems for some children and their caretakers. "[D]isruptive behavior problems in childhood typically include hyperactivity, impulsivity, inattention, oppositional behaviors, defiance, aggression, and disregarding the rights of others" (Waschbusch, 2002, p. 118). According to Waschbusch, these disruptive behavior problems affect 5% to 10% of children and adolescents and account for more than 50% of referrals to mental health clinics. When left untreated, disruptive children are likely to experience peer rejection, have problems in school, demonstrate difficulties getting along with others, and exhibit persistent delinquent behaviors. In many instances, the persistent delinquency behaviors develop into long-term chronic, adult, violent, and antisocial behavioral patterns.
Disruptive behaviors often lead to what psychologists generally call externalizing problems. **Externalizing disorders** are maladaptive behaviors directed at an individual's environment, such as acting out, antisocial behavior, deceitfulness, hostility, violations of rules and social norms, vindictiveness, and aggression. Conduct disorder represents a prime example, which refers to a persistent pattern of behavior that involves violating the basic rights of others (VandenBos, 2007). **Internalizing disorders**, on the other hand, refer to maladaptive processes within or directed at the self, such as depression, anxiety, suicidal thoughts, low self-confidence, or low self-esteem.
Disruptive behaviors are included in at least two of the four prominent features of Moffitt's LCPs or serious, persistent offenders that are continually reported in the research literature. The four are (1) hyperactive-impulsive attention problems (or ADHD), (2) conduct problems (or externalizing problems), (3) deficient cognitive ability, and (4) poor interpersonal or social skills (often resulting in peer rejection). In order to understand more fully the formation of life course antisocial behavior, we cover each in some detail.

Attention-Deficit/Hyperactivity Disorder (ADHD) and Delinquency

The term **Attention-deficit/hyperactivity disorder (ADHD)** encompasses a wide variety of terms frequently used in medical and educational contexts, such as minimal brain dysfunction (MBD), attention deficit disorder (ADD), and hyperactive-impulsive attention (ADHD-HI) problems or simply "hyperactivity." We will use the term most commonly used today, *ADHD*. All the terms, however, refer basically to three central behaviors: (1) excessive motor activity (cannot sit still, fidgets, runs about, is talkative and noisy), (2)

impulsivity (acts before thinking, shifts quickly from one activity to another, interrupts others, does not consider consequences of behavior), and (3) inattention (does not seem to listen, is easily distracted, loses things necessary for tasks or activities). Together, the three behaviors result in the child's inability to regulate and organize their behavior in different situations. ADHD is considered a neurodevelopmental disorder which begins early in life and is associated with "significant impairment across multiple areas of functioning, including academic, psychological, social, and occupational functioning" (Weyandt, Oster, Gudmundsdottir, DuPaul, & Anastopoulos, 2017, p. 160). Deficient executive functions are prominent factors in ADHD, "including neurodynamic deficits, difficulty sustaining activity and attention, poor selectivity in decision making, deficits in shifting from one executed activity to another, poor planning, poor prognostic ability, problems recalling performance, and deficits in error correction" (Glozman & Shevchenko, 2014, p. 459).
A symptom cluster that should not be confused with ADHD is **Oppositional defiant disorder (ODD)**, which refers to a child's behavior pattern that has often been linked to crime. ODD symptoms include arguing with adults, refusing adults' requests, deliberately trying to annoy others, blaming others for mistakes, and being spiteful or vindictive (Kosson, Cyterski, Steuerwald, Neumann, & Walker-Matthews, 2002). Many mental health practitioners are skeptical that ODD is a legitimate disorder, but when it is its prevalence is, at an estimated 3% in boys and 1.4% in girls (von Polier, Vloet, & Herpertz-Dahlmann, 2012). Some children diagnosed with ADHD also show behavioral patterns of ODD (Atherton, Lawson, Ferrer, & Robins, 2019; Biederman, 2005).
ADHD is the leading psychological diagnosis for children living in the United States. An estimated 9.4% of children between the ages of 2 and 17 years of age have, at some time in their lives, received an ADHD diagnosis (National Survey of Children's Health, 2020). ADHD diagnoses range between 5% and 10% in children and adolescents in all parts of the world (Ramsay, 2017; E. Taylor & Sonuga-Barke, 2008; von Polier et al., 2012). ADHD is also estimated to range from 3% to 9% in the adult population (Ramsay, 2017; Sevecke, Kosson, & Krischer, 2009). To date, however—outside of estimates—no systematic nationwide research has been conducted to identify the extent, seriousness, or nature of ADHD. However, the research has consistently revealed that boys outnumber girls, with ratios ranging from 2:1 to 9:1 (R. W. Root & Resnick, 2003). According to R. W. Root and Resnick (2003), Black children appear to receive the diagnosis more often than other racial or ethnic minority children,

although the reasons for this finding are unclear. In addition, ADHD symptoms manifest themselves early in development, usually during the preschool years (Deault, 2010).

It is important to realize that all children (and adults) have certain levels of inattention, overactivity, and impulsivity in some situations, but for the diagnostic label ADHD to be assigned, the symptoms must be unusually persistent and pronounced (R. W. Root & Resnick, 2003). In his description of ADHD, Ramsay (2017) writes that it "represents a subgroup of individuals whose self-regulation deficits fall at the extreme end of a range of functioning" (p. 63). Although most studies have been carried out in the United States and Europe, research has also supported the validity of ADHD in developing countries (Rohde et al., 2001) and across different cultures (Barkley, 1998; Polanczyk, Lima, Horta, Biederman, & Rohde, 2007).

A significant percentage of children with diagnosed ADHD show the same persistent symptoms into adulthood (Lara et al., 2009; Nigg, Butler, Huang-Pollock, & Henderson, 2002; Weyandt et al., 2017). In a comprehensive study of 10 countries, Lara et al. (2009) report that roughly 50% of childhood cases of ADHD continue to meet the full criteria for the disorder as adults. Other studies find that an estimated 30% to 65% of children with ADHD continue to exhibit clinically significant symptoms as adults (Cahill et al., 2012). In other words, many people do not "outgrow" ADHD. The observation that ADHD is prevalent among adults is a recent conclusion, however. In the past, ADHD was largely considered a childhood disorder.

Educators find that ADHD children have difficulty staying on task, remaining cognitively organized, sustaining academic achievement in the school setting, and maintaining control over their behavior. Associated features may include low frustration tolerance, irritability, and rapid mood changes (APA, 2013). ADHD is puzzling, and its causes are largely unknown. Some scientists contend that ADHD children are born with a biological predisposition toward inattention and excessive movement; others maintain that some children are exposed to environmental factors that damage the nervous system. Loeber (1990) reveals how exposure to toxic substances during the preschool years can interfere with a child's neurological development, often resulting in symptoms of ADHD. For example, children exposed to even low levels of lead toxicity (e.g., from paint, airborne contaminants, or drinking water) are more hyperactive and impulsive and are easily distracted and frustrated. They also show notable problems in following simple instructions. Some researchers (e.g., Nigg & Huang-Pollock, 2003; Séguin & Zelazo, 2005) observe that ADHD children do not possess effective strategies and cognitive

organization with which to deal with the daily demands of the traditional school setting. These children often have particular difficulty in understanding and using abstract concepts. ADHD children also seem to lack cognitive organizational skills for dealing with new knowledge and information. Nonetheless, it is believed that numerous gifted, brilliant individuals were or could have been diagnosed with ADHD when they were children, so it is a mistake to focus on the problematic aspects of this diagnosis. In addition, it is believed that numerous children are misdiagnosed. This, accompanied by concerns about drugs prescribed for children with ADHD, has led to spirited and sometimes vituperative arguments in the professional literature. Most forensic psychologists confronting this issue in the process of conducting various assessments are well aware of these concerns.

Some research suggests that one of the primary causal factors of ADHD appears to be inhibitory problems due to neuropsychological deficits (Barkley, 1997, 1998; Nigg, Butler, et al., 2002). The inhibitory problems may be primarily due to motor (behavioral) control (Nigg, 2000). Overall, however, the extant research underscores the possibility that the causes of ADHD are probably multiple and extremely difficult to tease out of the many ongoing interactions occurring between the nervous system and the environment.

Although many behaviors have been identified as accompanying ADHD, the major theme is that ADHD children are perceived as annoying and aversive to those around them, and therein may lie the problematic aspects. ADHD children often continually seek and prolong interpersonal contacts and eventually irritate and frustrate those people with whom they interact. Because of these annoying and socially inappropriate behaviors, they are often rejected by peers, especially if they are perceived as aggressive (Henker & Whalen, 1989). This pattern of peer rejection appears to continue throughout the developmental years (Dodge & Pettit, 2003; J. B. Reid, 1993). In many ways, then, ADHD appears to be more a disorder of interpersonal relationships than simply a disorder of hyperactivity. Some researchers find that ADHD children generally lack friendship and intimacy (Henker & Whalen, 1989). Moffitt (1990) reports that children between the ages of 5 and 7 who demonstrate the characteristics of both ADHD and antisocial behavior not only have special difficulty with social relationships but also have a high probability of demonstrating these problems into adolescence and beyond.

Experts argue that the most common problem associated with ADHD is delinquency and substance abuse (Beauchaine, Katkin,

Strassberg, & Snarr, 2001). The data strongly suggest that youth with symptoms of both ADHD and delinquent behavior are at very high risk for developing lengthy and serious criminal careers (Mannuzza, Klein, Bessler, Malloy, & LaPadula, 1998; Moffitt, 1990; Odgers et al., 2008; Pfiffner et al., 1999). One study of antisocial youth in a secure correctional facility found that nearly half of the adolescents demonstrated symptoms of ADHD (S. Young et al., 2010). Other studies indicate that prevalence estimates for adjudicated adolescents range from 14% to 19% and from 20% to 72% for incarcerated adolescents (Vermeiren, 2003). David Farrington (1991), in his well-regarded research, also found that violent offenders often have a history of hyperactivity, impulsivity, and attention-deficit problems. A study by Cahill and associates (2012) revealed that the prevalence rate of ADHD in adult prison inmates is substantially higher than reported in the general population. Surprisingly, the study found that ADHD may be higher in female inmates than in male inmates.

The relationship between ADHD and delinquency and adult crime is an area demanding much more research by forensic psychologists interested in studying crime and delinquency. It must be stressed, however, that the child with ADHD should not be labeled as the delinquent or the criminal of tomorrow. Many children and adolescents with ADHD do not become serious delinquents or adult offenders. However, they often do have much greater genetic, neurocognitive, and psychosocial burdens than do non-ADHD children and adolescents (von Polier et al., 2012). As noted earlier, they tend to have more learning difficulties and problems in school (especially reading problems), more problems interacting with peers, and more neurological problems.

The most common method of treatment for ADHD is medication (especially methylphenidate, more commonly known as Ritalin, and the central nervous system stimulant Adderall and its derivatives). However, although medication apparently helps many children, many others exhibit numerous side effects, some of them severe. Counseling and psychotherapy are frequently used, especially cognitive-behavior therapy, often in conjunction with medication, but with limited success with this puzzling phenomenon, particularly over the long term. As many practitioners realize, ADHD children generally demonstrate multiple problems that can be best managed through treatment strategies that take into account all the factors impinging on the child at any given time. (See R. W. Root & Resnick, 2003, for an excellent review.) These treatment approaches are called “multisystemic” and are dealt with more fully in Chapter 13.

Conduct Disorder (CD)

ADHD frequently co-occurs with a diagnostic category called "conduct disorder" (Atherton et al., 2019; Coid, 2003; Connor, Steeber, & McBurnett, 2010; Offord, Boyle, & Racine, 1991; J. B. Reid, 1993). Waschbusch (2002) reports, for instance, that about 50% of disruptive children exhibit the basic symptoms of both ADHD and a CD. If disruptive children have the symptoms of one, about half of them also have symptoms of the other. Not only does the presence of CD increase the symptoms of ADHD, but the combination of the two is also an especially powerful predictor of a lifelong course of violence, persistent criminal behavior, and drug abuse (Erskine et al., 2016; Flory, Milich, Lynam, Leukefeld, & Clayton, 2003; Molina, Bukstein, & Lynch, 2002; Pfiffner et al., 1999). According to Erskine et al. (2016), CD was associated with increased signs of depression, anxiety, substance abuse problems, and decreased educational achievement. As mentioned previously, conduct disorder consists of a cluster of maladaptive behaviors characterized by a variety of antisocial behaviors. Examples of this misbehavior include stealing, firesetting, running away from home, skipping school, destroying property, fighting, telling lies on a frequent basis, and being cruel to animals and people. CD is generally considered to be a serious childhood and adolescent disorder because it appears to be a precursor to chronic criminal behavior during adulthood (Lahey et al., 1995). In fact, "the relationship between conduct disorder and violence is well documented" (Baskin-Sommers et al., 2016, p. 352). According to the *DSM-5* (American Psychiatric Association, 2013), the central feature of conduct disorder is the *repetitive* and *persistent* pattern of behavior that violates the basic rights of others.

The *DSM-5* recognizes two subtypes of conduct disorder: childhood onset and adolescent onset. Childhood-onset CD occurs when the pattern begins before the age of 10. This pattern often worsens as the child gets older and is more likely to lead to serious and persistent criminal behavior into adulthood (Frick et al., 2003). According to Frick and colleagues, "[i]n addition, children in the childhood-onset group are characterized by more aggression, more cognitive and neuropsychological disturbances, greater impulsivity, greater social alienation, and more dysfunctional backgrounds than are children in the adolescent-onset group" (2013, p. 246).

On the other hand, adolescent-onset CD is characterized by the absence of any maladaptive behavior before the age of 10. After age 10, those with adolescent-onset CD tend to exhibit fewer problems in interpersonal and social skills but do reject traditional rules and formal

procedures. They often associate with deviant peers in forbidden activities to show their independence and self-perceived maturity (Frick et al., 2003). In many respects, the two types of CD follow the developmental paths of Moffitt's (1993a, 1993b) LCPs (childhood onset) and ALs (adolescent onset).

Behavioral indicators of childhood-onset CD can be observed in children's interactions with parents or caretakers well before school entry (J. B. Reid, 1993). For example, children who are aggressive, difficult to manage, and noncompliant in the home at age 3 often continue to have similar problems when entering school. Furthermore, as we noted, these behaviors show remarkable continuity through adolescence and into adulthood. CD children frequently have significant problems with school assignments, a behavioral pattern that often results in their being mislabeled with a "learning disability." It is important to note that students with genuine learning disabilities are not typically conduct disordered. In other words, the two designations may overlap, but each is also a distinct categorization. Similar to ADHD children, aggressive CDs are at high risk for strong rejection by their peers. This rejection generally lasts throughout the school years and is very difficult to change (J. B. Reid, 1993). As described earlier, children who are consistently socially rejected by peers miss critical opportunities to develop normal interpersonal and social skills. Lacking effective interpersonal skills, these youth *may* meet their needs through more aggressive means, including threats and intimidation.

Prevalence estimates of CD ranges from 2% to more than 10%, with a median of 4% (American Psychiatric Association, 2013). Overall, the sex ratio for CD appears to be 2.5 males to each female (Moffitt et al., 2008). According to the *DSM-5,* boys with CD tend to display fighting, stealing, vandalism, and school discipline problems, whereas girls are more likely to participate in lying, truancy, running away, substance abuse, and prostitution. Some feel that the current diagnostic category in the *DSM-5* fails to accurately detect CD among girls. (See Moffitt et al., 2008, for a comprehensive review.) In addition, severe conduct-problem children often show deficits in verbal abilities and problems in executive control of behavior (Frick & Viding, 2009). Although the *DSM-5* stipulates that a youth with CD exhibits a lack of remorse or guilt and shows no empathy toward others, a majority of studies have discovered that children with severe CD do not show problems in empathy and guilt (Frick et al., 2014). "In fact, they often show high rates of anxiety, and they appear to be highly distressed by the effects of their behavior on others" (Frick et al., 2014, p. 27).

An interesting study by Bardone, Moffitt, and Caspi (1996) found that CD patterns in girls are a strong predictor of a lifetime of problems, including poor interpersonal relations with partners or spouses and peers, criminal activity, early pregnancy without supportive partners, and frequent job loss and firings. Similar to CD boys, CD girls—without intervention—often lead a life full of interpersonal conflict. One observation that continually emerges in studies of CD is that these youths are frequently raised in families that are hostile to them, and their parents engage in inconsistent parenting practices (Frick et al., 2014).

We must remind ourselves that there are multiple factors associated with delinquency, including delinquency characterized by serious and chronic offending. This part of the chapter has focused on various deficiencies within the individual—hyperactivity, conduct disorder, and impulsivity, to name a few. Children live within a social system, however. The behavior and reactions of adults such as parents, caretakers, and teachers significantly affect the child's behavior. In some cases, the "deficiencies" described here are due to abuse, maltreatment, neglect, or simply ignorance about effective child-rearing techniques. In these, as well as other cases, intervention by competent and caring adults can avert a lifetime of continual offending. Moreover, researchers also bring attention to crucial macro-level variables, such as the neighborhood or community in which one is raised or the health care one has received (Chauhan, 2015).

Cognitive Ability and Crime

In addition to the emphasis on developmental pathways, ADHD, and CD, recent research on crime and delinquency has identified the importance of cognition and mental processes in the development of antisocial behavior and violence. These include language acquisition, self-regulation, and executive functions which were covered earlier in the chapter. Developmental research also has been instrumental in identifying the enormous influence of multiple contexts (e.g., school, peers, and families) in the learning and continuation of delinquency and criminal behavior. This emphasis has highlighted the importance of considering the many complex interactions among neurodevelopment and the environment, family members, peers and friends, and cultural and ethnic background in all discussions of antisocial behavior.

Intelligence

A number of developmental theories posit a role for intelligence in the development of delinquency. For example, Moffitt (1993a)

hypothesizes that the more serious, persistent offenders should demonstrate lower intelligence or cognitive ability than nonoffenders. She writes, “The verbal deficits of antisocial children are pervasive, affecting receptive listening and reading, problem solving, expressive speech and writing, and memory” (p. 680). It is clear that a person’s intellectual performance will vary on different occasions, in different domains—as judged by different criteria—and across the life span. In the past few decades, there has been a concentrated effort to develop the idea of multiple intelligences, rather than just one single type of intelligence, and to have an appreciation of abilities that previously either were ignored or were considered not very important in understanding human behavior. Every student reading this book knows that some people are “book smart but not street smart.” Some people find it difficult to express themselves orally or in writing but are able to create works of art or build a sturdy house. Who would argue that the street-smart person or the creator of art or builder of houses is not intelligent?

Although intelligence is a controversial topic—particularly due to skepticism about the validity of “IQ” testing—it has become apparent today that intelligence exists in multiple forms and relates to a wide assortment of abilities. Howard Gardner (2000), for example, describes nine different types of intelligences or cognitive styles (see **Table 7.3**). There are probably more types, such as wisdom, spirituality, synthesizing ability, intuition, metaphoric capacities, humor, and good judgment (H. Gardner, 1983, 1998, 2000), many of which have been used to describe resilient persons. Gardner considered the last two of the primary nine—insight into oneself and the understanding of others—features of emotional intelligence. **Emotional intelligence** is the ability to know how people and oneself are feeling and the capacity to use that information to guide thoughts and actions, such as we find in the social brain. A deficiency in this form of intelligence may play a prominent role in human violence. Standard intelligence tests (IQ tests) measure only the first three forms of the Gardner multiple intelligences model: linguistic, visual-spatial, and logical-mathematical. Even if we presume that standard tests are valid (and caution is urged here), the delinquent individuals who scored low on the standard tests may well be higher in other types of intelligence. Likewise, people who score high on standard tests may be quite deficient at understanding and interacting with others.

Individuals who chronically engage in violence—regardless of how they score on traditional IQ tests—also may lack significant insight into their own behavior and possess little sensitivity toward others.

They tend to misread emotional cues from others and become confused and angry in ambiguous social situations. For example, highly aggressive children often have a **Hostile attribution bias**. That is, they are more likely than less aggressive children to interpret ambiguous actions of others as hostile and threatening. Research consistently indicates that highly aggressive and violent adolescents "typically define social problems in hostile ways, adopt hostile goals, seek few additional facts, generate few alternative solutions, anticipate few consequences for aggression, and give higher priority to their aggressive solutions" (Eron & Slaby, 1994, p. 10). These hostile cognitive styles, combined with deficient interpersonal skills, are more likely to result in aggression and violence in certain social situations. In a review paper on hostile attribution bias, Verhoef, Alsern, Verhulp, and DeCastro (2019) write, "Children who experienced harsh parenting and peer rejection, and exhibit underlying vulnerabilities, such as executive functioning deficits or difficult temperament, could be particularly prone to develop hostile attribution styles and subsequent aggressive behavior patterns" (p. e526). Verhoef and his colleagues conducted an extensive analysis of all the studies published on hostile attribution bias over the past 40 years. Their conclusion: The overall research findings indicate that hostile attribution "is a general cognitive disposition that guides information processing across a broad variety of contexts, including interactions with unknown peers" (p. e540). Hostile attribution is especially prevalent in severely aggressive children.

Table 7.3

Source: Adapted from Gardner (1983, 1998, 2000).

Highly aggressive and antisocial children appear to be less equipped cognitively for dealing with ambiguous or conflict-laden situations. Research strongly supports the idea that highly aggressive individuals possess biases and cognitive deficits for dealing with and solving problematic social encounters with others. Children and adolescents who engage in severe peer aggression show more distorted thought patterns that support aggressive behavior. According to Pornari and Wood (2010), "[t]hey make more justifications and rationalizations in order to make a harmful act seem less harmful and to eliminate self-censure" (pp. 88–89). Research also indicates that serious delinquent offenders are deficient in being able to cognitively put themselves in the place of others or to empathize (Pepler, Byrd, & King, 1991). As a result, these youth are less concerned about the negative consequences of violence, such as the suffering of the victim or the social rejection they receive from their peers.

Ironically, although the early research on IQ and delinquency can be criticized for its lack of attention to social factors, it is likely that some forms of intelligence, in a broader sense, *do* play a role. Most particularly, Gardner's (1983) concept of emotional intelligence may be a key factor in the development of habitual and long-term offending. Put another way, the chronic offender may or may not be "intelligent" in the traditional sense; they are unlikely to be high in emotional intelligence. However, early school failure seems to play a more critical role in the development of delinquency and crime than the traditional measures of intelligence predict (Dodge & Pettit, 2003). In addition, research indicates that retention in kindergarten and in the early grades—being "held back"—has significant detrimental effects on healthy development (Dodge & Pettit, 2003). Related to verbal intelligence and thinking is language development. A number of studies indicate that low language proficiency is associated with antisocial behavior, as discussed in the next section.

Language Development

Verbal deficits and impaired language development are closely associated with behavior problems and serious delinquency (Leech, Day, Richardson, & Goldschmidt, 2003; Muñoz, Frick, Kimonis, & Aucoin, 2008; Petersen et al., 2013; Vermeiren, De Clippele, Schwab-Stone, Ruchkin, & Deboutte, 2002). Antisocial behavior and aggression have been linked to low language proficiency as early as the second year of life and throughout the life span (Dionne, 2005). According to Keenan and Shaw (2003), language is the "primary means by which children learn to solve problems nonaggressively and effectively decrease negative emotions such as anger, fear, and sadness" (p. 163). By the end of the preschool period, the average child has internalized—primarily through the use of language—rules that are associated with the ability to inhibit behavior, follow rules, and manage negative emotions (Keenan & Shaw, 2003; Kochanska, Murray, & Coy, 1997). In addition, according to Keenan and Shaw, the child demonstrates more empathy and prosocial behavior toward others as a result of language development. As noted by Dionne, "language becomes for most children a social tool for increased prosocial interactions" (p. 335).

Delayed language development appears to increase stress and frustration for many children and impede normal socialization (Keenan & Shaw, 2003). Toddlers, especially boys, who do not meet language development milestones at ages 6 months, 18 months, and 24 months, often display later delinquency and antisocial behavior, even when other influences are accounted for (Nigg & Huang-Pollock, 2003; Stattin & Klackenberg-Larsson, 1993). A higher

incidence of language delay also has been observed among boys who display disruptive behaviors during the preschool years and antisocial behaviors during the school years (Dionne, Tremblay, Boivin, Laplante, & Pérusse, 2003; Stowe, Arnold, & Ortiz, 2000). However, the evidence for a similar pattern for girls remains sparse and inconclusive.

How might these relationships be explained? Early language delay and limited communication skills may predispose some children to use more physically aggressive tactics for dealing with others, especially peers. Frustrated about not getting their needs met through normal communication and social strategies, these children are drawn to more physically aggressive behaviors to get their way. This aggressive behavioral pattern, however, is likely to produce a circular effect, since aggressive and disruptive behaviors interfere with creating a positive social environment for language development and normal peer interactions. Therefore, aggressive or antisocial behaviors may, in turn, curtail language development. In contrast to children with language deficits, verbally advantaged children may benefit from their verbal skills by developing prosocial behaviors and may thus steer away from the antisocial trajectories (Dionne, 2005; Dionne et al., 2003).

N. J. Cohen (2001) asserts that language provides an important cognitive tool for controlling one's own behavior, impulses, and emotions. According to Dionne (2005), "[e]motion regulation and self-regulation are generally viewed as requiring complex linguistic tools such as the ability to analyze social situations, organize thoughts about one's own emotions, and plan behavior according to social roles" (p. 346).

Deficient Interpersonal Skills and Peer Rejection

As described earlier, research examining social influences has discovered that peer rejection is one of the strongest predictors of later involvement in persistent, serious offending, especially violence (Cowan & Cowan, 2004; Dodge, 2003). This rejection starts early. Even around age 5, aggressive, belligerent children are unpopular and are excluded from peer groups (Dodge & Pettit, 2003; G. R. Patterson, 1982).

Children may be rejected by peers for a variety of reasons, but aggressive behavior appears to be a prominent one. Kids reject those peers who rely on various forms of physical and verbal aggression as a method for getting what they want. These peer-rejected children are not only aggressive, but they also tend to be

argumentative, inattentive, and disruptive. Furthermore, boys who are both peer rejected and aggressive have a variety of behavioral, social, and cognitive deficits and display low levels of prosocial behavior in general (Coie & Miller-Johnson, 2001). This cluster of deficits frequently results in poor school and academic performance (Buh & Ladd, 2001; Dodge & Pettit, 2003). Peer acceptance is crucial during early development, and those who receive it turn out far differently from their rejected peers. Children who are liked and accepted by their peer group in the early school years are much less likely to become antisocial in their later years (Laird et al., 2001; Rubin, Bukowski, & Parker, 1998). It should be emphasized, however, that almost all the research on the effects of peer rejection, aggression, and delinquent behavior has focused on boys, although neuroimaging studies have begun to focus on girls, especially teenage girls.

As pointed out previously, recent research on the development of delinquent and criminal behavior has identified ADHD features, which appear to have strong neurodevelopmental components. There are many other potential biological and neurological development factors that may contribute to the development of antisocial behavior, including genetics and temperament.

ADDITIONAL SOCIAL DEVELOPMENTAL INFLUENCES

Many other developmental factors have been identified as contributing to a child's trajectory toward a life of committing serious crime and violence. For example, the experience of physical abuse in early life significantly increases the risk of future antisocial conduct (Dodge & Pettit, 2003; Mayfield & Widom, 1996). On the other hand, emotional warmth and appropriate behavioral management by parents have been found to have very positive outcomes on the developmental trajectories of their children (Dishion & Bullock, 2002; Dodge & Pettit, 2003). The amount of exposure that the child has to aggressive peers in day care or preschool also appears to have significant effects on the child's later aggressive behavior. In addition, children who spend large amounts of time in unsupervised after-school self-care in the early elementary grades are also at high risk of participating in antisocial behavior (Sinclair, Pettit, Harrist, & Bates, 1994).

Poverty is also a powerful risk factor. Although the vast majority of children growing up poor do not engage in serious antisocial behavior or delinquency, poverty does create multiple barriers to healthy development. Communities under financial strain are often plagued

by inadequate educational and health systems and often have a large number of families experiencing disruption brought about by limited occupational resources and family breakdown. In these areas, schools tend to be inadequate and day care services limited. Moreover, unsafe levels of lead and other toxic materials have been found in significantly higher amounts in economically deprived areas than in middle- or upper income communities (Narag, Pizarro, & Gibbs, 2009). Although it is crucial to emphasize that economic circumstances do not have a causal effect on delinquency—and that most children raised in poverty do not become persistent or even occasional offenders—poverty must be recognized as a risk factor that should be addressed.

THE CRIMINAL PSYCHOPATH

Probably no topic has caught the attention of forensic psychologists interested in the development of habitual criminal behavior more in recent years than that of psychopathy. Some scholars also have used illustrations from popular culture to educate readers about the brain of the psychopath (Berryessa & Goodspeed, 2019). Nicholls and Petrila (2005) assert, “One of the most important concepts to ever emerge in forensic psychology and law is psychopathy” (p. 729). The term **Psychopath** is currently used to describe a person who demonstrates a discernible cluster of psychological, interpersonal, and neuropsychological features that distinguish them from the general population.

Although psychopathy is usually associated with repetitive criminal or other antisocial behavior, not all researchers and theorists agree that this association is necessary. Some argue (e.g., Lilienfeld et al., 2012) that although psychopaths may be charming but unscrupulous con artists, they do not have to engage in criminal behavior to qualify for psychopathy. Others (e.g., Neumann, Schmitt, Carter, Embley, & Hare, 2012) contend that antisocial behavior is a central factor in the definition of psychopathy. The debate is a crucial one and is discussed in more detail later. It is important at this point, however, to distinguish the psychopath from a **Sociopath**, the common term for someone who commits *repeated* crime. Although they engage in repetitive crime, sociopaths—unlike psychopaths—have a sense of morality, show genuine empathy for others, and generally possess a well-developed conscience even though their criminal activity may suggest otherwise (Pemment, 2013). To illustrate, the sociopath may be sympathetic to the plight of the homeless and may feel guilty about the crimes he commits. Psychopaths, on the other hand, demonstrate very little empathy, compassion, and conscience compared to the general population, and they also have additional

emotional deficits in certain areas. Basically, the psychopath seems to have a reduced capacity for emotional experience (Brook & Kosson, 2013). We will cover the distinguishing behavioral, emotional, interpersonal, and neurological characteristics of the psychopath in more detail in the sections to follow.

Many psychopaths have no history of serious antisocial behavior, and many persistent, serious offenders are not psychopaths. For our purposes here, the term *criminal psychopath* will be reserved for those psychopaths who demonstrate a wide range of persistent antisocial behavior. As a group, they tend to be "dominant, manipulative individuals characterized by an impulsive, risk-taking and antisocial lifestyle, who obtain their greatest thrill from diverse sexual gratification and target diverse victims over time" (S. Porter et al., 2000, p. 220). S. Porter and associates go on to say, "Given its relation to crime and violence, psychopathy is arguably one of the most important psychological constructs in the criminal justice system" (2000, p. 227). Nevertheless, some scholars believe the emphasis on psychopathy is unjustified, particularly as it relates to juveniles, as we will discuss shortly.

General Behavioral Characteristics of Psychopaths

Dr. Hervey Cleckley (1941) was one of the first to outline the behavioral characteristics of psychopaths. He was a professor of psychiatry and neurology at the Medical College of Georgia during the 1930s and remained there until the 1950s. Cleckley is credited with completing one of the most comprehensive works on the psychopath, titled *The Mask of Sanity.* The book went through five editions, and his clear writing style, in combination with the subject area, captivated public and scholarly interests for many years. Cleckley (1941) identified what he thought were 10 cardinal behavioral features characteristic of the true psychopath: (1) selfishness (also called egocentricity), (2) an inability to love or give genuine affection to others, (3) frequent deceitfulness or lying, (4) a lack of guilt or remorsefulness (no matter how cruel the behavior), (5) callousness or a lack of empathy, (6) low anxiety proneness, (7) poor judgment and failure to learn from experience, (8) superficial charm, (9) failure to follow any life plan, and (10) cycles of unreliability. By no means do all researchers in the field of psychopathy agree with this list, but the behavioral features outlined serve as a starting point for further discussion in this section. Cleckley also believed that the typical psychopath exhibited superior intelligence, but that observation has not been supported by the research literature. For

example, various measures of psychopathy have shown little—if any—correlations with IQ measures (Hare, 2003). Some recent research has suggested that many psychopaths may possess good amounts of emotional intelligence, however (Copestake, Gray, & Snowden, 2013) and that they use this ability to manipulate, deceive, and control others. In this context, emotional intelligence refers to "the capacity to perceive and understand emotions and the ability to use this information as part of decision-making and the management of behavior" (Copestake et al., 2013, p. 691). In this respect, the psychopath differs from more traditional chronic offenders, who—as discussed earlier—are typically not high in emotional intelligence.

An important feature underlying all behavioral descriptions is the psychopath's profound and pathological stimulation seeking (Quay, 1965). According to Quay (1965), the actions of the psychopath are motivated by an excessive *neuropsychological* need for thrills and excitement. It is not unusual to see psychopaths drawn to such interests as race car driving, skydiving, and motorcycle stunts.

Antisocial Personality Disorder and Psychopathy

Psychiatrists, mental health workers, clinical and forensic psychologists often use the term mentioned earlier, *antisocial personality disorder* (ASP/APD), to summarize many of the same features found in the criminal psychopath. As defined in the *DSM-5*, antisocial personality disorder refers specifically to an individual who exhibits "a pervasive pattern of disregard for and violation of the rights of others, occurring since age 15 years" (American Psychiatric Association, 2013, p. 659). This definition is followed by seven criteria, any three or more of which must be met (e.g., failure to conform to social norms, deceitfulness). The person diagnosed with APD must be at least 18 years of age, but, as we discussed earlier, there is evidence of CD disorder with onset before age 15. In other words, the antisocial personality disorder appears closely aligned with the persistent offender, such as the LCP offender.

It should be emphasized that, although there are many behavioral similarities, the terms *antisocial personality disorder* and *psychopathy* are not synonymous. Nevertheless, the *DSM-5* states that "This pattern has also been referred to as *psychopathy, sociopathy*, or *dissocial personality disorder*" (p. 659). Most research psychologists want to preserve a distinction. Antisocial personality disorder refers to broad behavioral patterns based on clinical observations, whereas psychopathy refers not only to specific behavioral patterns but also to measurable cognitive, emotional, and neuropsychological differences.

Overall, psychopathy and ASP do not reflect the same underlying psychopathology (Riser & Kosson, 2013). In addition, ASP is so broad in its scope that between 50% and 80% of male inmates qualify as meeting its criteria (Correctional Services of Canada, 1990; Hare, 1998; Hare, Forth, & Strachan, 1992). In contrast, only 11% to 25% of male inmates meet the criteria for psychopathy (Hare, 1996).

Prevalence of Criminal Psychopathy

Overall, Hare (1998) estimates that the prevalence of psychopaths in the general population is about 1%, whereas in the adult prison population, estimates range from 15% to 25%. Some researchers (e.g., Simourd & Hoge, 2000) wonder, however, whether these estimates are not somewhat inflated. Simourd and Hoge (2000) report that only 11% of the inmate population they studied could be identified as criminal psychopaths. The inmates used in their study were not simply inmates in a medium-security correctional facility. All 321 were serving a current sentence for violent offending, more than half of them had been convicted of a previous violent offense, and almost all of them had extensive criminal careers. Even so, they did not qualify as psychopaths according to the criteria for achieving that designation; they were antisocial personalities. Simourd and Hoge's research underscores the need to not assume high percentages of criminal psychopathy within any given population, even a population of incarcerated offenders.

Offending Patterns of Criminal Psychopaths

Although some psychopaths have little contact with the criminal justice system, many have continual contact with the system because of persistent, serious offending. For example, Gretton, McBride, Hare, O'Shaughnessy, and Kumka (2001) point out that criminal psychopaths generally

> lack a normal sense of ethics and morality, live by their own rules, are prone to use cold-blooded, instrumental intimidation and violence to satisfy their wants and needs, and generally are contemptuous of social norms and the rights of others. (p. 428)

Criminal psychopaths manifest violent and aggressive behaviors—including verbal abuse, threats, and intimidation—at a much higher rate than is found in other populations (Hare, Hart, & Harpur, 1991). In some cases, this persistent offending is extremely violent in nature.

Criminal psychopaths are “responsible for a markedly disproportionate amount of the serious crime, violence, and social distress in every society” (Hare, 1996, p. 26). Hare posits, “The ease with which psychopaths engage in . . . dispassionate violence has very real significance for society in general and for law enforcement personnel in particular” (1996, p. 38). Hare refers to a 1992 report by the FBI that found that nearly half of the law enforcement officers who died in the line of duty were killed by individuals who closely matched the behavioral and personality profile of the psychopath. In addition, the crimes of psychopathic sex offenders are likely to be more violent, brutal, unemotional, and sadistic than those of other sex offenders (Hare, Clark, Grann, & Thornton, 2000). Some serial murders described as unusually sadistic and brutal also tend to have many psychopathic features (Hare et al., 2000; M. H. Stone, 1998). It should be emphasized, though, that very few psychopaths—even criminal psychopaths—are serial killers.

The relationship between psychopathy and sexual offending appears to be a complex one. For example, the prevalence of psychopaths among child sex offenders is estimated to be from 10% to 15%; among rapists, it is between 40% and 50% (Gretton et al., 2001; S. Porter et al., 2000). Research also indicates that rapists who have psychopathic characteristics are more likely to have “nonsexual” motivations for their crimes compared to rapists who are not psychopaths, such as anger, vindictiveness, sadism, and opportunism (S. Hart & Dempster, 1997). Rape, however, is always a violent crime and should not be attributed predominately to sexual motivations.

With regard to other violent offenses, many murders and serious assaults committed by non-psychopaths occurred during domestic disputes or extreme emotional arousal. However, this pattern of violence is rarely observed for criminal psychopaths (Hare et al., 1991; Williamson, Hare, & Wong, 1987). Criminal psychopaths frequently engage in violence as a form of revenge or retribution or during a bout of drinking. Many of the attacks of non-psychopaths are against women they know well, whereas many of the attacks of criminal psychopaths are directed toward women who are strangers. Hare et al. (1991) observe that the violence committed by criminal psychopaths was callous and cold-blooded, “without the affective coloring that accompanied the violence of nonpsychopaths” (p. 395). According to S. Porter et al. (2000), research suggests that psychopaths reoffend faster, violate parole sooner, and perhaps commit more institutional violence (i.e., in jails, prisons, or psychiatric facilities) than non-psychopaths. In one study (Serin, Peters, &

Barbaree, 1990), the number of failures—or violations of the conditions of their release—of male offenders released on an unescorted temporary absence program was examined. The failure rate for psychopaths was 37.5%, whereas none of the non-psychopaths failed. The failure rate during parole was also examined. Although 7% of non-psychopaths violated parole requirements, 33% of the psychopaths violated their requirements. In another study (Serin & Amos, 1995), 299 male offenders were followed for up to 8 years after their release from a federal prison. Sixty-five percent of the psychopaths were convicted of another crime within 3 years, compared to a reconviction rate of 25% for non-psychopaths. Quinsey, Rice, and Harris (1995) found that within 6 years of release from prison, more than 80% of the psychopaths convicted as sex offenders had violently recidivated, compared to a 20% recidivism rate for non-psychopathic sex offenders.

High recidivism rates are also characteristic of adolescent offenders with psychopathic characteristics. According to Gretton et al. (2001), these offenders are more likely than other adolescent offenders to escape from custody, violate the conditions of probation, and commit nonviolent and violent offenses over a 5-year follow-up period. The high recidivism rates among adult and juvenile psychopathic offenders have prompted some researchers to conclude that there is "nothing the behavioral sciences can offer for treating those with psychopathy" (Gacono, Nieberding, Owen, Rubel, & Bodholdt, 2001, p. 119). Other researchers take a decidedly different perspective and believe that untreatability statements concerning the psychopath are unwarranted (Salekin, 2002; Skeem, Monahan, & Mulvey, 2002; Skeem, Poythress, Edens, Lilienfeld, & Cale, 2003; Wong, 2000). There is *some* evidence that psychopaths who receive larger "doses" of treatment are less likely to demonstrate subsequent violent behavior than those who receive less treatment (Skeem, Edens, & Cowell, 2003).

Psychological Measures of Psychopathy

Currently, the most popular instrument for measuring criminal psychopathy is the 20-item **Psychopathy Checklist-Revised (PCL-R)** (Hare, 1991). It is an instrument familiar to most forensic psychologists who interact with the criminal justice system in various ways. More recently, the PCL-R has been published in a second edition, which includes new information on its applicability in forensic and research settings. It has been expanded for use with offenders in other countries and includes updated normative and validation data on male and female offenders. A 12-item short-form version has also been developed, called the **Psychopathy Checklist: Screening**

Version (PCL: SV) (Hart, Cox, & Hare, 1995; Hart, Hare, & Forth, 1993), as well as the **Psychopathy Checklist: Youth Version (PCL: YV)** and the **P-Scan: Research Version**. The P-Scan is a screening instrument that serves as a *rough* screen for psychopathic features and as a source of working hypotheses to deal with managing suspects, offenders, or clients. It is designed for use in law enforcement, probation, corrections, civil and forensic facilities, and other areas in which it would be useful to have some information about the possible presence of psychopathic features in a particular person.

The previously mentioned instruments are largely based on Cleckley's (1941) conception of psychopathy but are specifically designed to identify psychopaths in male prison, forensic, or psychiatric populations. Because the PCL-R is currently the most frequently used as both a research and clinical instrument, it will be the center of attention for the remainder of this section. The PCL: YV is beginning to be researched more extensively and is covered in more detail in the section on juveniles with psychopathic features. Several other inventories or tests to measure psychopathic traits have been developed besides the PCL-R, the PCL: YV, and their derivatives. For example, one of the more recent measures is the Triarchic Psychopathy Measure (TriPM) developed by Patrick and colleagues (Drislane, Patrick, & Arsal, 2014; Patrick, Drislane, & Strickland, 2012; Patrick, Fowles, & Krueger, 2009), which is discussed later.

Other measures of psychopathy include the Youth Psychopathic Traits Inventory (YPI; Andershed, Kerr, Stattin, & Levander, 2002), the Child Psychopathic Scale (CPS; Lynam, 1997), the Psychopathic Personality Inventory (PPI; Lilienfeld & Andrews, 1996), and the Psychopathic Personality Inventory-Revised (PPI-R; Lilienfeld & Widows, 2005). Coverage of all these measures of psychopathy are beyond the scope of this chapter. Despite the proliferation of psychopathic measures, the PCL-R clearly remains the "gold standard" for researchers and practicing clinicians.

The PCL-R assesses the affective (emotional), interpersonal, behavioral, and social deviance facets of criminal psychopathy from various sources, including self-reports; behavioral observations; and collateral sources, such as parents, family members, friends, and arrest and court records, which can help to establish the credibility of self-reports (Hare, 1996; Hare et al., 1991). In addition, item ratings from the PCL-R, for instance, require some integration of information across multiple domains, including behavior at work or school; behavior toward family, friends, and sexual partners; and criminal

behavior (Kosson et al., 2002). Typically, highly trained examiners use all this information to score each item on a point scale of 0 to 2, which measures the extent to which an individual has the disposition described by each item on the checklist (0 = *consistently absent,* 1 = *inconsistent,* 2 = *consistently present*). Scoring is, however, quite complex and requires substantial time, extensive training, and access to a considerable amount of background information on the individual. A score of 30 or above usually qualifies a person as a primary psychopath (Hare, 1996). In some research and clinical settings, cutoff scores ranging from 25 to 33 are often used (Simourd & Hoge, 2000). Hare (1991) recommends that persons with scores between 21 and 29 be classified as "middle" subjects who show many of the features of psychopathy but do not fit all the criteria. Scores below 21 are considered "non-psychopaths."

So far, the research has strongly supported the reliability and validity of the PCL-R for distinguishing criminal psychopaths from criminal non-psychopaths and for helping correctional psychologists in risk assessments of inmates (Hare, 1996; Hare et al., 1992). In addition, the instrument provides researchers and mental health professionals with a universal measurement for the assessment of psychopathy that facilitates international and cross-cultural communication concerning theory, research, and eventual clinical practice (Hare et al., 2000). Currently, the PCL-R is increasingly being used as a clinical instrument for the diagnosis of psychopathy across the globe, although it appears to be most powerful in identifying psychopathy among North American white males (Hare et al., 2000). However, it is also an instrument that many forensic psychologists prefer to use to assess an offender's risk of violence and "to inform decisions about whether to incarcerate, treat, indefinitely detain, or even execute him or her" (Camp, Skeem, Barchard, Lilienfeld, & Poythress, 2013, p. 468). This extensive use of the PCL-R is highly controversial, as we see below.

The PCL-R as a Risk Assessment Tool

In U.S. courts, the PCL-R is increasingly being used as an important —and sometimes required—risk assessment tool. "The mental health field clearly has embraced the applied use of the PCL-R, as evidenced by its popularity in various surveys of instruments used in civil and criminal cases" (DeMatteo et al., 2014b, p. 96). Not only has the PCL-R become a popular tool for forensic psychologists to use in risk assessment measures for U.S. courts, but it has also actually become a required assessment for some types of cases in some states. These cases involve sexually violent predator hearings, parole hearings, capital sentencing, civil commitment, and transfer to adult

court hearings (DeMatteo & Edens, 2006; DeMatteo et al., 2014b; Walsh & Walsh, 2006). In cases involving sexually violent predators, "many of these laws have in one form or another focused on the concept of 'psychopathy' as relevant to the classification of being a dangerous sexual offender, with some laws specifically referring to these offenders as 'sexual psychopaths'" (DeMatteo et al., 2014a). In addition, it appears that evidence of psychopathy is highly influential to judicial decision making in a sizeable portion of court cases (Viljoen, MacDougall, Gagnon, & Douglas, 2010). More important, the evidence of psychopathy often plays an instrumental role in decisions concerning whether the defendant can be successfully rehabilitated.

DeMatteo et al. (2014b) comment, "The PCL-R remains a popular and widely used measure among forensic practitioners, and the results of this case law survey suggest that the number of U.S. court cases reporting the use of the PCL-R continues to accelerate" (p. 105). There is also every indication the number of cases involving the PCL-R will continue to increase well into the future.

Moreover, results of the PCL-R submitted by forensic psychologists are rarely challenged in court, a fact that troubles researchers who are concerned with possible overuse of this instrument (DeMatteo et al., 2014a). Considering the amount of stigmatizing effects that the label "psychopath" carries, the low challenge rate is surprising. As things stand now, a defendant labeled a psychopath is in danger of receiving the maximum sentence allowed because they are *perceived* as highly dangerous with little chance of being rehabilitated or successfully treated. For example, J. Cox, Clark, Edens, Smith, and Magyar (2013) found that mock jurors are more likely to support execution in capital cases when the defendant was diagnosed as a "psychopath." In fact, the researchers made a call for a moratorium on the use of the PCL-R in court cases involving capital offenses. Not surprisingly, scores on the PCL-R are used primarily by the prosecution (DeMatteo & Edens, 2006; Edens & Cox, 2012; Edens, Davis, Fernandez Smith, & Guy, 2013) to buttress its argument for longer sentences. What may be surprising, though, is that some judges may respond in an unexpected manner if provided with evidence that psychopathy is biologically based. In a recent study in which sitting judges were given scenarios based on an actual case, the judges who were given such biological information were more lenient in their sentencing than those who were not provided it (Aspinwall, Brown, & Tabery, 2012; G. Miller, 2012).

Core Factors of Psychopathy

One finding that has clearly emerged from the research on the PCL-R is that psychopathy is multidimensional in nature. **Factor analysis** is one statistical procedure designed to find different dimensions or factors in test data. When expert ratings of psychopathy on the PCL-R were submitted to a factor analysis, at least two behavioral dimensions or factors came to light (Hare, 1991; Harpur, Hakstian, & Hare, 1988; Hart et al., 1993). Factor 1 reflects the interpersonal and emotional components of the disorder and consists of items that measure a tendency to be deceitful, unemotional, remorseless, socially dominant, and manipulative. The typical psychopath feels no compunction about using others strictly to meet their own needs. Some studies have found that Factor 1 is related "to levels of anxiety and fear, decreased physiological reactivity to threatening cues, and resilience against mood disorders" (Sadeh, Javdani, & Verona, 2013, p. 167). This factor is commonly referred to as the interpersonal-affective factor.

Factor 2 is most closely associated with a socially deviant lifestyle and antisocial attitudes, as characterized by a tendency to be irresponsible, impulsive, and aggressive. The factor is also associated with a strong tendency to engage in an antisocial lifestyle combined with unrealistic goals and ambitions. In contrast to Factor 1, Factor 2 is related to high levels of anxiety and distress and various forms of psychopathology (Sadeh et al., 2013). This factor is often referred to as the impulsive factor. In criminal psychopaths, some researchers have found that Factor 1 appears to be associated with planned predatory violence, whereas Factor 2 appears to be related to spontaneous and disinhibited violence (Hart & Dempster, 1997). Factor 1 is also linked to resistance to and inability to profit from psychotherapy and treatment programs (Olver & Wong, 2009). Factor 2 appears related to socioeconomic status, educational attainment, and cultural/ethnic background, whereas Factor 1 may be more connected with biopsychological influences (Cooke & Michie, 1997). Research also suggests that Factor 1 may be a more powerful predictor of psychopathic violence than Factor 2 (Cooke, Michie, Hart, & Hare, 1999; Olver, Lewis, & Wong, 2013).

Although the first two core factors have received the bulk of the research attention to date, some studies with both adolescents and adults reveal that there may be at least *three* behavioral dimensions at the core of psychopathy rather than just the original two (Cooke & Michie, 2001; Frick, Bodin, & Barry, 2000; Kosson et al., 2002). Cooke and Michie (1997), for example, found from their factor analysis of PCL-R data that psychopathy probably consists of three core factors: (1) arrogant and deceitful interpersonal style, (2)

impulsive and irresponsible behavioral style (highly similar to the original Factor 2), and (3) deficient affective experience. Factors 1 and 3 are actually subdivisions of the original Factor 1 reported in earlier studies. The term *deficient affective experience* refers to the lack of sincere positive emotions toward others and the demonstration of callousness and lack of empathy. The terms *arrogant* and *deceitful interpersonal style,* on the other hand, refer to the glibness, superficial charm, and grandiose sense of self-worth that are so characteristic of the psychopath. The three factors are now termed *interpersonal* (Factor 1), *deviant lifestyle* (Factor 2), and *deficient affective* (Factor 3).

An increasing amount of evidence indicates that a fourth core factor of psychopathy should be included in the discussion (Hare, 2003; Hare & Neumann, 2008; Neumann et al., 2012; Salekin, Brannen, Zalot, Leistico, & Neumann, 2006; Vitacco, Neumann, & Jackson, 2005; Walters & Heilbrun, 2010). According to the **Four-factor perspective**, the factors are as follows: (1) interpersonal, such as pathological lying and conning; (2) impulsive lifestyle, such as irresponsible behavior, sensation seeking, and impulsiveness; (3) affective, meaning shallow affect or emotional reactions, lack of remorsefulness for their actions; and (4) antisocial tendencies, such as poor self-regulation and a wide array of antisocial behavior (see **Table 7.4** for a summary).

Table 7.4

The argument for a fourth factor is based on the finding that individuals manifesting psychopathic traits often exhibit violence and a large collection of other antisocial behaviors that go beyond the poor planning and impulsivity associated with Factor 2. As noted by Neumann et al. (2012), “[b]oth clinical tradition and empirical evidence clearly show that psychopathic propensities are fundamentally linked with antisociality” (p. 559). Lynam and Miller (2012) write that any description of psychopathy is incomplete without including antisocial behavior. Therefore, researchers backing inclusion of this factor in defining psychopathy contend that we are missing a critical ingredient in the understanding of the psychopath if measures of antisocial behavior are left out of the equation. Salekin et al. (2006) maintain that much of the predictive power of psychopathy measures is enhanced if we include past antisocial behavior in defining psychopathy. In fact, research has found that Factor 4 appears to be the most important factor for predicting psychopathic recidivism (Hawes, Boccaccini, & Murrie, 2013; Walters & Heilbrun, 2010). Recent research has also discovered that Factor 4 emerges as a key component in defining psychopathy for both male

and female adult psychopaths as well as for male and female juvenile psychopaths (Kosson et al., 2013).The fourth factor has become known as the antisocial factor.

Other researchers disagree with the requirement that antisocial behavior should be considered a core factor of psychopathy. Lilienfeld et al. (2012), for example, maintain that the inclusion of antisocial behavior as a core definition of psychopathy leaves little room for the psychopath who is slick, smooth, likeable, socially poised, and charming but does not engage in a life of antisocial or criminal behavior. They propose a "boldness" factor, which is discussed later.

A key development in the recent research on psychopathy is that the disorder is now viewed as a continuous or dimensional condition rather than a discrete disorder (Patrick, 2018a). The conclusion that you are either a "psychopath" or "not a psychopath" is scientifically out of fashion. This trend has resulted in the use of such terms a *high-psychopathic offenders* or *individuals high in psychopathic traits* rather than simply "psychopaths." Furthermore, more attention is being directed at the positive aspects of some of the characteristics and the fact that people with these attributes often can be quite successful in life. Given this, it is no surprise that psychopathy has become a central focus of research in forensic psychology, particularly but not exclusively as it relates to criminal behavior.

Triarchic Psychopathy Model (TriPM)

As mentioned previously, the most recent model of psychopathy is called the **Triarchic psychopathy model** (abbreviated **TriPM**), developed by Christopher Patrick and his colleagues (Patrick, 2010, 2018a, 2018b; Patrick et al., 2009). To date, the model has received considerable scientific scrutiny and support in the United States and a number of countries (Sellbom, Lilienfeld, Fowler, & McCray, 2018). The TriPM consists of three distinct dimensions, with a scale measuring each one: (1) meanness or callous-unemotionality; (2) disinhibition or externalizing proneness; and (3) boldness or fearless dominance. (See **Table 7.5**)

Meanness refers to "deficient empathy, disdain for and lack of close attachments with others, rebelliousness, excitement seeking, exploitativeness, and empowerment through cruelty" (Patrick et al., 2009, p. 927). It can be expressed through extreme arrogance, defiance of authority, destructive excitement seeking, callous aggression, interpersonal detachment, and physical cruelty toward people and animals (Skeem, Polaschek, Patrick, & Lilienfeld, 2011). It is a motivational style in which pleasure and satisfaction are sought without consideration of others. Patrick et al. (2009) point out that

meanness tends to be a central feature of the crime and delinquency that is actively directed at hurting others. It also has been viewed as the core component of psychopathy (Herpers, Rommelse, Bons, Buitelaar, & Scheepers, 2012).

Meanness is sometimes associated with **callous-unemotionality (CU)** traits which are often "linked with severe, chronic, and proactive antisocial and violent behavior" (Viding & Kimonis, 2018, p. 144) and are most central to the diagnosis of criminal psychopathy (Nelson & Foell, 2018). CU traits include a persistent and significant lack of empathetic concern for others, limited capacity for guilt, and deficits in emotional expression. Callous-unemotionality disorder will be discussed in more detail later in the chapter.

Table 7.5

Source: Author-created table based on Patrick (2010).

The second dimension of the TriPM is **disinhibition** (also referred to as **externalizing proneness**). This refers to impulsivity, poor self-regulation, low frustration tolerance, irresponsibility, alienation, and unreasonable risk taking. It involves "traits of hostility, antisociality, and having difficulties in regulating anger-related emotions" (Shou, Sellbom, Xu, Chen, & Sui, 2017, p. 1072), and "encompasses tendencies toward impulse control problems of various types" (Nelson & Foell, 2018, p. 127). Basically, this dimension is very similar to highly deficient or dysfunctional executive functions. It is characterized by reckless-impulsive tendencies that are often closely connected to the use of severe, potentially criminal coercive tactics (Porter, Woodworth & Black, 2018). Interestingly, the disinhibition trait (externalizing proneness) is believed to have a strong genetic component (Patrick, 2018b), and has been linked to impairments in the functioning of the prefrontal cortex that regulates emotions and self-control (Drislane, Brislin, Jones, & Patrick, 2018).

Boldness (sometimes referred to as **fearless dominance**) consists of personality characteristics of charisma, fearlessness, novelty seeking, calmness in the face of danger and low stress reactivity (Lilienfeld, Watts, Smith, & Latzman, 2018). Behaviorally, it is described as an "interpersonal style that is characterized by fearlessness, being relatively immune to stress or anxiety, and being successful at negotiating social interactions to achieve desired goals" (Douglas, Nikolova, Kelley & Edens, 2015, p. 265). Several researchers (e.g., Patrick et al., 2009; Skeem et al., 2011) describe psychopathic boldness as the ability to remain calm and focused in stressful or life-threatening situations and to exhibit high self-assurance and social efficacy in a wide variety of social situations.

The trait boldness also reflects the capacity to recover rapidly from disastrous events as well as seek out unfamiliarity and danger.
To a large extent, boldness may be considered adaptive, and appears to be associated with occupational choice. For example, Lilienfeld and his colleagues discovered that the trait was significantly linked to leadership positions in many organizations and high-risk occupations (Lilienfeld, Watts, & Smith, 2015; Patton, Smith, & Lilienfeld, 2018). Examples of high-risk occupations that demand certain levels of boldness include firefighters, first responders, law enforcement, and dangerous sports.
Lilienfeld and his colleagues (Lilienfeld et al., 2016; Lilienfeld et al., 2015; B. Murphy, Lilienfeld, Skeem, & Edens, 2016) believe that boldness (fearless dominance) may represent the key trait that separates successful psychopaths from unsuccessful psychopaths. "Recent studies suggest that fearless dominance may be a marker of the successful features of psychopathy and may bear important implications for leadership" (Lilienfeld et al., 2015, p. 301).
However, boldness also appears to be also associated with a "dark side," including antisocial behavior, aggression, and sexual assault (Lilienfeld et al. 2018). At this point it appears boldness can be channeled into either adaptive behavior (e.g., heroism) or maladaptive behavior (e.g., criminality), and the trait demands further research (Lilienfeld et al., 2018). Boldness certainly represents the most puzzling and controversial of the three dimensions of the TriPM.

Juvenile Psychopathy

One of the serious shortcomings of the extensive research conducted on psychopathy is that it originally focused almost exclusively on men (Frick, Barry, & Bodin, 2000). Consequently, research on juvenile (primarily adolescent) psychopathy as well as psychopathy in women has been limited. It is now growing rapidly. However, attempts to apply the label *psychopathy* to juvenile populations are strongly resisted, and they "raise several conceptual, methodological, and practical concerns related to clinical/forensic practice and juvenile/criminal justice policy" (Edens, Skeem, Cruise, & Cauffman, 2001, p. 54). Juvenile psychopathy continues to be a subject of considerable interest and debate (Salekin, Rosenbaum & Lee, 2008; Skeem, Polaschek, et al. 2011; Viljoen, MacDougall, et al., 2010). For example, some researchers question its validity and implications, while others believe it is crucial that we identify psychopathic characteristics in juveniles in order to intervene at an early age. Juveniles who possess psychopathy-like characteristics, such as callous-unemotional traits, are believed to be particularly susceptible to antisocial behavior throughout their lives.

Even if psychopathy can be identified in adolescents, however, the label may have too many negative connotations. More specifically, the label implies that the prognosis for treatment is poor, a high rate of offending and recidivism can be expected, and the intrinsic and biological basis of the disorder means little can be done outside of biological interventions. A third debate contends that psychopathy assessments of youth must achieve a high level of confidence before they can be employed in the criminal justice system (Seagrave & Grisso, 2002).

Several instruments for measuring pre-adult psychopathy have been developed, including the Psychopathy Screening Device (PSD; Frick, O'Brien, Wootton, & McBurnett, 1994), the Childhood Psychopathy Scale (CPS; Lynam, 1997), and the PCL: YV (Forth, Kosson, & Hare, 1997). All three instruments began primarily as research measures rather than as clinical-diagnostic measures but are now likely to be seen in clinical practice. This is particularly true of the PCL: YV.

The PCL: YV, designed for assessing psychopathy in adolescents age 13 or older, is a modified version of the PCL-R. Basically, the instrument attempts to assess psychopathy across the youth's life span, with an emphasis on school adjustment and peer and family relations. Similar to the adult PCL-R, the PCL: YV requires a lengthy standardized, semistructured clinical interview and a review of documents by a well-trained psychologist. Scores of 0 (*consistently absent*), 1 (*inconsistent*), or 2 (*consistently present*) for each of the 20 behavioral dimensions of psychopathy represent the scoring system. The instrument—like the PCL-R—generates a total score and two factor scores. Factor 1 reflects an interpersonal/affective dimension and includes items that measure glibness/superficial charm, grandiosity, manipulativeness, dishonesty, and callousness. Factor 2 reflects behavioral or lifestyles features such as impulsiveness, irresponsibility, early behavioral problems, and lack of goals.

The PSD is a behavior rating scale in which some of the items on the PCL-R were rewritten for use with youth (Frick, Barry, et al., 2000). Currently, the PSD comes in three versions: (1) a teacher version, (2) a parent version, and (3) a self-report version. The versions represent the person who is rating the behavior of the individual of concern. Using the teacher and parent versions of the PSD, Frick et al. (1994) found (through a factor analysis) that juvenile psychopathy may be made up of two major dimensions. One dimension was labeled callous-unemotional and the other impulsivity-conduct problems. The callous-unemotional dimension, however, appeared to be especially useful for predicting more severe aggression, conduct

problems, and delinquency (Marsee, Silverthorn, & Frick, 2005). Later, Frick, Bodin, and Barry (2000) found evidence (again through a factor analysis) to support a *three*-dimensional core for juvenile psychopathy. Two of the factors (callous-unemotional and impulsivity) were similar to the core dimensions found for adults in Frick, Bodin, et al.'s earlier study. However, the construct of impulsivity seems to be much more complex in youth than in adults, and the researchers discovered that the construct may be subdivided into impulsivity and narcissism (grandiose sense of self-worth).

Callous-Unemotional (CU) Traits

Callous-unemotional (CU) traits are characterized by a distinct lack of empathy, deficits in recognizing various emotions, "shallow affect, a lack of remorse or guilt, and indifference towards one's performance" (Hartmann & Schwenck, 2020, p. 1). Together, these traits often lead to a persistent and aggressive pattern of antisocial behavior. Many experts consider CU traits as signs and symptoms of juvenile and adult psychopathy, but these traits can be observed in young children as well. CU trait theory was first proposed by Paul Frick and his colleagues (Frick, Barry, et al., 2000; Frick et al., 2003, 2014; Frick & Marsee, 2018;). Early in the development of CU theory, Frick's research team conducted a series of projects designed to detect developmental patterns that resulted in adult psychopathy. The researchers were able to identify a group of children who had been diagnosed with conduct disorders but who showed particularly severe and chronic patterns of antisocial behavior beyond what is normally seen in other children with conduct disorders. This group of children and adolescents displayed a significant lack of empathetic concern for others, limited capacity for feeling guilty about cruel deeds and dishonesty, and deficits in emotional expression. The researchers noticed that these behavioral characteristics were highly similar to those patterns found in adult psychopaths, and labeled this cluster of traits callous-unemotional. These findings have led researchers to concentrate on CU traits as very informative for understanding the development of adult psychopathy (Viding & Kimonis, 2018).

Further study revealed that high levels of impulsivity and egocentricity distinguished these CU youths and that they were not only diagnosed with severe conduct disorders but were also highly aggressive and often violent (Frick et al., 2014). In addition, the youths exhibited cognitive problems, such as the inability to take the perspective of others, self-serving cognitive distortions such as blaming others for their mistakes, and underestimating the likelihood they will be punished for their misbehavior. The research also led to the development of the Antisocial Process Screening Device (APSD;

Frick & Hare, 2001), a 20-item rating scale designed to measure CU traits in children (Viding & Kimonis, 2018).

Additional research revealed that children with CU traits are not afraid of being punished for their aggressive actions and are convinced that aggression is an effective means for dominating and controlling others (Pardini & Byrd, 2012). The CU children in the study spoke in a way that minimized the extent to which their aggression caused victim suffering, and they openly acknowledged caring very little about the distress and suffering of others. Not surprisingly, other studies found that CU traits in childhood and adolescence strongly predicted psychopathy patterns in adulthood (Kahn, Frick, Youngstrom, Findling, & Youngstrom, 2012).

It should be noted that CU traits were included as a "specifier" under the general category of conduct disorder in the *DSM-5.* A specifier, in this context, provides an opportunity to distinguish this group of conduct disorders as different from the other subgroups of CDs. The intent was to notify practitioners that this group is more likely to engage in aggression that is planned for instrumental gain (American Psychiatric Association, 2013).

One of the major problems of identifying juvenile psychopaths is that psychopathy may be very difficult to measure reliably because of the transient and constantly changing developmental patterns across the life span, especially during the early years. For example, psychopathic symptoms in childhood may look very different from those exhibited in adulthood (S. Hart, Watt, & Vincent, 2002). That is, some of the behavioral patterns of children and adolescents may be similar to psychopaths for a variety of reasons but may not really be signs of psychopathy. Moreover, children and adolescents who display serious antisocial and conduct problems show great variability in the types of problem behaviors they have, making it difficult for researchers and clinicians to easily classify them into neat categories (Frick et al., 2014).

Children in abusive homes often demonstrate an abnormally restricted range of emotions that are similar to the emotional characteristics of psychopathy. Actually, they may be the child's way of coping in a very stressful home environment (Seagrave & Grisso, 2002). Furthermore, Seagrave and Grisso (2002) assert, "Some adolescent behavior may . . . appear psychopathic by way of poor anger control, lack of goals, and poor judgment, but is actually influenced by parallel developmental tasks encountered by most adolescents" (p. 229). Going against the rules is part of many adolescents' attempts to gain autonomy from adult dominance, such as what is found in adolescent-limited offending. In addition, adult

criminal psychopaths often have been psychologically scarred by years of drug and alcohol abuse, physical fighting, lost opportunities, and multiple incarcerations (Lynam, 1997). Consequently, adult psychopaths may present a very different population pool compared to the juvenile psychopath.

Appropriateness of PCL-R and PCL: YV For Testing Adolescents

Edens, Skeem, et al. (2001) also point out that some of the items on the various psychological measures of psychopathy (especially the PCL-R and PCL: YV) are inappropriate for use with adolescents, or for use with certain populations, such as female adolescents (Edens, Campbell, & Weir, 2007) or various ethnic groups (Leistico, Salekin, DeCoster, & Rogers, 2008). Some items focus on such things as lack of goals and irresponsibility. If these features are not present in the adolescent, then they might receive scores in the psychopathy direction. However, adolescents generally have not crystallized their life goals or had to take on many responsibilities, and consequently such items “seem less applicable as definitive markers of psychopathy for adolescence than for adults” (Edens et al., 2007, p. 58). We must be careful, then, not to generalize what we know about the adult psychopath to a juvenile who has been given the same label.

Nevertheless, many researchers are persisting in their attempts to identify juvenile psychopaths and measure psychopathic tendencies. In a study examining the prevalence rate of psychopathy among children, Skilling, Quinsey, and Craig (2001) found in a sample of more than 1,000 boys in Grades 4 to 8 that 4.3% of the sample could be classified as psychopathic on every measure employed in the study.

Lynam (1997) designed a research project that compared juvenile and adult psychopaths. Using the CPS, Lynam reported results that suggested psychopathy begins in childhood and can be measured reliably in young adolescents (ages 12 and 13). Lynam found that, like their adult counterparts, they were the most aggressive, severe, frequent, and impulsive offenders, a characteristic that was stable across time. Moreover, he discovered that the CPS was a better predictor of serious delinquency than was socioeconomic status, previous delinquency, IQ, or impulsivity.

Research so far does indicate that there is some validity in measures of juvenile psychopathy (Kosson et al., 2002; Murrie & Cornell, 2002). Some research also indicates that juvenile psychopathy may have a genetic basis and may run in families (Forsman, Lichtenstein,

Andershed, & Larsson, 2010; Viding & Larsson, 2010). In addition, preliminary functional magnetic resonance imaging studies show areas of the brain are active in juveniles who were labeled as psychopaths when performing certain tasks (Salekin, Lee, Schrum Dillard, & Kubak, 2010). Other studies suggest that psychopathic youth may have specific physical brain abnormalities (J. P. Newman, Curtin, Bertsch, & Baskin-Sommers, 2010; Shirtcliff, Vitacco, Gostisha, Merz, & Zahn-Waxler, 2009). However, many scholars remain concerned about the implications of bringing evidence of psychopathy or psychopathic features to the attention of the courts, particularly when it comes to young offenders.

In an important study involving courts, Viljoen, MacDougall, Gagnon, and Douglas (2010) reviewed 111 American and Canadian cases of adolescent offenders and found that psychopathy evidence is becoming increasingly common and appears to be influential in the decision making of judges, although it was not necessarily a key factor. Evidence of psychopathy or psychopathic features was found in about half the cases. Juveniles whose cases did not indicate psychopathy or psychopathic features received more lenient sentences than those whose cases did. In addition, “psychopathy evidence appeared very influential in some cases, including those in which decisions were made to transfer a youth to adult court or place the youth in an adult jail” (p. 271). According to Viljoen, MacDougall, et al., “psychopathy evidence was commonly used to infer that a youth would be very difficult or impossible to treat” (p. 271).

The Female Psychopath

The study of criminal behavior has traditionally concentrated on men, “as males are overrepresented in the criminal justice system and are significantly more likely to engage in antisocial behavior” (Javdani, Sadeh, & Verona, 2011, p. 1325). Similarly, there are few statistics on the ratio of male to female psychopaths, but it has been generally assumed that males far outnumber their female counterparts. Based on PCL-R data, Salekin, Rogers, and Sewell (1997) reported that the prevalence rate of psychopathy for convicted women in a jail setting was 15.5%, compared to a 25% to 30% prevalence rate estimated for convicted men.

Little research has been conducted on the extent to which psychopathy exists in women. Because the known psychopathic population is dominated by men, little research has been directed at women, but the studies that have been conducted are frequently cited. Salekin, Rogers, Ustad, and Sewell (1998) found, using a PCL-R cutoff score of 29, that 12.9% of their sample of 78 female inmates qualified as psychopaths. In another investigation involving 528 adult

women incarcerated in Wisconsin, Vitale, Smith, Brinkley, and Newman (2002) reported that 9% of their participants could be classified as psychopaths, using the recommended cutoff score of 30 on the PCL-R. Some preliminary studies using the PCL-R also suggest that female criminal psychopaths may demonstrate different behavioral patterns from those of male criminal psychopaths (Hare, 1991; Vitale et al., 2002).

Female Psychopaths Compared to Male Psychopaths

Based on the limited research that has been done, there appear to be many similarities between male and female psychopaths, but there also may be some differences (Neumann et al., 2012; Verona, Bresin, & Patrick, 2013; Walters, 2014). Early studies reported that female psychopaths might be less aggressive and violent than male psychopaths (Mulder, Wells, Joyce, & Bushnell, 1994). Early research also indicated that female psychopaths seemed to recidivate less often than male psychopaths. In fact, the evidence suggested that psychopathic female inmates recidivated at rates that were no different from those reported for non-psychopathic female inmates (Salekin et al., 1998).

However, more recent research reports that—compared to male psychopaths—female psychopaths tend to be more subtle and skillful in their aggression, exploitative relationships, and manipulation of others, which results in their harmful acts going largely unnoticed by the authorities (Kreis & Cooke, 2011). Furthermore, female psychopaths are more likely than male psychopaths to target family, friends, or acquaintances rather than strangers (Nicholls & Petrila, 2005). In contrast, male psychopaths rely on greater use of physical aggression, dominance, and status seeking, which makes their harmful actions more noticeable and more likely to be officially recorded. Kreis and Cooke (2011) assert that the incidence of female psychopathy is probably underestimated because of behavioral differences. They write, “Measures (e.g., the PCL-R) that rely strongly on officially recorded criminality and antisocial behavior, and of more male typical presentations of it, are clearly going to miss a great proportion of psychopathic women” (p. 645).

Preliminary evidence further suggests that female psychopaths suffer greater levels of environmental deprivation, victimization, and mental health problems compared to their male counterparts (Hicks et al., 2012; Javdani et al., 2011). These findings may mean that environmental and cultural influences play a greater role in the development of psychopathy in women. The Hicks et al. (2012) research also underscores the importance of a complex interaction between genes and the environment in the development of

psychopathy. It is clear that research focusing on the potential influences of different cultures and social backgrounds on psychopathic traits would certainly add a deeper understanding of the development of female and male psychopathic behavior.

Racial/Ethnic Differences

Kosson, Smith, and Newman (1990) noticed that most measures of psychopathy have been developed using white inmates as subjects. In their research, they found that psychopathy, as measured by Hare's PCL, exists in Black male inmates in a pattern that resembles that of white male inmates. However, Kosson et al. found one important difference: Black criminal psychopaths tended to be less impulsive than white criminal psychopaths.

On one hand, this finding raises some questions as to whether the PCL is entirely appropriate to use with African American inmates. On the other hand, Vitale et al. (2002) found no significant racial differences in the scores and distributions of female psychopaths. More specifically, Vitale et al. reported that 10% of the 248 incarcerated white women who participated in their study reached the cutoff scores of 30 or higher on the PCL-R compared to 9% of the 280 incarcerated Black women who had similar scores. A meta-analysis by Skeem, Edens, and Colwell (2003) supports the conclusion that the differences between Blacks and whites are minimal. Questions remain, however, as to the potential differences among other racial or ethnic groups.

Some researchers have raised the intriguing and serious issue of whether the stigmatizing diagnosis of psychopathy is likely to be used in a biased manner among minority or disadvantaged groups (Edens, Petrila, & Buffington-Vollum, 2001; Skeem, Edens, & Colwell, 2003; Skeem, Edens, Sanford, & Colwell, 2003). In essence, the consequence of being diagnosed a psychopath is becoming more serious (Skeem, Edens, Sanford, et al., 2003). As pointed out by Skeem, Edens, and Colwell (2003), Canada and the United Kingdom use the diagnosis of psychopathy to support indeterminate detention for certain classes of offenders and that furthermore,

> [t]here is evidence that psychopathy increasingly is being used as an aggravating factor in the sentencing phase of U.S. death penalty cases, where it has been argued that the presence of these personality traits renders a defendant a "continuing threat to society." (p. 17)

In addition, as we learned earlier, there is concern that a diagnosis of psychopathy may be used to justify decisions to transfer juvenile

offenders to the adult criminal justice system, typically based on the assumption that psychopathy is untreatable. Therefore, any differences in psychopathy scores related to race, ethnicity, or age would raise significant criminal justice and public policy issues (Skeem, Edens, & Colwell, 2003). Edens, Petrila, et al. (2001) suggest that perhaps the PCL-R should be excluded from capital sentencing until more solid research on its ability to assess violence risk in minority and disadvantaged individuals is established. It would be wise, therefore, for forensic psychologists to refrain from using diagnostic indicators of psychopathy at the sentencing phase until considerably more research is undertaken.

Treatment and Rehabilitation of Psychopaths

For nearly a century, the treatment and rehabilitation of criminal psychopaths have been shrouded with pessimism and discouragement. The leading researcher on psychopathy, Robert Hare (1996), lamented that "[t]here is no known treatment for psychopathy" (p. 41). To add to the discouragement, a long list of research projects continually discovered that nothing seemed to work to reduce their violence, criminal recidivism, and antisocial attitudes (Hare et al., 2000). Gacono, Nieberding, Owen, Rubel, and Bodholdt (2001) concluded from their comprehensive review of the treatment literature that "simply stated, at this time there is no empirical evidence to suggest that psychopathy is treatable" (p. 111). Other studies reported that psychopaths are either completely unresponsive to treatment or play the treatment game well, pretending to cooperate but skillfully "conning" the treatment provider (Bartol & Bartol, 2014). In fact, some researchers (e.g., Rice, Harris, & Cormier, 1992) concluded that inappropriate treatment programs may make psychopathic offenders worse. Others suggested that psychopaths are difficult clients primarily because of their interpersonal and emotional style (Olver & Wong, 2009).

Farrington (2005) probably made the most comprehensive statement when he wrote, "it seems to be generally believed that psychopaths are difficult to treat because (a) they are an extreme, qualitatively distinct category; (b) psychopathy is extremely persistent throughout life; (c) psychopathy has biological causes which cannot be changed by psychosocial interventions; and (d) the lying, conning, and manipulativeness of psychopaths make them treatment resistant" (pp. 494–495).

Frick, Ray, Thornton, and Kahn (2014) paint an equally bleak picture of the intervention success with children and adolescents with both CD and CU traits. In their review of the research literature, they conclude that

> several studies of adolescents in the juvenile justice system demonstrated that adolescents with elevated psychopathic or CU traits were less likely to participate in treatment, showed lower rated quality of participation in treatment, showed poorer institutional adjustment, and were more likely to reoffend after treatment than those low on these traits. (p. 42)

Although children and adolescents with a combined CU and CD trait cluster present a true treatment challenge, Frick et al. (2014) also contend that if interventions "are tailored to the unique emotional, cognitive, and motivational styles of children and adolescents with CU traits, treatments can reduce their behavior problems" (p. 44). Other research is beginning to suggest there is hope, and there are some indications that certain psychotherapies could be effective if applied competently and appropriately (Salekin, 2002; Skeem et al. 2002; Skeem et al., 2003; Wong & Hare, 2005). We discuss this further in Chapter 12. In his review of 42 studies on psychopaths, Salekin (2002) found several treatment approaches that appeared effective in reducing the severity of psychopathic attitudes and behavioral patterns. Olver and Wong (2009) report some success with incarcerated psychopathic sex offenders when appropriate treatment programs were applied. Success was measured by sexual and violent recidivism rates, 10 years after the treatment. Olver and Wong concluded, "The results do not support the notion that psychopaths are untreatable or that treatment makes psychopaths worse or more likely to recidivate" (p. 334). It is clear there is encouraging news about the treatment of psychopaths as well as children and adolescents with psychopathic characteristics.

SUMMARY AND CONCLUSIONS

Criminal behavior involves an extremely wide range of human conduct and is committed by individuals of all ages and across all economic circumstances. In this chapter, we have been concerned with that subset of criminal behavior that includes persistent, serious offending over time. Consequently, we have examined early origins of such offending by focusing on developmental factors associated with the antisocial acts of chronic juvenile offenders. In addition, we have examined offending patterns over the life span by focusing on the criminal psychopath.

The chapter began with detailed discussion of executive function (EF), a concept that has gained considerable attention in recent years, both in psychological research and in legal decision making.

Deficiencies in executive functioning sometimes can be traced to early childhood and, if not addressed, can follow children through adolescence and adulthood. They do not necessarily lead to criminal activity, but when criminal activity does occur, EF deficits are often identified. The prominent theories discussed in the chapter, such as those of Terrie Moffitt and Laurence Steinberg, highlight the role of executive functioning in the development of antisocial and criminal behavior.

As a group, juvenile offenders tend to grow out of crime—which is to say, they do not grow up to become chronic adult offenders. From the statistics on juvenile arrests, it is impossible to tell how many different juveniles are involved (as some are arrested more than once) as well as which of these particular juveniles will become long-term offenders. We know from the research that a small percentage (5%–6%) of offenders is responsible for a large proportion of juvenile crime. We know also that chronic offenders do not specialize but rather are involved in a wide variety of offenses. Forensic psychologists try to identify those juveniles who are at risk for serious, chronic offending. Psychologists working in juvenile corrections are also involved in providing treatment for these juveniles, a topic we will return to in Chapter 13.

In their attempts to identify juveniles at risk, many psychologists today have adopted developmental or cognitive approaches. Developmental studies—such as those conducted by Terrie Moffitt and her colleagues—suggest that differences in impulsivity, aggressiveness, social skills, and empathy for others can distinguish persistent from nonpersistent offenders. Moffitt's (1993a) dual-pathway hypothesis (LCP vs. AL offenders) has contributed significantly to theory development in this area. Most recently, Moffitt as well as other researchers have suggested that more than two developmental pathways may be needed, although the dual-pathway approach remains credible for a large percentage of offenders.

Research by Steinberg on the adolescent brain has documented that adolescents develop intellectually at a faster pace than emotionally. To a great extent, this explains the typical adolescent's tendency to take risks and make spur-of-the-moment decisions. Although there are individual differences among adolescents, as a general principle this age group is believed by developmental psychologists to be responsible for their behavior but less responsible than adults. For this reason, Steinberg's research is frequently cited in court decisions that relate to the future of juveniles who have committed criminal acts.

These and other developmental studies have identified such factors as early exposure to aggressive peers and rejection by peers as contributing to later antisocial conduct. Developmental theory also suggests that conduct disorders, differences in cognitive abilities, and ADHD all play a significant role in facilitating chronic antisocial behavior in children and adolescents. However, they certainly do not "cause" it. Although each of these correlates with delinquency, a cautionary note is necessary. "Deficiencies" in children may well be due to abuse, neglect, or lack of resources or understanding on the part of the adults in their lives. Larger, macro-level variables also must be considered, including neighborhood factors and health challenges, such as those due to environmental toxins. It is unwarranted to focus on behavioral problems in children without attending to their broader social systems.

We discussed in some detail the criminal psychopath, a designation that has been given to a significant minority of adults. It is emphasized that not all psychopaths commit crimes. Although it is estimated that only 1% of the total adult population would qualify as psychopathic, estimates of the number of imprisoned psychopaths have reached over 15% (although some believe these estimates are inflated). Criminal psychopaths are problematic, not only because of their offending patterns, but also because of their apparent resistance to change. For this reason, a diagnosis of psychopathy may be the "kiss of death" at capital sentencing in those states where future dangerousness is an important consideration as well as at civil commitment proceedings for sexually violent predators. A variety of instruments are offered to measure psychopathy, the most widely known being Robert Hare's (1991) PCL-R. We noted that gender, race, and ethnicity differences in psychopathy are beginning to attract research attention.

Although there is debate over whether the concept of psychopathy can be applied to juveniles, efforts to develop instruments for measuring this construct are robust and ongoing, and the instruments are increasingly being used in clinical practice. Psychopathic characteristics in juveniles include callous-unemotional traits, which have received much research attention. The concept of juvenile psychopathy—*if such a construct exists*—may have important implications for the prevention of serious delinquency if clinicians can intervene and provide effective treatment. Nevertheless, as in the adult population, psychopathy is likely to be limited to a very small subset of juvenile offenders. Even so, the concerns expressed by many researchers should be very carefully considered. A psychopathic label placed on a juvenile may lead some

mental health providers to question the juvenile's rehabilitative prospects and may virtually guarantee the juvenile's transfer to a criminal court.

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QUESTIONS FOR REVIEW

1. Discuss the differences among legal, social, and psychological definitions of *delinquency*.
2. What are the main sources of youth crime data?
3. Explain how Moffitt's original dichotomy of juvenile offending has been modified in recent years.
4. What are at least three explanations of ADHD?
5. What are three alternative explanations for the IQ–delinquency connection?
6. What is intelligence? How has Howard Gardner contributed to psychology's understanding of this concept?
7. List Cleckley's behavioral features of the psychopath.
8. State the controversy over labeling juveniles as *psychopaths*.

Descriptions of Images and Figures

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The horizontal axis lists early, mid-, and late adolescence. The vertical axis lists influence over behavior and ranges from low to high. Risk-taking behavior is represented by a concave down curve that starts from low level of influence at early adolescence, peaks at a moderate level of influence at mid-adolescence, and decreases to a lower level of influence at late adolescence. Developmental control system is represented by a line sloping upward, starting from low level of influence at early adolescence and increasing to high level of influence at late adolescence.

CHAPTER EIGHT PSYCHOLOGY OF VIOLENCE AND INTIMIDATION

CHAPTER OBJECTIVES

- Summarize the statistical and research data on violent crime.
- Assess the psychological effects of violent media and electronic video games on aggressive behavior.
- Describe threat assessment and school violence.
- Examine the research and clinical data on criminal homicide, including multiple murder and serial killers.
- Explain the psychological factors involved in workplace violence.
- Identify the demographic and psychological aspects involved in hate and bias crimes.
- Discuss the psychological trauma and potential violence of being stalked, bullied, or cyberbullied.
- Assess the key aspects of traditional bullying and modern cyberbullying.

In 2017, in Charlottesville, Virginia, a car driven by a white supremacist careened through a crowd of people protesting racism. One woman was killed and many were wounded.

Also in 2017, a mass shooting at an outdoor concert venue in Las Vegas, Nevada, left 58 people dead and more than 500 injured. The gunman opened fire from a hotel suite high above the concert.

Over a 6-week period in 2020, three unarmed Black persons—a woman and two men—were killed by police in separate incidents that received national attention. The deaths were not unusual—similar incidents before and after are a matter of record—and they brought to the fore the problem of systemic violence against Blacks and other persons of color.

Violence terrifies us and angers us. Incidents like those described above are reported and replayed extensively by the news media. Although some fault the media for overreporting these events, we need to be told when there is violence displayed by both private people and public figures, including elected officials. Interestingly, violence is somewhat difficult to define, precisely because it has so many meanings and conjures up such a broad spectrum of images (G. Newman, 1979). Moreover, it occurs in many situations and under a wide variety of conditions, and there are numerous explanations for why it occurs.

Violence is commonly defined as *physical* force exerted for the purpose of inflicting injury, pain, discomfort, or abuse on a person or persons or for the purpose of damaging or destroying property. Some physical force, however, is condoned by society. We allow police to use *reasonable* force against an individual resisting arrest, a football player to tackle his opponent, a soldier to kill an enemy, and crime victims to protect themselves from serious bodily harm. It is the

violence committed without justification that we are concerned with in this chapter, specifically criminal violence.

As we will learn in this chapter, violence almost always leads to some degree of psychological harm to survivors, witnesses, families, and the local community. Not only are forensic psychologists involved in the scientific study of violent offenders, but they also participate in relaying research findings to the public and to legal practitioners. In a separate capacity, some also provide risk or threat assessments, and some offer clinical services in the aftermath of violence. Also, as discussed throughout this text, psychologists provide forensic and treatment services to individuals charged with both violent and nonviolent crimes, facing trials, and serving sentences in the community or in jails and prisons.

It should be noted that *violence* and *aggression* are not interchangeable terms. Whereas violence involves physical force, aggression may or may not involve such force. ***Aggression*** can be defined as behavior perpetrated or attempted with the intention of harming another individual (or group of individuals) physically or psychologically. Someone blocking entry into a business that allegedly discriminates against a racial or ethnic group is performing an aggressive act, not a violent act. Even though we may agree with this action as a matter of principle, it is still aggressive. Likewise, refusing to speak to someone who has insulted you in the past is an aggressive act, not a violent act. It would qualify as what psychologists call “passive aggression.” Thus, all violent behavior is aggressive, but not all aggressive behavior is violent.

Two increasingly interconnected streams of research on violence are evident. One research stream examines the many characteristics and demographics of the individual violent offender; the other examines the immediate contexts and environments in which violence most often occurs (Hawkins, 2003). Studies focusing on the former have examined the social, psychological, and biological factors in interpersonal offending, including personality attributes and possible mental disorder associated with the offending. Studies in the latter tradition have examined family, peer, local community, and neighborhood effects on varying levels of violence. Each area of research has recognized the importance of the other. That is, researchers acknowledge that both individual factors and environmental influences must be taken into account in their efforts to understand violence.

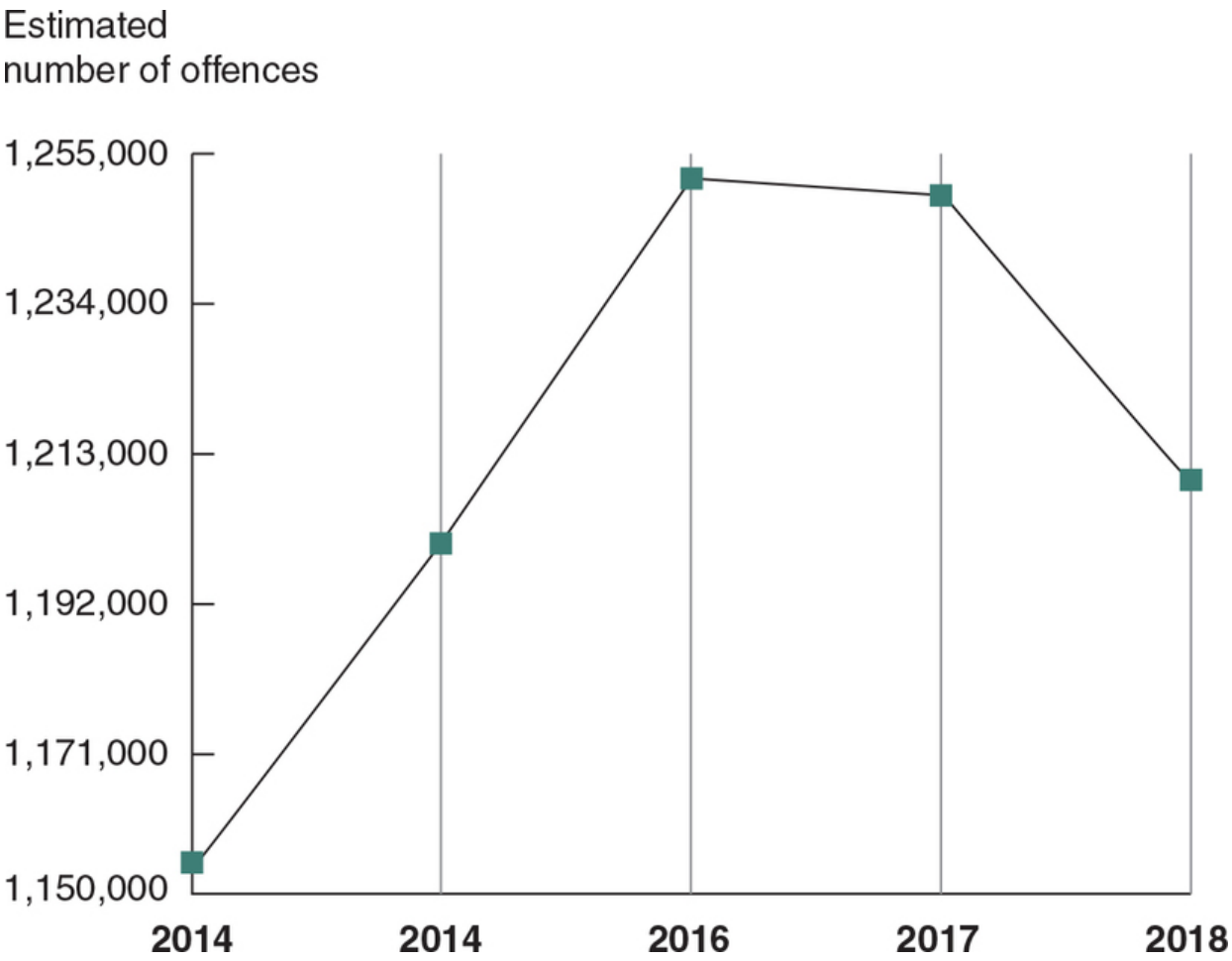
Forensic psychologists frequently encounter violence—as well as aggression in general—sometimes even on a daily basis. The person they are evaluating may have threatened to harm others. They may

be asked to assess the risk of violence in a given individual even if that person has not threatened harm. In a court setting, they may be asked to testify about the effects of violence on a victim of a crime or a plaintiff in a civil suit. Therefore, an understanding of the prevalence, causes, and effects of violence is critical for forensic psychologists.

We begin this chapter with data on violent crime, including information on gender and race/ethnic differences. This is followed by a discussion of theoretical perspectives on violence offered by research psychologists. Efforts to prevent violence from occurring are covered in a section on threat assessment, which is different from the risk assessment enterprise discussed in previous chapters. Closely related to threat assessment is the topic of school violence and workplace violence, both of intense interest to mental health practitioners, including forensic psychologists, as well as the public. We then focus on the most serious violent crime, criminal homicide. Note that the serious violent crimes of rape and other sexual assaults are covered in the following chapter. This chapter ends with a discussion of crimes of intimidation, which represent a form of aggression that may or may not result in violence but produce fear in the victims.

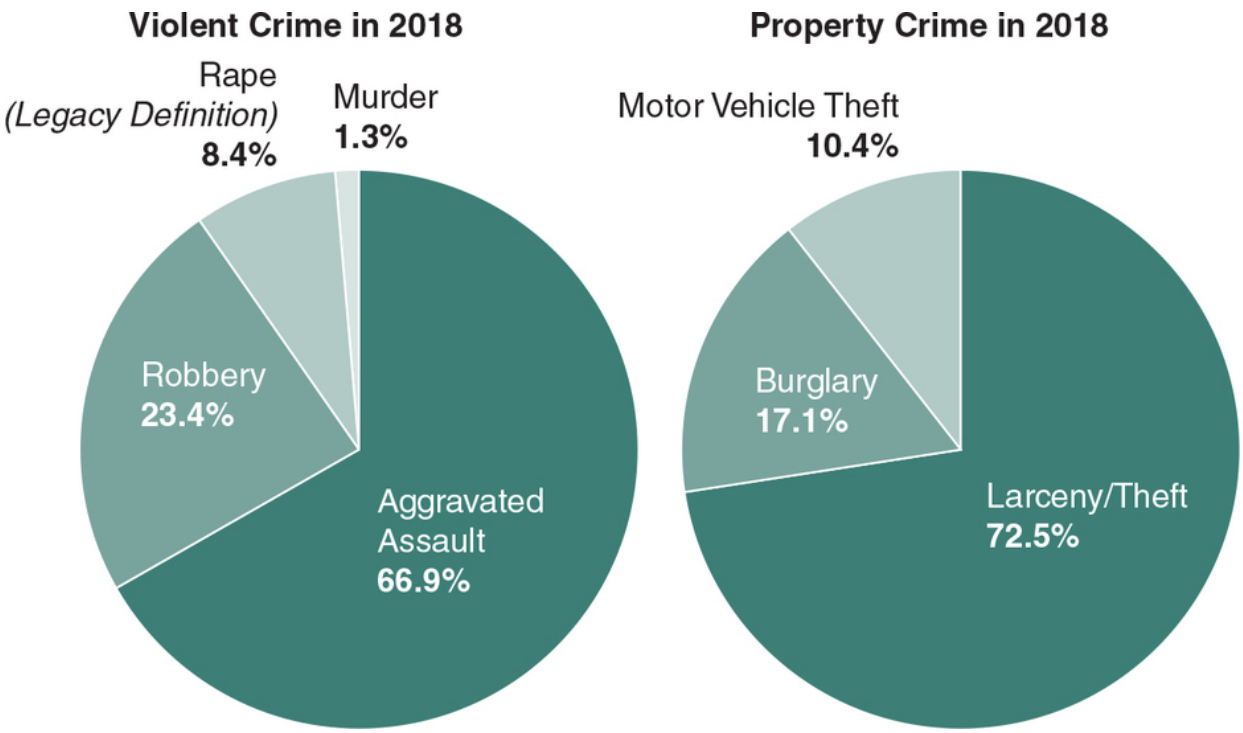
UCR DATA ON VIOLENT CRIME

In the Uniform Crime Reporting System (UCR), as discussed in the previous chapter, the four violent crimes are murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. Together, reports of these crimes comprise the violent crime rate provided annually to the public (see **Figure 8.1** for trends in violent crime and **Figure 8.2** for percentages of violent and property crime). According to the UCR (Federal Bureau of Investigation [FBI], 2019a), aggravated assault accounted for the largest share of violent crimes known to police (approximately 67%) in 2018 in the United States, and murder accounted for the smallest share (approximately 1.3%). Firearms were used in 72.7% of homicides committed in 2018; knives or cutting instruments in 11.8% of the incidents; personal weapons, such as hands, fists, and feet, were used in 4.8% of the homicides. Other dangerous weapons were used in the remaining 12.6% of the crimes.



Description

Figure 8.1 Five-Year Trend in Violent Crime
Source: Federal Bureau of Investigation (2019a).



Description

Figure 8.2 Violent and Property Crime Distribution in the United States, 2018

Source: Federal Bureau of Investigation (2019a).

The geography of violence is largely distributed across two primary locations—the home and the street. Additional locations—for example, schools, bars, places of work—comprise smaller percentages of violence. Until recently, much of the emphasis on stopping violent crimes has been directed at the more visible street crimes and less at violence within the home. Street crimes are far more likely to come to the attention of police and thus more likely to be represented in official statistics. However, women and children are more likely to be harmed by violence in their homes and by people they know than by strangers on the street. Thus, both researchers and law enforcement officials have given increasing attention to studying, preventing, and responding to this category of violent crime. Workplace and school violence also are drawing more attention, as we discuss later in this chapter.

GENDER, RACE, AND ETHNIC DIFFERENCES IN CRIMINAL VIOLENCE

UCR data consistently indicate that males account for 80% to 90% of total arrests for violent crimes in any given year. In 2018, males accounted for about 87% of the annual arrests for murder (FBI, 2019a). This 9:1 ratio is characteristic of other countries as well.

Arrest rates for aggravated assault are slightly different, with 76% male and 24% female. Although women's violent crime rate increased faster than the men's rate for a brief period in the mid-1990s, women continue to be far underrepresented in the violent crime statistics. The two dominant explanations for the gender discrepancies in violent offending are (1) socialization factors (the fact that women are less likely than men to be encouraged to be violent and physically aggressive) and (2) biological factors (with some researchers linking the male hormone testosterone to aggression).

Women also are said to have less opportunity to commit the violent street crimes that come to the attention of police. Thus, some theorists have suggested that violence perpetrated by women may go undetected and unreported because it is more likely to occur in the privacy of the home. Even if this were so, it would be unlikely to narrow the gender gap in violent offending because much male violence in the home also goes undetected and unreported. Although gender differences in violent offending have garnered some interest, it is racial and ethnic differences that have produced the most commentary. Race differences in crime and violence remain emotionally and politically charged, divisive topics in the United States and in many other societies around the world (Hawkins, 2003). National surveys conducted in the United States, for example, suggest that a majority of white respondents believe Blacks and Latinx are more prone (innately and culturally) to violence than whites or Asians (Bobo & Kluegel, 1997; Unnever & Cullen, 2012). These beliefs demonstrate the continual existence of stereotypes as misguided explanations of criminal violence in the United States. Official crime data can be partly blamed for perpetrating these stereotypes. According to these data, African Americans in the United States are involved in criminal homicide and other forms of violence at a rate that far exceeds their numbers in the general population. For example, although African Americans make up about 13.5% of the U.S. population, they accounted for more than 53% of all arrests for murder in 2018 (FBI, 2019a). These statistics hold for both adult and juvenile Black Americans. These figures reflect social inequalities such as lack of employment and educational opportunities, racial oppression in its many forms, discriminatory treatment at the hands of the criminal justice system, and law enforcement practices in geographical areas where many African Americans reside.

In 2020, it became clear that the problem of systemic racism in American society had to be addressed. For over 400 years, despite

some progress made during civil rights eras, pernicious racism has continued across many segments of society. The anecdotes involving police officers at the beginning of this chapter are illustrations. It is also important to emphasize, as it was in Chapter 2, that some police violence is justified. It is unjustified violence, disproportionately used against some groups, that is of concern today.

It is also extremely important to emphasize that race or ethnic differences in people who commit violent crime are *not* due to genetic or biological factors, such as racial differences in innate aggressive traits. As we shall see shortly, researchers have explored and sometimes uncovered links between biology and aggression, but these links are not racially or ethnically connected.

In sum, conclusions about the relationship between violence and race as well as ethnicity must be made with extreme caution. As noted in Chapter 1 of this text, forensic psychologists and mental health practitioners in general must be sensitive to the special concerns of racial and ethnic groups. They must become highly knowledgeable about the beliefs, attitudes, values, traditions, and expected behaviors of each ethnic or racial group or subculture with which they interact if they are to be effective and helpful to offenders and their victims. **Ethnocentrism**, or viewing others strictly through one's own cultural perspectives, often encourages people—including mental health professionals—to form stereotypes and biases that limit their ability to assess and treat those from diverse backgrounds (Feindler, Rathus, & Silver, 2003).

Furthermore, we must be careful not to focus exclusively on any one racial or ethnic group to the exclusion of others. Although great attention has been paid to the street crimes of Black males, the research microscope has ignored other groups. Researchers do not generally focus on whites as a separate group, despite the fact that violence among whites occurs regularly. Researchers do filter out other racial and ethnic groups, however. Overall, many puzzles remain in any attempts to explain the ethnic and racial distribution of violence and its changes over time (Hawkins, 2003). In addressing that distribution, participation of whites should not be ignored. Furthermore, as society increasingly becomes multiracial and multiethnic, it will be difficult to justify placing people in racial or ethnic categories.

GUNS—A NATIONAL EMERGENCY

Gun deaths in the United States are a disturbing reality that remains unaddressed by meaningful legislation on gun safety and control. Consequently, groups and individuals, including victims of such

violence, are supporters of a variety of gun control and gun safety measures. (See **Photos 8.1 and 8.2.**)

Not all gun deaths are crime related, but many are. In 2017, 39,773 people died from firearm-related injuries in the United States, according to the Centers for Disease Control and Prevention (CDC; 2019), which has tracked gun-related deaths since 1979. This recent number of firearm deaths in the United States was the highest in 40 years (Charlton, 2019). Each year, firearm injuries are the third leading cause of death for youth in the United States (Price & Khubchandani, 2019). Perhaps more shockingly, 60% of the gun-related fatalities were suicides, while 37% were homicides. The other 3% included accidental gun-related deaths and law enforcement shootings that were officially ruled justifiable. Globally, the majority of firearm deaths are due to homicides (Naghavi, 2018).

The data also reveal that gun-related suicides are more concentrated in places with higher firearm ownership and looser gun legislation (Charlton, 2019; Naghavi, 2018). Naghavi asserts, “Readily available firearms facilitate unplanned suicide attempts and increase the probability of an injury being lethal” (2018, p. 809). It should be noted that 91% of attempts of suicide by a firearm are fatal on the first attempt (Fowler, Dahlberg, Haileyesus, & Annest, 2015), indicating that the choice of a gun for a suicide attempt is largely a certain avenue to death. Moreover, the decision by youth to commit suicide by a firearm is quick and largely impulsive (Simon et al., 2001). Some studies reveal that 43% of homes with youths under 18 reported having one or more unlocked guns, 9% kept the guns unlocked and loaded, and 4% kept them unlocked, unloaded, but stored with ammunition (Price & Khubchandani, 2019; Schuster, Franke, Bastian, Sors, & Halfon, 2000). Other studies have found similar results (Azrael, Cohen, Salhi, & Miller, 2018; J. Scott, Azrael, & Miller, 2018).



► Photo 8.1 A rally against gun violence in Maryland in support of a bill to ban assault weapons and place other restrictions.
iStock/EyeJoy



► Photo 8.2 Aalayah Eastmond, a survivor of the school mass shooting in Parkland, Florida, testifies before Congress in 2019 on the need for gun safety and gun control legislation.
Chip Somodevilla / Staff/Getty Images

Clearly, firearms-related deaths remain a huge problem in the United States. In 2014, an American Psychological Association (APA) task force on the prediction and prevention of gun violence issued a number of policy statements based on the available scientific literature on gun violence (see **Focus 8.1**). Over the past decade, numerous efforts have been made to place restrictions on the purchase and possession of guns, while still maintaining the guarantees of the Second Amendment of the Constitution. These restrictions include background checks, keeping guns away from ex-felons and from persons with serious mental illness, and gun-free safe zones in schools, hospitals, entertainment venues, and the like. At the same time, however, approximately 25 states have right-to-carry laws, which allow licensed gun owners to carry weapons in public places (Doucette, Crifasi, & Frattaroli, 2019). Some 10 states allow this on public university campuses (excepting stadiums and administrative offices, but not classrooms). Laws differ widely by states, and restrictions apply, but it is clear that gun possession is not uncommon. Although not all violent crime is committed with guns, guns are often associated with violent crime.

Focus 8.1

Expert Report on Gun Violence

In December 2013, the APA released a policy report on gun violence, prepared by a panel of experts including clinicians; professors of psychology, public health, pediatrics, and public policy; and representatives from private and public foundations. The complete report is available at http://www.apa.org/pubs/info/reports/gun-violence-prevention.aspx.

Following are some high points and recommendations of the report, adapted from its summary:

- No single profile can reliably predict who will use a gun in a violent act.
- Prevention is most effective at the community level, when the community is engaged in collective problem solving.
- Males in particular face gendered expectations that emphasize self-sufficiency, toughness, and violence. Knowledge of developmental psychologists must be used to change these expectations.
- Training police in crisis intervention and training community members in mental health first aid has shown success; more such community programs should be considered.
- Public health messaging campaigns on safe gun storage are needed.
- Individuals with depression or with severe mental illness are more likely to commit suicide with a gun than to commit homicide with a gun.
- Most individuals who are mentally ill are not dangerous, but for those at risk for violence, mental health treatment can often prevent gun violence; at present, access to mental health services in the United States is woefully inadequate.
- Firearms prohibitions for high-risk groups have been shown to reduce violence. High-risk groups include domestic violence offenders, persons convicted of violent misdemeanor crimes, and those with mental illness who have been adjudicated as being a threat to themselves or others.
- Threat assessment teams in schools, the workplace, and government agencies are a crucial component in preventing violence and intervening to assist a person posing a threat of violence or self-harm.
- Additional policies to reduce gun violence include licensing of handgun purchases, background-check requirements for all gun sales, and close oversight of retail gun sellers.

QUESTIONS FOR DISCUSSION

1. What would you add to the above list? Is any important context or policy missing?
2. Comment on the above points from the perspective of (a) a mental health professional, (b) a law enforcement officer, (c) a person who says he owns guns primarily for sport, and (d) a person who says she owns a gun primarily for protection.

THEORETICAL PERSPECTIVES ON VIOLENCE

Criminal violence can be classified along several continuums. For example, one continuum can represent the amount of planning involved in the act. At one pole, the act is highly calculated and planned (cold-blooded), but at the other pole, the act can be characterized as highly impulsive and emotionally driven behavior with virtually no planning (e.g., crimes of passion). Criminal law recognizes this continuum as well, such as by attaching "degrees" to some crimes, such as murder.

In psychological literature, violence may represent different forms of aggression, ranging from instrumental to reactive, with equal elements of both occurring at the middle sections of the continuum. **Instrumental violence** "occurs when the injury of an individual is secondary to the acquisition of some other external goal" (Woodworth & Porter, 2002, p. 437). The external goal may be money, status, security, or material goods. **Reactive violence**—also called **expressive violence**—refers to physical violence precipitated by a hostile and angry reaction to a perceived threat or dangerous situation. Reactive violence, therefore, "is often the impulsive and unthoughtful response to a provocation, real or imagined" (APA, 1996, p. 8). An angry person who "flies off the handle" and shoots a friend over a petty argument represents an obvious example. More often than not, these aggressors—once the emotions calm down—cannot believe what they did or understand how they could lose control to that level. In many cases, though, it is difficult to clearly differentiate whether the violence is instrumental or reactive—it often appears to include some mixture of both instrumental and reactive factors. Consequently, violent actions often fall in the middle ranges of the instrumental–reactive continuum, similar to what is found in the normal curve.

The Causes of Violence

The causes of violence are multiple and complex. The psychological literature usually divides these causes into four highly overlapping

categories: (1) neurobiological, (2) socialization, (3) cognitive, and (4) situational factors. It is important to stress that they are overlapping, because contemporary research on criminal behavior increasingly takes a developmental perspective, as indicated in Chapter 7. Moreover, scholars from different perspectives, even from different disciplines, collaborate to study violence and other social problems.

Neurobiological Factors

The neurobiological factors refer to a wide array of neurological and neurochemical influences on the brain during the life course that may result in high levels of aggressive and violent behavior. Advances in the neurosciences have revealed links between violence and brain damage or dysfunction resulting from a variety of both genetic and environmental risk factors (Berryessa, Martinez-Martin, & Allyse, 2013; Hubbs-Tait, Nation, Krebs, & Bellinger, 2005; Raine, 2013). Among the more prominent environmental risk factors are the neurotoxins. “Neurotoxins are trace elements, pesticides, chemicals, and biological elements that have toxic effects on the human nervous system” (Hubbs-Tait et al., 2005, p. 58). Examples of neurotoxins are lead, cadmium, and manganese, all of which are trace elements found in the environment. Neurotoxins have the potential of producing neurocognitive dysfunction which predisposes individuals to engage in antisocial behavior and violence (Raine, 2013). Recall from Chapter 7 that this is particularly of concern as it affects childhood development.

Malnutrition may also significantly affect the neurodevelopment of the brain. It is estimated that malnutrition affects the neurodevelopment of 167.2 million preschool children worldwide (Waber et al., 2014). Several studies have indicated that prenatal and early childhood malnutrition “is associated with adverse outcomes in school-aged children and adolescents, including an increased prevalence of conduct problems and aggressive behaviors” (Galler et al., 2012, p. 239). Galler and her associates (2012) found that the conduct problems and aggressive behavior were significantly elevated in adolescence, despite improvements in diet during infancy.

Alcohol, drug ingestion, and tobacco use by the mother adversely affects critical fetal development. Traumatic head injury as a result of child abuse or accident may also be a contributing factor, especially if the injury occurs in the frontal cortex region.

The best approach, of course, is to prevent these from occurring in the first place. Once the deficits do occur, attempts to remove or remedy the neurobiological problems may include neurological intervention in the form of medication. However, and equally important, a supportive and competent social environment has been

found to neutralize or mitigate the effects of these neurobiological factors on any propensity toward violence. Adrian Raine (2013), one of the leading researchers on the relationship between brain damage and violence, writes, “I want to stress that social factors are critical both in interacting with biological forces in causing crime, and in directly producing the biological changes that predispose a person to violence” (p. 9).

Socialization Factors

Socialization factors refer to those processes through which a person learns patterns of thinking, behavior, and feeling from their early life experiences (APA, 1996). More specifically, according to the APA, “[s]cientists use the term socialization to describe the process by which a child learns the ‘scripts’ for specific social behavior, along with the rules, attitudes, values, and norms that guide interactions with others” (p. 3). Furthermore, children can learn as much from observing significant or admired others in their environment as from their own experiences. Considerable research indicates that aggressive, antisocial, and violent behaviors are often learned from significant others (including TV, movie, online, or fictional characters) and are held in reserve for response to specific social situations. This is a good argument for limiting young children’s exposure to violent media images, a topic that will be addressed shortly. Nevertheless, it is too simplistic to say that watching media “causes” violent behavior. We return to this topic later in the chapter.

Cognitive Factors

Cognitive factors refer to the ideas, beliefs, and patterns of thinking that emerge as a result of interactions with the world during a person’s lifetime. Research has revealed that violent individuals have different ways of processing and interpreting that information. “They tend to perceive hostility in others when there is no hostility” (APA, 1996, p. 5). As you may recall from Chapter 7, this notable tendency is referred to as *hostile attribution bias.* People who act violently are also less efficient at thinking of nonviolent ways to solve social conflicts and disagreements. They also tend to be more accepting of violence in general. Some young males—especially members of violent peer groups or gangs—have adopted the belief that it is acceptable to react to every perceived or imagined sign of disrespect with aggression. Simply put, aggressive children and adolescents have more antisocial, violent beliefs than their nonaggressive peers (Shahinfar, Kupersmidt, & Matza, 2001).

Situational Factors

Situational factors refer to the characteristics of the environment, such as stress or aggression in others, that encourage or engender violent behavior. As pointed out by many researchers, “[o]ften we seek the causes of violence in the person and ignore the contributing effects of the situation” (APA, 1996, p. 6). Almost any aversive situation—such as excessive heat, continuous loud noise, or crowded living conditions—can provoke aggression and violence in those persons submitted to such conditions. In various periods of time in 2020, many people across the world were asked to remain in their homes as much as possible to avoid contracting or disseminating the strain of coronavirus that resulted in widespread instances of COVID-19. Many people who were not essential workers lost their jobs or were placed on indefinite furloughs. The “lockdown” or “stay-at-home” recommendations or requirements resulted in family members and roommates being confined in often close quarters, sometimes for as long as 2 months or more. Many communities reported increased calls to domestic violence hot lines and indeed police reported more calls as well as more arrests (Kofman & Garfin, 2020). Neighborhoods, schools, family, and peers can all be conducive to the development of violent behavior. The presence of weapons increases the chances that the conflict will occur in the first place and that it will have lethal consequences once it does.

It is also clear that children who grow up in deprived environments where poverty, frustration, and hopelessness are prevalent are at much greater risk for later involvement in violence than other children, but it must be emphasized that most children growing up under these conditions do not follow a destructive path. Childhood aggression can predict adult violence in some individuals, though. Research has discovered that approximately 10% of highly aggressive children grow up to account for 50% to 60% of the majority of violent crimes (Bartol & Bartol, 2011). During their childhood, this small percentage of highly aggressive children exhibit aggression, disobedience, and disruptions at home and in school; are disliked and avoided by peers; are neglected by parents and teachers; and are likely to fail in school, eventually dropping out. Unsupervised and susceptible to the pernicious influence of other delinquent youth, they grow up to be antisocial, aggressive, and sometimes violent young adults. They are likely to become involved in abusive intimate relationships, and they often abuse their own children.

Despite the complexity and multitude of causes, human violence is ultimately a learned behavior. Because it is learned, it can be unlearned or altered, or conditions can be changed so that it is not

learned in the first place. Furthermore, violence is a behavior that is acquired early in life—in many cases, *very* early. Consequently, prevention of violence should likewise begin very early in life.

THE EFFECTS OF VIOLENT MEDIA

Over the past 40 years, a significant amount of research literature has strongly supported the observation that media violence viewing is one factor contributing to the development of aggression and violence (Bushman & Huesmann, 2012; Huesmann, Moise-Titus, Podolski, & Eron, 2003). The majority of the research has focused on the effects of watching dramatic violence on TV, video, and film. As we will note in this section, though, the effects are not as negative as sometimes assumed. (See **Perspective 8.1** in which Dr. Neil Gowensmith discusses his unique personal response to such exposure. Dr. Gowensmith, who is cited in Chapters 5 and 12, has devoted his career to studying crime, mental health issues, and criminal justice policies related to all offenders.)

Most of the research has focused on the effects of watching dramatic violence on TV, video, and film. A wide variety of research projects have arrived at the same fundamental conclusion: Exposure to dramatic violence on TV, other media, and in the movies is related to violent behavior. In addition to the hundreds of research findings, three major national studies have concluded that *heavy* exposure to media violence is one of the most significant causes of violence in society (APA, 2003c). They include the Surgeon General's Commission report (Surgeon General's Scientific Advisory Committee on Television and Social Behavior, 1972), the National Institutes of Mental Health's (1982) 10-year follow-up study on "Television and Behavior," and the American Psychological Association's Task Force on Television in Society (1992). According to the APA (2003c), these reports indicate that viewing a steady diet of violence has the following negative effects:

- It increases the viewer's fear of becoming a victim, with a corresponding increase in self-protective behaviors and increased distrust of others.
- It desensitizes the viewer to violence. That is, viewers often become less sensitive to the pain and suffering of others.
- It encourages some individuals to become more involved in violent actions.
- It demonstrates how desired goods and services can be obtained through the use of aggression and violence.
- Sexual violence in X- and R-rated films has been shown to increase sexual aggression in some males.

It is important to distinguish between short-term and long-term effects of media on aggressive behavior and violence. Long-term effects occur as a result of learning and storing violent and aggressive material in the cognitive system that eventually "crystallizes" and is difficult to change as the child gets older. Young children are especially open to new learning, and these experiences often have a greater impact during the early developmental years than learning events that occur during adulthood. Moreover,

> [i]n recent theorizing, long-term relations have been ascribed mainly to acquisition through observational learning of three social-cognitive structures: schemas about a hostile world, scripts for social problem solving that focus on aggression, and normative beliefs that aggression is acceptable. (Huesmann, Moise-Titus, Podolski, & Eron, 2003, p. 201)

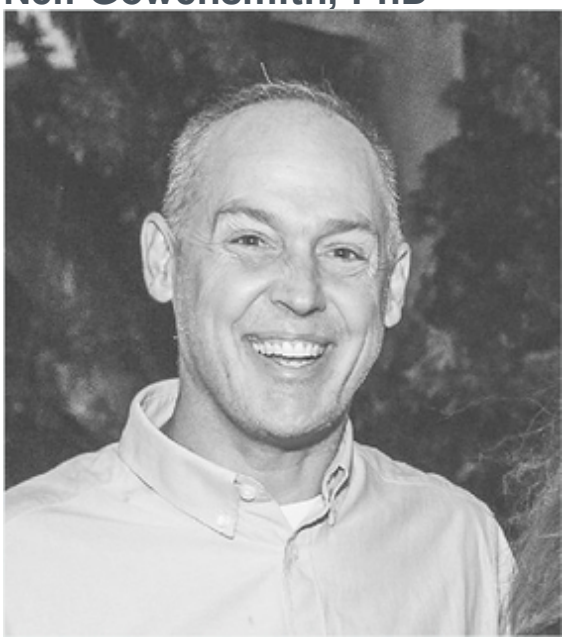
Observational learning refers to the very strong tendency of human beings to imitate any significant or admired person or model they observe. Children are especially prone to doing this. Consequently, observation of specific aggressive behaviors around them increases children's likelihood of behaving exactly that way. Over time and with frequent exposure to aggressive behavior, children develop beliefs (schemas) that the world is basically a hostile place, that aggression is an acceptable social behavior, and that the best way to solve conflicts and to get things is to be aggressive.
Huesmann et al. (2003) found strong long-term effects of media violence observed in early childhood that carried over into adulthood:

> Overall, these results suggest that both males and females from all social strata and all levels of initial aggressiveness are placed at increased risk for the development of adult aggressive and violent behavior when they view a high and steady diet of violent TV shows in early childhood. (p. 218)

In addition, the Huesmann et al. (2003) study found that violent films, TV programs, and other media that have the most deleterious effects on children are not always the ones that adults and critics perceive as most violent. What type of scene is the most deleterious to children? "It is one in which the child identifies with the perpetrator of the violence, the child perceives the scene as telling about life like it is, and the perpetrator is rewarded for the violence" (p. 218). In other words, violent media that portray an admired perpetrator as

successful through the use of violence appear to have a greater impact on the child's observational learning of aggression and violence over the long haul. The researchers suggest that the easiest way to reduce the effects of media violence on children is to restrict children's exposure to such violence. The persons in the best position to do this, particularly with young children, are parents or caretakers.
From My Perspective 8.1

A Dream Career Confronts Reality
Neil Gowensmith, PhD



Neil Gowensmith

The answer to what made me choose forensic psychology as a profession is not a noble one: it's horror movies and heavy metal music. I grew up in the 1980s—a veritable golden age for both horror and metal. I watched every horror movie possible, from the dumbest B-reels to the most critically acclaimed, and I was always drawn into the "mind of the killer." What made him do those terrible things? What was driving him? I wondered what it was like for Michael Myers to spend his childhood in a dank, horrifying insane asylum. I reveled in the narcissistic and sinister brilliance of Dr. Hannibal Lecter. And why wouldn't Freddy Krueger be ticked off after neighborhood parents burned him alive in an incinerator?

Heavy metal was an even bigger outlet, especially for a teenager with grief, loss, and anger issues. Heavy metal is rooted in lyrics about mental illness and violent crime, and they complemented perfectly the stories from my favorite horror movies. "Madhouse" by Anthrax and Metallica's "Welcome Home (Sanitarium)" were fascinating

descriptions of being wrongfully locked in asylums. Slayer, Cannibal Corpse, Death, Mayhem—I was all in. In the words of Quiet Riot's lead singer, pictured wild-eyed in a straitjacket on their album cover, I just *knew* that "metal health will drive you mad."

So it wasn't surprising when I latched on to forensic psychology in graduate school at Colorado State University, dreaming of a career in which I could see these movies and songs come to life. Walking into jail the first time, ready to evaluate a defendant who was charged with a violent assault, was the culmination of years of training, study, schooling—and yes, movies and metal. I then completed my forensic postdoctoral fellowship at St. Elizabeth's Hospital in Washington, DC, bringing Slayer's "Criminally Insane" to life.

After postdoc, I took a job at the New Jersey State Prison (NJSP), the state's main maximum-security institution. My job duties included overseeing mental health care for certain units, providing crisis mental health care, conducting risk assessments, and monitoring inmates in Administrative Segregation. In the beginning, it was everything that my inner voyeur dreamed about—psychopathic killers, brutal case files, bizarre mental illnesses, and stories that put horror movies and heavy metal lyrics to shame.

However, my perspective was soon jarringly and permanently changed. In a very short time, I was a witness to several instances of tragedy involving inmates with mental illness. I talked inmates out of suicide. I saw inmates who suffered from mental illness be exploited and victimized by other antisocial inmates in their units. I saw little difference between persons found Not Guilty by Reason of Insanity at St. Elizabeth's Hospital and those sentenced to life in prison at NJSP—except that many of the most mentally ill inmates in prison were punished with solitary confinement or administrative segregation as a way to manage acute symptoms. A metaphorical switch flipped inside me. The stories regarding mental illness in prison were no longer titillating or fascinating. They were tragic.

I should be clear: These experiences were not limited to just NJSP. These are common, daily events in jails and prisons across the United States (and beyond). I had unwittingly walked into a place in which correctional mental health care was judicially mandated as the result of a class-action lawsuit and one that was absolutely and totally unable to manage the unbelievable intensity of mental health needs. And as I found out later in my career, these realities are still true in many correctional institutions.

During that time as an early-career prison psychologist, I transformed from a thrill-seeking forensic psychologist into a justice-seeking one. My old horror and metal tropes didn't address the tragedy I was

witnessing. Please understand that most of the inmates there had committed terrible crimes and were justifiably being held accountable for their actions; in that sense, justice was likely being served. However, regardless of their crimes, a significant number of inmates were experiencing symptoms of serious and persistent mental illness—psychosis, mania, deep depression, dissociation, trauma—and many of their pre-prison histories were shaped by the failings of our country's misguided approach to mental illness. My entire career since then has been rooted in the pursuit of social justice for people with mental illness—through applied research, teaching, consultation, legislative action, policy advocacy, and clinical work.

I eventually left my job as a prison psychologist as I didn't have the resilience or fortitude to remain unaffected by the work. It was taking a toll on me physically and psychologically. My wife and I dropped out of regular society for several months, living in Central America and Southern Africa to clear our heads and reassess how we could live our lives with purpose. After a year or so, I took a job as a community forensic psychologist in Hawai'i, and I was eventually promoted to the Chief of Forensic Services for the state of Hawai'i. As the chief, I was able to oversee a system that was forward-thinking and innovative, collaborating with colleagues to develop several forensic programs that reflected promising practices and emerging research. I saw how the blend of research, training, clinical work, and social justice made a real difference in people's lives.

I now work as a professor at the University of Denver. I created our in-house forensic institute—the University of Denver's Forensic Institute for Research, Service, and Training (Denver FIRST)—to capitalize on our department's unique clinical and research strengths. I later developed a postdoctoral forensic fellowship, and I've enjoyed watching our fellows teach graduate courses, conduct research, supervise graduate students, and conduct forensic assessments across a variety of psycholegal referral questions. I enjoy mentoring students and encouraging them to pursue meaningful work in whatever niche of forensic psychology they are drawn toward—including corrections, given the vast amount of need for correctional mental health expertise.

Above all, regardless of whatever I'm doing professionally, I always try to remember the importance of rooting it in my pursuit of social justice. That can be found when I testify before the legislature, conduct an insanity evaluation, develop an app to monitor for bias in forensic evaluations, or consult with states to develop improved forensic mental health systems. Persons with mental illness deserve the opportunity to have just, equitable, meaningful lives.

Unfortunately, they are massively overrepresented in the legal system—typically for minor offenses and as a result of their mental illness. They then face the double-whammy of living with mental illness and a criminal record. Forensic psychologists can play a critical role in raising awareness about the injustices faced by this population and advocate for meaningful systemic changes.
Dr. Gowensmith is a forensic psychologist specializing in forensic assessment and public forensic mental health systems. As noted, he is a professor at the University of Denver, director of Denver FIRST, and a national consultant on forensic mental health issues. In his free time, he enjoys spending time with his family, traveling, enjoying the outdoors, and playing heavy metal on his guitar poorly (he says) but loudly.

Violent Video and Electronic Games

Young people today are growing up in a media-saturated environment. In fact, some scholars refer to this generation as “born digital” (Palfrey & Gasser, 2008). The earliest investigations of video game play in the United States indicated that 97% of adolescents (ages 12–17) played computer, web, tablet, cell phone, or console video games (Lenhart et al., 2008; Willoughby, Adachi, & Good, 2012). Ninety-nine percent of boys and 94% of girls played the games (Lenhart et al., 2008). Furthermore, 98% of the games rated for teens have violent content, and 64% of those rated for everyone have such content (Calvert et al., 2017). Early surveys also revealed that approximately half of the adolescents played video games on a mobile device, such as a cell phone, iPad, or other handheld system, which is not entirely surprising considering that 2007 marked the “explosion” of mobile technological devices (T. Friedman, 2016). Prior to the digital explosion of 2007, surveys estimated that the average youth observed more than 100,000 violent episodes and some 20,000 murders on television before reaching adolescence.
Virtually everyone reading this textbook has likely played video games, some perhaps for hours at a time. Many of you have played *violent* video games. Has that made you more violent? Has it desensitized you to the effects of violence? Has it caused you serious psychological harm? Some predicted that the U.S. Supreme Court would address this last question, when it announced its decision in Brown v. Entertainment Merchants Association (2011). The case involved a California law passed in 2005 banning the sale of violent video games to children under 18 and imposing a $1,000 fine on any retailer caught doing so. The games in question were those that depicted killing, maiming, dismembering, or sexually assaulting the image of a human. However, the California Supreme Court struck

down the law in 2009, stating there was no conclusive evidence that these games seriously harmed children. The U.S. Supreme Court agreed, noting that research on the effects of exposure to such violence was equivocal. The Court supported the First Amendment right of the Entertainment Merchants Association to distribute their products and refused to allow a fine on retailers who sold them.

The effect of violent video games on violence became a serious topic for study after a series of school shootings that occurred during the late 1990s. The shooters in these cases were often students who habitually played violent video games. For example, Eric Harris and Dylan Klebold, the Columbine (Colorado) High School students who murdered 13 persons and wounded 23 before killing themselves, were fascinated with the bloody video game *Doom,* one of the earliest and most successful of all violent video games. “Harris created a customized version of Doom with two shooters, extra weapons, unlimited ammunition, and victims could not fight back—features that are eerily similar to aspects of the actual shootings” (C. A. Anderson & Bushman, 2001, p. 353).

Despite this anecdotal account, however, researchers have not linked the playing of violent video games to acts of violence (APA, 2015), including school shootings, which are discussed later in the chapter. Some researchers challenge both the methodology and results of earlier studies (Ferguson, 2015; Markey, Ivory, Slotter, Oliver, & Maglalang, 2019). This does not mean that playing violent video games is an innocuous activity, as we will see.

A comprehensive report by a task force assigned by the American Psychological Association to assess the impact of violent video games (Calvert et al., 2017) is revealing. The 10-member task force reviewed all relevant and methodologically sound studies on the topic through 2013. Its conclusions are sobering. Exposure to violent video games was associated with increased aggressive behavior, cognitions, affect, desensitization, and decreased empathy. Even controlling for other risk factors (e.g., poor academic achievement, parental conflict, exposure to deviant peers), exposure to violent video games was considered a robust risk factor for aggressive outcomes. Nevertheless, the task force could not conclude that there was a direct link between violent video games and either delinquency or adult crime.

The overwhelming majority of people who play video games today, including violent games, do not commit acts of violence. Nevertheless, the Calvert et al. (2017) report suggests that the games have an overall negative effect on many users. Some research still indicates they may have a particularly negative effect on

individuals who are already violence prone (e.g., as a result of witnessing violence in their homes or having exhibited violent behavior in the past). This leads us to topics that are of great interest to forensic psychologists today, specifically, threat assessment and school and workplace violence.

THREAT ASSESSMENT

"A threat is an expression of intent to do harm or act out violently against someone or something. A threat can be spoken, written, or symbolic—for example, motioning with one's hands as though shooting at another person" (O'Toole, 2000, p. 6). Threat assessment is concerned with predicting future violence or other undesirable actions targeted at specific individuals or institutions after an expressed threat has been communicated. Although similar concepts are involved, it can be distinguished from risk assessment, addressed in other chapters. Psychological risk assessment is a systematic process of evaluating the likelihood that a person will engage in dangerous behavior, even though the person has not made a direct or implied threat. Psychological risk assessments are most commonly used in association with criminal proceedings, such as deciding whether to grant bail or at sentencing, including in some states, death sentencing. They also are commonly used in correctional settings, such as deciding where to house prisoners or deciding whether to grant release on parole. Risk assessments may be used in civil contexts as well, such as evaluating the likelihood of people being a danger to themselves or others before releasing them from a psychiatric facility.

Threat assessment differs because a threat has been communicated. Psychologists engaged in threat assessment work often note, then, that that their focus is more on preventing violence than on predicting it. According to Dewey Cornell (cited in A. Miller, 2014, p. 40), "We don't intervene because we predict someone is dangerous, we want to intervene because they're troubled or there's conflict or people are worried about them." Put another way, threat assessment aims to interrupt people on a pathway to commit violence (Meloy, cited in A. Miller, 2014). Recall also that the APA (2013a) panel on gun violence, whose work was featured in Focus 8.1, highlighted the fact that threat assessments in schools, the workplace, and government agencies were crucial to preventing violence in those environments.

Threat assessment is a process to determine the credibility and seriousness of a threat and the likelihood that it will be carried out. It involves three basic functions: identify, assess, and manage (see **Table 8.1**). Similar to the risk assessment instruments discussed in

earlier chapters, forensic psychologists have devised instruments that can be used for assessing the likelihood that a threat will be carried out. Little research is available on the extent to which these instruments are used, however. There is also a professional group, the Association of Threat Assessment Professionals, and a number of publications (e.g., J. R. Meloy & Hoffmann, 2013) that provide guidance to forensic psychologists and other mental health professionals conducting threat assessments. In addition, the *Journal of Threat Assessment and Management* was launched in 2014.

Table 8.1

Because an enormous amount of research in recent years has concentrated on school shootings, we will discuss shortly what is known about threat assessment as it pertains to that context. Prior to that, however, we summarize what is known about school shootings as a general phenomenon. Workplace violence is also a prominent issue needing threat assessment procedures, and that is covered later in the chapter.

School Shootings

The term ***school shooting*** most often refers to those violent incidents occurring within the school building, on the school grounds or school property. Some believe (Daniels & Bradley, 2011) that the definition should include one or more fatalities that happen “in school, on school property, at school sponsored activities, or to a member of the school community on his or her commute to or from school” (p. 3). Recent data on violent deaths in schools (e.g., the School-Associated Violent Deaths Surveillance Study [SAVD]) also include these broader contexts. Thus, administrators, teachers, and other staff members are included along with students, and suicides as well as homicides are tabulated. The SAVD is a study developed by the CDC, and has been collecting data since 1992. All data from 1999 to the present are considered “preliminary” (Planty & Truman, 2013), so statistics should be cited with caution.

It is believed, on the basis of the data that are available, that homicides of youth at school comprise just over 1% of the total homicides in the United States in any given year (Musu et al., 2019; Planty & Truman, 2013). However, in these statistics, “at school” includes not only on school property and while attending school but also on the way to or from school and while attending or traveling to or from a school-sponsored event. However, shootings at schools, especially mass school shootings, are very rare events (Daniels & Page, 2013; Price & Khubchandani, 2019). There are an estimated 132,853 K–12 schools in the United States, including 98,158 public schools and 34,576 private schools (Riser-Kositsky, 2019). Data from

various sources continually affirm that “schools are one of the safest places for youth in every community” (Price & Khubchandani, 2019, p. 156). For example, from July 1, 2015 to June 30, 2016, only 18 of the 1,478 homicides of school-age children (ages 5 to 18) occurred at school (Musu et al., 2019). Of all the school shootings between 2000 and 2018, 6 involved elementary schools, 8 middle schools, and 24 high schools (FBI, 2019b). Although 15 shootings occurred at institutes of higher education during that period, we focus in this section on elementary, middle, and high school shootings.

“Aggressive behavior such as fighting and bullying are common problems in school, yet lethal attacks or more serious violence such as rape or aggravated assault are rare” (Nekvasil & Cornell, 2015, p. 99). Student *threats* of violence, on the other hand, are relatively common at schools, but they are often expressions of anger and frustration rather than serious plans of an imminent shooting (Nekvasil & Cornell, 2015). Interestingly, although public attention is often directed at student behavior against other students, victimization of teachers also has attracted research interest. (See **Focus 8.2** for more on this issue.) Fighting, bullying, and threats of violence are more common in the middle school (Grades 6–8) than in any other grade level. Although these expressions of anger and frustration should not be tolerated by the schools, very few are referred for formal threat assessments.

For our purposes, we restrict our discussion to those lethal attacks that take place within the school building, immediately outside the building, or other school property, including the parking lots, athletic fields, school stadiums, or even school buses.

Focus 8.2

Victimization of Teachers

It cannot be disputed that teachers are crucial to the healthy development of children. Not only do they educate. They offer support to families, guard the safety of the children in their care, and often use their own financial resources to purchase school supplies. Teachers have often prevented violence in school settings, and some have lost their lives protecting children. Although as in all professions there are outliers whose actions and competence are questionable, as a group, teachers are among society’s most valued workers. Unfortunately, teachers are often victimized in school settings by the students they serve. Although victimization may come from other adults (e.g., parents, supervisors, colleagues), the majority comes at the hands of youth, particularly but not exclusively adolescents. Victimization can be clearly violent—such as assaults—or clearly

nonviolent, such as theft of personal property. Acts of intimidation—bullying, harassment, threats—fall between these two poles. Longobardi, Badenes-Ribera, Fabris, Martinez, and McMahon (2019) reviewed research on teacher victimization that was conducted around the world. Beginning with 5,337 articles, they winnowed these to 24 studies that met their criteria for meta-analytic review. Longobardi et al. were interested in learning the prevalence of various actions against teachers, recency of the victimization, and self-reported victimization over the course of a teacher's career. Following are a few results from both that meta-analysis and other available research, including studies supported by a separate task force of the APA:

- Research on violence and other victimization of teachers is in early stages, with varying methodology and definitions across existing studies.
- Approximately 8% of teachers have been victims of physical assaults by students.
- In the United States, 80% of teachers reported experiencing some form of victimization by students within the current or past school year, ranging from physical abuse to verbal abuse.
- Victimization rates decreased as the severity of the offense increased. The lowest rates were for sexual assaults.
- In those studies that compared victimization reported by teachers to victimization of teachers reported by students, the rates were comparable.
- Physical violence, though rare, is typically accompanied by other forms of victimization.

QUESTIONS FOR DISCUSSION

1. Assuming that forensic psychologists are called in when students make threats against other students, should they also be performing threat assessments when students victimize teachers in ways illustrated earlier?
2. In the early 21st century, the APA formed a task force on classroom violence against teachers. Obtain any report subsequently issued by the task force and discuss its findings.
3. Should verbal abuse be included as a form of victimization? What about verbal threats? What about obscene gestures?
4. Discuss the likelihood that teachers overreport or underreport victimization. What might be reasons for doing either?

The great majority of school shootings have been carried out by one or more students against others. The horrific massacre of 20 first graders and 6 school staff members at Sandy Hook Elementary School in Newtown, Connecticut, in 2012 is an exception, because it

was carried out by a 20-year-old who lived in the community. Another is the shootings of 17 (and wounding of 17 others) at Marjory Stoneham High School in Parkland, Florida, in 2018 where the shooter was a 19-year-old former student. As of the fall of 2020, he had yet to be brought to trial. Some reports indicated he was prepared to plead guilty in exchange for a life sentence, but prosecutors are seeking the death penalty.

In recent years, some writers (e.g., Langman, 2013; Madfis & Levin, 2013) have preferred the term *school rampage shootings,* defined as involving "attacks on multiple parties, selected almost at random" (K. Newman, Fox, Harding, Mehta, & Roth, 2004, pp. 14–15). However, as noted by Böckler, Seeger, Sitzer, and Heitmeyer (2013), the term *rampage* suggests an impulsive, *random* act. School shootings are usually carefully planned by the perpetrator, sometimes over a period of months or even years. In addition, the shooter often develops a "hit list" or a plan to kill a specific group of students, such as athletes (Daniels et al., 2007; Daniels & Page, 2013).

Another problem with the terms *school shooting* or *rampage shooting* is the word *shooting.* Although a vast majority of school violence in the United States involves a gun, not all incidents do. Böckler et al. (2013) also observe that outside the United States, there are many cases where, because of the extensive restrictions on firearms, perpetrators resort to other weapons such as explosives, swords, knives, or axes. The United States is not immune to such attacks, however. In April 2014, a 16-year-old Pennsylvania student stabbed 20 students and a security guard before being restrained. "Even if such incidents are not 'shootings' in the literal sense, they exhibit clear similarities in perpetrator profile, contextual factors, developments in the lead-up to the attack, and modus operandi" (p. 6). However, in the United States, school fatal attacks in recent years have been overwhelmingly carried out with firearms. Consequently, we concentrate on gun-related violence in the following section.

Incidence of School Shootings

Although school shootings are rare, studies report that nonetheless they have been a rapidly growing phenomenon in modern Western societies over the past two decades (Böckler et al., 2013). In addition, more school shootings have occurred in the United States during that time frame than in all other countries combined (Böckler et al., 2013). In an attempt to determine whether school shootings in the United States are increasing, decreasing, or staying the same, a comprehensive analysis of all school shootings between 2009 and 2018 was conducted by CNN (C. Walker, Petulla, Fowler, Mier, Lou, & Griggs, 2019). In collecting the data, the researchers relied on open-

source databases, news reports, police departments, information from school websites, and data provided by Northwestern Institute on Complex Systems (NICO). The parameters followed in the data collection included the following: (1) the shooting must have involved at least one person being shot (not including the shooter); (2) the shooting must have occurred on school property, including the school building, athletic fields, parking lots, stadiums, and buses; (3) included accidental discharge of a firearm, as long as the first two parameters had been met; and (4) may include injuries sustained from a powerful BB gun since these injuries may be serious or even fatal.

The CNN statistics revealed a consistent and significant increase in U.S. school shootings over the 10-year period. In addition, a more recent CNN analysis in 2019 indicated that the yearly increases in school shootings are continuing, with 45 shootings occurring within the first 46 weeks of that year (Wolf & Walker, 2019). Between 2009 and 2018, there were 180 confirmed school shootings involving 356 victims, underscoring the point that although school shootings in America are increasing, statistically they represent a tiny fraction of shootings in the country overall. For example, across the United States there were approximately 193,000 aggravated assaults and 11,836 homicides with a firearm in 2018 alone (FBI, 2019a, **Table 15**).

The CNN analysis examined the location, time of day, type of school, and student demographics of the shootings. In general, the data showed that no type of community is spared from these tragedies. However, the CNN study did find that *mass* school shootings are more likely to occur at white, suburban schools, especially on Friday afternoons. The study further found that considerable number of gun violence incidents occur at the end of or during sporting events. Although the headline-grabbing mass school shootings usually dominate public attention, it is also the day-to-day school violence that continues to impact students, teachers, and families in various communities. For example, the average school shooting involves two victims or fewer, and rarely receives national attention. According to the CDC (Holland et al., 2019), approximately 90% of school-associated homicide incidents involve only one victim. However, when school shootings occur, there is an immediate need for the services of psychologists and other mental health professionals to help heal the local students, parents, teachers, administrators, and other school personnel from the trauma.

It is clear that the psychological impact of a school shooting is widespread and long lasting within the local community and, to some

extent, across the nation as a whole (Ardis, 2004; Daniels & Bradley, 2011; Larkin, 2007; M. L. Sullivan & Guerette, 2003). The school shootings at Columbine High School in 1999, Sandy Hook Elementary School in 2012, and the 2018 shootings at Marjory Stoneman Douglas High School in Parkland, Florida, had an impact far beyond the communities in which they occurred, possibly because of the number of lives that were lost. All three incidents have resulted in continuing activism on the part of students, parents, the American Psychological Association, other professional organizations, and members of the public aimed at curbing gun violence in society. (See again **Photos 8.1** and **8.2**.)

When it comes to school violence, forensic psychologists are most likely to be involved in three different professional activities (either through research, teaching, and/or direct clinical services): (1) threat assessment (as discussed earlier in the chapter), (2) prevention, and (3) providing psychological services to survivors or witnesses and their families. We begin with school threat assessment and the most common types of student threats.

School Threat Assessment

In recent years, the fields of violence risk and threat assessment have moved toward placing a greater emphasis on prevention than on prediction (Cornell, 2020). This shift is especially prominent in school threat assessment endeavors. Despite the increasing numbers cited earlier, school shootings are still relatively rare, making them difficult to predict. “As more than 99% of schools will not have such an event, any predictive formula would need nearly perfect accuracy merely to achieve chance levels of prediction” (Cornell, 2020, p. 236). Consequently, a focus on prevention is far more promising in the reduction of school violence. This leads to a need for threat assessment.

Types of School Threats

According to the FBI (O’Toole, 2000), school threats may be divided into four types: (1) direct, (2) indirect, (3) veiled, and (4) conditional. A *direct* threat specifies a target and is delivered in a straightforward, clear, and explicit manner. For example, a caller—sometimes a student, sometimes someone from outside—might say, “I placed a bomb in the school cafeteria, and it will go off at noon today.” An *indirect* threat is vague and more ambiguous. The specific motivation, the intention, and the target are unclear and open to speculation: “If I wanted to, I could kill many at the school at any time.” This is the type of threat that has most frequently been made.

A *veiled* threat strongly implies but does not explicitly threaten violence. For example, a student might receive an anonymous note in his locker that reads, “We would be better off without you around anymore.” The message clearly hints at a potential violent act but leaves the seriousness and meaning of the note for the threatened victim to interpret. A *conditional* threat suggest that harm will result if something the threat-maker wishes is not delivered. “If you don’t open the gym for longer hours, I’ll see to it that people will suffer.”
When students themselves become aware of a threat, they do not necessarily report it to school authorities. This occurs even when they themselves are personally threatened. A recent study indicated that only about one fourth of high school students who received a personal threat told anyone in authority (Nekvasil & Cornell, 2012). This tendency is sometimes referred to as the code of silence. It develops when students are resistant to reporting threats because of fear of repercussions or lack of an adequate or clearly defined reporting system. An important factor in breaking the code of silence is for teachers and other school personnel to develop trusting relationships with all students (Daniels, 2019).
A major task of threat assessment teams, therefore, is to encourage every student in the school to report any suspicious behavior or threats. Attackers talk about their plans to others, usually through their favorite social media, much of it unavailable to adults, or face-to-face conversations. In more than three fourths of incidents that have been studied, the attacker told a friend, schoolmate, or sibling about an idea for a possible attack before taking action. Moreover, in 59% of the shootings, two or more people knew about the attacker’s planning (Vossekuil, Fein, Reddy, Borum, & Mozeleski, 2002). This communication by the potential attacker about violent intentions is often referred to by threat investigators as **Leakage**. “Leakage can occur through oral, written, or social media communications” (Burnette, Datta, & Cornell, 2018, p. 4). Leakage is a very important component in the preventive strategies for reducing school violence. Many attacks have been averted when students have provided information to adults after hearing about potential attacks (Daniels, 2019). It should be noted that leakage to peers is quite common in both suicidal intentions and school shootings, and students need to be educated about the significance of reporting these communications to parents, teachers, coaches, or other trusted adults.

The Safe School Initiative (SSI) Report

In June 1999, following the attack at Columbine High School, the U.S. Secret Service in collaboration with the Department of Education

began conducting a study of school shootings and other school-based attacks between 1974 and 2000 (Borum, Fein, Vossekuil, & Berglund, 1999; Vossekuil et al., 2002). The study, called the **Safe School Initiative (SSI)**, examined 37 school shooting incidents involving 41 student shooters. The study involved extensive review of police records, school records, court documents, and other source material, including interviews with 10 school shooters. The goal of the project was to examine thoroughly the thinking, planning, communications, and behaviors engaged in by students who carried out school attacks. In addition, the perceived rash of school violence thrust mental health professionals and school psychologists into the role of assisting school districts and the local communities in the development of prevention and treatment programs directed at juvenile violence (G. D. Evans & Rey, 2001). It also initiated considerable applied research by forensic psychologists and other mental health professionals across the country.

In the SSI report, researchers concluded that those involved in school shootings did not “just snap”; they planned their attacks ahead of time (Vossekuil et al., 2002). According to the report, for more than half of the school shooters, the motive was revenge. In many cases, long-standing bullying or harassment played a key role in the decision to attack. However, there are many other motives or reasons for school violence and for making the threats that may precede them. As we see shortly, a more updated report confirms and expands upon these early findings.

After the attack at Columbine High School in 1999, some mental health professionals were intent on developing a psychological profile of the typical school shooter (Borum, Cornell, Modzeleski, & Jimerson, 2010; J. McGee & DeBernardo, 1999). However, according to the SSI report, there is no accurate or useful profile of “the school shooter” or threatener. Furthermore, researchers who prepared the report found that the personalities and social characteristics of the shooters varied considerably. They came from a variety of social backgrounds and varied in age from 11 to 21 years. Family situations ranged from intact families to foster homes. Academic performance ranged from excellent to failing. Although mental illness is often believed to be at the root of school shootings (and mass murders in general), most school shooters were not diagnosed with any mental disorder, and a majority had no history of drug or alcohol abuse. However, more than three fourths of school shooters did threaten to kill themselves, made suicidal gestures, or tried to kill themselves before their attacks.

Statistics do show that school shootings are committed predominately by white, male adolescents at secondary schools (Böckler et al., 2013). Although this is true of most high-profile, multi-victim cases, there is significantly more racial/ethnic diversity in school shooters than previously believed, especially when it involves single-victim incidents (CDC, 2019; Holland et al., 2019). The data from the CDC indicate that approximately 39% of the attackers who were involved in single-victim school-associated homicides were Black, compared to 12% white and 15% Latinx. On the other hand, white attackers were more likely to be involved in multiple-victim school homicides (46%) compared to attackers who were Black (23%) or Latinx (17%). Although males were predominant in multiple-victim school homicides (98%), females were the attacker in 23% of single-victim, school homicides during the years 1994 to 2018. It should be emphasized that CDC data included youth deaths that occurred (1) on the school campus, (2) on the way or from school while regular school is in session, or (3) while the victim was attending or traveling to or from an official school-sponsored event. The CDC data also revealed that the most frequent motive for single-victim school homicides were gang related (58%), followed by interpersonal disputes (44%). In reference to multiple-victim school homicides, the primary motive was dating partner problems or lover's triangle (39%), followed by gang-related activity (34%) and interpersonal disputes (29%).

Studies also suggest that most school shooters are average or above average academically (Vossekuil et al., 2002). Ultimately, it must be emphasized that school shootings are the result of numerous interacting risk factors; there appears to be no one single cause (Böckler et al., 2013).

Updated Secret Service Analysis of Targeted School Violence

In November 2019, the U.S. Secret Service National Assessment Center (NTAC) released an updated and thorough analysis of 41 additional school shootings that occurred at K–12 U.S. schools from 2008 through 2017. This important report is titled *Protecting America's Schools*. The opening summary of the report reads, "This report builds on 20 years of NTAC research and guidance in the field of threat assessment by offering an in-depth analysis of the motives, behaviors, and situational factors of the attackers, as well as the tactics, resolution, and other operationally-relevant details of the attacks" (U.S. Secret Service, 2019).

The study revealed that 91% of the attackers displayed symptoms of at least one psychological, behavioral, or developmental health issue. The report recommended that mental health evaluations and treatments should be considered a component of any multidisciplinary threat assessment but emphasized that a vast majority of students with mental health problems are not dangerous nor likely to engage in violent behavior. The most common symptoms were related to psychological problems, with two thirds of the attackers showing some signs or symptoms of depression compounded by suicidal thoughts. Over half of the attackers exhibited behavioral problems, including defiance of authority, poor impulse control, and a variety of violations of social norms. The Secret Service report further notes that “these attackers tended to lack empathy and derived sadistic pleasure from the thought of hurting or killing others” (p. 26). Moreover, they showed callousness in their lack of remorse or emotional reaction to the tragedy they had committed. Half of the attackers engaged in violent behaviors sometime before the attack, “including violence toward a family member (e.g., hitting a parent or stabbing a sibling), physical assaults (e.g., choking a friend or hitting another student), threatening or aggressive behavior (e.g., pointing a pair of scissors at and threatening to stab a classmate), and hurting animals” (U.S. Secret Service, 2019, p. 28). Half of the attackers demonstrated a very unusual or concerning interest in violence or weapons.
Twenty percent of the attackers were found to have neurological or developmental conditions, such as learning disabilities, autism, and executive function disorders (poor problem-solving or decision-making skills). Attackers in this category often exhibited delays in language acquisition, sensory sensitivity (e.g., covering ears when other kids were loud, disliking school assemblies, or attempting to avoid pep rallies due to loud noises), and overall poor communication skills. Perhaps more importantly, most of the attackers who experienced these disorders or symptoms also had great difficulty self-regulating their emotions and impulses. It should be emphasized, however, that the vast majority of students with these handicaps or difficulties do not become school shooters or engage in school violence. These findings underscore the fact that there is no single, established school-shooter profile. School attackers differ widely in their motivations as well as in their developmental histories and risk factors (Cornell, 2020). Therefore, in order to conduct a useful threat assessment, multiple sources of information from different perspectives must be carefully examined on an ongoing basis before any conclusions or preventive actions are warranted.

Over 50% of the school shooters the Secret Service investigated had received some type of mental health treatment provided within their schools or in the community. Although some attackers received psychological treatment or counseling before their attack, it is unclear how intensive or time committed the treatments or evaluations were. The report did conclude that "[m]ental health professionals, both in and out of the school, should be included in a *collaborative* threat assessment process that also involves the teachers, administrators, and law enforcement" (U.S. Secret Service, 2019, p. 27, italics in original quote). (See **Table 8.2** for summary of the report findings.)

Prevention of School Shootings and Other School Violence

Price and Khubchandani (2019) identified three levels of prevention for school shootings: (1) primary; (2) secondary; and (3) tertiary. For example, if you focus on firearms, the ideal primary prevention approach would be to simply prevent youths from ever gaining access to firearms. The secondary approach would be designed to "detect and deter youth with access to firearms from bringing them into the school setting" (p. 158). The tertiary prevention approach would be trying to minimize the amount of firearm-related school injuries and deaths inflicted *during* the shooting.

Table 8.2

Source: U.S. Secret Service, National Threat Assessment Center (2019).

The primary prevention approach, although it is laudable, is unrealistic in present-day American society. Youth can obtain guns from their homes or elsewhere, and universal firearm legislation would be extremely difficult to obtain in many states. Secondary prevention would require such things as hardening the school by having school resource officers (or regular police officers) in the school to check all students for the presence of weapons on a daily basis, plus zero-tolerance school policies (e.g., suspension or expulsion). Tertiary prevention would require the presence of armed teachers, armed school resource officers, or armed volunteers in the school and on the premises.

Secondary prevention, focusing on controlling firearms in the school or on school property has not been successful (S. King & Bracy, 2019; Price & Khubchandani, 2019). "The belief that schools are dangerous locations has justified enormous expenditures of tax dollars on building security measures such as fortified school entrances, bullet-resistant glass, metal detectors, alarm systems, video cameras, and even safe rooms where students can hide from a

gunman" (Cornell, 2020, p. 236). Price and Khubchandani (2019) write, "Hardening of schools with visible school security measures is an attempt to alleviate parental and student fears regarding school safety and make the community aware that schools are doing something" (p. 161). However, none of these prevention measures have been shown to unequivocally reduce or eliminate school shootings or violence. S. King and Bracy (2019) maintain that school security strategies (such as increased policing, surveillance technology, and emergency preparedness procedures "have proven to be problematic, often doing more harm than good by criminalizing student misbehavior, contributing to negative school climate, and having psychological impacts on student's perceptions of safety" (p. 274). Furthermore, even with this hardening of schools, the majority of teachers, parents, students, and other school personnel still fear and anticipate shootings, and do not feel adequately protected (Payton, Khubchandani, Thompson & Price, 2017; Price, Khubchandani, Patton, & Thompson, 2016).

The current best approach for prevention is to establish multidisciplinary threat assessment teams. They comprise teachers, administrators, guidance counselors, mental health professionals, and law enforcement who are trained and skillful at developing threat assessment appraisals of youth who show signs of potential violent behaviors.

According to Böckler et al. (2013), three basic factors must be considered in order to implement effective prevention strategies:

1. Factors that influence the socialization of children and adolescents, such as the family and the culture. For example, a lack of parental supervision and dysfunctional family relationships, or a family atmosphere that resorts to violence to solve problems, represent risk factors that may result in violence at school.
2. The school atmosphere, policies and culture. For instance, a school environment that allows bullying and rejection of peers, or tolerates or ignores disrespectful behavior—these represent common risk factors in school shootings. Vossekuil et al. (2002) discovered that 75% of school shooters felt persecuted by peers at school.
3. Individual factors, such as personality traits, genetic makeup, and mental health. For example, depression or uncontrollable rage may be contributing factors.

Of the three categories of risk factors, addressing the school-related factors may represent the best first-line preventive efforts. Effective anti-bullying programs, crisis planning, training for crises, and school–

community collaboration are all measures that are likely to mitigate school shootings (Daniels & Page, 2013). Rules and expectations should be clearly articulated, and consequences for disrespectful behavior and other misbehavior should be consistently and fairly meted out (Daniels & Page, 2013). Only about 25% of students who report being threatened by others report these threats to an adult or someone in authority. Attempting to break the student code of silence by educating students about the difference between snitching and helping to save lives of others appears to be a helpful strategy.
Daniels and Bradley (2011) also examined the culture of schools where shootings occurred compared to the culture of schools where a planned shooting was successfully averted because authorities were attuned to signs of danger or alerted by students. Four common themes emerged. In those schools where a shooting occurred, there was considerable evidence of (1) an inflexible culture, (2) inequitable discipline, (3) tolerance for disrespectful behavior, and (4) a code of silence. The *inflexible culture* created, among certain students, a sense of not belonging. *Inequitable discipline* occurs when staff members and teachers apply school rules differently to different groups of students. Concerning *tolerance for disrespectful behavior,* Daniels and Page (2013) noted that if a school permitted or was perceived to permit behavior like bullying, racism, or overt rudeness, “the students bearing the brunt of such actions may feel they have no one to turn to, especially if they are aware that the school’s policies are very lenient” (p. 413).
Although the above focus on a school’s culture is an important consideration, it cannot be assumed that when a shooting occurs the school’s culture was necessarily negative. Put another way, the socialization and individual factors listed by Böckler et al. (2013) may carry more weight.

Comprehensive Student Threat Assessment Guidelines (CSTAG)

Guidelines for preventing threats of violence from becoming serious may be found in the *Virginia Student Threat Guidelines* (later renamed the *Comprehensive Student Threat Assessment Guidelines* or VSTAG), a project spearheaded by forensic psychologist Dewey Cornell (Cornell, 2018; Cornell & Allen, 2011; Cornell, Gregory, & Fan, 2011). The guidelines were developed for K–12 schools in response to the FBI and Secret Service recommendation that schools utilize a threat assessment approach to reduce school violence. In addition, the VSTAG model “provides practical guidelines for school-based teams to conduct assessments of students who threaten to commit

an act of violence" (Maeng, Cornell, & Huang, 2019, p. 2). The guidelines manual was first published in 2006 under the title *Guidelines for Responding to Student Threats of Violence* (Cornell & Sheras, 2006). The manual was updated in 2018 under the new title *Comprehensive School Threat Assessment Guidelines* (Cornell, 2018), or CSTAG.

The guidelines recommend that a school assessment team, consisting of a school administrator, several mental health professionals, and a law enforcement representative, be established at each school to evaluate possible student threats during the year. The mental health professions should include a school counselor, psychologist, or a social worker. "A mental health professional may be involved at multiple stages in a threat assessment, from the initial interview to gauge the seriousness of a threat to more extensive assessment of the student's mental health status and need for services" (Cornell, 2020, p. 243).

The CSTAG utilizes a five-step decision tree to help the assessment team gather information and, if possible, resolve the threat as quickly as possible (see **Figure 8.3**). The CSTAG decision tree outlines a process whereby the school threat assessment team is able to determine at the outset whether a threat is transient or substantive. Examples of transient threats are jokes, figures of speech, or expressions of feelings, such as "I am going to kill you for that!" (Cornell, 2020). Transient threats clearly imply there is no intention of carrying out the threat and are easily resolved. Substantive threats, on the other hand, are indications that the individual or individuals intend to carry out the threat. Sometimes determining a substantive or serious threat from a transient one is a challenging and difficult task because acts of physical aggression and bullying are common among youth (Cornell, 2020). A substantive or serious threat refers to "a threat that has been determined to pose a nontrivial risk of violence because an individual has both the means and intent to carry out the threat" (Burnett et al., 2018).

If the threat appears serious, various steps are taken to ensure that the threat is not carried out. At this point, law enforcement, parents, and mental health professionals are likely to be involved. Protective measures may be necessary. The final step proceeds with a written safety plan based on the findings of the assessment and investigations.

Although school threat assessments were originally designed to prevent severe acts of violence, in practice, they are now often used to respond to many less serious threats (Cornell, 2020). Of the threats that are reviewed, "[a]pproximately 20% are serious

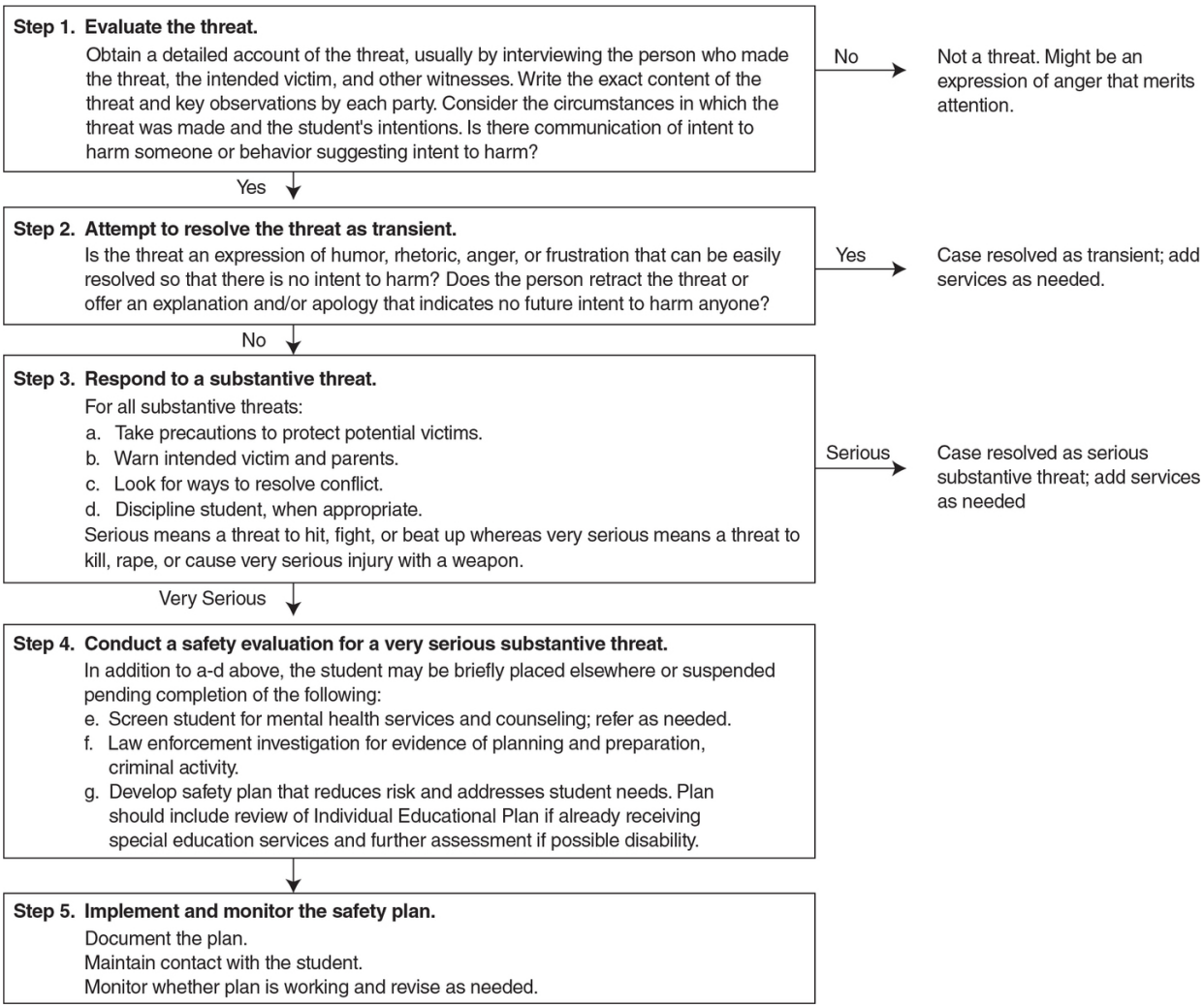
substantive threats (fights), and the majority (70%) are transient threats" (Cornell, 2020, p. 245). Less than 10% of cases are assessed as very serious substantive threats. To date, ongoing research has revealed very promising support for the value of the CSTAG for handling student conflicts effectively and reducing school violence.

Most states do not mandate that schools create and maintain threat assessment teams, either as in-house or readily available consultants. Langman (2020) strongly recommends that threat assessment teams be required for all K–12 schools as well as for institutions of higher education. He asserts, "More broadly, advancing knowledge and implementation of threat assessment processes across the country should be a national priority" (p. 81).

Forensic psychologists can make significant contributions to helping victims, witnesses, families, the school, and the community affected by school shootings by providing research findings and teaching, and recommending clinical services. Although exposure to school violence often results in significant psychological distress, most individuals are able to recover to some extent over time.

An effective tool for helping young students is the *Cognitive Behavioral Intervention for Trauma in Schools* (CBITS). The program was developed to help elementary-grade and middle school students affected by community and school violence. "CBITS, a child-group intervention, incorporates psychoeducational, relaxation training, cognitive therapy, trauma exposure, and social problem solving, and recommends teacher and parent sessions" (Santiago, Lennon, Kataoka, Fuller, & Brewer, 2014, p. 560). CBITS has three primary goals: (1) to reduce symptoms related to trauma; (2) to build resilience; and (3) to increase peer and parent support. The program has been shown to reduce student symptoms of PTSD, anxiety, and depression (Jaycox, 2004; Santiago et al., 2014; Stein, Jaycox, Kataoka, Wong, et al., 2003).

We now turn to discussing violence in another context, the work environment. Workplace violence has increased in recent years, possibly for reasons discussed next.



Description

Figure 8.3 CSTAG School Threat Assessment Decision Tree
Source: Cornell (2018). Reprinted with permission of author.

WORKPLACE VIOLENCE

Workplace violence is a complex phenomenon, encompassing a wide assortment of threatening and injurious behaviors that occur within one's place of employment. Workplace violence is somewhat of a misnomer because it refers not only to the more physically violent incidents, but also to the subtle behavior that *threatens* violence, such as coercion, intimidation, outright threats, and harassment. Therefore, workplace violence may be classified in three ways: (1) homicides, (2) physical but nonfatal violence, and (3) psychological violence.

Workplace violence also can be classified into four major types on the basis of the assailant's relationship to the workplace (California

Occupational Safety and Health Administration, 1995; Gregorie, 2000; LeBlanc & Kelloway, 2002). In the first type, the assailant does not have a legitimate relationship to the workplace or to the victim. They usually enter the workplace to commit a criminal action, such as a robbery or theft. Robbery is the principal motive for most workplace homicide, accounting for 85% of workplace deaths (Gregorie & Wallace, 2000). The second type of assailant is the recipient of some service provided by the workplace or victim and may be either a current or former client, patient, or customer. Most often, this individual is unhappy with the product or service they received from the agency or company. The third type of assailant has an employment-related involvement with the workplace, as a current or former employee, supervisor, or manager. This assailant is often referred to as a "disgruntled employee" who enters the workplace to punish or get back at some individual or the agency or company in general. According to Gregorie and Wallace (2000), disgruntled employees account for approximately 10% of workplace homicides. The fourth type has an indirect involvement with the workplace because of a relationship with an employee, such as a current or former spouse or partner.

One thing is clear concerning the survivors of workplace violence. Workplace violence "can lead to many adverse outcomes including [those related to] personal safety concerns, job insecurity, fear, lowered job performance, job satisfaction, affective commitment, intent to turnover, psychological distress, emotional exhaustion, depression, physical well-being, interpersonal deviance, and organizational deviance" (Piquero, Piquero, Craig, & Clipper, 2013, p. 390). Forensic psychologists sometimes are asked to assess victims of workplace violence in civil suits against present or former employers, in which the victims allege that the employers were negligent in protecting them from harm.

Psychologists and other mental health professionals also can play an instrumental role in helping employees recover from these stressful incidents. This is especially important when it comes to employees who witness a coworker or supervisor being killed or brutalized. Mental health professionals also play critical roles in the prevention of workplace violence when it comes to violence between employees and supervisors. The threat assessments discussed earlier become crucial when there is concern that a particular employee may pose a danger to the workplace. The National Standards Institute endorsed threat assessment teams in workplaces in 2011 (A. Miller, 2014). Stress management interventions have been shown to be highly

effective in addressing coworker dissatisfactions and other stress-related issues (Limm et al., 2011).

Workplace Homicides

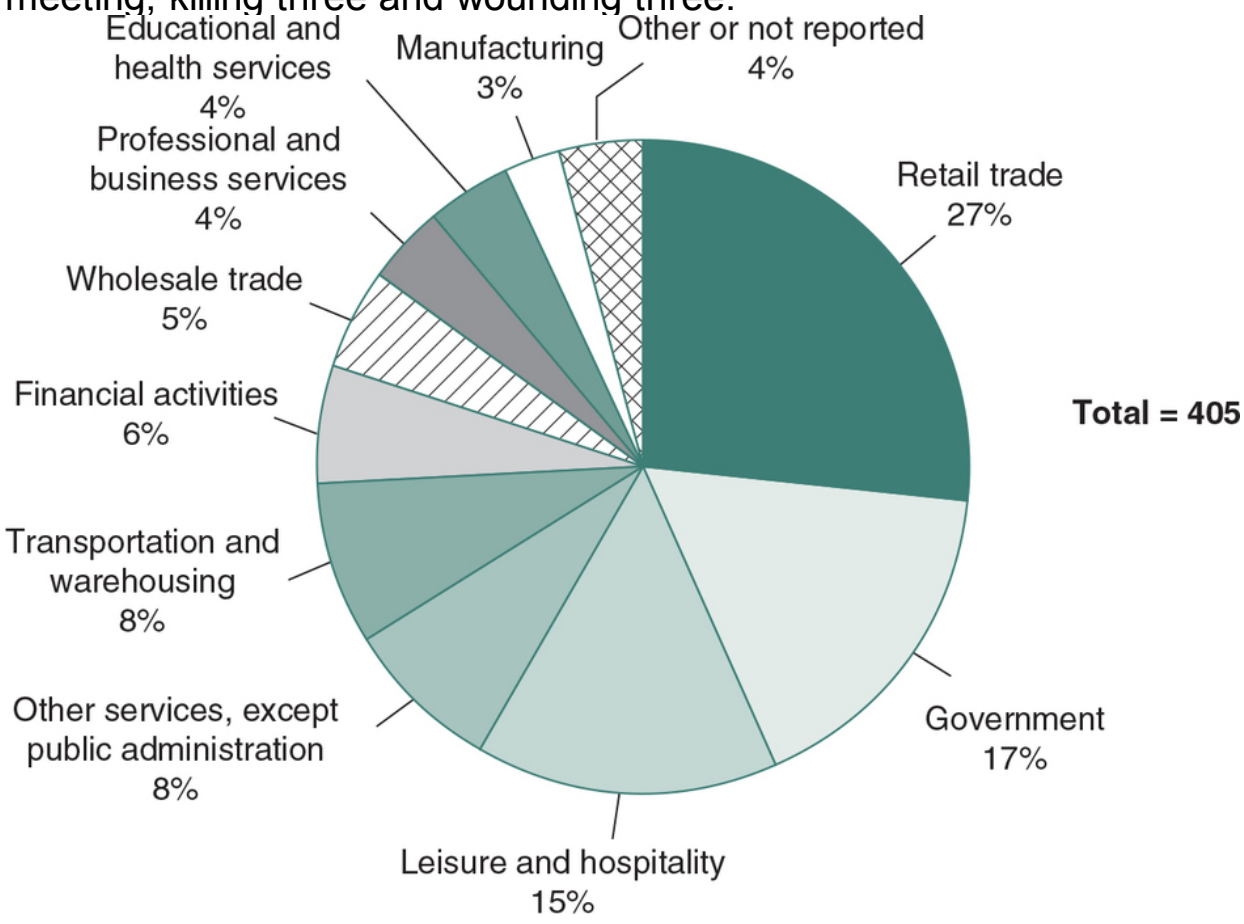
Although statistically rare, “the most extreme forms of workplace violence are homicide and mass murder” (Geck, Grimbos, Siu, Klasen, & Seto, 2017, p. 211). In the public mind, workplace violence usually means a worker killing their coworkers or supervisors. However, the data reveal that the assailants of most serious workplace violence often come from outside the workplace (Geck et al., 2017; Piquero et al., 2013). And as noted earlier in the chapter, there is also indication that the increases in right-to-carry laws in nearly half the states has contributed to violent crime. A longitudinal analysis of 1992 through 2017 has documented this effect on violent crime in the workplace (Doucette et al., 2019).

From 2000 to 2012, over half of the workplace homicides occurred within three occupations: sales and related occupations (especially fast-food restaurants and beverage stores), protective service occupations (especially law enforcement officers), and transportation occupations (especially ground-passenger transportation services; Bureau of Labor Statistics, 2013). Firearms account for 80% of all workplace homicides (Bureau of Labor Statistics, 2013). Coworkers or former coworkers were the assailants in 12% of all shootings, and robbers were assailants in 40%. **Figure 8.4** depicts gun-related workplace homicides by industry in 2010. Although the chart is somewhat dated, there is no evidence to indicate that the percentage breakdown by occupation does not still hold today.

Homicide is the leading cause of death for women in the workplace, and it appears to be increasing (Tiesman, Gurka, Konda, Coben, & Amandus, 2012). Although 39% of women killed in the workplace were killed during criminal events such as robbery, theft, or other criminal activity, those killed by intimate partners were a close second at 33%. Women in protective service occupations usually have the highest overall homicide victimization rates, but women in health care (especially nursing), production (e.g., food services, factory work), and office or administration have the highest proportion of homicide victimization associated with intimate partner violence. Over half of the homicides committed by intimate partners occurred in parking lots and public buildings associated with the workplace.

Schools are the workplace for many adults, and neither schools nor colleges and universities are immune from workplace homicide. In 2017, a special education teacher was shot to death in her classroom, along with one of her students, by her estranged husband. Another child in the classroom was also shot but survived.

The husband committed suicide at the scene. In 2010, a college professor opened fire on her colleagues during a biology department meeting, killing three and wounding three.



Description

Figure 8.4 Workplace Homicides Due to Shootings, by Industry, 2010
Source: Bureau of Labor Statistics (2013).
Note: Most recent data available.

Other examples of workplace violence in academe have included graduate students who shot professors on their dissertation committees and teachers killed by former boyfriends in the parking lot of the school. In 2009, a laboratory technician at Yale University was charged with the on-campus murder of a graduate student shortly before her scheduled wedding day. Note that we are making a distinction between these work-related incidents and the school violence directed primarily at students, which was discussed previously.

Nonfatal Workplace Violence

Obviously, most workplace violence does not end in death. Robbery, aggravated assaults, and sexual assaults are the most common violent crimes that occur in the workplace (Harrell, 2011). Although

retail workers tend to be the most frequent victims of *homicide,* other occupational groups are at greater risk of *violence* in general because of the nature of their job. Police officers are victims of the highest rate of workplace violence, followed by correctional officers, taxi drivers, private security guards, and bartenders. In the 1980s, the phrase “going postal” became part of the national lexicon after a series of workplace shootings by distressed postal workers. In actuality, postal workers were no more likely to commit or be victims of workplace violence than other occupational groups, but the convergence of several incidents among this group led to the misconception.

In the United States, workplace nonfatal violence for government employees is about twice that for employees in the private sector (Harrell, 2013). Government employees are those persons who work for federal, state, county, and local governments. Private-sector employees refer to persons who work for a private company, business, or persons who are self-employed. Between 2002 and 2011, law enforcement and security employees were the victims in 56% of all workplace violence against government employees. People in retail sales (17.1%) and the medical professions (14.3%) were the most victims of workplace violence in the private sector (Harrell, 2013).

Note that the preceding figures do not distinguish violence perpetrated by someone within the workplace from violence perpetrated by someone coming in from the outside. Some research does try to do this. Geck, Grimbos, Siu, Klasen, and Seto (2017) designed a study to answer the question: Exactly who are those employees who engage in violence at their workplace? In their analysis, the authors took a “forensic psychological perspective that pays particular attention to factors identified as key in the development and progression of antisocial conduct, including interpersonal violence” (p. 212). They found that violent employees targeted coworkers more often than supervisors or subordinates, which is consistent with previous evidence that indicates aggressive and violent behaviors do not occur with equal frequency across different employee relationships. In addition, the researchers discovered that those who engage in repeated acts of workplace violence had experienced early physical abuse during their childhood and adolescence, had substance abuse problems, and exhibited chronic anger problems.

Although it was not examined in Geck et al. (2017) study, other research indicates that violence in the home (such as domestic violence) carries over to the workplace (La Duke, 2019; O’Leary-

Kelly, Lean, Reeves, & Randel, 2008). In fact, approximately 42% of women killed at their workplace were killed by family members or domestic partners (La Duke, 2019; Tiesman et al., 2012). Only 2% of men are murdered at work in this way.

It comes as no surprise that individuals who were repeatedly violent at their workplace were often suspended or terminated. Geck et al. (2017) note that once violent employees are terminated and find other employment, “they are at risk of continuing to engage in past behaviors, namely violence, and are then more likely to be suspended and/or terminated again at future places of employment” (p. 222). Overall, the study demonstrated that violent workplace employees had significant problematic histories, both in their personal lives and at their places of employment.

Considerably more research is needed to identify the causes and implement preventive measures in the workplace. Nevertheless, many places of employment have been sensitized to this issue and have increased their levels of security in response to fear and uneasiness among employees. This may be due, at least partly, to the dramatic increase in workplace violence litigation (Kaufer & Mattman, 2002). According to Kaufer and Mattman (2002), the legal action and civil lawsuits at this point in time concentrate on four major areas: (1) negligent hiring (failure to screen employees properly), (2) negligent retention (failure to terminate unsuitable and threatening employees), (3) negligent supervision (failure to monitor performance), and (4) inadequate security.

Consequently, legal and regulatory obligations for employers to provide safe and secure work environments are bound to increase, and mandatory prevention and training programs are likely to be commonplace across all private and public organizations in the near future, at least at state and local levels. As should be apparent, forensic psychologists increasingly are called on to conduct threat assessments or to assess the risk of violence in an individual about whom fellow workers or supervisors are concerned. In addition, psychologists working within employment settings should be attuned to the culture of the workplace and play a critical role in facilitating an environment that promotes cooperation and mutual respect among and between employees and supervisory personnel.

Psychological Workplace Violence

Psychological violence “refers to any form of non-physically aggressive, intimidating, derogatory, or offensive interpersonal behavior that is psychological in nature and is likely to have negative psychological and behavioral consequences for the target” (Courcy, Morin, & Madore, 2019, p. 4163). Examples include bullying, verbal

mistreatment, social undermining, ostracism, harassment, and spreading rumors. Approximately 35% of U.S. workers and 47% of workers in the United Kingdom reported being bullied or experienced unreasonable treatment in their workplaces (Courcy et al., 2019). The negative consequences of psychological violence at work include damaging effects on mental health, reduced job satisfaction, higher levels of counterproductive work behavior, and stronger desires to leave the workplace (Courcy et al., 2019).

Discrimination—be it on the basis of race, gender, ethnicity, age, sexual orientation, or religion—remains an area of major concern. One particular form of discrimination is sexual harassment, which we covered in Chapter 6. In fiscal year 2016, the U.S. Equal Employment Opportunity Commission (EEOC) received 12,880 charges of sexual harassment (EEOC, 2017). Seventeen percent of those charges were filed by men. Moreover, even though there has been a leveling off of filings with the EEOC over the past 10 years, the data underscore the fact that sexual harassment is still quite common in the workplace. One study (Fineran & Gruber, 2009) found that more than half of teenage girls experience some form of sexual harassment at their place of work. It is a distressing behavior that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, and creates an intimidating, hostile, or offensive work environment. In addition, a number of investigations have substantiated a link between post-traumatic stress disorder (PTSD) and depression, and sexual harassment (Fineran & Gruber, 2009). More pertinent to our discussion here, harassing behavior may lead to stalking, which may in turn lead to violence.

Likewise, racial, religious, and ethnic discrimination in the workplace also may lead to violence. In addition, discrimination in all its contexts has similarities to bias crimes and to crimes of intimidation, which is discussed later in the chapter.

In the next section, we direct our attention to the most serious violent act, the taking of human life. Although homicide was illustrated in much of the previous material, we now discuss its overall prevalence as well as its specific forms.

CRIMINAL HOMICIDE

Homicide is the killing of one person by another. **Criminal homicide** is the causing of the death of another person without legal justification or excuse. Under certain conditions, the killing of another person can be justified (such as in self-defense) or excused (such as if the perpetrator was legally insane).

The criminal law recognizes two major levels of criminal homicide: murder and man-slaughter. ***Murder*** is the term reserved for the "unlawful killing of one human by another with malice aforethought, either expressed or implied" (H. C. Black, 1990, p. 1019). Many states recognize "degrees" of murder, labeling those unlawful killings that are committed with planning and premeditation as murder in the first degree. First-degree murder is usually considered a capital offense, punishable by death or life in prison. Second-degree murder suggests less planning and premeditation but still requiring an intent to kill. Some states also have third-degree murder, which displays a depraved mind without regard for human life.

Manslaughter usually refers to an *unintended* killing that results from *unjustifiable* conduct that places others at risk (Morawetz, 2002). The individual who aimlessly fires a loaded weapon and ends up killing someone, even if they did not "intend" to, is still responsible for that person's death. This would be referred to as negligent manslaughter. However, manslaughter also may be nonnegligent, an *intended* killing "for which there is mitigation, acts that are provoked by the victim, or that result[s] from temporary and understandable circumstances that compromise the actor's normal responsibility" (Morawetz, 2002, p. 398). For example, a father who comes upon a car accident, discovers that his daughter has been killed, and chokes to death the inebriated driver of the car that hit her would likely be charged with nonnegligent manslaughter, not murder.

The UCR includes both murder and nonnegligent manslaughter under the term *criminal homicide* for reporting purposes. According to the UCR, approximately 16,214 persons were victims of murder or nonnegligent manslaughter in 2018 (FBI, 2019a). The murder rate in the United States during that year was 5.0 murders for every 100,000 inhabitants. As noted in previous chapters, the murder rate as reported in the UCR is based solely on police investigations as opposed to the determination of a court, medical examiner, coroner, jury, or other judicial body. In other words, the UCR provides data on the criminal homicides known to police and—if solved—on the persons arrested. Recall also that the UCR does not tell us, for instance, whether the 6,764 persons arrested and charged for murder and nonnegligent manslaughter in 2018 were convicted. Also not included in the UCR murder statistics are deaths police believe were caused by negligence, suicide, accidents, or justifiable homicide.

During 2018, UCR-contributing agencies submitted supplemental information concerning 9,049 homicides. The Supplementary Homicide Report (SHR) collects data on the age, sex, and race of

both the victim and the offender; the type of weapon used; the relationship of the victim to the offender; and circumstances surrounding the incident.

Criminal homicide, like sexual assault, is a heterogeneous phenomenon associated with different contexts, motivations, and types of offenders (Woodworth & Porter, 2002). Consequently, any attempt to make broad generalizations about people who commit criminal homicide—particularly murder—is risky. Nevertheless, researchers have drawn tentative conclusions about the types of individuals who commit this ultimate violent act. For example, most murders are single-incident offenses involving only one victim—and murderers generally do not commit another murder, even after release from prison. The “typical murder” is committed either during the course of committing another offense—most often a robbery—or is perpetrated against an intimate partner or an acquaintance. The typical murder also is committed between the ages of 18 and 34 (see **Table 8.3**).

Table 8.3

Source: FBI (2019a).

An unknown number of murderers kill themselves after they have committed their crimes—typically very shortly thereafter and in the same location. The clinical characteristics of homicide–suicide are similar across the globe. Perpetrators of homicide–suicide are mostly men (95% in the United States), and the homicide victims are usually women (85% in the United States; Hillbrand, 2001). In a majority of cases, the offender and victim(s) are relatives. Most cases involve one killer and one victim (90%; Hillbrand, 2001). Despair, hopelessness, and depression are common among perpetrators of murder–suicides. In fact, the clinical or psychological characteristics are more typical of suicide than homicide. For example, there is not a lifelong pattern of impulsivity or violence.

A distinct form of homicide–suicide involves politically motivated terrorists who commit acts such as suicide bombings. In such incidents, a single terrorist may strap themself with explosives that are later detonated at targeted locations. As in the September 11, 2001, attacks on the World Trade Center and the Pentagon, and the attack that was thwarted by passengers who sacrificed themselves by flying a plane into the ground in Shanksville, Pennsylvania, these may be perpetrated by individuals acting in small groups. Individuals who commit homicide–suicide, whether politically motivated or not, seldom utter threats or give warnings of the impending killings.

Forensic psychologists are most likely to be called on to consult regarding the atypical murder. A psychologist may be asked for a

“profile” of a serial killer or to assess the risk that he will strike again within a given locality. These activities are engaged in by police and public safety psychologists, whose work was discussed in Chapters 2 and 3. The field of investigative psychology includes consulting with police to help in solving crimes. Forensic psychologists also may be called to testify in a murder trial and most particularly at the sentencing phase when the court is deciding on the length and nature of a sentence. Finally, serious offenders may be eligible for parole, and clinicians may be asked to assess their risk of future violence if released.

Because forensic psychologists do encounter those who murder many victims in various capacities, we devote more coverage to these atypical crimes. The topic of single or typical murders is revisited in Chapters 10 and 11, where we discuss the effects of violent crime on victims.

Multiple Murder

Multiple murder is usually divided into three somewhat overlapping offender patterns based on the timing of the act. **Serial murder** usually refers to incidents in which an individual (or individuals) separately kills a number of people (usually a minimum of three) over time. The time interval—sometimes referred to as the “cooling-off period”—may be days or weeks but is more likely months or even years. **Spree murder** refers to the killing of three or more individuals without a cooling-off period, usually at two or three different locations. The designation spree murder is problematic, however, because some of these killings share characteristics of mass murders while others seem more like serial murders. Neither law enforcement nor psychological researchers have found this to be a helpful designation, either for crime control or for research purposes. Compared with serial and mass murderers, spree murderers have received very little research attention and will not be discussed here.

Mass murder involves the killing of three or more persons at a single location with *no* cooling-off period between the killings. The FBI identifies two types: classic and family. The school shootings discussed earlier; the Las Vegas mass shooting in October 2017; the Navy Yard shooting in 2013; the Virginia Tech tragedy of 2007; the Aurora, Colorado, movie theater shootings in 2012; and the 2014 stabbings and shootings in Isla Vista, California (described more later), are all examples of classic mass murder. In a family mass murder—which is by far the more common of the two—at least three family members are killed by another immediate family member or relative. Very often, the perpetrator kills themself. Both classic and family mass murders, but particularly the latter, are also often

examples of homicide–suicides. In the classic mass murder, it is more likely that the perpetrator—if not alive—has been shot by police at the scene.

What the public knows about multiple murder is largely based on misinformation and myth. The more sensational aspects of serial murder, for example, associate it with sexual sadists who prey on strangers to satisfy sexual fantasies. Movies or videos with multiple-murder themes, especially serial killings, almost invariably portray these killers with sexual, cruel, and often bizarre characteristics. Researchers and scholars do not seem immune to the alluring features of multiple murder either. J. Fox and Levin (1998) have observed that the scholarly accounts are too often based on media sources or unstructured interviews with convicted offenders: “Indeed, the ratio of scholarly books to research articles is unusually high, reflecting an abundance of speculation and a paucity of hard data” (pp. 409–410). It is with this caveat in mind that we review the following information.

What little empirical research on multiple murder has been conducted has occurred within the past 20 years, largely in response to high-profile multiple-homicide incidents, particularly incidents of serial murder. In the past, researchers and criminologists assumed that multiple murderers were basically similar to single-victim offenders and therefore did not require special study. Later research, however, revealed that multiple murder does involve motivations, victims, demographics, and psychological features that differentiate much of it from the more ordinary single-victim homicide.

The considerable variation in the behavioral, emotional, and cognitive features of multiple murderers has prompted some researchers (R. M. Holmes & DeBurger, 1988; R. M. Holmes & Holmes, 1998; Ressler, Burgess, & Douglas, 1988) to develop typologies, or classification systems, that allow some appreciation of the complexity of the crime. We will briefly describe one of these typologies shortly.

Serial Killers

Despite the extensive commentary and media interest, there has been surprisingly little empirical research on serial murder. As noted by Fridel and Fox (2018), scholarly research in this area is challenging to conduct. Most research is limited to archival research or case studies. *Archival research* is seeking out and analyzing evidence from past records, such as police records, newspaper stories, diaries, historical notes in private collections, or other documents pertaining to serial murders. A *case study* is an extensive examination of the background, behavior, and crimes of one particular serial killer. “The literature on serial murder is largely the

product of broad-based descriptive study of large numbers of cases of serial killers or the result of individual case studies" (Skrapec, 2001, p. 46). Consequently, most of the following information will be descriptive in nature, and the identification of motives will be largely based on self-reports provided by the killers themselves. Self-reports, although informative, are not the most objective measures available. They only provide information pertaining to what offenders want to reveal.

What does a serial killer look like? Physically, serial killers can be placed on a continuum, with Theodore Bundy, the handsome, charming, intelligent law student who brutally killed dozens of women in the Pacific Northwest, at one pole, and Arthur Shawcross, the dour, rumpled, aging serial killer of primarily prostitutes in the Rochester, New York, area at the other pole. Some television buffs may want to add the fictional Dexter Morgan of *Dexter* fame. An innocuous-looking, mild-mannered blood-spatter analyst, Morgan carried out revenge killings of people who had escaped the justice system. Many of his victims were themselves serial killers. Morgan's character itself has been the focus of investigation by criminologists (e.g., Berryessa & Goodspeed, 2019). It is not difficult to find additional images and depictions from the entertainment media and crime novels.

There is no single identifiable serial killer type based on physical appearance, socioeconomic status, or personality attributes. Research suggests that most serial killers are males, but there are exceptions, such as Aileen Wuornos, convicted of killing six men, who was executed by lethal injection in 2002. Research on female serial killers has been limited and has focused on small samples, but it is now believed that approximately 16% of all serial killers are female, suggesting that additional studies on this group are warranted (Harrison, Murphy, Ho, Bowers, & Flaherty, 2015). Unless otherwise noted, the following material relates to male offenders, but it cannot be assumed that female offenders are different.

Serial killers have many of the same personality traits or behavioral features as the general public. However, the one trait that appears to separate them from the norm is their exceptional interpersonal skill in their presentation of self (Fox & Levin, 2003). Their ability to charm and "fool" others often elevates them beyond suspicion and makes them difficult to apprehend. This may explain why victims allow serial killers into their homes or go willingly with them on dates or other engagements.

It is a mistake to assume that serial murderers are seriously *mentally disordered* in the clinical sense of that term. Some are, but most are

not. Their thought patterns may be considered extremely aberrant when it comes to sensitivity and concern for other human beings, indicating psychopathy, but a vast majority of serial killers do not display behaviors that qualify for the traditional diagnostic categories of mental disorders. Serial killers have developed versions of the world characterized by values, beliefs, perceptions, and general cognitive processes that facilitate repetitive murder, often in a brutal, demeaning, and cold-blooded manner. They are prone to committing murders that draw interest and send spine-chilling fear into the community, and their motives appear incomprehensible to the public. The motives of many serial killers seem to be based on psychological rewards of control, domination, media attention, and excitement rather than material gain. But the labels “sick,” “crazy,” or “psychotic” explain little and offer little hope in the quest for understanding the processes in the development of this behavior.

Although some serial killers have extensive police records, the records mainly reflect a series of petty thefts, embezzlements, and forgeries rather than a history of violence (Jenkins, 1988). Single-victim homicides often involve family, intimates, or acquaintances, whereas serial murder most often involves strangers, especially if the offender is male. Female serial murderers present a different story, however, because they most often murder those with whom they share a relationship such as husbands, intimates, and acquaintances, including individuals who are in their care (Harrison et al., 2015). For example, female serial murderers have included women in the nursing and home health care professions or who operated boarding homes. The crimes were undetected for long periods because it was assumed that the victims had suffered natural deaths (Hickey, 2010).

An examination of the victim selection of known male serial murderers will reveal that they prefer victims offering easy access and transience. Often the victim’s disappearance is not reported to police. For example, victims are often sex workers, runaways, young male drifters, and itinerant farm workers whose family and friends may not immediately realize that they are missing. With experience, improving skills, and a need for greater challenge, serial killers often move to more difficult victims, such as university or college students, children, the elderly, or the solitary poor. Very rarely do serial murderers break in and terrorize, torture, and kill strangers in their homes.

The geographic location preferred by serial killers most often tends to be a specific one. For some unknown reason, serial murderers seldom kill victims in the communities where they (the murderers)

were born. They do, however, often select victims near their *current* residence or place of work. Hickey (1997) estimates, for example, that 14% of serial killers use their homes or workplaces as the preferred location, whereas another 52% commit their murder in the same general location or area, such as the same neighborhood or city. This tendency suggests that geographical profiling may be an invaluable aid in the identification of serial murderers. However, this still leaves more than 30% of offenders who apparently commit crime across a much wider geographical area.

As noted earlier, serial killers are primarily males, and they often have a preference for one gender over the other. Jeffrey Dahmer, for instance, murdered at least 17 young males in Wisconsin and Ohio during the early 1990s. Dahmer drugged, strangled, dismembered, and—in some cases—consumed the flesh of his victims. John Wayne Gacy sexually assaulted and killed at least 33 boys in Illinois during the 1970s. He buried most of his victims in the dirt basement of his house. Robert Yates, on the other hand, murdered at least 17 sex workers and homeless women in the state of Washington during the 1990s. Gary Ridgway targeted girls and women in the Seattle area during the 1980s and 1990s. He was convicted of 49 murders and confessed to 20 more. Samuel Little, convicted in 2012, confessed to committing 93 murders of people of various ages, races, and genders between 1970 and 2005 across the continental United States.

A serial murderer may choose his victims because they hold profound meaning for him in terms of his life experiences (Skrapec, 2001). Interviews and descriptions of serial killers suggest that one of the dominant motives for their behavior is the power and control over another person's life that the crime offers them. "For these killers, murder is a form of expressive, rather than instrumental, violence" (Fox & Levin, 1998, p. 415). In keeping with the control theme, serial killers, unlike typical murderers, usually do not use a firearm to murder their victims. Although they may use a firearm to intimidate and control their victims, serial killers prefer a method of killing that provides the maximum amount of control and dominance. Choking, stabbing, and other methods of delayed death are ways the killer can maintain the life-or-death mastery over the helpless victims.

Serial killers also tend to be inspired by detailed and elaborate fantasies rich with themes of dominance (Fox & Levin, 2003; Skrapec, 1996). Prentky et al. (1989), for instance, found that 86% of the 25 serial killers they studied had violent fantasies on a regular basis, compared with only 23% of the 17 single-victim murderers. However, it should be mentioned that a majority (58%) of the serial

killers in their sample had above-average intelligence compared to only 29% of the single-victim murderers. Therefore, the two groups were not completely matched in all important factors. In reference to this difference, Prentky et al. state, “While intelligence seems to have little bearing on the quality or content of the fantasy, it does influence how well fantasy is translated into behavior (i.e., how organized the crime is) and how successfully the offender eludes apprehension” (p. 888). The researchers further state that “fantasy, as it is defined in this study, is an elaborated set of cognitions (or thoughts) characterized by preoccupation (or rehearsal), anchored in emotion, and originating in daydreams” (p. 889). Furthermore, the more the fantasy is rehearsed in the mind of the potential killer, the stronger the association between the fantasy content and the actual behavior becomes, eventually lowering the restraints that normally would inhibit acting out the fantasy itself. Eventually, the individual will actually act on the fantasy. At this point, Prentky et al. suggest, the serial killer engages in a series of progressively more accurate “trial runs” in an attempt to enact the fantasy as it is imagined. In other words, the killer will continue to try to improve on his cognitive script through trial and error. Because the trial runs can never quite match the fantasy entirely, the need to restage the fantasy with a new victim is always there. As Fox and Levin (1998) note, “[t]he killer’s crime can increase in severity as he constantly updates his fantasy in a never-ending spiral of image and action” (p. 417).

Many serial killers augment their fantasies with hard-core pornography, which often contains themes of violence, dominance, and bondage (Fox & Levin, 1998, 2003). In the past, police investigators often uncovered extensive libraries of films and tapes that portrayed acts of rape and murder. Today, they would likely also uncover pornographic sites on the person’s computer and other electronic equipment. It is not clear, however, whether the violent pornography engenders thoughts of violence or whether violence-prone individuals prefer violent pornography. The answer may lie in some combination of both.

Many serial killers also collect memorabilia of their victims, such as items of clothing, audiotapes or photographs of the murder, and—in rare cases—body parts. Called *trophies,* these “souvenirs” vividly remind the killer of the incident, enhancing his fantasies even further.

Serial Killer Typologies

In contemporary psychology, the term *typology* refers to a particular system for classifying personality or behavior patterns. Usually, the typology is used to classify a wide assortment of behaviors into a more manageable set of brief descriptions. There are many problems

with typologies, however, including considerable overlap between categories. Rarely is one classification independent and separate from the others. In addition, some individuals can qualify for two or more classifications at once. For example, if the typology is based primarily on motive, the offender may demonstrate a combination of motives for the crime. Moreover, placing individuals into various categories is based on the questionable assumption that behavior is consistent across both time and place. Still, typologies are useful in highlighting the complexity of human behavior and the variety of motives and scripts.

Several typologies of serial killers have been proposed (Holmes & DeBurger, 1985, 1988; Holmes & Holmes, 1998; L. Miller, 2014). The Holmes typologies are widely cited, but researchers question their validity, as we note shortly. Holmes and DeBurger classify serial killers into a typology based on motive and outline four types: (1) visionary, (2) mission oriented, (3) hedonistic, and (4) power/control.

The **Visionary type** is driven by delusions or hallucinations that compel him to kill a particular group of individuals. He may be psychotic or otherwise seriously mentally ill. The **Mission-oriented type** is not mentally ill. This type believes that there is a particular group of people who are undesirable and who must be destroyed or eliminated. The victims may be sex workers; “street people”; LGBTQ individuals; or members of a particular religious, racial, or ethnic minority group.

The **hedonistic type** strives for pleasure and thrills, and, in the killer’s mind, people are simply objects to use for one’s own enjoyment. According to R. M. Holmes and Holmes (1998), hedonistic killers may be divided into three subtypes based on the primary motive for the murder: lust, thrill, and comfort.

The **Power-control killer** obtains satisfaction from the absolute life-or-death control they have over the victim. Sexual components may or may not be present, but the primary motive is the extreme power and dominance over the helpless victim. These killers also tend to seek specific victims who appear especially vulnerable and easy to victimize.

As noted earlier, although the Holmes typologies are often cited, they have not been validated. Canter and Youngs (2009) contend that the Holmes typology is largely based on the offender’s motivation, an approach they believe is fraught with problems and often results in marginally useful or unsuccessful profiles of the offender. Canter (Canter & Wentink, 2004) believes a better approach is to examine the offending style and dominant theme that is reflected in the way

that the offender interacts with the victim and the role the offender assigns to the victim.

Public Mass Shootings

A public mass shooting—sometimes referred to as an active shooter situation—takes place in public circumstances, such as schools, workplaces, malls, restaurants, parking places, and public transit (including aircraft). It is committed in the absence of other criminal activity or military action. Mass killings at home by a family member are often classified as domestic violence. Although everyone defines *mass shootings* a little differently, mass shootings are most often defined as those with four or more fatalities in a single incident (Follman, Aronsen, & Pan, 2020). It should be noted that the number 4 appears to be arbitrary number, and there is no reason why it could not be 2 or 3 deaths to qualify as a public mass murder. We focus on "shootings" in this section because mass violence using other lethal means, such as explosives, fires, or vehicles, often requires more technological knowledge or/and planning. Firearms are more direct, available, easier to utilize, and they are by far the most common method used in public mass killings.

While a mass murder is in process, the term used by law enforcement to designate the perpetrator is **Active shooter**. According to the FBI, "an active shooter is one or more individuals engaged in killing or attempting to kill people in a populated area" (2018, p. 1). Implicit in the definition is the use of one or more firearms by the shooter. The use of the word *active* indicates that both law enforcement personnel and citizens have the potential to influence the outcome. Basically, it also means that law enforcement was notified while the shooting was taking place (Cornell, 2020). Over three recent decades (1983–2012), there were approximately 78 public mass shootings in the United States, resulting in 547 deaths (not including the shooters; Bjelopera, Bagalman, Caldwell, Finklea, & McCallion, 2013). During 2014 and 2015, there were 50 active shooter incidents in 21 states resulting in 943 casualties (221 killed, 722 wounded) (FBI, 2018). All 50 shooters were male, 3 wore body armor, and 13 committed suicide at the scene. While shocking, frightening, and tragic, public mass shootings account for a very small proportion of the murders in any given year. In 2018 alone, for example, firearms were used to murder 11,836 persons (FBI, 2019a). The vast majority were not killed during public mass shootings.

Compared to serial murder, public mass shootings have drawn little research until recently. Perhaps this is because mass murder, although horrible and troubling, is not as intriguing, mysterious, or frightening as serial murder. It is, of course, devastating to all who

experience it, either directly or indirectly. We have only to mention such recent events as the mass killings in Newtown, Parkland, El Paso, Las Vegas, and Aurora, the Navy Shipyard incident, the killings at Fort Hood on two separate occasions, stabbings and gun deaths near the University of California Santa Barbara campus, Virginia Tech, and Northern Illinois University to recall the horror of those occurrences. Even Canada is not immune. In April, 2020, a public mass shooter shot and killed 22 people in Nova Scotia and set fires at 16 different locations before he was shot and killed by Royal Canadian Mounted Police.

It should be noted, as well, that the specific form of mass murder associated with terrorism is not usually included in the public mass shooting literature. Although instances of multiple deaths caused by terrorists, including domestic terrorists, have occurred for many years, these incidents are studied from a different perspective because they are either committed by groups of individuals for political purposes or by individuals affiliated with specific hate groups.

Reasons for the Increase in Public Mass Shootings

Lankford and Silver (2020) find that contemporary public mass shootings have become substantially more common and deadly in recent years. Over the past 60 years, for instance, 53% of all public mass shootings occurred over a 10-year period, 2010 to 2019. In fact, two thirds of all shootings that have killed 16 or more victims occurred during that period. Lankford and Silver argue that there are several reasons for this significant uptick in public mass shootings in recent years. First, there is a discernible increase in desires for fame, attention, or infamy among today's public mass shooters. "Although many of these perpetrators commit suicide or are shot and killed during their attacks, it does not detract from their desire for widespread attention" (Lankford & Silver, 2020, p. 42). From 2010 to 2019, 78% of the shooters demonstrated explicit or circumstantial evidence of fame-seeking or attention-getting desires compared to only 44% of shooters in the past (1966 to 2009). The primary way to gain fame or attention is to kill a large number of innocent victims. "For instance, findings from prior studies have shown that for a mass shooter, more victims equals more front page photos or you in the newspaper, more days that you stay on the front pages, more likelihood of you appearing in *The New York Times*, and more articles and longer articles . . . published about you" (Lankford & Silver, 2020, p. 44).

Second, the increase in the number of high-profile public mass shooters since the mid-1960s has played a significant role in the plans of subsequent attackers. More specifically, at least 50% of the

attackers between 2010 and 2019 indicated they were influenced by previous mass shootings, compared to only 25% of attackers in previous years. Third, Lankford and Silver (2020) find that a substantial increase in the availability of semiautomatic and assault weapons has occurred in recent years. Considerable research studies conclude that public mass shootings committed with semiautomatic rifles and assault weapons kill and injure more victims than attacks with less powerful weapons (de Jager et al., 2018; Klarevas, 2016). Consequently, public mass shooters who wish to gain instant fame (or infamy), use high-power, rapid-fire weapons to substantially increase victim totals for media attention.

Lankford and Silver (2020) proposed two policy recommendations to reduce the increase of victims in mass shootings: (1) change media coverage of public mass shootings and (2) reduce firearms easy access for potential attackers. Reducing media coverage, such as not publishing their names and photos, would limit the shooter's fame status. Moreover, limiting publicity would also diminish the shooter's influence on future copycats and imitators. Although most public mass shooters do obtain their weapons legally, there are a number of opportunities for preventing them from obtaining the weapons, especially when it comes to leakage. Lankford and Silver write, "Researchers have shown that compared with less lethal offenders, the deadliest perpetrators seem much more likely to (a) plan their attacks for more than 1 year, (b) reveal their violent thoughts/intentions prior to attacking, (c) reveal their specific interest in mass killing, (d) be reported to law enforcement for the concerning behavior, and (e) be reported to law enforcement for their concerning interest in homicide" (pp. 52–53). These warning signs and concerning behaviors provide considerable opportunity for intervening before the attacks.

Who Are the Shooters?

A detailed profile that will enable experts and law enforcement to predict the actions of public mass murderers does not exist. For example, active shooters during 2016 and 2017 ranged in age from 14 years to 66 years (FBI, 2018). "Seven shooters were in their teens, 18 were in their 20s, nine were in their 30s, nine were in their 40s, three were in their 50s, and four were in their 60s" (p. 5). In their study of 63 public mass shooters, Silver, Simon, and Craun (2018) did not discover any way of identifying them or predicting their attacking behavior based on demographic information alone. Case studies of active shooters often identify common risk factors, including in some cases, mental disorders, but in general we cannot identify who will or will not carry out such an event.

However, there have been attempts to construct a general profile of the typical mass killer, and these attempts are often cited in the media. In reality, mass murderers or active shooters often do not “fit the profile.” Interestingly, a recently published study of 152 mass murders between 2007 and 2011 (M. Taylor, 2018) questions some of the profile characteristics. Taylor found that typical mass murders were precipitated by a triggering event (e.g., being fired from one’s employment) and were committed by persons who knew one or more of the victims. They were often angry, discouraged, depressed but large segments of the general population also qualify for these characteristics.

Are Public Mass Shooters Mentally Ill?

In a national poll conducted in the United States in 2015, 63% of the respondents believed that public mass shootings are largely a result of serious mental health problems of the shooter (Skeem & Mulvey, 2020). In that same pool, only 23% believed the public mass shootings were primarily due to inadequate gun control.

In their study of pre-attack behaviors of public mass shooters, Silver et al. (2018) could only verify that 25% of the 63 shooters had been diagnosed by a mental health professional with a mental illness *of any kind* prior to the shooting. Twelve of the active shooters were diagnosed with a mood disorder, four with an anxiety disorder, three were determined to be psychotic, and two were diagnosed with a personality disorder. One shooter was diagnosed with autism spectrum disorder, which is not a mental illness. Based on their investigation, Silver et al. concluded that “formal diagnosed mental illness is not a very specific predictor of violence of any type, let alone targeted violence” (p. 17). They further concluded that “declarations that all active shooters must simply be mentally ill are misleading and unhelpful” (p. 17). Consideration should be directed more toward social and contextual factors than concluding the shooting was caused by mental illness.

In their extensive research review of mental illness and public mass shooters, Skeem and Mulvey (2020) concluded “there is little compelling evidence that mental illness *causes* mass shootings or that policy initiatives focused on mental illness will have a significant impact on these crimes” (p. 87, italics in quote). In fact, most public mass shooters do not have criminal records or any history of psychiatric hospitalizations (Fox & DeLateur, 2014), despite the fact that some (e.g., Virginia Tech shooter, Aurora theater shooter, Northern Illinois shooter) have had mental health treatment and qualify for some degree of mental illness. Mental disorders tend to exist on a continuum and the symptoms frequently wax and wane

over time. For example, Skeem and Mulvey (2020) point out that "research findings robustly indicate that most symptoms associated with mental disorders exist on a spectrum of severity—meaning that many symptoms are present to some degree even in the 'normal' population" (p. 88). Mental disorders come in all types of behaviors and levels of severity, and using them as predictors of future violence or as a primary basis for policies designed to prevent violence is a fool's errand.

In most cases, mass shooters tend to be convinced there is little chance that things will get better for them. Emotional distress, anger, and a conviction that life has not been fair to them are very common and generally do not fully qualify for the definition of mental illness. Silver et al. (2018) found that a majority of active shooters experienced multiple stressors in their lives before they attacked. Shooters experienced a high degree of financial and job-related stressors as well as personal conflicts with peers, partners, and coworkers or supervisors. In the Silver et al. study, it was clear that 79% of the active shooters were attacking in reference to a grievance of some kind. Their personal lives have been a failure by their standards, and they had often suffered a tragic or serious loss, such as a loss of meaningful employment or a significant other. Usually, the loss was recent (Taylor, 2018). Notably, at least half of the active shooters studied by Silver et al. (2018) demonstrated suicide ideation or engaged in suicide-related behaviors before their attack.

In the weeks and months before an attack, many active shooters demonstrate behavior that may signal impending violence (Silver et al., 2018). Although they may try to intentionally conceal these signals, other signaling behaviors are observable and, if recognized and reported, may lead to preventing the attack. Friends, family members, co-workers, and others who notice these signals may resist reporting them for fear of erroneously labeling a friend or family member as a potential killer.

Mass murders are usually carefully planned, and the crimes are often carried out in a calm, systematic fashion. Silver et al. (2018) found that 77% of the shooters they studied spent a week or longer planning their attack, and 46% spent a week or longer actually preparing and procuring the means for the attack. Approximately 9% planned their attack for more than a year. Furthermore, perpetrators who planned for more than a year were often substantially more deadly than perpetrators who took less time during the planning stage (Lankford & Silver, 2020).

Similar to school shootings, public mass shooters usually exhibit "warning behaviors" or communicate their intentions to others. Again,

we encounter the concept of leakage, as commonly found in school shootings. Those individuals who have information about a potential attack and/or are aware of the warnings are called **Bystanders** (Silver, 2020). “A bystander is anyone who has relevant information whether obtained through face-to-face or virtual contact” (Silver, 2020, p. 259). Also similar to school shootings, bystanders often do not communicate the relevant information to authorities. Fortunately, some do. Sarteschi (2016) analyzed 57 mass homicides plots that were prevented from being carried out. She found that the most common way the attacks were thwarted was by an individual or individuals reporting the relevant information to law enforcement. Even so, “the available evidence indicates that the number of public mass casualty events prevented by any means is much smaller than the number of completed attacks” (Silver, 2020, p. 260). Although a large percentage of mass shooters leaked their intent to others, people are reluctant to report pertinent information about the plans of a potential shooter for a variety of reasons. Silver (2020) mentions several: “[T]he possibility that the bystander is (or fears being seen as) complicit in the behavior at issue, the potential for reprisal from the person of concern, uncertainty about the seriousness of the situation, and the potential for not being taken seriously” (p. 261). The targets of the shooters are either symbolic of their discontent (such as their workplace) or are hated or blamed for the perpetrator’s misfortunes. Mass murderers who specifically target groups of people (e.g., members of a religious or political group) blame the group for their own misfortunes. The level of planning is often so focused and intense, that when they do attack they can maintain a calm composure during the massacre. Fox and DeLateur (2014) note that “[m]ass murderers have been known to follow a mental script, one that is rehearsed over and over again, to the point where they become comfortable with the mission” (p. 127).

Public mass shooters usually plan to die in the shooting, which characterizes their mission as a mass murder–suicide. Approximately 50% of the shooters turn the gun on themselves during the episode and many of the rest are shot by law enforcement officers (Bjelopera et al., 2013). Very few mass shooters live to go on trial—they generally die at the scene, either at their own hand or the hands of police. Exceptions include James Holmes, the Aurora, Colorado, theater shooter who is serving life in prison; Robert Bowers, who shot worshippers in a Jewish Synagogue in Pittsburgh in 2018 and has yet to be tried; and Nikolas Cruz, who killed 17 at Marjory Stoneham Douglas High School in Parkland, Florida the same year, and who also awaited trial at the end of 2020.

As in school shootings, psychologists can play a key role in providing clinical, education, and research services to the survivors, family members, and the community. For example, research directed at discovering what specific short-term, emergency psychological therapies may be most effective after mass violence incidents would be invaluable. Educating the public and first responders concerning resilience, common reactions, and the psychological recovery process for children, teenagers, and adults would be helpful. And providing effective clinical services to those individuals experiencing long-term trauma reactions would be rewarding to mental health professionals and highly beneficial to the long-term adjustment of the survivors.

HATE OR BIAS CRIMES

Hate crimes—also called **Bias crimes**—are criminal offenses motivated by an offender's bias against a group to which the victim either belongs or is believed to belong. Neither hatred nor prejudice alone is sufficient to constitute a hate crime. There must be an underlying criminal offense—for example, an assault, vandalism, arson, or murder—that is *motivated* by the hatred or prejudice. It is not a crime to hate; however, demonstrated hatred against the victim of a crime based on prejudice can enhance the sentence given the perpetrator if convicted. Among the notorious hate crime incidents in recent years was the killing of nine people at a Mother Emanuel Church prayer meeting in 2015. The shooter expressed no regret about his actions and said he committed his actions to preserve the Aryan race. In 2020, three men pursued a Black man who was jogging through a neighborhood in Georgia. Two cut off his path with their truck and shot him dead, while the third filmed the incident from a separate vehicle. As he lay on the ground, one shooter used a racial slur to describe the victim.

The groupings—or protected categories—most commonly identified in bias crime laws are race, religion, gender, disability, sexual orientation, and ethnicity. (See **Focus 8.3** for illustrations of incidents that qualify as hate crimes.) It is important to note that these are inclusive categories; that is, bias crime statutes protect all members of all races (not just Blacks or whites) and persons of all sexual orientations (not just gays and lesbians). In addition, statutes in some states also provide penalties for bias crimes against certain age groups (e.g., the elderly) or members of the military.

The **Hate Crime Statistics Act** of 1990 requires the FBI to collect data and provide information on the nature and prevalence of violent attacks, intimidation, arson, or property damage directed at persons or groups because of bias against their race, religion, sexual

orientation, or ethnicity. In September 1994, the Violent Crime Control and Law Enforcement Act amended the Hate Crime Statistics Act to include physical and mental disabilities in the data collection. Gender—commonly covered in hate crime statutes in many states—is not one of the specified categories. However, gender is now covered as a result of the **Violence Against Women Act** (VAWA), first passed in 1994 and reauthorized in 2000 and 2013. As of 2020, the VAWA had not been reauthorized.

Also, in 1994, Congress passed the Hate Crime Sentencing Enhancement Act, which provides for longer sentences for such crimes. In 1996, due to dramatic increases in the burning of places of worship (especially African American churches located in the southeastern sections of the United States), the Church Arson Prevention Act was signed into law. The Hate Crime Prevention Act of 1999 prohibits persons from interfering with an individual's civil or constitutional rights, such as voting or employment, by violence or threat of violence due to their race, color, religion, or national origin. In October 2009, Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in response to the brutal murders of both men because of their sexual orientation and race, respectively. This new federal law not only encouraged prosecution of hate crimes and allowed enhanced sentences, but also expanded the protected categories to include gender and sexual orientation along with those aforementioned. Despite these laws, crimes against gay, lesbian, bisexual, and transgender individuals remain frequent and tend to be the most violent of all hate crimes (Cramer et al., 2013). The Human Rights Campaign reported that at least 22 transgender people (mostly women of color) were killed in the United States in the year 2016 alone. In 2017 a 29-year-old man became the first person sentenced for killing a transgender woman under the federal hate crime statute. He was sentenced to 49 years.

Based on national statistics, hate crimes appear to account for a relatively small percentage of all criminal violence, usually about 4%. In 2018, a total of 7,120 hate crime incidents were reported (FBI, 2019a), and this number includes both violent and nonviolent offenses. Documenting hate or bias crimes is difficult because the intentions of the offender are not always obvious or clear cut. In addition, it is an enormous challenge to estimate accurately the prevalence of hate crimes because of varying statutes and methods of data collection across jurisdictions. Consequently, law enforcement agencies record hate crimes only when the investigation reveals facts sufficient to conclude that the offender's actions were bias motivated. Evidence most often used to support the existence of bias includes

oral comments, written statements, or gestures made by the offender at the time of the incident or drawings or graffiti left at the crime scene (Strom, 2001). In addition, there is state-to-state variation in the extent to which law enforcement officers are trained and encouraged to recognize and record hate crimes. For this reason, the most egregious examples are often turned over to federal investigators for possible prosecution under federal civil rights laws. Nevertheless, federal law enforcement officers do not necessarily recognize or record hate crimes. These officers comprise an extremely large group of agents identified with numerous federal agencies which are beyond the scope of this text.

Focus 8.3

Hatred on Display

The following are illustrations of recent bias-related incidents reported in the media. Although criminal activity is indicated in most—but not all—of them, the perpetrators were not necessarily charged with committing bias crimes—and in some cases the perpetrators were not caught.

- Shortly after the presidential election of 2016, a youth baseball dugout was spray painted with racist and anti-Semitic slogans. A photograph of the dugout was displayed on the front page of *USA Today*.
- Similarly, both during the presidential campaign and after the election, numerous mosques across the United States were defaced or otherwise vandalized.
- In 2017, nooses and swastikas began to appear in greater numbers in graffiti, on campuses, and even in the nation's capital.
- In 2017, a Black family living in a rural community in New York was awakened shortly before midnight to find their garage on fire and the house itself at risk of burning. The father, mother, and five children left the house, physically unharmed but emotionally distraught. A swastika and racist graffiti had been spray-painted on the house. A teenage boy was later charged.
- A youth with intellectual disability was beaten by four young people in Chicago; images of the beating were posted on Facebook. Advocates for the disabled said that such incidents against the disabled were common and seldom came to public attention.
- In 2020, as support for the Black Lives Matter movement increased, so did racist graffiti. In some communities, both white- and Black-owned businesses were vandalized.

QUESTIONS FOR DISCUSSION

1. Which if any of the earlier incidents does not, *as described*, suggest criminal activity?
2. For purposes of the criminal law, we could rank the incidents in order of severity, with the murders being the most serious. Should they also be ranked according to a moral perspective? According to psychological damage to the victims? Should they be ranked according to any other perspective?
3. When nooses and swastikas are put on display, who are the victims?

Available data indicate that a majority of hate crimes are motivated by race/ethnicity/ancestry bias (57.5%), followed by religious bias (20.2%), sexual orientation bias (17.0%), gender identity bias (2.4%), and disability bias (2.3%; FBI, 2019a). It is estimated that 60% of the total hate crime victimizations are not reported to the police (M. M. Wilson, 2014). Sexual orientation hate crimes are the least likely to be reported by the victim. Although substantially unreported, LGBT hate crimes are usually more violent and involve greater victim injury (Briones-Robinson, Powers, & Socia, 2016). Religious-bias crimes usually target Jews (Cheng, Ickes, & Kenworthy, 2013). Anti-Muslim hate crimes escalated rapidly after the attacks of September 11, 2001, but then leveled off for a few years (Cheng et al., 2013). However, according to data released by the FBI in November 2016, the number of assaults, attacks on mosques, and other hate crimes against Muslims in 2015 reached the highest total since the immediate aftermath of September 11, 2001 (Clay, 2017). In 2015, there were 257 anti-Islamic (Muslim) incidents involving 301 victims, a 67% increase from the previous year 2014. Currently, Muslim women in the United States wearing the hijab are often targets of harassment and racial microaggressions (casual degradations; Nadal et al., 2015). An example of a microaggression is asking, “What country are you from?” implying that she is not American. Muslim men draw perceptions of terrorism, violence, and criminal behavior (Clay, 2017). In 2020, Asian individuals, particularly those who were Chinese, were harassed and blamed for initiating the spread of the coronavirus, despite lack of scientific evidence that any one country or group should be targeted in this way. Examples of a disability bias include biases against a person with AIDS, a mental disorder, or intellectual disability.

Approximately two thirds of hate crimes are directed at individuals, whereas the remaining targets are businesses, religious institutions, or other institutions and organizations. About 4 out of 5 violent hate crimes reported in the FBI’s (2019a) hate crime statistics involve the

victimization of a single individual within a single incidence. The greatest proportion of persons suspected of committing hate crimes are white males (41%). FBI data indicate that 85% of those arrested for hate crimes are age 18 or older. Younger persons (younger than age 18) are more likely to be arrested for property-related offenses, such as vandalism, whereas older persons are more likely to be arrested for violent hate crime, such as aggravated assault. Forensic psychologists and other mental health professionals can play major roles in understanding and preventing hate crimes and treating those who commit them. For example, they can research and apply knowledge of how bias against certain groups influences juries, lawyers, judges, and law enforcement. They can study how hate crimes differ from other forms of violent crime. They can work with and train mental health professionals who work with hate crime victims. Forensic psychologist also can participate in advancing legislation aimed at addressing bias crimes at the state and federal levels.

STALKING: THE CRIME OF INTIMIDATION

Stalking is defined as "a course of conduct directed at a specific person that involves repeated physical or visual proximity, nonconsensual communication, or verbal, written, or implied threats sufficient to cause fear in a reasonable person" (Tjaden, 1997, p. 2). The term refers to

> repeated and often escalating unwanted intrusions and communications, including loitering nearby, following or surveying a person's home, making multiple telephone calls or other forms of unwanted direct and indirect communications, spreading gossip, destroying personal property, harassing acquaintances or family members, sending threatening or sexually suggestive "gifts" or letters, and aggressive and violent acts. (K. M. Abrams & Robinson, 2002, p. 468)

Stalking is as old as the history of human relationships, and yet it has only been within the past three decades that the behavior has been recognized as unlawful (Beatty, Hickey, & Sigmon, 2002). The release of films such as *Fatal Attraction* (Paramount Pictures, released 1987), *Sleeping With the Enemy* (20th Century Fox, released 1991), and *Cape Fear* (Universal Studios, released 1991) contributed to increasing salience about this problem in the minds of the public. Increased coverage by the news media of the stalking of celebrities (e.g., David Letterman, Rebecca Schaeffer) also led to stalking

becoming a household term at the end of the 20th century. Today, attention has been directed to cyberstalking and a related phenomenon, cyberbullying, both of which we cover shortly. Whether in person, over cell phones, or online, stalking is an extremely frightening, emotionally distressful, and depressing crime of intimidation. Since the 1990s and to the present, it has been the subject of extensive psychological research. Not surprisingly, clinicians have discovered that the longer the duration of the stalking —regardless of whether the behaviors are intrusive, violent, or some combination of both—the greater the potential damage to the victim (McEwan, Mullen, & Purcell, 2007). Anti-stalking laws exist in all 50 states, the District of Columbia, and Canada. Although most states define stalking in their statutes as the willful, malicious, and repeated following and harassing of another person, some include such activities as lying-in-wait, surveillance, nonconsensual communication, telephone harassment, and vandalism (Tjaden & Thoennes, 1998a). Some states require that at least two stalking incidents occur before the conduct is considered criminal. With the rapid development of technology, the laws in some states have now added cyberstalking to their list of prohibited behaviors.

Researchers believe that the motives of most stalkers are to control, intimidate, or frighten their victims. Like domestic violence and intimate partner violence, stalking is a crime of power and control. The fears and emotional distress generated by stalking behavior are many and varied. About 1 in 5 victims feared bodily harm to themselves and 1 in 6 feared for the safety of a child or other family member (Baum et al., 2009). About 1 in 20 feared being killed by the stalker.

In the study referenced earlier (Baum et al., 2009), the stalker was male 87% of the time, and the victim was female 80% of the time. Eighty percent of the stalkers are believed to be white, at least 50% are between the ages of 18 and 35, and many earn above-average incomes. In most stalking incidents, the victims (particularly women) knew their stalker. Approximately half of the female victims were stalked by current or former marital or cohabiting partners, and a majority of these women (80%) had been physically assaulted by that partner either during the relationship, during the stalking episode, or both. In about a third of the cases, the stalkers vandalized the victim’s property, and about 10% of the time, the stalker killed or threatened to kill the victim’s pet. Only 7% of the victims thought their stalkers were mentally disordered, psychotic, crazy, or abusers of alcohol or drugs.

In an effort to better understand stalkers, some researchers have proposed typologies, or classification systems. One of the first systematic studies on stalkers was done by Zona, Sharma, and Lane (1993) in their work with the Los Angeles Police Department's Threat Management Unit. These researchers developed a classification system that focused on individuals who stalked entertainment celebrities and divided stalkers into three behavioral clusters: (1) erotomanic, (2) love obsessional, and (3) simple obsessional (categories that will be defined shortly). A few years later, researchers shifted their focus from "star stalkers" to men who stalked their ex-partners (Emerson, Ferris, & Gardner, 1998; Kurt, 1995). Star stalkers were assumed to be predominately persons with mental disorders who were driven by delusions in their pursuit of their favorite celebrity, whereas ex-partner stalkers were seen as asserting their power over women through violence and intimidation (Mullen. Pathé, & Purcell, 2001).

Mohandie, Meloy, Green McGowan, and Williams (2006) studied a large sample of 1,005 male and female stalkers. They concluded that they could be grouped into four categories based on their relationship to the victim: (1) the Intimate stalker, who pursues a current or former sexual intimate; (2) the Acquaintance stalker, who pursues someone they know but with whom they have not ever been sexually intimate; (3) the Public Figure stalker, who pursues a public figure with whom they have never had a relationship; and (4) the Private Stranger stalker, who pursues someone they have never met but are aware of because the victim is in the stalker's environment (such as a neighbor or fellow college student). Mohandie et al. found that these groups had different violence rates, with the Intimate stalker being the most likely (74%) to use violence against their victim and the Public Figure stalker being the least likely (2%). Using the same data set, M. Meloy, Mohandie, and Green McGowan (2008) and M. Meloy and Mohandie (2008) have published studies focusing only on female stalkers.

Another often-cited stalking typology, one that focuses more on the motives for stalking than on the relationship between the stalker and his or her victim, was outlined by Beatty, Hickey, and Sigmon (2002). It consists of four broad categories, the first three of which are similar to those proposed by Zona et al. (1993): (1) simple obsession stalking, (2) love obsession stalking, (3) erotomania stalking, and (4) vengeance stalking. The term *obsession* refers to recurrent ideas, thoughts, impulses, or images that a person tries to control or satisfy through various actions. It should be emphasized that this typology

has not been validated by empirical research but should serve as a springboard for future research and hypothesis development.

When Does Stalking Usually Stop?

What terminates stalking? Some stalkers stop pursuing their current victim when they find a new “love” interest. About 18% of the victims in the Center for Policy Research Survey (Tjaden & Thoennes, 1998b) indicated that the stalking stopped when stalkers entered into a relationship with a new person. Law enforcement interventions also seem to help. Fifteen percent of victims said the stalking ceased when their stalkers received a warning from the police. Interestingly, more formal interventions such as arrest, conviction, or restraining orders do not appear to be very effective—perhaps serving to antagonize the stalker. Angela Eke and her colleagues (Eke, Hilton, Meloy, Mohandie, & Williams, 2011), in a 9-year follow-up study of stalkers with police contacts, found that 77% committed new offenses over that period, over half being charged with stalking offenses. About one third were charged with violent offenses. Eke et al. (2011) also found that stalkers with previous diagnoses of mental illness had significantly more contact with police, but their recidivism was more likely to be nonviolent. When it comes to persistent, frightening stalking that creates risks to personal safety, Tjaden and Thoennes (1998b) suggest that the most effective method to stop it may be for the victim to relocate as far away from the offender as possible, providing no information of the person’s whereabouts to the stalker or to individuals who might communicate that information. Victims of stalking should not be expected to bear the burden of such an impractical approach, however.

Predictions of Violence in Stalking Cases

Many stalking victims want to know the likelihood that they will become the victim of a violent act (Rosenfeld & Harmon, 2002). According to Rosenfeld and Harmon (2002), “[d]etermining which stalkers represent a significant risk of violence, and differentiating those individuals from the remaining offenders who may pose less risk of physical harm, has clear and significant implications for victims, clinicians, and the legal system” (p. 685). Recall that Mohandie et al. (2006) found that intimate stalkers had the highest rate of violence in their four groups, and Eke et al. (2011) found that stalkers with mental illness were less violent than those without.
In an effort to identify features that may differentiate violent stalkers from nonviolent stalkers, Rosenfeld and Harmon (2002) analyzed 204 stalking and harassment cases referred for court-ordered mental health evaluations in New York City. Results supported the findings of

previous researchers (e.g., Palarea, Zona, Lane, & Langhinrichsen-Rohling, 1999) who found that former spouses or intimates of stalkers were most at risk.

> Specifically, intimate stalkers threatened persons and property (including physical violence toward the victim), were more likely to "make good" on their threats by following them with some form of violent behavior, and used more physical approach behaviors in contacting their victims than non-intimate stalkers. These results illustrate the importance of accounting for the presence of an intimate relationship when assessing for violence risk in stalking cases. (Palarea et al., 1999, p. 278)

Violent *threats* and drug abuse also appear to be significant predictors of stalking violence. Rosenfeld and Harmon (2002) also found that variables such as the stalker's prior criminal history and previous violent *behavior* did *not* emerge as good predictors of violence. This was surprising because Palarea, Zona, Lane, and Langhinrichsen-Rohling (1999) reported that a history of violence was the strongest predictor in their data. McEwan, Mullen, MacKenzie, and Ogloff (2009) also found that stalkers who are rejected ex-intimates, who have a history of violent behavior, and who have made threats present the greatest risk of violence. The differences between the studies, however, may be due to the fact that Rosenfeld and Harmon (2002) had access to much more information—official records of arrest and convictions as well as stalker self-reports and victim reports—than the Palarea group did. Palarea et al. used data obtained from 223 police files maintained by the LAPD. Consequently, the difference between the two studies might be a function of the quality and quantity of the data collected.

Some research suggests that juvenile stalkers may be more dangerous and violent than adults. In an investigation of 299 juvenile stalkers, Purcell, Moller, Flower, and Mullen (2009) found that juveniles participated in higher levels of threats and violence than typically found in adult stalking. Over half of the victims (54%) of juvenile stalkers were physically attacked, some sustaining significant injuries, and another 2% were sexually assaulted resulting in serious injury. On the other hand, a recent study by L. Sheridan, North, and Scott (2015) found little difference in the violence displayed among three age groups of stalkers—16 and under, 17 to 59, and 60 and over. However, there were significant differences in ages of the

victims. Older victims were the most likely to be injured and also the less likely to be taken seriously by law enforcement.

Cyberstalking

Cyberstalking is analogous to traditional forms of stalking in that it incorporates persistent behaviors that engender apprehension and fear. However, with the advent of new technologies, traditional stalking has taken on new forms—e-mail, text messaging, tweets, and countless means of social networking. Cell phones and the internet have provided far-reaching and unregulated opportunities for cyberstalkers to harass unsuspecting victims. They provide not only anonymity but also contact with an immense field of potential victims. In addition, there is a considerable amount of personal information available through the internet, and cyberstalkers can easily and quickly locate private information about a target.

Unsolicited e-mail has been one of the most common forms of harassment, including hate, obscene, or threatening mail. However, the explosion in the availability of text messaging and other social media sites (Instagram, Twitter, Tik-Tok, K-Pop) has added to the problem. Other forms of harassment include sending the victim computer viruses or high volumes of electronic junk mail (spamming). Electronic stalking can result from an attempt to initiate a relationship, repair a relationship, or threaten and traumatize a person. It is often accompanied by traditional stalking such as threatening phone calls, vandalism of property, threatening mail, and physical attacks (Gregorie, 2000).

It is extremely difficult to hold someone accountable for cyberstalking, however, as a recent U.S. Supreme Court decision illustrates. In Elonis v. U.S. (2015), a man was convicted under a federal law making it a crime to transmit via interstate communication (e.g., cyberspace) a threat to injure someone. Elonis had periodically posted violent images and rap lyrics on his Facebook account, along with disclaimers that these did not refer to real persons. In addition, he posted rantings against his estranged wife, his employer, and various government officials. His boss and estranged wife both perceived these as threats—the former fired him and the latter obtained an order of protection from abuse. However, the U.S. Supreme Court, in a unanimous decision (8–0), said prosecutors had not demonstrated that he intended to threaten these particular individuals. Although it was argued that Elonis had at least been negligent in his postings and should have known better, the Court said negligence was not sufficient to convict him of that crime.

Cyberbullying is becoming more prominent and, although similar to cyberstalking, it largely involves adolescents bullying adolescents on

line. Age is a major determining factor in distinguishing the two terms, but this is not to say that adults do not get cyberbullied, in both workplace and non-workplace settings. Most studies focus on adolescents, however. At this point, we cover the psychological aspect of bullying and then extend the coverage to include cyberbullying, which is increasing while traditional physical, face-to-face bullying is decreasing.

Peer Non-Cyberbullying

During the past two decades, “peer victimization, and especially bullying, has become recognized as a pervasive and often neglected problem in school around the world” (Cornell, Gregory, Huang, & Fan, 2013, p. 138). In one national survey, 28% of adolescents in the United States reported being victims of bullying at school during the past year (Robers, Zhang, Truman, & Snyder, 2012). Other studies have found very similar results (Faris & Felmlee, 2011). In addition, bullying is pervasive in elementary schools, middle school, high school, and the workplace. Bullying, then, is not limited to children and adolescents.

Bullying is a form of peer aggression in which one or more individuals physically, verbally, or psychologically harass a victim who is perceived to be weaker or “different.” Examples of physical bullying include hitting, spitting, kicking, punching, pushing, or taking or destroying personal items. Verbal bullying includes name calling, taunting, malicious teasing, and verbal threats. Psychological bullying is spreading destructive or mean rumors and engaging in social exclusion, extortion, or intimidation. Very often, those who bully have been victims of bullying themselves.

Bullying can adversely affect all students in a particular school, even if they are not direct victims (Cornell et al., 2013; Vanderbilt & Augustyn, 2010). More specifically, “Bystanders may have various roles that range from assisting and reinforcing the bully to being frightened and experiencing vicarious victimization” (Cornell et al., 2013, p. 139). Bullying affects the entire climate of the school. Researchers have found that widespread bullying creates a school environment of fear and insecurity, reduces school attendance, and results in poor academic performance and dedication to schoolwork (Glew, Fan, Katon, & Rivara, 2008; Swearer, Espelage, Vaillancourt, & Hymel, 2010). As a result of chronic bullying, victims often suffer psychological problems, including depression, PTSD, and suicidal thoughts (T. Shaw, Dooley, Cross, Zubrick, & Waters, 2013). These problems sometimes continue into adulthood.

Rather than focusing on the personality traits of those who bully or are bullied, Faris and Felmlee (2011), in a very important study,

investigated the social networks in which bullying takes place. The authors argue that the role of personal deficiencies in bullying is overstated. Rather, it is the role of peer status that often leads to bullying and peer-directed aggression. The results of their study revealed that, “for the vast majority of adolescents, increases in status are, over time, accompanied by increases in aggression toward their peers” (p. 67). Their findings indicate that bullying does not emerge from isolated adolescents who are on the fringes of the school hierarchy, but rather occurs most often among relatively popular young people seeking additional status—in other words, students at the midlevel of status. A very similar finding is reported by Reijntjes and his associates (2013). High amounts of bullying were significantly related to high social status as measured by perceived popularity. Apparently, in some peer circles, aggression and bullying are a way of gaining status among that specific group of adolescents. Interestingly, Faris and Felmlee found that once bullies gained the top status level, their aggression and bullying generally stopped or were greatly reduced.

Adolescents who engage in bullying are unlikely to target strangers but often select those peers with whom they previously had close relationships. Both girls and boys engaged in bullying, but in slightly different ways. Girls were less likely to use direct forms (verbal harassment or physical violence) but somewhat more likely to spread rumors and ostracize (Faris & Felmlee, 2011). Girls, however, were also more likely to be victimized.

Studies also show that bullying behaviors are partly maintained by the responses of those peers who witness the bullying (Salmivalli, Voeten, & Poskiparta, 2011). “Bystanders are present for 80% of bully incidents, and therefore can influence the bullying situation by promoting or reducing bullying” (Banks, Blake, & Joslin, 2013, p. 10). Studies continually show that bystanders that defend victims have the greatest likelihood of decreasing bullying. Consequently, research that focuses on the prevention of and intervention in bullying has shifted toward recognizing bullying as a group process (Howard, Landau, & Pryor, 2014). That is, the bully is often reinforced by the peer-group dynamics that occur during the episode. For example, peers spend a majority of the time watching the bullying incident and try not to get involved (O’Connell, Pepler, & Craig, 1999). Experts believe that passively watching the behavior sends a message to the bully that the bystanders approve of their actions. Only about 17% of peers try to defend the victim (Howard et al., 2014). More important, “[w]hen peers do intervene, either by actively defending the victim or

aggressing against the bully, a majority of these efforts have proven effective" (Howard et al., 2014, p. 266).

Psychologists, particularly school psychologists and other school personnel, can help greatly in reducing peer bullying by educating students that peers are central to occurrence, maintenance, and escalation of that bullying. Howard et al. (2014) warn, however, that bullying-prevention programs cannot be applied without careful consideration of the individual differences among students. Failure to appreciate and address the important differences in how children and adolescents respond to bullying will lead to only partial success in bullying reduction. As noted by Banks et al. (2013),

> [m]any students may choose not to defend for fear of stigmatization or rejection by peers, whereas others may defend intermittently because the bully is their friend or simply because they assume someone else will speak up first on behalf of the victim. (p. 10)

In addition, most parents discuss how their children should respond to bullying, which also influences whether and how bystanders intervene. Studies reveal that children whose parents tell them not to become involved in the bullying incident are more likely to just watch or even join in the bullying (Banks et al., 2013; T. N. Sullivan et al., 2012; Traube et al., 2007).

The preceding findings suggest that parents should also be involved in bully-intervention programs. A study conducted by Ttofi and Farrington (2011) confirmed this approach. The researchers discovered that anti-bullying interventions that included the training of parents on how to handle bullying reduced both school bullying and victimization.

Cyberbullying

"The time has come for developmental and clinical psychologists to pay attention to the hidden world of adolescent peer culture revealed by examining adolescents' digital communication" (Underwood & Ehrenreich, 2017, p. 145). Best estimates indicate that 88% of adolescents in the United States own or have access to mobile phones, and about 25% report going online almost constantly (M. George & Odgers, 2015). On average, adolescents send and receive 67 text messages daily on their phones (Lenhart, 2015), and 80% of adolescent mobile phone owners report sleeping with (or presumably very near) their phones (Lenhart, Ling, Campbell, & Purcell, 2010). Most adolescents consider their phones indispensable to their social lives (Barlett, Gentile, & Chew, 2016). Adolescents turn to social

media as a way of understanding how they fit in with their peers and keep tabs on what their friends are doing and whom they are with. Many, if not most, adolescents prefer to communicate with friends and peers through text messages rather than any other form of communication, including face-to-face interactions (Lenhart et al., 2010; Underwood & Ehrenreich, 2017). Interestingly, a recent pilot study examining text messages of mostly young people who self-reported past attempts at suicide found that anger increased and positive emotions decreased as the participants approached a suicide attempt (Glenn, Nobles, Barney, & Teachman, 2020).

The heavy use of electronic communications renders adolescents highly susceptible to become victims of *cyberbullying*, defined as the intentional use of electronic communication to intimidate, threaten, or embarrass another person. In one major survey of 28,104 adolescents (Grades 9–12) attending 58 Maryland high schools (Waasdorp & Bradshaw, 2015), 12.5% reported being cyberbullied in the past 3 months. Middle school students (Grades 6–8) appear to be especially susceptible to cyberbullying. A survey by Hinduja and Patchen (2009) found that 9% of middle school students reported being cyberbullied within the last 30 days and 17% during their lifetime. Eight percent of the middle school students admitted cyberbullying someone. In another survey of 3,767 middle school students, Kowalski and Limber (2007) discovered that 18% had been cyberbullied at least once within the previous 2 months. Eleven percent said they had cyberbullied others during the past 2 months. Girls appear most likely to be both victims and perpetrators during the middle school years, while boys tend to be both victims and perpetrators in high school. A recent study by the Cyberbullying Research Center (Hinduja & Patchin, 2016a) revealed that 33.8% of students between ages 12 and 17 were victims of cyberbullying in their lifetime. In addition, the same study found that 11.5% of students between those ages had engaged in cyberbullying in their lifetime.

Cyberbullying has become a worldwide problem. In the United Kingdom, 1 in 4 youths between 11 and 19 said they had been cyberbullied (Li, 2006). Similar data were reported by Canadian youth (Li, 2006, 2010). Spain and Italy also appear to have significant problems with youth cyberbullying (Ortega et al., 2012). (See Kowalski, Giumetti, Schroeder, & Lattanner, 2014, for a complete listing of the many countries facing cyberbullying problems.)

Effects of Cyberbullying

The psychological impact of even a single episode of cyberbullying can be quite devastating to the victim (Underwood & Ehrenreich,

2017). This is especially the case if the perpetrator was believed by the victim to be a friend or known peer. “Adolescents may be deeply wounded by even a single experience of cyber victimization, which will most often happen at the hands of a friend” (Underwood & Ehrenreich, 2017, p. 155). In 2017, news media reported on the case of an 11-year-old boy who killed himself after seeing a video of his 14-year-old girlfriend who was supposedly dead. The girl herself, along with a friend, had apparently sent him the video. Many other incidents have been reported of teens either harming themselves, killing themselves, or experiencing serious psychological problems after embarrassing photos have been posted online. In the Waasdorp and Bradshaw (2015) study described previously, nearly one third of the victims said they thought it was a friend who cyberbullied them. Unfortunately, perpetrators who feel they are anonymous can be even more daring, vicious, and threatening than those who bully face to face.

Not only does the cyberattack cause havoc to the victim’s self-esteem and self-image, but the message also can be immediately viewed by friends and followers (Underwood & Ehrenreich, 2017). Moreover, it potentially remains in digital space forever. Studies find that the effects on youth include anxiety disorders, sleep problems, loneliness, depression, substance use, low academic achievement, low life satisfaction, and, in extreme cases, suicide attempts (Mehari, Farrell, & Le, 2014; Underwood & Ehrenreich, 2017). Because of its established links to physical and mental health problems in youth, cyberbullying has become an emerging public health concern (Selkie, Fales, & Moreno, 2016).

Studies have generally reported that girls are more likely to be victims and perpetrators of cyberbullying than boys. However, as noted earlier, a recent study suggests that girls report more cyberbullying in early adolescence (e.g., middle school), whereas boys report more in late adolescence (Barlett & Coyne, 2014). Very little research has focused on the extent that youths of various races, ethnicities, and religions are subjected to cyberbullying.

To date, all states have a bullying law, but only 23 have laws specially pertaining to cyberbullying (Hinduja & Patchin, 2016). There is no cyberbullying law in the United States at the federal level. In Canada, several provinces and territories have laws specifically dealing with online and offline bullying. At the federal level, Canada’s parliament passed Bill C-13 which criminalizes nonconsensual distribution of intimate images online but do not include other types or content of cyberbullying.

The difficulty enacting laws directed at cyberbullying in the United States is illustrated by the fate of the Megan Meier Cyberbullying Prevention Act of 2009, a proposed federal law that would have forbade interstate or foreign digital or electronic communication with the intent to coerce, intimidate, harass or cause substantial emotional distress to a person. The proposed penalty for violating the law was a fine of $10,000 or imprisonment not more than 2 years, or both. The bill was introduced twice in the House of Representatives but failed to gain support for passage because of concerns about infringement on the First Amendment (free speech) and the overbroad aspects of the law that might provide prosecutors with too much latitude. Megan Meier was a 14-year-old girl who committed suicide after receiving a hostile, demeaning message from “Josh Evan,” a “boy” she met on Myspace. Eventually, it was learned that “Josh” was really another girl, an acquaintance of Megan who lived down the street.

So far, punishment for cyberbullying has been limited to suspensions from school, provided the actions significantly disrupted the school environment. Adolescents are often reluctant to share hurtful online experiences with their parents, however (Underwood & Ehrenreich, 2017). Waasdorp and Bradshaw (2015) found that only one third of adolescents told their parents about being cyberbullied. Parental monitoring and support are helpful but, as Underwood and Ehrenreich point out, adolescents are continually embracing new digital platforms which become overwhelming to understand. Even for parents who try to monitor the digital lives of adolescents, this is a major challenge—70% of teens admit they are skillful at avoiding parental monitoring.

SUMMARY AND CONCLUSIONS

Violence, the definition of which indicates that it requires some display of physical force, is essentially atypical human behavior when we compare it with the vast amount of human behavior that is nonviolent. Nonetheless, it remains a fascinating area of study as well as a pervasive aspect of popular culture. In fact, as we saw in this chapter, the increasingly violent images in the media have prompted research studies that in turn have led to calls for limiting the exposure of children—particularly young children—to these images. We saw that aggression, a construct frequently studied by psychologists, does not necessarily result in the physical force that we defined as violence. In addition, society actually condones some forms of violence, which further complicates any attempts to prevent it, predict it, or treat those who display violence or who are its victims. The chapter focused primarily on criminal violence as it is defined in the law and in crime statistics. The four Part I violent crimes—murder

and nonnegligent manslaughter, rape, aggravated assault, and robbery— together comprise about one third of the total Part 1 crimes committed. Persons arrested for these crimes are predominantly male (87%–90%), although the violent crime rate for females began to increase faster than the male rate in the 1990s. Women continue to appear in arrest statistics far less often than men, however, a phenomenon for which a variety of explanations has been proposed. The most common explanations relate to either socialization or biological differences.

Race and ethnic differences in violent crime have received greater attention, and these differences are among the most troubling to researchers and policy makers alike. African Americans, particularly males, continue to make up a disproportionate part of official statistics on violent crime. The chapter emphasized that numerous social factors as well as police practices can explain these differentials. and we warned against attributing any biological factors to the differences.

We also cautioned against focusing on one racial or ethnic group to the exclusion of others, noting that researchers are beginning to explore differences among these groups. Psychologists and criminologists as a group often discuss violence as being instrumental, or reactive-expressive, or some combination of both. Studies suggest that the great majority of criminal violence—including homicide—is instrumental. Offenders commit the crime to achieve a particular goal, be it material goods, recognition, or political change. Psychologists and criminologists also have explored biological, social, cognitive, and situational factors as explanations for violent behavior. At present, it appears that a combination of all four categories of factors is the best way to approach the study of violence. However, we emphasize that, although some researchers have found biological links to aggression, any biological predisposition can be attenuated (or lessened) with careful attention to social, cognitive, and situational factors. To use one example, the social environment of a child who is highly aggressive as the result of some brain damage can be modified to make it less likely that that child will display violent behavior.

Violence in schools and in the workplace has attracted intense media attention, and both topics are explored in detail. Although school shootings are statistically rare in light of the vast number of schools in the United States, they continue to occur with regularity. The vast majority involve only one or two victims; school mass shootings get the most public attention. Even when only one life is lost, however, the tragedy touches the entire community. No one profile of a school

shooter exists, but researchers have identified some common features as well as “red flags” that *may* alert school officials. When an individual student is believed to pose a threat, mental health practitioners may be asked to conduct a threat assessment. Such assessments are now a common task for forensic psychologists, some of whom have developed protocols and decision trees to use for these purposes.

Workplace violence includes homicides, but the vast majority of workplace violence incidents do not end in death. In fact, most of these incidents are not actually violence but rather *threats* of violence. Forensic psychologists have critical roles, not only in alerting employers to potentially violent individuals in the workplace, but also in facilitating a working environment that fosters acceptance and cooperation among all employees. However, a substantial portion of workplace violence is committed by outsiders or by former workers or supervisors.

Atypical murders—particularly those that qualify as multiple murders (serial, spree, and mass murders)—have most fascinated and frightened the public. We discussed in detail both serial and mass murderers because they have received the most research attention. Serial murderers—so called because of the time interval between their killings—generally begin their murderous behavior at a later age than single murderers. Most are male, but their victims may be male or female—they generally show a preference for one or the other. Although there is no “serial murderer personality” or profile, serial murderers as a group appear to be persuasive and to delude their victims into thinking that they pose no danger to them. Serial murderers *as a group* are not mentally disordered in the traditional sense; that is, they do not fit traditional diagnostic categories of mental illness, although some qualify as criminal psychopaths. Mass murderers—who kill three or more individuals during one incident—are generally divided into classic and family types, but a terrorist mass murder type should also be added. Although there are highly publicized illustrations of mass murders in public places, most mass murders seem to be family murders. When the perpetrator is a member of the family, they are also likely to commit suicide in conjunction with the incident. Compared with serial murderers, mass murderers are more likely to be isolated, disenchanted, and ineffective individuals whose crime is precipitated by what they perceive as a tragic loss, such as abandonment by a significant other or loss of employment.

The chapter ended with a discussion of bias crimes, stalking, and bullying, and the cyber versions of each of these. Of these, bias

crimes qualify more directly as criminal violence, if the underlying offense is a violent crime, such as assault. Vandalism, such as spray-painting racist slogans, defacing mosques, or upending cemetery markers, is a continuing problem and one in which the perpetrator is often not identified. Although incidents of bias or hate crimes have increased in recent years, the number reported nationwide does not seem overwhelming, but we cautioned that many bias crimes go unreported to police. In addition, police agencies vary greatly in the extent to which they enforce bias crime statutes or record bias crimes.

Stalking was sometimes referred to as the crime of the 1990s. Its traditional form—following, sending mail, or telephoning victims—is now supplemented by cyberstalking, which is stalking via electronic communication. Researchers have proposed typologies of stalkers that are similar to the typologies proposed for serial killers and mass murderers. Although not violent in itself, stalking (whether in traditional or online form) engenders fear—sometimes debilitating fear—in its victims. An undetermined percentage of stalkers do ultimately exhibit violent behavior.

We discussed recent efforts to distinguish between those stalkers who are likely to be violent and those who will cease their stalking behavior without harming their victims. At present, it appears that victims who are former intimate partners of the stalker are most at risk of being physically harmed. Past violent behavior does not appear to be a strong predictor of violence associated with stalking, but the research is somewhat inconsistent on this point and needs further attention.

Psychologists, particularly those consulting with schools, have been concerned with bullying, including cyberbullying, in recent years, in light of evidence that this is an increasing problem, particularly among children and adolescents. Although we focused on bullying among children and adolescents, because this is where the research takes us, it is important to recognize that bullying also occurs among adults. Research suggests a complex interaction between bullying and being bullied. Adolescents who bully others were often bullied themselves in their childhoods, so early detection and prevention are crucial aspects to be considered. Bullying also may be used as a means of gaining status among some peers; when the status is achieved, the bullying behavior no longer continues. Recent research on bullying indicates that both peer intervention (encouraging peers to speak out against it) and adequate parental education about bullying represent the most effective means to address this problem.

KEY CONCEPTS

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Hedonistic type 331
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Leakage 314
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Mission-oriented type 331
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Safe School Initiative (SSI) 314
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Socialization factors 303
Spree murder 327
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QUESTIONS FOR REVIEW

1. What are the four categories of the causes of violence discussed in the psychological literature?
2. Provide illustrations of gender, race, and ethnic differences in violence.
3. Summarize the negative effects of constant viewing of violence in the media.
4. Distinguish among single murder, serial murder, mass murder, and spree murder.
5. List and define the typologies of serial killers.
6. What are the two major types of mass murder?
7. Why is the term *workplace violence* somewhat of a misnomer?

8. Describe the four major categories of workplace violence.
9. Define hate or bias crime and tell how the criminal justice system has responded to these crimes.
10. List any five findings from the research on (a) stalking and (b) bullying.

Descriptions of Images and Figures

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The horizontal axis ranges from 2014 to 2018 in increments of 1. The vertical axis is labeled estimated number of offences and ranges from 1,150,000 to 1,255,000 in increments of 21,000. The approximate data from the graph are tabulated below.
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The percentage of violent crimes in 2018 are tabulated below.
The percentage of property crimes in 2018 are tabulated below.
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The threat assessment is as follows.
Step 1: Evaluate the threat. Obtain a detailed account of the threat, usually by interviewing the person who made the threat, the intended victim, and other witnesses. Write the exact content of the threat and key observations by each party. Consider the circumstances in which the threat was made and the student's intentions. Is there communication of intent to harm someone or behavior suggesting intent to harm? If no, not a threat. Might be an expression of anger that merits attention. If yes, proceed to Step 2.
Step 2: Attempt to resolve the threat as transient. Is the threat an expression of humor, rhetoric, anger, or frustration that can be easily resolved so that there is no intent to harm? Does the person retract the threat or offer an explanation and or apology that indicates no future intent to harm anyone? If yes, case resolved as transient; add services as needed. If no, proceed to Step 3.
Step 3: Respond to a substantive threat. For all substantive threats: a. Take precautions to protect potential victims. b. Warn intended victim and parents. c. Look for ways to resolve conflict. d. Discipline student, when appropriate. Serious means a threat to hit, fight, or beat up whereas very serious means a threat to kill, rape, or cause very serious injury with a weapon. If the case is serious, then it is resolved as serious substantive threat; add services as needed. If the case is very serious, proceed to Step 4.
Step 4: Conduct a safety evaluation for a very serious substantive threat. In addition to a-d above, the student may be briefly placed elsewhere or suspended pending completion of the following: e. Screen student for mental health services and counseling; refer as needed. f. Law enforcement investigation for evidence of planning

and preparation, criminal activity. g. Develop safety plan that reduces risk and addresses student needs. Plan should include review of Individual Educational Plan if already receiving special education services and further assessment if possible disability.
Step 5: Implement and monitor the safety plan. Document the plan. Maintain contact with the student. Monitor whether plan is working and revise as needed.
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The total equals 405. The data from the chart are tabulated as follows.

CHAPTER NINE PSYCHOLOGY OF SEXUAL VIOLENCE

CHAPTER OBJECTIVES

- Define sexual violence. Examine the characteristics of men who rape and sexually assault.
- Acquaint the reader with the Massachusetts Treatment Center typologies for rapists and child sex offenders.
- Review research on juvenile sex offenders, both male and female.
- Discuss sexual exploitation of children through the internet.
- Describe characteristics of child sex offenders.
- Describe the varieties of risk assessment procedures for both adults and juvenile sex offenders.

Since 2010, numerous celebrities, media and sports personalities, public officials, and others have been accused or convicted of sexual offenses.

Nearly one fourth of juveniles held in detention facilities nationwide have reported being sexually assaulted by staff or other juveniles. Both political figures and academic researchers have brought attention to the problem of sexual assault on college campuses, in the military, and in detention centers holding immigrants.

Sexual violence is a pervasive global problem. According to the Centers for Disease Control and Prevention (CDC), *sexual violence* is defined as a sexual act committed against someone without their consent (Aroustamian, 2020). The term includes “completed or attempted forced penetration, alcohol or drug-facilitated penetration of a victim, forced acts in which a victim is made to penetrate someone, and unwanted sexual contact” (Aroustamian, 2020, p. 2). Sexual violence is basically an all-encompassing, nonlegal term that refers to a wide spectrum of criminal behaviors of sexual abuse including sexual trafficking and sexual exploitation, child sexual abuse and incest, and sexual harassment. It is also used to refer to a range of sexual criminal acts from unwanted touching and kissing to rubbing, groping or forcing the victim to touch the perpetrator in a sexual manner. Human rights organizations, for example, have reported widespread examples of sexual violence, particularly but certainly not exclusively against women and girls, in many countries including the United States. In legal settings, the term most preferred is *sexual assault*, defined as any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (Office on Violence Against Women, 2020). Our preference in this chapter is to utilize the term *sexual violence* when broadly describing both criminal or unwanted but not necessarily criminal sexual behaviors. We use the term *sexual assault* when describing legal issues of criminal sexual behavior,

when used in government documents, or when describing research findings or scholarly comments that specifically apply the term. Finally, as we explain shortly, the term *rape* will be used, depending upon the context.

After four decades of research, it is clear that sexual violence is a multidetermined behavior committed by a heterogeneous group of offenders. Although desire for power, control, and dominance is usually the primary reason, sexual gratification may be the primary reason as well. Even when gratification is a primary motive, however, the exertion of power and control are almost as important—if not equally so. Addressing the heterogeneity of sexual offenders and their motives is critical if we are to identify effective strategies for offender assessment, management and treatment (S. L. Brown & Forth, 1997).

Forensic psychologists encounter sex offenders primarily as individuals they are evaluating in a number of contexts. An alleged sex offender may be assessed before a judge decides to grant bail or a convicted offender may be assessed before a judge determines a sentence. Forensic psychologists often conduct risk assessments of juvenile sex offenders and evaluate them with respect to their amenability for rehabilitation. Correctional psychologists also may assess sex offenders before parole hearings or offer treatment to sex offenders both in community and prison settings. A sex offender being released from prison after serving their sentence may undergo risk assessment as to whether they are dangerous and should be involuntarily civilly committed. Forensic psychologists also may help police investigating sex crimes, such as by identifying categories of sex offenders. We cover research relating to most of these contexts in the chapter.

In this chapter, we also provide a comprehensive summary of the incidence and complexity of sexual violence, the known characteristics and developmental histories of various sex offenders, and the methods commonly used to assess and evaluate them. The effect of sexual violence on victims is covered in Chapter 10 and the treatment of convicted sex offenders is described in Chapter 12. It will be emphasized there, as it is in the present chapter, that sex offenders are a diverse group. The etiology or causes of such offending varies widely, and there are surprisingly few common demographic factors in their backgrounds. Furthermore, professionals who work in this area in many contexts (e.g., police officers investigating crimes, clinicians evaluating offenders or offering treatment, mental health practitioners providing services to

victims, and even researchers gathering data) are susceptible to emotional burnout.
This chapter also covers typologies of sexual offenders that are often used by both law enforcement officials and mental health professionals. As explained in the previous chapter, typologies, which place people into categories or groupings, are an important first step in the understanding and management of crimes and perpetrators, including those who commit sexual violence. A typology is useful in classifying a wide assortment of behaviors, attitudes, motives, and beliefs into a manageable set of meaningful descriptions. It helps put order into an otherwise chaotic mass of information, a process that enables research, assessment, prevention, treatment, and policy planning to take place. Offender typologies also highlight the enormous complexity of sexual offending and emphasize that there is no single type of sex offender. Nevertheless, as previously mentioned, typologies are not perfect tools and must continually be revised and validated.

DEFINITIONS OF SEXUAL ASSAULT AND RAPE

Legal definitions of what constitutes a sexual offense vary widely from state to state. In a majority of states, the broad term ***sexual assault*** has replaced the term rape in the criminal statutes. **Rape** is a narrower term, referring to forced penetration of vaginal, anal, or oral regions of the body. Sexual assault recognizes that victims also may be violated in ways that do not involve penetration, such as groping or fondling. In addition, in an effort to include males as victims, the statutes are becoming increasingly gender neutral.
The definitions used in federal criminal law parallel the changes in definitions in many states. To begin with, the Federal Criminal Code (Title 18, Chapter 109A, Sections 2241–2243) definition of sexual assault does not use the term ***rape*** and does not require the victim to label the act as rape to meet the criteria (legally called *the elements*) for the crime (Kilpatrick, Whalley, & Edmunds, 2002). Second, the federal code distinguishes between two types of sexual assault on the basis of the degree of force or threat of force used: (1) aggravated sexual assault and (2) sexual assault.

DEFINITIONS FOR GATHERING STATISTICS

As discussed in previous chapters, the U.S. government has three major crime measures, each published in a separate document: the *Uniform Crime Reports* (UCR), the *National Incident-Based Reporting*

System (NIBRS), and the *National Crime Victimization Survey* (NCVS). All three measures define sexual assault slightly differently.

The Uniform Crime Reports (UCR)

The UCR traditionally divided sexual offenses into two categories: (1) **Forcible rape** and (2) (other) sexual offenses. Beginning in 2013, the Federal Bureau of Investigation (FBI) began collecting rape data under a revised definition. Before that time, *forcible rape* was defined as "the carnal knowledge of a female forcibly and against her will." In addition, traditionally the UCR program did not recognize rape when males were the victims; rather, these crimes were reported as aggravated assaults or other sexual assaults. If recorded as other sexual assaults, they were considered Part II or non-index crimes.

As of December 2013, the term *forcible* was removed from the definition. The revised definition of rape is "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration of a sex organ of another person, without the consent of the victim." In UCR data, the old definition is referred to as the legacy definition, and the new description is called the revised definition, and for a few years data were reported under both definitions.

In 2016, the FBI director approved a recommendation to discontinue the reporting of rape data using the UCR legacy definition beginning in 2017. This transition from the legacy definition to the revised one was largely accomplished by 2018. Therefore, the official rape statistics reported in this section are based on the revised definition, where both females and males are reported as rape victims.

The UCR counts one offense as rape, regardless of whether it was rape, attempted rape, or assault with intent to rape, and regardless of the victim's age or sex. Sexual relations without the victim's consent that involve a family member is classified as a rape and not an act of incest.

All other crimes of a sexual nature are classified as Part II offenses. They include such behaviors as fondling or groping sexual parts of another's body and lewd and lascivious actions, such as exposing one's sexual organs to unsuspecting others.

Statutory rapes, in which no force is used but the female victim is under the age of consent, are part of a list of offenses for which only arrest data are collected in the UCR. This is not to say that the offenses are not serious; many qualify as felonies. It is estimated, however, that approximately 25% of the sex crimes committed against minors and reported to the police involve statutory rape (Troup-Leasure & Snyder, 2005). However, even if a statutory rape is reported to police, it will appear in the UCR only if someone is arrested.

The UCR also does not tabulate cases in which the offender uses threats of *nonphysical* force to obtain sex, such as threatening a person with the loss of a job or other punishment if this person does not comply. However, some state legislatures have broadened the definition of force and have criminalized sex obtained by certain nonphysical forms of coercion (Kinports, 2002).

The National Incident-Based Reporting System (NIBRS)

The NIBRS has the potential to yield fairly detailed descriptions of sexual assaults reported by participating law enforcement agencies. Recall from earlier in the text that NIBRS will replace the UCR's Summary Reporting System (SRS) in the near future. The NIBRS divides crimes into two major categories: Group A and Group B. Group A contains the 46 most serious crimes, including sexual offenses, and Group B contains 11 of the less serious offenses, such as passing bad checks. The sex offenses in Group A are divided into two subcategories, forcible and non-forcible. The forcible offenses include forcible rape (only to distinguish it from statutory), forcible sodomy, sexual assault with an object, and forcible fondling. For these offenses, the NIBRS provides, among other things, data that include the following:

- Demographic information on all victims
- Levels of victim injury
- Victim's perceptions of offender's age, gender, race, and ethnicity
- Victim–offender relationship

The NIBRS also collects information on the weapons used, location of the incident, and the demographics of the offender (if arrested). Like the UCR, the NIBRS is based on law enforcement data and does not include information on convictions.

The National Crime Victimization Survey (NCVS)

The Bureau of Justice Statistics' **National Crime Victimization Survey** (NCVS) is an annual data collection carried out by the U.S. Census Bureau. The NCVS is a self-report survey administered to persons age 12 or older from a nationally representative sample of U.S. households. The NCVS survey collects information on nonfatal personal crimes and household property crimes.

In the NCVS, rape is defined as forced sexual intercourse in which the victim may be either male or female. Sexual assault, on the other hand, includes a wide range of victimizations involving attacks in which unwanted sexual contact occurs between the victim and the offender(s). Threats and attempts to commit such offenses are included in the victimization data reported by the NCVS.

Many existing laws require that both force and a lack of consent be proved before an individual can be convicted of rape or sexual assault. Traditionally, for example, a lack of resistance by the victim was interpreted as evidence of consent. Ironically, at the same time, victims were often advised not to resist because that would only anger the rapist even more. Although no jurisdiction still adheres to the requirement that the victim must have resisted “to the utmost,” some state courts continue to require some reasonable resistance unless the force exercised by the offender prevented the victim from resisting (Kinports, 2002). The issue of consent is a critical component in most court cases involving rape or sexual assault because persons accused of these crimes who choose to go to trial often use consent as their defense when their alleged victim was an adult.

Statutory Rape Statistics

As noted earlier, **Statutory rape** is the unlawful sexual intercourse with a female younger than the age of consent, which may be anywhere between 12 and 18, depending on the jurisdiction and state statute. Most states, however, use a cutoff point of age 16 or 18. The age of consent is an arbitrary legal cutoff considered to be the age at which the person has the cognitive and emotional maturity to give meaningful consent and understand the consequences. If the person was below the age of consent, the state is not required to prove that the intercourse was without consent, as the young person is presumed incapable of consenting. Moreover, a mistake made by the offender as to the victim’s age is usually not a valid defense. Kinports (2002) writes that though making statutory rape a crime was “traditionally justified as a means of preserving an unmarried girl’s economic value to her father, today it is seen as a way of protecting vulnerable children” (p. 737). Increasingly, many contemporary state statutes are becoming gender neutral, encompassing both boys and girls. Therefore, the female teacher who has “consensual” sex with her 15-year-old male student can be charged with statutory rape as can the male teacher with a female student. Similarly, same-sex “consensual” relationships of this nature are subject to criminal prosecution. Furthermore, most states exempt peer relationships from statutory rape laws by requiring a minimum age for the offender or an age differential (typically 2 years) for the youths.

Rape by Fraud

Rape by fraud refers to the act of having sexual relations with a consenting adult under fraudulent conditions. A frequently cited

example is when a professional psychotherapist has sexual intercourse with a patient under the guise of “effective treatment.” Despite these broad and much-needed shifts in definition, the terms *rape* and *sexual assault* are still used interchangeably in both law and research to describe crimes that involve unwanted and illegal sexual acts. This is especially true with official government documents, such as those published by the U.S. Department of Justice. Even there, use of the term *rape* is increasingly reserved for sexual acts that involve actual or threatened sexual penetration, whereas sexual assault refers to a wide range of sexual attacks, including rape. Put another way, rape is always sexual assault, but sexual assault is not always rape.

Mindful of the distinctions and changes in definitions and requirements, we will use the term *rape* when it is clear that penetration is an issue. Otherwise, as noted earlier, sexual violence will be used. In addition, our discussion of research studies and typologies employs the terminology favored by the researchers who conducted and developed them.

Prevalence and Incidence of Rape and Other Sexual Assaults

National victimization surveys indicate that the vast majority of sexual assaults are never reported to law enforcement (Kilpatrick et al., 2002; Langton, Berzofsky, Krebs, & Smiley-McDonald, 2012). Both the NCVS and data from nongovernmental sources support this observation. According to the NCVS, only about one third of sexual assaults were reported to authorities over the 5-year period, 2005 to 2010 (Langton et al., 2012). Most of the victims in the NCVS said they did not report rape because they were afraid of reprisal or getting the offender in trouble (see **Table 9.1**).

National studies also indicate that victims are reluctant to label the experience as a sexual assault if the attacker is a spouse, boyfriend, or acquaintance (Acierno, Resnick, & Kilpatrick, 1997). Victims with disabilities are even less likely to report sexual assaults because of their social isolation and fear (Kilpatrick et al., 2002). Many of the assailants are family members or caretakers, and the victims do not want to get them in trouble and fear loss of support or services if they report. In recent years, the public has been made more aware of sexual assaults in correctional facilities, college campuses, and within the military, where the rates of reporting are believed to be even lower. (See **Focus 9.1** for a discussion of sexual violence in the military.)

Table 9.1

Source: Adapted from Planty, Langton, Krebs, Berzofsky, and Smiley-McDonald (2013).

According to the UCR, there were an estimated 139,380 rapes (again, this is the revised definition) of both female and male victims reported to law enforcement in 2018. The rate of rapes during the past 2 years has shown a discernible upward trend, but as always we should be cautious in interpreting these statistics. Although 8 out of 10 rapes and sexual assaults go unreported to the police, an estimated 73% to 93% of sexual assaults that *are* reported are never prosecuted (R. Campbell et al., 2014; Lonsway & Archambault, 2012; J. Shaw, Campbell, Cain, & Feeney, 2016). For example, R. Campbell, Feeney, Goodman-Williams, Sharma, and Pierce (2020) note, "Research on case attrition in the criminal justice system consistently finds that the vast majority of reported sexual assaults are never referred by police to prosecutors for arrest warrants and charges, and most cases are closed by the police, often with minimal or no investigation" (p. 255). Furthermore, only about 21% to 41% of sexual assault victims seek post-assault medical care after the attack (R. Campbell, Feeney, et al. 2020; R. Campbell, Wasco, Ahrens, Sefl, & Barnes, 2001).

Focus 9.1

Sexual Violence and the Military

Military sexual violence reported to the Department of Justice has increased in recent years. According to a Pentagon report released in early 2014, covering the period July 1, 2012, through June 30, 2013, the Defense Department had received 3,553 such reports, which represented an increase of 43% from the year before. Sexual violence includes rapes and attempted rapes and forcible touchings but does not include sexual harassment, which is reported under a different system. Although both women and men may be victims of sexual violence, victimization data on women are more available. Some statistics suggest that between 20% and 48% of servicewomen are sexually assaulted, that every day more than 70 incidents of unwanted sexual conduct occur, that more military women live with post-traumatic stress disorder (PTSD) as a result of rape than PTSD from combat experiences, and that female soldiers are 15 times more likely to be raped by a comrade than killed by the enemy.

The sexual violence includes civilians against service members and service members against civilians in addition to service members against service members. The increase in numbers in recent years

reflects some willingness of those assaulted to come forward, suggesting that steps are being taken to address the problem. Psychologists—typically though not exclusively military psychologists—are likely to be involved in this issue in several ways. They may evaluate survivors who bring civil suits against their aggressors, consult with attorneys on the psychological consequences of sexual abuse, provide treatment for victims of sexual violence, participate in educational and prevention programs for all military personnel, and testify before Congress on related legislation, or testify in court about the effects of sexual trauma. These are just a few tasks awaiting the attention of psychologists.

QUESTIONS FOR DISCUSSION

1. Of the tasks mentioned, which are the most likely to be undertaken by *forensic* psychologists if that term is narrowly defined?
2. How can psychologists be most effective in addressing the problems of sexual violence in the military?
3. What are the challenges of obtaining accurate information about sexual violence (a) in the military, (b) on college campuses, (c) in adult and juvenile correctional facilities, and (d) in immigration detention centers?

In 2018, the NCVS reported 734,630 rape/sexual assault victimizations reported by participants in the survey, which represents a victimization rate of 2.7 per 1,000 persons (R. E. Morgan & Oudekerk, 2019). It should be noted that UCR estimates are based on counts of crimes reported by law enforcement agencies, not by the victims themselves. The NCVS survey data indicated that only 25% of the respondents reported their rape/sexual assault victimization to law enforcement in 2018. These statistics are in line with victimization data reported in both Canada and the United States which reveals that over 80% of sexual offenses are not reported to law enforcement (Stephens, Klein, & Seto, 2019).

For UCR purposes, an offense is “cleared” when at least one person is arrested and charged or when circumstances beyond the control of law enforcement preclude an arrest for a crime that police believe has been solved. The latter would occur when a victim decides not to cooperate with police after initially doing so, or a suspect dies before an arrest can be made. Nationally, 33.4% of rapes were cleared during 2018 (FBI, 2019a). However, it is important to remind ourselves that—for a variety of reasons—a majority of rapes are not reported to police. Moreover, as noted earlier, only a small percentage are prosecuted.

Numerous studies have been conducted by both independent and government-sponsored researchers to shed light on the prevalence of sexual violence in general and among specific groups (e.g., college students, ethnic populations, persons who have emotional and intellectual disabilities). The National Intimate Partner and Sexual Violence Survey (NIPSV) reports that about 1 in 5 women (18.3%) and 1 in 71 men in the United States have been raped sometime during their lives, whether it was completed forced penetration, attempted forced penetration, or alcohol- or drug-facilitated completed penetration (M. C. Black et al., 2011). More than half (51.1%) of female victims said they had been raped by an intimate partner, and another 40.8% had been raped by an acquaintance, such as a boyfriend or date. About one half (52.4%) of the male victims reported they were raped by an acquaintance and 15.1% by a stranger. Half of the female victims stated they experienced their first completed rape before age 18.

Research and the general literature on sexual assault of college students often report that 1 in 4 college women and 1 in 16 college men experience some form of sexual violence while in college (Zounlome & Wong, 2019). In an effort to establish a standardized method of measuring sexual violence in the United States, the Bureau of Justice Statistics (BJS) conducted a comprehensive study of sexual victimization at several colleges called the Campus Climate Survey Validation Study (CCSVS; Krebs et al., 2016). The survey was conducted during the 2014–2015 academic year at nine different colleges representing diverse geographic and demographic characteristics. More than 23,000 undergraduate students representing 15,000 women and 8,000 men participated. About 90% of the women and 91% of the men reported their sexual orientation as heterosexual.

The survey divided sexual victimization into three categories: sexual battery, rape, and sexual assault. *Sexual battery* was defined as any unwanted and nonconsensual sexual contact that involved forced touching of a sexual nature that did not involving penetration. *Rape* was defined as any unwanted and nonconsensual sexual contact that involved a penetrative act, including oral sex, anal sex, sexual intercourse, or sexual penetration with an object or finger. If a respondent reported unwanted and nonconsensual sexual contact but did not provide enough detail to be classified as either a sexual battery or rape, the response was tallied as a sexual assault.

For all colleges, sexual assault was reported to be higher than either sexual battery or rape, averaging 10.3% for women and 3.1% for men. Sexual battery emerged as the second highest incident,

averaging 5.6% for women and 1.7% for men. Rape was reported to be the lowest in frequency, with women averaging 4.1% and men averaging 0.8%. Therefore, based on these data, total sexual victimization for undergraduate women while in college was 21% and for undergraduate men it was 7.0%. Students were also asked about sexual violence victimization over their lifetimes. Approximately 34% of college women and 11.2% of college men in the survey reported they had experienced some type of sexual violence over their lifetimes.

A substantial percentage of American youth date and have romantic relationships at an early age (Garthe, Sullivan, & McDaniel, 2017). For example, about half of all adolescents have been on at least one date by age 12 (Garthe et al., 2017; Steinberg, 2014b). Unfortunately, a large number of adolescent youths who date are victimized by violence and sexual assault.

DATE OR ACQUAINTANCE RAPE

Date rape (also known as **acquaintance rape**) refers to a sexual assault that occurs within the context of a dating or casual relationship. Date and acquaintance rape are far more common than generally realized, representing about 80% of all rapes (Planty et al., 2013). These data imply that only one fifth of the sexual violence in the United States is committed by strangers. Although the terms *date rape* and *acquaintance rape* are often used interchangeably, date rape technically refers to sexual assault that occurs within the context of a dating relationship, while acquaintance rape refers to a sexual assault by a person whom the victim knows out of the context of a dating relationship—for example, a friend, neighbor, classmate, or relative. Approximately one third of these assaults are committed by an intimate partner (former or current spouse, girlfriend or boyfriend) and 38% are committed by a friend or acquaintance (Planty et al., 2013). Women ages 18 to 24 have the highest incidence of rape and sexual assault victimization compared with females (women and girls) in other age groups (Sinozich & Langton, 2014). Thus far, research in this area has focused primarily on college students (Post, Biroscak, & Barboza, 2011).

The connection between alcohol use and date or acquaintance rape is strong. “Studies show that women who engage in heavy episodic drinking (i.e., consume four or more drinks in 2 hours) are at increased risk of being targeted for sexual coercion and assault by perpetrators, relative to women who abstain or drink in moderation” (Sell, Turris, Scaglione, Cleveland, & Mallett, 2018, p. 62). In more than half of sexual assaults involving dating partners, alcohol had been consumed by either one or both partners (Gross, Bennett,

Sloan, Marx, & Jurgens, 2001; Ullman, Karabatsos, & Koss, 1999). Women who consume alcohol may be perceived by many young men as sexually vulnerable (Abbey, Zawacki, & McAuslan, 2000), and thus are more likely to be the targets of sexual predators (Abbey, Zawacki, Buck, Clinton, & McAuslan, 2004). However, as Sarah Ullman (2007b) warns, "women's drinking in and of itself should not be assumed to increase their risk of sexual victimization" (p. 419). She notes that research has found that rapes where only the offenders were drinking were related to greater rape completion and victim injury, "suggesting a greater role of offender, not victim, drinking in assault outcomes" (p. 419). Clearly, the role of drinking with respect to injury received is a complicated one.

In many date rapes, the male believes he is entitled to "payback" because he probably initiated the date, paid most of the expenses, and drove his vehicle or provided transportation, if transportation was needed. Two decades ago, Hill and Fischer (2001) found in their study of male college students that "feelings of entitlement" appear to be a central feature in date rape behaviors and attitudes. Changing concepts of "dating," such as the couple meeting on a date app, agreeing to share the cost, or the woman initiating the date, will likely begin to diminish this payback attitude.

One of the more consistent findings in the research literature on date rape is that men, compared to women, tend to assign more blame to victims and less blame to perpetrators (Basow & Minieri, 2010; Munsch & Willer, 2012). However, not all the research supports these gender differences. K. A. Black and McCloskey (2013) suggest that belief in traditional gender roles held by both men and women may still play a very significant role in date rape situations as well as reacting to them, such as attributing blame or giving opinions about punishment. They point out that some men who believe in traditional male–female roles "may feel compelled to behave in ways that establish authority and maintain control in intimate relationships" (p. 951). Some women who hold traditional attitudes, on the other hand, may see other women as objectifying themselves to attract men's attention, or place greater priority on maintaining the relationship. K. A. Black and McCloskey argue that these beliefs in traditional gender roles not only get incorporated into a person's attitudes about sexual relations but also strongly influence judgments about what happens in dating situations. In their important date rape study, the researchers discovered the following:

> Participants with traditional gender role attitudes attributed greater responsibility to the victim and less responsibility to

> the perpetrator, were less likely to agree that the woman should report the incident and that the perpetrator should be arrested and found guilty of rape, and recommended a more lenient sentence for the perpetrator than did participants with liberal attitudes. (p. 962)

Belief in traditional gender roles may influence the behavior of those who interact with rape victims as well, such as police, medical personnel, and acquaintances. Judgmental behavior on the part of these individuals may be a reflection of traditional gender role attitudes and the existence of rape myths that society has yet to eradicate. For example, sexual assault nurse examiners (SANEs), who are called into emergency rooms when a rape victim comes in, indicate that triage nurses and other medical personnel unfortunately too often display little empathy for these victims. Rape myths are discussed again later.

DEMOGRAPHICS OF SEX OFFENDERS

One of the most consistent demographic findings about rapists is that, as a group, they tend to be young. According to data reported in the UCR, for instance, 44% of those arrested for rape are younger than age 21, and more than 17% of those arrested are younger than age 18 (FBI, 2019a).

Although the rape arrest patterns show that youths dominate the data, it must be emphasized there are many exceptions. Research data suggest there are at least three distinct sexual-offending arrest trajectories; one group of offenders peak at age 25; a second group peak at around age 30; and a third group peak at age 32 (Francis, Harris, Wallace, Soothill, & Knight, 2014; Freiburger, Marcum, Iannacchione, & Higgins, 2012).

According to 2018 UCR data, only a fraction of one percent (0.1%) of the arrest for rape were female. Probably most of these female arrests were for being an accomplice to a male offender.

Another consistent finding is that *many* men convicted of rape manifest a wide spectrum of antisocial behavior across their early life span. In other words, many of these sex offenders engage in both sexual and nonsexual crimes. One extensive study (Mercado, Jeglic, Markus, Hanson, & Levenson, 2011) found that about 70% of the sexual offenders had been charged with a prior *nonsexual* offense. Some scholars (Parent, Guay, & Knight, 2011) refer to rapists as “criminal career generalists” and other scholars refer to the very broad offending tendencies of rapists as general criminality (Babchishin, Hanson, & Blais, 2016). “General criminality includes a global propensity for rule violation, meanness, and impulsivity, and

overlaps with the constructs of antisocial personality disorder, psychopathy, and antisocial personality pattern" (Babchishin et al., 2016, p. 190). General criminality is best understood as existing on a continuum, with some offenders exhibiting greater criminality that others.

General criminality is important because the concept is emerging as a critical variable in predicting reoffending. Forensic psychologists are often involved in these assessments. Two measures that demonstrate considerable promise for predicting future offending and general criminality are the Static 99R and Static 2002R (Kelley, Ambroziak, Thornton, & Barahal, 2020. These measures were developed by Hanson & Thornton (2000, 2003). The instruments have shown good validity, reliability, cost effectiveness, and their applicability to a wide range of sexual offenders. The instruments are widely used by psychologists in conducting forensic risk assessments and are covered in more detail later in the chapter.

TYPOLOGIES OF MEN WHO RAPE

As mentioned earlier, classification systems, based on either personality traits or behavioral patterns of individuals, are called *typologies*, and they have been moderately successful in their ability to add to our understanding of criminal behavior. Chief among the criminal typologies are those pertinent to men who rape. It is important to realize, however, that individuals do not always fit neatly into a particular type; they only approximate it.

Another problem with typologies is that very few of them have been subjected to empirical verification or validation studies, and they sometimes encourage stereotypes of offenders (B. K. Schwartz, 1995). That is, typologies can promote a tendency for the public and professionals to jam people into their favorite categories without empirical support or thoughtful consideration of individual differences among offenders.

However, typologies can be very useful in organizing a vast array of behavioral patterns that would otherwise be a confusing muddle. They are also useful in correctional facilities for risk management, such as deciding where to place an inmate, or in treatment programming, such as deciding what particular treatment technique or strategy might be most beneficial for an inmate or offender. To some researchers, the "acid test" of the usefulness of a typology is its ability to estimate the risk of particular offenders to reoffend (Quinsey, 1986).

Many rape typologies have been suggested, including the one originally used by the FBI (Hazelwood & Burgess, 1987), the Selkin typology (Selkin, 1975), the Nagayama-Hall typology (Nagayama-

Hall, 1992), and the Nicholas Groth typology (Groth, 1979). However, the most extensively studied sex offender typologies are the ones developed by researchers and clinicians associated with the Massachusetts Treatment Center (MTC) (Knight & Prentky, 1987; Prentky & Knight, 1986). One typology was developed for rapists and the other for sex offenders who violate children. The MTC typologies are among the most rigorously tested classification systems in sex offender research to date (Goodwill, Alison, & Beech, 2009).

The MTC typologies have undergone several revisions over the course of the development and are currently in their fourth revision (Knight, 2010; Knight & Guay, 2018; Knight & King, 2012). As research progresses, it is becoming increasingly clear that some sexual offenders do not fit neatly into the MTC typology. For example, the usefulness of a typology for sex offenders is beginning to give way to a dimensional approach. That is, rather than trying to place sex offenders into a variety of descriptive boxes, ongoing research finds that it is more realistic to classify them along a dimension or a continuum when possible (Lehmann et al., 2013, 2014; Lehmann, Dahle, Schmidt, 2018). Furthermore, the MTC does not include the finding that many sex offenders engage in crossover offending against victims of different ages and genders (Ennis et al., 2016). Crossover offending refers to “engaging in more than one type of sex-offending behavior or victimizing individuals from different relationship categories, genders, or age groups” (Levenson, Becker, & Morin, 2008, p. 44). For example, D. Sim and Proeve (2010) discovered a considerable amount of crossover in their study of 128 adult male child sex offenders. More than half of the offenders exhibited crossover in at least three domains: age of the victim, gender, and relationship to the victim. The Sim and Proeve study underscored the point that crossovers are not rare among adult offenders, especially those who primarily sexually abuse children. Therefore, sex offenders not only demonstrate crossover behavior but also general criminality.

In addition, other studies have attempted to expand the MTC classification system to include a set different variables of sex offending. A good example is the developmental life trajectories of sex offenders examined in a study by Eloir, Ducro, and Nandrino (2019).

Despite the fact the MTC classification system has some shortcomings, it provides a very useful portrayal of the wide psychological diversity of sex offending in terms of motivations, victim selection, and behavioral, emotional and thought patterns. The MTC classification system is also useful as a reference table for forensic

psychologists conducting risk assessments on sex offenders. In this chapter, we concentrate on the third revision of both the rapist and child offender typologies (**Figures 9.1** and **9.2**, presented later), as they have drawn the most solid research interest to date.

The Massachusetts Treatment Center Rapist Typology

Several decades ago, a group of researchers at the MTC (M. Cohen, Garafalo, Boucher, & Seghorn, 1971; M. Cohen, Seghorn, & Calmas, 1969; Knight & Prentky, 1987; Prentky & Knight, 1986) developed an empirically based and useful typology that focuses on the behavioral patterns of convicted rapists, including the appearance of aggressive and sexual patterns in the sexual assaults. It also provides an excellent framework for describing the psychological characteristics of rapists in general.

The MTC researchers believe that rape is a multidetermined behavior that can best be explained by models incorporating a multitude of dimensions. An empirically based typology that takes into account all possible categories of rape behavior is such a model. Originally, the researchers identified four categories of rapists: displaced aggressive, compensatory, sexual aggressive, and impulsive. These have been replaced with a new typology. The MTC classification system now identifies four major types, based on the rapist's primary motivation (opportunistic, pervasively angry, sexual, vindictive), and nine subtypes (R. A. Knight, Warren, Reboussin, & Soley, 1998; see **Figure 9.1**). The new system is called the **MTC: R3** and has been subjected to extensive research by the MTC group as well as other researchers (Barbaree & Serin, 1993; Barbaree, Seto, Serin, Amos, & Preston, 1994; Goodwill et al., 2009; G. T. Harris, Rice, & Quinsey, 1994). R3 signifies the third revision.

The nine discrete rape subtypes are differentiated on the basis of six variables that have been consistently found by clinicians and researchers to play an important role in the behavioral, emotional, and thought patterns of a wide array of rapists (and child sex offenders). Before covering the typologies themselves, we discuss the six variables, which are as follows:

- Aggression
- Impulsivity
- Social competence
- Sexual fantasies
- Sadism
- Naïve cognitions or beliefs

In a sense, these six variables form the “building blocks” for the development and ongoing revision of the MTC rape typology, and each should be described separately to get a deeper understanding of typology subtypes. It should be understood at the outset that certain variables appear to be more prominent in some rapists than in others.

Aggression

For our purposes here, aggression may be divided into two broad categories: (1) instrumental or strategic violence and (2) expressive aggression or nonstrategic violence (Prentky & Knight, 1991). The former represents the type of aggression used by rapists to gain victim compliance. There is usually no anger present in instrumental aggression, except in reaction to a victim’s lack of cooperation or compliance. Expressive aggression, on the other hand, is used by rapists to hurt, humiliate, abuse, or degrade the victim in some way. This form of aggression goes way beyond simply obtaining victim compliance and is often extremely violent. This instrumental–aggressive dichotomy model does have its limitations, however, as some rapists demonstrate a mixture of both. As Prentky and Knight (1991) point out, “[t]hose rapists who intend only to force victim compliance are likely to vary widely in the amount of aggression evident in their offenses” (p. 647). It may depend on the extent of victim resistance, the level of alcohol or drugs ingested by the offender, the presence of other aggressors or victims, and the context in which the attack occurs. Furthermore, sometimes the expressive aggression is “sexualized,” and sometimes it is not. However, the instrumental–expressive dichotomy does serve as a useful springboard for discussing most of the MTC subtypes.

Impulsivity

There is considerable research and clinical evidence that impulsivity is a significant factor in many sexual assaults and criminal behavior in general. Lifestyle impulsivity has been found to be a powerful predictor of recidivism and frequency of offending (Prentky & Knight, 1986, 1991). Some impulsive people seem to have an overpowering deficiency in self-control and continually revert to old behavioral patterns, regardless of the costs. Research has consistently found that lifestyle impulsivity emerges as one of the strongest and most meaningful ways to differentiate repetitive rapists from other repeat sex offenders such as child sex offenders. It is also the major focus of many treatment programs designed to change the antisocial behavior of sex offenders. As noted by Prentky and Knight (1991), “[c]linicians have long recognized the importance of impulsivity for

relapse and have introduced self-control and impulsivity management modules into treatment" (p. 656).

Social Competence

Sexual offenders have often been described as having poor social and interpersonal skills, especially when dealing with the opposite sex (Prentky & Knight, 1991). The MTC researchers refer to this characteristic as *social competence*, a concept that plays an important role in developing the various subtypes of the MTC typology. This feature is especially prominent in the behavioral patterns of child sex offenders. There are also consistent research findings that rapists as a group are not assertive in their everyday relationships with others. It should be realized that social competence represents a wide range of different abilities, such as social assertiveness, communication skills, social problem solving, social comfort, and political savvy, and consequently should be understood as a complex skill that is developed within a variety of contexts.

Sexual Fantasies

Sexual fantasy refers to any mental imagery that is sexually arousing or erotic to the individual (Leitenberg & Henning, 1995). Many clinicians believe that sexual fantasy is a necessary precursor to deviant sexual behavior. As stated by Leitenberg and Henning (1995), "[t]here seems to be little question that many men who commit sexual offenses frequently have sexually arousing fantasies about these acts and masturbate to these fantasies regularly and presumably more often than nonoffenders" (p. 487). In one clinical study of men who had been convicted of sexual homicide, approximately 80% had sexual fantasies related to sexually assaultive behavior (Burgess, Hartman, & Ressler, 1986), and the percentage appears to be even higher for those convicted of serial sexual murders (Prentky et al., 1989). In fact, most treatment programs for sex offenders include a component designed to directly change sexual fantasies (Leitenberg & Henning, 1995; W. L. Marshall, Boer, & Marshall, 2014). Some research has discovered that the content, frequency, and intensity of deviant sexual fantasies often differentiate between single and serial sexual murderers (Prentky & Knight, 1991).

It should be noted that it is not unusual for people to have sexual fantasies that would be inappropriate, or even criminal, for them to act on. Briere and Runtz (1989) found that 21% of male college students in an anonymous survey admitted that children sometimes attracted them sexually, and 9% of the sample said they have sexual fantasies about children (Leitenberg & Henning, 1995). In a survey

conducted by Malamuth (1981), 35% of male college students felt there was some likelihood that they would sexually assault if they could be sure of getting away with it. In another study, 60% of a group of 352 male undergraduates indicated that they might rape or force a woman to perform sexual acts against her will if given the opportunity (Briere, Malamuth, & Ceniti, 1981). Nevertheless, research (e.g., Dean & Malamuth, 1997) suggests that although aggressive or violent sexual fantasies are common in some college males, the degree to which these fantasies translate into an actual sexual assault depends on the individual's empathy for others. More specifically, those men who are highly self-centered are more likely to be sexually aggressive and act out their sexual fantasies. "There is no evidence that sexual fantasies, by themselves, are either a sufficient or a necessary condition for committing a sexual offense" (Leitenberg & Henning, 1995, p. 488).

Sadism

"Typically, central to the definition of sadism is a pattern of extreme violence in the offense that has often focused on erogenous areas of the body and that may be considered bizarre or appear ritualized" (Prentky & Knight, 1991, p. 652). Sadism is illustrated by cruel and malicious acts that are enjoyed by and often sexually arousing to the offender. Sadistic rapists, compared to other types of rapists, tend to offend more frequently against victims who are close friends, intimates, or family (Prentky, Burgess, & Carter, 1986).

Naïve Cognitions or Beliefs

Research indicates that offense-justifying attitudes are prevalent among males prone to rape and, to some extent, among the general male population as well. Similar to sexual fantasies, irrational attitudes and cognitive distortions usually are a major focus of most treatment programs for sex offenders.

Sexual socialization and social learning play very critical roles in the development of those who choose to sexually assault. Sexual behavior and attitudes toward women are acquired through the day-to-day contacts with family members, peers, images of entertainment figures, and the media in general. Koss and Dinero (1988) found that sexually aggressive men expressed greater hostility toward women, frequently used alcohol, frequently viewed violent and degrading pornography, and were closely connected to peer groups that reinforced highly sexualized and dominating views toward women. These same men were more likely to believe that force and coercion are legitimate ways to gain compliance in sexual relationships. Koss and Dinero conclude, "In short, the results provided support for the

developmental sequence for sexual aggression in which early experiences and psychological characteristics establish conditions for sexual violence" (p. 144).

Research reveals that a majority of sexually aggressive men subscribe to attitudes and ideology that encourage men to be dominant, controlling, and powerful, whereas women are expected to be submissive, permissive, and compliant. Such an orientation seems to have a particularly strong disinhibitory effect on sexually aggressive men, encouraging them to interpret ambiguous behaviors of women as come-ons, to believe that women are not really offended by coercive sexual behaviors, and to perceive rape victims as desiring and deriving gratification from being sexually assaulted (Lipton, McDonel, & McFall, 1987).

Rape Myths

Rape myths and misogynistic attitudes appear to play a major role in sexual violence. Rape myths are "attitudes and beliefs that are generally false but widely and persistently held, and that serve to deny and justify male sexual aggression against women" (Lonsway & Fitzgerald, 1994, p. 134). Rape myth acceptance (RMA) is the false belief that women must be dominated and coerced into sexual activity. RMAs stem from the traditional view of masculinity that men should be strong, sexually assertive, dominant, and heterosexual. Rape myths are often used to excuse sexual violence, create disbelief and hostility toward the victim, and bias criminal prosecution. Evidence reveals that RMAs significantly influence judges, lawyers, and law enforcement investigators in the way they handle rape cases (Ehrlich, 2001; Fansher & Zedaker, 2020; Krahé, Temkin, Bierneck, & Berger, 2008; J. Shaw et al., 2016; M. Smith, Wilkes, & Bouffard, 2016; Temkin & Krahé, 2008). RMAs still exist among lawyers and judges despite the existence of Rape Shield Laws that prohibit discussions of rape victim's sexual histories during trial and do not require proof of resistance (S. McMahon & Farmer, 2011). Research has also found that RMAs exist in a wide spectrum of individuals in American society, including members of the clergy, college students, high school students, and military personnel (Shaw et al., 2016), and they are not exclusive to men. They have been frequently found among jury members (Dinos, Burrowes, Hammond, & Cunliffe, 2015; J. Shaw et al., 2016). It should be noted that the primary focus of many rape prevention programs at schools and college campuses is often designed to change students' beliefs in rape myths (S. McMahon & Farmer, 2011).

In an interesting study of police officers' rape beliefs, Shaw et al. found that explicit rape myths have been reduced to some extent in

recent years but continue to operate implicitly during sexual assault investigations. J. Shaw et al. (2016) write, “Such beliefs now operate at a more implicit level, undetectable on rape myth surveys yet still influential in decision-making and action” (p. 9). These beliefs come across in police attitudes during the interview, investigation, and report writing. (See **Focus 9.2** for more discussion of this study.)
The concept of “rape myths” became popular during the 1970s when the Women’s Movement became prominent (Brownmiller, 1975; Fansher & Zedaker, 2020; Schwendinger & Schwendinger, 1974). During that decade, Martha Burt (1980) developed a widely used, validated scale to measure rape myth acceptance among the general population. In 1999, Payne, Lonsway, and Fitzgerald improved the Burt RMA scale by creating the 45-item Illinois Rape Myth Acceptance (IRMA) questionnaire. In order to keep the 1999 IRMA scale contemporary, S. McMahon and Farmer (2011) updated its language to reflect the subtleties involved in rape myths in a constantly changing culture, especially subcultures. The researchers point out that sexual communications rely heavily on slang terminology which changes significantly with each generation. McMahon and Farmer argued that previous RMA scales often used language that was outdated, antiquated, and irrelevant, and largely failed to capture the more subtle and covert prejudicial beliefs about women that evolve over time, often through slang communication. For example, the direct, blatant blaming of girls and women for their sexual assault has increasingly become more unacceptable in a more enlightened society. Although the subtle perspective still blames the victim for doing something that contributed to the sexual assault, it is more indirect and less obvious. For instance, some will argue that women put themselves at unnecessary risks by walking alone in a secluded area or drinking alcohol on a date. Moreover, there is often a subtle wide-spread belief that under certain situations men should not be held entirely accountable for sexual assault (S. McMahon & Farmer, 2011).
Focus 9.2

The Persistence of Rape Myths
Despite decades of sensitization and education by rape survivors and their supporters, many myths associated with this crime have persisted. As noted in the text, these myths are held by many in the general population, including some people who are elected to public office or work in law enforcement. Some lawyers and judges hold them as well. Although most police officers do not believe that rape victims are promiscuous or secretly desire to be raped, many

apparently still believe that victims often put themselves in dangerous situations and are partly to blame for the assault. In other words, the victim should have known better.

Shaw et al. (2016) examined police records of actual sexual assault investigations to determine the extent to which police endorsed rape myths. They found statements implying acceptance of rape myths in over half of the case records. The statements were categorized into three victim-blaming groups:

- Circumstantial—these statements minimized the rape on the basis of the circumstances of the assault (e.g., the victim was not injured or was not "emotional" enough about the attack).
- Characterological—these statements focused on the character of the victim (e.g., she was a regular drug user or she should not have been out alone that late).
- Investigatory—these statements made excuses for a less-than-thorough investigation because the victim was unwilling to assist, without considering what may have led to a victim's noncooperation during the early stages of the investigation.

The last group, the investigatory statements, suggested to the researchers a lack of understanding of the reality facing survivors of rape. Research has consistently reported that nearly half of rape victims who report the assault to police are treated in a manner they described as upsetting or humiliating (D. Patterson, 2011). Under that situation, it is not surprising that a survivor would be reluctant to cooperate. Police psychologists and other mental health professionals would be wise to train police officers to be aware of their implicit myths and blaming attitudes toward rape victims.

QUESTIONS FOR DISCUSSION

1. More than half of the investigation reports contained statements implying acceptance of rape myths. Does this mean that, for those cases, a perpetrator was not found and prosecuted? In your opinion, what is the significance of that finding?
2. What methods should police psychologists use to help law enforcement personnel recognize their implicit myths?
3. The text cites very recent research indicating that rape myths persist not only among rapists but also in the general population. Do they persist on your campus, in your workplace, or in community settings where you interact with a cross-section of people? If yes, why might this be so? If no, why might it not be so?

According to findings reported by Chapleau and Oswald (2010), the stronger the cognitive association between power and sex, the more likely it is that men endorse rape myths and report a higher likelihood

that they would rape. Furthermore, the more strongly men accept rape myths, the higher the tendency that they will misperceive women's attire and behavior as "asking for it" or misperceive their own sexual interest as "uncontrollable." Similarly, an important European study by Bohner, Jarvis, Eyssel, and Siebler (2005) provides further evidence that rape myths serve to justify sexual aggression, "not only after it has occurred but also by increasing the likelihood of future violence" (p. 827). There is some empirical evidence that women who have severe victimization histories are less adept at identifying the cues that signal risky situations. Yeater, Treat, Viken, and McFall (2010) conducted a study using 194 undergraduate women between the ages of 18 and 24 who were from diverse ethnic and cultural backgrounds. As part of the study, the students read vignettes describing social situations that varied on dimensions of sexual victimization risk and potential impact on women's popularity. Near the end of the study, the participants were administered the Sexual Experiences Survey (SES) and the Rape Myths Acceptance Scale. The SES responses were used to quantify the severity of victimization experiences. The researchers found that those women who had severe victimization histories had difficulty identifying those situations that suggested high risks of being sexually assaulted. In addition, the researchers found that fear of losing the relationship with a man or losing popularity in general obscured their ability to identify high-risk situations. Last, those participants who demonstrated a higher acceptance of rape myths were less skillful at identifying high-risk situations. According to Yeater and her colleagues, "endorsement of rape-supportive attitudes appears to interfere with both women's and men's use of information that may help guide effective decision making in heterosexual interactions" (p. 383).

We should be careful not to imply that these women would be at fault if they were sexually assaulted, simply because they misread high-risk situations. The tendency to blame victims for their victimization is one that often occurs in society, particularly but not exclusively in cases of sexual assault: "If you had locked your door, you wouldn't have been burglarized." "How could you fall for that scam? If it sounds too good to be true, it isn't." "If you hadn't gone to that bar, you wouldn't have been raped." However, women as well as men can benefit from information that disproves rape myths and from learning effective strategies to help avoid victimization (Ullman, 2007a).

The MTC: R3

As described previously, the MTC: R3 rape typology consists of nine discrete rapist types who are differentiated on the basis of the six

variables already discussed. This section describes these nine types in more detail, and the typology is illustrated in **Figure 9.1**. Thus far, the research has focused almost exclusively on male rapists. Although a small percentage of reported rapes involve women as offenders, these women are almost invariably operating in partnership with a male offender. In recent years, though, some researchers have suggested that the prevalence of independent female sexual offending has been underestimated, chiefly due to society's reluctance to accept that women sexually offend or that their offending is harmful to their victims (Becker, Hall, & Stinson, 2001). Based on official records, however, the proportion of independent female sex offenders among all sex offenders across the globe is 4.6% (Cortoni, Hanson, & Coache, 2010). Moreover, in victimization studies for Australia, Canada, New Zealand, the United Kingdom, and the United States, the proportion of sex offenders who were females ranged from 3.1% for New Zealand to 7.0% for Australia, an average of 4.8%. Our discussion of the MTC: R3 typology focuses on the male as perpetrator. Later in the chapter, we discuss typologies for female offenders.

The Opportunistic Rapist (Types 1 and 2)

The impulsive or **Opportunistic rapist** engages in sexual assault simply because the opportunity to rape presents itself. Thus, this offender type is motivated more by contextual factors and opportunity than by any internally driven sexual fantasy (Prentky & Knight, 1991). The rape may occur within the context of some other antisocial act, such as a robbery or burglary. Alternatively, the rape may be perpetrated on a woman encountered at a bar or party. The most prominent characteristic of these offenders is their impulsivity and lack of self-control, resembling those qualities of an immature child. More important, this poor impulse control leads to a pervasive and enduring lifestyle of impulsive and irresponsible behavior, frequently leading to an extensive criminal career. Thus, rape becomes only one of many antisocial behaviors in this person's repertoire.

The opportunistic rapist is not perceived to be "person oriented" and sees the victim only as a sexual object. He seems to have little concern for the victim's fear or discomfort. Opportunistic offenders consistently engage in troublesome acting-out behavior throughout their childhood, adolescence, and into adulthood. To be classified as an opportunistic rapist according to the MTC: R3, the offender must show the following:

- Callous indifference to the welfare and comfort of the victim

- Presence of no more force than is necessary to get the compliance of the victim (instrumental aggression). Any excessive force or aggression—beyond what is needed to carry out the offense—rules out this type.
- Evidence of adult impulsive behavior, such as frequent fighting, vandalism, and other impulse-driven antisocial behaviors

The MTC researchers have discovered that opportunistic rapists can be subdivided on the basis of their social competence and the developmental stage at which their high impulsivity is first noticed. The opportunistic offender who is high in social competence—a Type 1 rapist—manifests impulsivity in adulthood. The Type 2 rapist, on the other hand, is low in social competence and demonstrates impulsivity during adolescence.

The Pervasively Angry Rapist (Type 3)

The **Pervasively angry rapist** demonstrates a predominance of global and undifferentiated anger that pervades all areas of the offender's life. These rapists are angry at the world in general, and their anger is directed at both men and women. The acts reflect capricious and random violence directed at whoever gets in the way at the wrong time and wrong place (Prentky & Knight, 1991). When these men attack women, their violent and aggressive behaviors exhibit a minimum or total absence of sexual arousal. Their attacks are characterized by high levels of aggression, and they inflict considerable injury on their victims. S. L. Brown and Forth (1997) report that psychopaths who sexually assault fall most often into the opportunistic or the pervasively angry categories.

The occupational history of the pervasively angry rapist is usually stable and often reveals some level of success. He perceives himself as athletic, strong, and masculine. More often than not, his occupation is a "masculine" one, such as truck driver, carpenter, mechanic, electrician, or plumber. His friends typically describe him as having a quick, violent temper (S. T. Holmes & Holmes, 2002). These offenders experienced chaotic and unstable childhoods and family life. Many of them were adopted or foster children who were often neglected or abused.

According to Knight and Prentky (1987), an offender must demonstrate the following characteristics to be classified as the pervasively angry type:

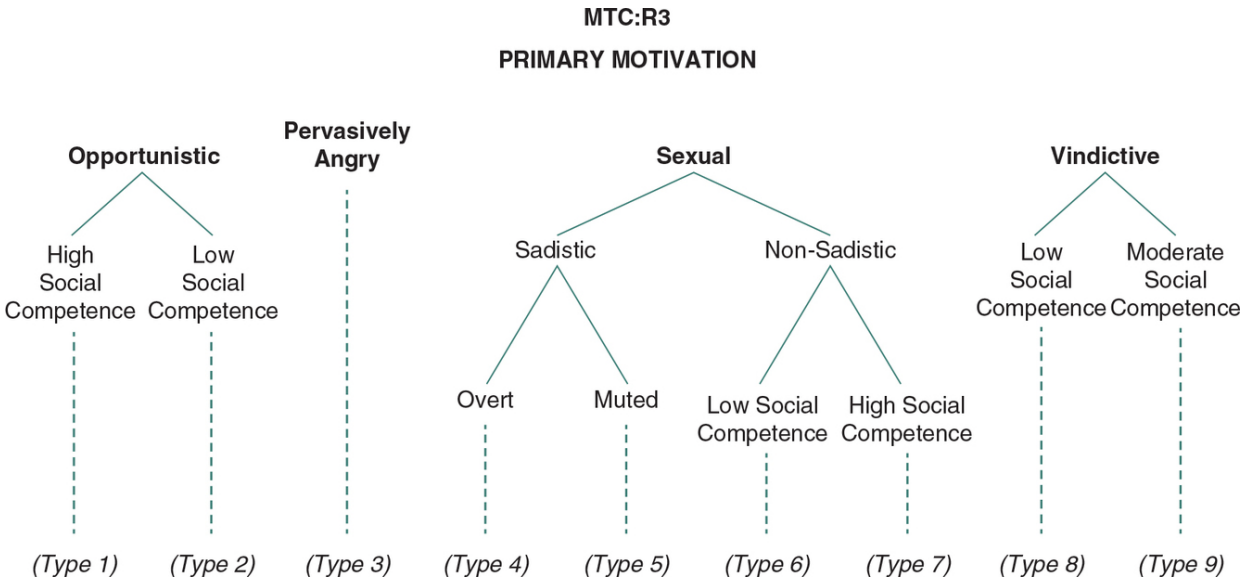
- Presence of a high degree of nonsexualized aggression or rage expressed through verbal or physical assault that clearly exceeds what is necessary to gain compliance of the victim (expressive aggression)

- Evidence of adolescent *and* adult sexual and nonsexual antisocial behavior
- Carries out attacks that are usually unplanned and unpremeditated

So far, no particular subtypes have been identified for the pervasively angry rapist.
Therefore, this type of rapist is referred to simply as Type 3.

Sexually Motivated, Sadistic Rapists (Types 4 and 5)

The motivation for the next four types is "sexual" in that their attacks are characterized by the presence of protracted sexual or sadistic fantasies that strongly influence the assaults. A discernible pattern of sexual preoccupation and fantasy is what all four have in common. The **Sexually motivated rapist** category is subdivided into sadistic and non-sadistic, and each is further subdivided (see **Figure 9.1**). Sadistic sexual offenders are either "overt" (Type 4) or "muted" (Type 5), depending on whether their sexually aggressive acts are directly expressed in violent attacks (overt) or are only fantasized (muted). The *muted* offender's motive is the victim's fear or some violent fantasy that aids in his sexual arousal. That is, the victim's fear excites him, or he relies on some rehearsed sexual fantasy during the act to excite him. It should be noted, however, that Type 5 (muted sadistic rapist) has been deleted in the new revision 4, which is still under development. The research data did not support the subtype. All other MTC: R3 subtypes have been retained. The *overt* sadistic rapist demonstrates *both* sexual and aggressive elements in his assault. In essence, the victim's actual (not fantasized) pain and discomfort are prerequisites for his sexual excitement. He believes his victims fundamentally "enjoy" being abused, forcefully raped, aggressively dominated, and controlled. Therefore, this type of rapist interprets the victim's resistance and struggle as a game, and the more the victim resists, the more excited and aggressive he becomes. At first, the attack may begin as attempts at seduction, but with increasing resistance from the victim, aggressive behaviors become increasingly prominent. On the other hand, rage or high levels of violence are precipitated in the offender when the victim, out of abject fear or helplessness, becomes passive and submissive, so it seems to be a no-win situation for the victim. In this context, in the offender's eyes, the victim is no longer playing the "game" properly.



Description

Figure 9.1 Breakdown of Four Categorizations of Rapist Types Into Nine Rapist Subtypes (MTC: R3)

Source: Knight, Warren, Reboussin, & Soley, B. J. (1998). Predicting rapist type from crime-scene variables. *Criminal Justice and Behavior*, Vol. 25, p. 57, Fig. 2.

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Overt sadistic rapists are frequently married, but they show little commitment to the marriage. Their backgrounds often are replete with sexual and nonsexual offending, beginning during adolescence or before and ranging from truancy to rape–murder. They have often had severe behavior problems in school, and throughout their lifetimes they have displayed poor behavior control and a low frustration tolerance. They manifest more paraphilias than the other types of rapists. The term ***paraphilia*** "denotes an intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners" (American Psychiatric Association, 2013, p. 685). A paraphilia becomes a disorder when it causes distress or impairment to the individual or entails personal harm or risk of harm to others. (See **Table 9.2** for examples of paraphilias.)

On occasion, the Type 4 rapist engages in sexual sadism that is so extreme that the victim may be murdered. To qualify as an overt, sadistic rapist, the offender must demonstrate the following:

- A level of aggression or violence that clearly exceeds what is necessary to force compliance of the victim

- Explicit, unambiguous evidence that aggression is sexually exciting and arousing to him. This can be illustrated either by descriptions indicating that the offender derives sexual pleasure from injurious acts to the victim or by the fact that the injurious acts are focused on parts of the body that have sexual significance.

To qualify as a sadistic, muted rapist (a type that has been excluded from the latest version of the MTC, the MTC-R4) on the other hand, the offender must demonstrate the following:

- Instrumental aggression or enough force to gain compliance
- Evidence that sexual fantasies of violence or the victim's fear excite him

Sexually Motivated, Non-Sadistic Rapists (Types 6 and 7)

The **non-sadistic rapist** engages in a sexual attack because of an intense sexual arousal prompted by specific stimuli identified in the intended victim. Although rape is, by definition, clearly a violent act, aggression is not the significant feature in the attack of the sexually motivated, non-sadistic rapist. Rather, the fundamental motivation is the desire to prove sexual prowess and adequacy to the victim. This type is also known as the "power reassurance rapist" (S. T. Holmes & Holmes, 2002). These men live in a world of fantasy, oriented around themes of how victims will yield eagerly under attack, submit to pleasurable intercourse, and even request further contact with the rapist. These rapists fantasize that they will at last be able to prove their masculinity and sexual competence to themselves and the victims. In their sexual assaults, these rapists are described as being highly sexually aroused and showing obvious disturbances involving lack of control and cognitive-perceptual distortions of reality.

Table 9.2

The victim of such a rapist is most often a stranger, but the rapist has probably watched and followed the victim for some time. Certain stimuli have drawn his attention and excited him. For instance, he may be attracted to college women or women who are tall or wear uniforms. S. T. Holmes and Holmes (2002) report that non-sadistic, sexually motivated rapists prefer women who are approximately their own age and race, especially those residing in the same neighborhood or close to their place of employment. The attacks are often done at night, with a time interval between attacks of 7 to 15 days. If the victim physically resists his attack, the non-sadistic rapist is likely to flee from the scene. During the entire incident, there will be very low levels of aggressive behavior on his part. Sometimes, if he

is successful, he may contact the victim at a later time to inquire about her well-being or even to ask for a date. Generally, this type of rapist confines his illegal activity to sexual assault and is not involved in other forms of antisocial behavior.

Assignment to the non-sadistic categories requires the following behavioral indicators:

- Presence of verbalizations aimed at self-reassurance and self-affirmation
- Behaviors that reflect, albeit in a distorted fashion, an attempt at establishing an amorous relationship with the victim
- Concerns for the victim's welfare, comfort, and enjoyment of the sexual experience

Research (e.g., Knight & Prentky, 1987; Knight, Warren, Reboussin, & Soley, 1998) has shown that there may be at least two subtypes of non-sadistic, sexually motivated rapists, similar to the two subdivisions of the opportunistic rapist. One group may be described as quiet, shy, submissive, and socially inadequate. Although they are dependable workers, their poor social skills and resulting low self-esteem prevent them from succeeding at occupational advancement. This type of person is usually classified as low socially competent, or Type 6. The second subtype may be more socially adaptable and competent and achieve more occupational advancement and professional development. This rapist is classified as highly socially competent (Type 7; see **Figure 9.1**).

Vindictive Rapists (Types 8 and 9)

In an effort to express anger toward women, the **Vindictive rapist** uses the act of rape to harm, humiliate, and degrade them. A violent sexual assault is, in this rapist's eyes, the most humiliating and dominating act possible. The victims are brutally assaulted and subjected to sadistic acts such as biting, cutting, or tearing of parts of the body. In most instances, the victims are complete strangers, although the victim may possess certain characteristics that attract the assailant's attention. Often, in addition to using physical abuse, this attacker will use a great deal of profanity and emotional abuse through threats. Resisting this particular rapist may engender more violence from him. Nevertheless, as we note later, women threatened by rape cannot be expected to distinguish among rapist types and should never be discouraged from using resistance strategies whenever possible (Ullman, 2007b).

Although many vindictive rapists are married, their relationships with women are characterized by periodic irritation and violence, and they probably engage in domestic violence and partner abuse. These men generally perceive women as demanding, hostile, and unfaithful

individuals who need to be dominated and controlled. They sometimes select their victim because they perceive something in her behavior or appearance that communicates assertiveness, independence, and professional activity. The assault usually follows some precipitating events involving a wife, girlfriend, or mother that he generalizes to all women. Upon arrest, the offender often attributes his offense to an “uncontrollable impulse.” Like the opportunistic and non-sadistic rapists, vindictive rapists can be subdivided by their degree of social competence, although here they are divided into low and moderate rather than low and high.

To qualify as a vindictive rapist, the following behaviors must be evident:

- Clear evidence, in verbalization or behavior, of the intent to demean, degrade, or humiliate the victim
- No evidence that the aggressive behavior is eroticized or that sexual pleasure is derived from the injurious acts
- The injurious acts are not focused on parts of the body that have sexual significance

Raymond Knight (2010), in response to studies that have identified several problems with the MTC: R3, has started to revise some aspects of the typological model. In the newly developed MTC: R4 version, Knight deleted subtype 5, the muted sadistic rapist, as mentioned earlier in this section, but all other MTC: R3 subtypes remain.

Summary

Although human beings rarely fit neatly into typologies, the MTC rape typology is useful in understanding rape and helps in treatment and in the prediction of recidivism. Even so, forensic and other psychologists are more likely to use various risk assessment measures for this latter purpose, as we note later in the chapter. The MTC typology is of value because it takes into consideration behavioral patterns, rather than simply personality traits, as well as the context within which the behavior patterns occur. However, the typology needs refinement and reconstruction, a process the group has been pursuing for a number of years. R. A. Knight and Prentky (1990) conclude that

> the MTC: R3 is a typological system that was developed to increase understanding of the etiology of sexual offending and to help predict recidivism. It might be that an alternative typology or a variant of MTC: R3 can be developed to maximize detection. (p. 78)

The MTC: R3 has received favorable reports from many research studies (Goodwill et al., 2009).

However, rape typologies in general may be of little use to the *victim* of sexual assault, and may even be a liability. Some typologies, for example, suggest that resisting certain rapist types will only make them angrier and will also make it more likely that the victim will be severely physically harmed or even killed. Ullman (2007a) remarks that the woman in the process of being assaulted is unlikely to make a determination about which category the rapist falls into. More important, however, contemporary research indicates that women who scream loudly or fight back—if they are able to do so—are more likely to avoid a completed rape; on the other hand, begging, pleading, and trying to reason with the rapist are less likely to be effective (Ullman, 2007a).

CHILD SEX OFFENDERS

If you are reading this text, you probably consider sexual crimes against children among the most heinous in our society. If the statistics are accurate, it is also likely that you or someone you know has been victimized by such crimes. As we discuss next, the incidence of childhood sexual victimization both nationally and globally is highly disturbing. Moreover, like other crimes against children, it is often not reported to police or social service agencies.

Definitions of Pedophilia

Pedophilia is *commonly* known as “child molestation” or child sexual abuse, but pedophilia—as defined in the *DSM-5*—is not necessarily a crime. It is a psychological condition, defined as one in which, “over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, *or behaviors* involving sexual activity with a prepubescent child or children (generally age 13 years or younger)” occur (American Psychiatric Association, 2013, p. 697, emphasis added). We added the italics to emphasize that the fantasies or urges themselves are not criminal; they become so only if and when the individual acts upon them. It is also important to note that not all child sex offenders have the fantasies and urges that have traditionally been associated with pedophilia (W. L. Marshall et al., 2014). W. L. Marshall (1998) reported that an examination of his own extensive clinical files found that there was no clear evidence of recurrent fantasies or urges in about 60% of nonfamilial child sex offenders or over 75% of incest offenders. The phrase “or behaviors” in the *DSM-5* recognizes that child molestation is not only a crime but also should be clinically treated. Virtually all clinicians believe treatment should be available for anyone who commits sex crimes,

even though persons who commit these crimes may not have a serious mental disorder.

The *DSM-5* further specifies that some pedophiles are sexually attracted only to children (the exclusive type), whereas others are attracted sexually to both children and adults (nonexclusive type). The psychologist, then, wants to prevent the urges—if they are recurrent—from translating into criminal activity or, if the activity has already occurred, treat the person so that it does not happen again. Child molesters who do not have recurrent urges and fantasies should be treated using evidence-based-treatment approaches (W. L. Marshall et al., 2014). As noted in Chapter 5, some forensic psychologists today often conduct sexually violent predator evaluations, which are intended to assess the likelihood that persons convicted of a sexual crime against either children or adults will reoffend in a similar manner.

For the purposes of this text, we are focusing on the pedophile who has taken the step into criminal activity and is considered a child sex offender. He may or may not have the fantasies and urges discussed in the clinical literature, but he has at least evinced the behavior. In this section, we use the term *child sex offender* in line with current research literature. A child sex offense may be rape, as defined earlier in the chapter, or another form of sexual assault. Although some researchers have specifically studied the topic of child rape, the great majority make reference to child sexual assault, which may or may not include that offense.

If the child victim is the offender's relative—sometimes referred to as *intrafamilial* child molestation—the criminal behavior is called **Incest**. By far the largest group in this category is fathers who molest their sexually immature daughters or stepdaughters (Rice & Harris, 2002). *Extrafamilial* child molestation, on the other hand, refers to sexual abuse from a person *outside* the family. However, the two categories probably overlap, perhaps to a large extent. Rice and Harris (2002), for example, report that a significant number of intrafamilial sex offenders have also offended outside the family.

Some Demographics of Child Sex Offenders

Best estimates of the prevalence of child sex offenders (CSOs) among men in the general population is less than 1% (Ahlers et al., 2011; Schmidt, Mokros, & Banse, 2013). In a recent online survey of both men and women, it was discovered that 6% of men and 2% of women indicated some likelihood of having sex with a child if they were guaranteed they would not get caught or punished (Wurtele, Simons, & Moreno, 2014). In another anonymous survey, approximately 4% of college-age men admitted having had sexual

contact with a prepubescent girl (Ahlers et al., 2011). It should be noted, however, that some research has discovered that a large segment of men attracted to children either do not commit sexual offenses (Bailey, Bernard, & Hsu, 2016) or they go undetected. For example, Bailey, Bernard, and Hsu (2016) found only 1 of 122 men in their survey who were attracted to children reported an arrest or conviction for a sexual offense against children, and that was for possession of child pornography.

Prentky, Knight, and Lee (1997) assert that the more an offender's sexual preference is limited to children, the less socially competent he is likely to be. In this context, social competence refers to the offender's strength and range of social and sexual relationships with adults. Although some child sex offenders may demonstrate some interpersonal inadequacies, a large number appear to be quite interpersonally skillful in their strategies to gain access to children while hiding their true motivations and actions (Owens, Eakin, Hoffer, Muirhead, & Shelton, 2016). "Some offenders appear to be charming, sincere, compassionate, morally sound, and socially responsible" (Owens et al., 2016, p. 11). Often, they try to work in occupations that put them in frequent contact with children, such as coaches, counselors, clergy, school crossing guards, school bus drivers, and even law enforcement.

Although we urge caution in discussing victim characteristics, it must be stated that some researchers have found that victims of CSOs tend to have similar traits. In her summary of the research literature, A. C. Butler (2013) finds that CSOs tend to select children who do not have many friends and "who appear to lack confidence, to have low self-esteem, and to be unhappy and emotionally needy" (p. 643). All these characteristics are likely to be a reflection of a child's living environment—such as living in a family under stress and conflict. Furthermore, disabilities of any kind tend to increase the vulnerability of children to sexual predators. For example, children with learning difficulties, language impairments, health problems, and intellectual disabilities are vulnerable targets for CSOs. Children from families in which parents do not show the child sufficient attention or affection are also especially vulnerable.

Perhaps because of the extremely negative attitudes the public has toward child sexual abuse, CSOs rarely take full responsibility for their actions. Many claim that they went blank, were too intoxicated to know what they were doing, could not help themselves, or did not know what came over them. Overall, they demonstrate a strong preference for attributing their behavior to external forces or motivating factors largely outside their personal control. The

tendency of sex offenders of children to deny, distort, or minimize the psychological damage they do is a relatively consistent finding in the research literature (Nunes & Jung, 2012). Many therapies for CSOs are designed to address and hopefully change these cognitions.

Few crimes are considered as despicable as the sexual abuse of children, and yet so little is understood about its causes, incidence, and reoffense risk (Prentky et al., 1997). In the United States, data on CSOs are difficult to obtain because there are no central or national objective recording systems for tabulating sexual offenses against children. Across the world, human rights groups report numerous instances of children being abused, kidnapped, sold, and killed by individuals, tyrannical governments, and militant groups. In many parts of the world, children are not cherished and protected.

The available evidence suggests that, in the United States, child sexual abuse is grossly underreported, both to police and in official statistics. This is due partly to children's fears of retaliation from the perpetrator. However, in some cases it is also because another adult is aware of the offending but persuades the child not to reveal it. The child sexual offender also may be protected by his own family—let's keep this a private matter, relatives have been known to say.

With regard to official statistics, offenders may be arrested and prosecuted under a variety of statutes and for a variety of offenses, including child rape, aggravated assault, sodomy, incest, indecent exposure, and lewd and lascivious behavior. Although the UCR program lists arrests for sex offenses, it does not differentiate child sexual abuse from the mixture of other possible sexual offenses. In addition, arrests are reported for crimes against children, but not all crimes against children are sex offenses. Self-report surveys are somewhat more instructive. The best data available indicate that 1 in 4 girls and 1 in 20 boys in the United States have been sexually abused or assaulted by the time they reach their 17th birthday (Finkelhor, Shattuck, Turner, & Hamby, 2014). Perhaps more surprising is the discovery that many of these abuses and assaults were committed by their peers. Over half of the total sexual offenses against children and adolescents were committed by juveniles; many of them were acquaintance peers. Overall, self-report victimization survey data reveal high rates of lifetime experience of sex abuse and assault at the hands of both adults and peers.

The classification, diagnosis, and assessment of CSOs—like those of rapists—are complicated by a high degree of variability among individuals in relation to personal characteristics, life experiences, criminal histories, and motives for offending. "There is no single 'profile' that accurately describes or accounts for all child molesters"

(Prentky et al., 1997, p. v). Perhaps the best way to provide a solid framework for any presentation on the complex nature of pedophilia and the offenders involved is through a discussion the research-based typology of the Massachusetts Research Center (MTC: CM3). Like the rapist typology discussed earlier, it has been formulated primarily with reference to male offenders, but this situation has changed in recent years, as we will discuss shortly.

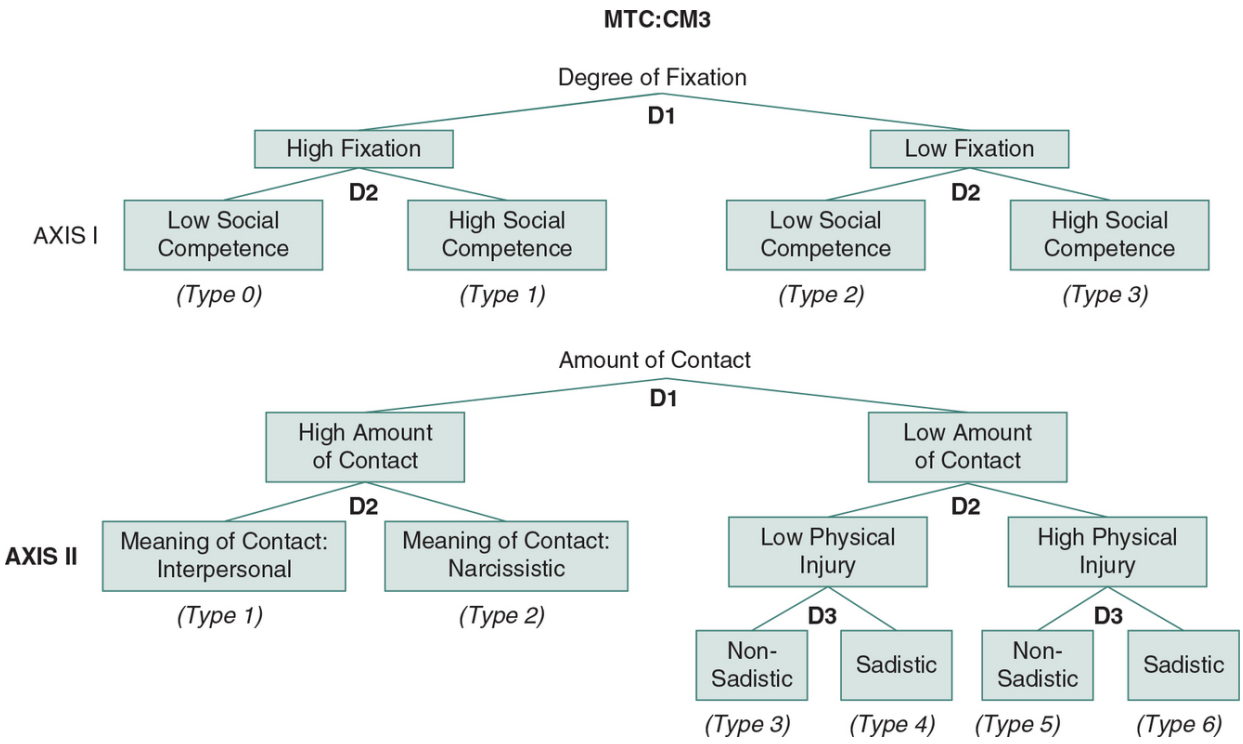
The MTC: CM3

Similar to their development of the MTC: R3 for rape typing, the MTC researchers (M. L. Cohen et al., 1969; Knight, 1989; Knight & Prentky, 1990; Knight, Rosenberg, & Schneider, 1985) have also developed one of the most useful typologies or empirically based classification systems for CSOs yet constructed. Called the **MTC: CM3** (Child Molesters, Revision 3), the system underscores the importance of viewing child sex offending as characterized by multiple behavioral patterns and intentions. The MTC: CM3 classifies CSOs according to variables on two basic dimensions, or axes (see **Figure 9.2**). The first dimension focuses on the degree of fixation the offender has on children and the level of social competence demonstrated by the offender. The second dimension focuses on the amount of contact with children, the level of injury to the victim, and the amount of sadism manifested in the attack.

The First Dimension

The MTC researchers have distinguished four types of CSOs based on this dimension:

- High fixation, low social competence (Type 0)
- High fixation, high social competence (Type 1)
- Low fixation, low social competence (Type 2)
- Low fixation, high social competence (Type 3)



Description

Figure 9.2 A Flow Chart of the Decision Process for Classifying Child Molesters (MTC:CM3)

Source: R. A. Knight, Carter, & Prentky (1989). A system for the classification of child molesters: Reliability and application. *Journal of Interpersonal Violence*, Vol. 4, p. 8, Fig. 1. Copyright © 1989 by SAGE Publications, Inc. Reprinted by permission of SAGE Publications, Inc.

The term *fixation* refers to the intensity of pedophilic interest or the degree to which the offender is focused on children as sexual objects. High fixation means that the offender demonstrates an exclusive and long-standing preference for children as sexual objects, whereas a low fixation connotes that both children and adults can serve or have served as sexual objects for the offender. Social competence refers to the level of social and interpersonal skills, assertiveness, and self-esteem possessed by the offender. Low social competence signifies that the offender has inadequate social skills, is unassertive in dealing with adults, and demonstrates poor self-esteem. High social competence means the opposite.

The Type 0 child molester displays a long-standing preference for children as both sexual and social companions. He has never been able to form a mature relationship with adult peers, male or female, and he is described by people who know him as socially immature, passive, timid, and dependent. He feels most comfortable with children. The Type 0 CSO is rarely married or in a long-lasting

relationship and has a history of steady employment, although the type of work is often below his ability and intellectual capacity. Sexual contact with the child occurs after the two become fully acquainted through a number of social encounters. He rarely is aggressive or uses physical force and rarely engages in genital intercourse. The behavior is generally restricted to touching, fondling, or caressing the child. However, this pedophile is the most difficult to treat and is most likely to recidivate because he is not disturbed or troubled about his exclusive preference for children.

Type 1 is similar to Type 0 in his child molestation strategies. However, he tends to be more socially competent in dealing with the world, has higher self-esteem, and usually has a good work history in line with his competence.

Type 2 CSOs have low fixation. They have had a fairly normal adolescence and good peer relationships and sexual experiences, but they later developed feelings of sexual inadequacy and self–doubt. These feelings of inadequacy were further exacerbated by failures in their occupational, social, or sexual lives. The Type 2 offender's background almost always includes alcohol abuse, divorce, and a poor employment history. Each pedophilial act is usually precipitated by a significant disappointment related to the offender's sexual and social adequacy in interaction with either female or male peers. Unlike Types 0 and 1, the low-fixated/low–socially competent offender prefers victims who are strangers and who live outside his neighborhood or area. The victims are nearly always female, and he seeks genital sex with the victim. Unlike Type 0 and 1 child molesters, this offender often feels remorseful for his actions and is willing to change.

The Second Dimension

MTC researchers have also discovered that CSOs can be distinguished on the basis of how much daily contact they seek with children (see **Figure 9.2**).

The "amount of contact" dimension identifies six types of CSOs:

- High contact, interpersonal interests (Type 1)
- High contact, sexual interests (Type 2)
- Low contact, low physical injury, exploitative (Type 3)
- Low contact, low physical injury, psychologically sadistic (Type 4)
- Low contact, high physical injury, aggressive (Type 5)
- Low contact, high physical injury, victim pain (Type 6)

A high-contact offender has regular contact with children within both sexual and nonsexual contexts (Knight, Carter, & Prentky, 1989). These high-contact offenders often engage in occupations or recreational activities that bring them into frequent contact with

children. Many occupations and much volunteer work can fall under this categorization (e.g., teachers, coaches, camp counselors, bus drivers, clergy, child care workers, scout leaders, social workers, karate teachers, clowns at children's parties, tutors, to name but a few), and we must be careful not to make assumptions about the individuals associated with them. The MTC research team identified two kinds of offenders who intentionally seek more extensive contact with children: (1) the interpersonal offender (Type 1), who seeks the frequent company of children for both social and sexual needs, and (2) the narcissistic offender (Type 2), who seeks the company of children primarily for sexual needs. Narcissistic offenders molest children they do not know, and their sexual acts with children are typically genitally oriented (Knight, 1989).

Another group of CSOs includes low-contact seekers. In general, low-contact CSOs come into contact with children only when they decide to sexually assault a child. Low-contact CSOs are subdivided into those who administer very little physical injury to their victims and those who administer high physical injury. Low physical injury is indicated by the absence of physical harm to the victim and the presence of such acts as pushing, shoving, slapping, holding, verbal threats, or other intimidation tactics. Low physical injury offenders are further classified into two types: (1) exploitative, non-sadistic offenders (called Type 3) and (2) muted or symbolic, sadistic offenders (Type 4). The Type 3 offender uses no more aggression or violence than is necessary to obtain victim compliance. Type 4, on the other hand, engages in a variety of frightening, painful, or threatening acts, none of which causes significant physical injury to the child.

Finally, the MTC: CM3 classifies two types of CSOs who administer a high amount of physical injury to their victims: (1) the aggressive offender (Type 5) and (2) the sadistic offender (Type 6). High injury is characterized by hitting; punching; choking; sodomizing; or forcing the child to ingest disgusting things, such as urine or feces. The Type 5 offender is drawn to children for both aggressive and sexual reasons, but sadism is not the primary need. He is extremely angry about all things in his life and is generally violent toward people, including children. The sadistic or Type 6 offender obtains sexual pleasure from the pain, fear, and physical harm he inflicts on the child. He exploits the child's vulnerability any way he can and attempts various strategies and ploys to get the child to comply. This offender does not care about the emotional or physical well-being of the victim and sees the child strictly as a sexual object. He usually has a long history of criminal and antisocial behavior. His

relationships with peers are unpredictable, difficult, and stormy. He is unpleasant to be around, uncomfortable to work with, and generally moody and irritable. His very poor and abrasive interpersonal skills may be the principal reason he selects children as victims (Knight et al., 1985).

The aggressive-sadistic or Type 6 CSO is apt to have a long history of antisocial behavior and poor adjustment to his environments. Type 6 CSOs most often prefer male children. Because the primary motive is to obtain sexual gratification without consideration for the victim, these offenders often assault the child viciously and sadistically. The more harm and pain inflicted, the more this individual becomes excited. Type 6 CSOs are most often responsible for child abductions and murders by strangers. They are very difficult to treat, but, fortunately, they are also very rare.

FEMALE SEX OFFENDER TYPOLOGIES

Traditionally, female sex offenders have received very little research attention, and consequently, have been poorly understood, but this research neglect has been changing in recent years. For example, and as noted earlier, Cortoni et al. (2010) estimate that females constitute 5% of all sex offenders in industrialized countries across the world. Vandiver and Kercher (2004) developed a clinically useful and research-derived typology of female sex offenders. They based their typology on 471 registered adult female sex offenders in Texas and were able to identify six types. They are the following:

1. Heterosexual nurturers
2. Noncriminal homosexual offenders
3. Female sexual predators
4. Young adult child exploiters
5. Homosexual criminals
6. Aggressive homosexual offenders

Heterosexual nurturers represented the largest group. The women in this group victimized only males with an average age of 12. The offenders were generally in mentorship, caretaking, or teacher roles, such as the teacher–lover category in which a teacher engages in a “romantic” relationship with one of her students or a counselor with one of her clients. A large segment of the women in this group did not believe the relationship was abusive or psychologically damaging to their child victim. These offenders appeared to be motivated by a desire for intimacy to compensate for unmet emotional and social needs and did not recognize the inappropriateness of the relationship. Vandiver and Kercher (2004) found that this group had a low recidivism rate.

Noncriminal homosexual (same-sex) offenders made up the second-largest group. This group preferred early-adolescent females as victims with an average age of 13. These female offenders appeared to have similar characteristics as heterosexual nurturers except that their victim preferences were females. Similar to heterosexual nurturers, these offenders were unlikely to have a criminal record or to recidivate.

Female predators sexually abused both male (60%) and female children (40%) who averaged 11 years of age. Members of this offender group were largely repeat offenders who engaged in a wide variety of crimes.

Women who fell into the young adult child exploiters group were those who sexually assaulted young victims (average age of 7) of both genders. These offenders themselves were the youngest of the six offender groups, with an average age of 28. About half of the victims were related to the offender and were sometimes the offender's own child. Their sexual offenses appeared to be associated with domestically violent relationships with other women.

In a study of 390 female sex offenders in New York State, Sandler and Freeman (2007) also were able to identify six categories. In addition, their sample was highly similar to Vandiver and Kercher's (2004) on demographic variables, such as offender age and race. However, Sandler and Freeman's research did not completely support some of the offender characteristics reported by Vandiver and Kercher. This is to be expected, as the development of female sex offender typologies was in its earliest stages.

Sandler and Freeman (2007) did find support for the heterosexual nurturer and young adult child exploiter categories identified by Vandiver and Kercher (2004), but some descriptors of the four other categories were different. One major difference was the gender of the victims. Sandler and Freeman discovered that many of the female offenders did not *consistently* victimize one gender more than the other.

Overall, the samples between the two studies were different. For one thing, the two states, Texas and New York, had different codes or registry requirements for sex offenders, so that an offender registered at a certain level in one may not have been registered at the same level in the other state. Furthermore, Vandiver and Kercher's (2004) sample included women who may or may not have served time in prison, although their offenses were considered serious enough to warrant arrest and prosecution (Gannon & Rose, 2008).

Although the two studies advance our knowledge concerning female offenders, neither project was able to obtain additional data relating to co-offenders (Gannon & Rose, 2008). That is, did the women offend alone or with a co-offender, such as a male partner? In one study conducted in the Netherlands between 1994 and 2005, Wijkman, Bijleveld, and Hendricks (2010) found approximately 8 of 10 female child sex offenders had abused their own children, often with a male co-offender. In about 75% of those cases, the co-offender was the woman's husband or intimate partner (Nicholls, Cruise, Greig, & Hinz, 2015). The study also revealed that female sex offenders were often raised in highly dysfunctional homes characterized by sexual abuse and conflict.

ONLINE CHILD SEXUAL PREDATORS

The explosive growth of internet use among youth has both positive and negative effects on the health and development of children and adolescents (Ybarra & Mitchell, 2007). Because of the internet's anonymity, one negative impact is the opportunity for sex offenders to exploit children and adolescents, both for online behavior, such as promoting sexual performances, and for in-person meetings. According to the Growing Up with Media Survey involving 1,588 youth, 15% of the participants reported an unwanted sexual solicitation online in 2006 (Ybarra & Mitchell, 2007). Other surveys support these data (K. Mitchell, Wolak, & Finkelhor, 2005). Surveys also indicate that most of the sexual solicitations occurred via instant messaging or public chat rooms.

According to Janis Wolak and her colleagues (Wolak, Finkelhor, Mitchell, & Ybarra, 2008), most internet-initiated sex crimes involve adult men who use the internet to meet and entice underage youth into sexual encounters. They also tend to be white males, often older than 25 years (Owens et al., 2016). They utilize various online communications in these endeavors, including instant messages, social networking avenues (blogs, Facebook), e-mail, gaming sites, and chat rooms. One study (Malesky, 2007) found that three quarters of online offenders said they monitor chat room dialogues in an attempt to identify potential victims. As a result of these and other activities, many states now have passed "luring" statutes, making it a crime to deceive children or adolescents through the electronic media for purposes of engaging them in sexual activity.

Research indicates that the typical internet child sex offender does not use trickery to assault children (Wolak, Finkelhor, & Mitchell, 2004). In a great majority of cases, the victims are fully aware they are communicating with adults; only 5% of the offenders pretended to be adolescents. In addition, those offenders who ultimately want a

meeting (they would be in the contact-driven group) rarely deceive victims about their sexual interests. “Sex is usually broached online, and most victims who meet offenders face to face go to such meetings expecting to engage in sexual activity” (Wolak et al., 2008, p. 113) in exchange for money or drugs. Moreover, the sexual intention of a majority of the offenders are made clear and introduced early in the internet conversation with the target (Winters, Kaylor, & Jeglic, 2017). Perhaps surprisingly, the National Juvenile Online Victimization (N-JOV) study reports that three quarters of victims who had face-to-face sexual encounters with offenders did so more than once (Wolak, Mitchell, & Finkelhor, 2003). Ninety-nine percent of the victims of internet-initiated sex crimes were 13 to 17 years old, and none was younger than 12. Available data suggest that online predators do not usually seek unsuspecting victims as much as they seek those youths who may be susceptible to seduction because they are offered gifts, are curious, or are lonely for companionship (Wolak et al., 2008).

Viewing a victim as “susceptible to seduction,” or focusing on the victim’s motives for meeting, though, distracts us from the behavior of the offender. Furthermore, online offenders also may engage in **Grooming** unsuspecting victims, or preparing them for sexual abuse. Kloess, Beech, and Harkins (2014) provided a helpful review of research on grooming in both the physical and online world. In the physical world, the practice is well recognized—it can involve the environment, significant others, as well as the potential victim. For example, the offender may align themself with community organizations in which children are involved, may get to know the victim’s caretakers well, and ultimately ingratiate themself with the child, making the child feel special or offering gifts. Researchers also note that, in the physical world, the offenders may isolate the child and may introduce sexual activities gradually, such as by showing pictures, minor touching, before moving on to blatant acts (Kloess, Beech, & Harkins, 2014, and resources therein).

Grooming online occurs in different ways. Integrating and expanding on other research in this area (e.g., Briggs, Simon, & Simonsen, 2011), Kloess et al. (2014) note that offenders often but not invariably begin by posing as adolescents themselves. (And increasing numbers of online offenders *are* in fact adolescents.) They exchange pictures and gradually form online friendships via a number of stages, ultimately ending with a request for pornographic images, incitement to sexual acts, or arrangement of in-person meetings. “In the absence of a meeting occurring between an offender and a victim, sexually exploitative interactions, via computer-mediated

communication, may only ever come to the attention of police authorities when a victim comes forward or discloses the abuse, or as a result of proactive undercover police investigations" (Kloess et al., (2014) p. 132).

Wolak and her colleagues (2008) assert that many youths are vulnerable to online child sex offenders because they lack the mature judgment and emotional self-regulation necessary for healthy relationships that involve sexual intimacy (recall the Steinberg research discussed in Chapter 7). Engaging in early sexual behavior, especially with an unknown adult, presupposes risk taking, a common behavioral pattern of adolescence. Adolescents who have histories of sexual or physical abuse appear to be especially vulnerable (K. Mitchell, Finkelhor, & Wolak, 2007).

In their study of convicted online CSOs, Owens et al. (2016) reported that, although the CSOs were predominately white males, they varied widely in most other demographic variables, such as age, education, income, occupation, marital status, and community standing. In another study of online CSOs (Shelton, Eakin, Hoffer, Muirhead, & Owens, 2016), the researchers concluded, "The characteristics of the offenders in this sample were somewhat diverse, perhaps more than other criminal populations, suggesting that there does not appear to be a set demographic profile for Internet offenders" (p. 20). It should be mentioned that both studies (Shelton et al., 2016, and Owens et al., 2016) used offenders who had gone through investigations for an online child sexual exploitation offense through the FBIs Innocent Images National Initiative (IINI) and were convicted in either state or federal court. All cases involved the use of the internet in some capacity to facilitate the sexual exploitation of a child. In total, the studies used 251 resolved FBI online child sexual exploitation cases which involved possessing, distributing, or producing child pornography, traveling to have sex with a child, and/or sexual contact offending against a child.

Online child offenders are usually not violent or sadistic, nor do they lack interpersonal skills to gain the confidence and acquiescence of victims. That said, the word "usually" should be emphasized. About 5% of the offenders in the N-JOV survey used threats or violence or attempted sexual assault. Abduction, however, is rare. For example, none of victims in the N-JOV study (Wolak et al., 2004) were forced to accompany offenders. Still, about one quarter of the cases began with missing persons reports, because the victim either ran away to be with the offender or lied to parents about their whereabouts.

Seto, Hanson, and Babchishin (2011) emphasize that although many online offenders are strongly aroused by child pornography, these

pedophilic interests do not necessarily result in sexual contact with children. Their research finds that only half of those online offenders have acted on these sexual interests. Moreover, those who have acted on their pedophilic interests "are likely to have personality traits and life circumstances that facilitate antisocial behavior and criminality" (p. 140).

It is important to emphasize that internet-initiated sexual offenses do not always result in physical encounters—in fact, they typically do not. In a study of convicted offenders, Briggs et al. (2011) identified two subtypes, based on their motivations: fantasy driven and contact driven. Fantasy-driven offenders were interested in pursuing a cyber relationship for purposes of self-gratification or engaging in cybersex. The contact-driven offenders wished to build a relationship and arrange a meeting for the purpose of sexual activity. The fantasy-driven offenders were older, married, or divorced. Contact-driven offenders tended to be younger, less well educated, and unemployed. Similarly, Babchishin, Hanson, and Hermann (2011) note that research and clinical literature have identified several typologies of online sexual offenders:

> For example, online offenders have been categorized as those who (a) access child pornography out of curiosity or impulse, without specific sexual interest in children; (b) access child pornography to satisfy sexual fantasies, but do not commit contact sex offenses; (c) create and distribute child pornography solely for financial gain; and, lastly, (d) use the Internet to facilitate contact sex offenses. (p. 93)

Note that each of the preceding categories still represents exploitation of children, even if only the last refers to contact. Although we have emphasized in this section those offenders who use the internet to facilitate contact sex offenses, we pay more attention to the first three offenders in the next chapter on victimology.

JUVENILE SEX OFFENDERS

According to the most recent FBI (2019a) statistics, about 17% of those arrested for rape and 17% of those arrested for all other sex offenses (except prostitution) are younger than age 18. The extent of the offending may be underestimated because, for a variety of reasons, many (perhaps a majority) of juvenile sex offenders (JSOs) are unknown to the criminal justice system. Several studies do suggest, however, that JSOs may account for about 20% of all sexual assaults and perhaps as much as 50% of child sexual abuse

(Barbaree & Marshall, 2006; Keelan & Fremouw, 2013). Most of the research on JSOs has concentrated on adolescent males while neglecting preadolescent males and females and adolescent female sex offenders. Nevertheless, there are exceptions, as we will see shortly.

Juvenile male sex offenders represent a heterogeneous population and defy any unitary profile or simple description. They come from all ethnic, racial, and socioeconomic groups. “However, what is known is that about 70% of adolescent sexual offenders come from two-parent homes, most attend school and achieve average grades, and less than 4% suffer from major mental illness” (Becker & Johnson, 2001, p. 274). Further research indicates that the median age of juvenile male sex offenders is between 14 and 15, more than 90% knew their victims, and more than one third of the offenses involved the use of force (National Council of Juvenile and Family Court Judges [NCJFCJ], 1993). The victims are often substantially younger than the juvenile offender, are most often girls (75%), and are usually relatives or acquaintances (Righthand & Welch, 2001). The median age of victims is 7 years old (NCJFCJ, 1993). Babysitting or some form of child care frequently provides the opportunity to offend, especially for female sex offenders.

JSOs frequently engage in a wide range of nonsexual criminal and antisocial behavior (Carpentier, Leclerc, & Proulx, 2011). In other words, they usually do not specialize in any one criminal activity. They tend to shoplift, steal, set fires, bully, assault others (including adults), and are often cruel to animals. Although most JSOs attend school and achieve average grades, a significant number are truant, demonstrate behavioral problems, and have learning disabilities. Moreover, although JSOs are described as ranging from social outcasts to popular athletes and from academically gifted students to tough delinquents (Cellini, 1995), research continually reveals that most juveniles with sexual behavior problems have significant deficits in social competence and getting along with others (Becker, 1990; R. A. Knight & Prentky, 1993). As we found in Chapter 7 for life course–persistent (LCP) delinquents in general, inadequate interpersonal skills, poor peer relationships, and social isolation are among the social difficulties identified in these juveniles (Righthand & Welch, 2001).

The types of sexual offenses committed by juveniles vary widely, ranging from noncontact offenses (such as exhibitionism and voyeurism) to sexual penetration. About half of the contact offenses involve oral–genital contact or attempted or actual vaginal or anal penetration (Righthand & Welch, 2001). Juvenile sex offenders

usually use more force when assaulting peers or adults than they do with younger children.

Many adult sex offenders began their sexually abusive behavior in their youth. Studies report that 47% to 58% of adult sex offenders committed their first offense during adolescence or younger (Cellini, 1995; Cellini, Schwartz, & Readio, 1993; Lobanov-Rostovsky, 2015). Many experts and mental health professionals have made the point that a juvenile's own sexual victimization in childhood is a primary cause of later sex offending. Yet, such abusive experiences have not consistently been found to differ significantly from those of other juvenile offenders (Knight & Prentky, 1993; Spaccarelli, Bowden, Coatsworth, & Kim, 1997). However, Dennison and Leclerc (2011) find that, although sexual victimization in childhood is not a necessary condition for later sexual offending, it does appear to influence developmental pathways into sexual offending for some individuals. In one British study, the researchers found that only 12% of the 224 boys who had been sexually abused as children later became sexually abusive themselves (Salter et al., 2003). Although the figure seems low and may reflect only the abuse that came to official attention, it does underscore the point that most children who are sexually abused do not become victimizers themselves. Some scholars (e.g., Hunter & Figueredo, 2000) maintain that the timing and frequency of sexual abuse is likely to affect the person's psychosocial and psychosexual development. They report data suggesting that early and frequent sexual victimizations are associated with adolescent sexual offending.

The role of child maltreatment in the etiology of sex offending appears unclear and much more complicated than previously supposed (Prentky, Harris, Frizzell, & Righthand, 2000). There is some evidence, though, that abused children as a group exhibit less empathy toward others than their non-abused peers, have trouble recognizing appropriate emotions in others, and have difficulty taking another person's perspective (Knight & Prentky, 1993). Abuse in this context refers not only to sexual abuse but also to physical and emotional abuse and neglect.

Female Juvenile Sex Offenders

According to the latest FBI (2019a) statistics, juvenile girls accounted for only 0.8% of all arrests for rape and 6% of all persons arrested for sex offenses (excluding rape and prostitution). For our purposes, we will not treat prostitution as a sex offense, because engaging in prostitution does not involve the victimization of others. Although juvenile prostitution (both female and male) is a social problem, if there is a victim, it is the person who is committing the offense. For

example, many juvenile as well as adult prostitutes are victims of human trafficking, a topic to be covered in the next chapter.
Research on girls who have committed sex offenses has been relatively rare, and existing studies have been limited by small sample sizes and other methodological restrictions and problems (Becker et al., 2001; Righthand & Welch, 2001). Most of the available research on sex differences in sexual offending has focused on adult females (Bumby & Bumby, 1997), and—as discussed earlier—that research itself is very limited. As Becker, Hall, and Stinson observe, "[s]ociety in the past has been disbelieving in regards to the presence or potential threat of female sexual perpetrators" (p. 30). They add that the mental health professionals in routine clinical interviews rarely or never ask women and girls about possible sexual aggression or paraphilias.
Fehrenbach and Monasterky (1988) report that most adolescent girls who sexually victimized young children did so while taking care of children or babysitting. The victims of the 28 female sex offenders they studied were 12 years old or younger, and they were mostly acquaintances (57%), followed by siblings (29%) and other relatives (14%). Mathews, Hunter, and Vuz (1997) provided data on 67 female adolescent offenders who ranged in age from 11 to 18. More than 90% of their victims were acquaintances or relatives. Both of the previously mentioned studies also found that a high percentage of the abusers (50% and 77.65%, respectively) themselves had a history of being sexually abused. Some studies report that adolescent female sex offenders are younger than male sexual offenders at the time of arrest, and also are more likely to sexually abuse both male and female victims (Nicholls et al., 2015). Bumby and Bumby (1997) found that adolescent female sex offenders tended to be depressed, have a poor self-concept, have a suicide ideation, and have been victims of sexual abuse during childhood.

Future Directions

Becker and Johnson (2001) recommend that future research on juvenile sex offending concentrate on the following four areas: (1) theory development that addresses the etiology of the behavior, (2) the development of classification systems or typologies that encompass all juvenile ages and both genders, (3) further development of treatment interventions for different classifications of juvenile sexual offenders, and (4) treatment outcomes studies with long-term follow-ups. The research studies on the effects of intervention and treatment on JSOs are encouraging. For example, in his review of the effectiveness of treatment for juveniles who sexually offend, Przybylski (2015) concludes: "Although there is widespread

agreement among researchers that the knowledge base is far from complete, the weight of evidence from both individual studies and synthesis research conducted during the past 10 years suggests that therapeutic interventions for juveniles who sexually offend can and do work" (p. 4).

RECIDIVISM RATES OF SEX OFFENDERS

Recidivism refers to the repetition of criminal behavior. Usually, it is measured in four ways: (1) rearrest, (2) reconviction, (3) resentence to prison, and (4) return to prison with or without a new sentence (Langan & Levin, 2002). "Recidivism is one of the most important and most frequently studied aspects of sexual offending" (P. Harris, Knight, Smallbone, & Dennison, 2011, p. 243). The observed rate of new sexual offenses among known sexual offenders is 10% to 15% *during* a 5-year period (Hanson, 2001; Hanson & Bussière, 1998; Hanson & Morton-Bourgon, 2004, 2005; Zgoba, Miner, Levenson, Knight Letourneau, & Thornton, 2016), and between 10% and 25% *after* five years (Hanson, Harris, Letourneau, Helmus, & Thornton, 2018). Of course, the sexual recidivism rate may be higher because many sex offenders avoid detection.

Furthermore, not all offenders reoffend at the same rate. Hanson, Bourgon, Helmus, and Hodgson (2009), in their meta-analytic study of nearly 7,000 sex offenders, found the sexual recidivism rate for treated offenders was 10.9% compared to a sexual recidivism rate of 19.2% for untreated offenders. Female sex offenders appear to have an extremely low recidivism rate (less than 3%) compared to males (Cortoni et al., 2010). As a group, child sex offenders commit a new but similar sexual offense at a higher rate than rapists. On the other hand, as mentioned earlier in the chapter, research finds that rapists generally do not confine their repeat crimes to sexual offenses but engage in a wide variety of other crimes, including violent sexual ones (Carpentier et al., 2011; Quinsey, Harris, Rice, & Cormier, 1998). Among male sexual offenders, for example, studies have revealed that recidivism rates are 13.5% for new sexual offenses, 25.5% for violent (including sexual) offenses, and 36% for any type of recidivism (Cortoni et al., 2010; Hanson & Morton-Bourgon, 2004).

Age Factors

A study by R. Karl Hanson (2001) confirms prior research that, on average, the rate of recidivism for rapists decreases with age. Hanson analyzed data from 10 follow-up studies of sex offenders released from prisons. He found important differences in recidivism risk according to both age and offense type. The highest risk age period for adult rapists was between 18 and 25 years, with a gradual

decline in recidivism risk as the offender got older. Extrafamilial CSOs were far more likely to recidivate than either intrafamilial CSOs or rapists. The highest risk period for extrafamilial CSOs was between the ages of 25 and 35; moreover, there were only modest declines in their recidivism risk until after the age of 50. Intrafamilial CSOs, on the other hand, were at highest risk between the ages of 18 and 25, and they were the least likely of the three groups to recidivate, particularly after age 25. Hanson notes that the age differential in recidivism between rapists and CSOs as a group might be attributable to a greater delay in the detection and prosecution of offenses against children than for offenses against adults. Another factor that may enter into the reported differences in age is that CSOs may be more skillful at avoiding detection.

Recidivism of Juvenile Sex Offenders

In general, research has found that the juvenile offender recidivism rate for sex offenses ranges between 2% and 14% (Reitzel, 2003; Rubinstein, Yeager, Goodstein, & Lewis, 1993; Sipe, Jensen, & Everett, 1998). M. A. Alexander (1999) reports an overall sexual recidivism rate (based on rearrest) of 7%, with juvenile rapists having the highest sexual reoffending rate of all juvenile sex offenders. More important, however, is the finding by some researchers (M. A. Alexander, 1999; Hunter & Becker, 1999) that juvenile sex offenders are less likely to reoffend than adult offenders.

RISK ASSESSMENT OF SEX OFFENDERS

Risk assessment of sex offenders is an extremely challenging undertaking because of the heterogeneous and multidimensional nature of the persons who commit such crimes. Comprehensive assessment strategies include evaluations of the offender's needs (psychological, social, cognitive, and medical), family relationships, risk factors, past criminal history, and risk management considerations (Righthand & Welch, 2001). Forensic psychologists assess sex offenders not only to decide on a treatment plan but also to gauge their likelihood of further offending. Some risk assessment instruments are also used to evaluate to what extent behavioral management and psychological treatment programs have been successful in reducing the sex offender's tendency to recidivate. **Psychosexual evaluations** often are conducted at the request of judges, lawyers, parole officers, or other agents of the criminal justice system. In recent years, as discussed in Chapter 5, some forensic psychologists have engaged in conducting risk assessments of sex offenders nder sexually violent predator (SVP) laws. Recall that these laws are controversial, and some mental health practitioners refuse

to participate in these assessments. Although treatment may be provided after commitment, the quality of treatment varies, and convicted offenders are rarely released once they are civilly committed in this manner.

Risk Assessment of Adult Sex Offenders

Forensic psychologists who wish to have their practice empirically based must periodically revise their risk assessment methods in light of new and constantly changing research findings (Kelley et al., 2020). In other words, psychologists engaging in the forensic practice of risk assessment must be thoughtfully informed by up-to-date, ongoing research. It is important also that forensic psychologists be familiar with current professional guidelines in their field of practice (Kelley et al., 2020). In this section, we will review the evolution of rapidly changing forensic risk assessment practice pertaining to sexual recidivism.

The basic purpose for conducting risk assessments of sex offenders is to determine who will reoffend. Unstructured clinical interviews have traditionally been the most commonly used assessment procedure for evaluating and predicting recidivism of adult sex offenders (Dougher, 1995). In past years, forensic-clinical practice, an unstructured interview was one that imposed minimal structure on the interviewee by asking open-ended questions rather than preset questions that are designed to control the discussion. The interviewee was allowed to answer the questions with wide freedom and minimal direction. The assessment interview with sex offenders was usually problematic, though, because the sex offender had a strong tendency to deny or conceal his “true” thoughts, feelings, or deviant behaviors (Abel, Lawry, Karlstrom, Osborn, & Gillespie, 1994). Consequently, the information gathered was often unreliable and distorted and had to be viewed with skepticism. It was important, therefore, that the clinician, who preferred the unstructured interview approach, obtain as much collateral or outside information as possible during the assessment process to corroborate or supplement the interview material. Collateral information includes psychological and medical records, previous statements made by the offender, police reports, arrest reports, and other information from those persons who knew the offender (Dougher, 1995). Even when all these informational sources were taken into account, forensic psychologists and other practitioners who relied on unstructured assessment methods and clinical judgment were often inaccurate in their predictions of sexual offending (Mills, 2017). “It is widely accepted that evaluations based on unstructured professional judgment are less accurate than structured risk assessments”

(Hanson & Morton-Bourgon, 2009, p. 1). The latter also are referred to as actuarial measurements. In addition to the above, the use of various psychological tests or personality inventories for the assessment of male sex offenders also has a long history. These tests are primarily focused on identifying personality characteristics or developing a psychological profile of the already-known offender. Usually, the tests are of the paper-and-pencil variety, where respondents answer “true” or “false” to items that ask about their thoughts, attitudes, and behaviors. However, the success of psychological inventories in identifying those male sex offenders who will reoffend is, at best, very marginal.

Risk assessment of sex offenders eventually advanced from the unstructured interview described earlier to structured professional judgment (SPJ) measures, discussed in Chapter 4. The SPJ is essentially a checklist of specific questions designed to help clinicians cover all the informational bases. SPJ measures contain “items that are based on theory, literature review, and/or professional consensus” (Kelley et al., 2020, p. 9). Clinicians are also encouraged to make their unique observations from the gathered information. Therefore, they rely on both specified guidelines and their own clinical judgment.

Beginning in 2000, then, there were two major approaches for determining sexual recidivism: the actuarial approach and the SPJ approach. Recall from earlier chapters that the actuarial instruments are almost exclusively based on statistical and research data, not on clinical observations. Referring to a noteworthy survey (Singh et al., 2014), Mills (2017) writes: “In a study involving 2,135 mental health professionals drawn from around the world, respondents reported over 400 instruments being used in violence risk assessment within the past 12 months of the survey” (p. 40). Among the most commonly used instruments, approximately half of the mental health professionals used actuarial instruments and half used SPJ instruments. The Singh et al. (2014) survey, however, focused primarily on violence risk assessment in general. A more specific survey, conducted by Neal and Grisso (2014), focused on sexual recidivism measures. The project discovered that, when doing sexual risk assessments, a large majority of forensic psychologists (82.4%) preferred actuarial measures over SPJ measures. Another more recent survey by Kelley et al. (2020) further confirmed the strong preference of forensic psychologists for empirically based, actuarial measures for conducting sexual recidivism evaluations. The survey involved 145 forensic psychologists who regularly complete sexual risk assessments of adults for the court.

Kelley et al. (2002) found that the sexual risk assessment measures most commonly used by forensic psychologists were the Static-99 and the STABLE-2007, but there was also evidence that the Violence Risk Scale–Sex Offense (VRS-SO) was rapidly gaining in popularity. Therefore, it is important we briefly introduce these research-based forensic instruments as the currently preferred risk assessment measures by forensic psychologists.

In recent years, two empirically developed and statistically based, actuarial approaches for predicting sex-offending recidivism have emerged. One approach uses static variables in the equation, and the other utilizes dynamic variables. A good example of the static-variable approach is the Static series (Static-99, Static-99R, Static-2001, and Static-2001R). Static-99 is a 10-item actuarial assessment scale developed by R. Karl Hanson and David Thornton for use with adult male sexual offenders. It was created by merging two previous risk assessment measures, the KRASOR and the Structured Anchored Clinical Judgment (SACJ) scales.

Static instruments utilize historical and generally unmodifiable variables (i.e., criminal history, current age, victim characteristics, marital history, and background variables) to predict the probabilities of sexual recidivism. The fact that these variables cannot change means that they are “static.” For example, if the individual is young and has an extensive criminal history, then the statistical probabilities are high that he is likely to reoffend.

In 2012, the age item on the Static-99 was updated and the scale was renamed Static-99R. The Static-99R is one of the most widely used sex offender risk assessment instruments in the world, and is extensively used in the United States, Canada, the United Kingdom, Australia, and many European countries (Hanson, Babchishin, Helmus, & Thornton, 2012; Kelley et al., 2020). The popularity of Static-99 is probably due to its cost-effectiveness and its applicability to a wide range of sexual offenders (Hanson, Helmus, & Thornton, 2010).

The Static approach is useful not only for his prediction probabilities but also for its long-term risk classification system, such as which individuals are best suited for community placement and what level of supervision the individual will require. Static-2002 and the Static-2002R were created as potential improvements over the Static-99R scale (Hanson & Thornton, 2000, 2003; Helmus, Thornton, Hanson, & Babchishin, 2012).

A good example of the dynamic approach is the VRS-SO scale, developed by Olver, Wong, Nicholaichuk, and Gordon (2007; also Olver, Nicholaichuk, Kingston, & Wong, 2014). Unlike static variables,

dynamic variables are subject to change and modification. Examples include drug abuse, alcoholism, social skills, and peer influences. To date, the “VRS-SO has been validated in Canada, New Zealand, and Australia as well as with unique samples, including individuals diagnosed with Pedophilic Disorder, individuals with high scores on the Psychopathy Checklist—Revised, . . . and with individuals who identify as Aboriginals in Canada” (Kelley et al., 2020, p. 21). Although both the Static and the VRS-SO measures have good predictive accuracy for sexual offense recidivism (Hanson & Morton-Bourgon, 2009), Olver, Nicholaichuk, Kingston, and Wong (2020) argue that the dynamic VRS-SO has three important advantages over the Static scales. First, dynamic measures have “a comprehensive collection of predictor variables reflecting important domains of psychological functioning,” such as atypical sexual interests, distorted attitudes, and relationship pathology (p. 363). Second, the dynamic approach can be utilized to combine both assessment and treatment plans for identifying what behavioral, emotional, and cognitive aspects are to be targeted for treatment. Third, the dynamic approach has the potential to evaluate how well the treatment, management plans, and change strategies are working. In sum, “[t]he VRS-SO is a sexual violence risk assessment and planning tool designed to assess risk for sexual violence, identify targets for sexual violence reduction programing, appraise readiness to change, and to evaluate changes in risk from treatment and other change agents” (p. 362). The scale includes seven static (i.e., historical, generally unchanging) and 17 dynamic (i.e. potentially changeable, social, environmental, and psychological characteristics) items linked to sexual violence offending.

The STABLE-2007 (Hanson, Harris, Scott, & Helmus, 2007) measures stable risk factors that have been statistically shown to correlate with sexual recidivism. The term *stable*—in contrast to static—refers to potentially changeable factors which may endure for months or years. Examples include capacity for relationships stability, hostility toward women, general social rejection, lack of concern for others, impulsivity, and poor problem-solving skills. The instrument measures whether treatment has been effective in changing the person propensity to reoffend. According to Hanson, Harris, Scott, and Helmus (2007), the STABLE-2007 is designed to add predictive power above and beyond the power of a Static instruments alone. STABLE-2007 and VRS-SO represent third-generation instruments that use both static and dynamic risk factors in the equation. Baldwin (2015) posits that “[b]y including dynamic risk in the assessment

process, third-generation risk assessments can be used to both guide and evaluate the impact of intervention efforts" (p. 2).
Although sex offender recidivism instruments are used to assess the risk of future offending and as aids in treatment planning, they are also used in various jurisdictions in the United States to place sex offenders in risk tiers. The tiers are relevant to community sexual offender notification regulations and civil commitment statutes (Heilbrun, Marczyk, & DeMatteo, 2002). For example, sex offender registration and notification (SORN) statutes typically require that low-risk offenders only register with police. In the case of high-risk offenders, it is expected both that they register and that police notify the community where they take up residence. As mentioned in Chapter 5, researchers often question the effectiveness of these laws in reducing recidivism (e.g., Sandler, Letourneau, Vandiver, Shields, & Chaffin, 2017).
It is important to emphasize that neither the Static series, the VRS-SO, nor any of the other risk assessment instruments are without critics. Research is ongoing on virtually every dominant measure used. It is often observed that the most positive results in support of an instrument are found in research by the instrument's developers in comparison to studies by independent researchers (W. L. Marshall et al., 2014).

Assessment of Juvenile Sex Offenders

The instruments described above are largely intended for adult sex offenders. There have also been several risk assessment methods devised for evaluating juvenile sex offenders. Both actuarial and SPJ instruments are available. There are three aspects of JSO risk assessment that make reliable and valid risk assessment development difficult. First, unlike adults, "adolescents are in a state of constant change and development, which has led researchers to liken them to 'moving targets'" (Spice, Vijoen, Latzman, Scalora, & Ullman, 2013, p. 348). Some researchers, however, have made gallant attempts to create risk assessment measures that are helpful in the overall evaluation of JSOs. Second, most juveniles do not usually continue sex offending once identified or adjudicated for sex offending (Schwartz-Mette, Righthand, Hecker, Dore, & Huff, 2019). However, if they do reoffend, it is most often a nonsexual offense (Lobanov-Rostovsky, 2015). For example, a study by Caldwell (2016) found non-sexual recidivism among adolescents who sexually offend was 41%. Third, researchers are finding that protective factors often decrease the likelihood of JSO recidivism (Spice et al., 2013). Consequently, the incorporation of important protective factors into the assessment equation is critical.

The Juvenile Sex Offender Assessment Protocol-II (J-Soap-II; Prentky et al., 2000; Prentky & Righthand, 2003) is considered the pioneer of risk assessment tools for predicting reoffending in JSOs (Barra, Bessler, Landolt, & Aebi, 2018; Rasmussen, 2013). It is also frequently used and well researched (Schwartz-Mette et al., 2019). The scale is designed for JSOs between the ages of 12 and 18 and can also be utilized for predictions of both sexual and nonsexual offending. The Estimate of Risk of Adolescent Sexual Offender Recidivism (ERASOR; Worling & Curwen, 2001) is applicable to JSOs ages 12 to 18 and is also useful for predictions of sexual and nonsexual reoffending. The ERASOR is considered a SPJ tool containing 25 items. Nine of the items represent static risk factors, and 16 items represent dynamic risk factors (Krause, Roth, Landolt, Bessler, & Aebi, 2020). Both assessment instruments have been shown to be similar in the accuracy of recidivism predictions.
Other JSO risk assessment instruments include the Juvenile Sexual Offense Recidivism Risk Assessment Tool–II (JSORRAT-II; Epperson, Ralston, Fowers, DeWitt, & Gore, 2006); the Multiplex Empirically Guided Inventory of Ecological Aggregates for Assessing Sexually Abusive Adolescents and Children (MEGA; Miccio-Fonseca, 2006); and the Structured Assessment of Violence Risk Among Youth (SAVRY; Borum, Bartel, & Forth, 2006). Some of these instruments are based on static risk factors, while others utilize dynamic factors. Importantly, juvenile risk assessment procedures pay attention not only to dynamic risk factors, but also to strength and resilience factors (also called protective factors) in the life of the youthful offender and his or her family. Protective factors are personal characteristics or experiences that can shield youth from serious antisocial behavior. Examples of protective factors are the consistent presence of a stable adult in the youth's life—such as a grandparent or respected teacher—and having someone in whom the youth can confide. Close relationships with peers who are nonaggressive and prosocial is another. And effective self-regulation and emotional control skills is an especially important protective factor. One relatively new and promising assessment instrument, the AIM2 (H. Griffin, Beech, Print, Bradshaw, & Quayle, 2008), incorporates static and dynamic strengths along with concerns (risk factors). The instrument is intended for young men between 12 and 18 years of age who are known to have sexually abused or assaulted others. The AIM2 (Assessment, Intervention, and Moving on) consists of 75 items, designed to measure static concerns, dynamic concerns, static strengths, and dynamic strengths. Although there is much

research needed, the assessment approach represented by the AIM2 seems warranted for both juvenile and adult sex offenders.
The above risk assessment procedures have been largely developed on male offenders. They are not entirely appropriate for female offenders because their offending and recidivism patterns are different (Cortoni et al., 2010). Forensic psychologists are encouraged to follow the research on risk factors and recidivism among female offenders and to use caution in the choice of assessment instruments.

SUMMARY AND CONCLUSIONS

Sex offending is of grave concern in contemporary society. Statistics indicate that sexual victimization is a reality for many individuals, and it is well acknowledged that most such victimization does not come to official attention. Forensic psychologists are highly likely to come into contact with both offenders and victims. In this chapter, we covered the assessment tasks of psychologists in relation to sexual offending; sex offender treatment and work with victims will be covered in later chapters.
The terms *rape* and *sexual assault* are often used interchangeably, but we have made some distinction between them. *Sexual assault* is a broader term that covers a wide range of offenses, including rape. Rape is typically used to refer to sexual crimes in which vaginal, anal, and sometimes oral penetration of the victim occurred. Increasingly, more state statutes are forgoing the term *rape*, however, and instead define the forms and degrees of sexual assault (e.g., aggravated; sexual assault of a child; sodomy). Much research literature continues to report studies using the term rape, and offenders are routinely called rapists as opposed to sexual assaulters.
Statistics reporting on the incidence and prevalence of sexual offending often are not comparable, partly because of the differences in terminology. Nevertheless, it is possible to discern a variety of patterns. It appears, for example, that probably no more than one third of all sexual assaults are reported to authorities. Victims themselves may not label the attacks as rapes or as sexual assaults; when they do, they are often fearful of the consequences of revealing their victimization. Although the official rate of rape has shown a downward trend, statistics and surveys about date rape, child sexual abuse, sexual assaults on campus and in the military, and juvenile sex offending indicate continuing cause for concern. Also of increasing interest is the topic of sexual offending by both adult and adolescent females. Although some studies in this area are available, they are often limited by their small sample sizes. By far, the greatest amount of research has focused on male offenders.

Research has indicated that men who rape often manifest a wide range of antisocial behavior in addition to their sexual offenses. Sex offenders as a group appear to be deficient in social skills and in their ability to maintain positive intimate relationships with others. A number of variables have also been found to play a key role in the behaviors, emotions, and thoughts of sex offenders. These include aggression, impulsivity, social competence, sexual fantasies, sadism, and naïve beliefs such as those demonstrated in a rapist's acceptance of society's "rape myths."

Nevertheless, sex offenders are not a homogeneous group. That very clear conclusion, based on numerous research studies, has led to the development of typologies or methods of classifying sex offenders for the purpose of both predicting deviant sexual behavior and providing treatment to offenders. Although there are a number of typologies of both rapists and child sex offenders, the most prominent and research based are the typologies developed by the Massachusetts Treatment Center (MTC). The MTC rapist typology divides rapists according to one of four primary motivations: opportunistic, pervasively angry, sexual, and vindictive. Three of the four are further subdivided, resulting in nine rapist subtypes.

Much of the chapter focused on the sexual victimization of children by child sex offenders. Although *pedophiles* is a commonly used term for CSOs, an important point must be made. *Pedophilia* is the clinical term for a condition in which the individual repeatedly experiences sexually arousing fantasies, urges, or behaviors involving sexual activity with children. Unless the behavior occurs, pedophilia is a psychological condition, not a crime. It is a challenge to obtain data on the prevalence of sexual abuse of children, and available evidence suggests that these behaviors are widely underreported and often difficult to treat.

The MTC typology system classifies CSOs on two separate axes, one focusing on the offender's degree of fixation, and the other on the amount of contact, level of injury, and extent of sadism demonstrated in the attack. Several radically different types of CSOs are especially difficult to treat. The first is the Type 0 offender, who has a long-standing and highly fixated preference for children as both sexual and social companions. Types 5 and 6, aggressive and sadistic offenders, inflict pain and physical harm on their victims, including harm that may result in death. Because of the nature of their crimes, they are unlikely to be included in treatment programs. Psychologists who treat CSOs often do work with Type 0 offenders, however.

Although most research has been carried out with male sex offenders, female offenders are receiving increasingly more attention. It is highly unlikely that female offenders can be conceptualized or treated in the same way as male offenders. In the chapter, we reviewed proposed typologies as well as some of the characteristics that distinguish them from male offenders. Although some female sex offenders engage in highly predatory behavior with strangers, the great majority appear to offend against those who are in their care.
In recent years, researchers have been paying increasing attention to the problem of juvenile sex offenders (JSOs). Statistics suggest that between 25% and 50% of sexual assaults may be perpetrated by adolescents. Although we must be guarded in accepting these figures, it is clear that juvenile sexual offending is of concern. As with adult offending, most of the research to date has been directed at males as perpetrators. JSOs are a heterogeneous group, and they frequently engage in a wide variety of nonsexual offending and exhibit behavioral problems. The typical JSO has significant deficits in social competence, but again there are exceptions. It is important to point out that children who are sexually victimized do not usually become sex offenders. However, it is likely that significant numbers of JSOs—both male and female—were themselves victimized. Even so, the relationship between prior sexual victimization and juvenile sex offending is not clear and merits additional research before firm conclusions can be offered. The recommendations made by Becker and Johnson (2001) bear repeating: Theory development, typologies, additional treatment interventions for different classifications of juveniles, and evaluation research are all sorely needed.
Also receiving more attention is the online sexual exploitation of children. The internet has afforded more opportunity for producers of child pornography to distribute their images and videos and for users to access them and to initiate contact with victims. Researchers have begun to distinguish between those who produce and those who access child pornography and among those users who do not have a specific interest in children, those who do, and those who use the internet to make actual physical contact with victims. All are forms of child sexual exploitation, but different characteristics of the perpetrator are implied.
Sex offender recidivism rates reflect the importance of preventing and treating the behaviors discussed in this chapter. Adult offenders as a group show higher recidivism rates than juveniles, although the sex offending of adults decreases with advancing age. These rates vary among offender types, though. Furthermore, not all reoffend at the same rate. Child molesters, for example, commit new offenses

more often than rapists. Rapists, however, have been found to engage in other violent crimes in addition to rape.
The psychological assessment of sex offenders is a crucial task for forensic psychologists. Offenders are assessed not only for their amenability to treatment, but also for their level of risk—or dangerousness—to society. Dominant instruments for assessing risk in sex offenders were discussed, but it should be emphasized that all risk assessment measures have critics and all require continued validation across ranges of offenders.

KEY CONCEPTS

Date or acquaintance rape 356
Forcible rape 351
Grooming 378
Incest 371
MTC: CM3 373
MTC: R3 360
National Crime Victimization Survey (NCVS) 352
Non-sadistic rapist 368
Opportunistic rapist 365
Paraphilia 368
Pedophilia 371
Pervasively angry rapist 366
Psychosexual evaluations 383
Rape 350
Rape by fraud 353
Rape myths 363
Recidivism 382
Sexual assault 350
Sexually motivated rapist 367
Statutory rape 353
Vindictive rapist 369

QUESTIONS FOR REVIEW

1. Define *rape*, and explain how and why the term is being replaced by sexual assault in many criminal statutes.
2. What are the demographic features of men who rape?
3. Briefly summarize the MTC: R3 classification system, along with what it is based on.
4. What six variables have consistently been found to play an important role in the behavior, emotional, and thought patterns of rapists?
5. What are the two basic dimensions on which child molesters are classified according to the MTC: CM?

6. Discuss juvenile sex offenders according to their antisocial conduct, the victims they choose, and their own history of victimization.
7. Are female juvenile sex offenders different from male juvenile sex offenders? Explain your answer.
8. List and define briefly any five psychological measures designed to assess recidivism among adult or juvenile sex offenders.

Descriptions of Images and Figures

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There are four main categories of rapists based on primary motivation, which are further classified into nine subtypes. They are as follows:

- Opportunistic
  - High social competence: Type 1
  - Low social competence: Type 2
- Pervasively angry: Type 3
- Sexual
  - Sadistic
    - Overt: Type 4
    - Muted: Type 5
  - Non-Sadistic
    - Low social competence: Type 6
    - High social competence: Type 7
- Vindictive
  - Low social competence: Type 8
  - Moderate social competence: Type 9

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The typing is made on two bases: Degree of fixation and amount of contact. The categories of child molesters are as follows.

- Degree of fixation, D 1
  - High fixation, D 2
    - Low social competence: Type 0
    - High social competence: Type 1
  - Low fixation, D 2
    - Low social competence: Type 2
    - High social competence: Type 3

The categories under D 2 correspond to axis 1.

- Amount of contact, D 1
  - High amount of contact, D 2
    - Meaning of contact is interpersonal: Type 1
    - Meaning of contact is narcissistic: Type 2
  - Low amount of contact, D 2
    - Low physical injury, D 3

        - Non-sadistic: Type 3
        - Sadistic: Type 4
    - High physical injury, D 3
        - Non-sadistic: Type 5
        - Sadistic: Type 6

The categories under D 2 correspond to Axis 2.

PART FIVE VICTIMOLOGY AND VICTIM SERVICES

Chapter 10 • Forensic Psychology and the Victims of Crime
Chapter 11 • Family Violence and Child Victimization

CHAPTER TEN FORENSIC PSYCHOLOGY AND THE VICTIMS OF CRIME

CHAPTER OBJECTIVES

- Describe the psychological effects of being victimized, and introduce the reader to the role played by mental health professionals in working with victims.
- Emphasize the multicultural and multiethnic aspects of working with victims.
- Describe the legal rights of victims.
- Recap official victimization data.
- Review homicide victimization research.
- Review rape and sexual assault victimization research.
- Describe forensic interviewing of sexually abused children.
- Address human trafficking and sexual exploitation trafficking.
- Review the psychological effects of sexual exploitation of minors.

A couple filed their income tax, expecting a refund, only to be told they had already filed it and a refund had been sent to them. They subsequently learned that someone had stolen their identity, filed a return in their name, and received the refund.

An 8-year-old girl riding in a boat with her family was killed when another boat crashed into them. The second boat was piloted by a 24-year-old intoxicated man who was subsequently convicted of manslaughter.

A man lost a knapsack containing cash and valuable electronic equipment when it was stolen by another patron at a gym.

We are all victims of crime. Whether or not we have been robbed, had our personal identity stolen, been assaulted, been deprived of our life savings, been burglarized, or lost a loved one who was killed, we have all experienced the social and financial costs of crime. Even so-called **Victimless crimes**—illegal drug use, prostitution, and illegal gambling—can be said to be harmful to society and leave victims in their wake, though there are cogent arguments that some of these activities should not be crimes to begin with. In addition, many people are victimized by crime without being aware of it. Medical insurance fraud is a good example of this. How many beneficiaries of Medicare or Medicaid are able to review and monitor the statements submitted by medical practitioners on their behalf? It is estimated that health insurance fraud costs taxpayers millions of dollars annually.

When we speak of crime victims, however, we are most likely referring to people who have been physically or emotionally harmed by known crimes against themselves or their property. In these cases, “criminal victimization’s impact is multidimensional, including physical (injury, pain, disability), financial (loss of income, possessions, housing, medical bills), and emotional (fear, anxiety,

depression, self-blame, insecurity, post-traumatic stress disorder) consequences" (Neff, Patterson, & Johnson, 2012, p. 609).

The U.S. government, which has been collecting victimization data for over 40 years, focuses its efforts on the types of crime that are highlighted in the media—assaults, burglaries, robberies, larcenies—and rarely on white-collar offenses or political crimes. Likewise, forensic psychologists and other mental health providers are far more likely to assess and treat victims of rape, child abuse, human trafficking, attempted murder, or robbery than victims of insider trading or illegal government surveillance. Moreover, when members of the public are asked about their fear of crime, they are more worried about child abduction than they are about credit card fraud, despite the relative rarity of the former and frequency of the latter. Child abduction is, of course, a serious, emotionally wrenching crime compared with fraud, yet the person who is the victim of credit card fraud suffers both financial and emotional harm. The point made here is that victimization comes in many forms and touches people in numerous ways. Although we may focus in this chapter on the forms of victimization most likely to be encountered by forensic psychologists and other mental health professionals, the backdrop is victimization in its broadest sense.

Psychologists will be increasingly employed as consultants, researchers, instructors, expert witnesses, evaluators, therapists, and service providers to victim service organizations in the coming years. Forensic psychologists have a major role to play in several areas such as the following: consulting with attorneys, assessing crime victims, providing expert testimony on the psychological effects of violent victimization, assessing psychological harm of plaintiffs in civil suits, and providing psychological information for victim impact statements. Although the criminal justice system does deal with victims to some extent, its primary responsibility is to apprehend and prosecute offenders (Neff et al., 2012). Today, with the passage of victims' rights legislation at both the state and federal level, victims have gained more attention in ways we discuss shortly. However, the tasks of providing forensic and general mental health services fall to psychologists, social workers, psychiatrists, and other mental health professionals.

Crime victims, including victims of intimate partner violence, sexual assaults and abuse, sexual exploitation, child abuse, elderly abuse, and hate/bias crimes, need help in many areas. One skill area that will be especially in demand is the assessment of a victim's crime-related experiences and responses. For example, such assessments are desirable when someone sues for damages or seeks disability or

other compensation relating to a crime (Carlson & Dutton, 2003). Another important forensic task is the interviewing of children to gain information regarding the nature of a crime and in some cases the identity of the perpetrator.

Psychological assessments, intervention, and counseling of human trafficking victims, both domestic and foreign, are especially in demand now and will be in the foreseeable future. Psychological therapy and counseling for a wide spectrum of victims of crime will continue to be a critical need. The National Survey of Children's Exposure to Violence (NatSCEV) discovered that 6 out of every 10 children were exposed to violence within 1 year, either directly or indirectly, such as by being a witness to a violent act; by learning of a violent act against a family member, neighbor, or close friend; or from a threat against their home or school (Finkelhor, Turner, Ormrod, Hamby, & Kracke, 2009). Nearly 40% of children surveyed had experienced more than one type of *direct* victimization in the previous year (Finkelhor, Turner, Hamby, & Ormrod, 2011). Children exposed to violence often display a variety of psychological problems that may require psychological services, including assessment and therapy from professionals who are familiar with the research and clinical literature on child victimization and are skilled forensic interviewers. These professionals should also be very familiar with the cultural backdrop from which these children come. Results of these assessments often find their way into courts, including trials of persons accused of crimes against children, and the custody disputes and civil suits brought by victims against offenders that were referred to in Chapter 6.

The present chapter begins with an overview of the issues that forensic psychologists must deal with concerning victimization of people of diverse cultures and backgrounds, sexual orientation and gender identity, disability, and religious preferences. It is critical that forensic psychologists understand culture and ethnicity factors in order to provide appropriate psychological services to an increasingly diverse population. We then discuss victims' rights and their ramifications, cover statistical information on victimization, and give special attention to victims of homicide, sexual violence, and sexual trafficking.

Although we are focusing on criminal victimization, it is important to emphasize that much victimization occurs in the civil context; that is, people are victims of civil wrongs, such as discrimination, sexual harassment (which is a form of discrimination), unsafe working conditions, and negligence on the part of others in numerous other settings. Sometimes, the wrongs done by others result in physical

losses, such as brain damage or the loss of a limb; at other times, wrongs can result in severe psychological symptoms, such as depression or **Post-traumatic stress disorder (PTSD)**. Thus, while the greater part of the chapter will focus on what is known about victims of *crime*, it is important to keep in mind that the psychological impact of being victimized and the various roles played by forensic psychologists in victim services are similar in civil contexts.

MULTICULTURALISM AND VICTIMIZATION

"**Multiculturalism**, in its broadest terms, not only is defined by race and ethnicity but also involves topics of gender, sexual orientation, and disability" (Bingham, Porché-Burke, James, Sue, & Vasquez, 2002, p. 75). Clauss-Ehlers, Chiriboga, Hunter, Roysircar, and Tummala-Narra (2019), authors of the *Multicultural Guidelines* published by the American Psychological Association (APA), introduce the *Guidelines* by offering an updated definition of the term *multiculturalism*. They state,

> The goal of this new version is to consider the term multicultural in its broadest conceptualizations reflecting current literature that considers contextual factors and intersectionality, including age, generation, culture, language, gender, race, ethnicity, ability status, sexual orientation, gender identity, socioeconomic status, religion, spirituality, immigration status, education, and employment, among other variables: these identities are considered within the context of domestic and international climates and human rights. (p. 233)

Recognizing and respecting individual differences in culture, religious preference, sexual orientation, disabilities, gender identity, and all the status factors listed in the previous paragraph are important to sensitive, empathetic, and effective work with victims. Each person has a unique way of viewing the world through the lens of cultural, societal status, and linguistic experiences. Recent data indicate that the racial/ethnic composition of the United States is becomingly increasingly diverse. In 2019, approximately 60.4% of Americans were white; 13.4% Black; 5.9% Asian; 1.3% Native American and Alaska natives; and 18.3% Hispanic, Latino, or Spanish origin; two or more races 2.7%
(U.S. Census Bureau, 2020). It should be noted that the term *Latinx* (pronounced *La-teen-ex*; Latinxs for plural) is increasingly being used to replace the binary term *Latino/a* in academic, literary, and social circles (Cardemil, Millán, & Aranda, 2019). *Latino/a* is considered a

binary term because it only designates a person as being male or female. One of several reasons the term *Latinx* is being adopted is because it includes "those who identify as transgender, genderfluid, genderqueer, agender, and others" (Cardemil et al., 2019, p. 2). Within each cultural/ethnic group reported in the U.S. Census, there is enormous complexity. For example, there are currently 574 federal and state recognized Native American peoples in the United States, representing 187 different languages (National Conference of State Legislatures, 2020; Ogawa & Belle, 2002). In addition, 1 in 50 Americans now identifies as "multiracial." Currently, there are 57 possible race combinations involving five major race/ethnicity categories, according to the U.S. Census Bureau (2020). Consequently, it is becoming increasingly difficult to place many Americans into a specific racial classification. By 2045, it is estimated that over 50% of the population will be members of what are now regarded as minority groups (Frey, 2018; Passel & Cohn, 2008).

It is important to emphasize that most members of minority groups in the United States are citizens, either born in the United States or naturalized. Others are on various temporary visas (e.g., student or work visas), and a minority are undocumented. Included in the undocumented are the "dreamers," the children of undocumented immigrants who were brought into the United States by their parents or others. As noted in Chapter 4, the U.S. Supreme Court in 2020 issued a ruling supportive of the dreamers and limiting efforts to end the Deferred Action for Childhood Arrivals (DACA) program that was begun in 2012 (Department of Homeland Security v. Regents, 2020). The shift in racial/ethnic composition by 2045 will present enormous challenges and opportunities to victim services providers, as well as to providers of other social services. Members of immigrant families are often afraid to ask for help due to language barriers, fear of deportation, and poor understanding of their rights in the community (Ogawa & Belle, 2002). If they are here temporarily or are undocumented, the challenges are multiplied because there may be abrupt interruptions of services and difficulties in long-range planning:

> Once in the United States, [the undocumented] become easy prey for employment exploitation, consumer fraud, housing discrimination, and criminal victimization because assistance from government authorities is attached to the fear of deportation. There is an epidemic of sexual assaults, for example, committed upon undocumented Latinas. (Ogawa & Belle, 2002, p. 6)

These concerns have intensified in recent years, with irrational fears of “other” groups, current immigration policies, and the unsettled state of the economy contributing to the mix. Meaningful, sensible, and compassionate legislation under the umbrella term *immigration reform* has yet to be successfully passed in Congress. Despite the fact that non-citizens do not have identical legal rights to citizens, immigration status should not dictate whether individuals get an education, get protection against crime, or receive health and victim services.

Two decades ago, it was observed that “almost 20 million international refugees throughout the world have been forced by extreme abuse of human rights to flee their home countries” (Gorman, 2001, p. 443), many fleeing to the United States. At that time, the then-named U.S. Immigration and Naturalization Service (INS, now Immigration and Customs Enforcement [ICE]) had authorized about 200,000 asylum cases, and another 90,000 undocumented immigrants received amnesty permitting them to stay in the country (Gorman, 2001). Many of them had been abused and tortured in their home countries, and they were vulnerable to becoming victims of crime here.

Within the past 5 years, however, though large numbers continue to seek entry, increasingly more are turned away at the borders. In 2016, U.S. Customs and Border Protection intercepted nearly 46,900 unaccompanied children and more than 70,400 families from Central America arriving at the U.S.–Mexican border (Lesser & Batalova, 2017). As noted in earlier chapters, hard-line governmental policies restricting immigration and separating families have led to considerable suffering by individuals who come to the attention of forensic psychologists in a number of contexts.

In working with refugees, promoting a sense of safety is an important task that requires a high degree of cross-cultural sensitivity. Today, refugees from many nations ravaged by wars and by violence have sought to build new lives in the United States and other Western nations. In addition, an unknown number of immigrants—chiefly women and both male and female adolescents—are lured to this country for work purposes, only to be victimized by those who engage in human trafficking. Although 13% of Latinxs are undocumented in the United States, immigration policies have “created a culture of uncertainty and fear for Latinxs regardless of individual documentation status” (Calzada, Roche, White, Partovi, & Little, 2020, p. 2).

Well-trained forensic psychologists and other clinicians must recognize that the traditional psychological concepts and theories

used in assessment and treatment approaches were developed from predominately Euro-American contexts and may be limited in their application to racial and culturally diverse populations (Sue, Bingham, Porché-Burke, & Vasquez, 1999). Some time ago, C. Hall (1997) admonished that Euro-American psychology may become culturally obsolete if it is not adapted to reflect a multicultural perspective. According to Hall, this will require psychology to make "substantive revisions in its curriculum, training, research, and practice" (p. 642). Heeding these words as well as those from many other scholars, professional associations such as the APA have published guidelines for working with diverse populations, as mentioned in Chapter 1. For example, the APA has published the *APA Handbook of Intercultural Communication*, edited by Matsumoto (2010), which should be of great help to practicing psychologists. The APA has also published *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015), *Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Population* (2003b), and *Multicultural Guidelines* (Clauss-Ehlers et al., 2019), which is a revision of the original *Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists* (2002).

Forensic psychologists should be especially attuned to the potential injustices and oppression that may result from monocultural psychology. C. Hall (1997) writes that "people of color and women have been misdiagnosed or mistreated by psychology for many decades" (p. 643). Even psychologists of color or those who are gay/lesbian/bisexual/transgender or from diverse backgrounds are not always knowledgeable about the psychological issues of other cultural groups or of their own groups. As Hall notes, "[c]olor, gender, and sexual orientation do not make people diversity experts" (p. 644). Although these challenges are crucial to all forensic settings, they may be particularly important for those who provide victim services. Without appreciation of their cultural backgrounds, some individuals become not only victims of crime, but also victims of the criminal justice system and victims of the mental health professions that do not truly recognize their needs. (See **Focus 10.1** for additional discussion on this topic.)

Victims With Disabilities

A neglected area in victimization research and practice is consideration of persons with disabilities. Victims in this instance extend not only to criminal victimization but also to discrimination and harassment in the workplace, as well as emotional abuse and neglect in the home that may fall short of criminal offending. Laws banning

discrimination against persons with disabilities in work settings and public services open up new areas of opportunity for forensic psychologists. It should be noted that individuals with drug addictions are often covered by these laws.

Focus 10.1

Serving Immigrant Populations

In the United States, immigrants—persons born in other countries (of non-American parents)—are crucial to who we are as a nation. The same may be said of other nations who have welcomed immigrants more enthusiastically than the United States in recent years (e.g., Canada and some European nations). The great majority of immigrants are here legally, having migrated voluntarily for a variety of reasons (e.g., better economic opportunities, education). A subset of immigrants are refugees who left their countries of origin to escape persecution or violence or repressive regimes. Increasingly, "environmental refugees" migrate to the United States to escape environmental disasters or degradation (Bemak & Chi-Ying Chung, 2014).

A minority of immigrants are undocumented because their visas have expired or because they entered illegally. These undocumented immigrants have received negative political and media attention in recent years and deportation proceedings have accelerated. Misconceptions abound about their numbers and their intentions, and there is great lack of recognition of the contributions they make to society (e.g., they pay taxes but cannot receive benefits).

Today the current political climate is such that many legal protections for undocumented immigrants are fragile. The political climate in the United States has changed so rapidly that it is impossible to tell at this time how policy changes and legal challenges to immigration laws will affect immigration groups. Legal immigrants and the children of the undocumented are affected as well, as families are torn apart or are kept in abeyance about the status of their loved ones. What is not likely to change, however, is the need for psychologists to offer their assessment and treatment services (Bemak & Chi-Ying Chung, 2014; Butcher, Hass, Greene, & Nelson, 2015; Vaisman-Tzachor, 2012).

Psychological instruments used by forensic examiners must be carefully chosen because many have not been normed on immigrant populations and are not culturally appropriate (Butcher et al., 2015). In addition, the testing process itself may be disturbing to many immigrants who may be even more likely than nonimmigrants to see it as intrusive (Pope, 2012). Scholars recommend that carefully

selected instruments as well as structured professional interviews be conducted, together with review of case records.

QUESTIONS FOR DISCUSSION

1. Given the current political climate and concerns about immigration, discuss additional challenges that might be faced by forensic psychologists working with immigrant populations.
2. As noted in the text, undocumented immigrants are often victims of crime. Should immigration status be relevant to the services they receive from psychologists and other mental health professionals? In answering this question, review what these services would be at each stage of the criminal justice process, from early contact with police to the final disposition of the criminal case.

> Psychologists may find opportunities to consult in the determination of reasonable workplace accommodation for persons with psychiatric, learning, and intellectual disabilities and to provide expert testimony in employment discrimination cases. Psychologists also have an essential role in evaluating neurological, learning, and psychological impairment and function as part of the process of determining reasonable accommodation for both students and employees with disabilities. (C. J. Gill, Kewman, & Brannon, 2003, p. 308)

Americans with Disabilities Act (ADA)

Much of the activity in working with persons who are disabled has been prompted by the Americans with Disabilities Act (ADA), implemented in 1992 and discussed briefly in Chapter 2. The law applies to public employers and private employers with 15 or more employees. It prohibits discrimination (a) in the hiring process; (b) regarding terms, conditions, and benefits of employment; and (c) in access to work-related amenities, facilities, and functions (Goodman-Delahunty, 2000). The Crime Victims with Disabilities Awareness Act (Public Law 105-301) of 1998 was designed to increase public awareness of the extent and nature of crime against victims with developmental disabilities. (See **Table 10.1** for recent victimization statistics.) After its initial passage, the ADA was the subject of numerous lawsuits as well as decisions by the U.S. Supreme Court that interpreted some of its provisions quite narrowly. Commenting on these decisions, some researchers pointed out that the ADA went from protecting 43 million Americans when it was first passed to

protecting a mere 13.5 million (Rozalski, Katsiyannis, Ryan, Collins, & Stewart, 2010). Legal scholars in general believed the law had been severely limited (Foote, 2013). Partly in response to decisions by the Court and other federal courts, Congress passed the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which was intended to once again broaden protections afforded to disabled Americans. It is too soon to tell whether the relatively new law has significantly affected this population in a positive way.

Table 10.1

Source: Harrell (2017).

Note: Based on the noninstitutionalized U.S. residential population age 12 or older. Includes persons with multiple disability types. Rates in this table represent the incidence of violent victimization per 1,000 people with disabilities over age 12.

A better appreciation of **Table 10.1** requires further definition of the disabilities listed. The conditions related to hearing refers to deafness or serious difficulty hearing; vision refers to blindness or serious difficulty seeing, even when wearing glasses; cognitive refers to serious difficulty in concentrating, remembering, or making decisions because of physical, mental, or emotional condition; ambulatory refers to such difficulties as walking or climbing stairs; self-care pertains to a condition that causes difficulty dressing, bathing, or other self-care requirements; and independent living refers to physical, mental, or emotional conditions that impede doing errands alone, such as visiting a doctor or shopping. The total percentages of violent crime victimization are troubling in each category, and this does not address nonviolent crime, such as theft or financial fraud. In addition to violent victimization, persons with disabilities are also often victims of harassment, discrimination, and emotional abuse. Employees with disabilities who become victims of crime may suffer substantial, long-term psychological problems that may interfere with or hamper their employment opportunities, advancement, and quality of life. The interested reader is encouraged to consult an article by Jane Goodman-Delahunty (2000), who identifies some common legal pitfalls for practitioners and forensic psychologists and provides suggestions for how to avoid these pitfalls when providing services to employers or to employees with psychological impairments.

Approximately 14% of the U.S. population has some type of *disability* (Harrell, 2017; Olkin & Pledger, 2003), broadly defined as a physical or mental condition that substantially limits one or more of the individual's major life activities. Forty-two percent of the population with disabilities is age 65 or older (Harrell, 2017).

It should be noted that disability is listed along with race, gender, age, sexual orientation, and other dimensions of human diversity in the "Ethical Principles of Psychologists and Code of Conduct" (APA, 2002). Psychologists working in forensic settings, therefore, may require specialized training and experience to be competent professionals in working with people who have disabilities.
Well-executed research on the impact of victimization on persons with disability is needed. Some data are beginning to emerge on the extent of disability victimization, such as reflected in **Table 10.1**. Criminal victimization data also indicate that victimization rates for children and adults with disabilities far exceed those of individuals who do not have disabilities (Harrell 2012a; Office for Victims of Crime, 2009). For example, the rate of violent victimization against persons with disabilities (32.3 per 1,000 persons with disabilities age 12 or older) was 2.5 times the rate for persons without disabilities (12.7 per 1,000 without disabilities age 12 and older) between 2011 and 2015 (Harrell, 2017). In addition, youth (ages 12–15) with a disability had the highest rate of violent victimization among all age groups (Harrell, 2017). For disabled youth ages 16 to 19, the rates are even higher—they experience violence more than three times as much as those without a disability (Harrell, 2017). Also as reflected in **Table 10.1**, persons with cognitive disabilities had the highest rate of violent victimization from 2011 to 2015 (Harrell, 2017). Many people with disabling conditions are especially vulnerable to victimization because of their real or perceived inability to fight or flee or to notify others. About 65% of women with multiple disabilities (which includes both serious mental and physical impairments) were sexually assaulted during 2011 to 2015, which represents a 50% higher rate than in the rest of the population (Harrell, 2017). In addition, people with these disabilities are more likely to be victimized again by the same person, and more than half of those victimized never seek assistance from legal or treatment services (Pease & Frantz, 1994).

LEGAL RIGHTS OF VICTIMS

Although it can be said that victims of crime—particularly violent crime—will always be affected by what happened to them, society has taken some steps to try to "make up for" their victimization. Crime victims' bills of rights have been enacted in all states, half of which provide for mandatory restitution unless compelling reasons to the contrary are stated on the record. In addition, at least 31 states have passed victims' rights constitutional amendments, and at least 10 of these provide for mandatory restitution (M. Murray & O'Ran, 2002). At the present time, every state has some form of victims' rights legislation. Moreover, victims' rights organizations, such as the

National Crime Victim Law Institute (NCVLI), work to uphold those rights. In addition, Congress in 2004 passed the Crime Victims' Rights Act. (See **Focus 10.2** for a list of rights guaranteed under this law.) Today, in light of a renewed interest in online hearings for criminal defendants mentioned in Chapter 4, there is concern about both maintaining victim privacy and the victim's right to be heard.

Focus 10.2

Crime Victims' Rights Act of 2004*

Congress in 2004 passed legislation providing the following rights to victims of crime. Every state has similar legislation or recognizes victims' rights in its constitution or court decisions. State laws differ, however. For example, some states limit the rights to victims of serious crimes. Organizations such as the NCVLI offer updated information on these state laws.

Victims' rights under the federal law fall into eight broad categories, as follows:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay;
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

QUESTIONS FOR DISCUSSION

1. Discuss any problems you might infer with respect to enforcement of this law. In other words, are any of the mentioned rights more or less difficult to guarantee to victims?
2. Is the list comprehensive or should victims be afforded other specific rights under the law?

3. In the case of federal crimes, does the release of 911 calls to the public violate the rights of crime victims?
4. Locate the victims' rights law in any state and compare it with the federal law.

Source: 18 U.S.C. Section 3771.

* Amended slightly in 2013 and 2016, but *listed guarantees* remain.

Restitution or **compensation** is a remedy for the recovery of some measure of economic and psychological wholeness. It is an attempt to restore a victim's original financial, physical, or psychological position that existed prior to the loss or injury. Undoubtedly, this is a laudable if somewhat high-sounding goal. However, crime victims have consistently reported their frustrations in obtaining adequate and timely restitution both from offenders and from public funds allocated for this purpose (Karmen, 2013).

Victims of crime can use two legal venues for obtaining justice: criminal courts and civil courts. Criminal courts deal with the aspect of the justice system that determines guilt or innocence with reference to crime and metes out criminal sanctions. Criminal courts allow victims to speak out at sentencing or have their statements read to the court. In some states, victims are also notified prior to all court appearances, and—if the defendant is eventually convicted and imprisoned—they are notified of parole hearings. They also may be given the opportunity to speak out at these hearings. As noted earlier, an increased trend to online or distance hearings poses challenges.

The civil courts also allow crime victims to seek civil remedies for the physical, financial, and psychological injuries they have suffered as a result of criminal acts, permitting vindication of their rights and recovery of financial reparations from the offenders (Gaboury & Edmunds, 2002). As illustrated in the high-profile O. J. Simpson case of the early 1990s, a defendant may be acquitted in criminal court but found responsible for a death or an assault in a civil court, but these instances are rare. Simpson was found not guilty of killing Nicole Brown Simpson and Ronald Goldman in criminal court; later, however, a civil jury held him responsible and awarded the families $3.5 million. More common today are the multitude of sexual assault cases in which survivors—sometimes of crimes that occurred many years ago but were never prosecuted—are able to seek reparation from their abusers or from the organization that employed or even protected them (e.g., churches, social organizations, media conglomerates, colleges and universities).

Civil litigation can be a complex, difficult, and expensive process. Cases involving personal injuries or civil wrongs that are not crime

related include sexual harassment, wrongful termination due to gender discrimination, unnecessary medical procedures, and injuries suffered from using faulty products, to name but a few. Lawyers may ask forensic psychologists, such as those specializing in neuropsychology, to help determine the extent of injuries. For example, as noted in the previous chapters, psychologists may assess a victim of crime or a civil wrong for the presence of PTSD or other psychological aftereffects of victimization. This is done to determine a value that can be placed on the victim's injuries, which in turn helps a jury award damages. Compensation for the cost of psychotherapy can be included in the damages awarded.

Although both the civil and the criminal process can be stressful for the victim, the criminal justice process is especially intimidating and frustrating. From the moment some victims call police, they may find themselves faced with a spiral of events that is seemingly out of their control. They may perceive that police do not respond quickly enough, for example, and when police do arrive, victims may believe that police are not sensitive enough to the experience they suffered. Victims often find it difficult to understand why their property cannot be recovered or, if recovered, why it cannot be immediately returned. Victims of violent crime are fearful that their aggressor will be released on bail; if convicted and imprisoned, they are fearful that the aggressor will be released on parole.

It is a reality in law that the U.S. Constitution protects the rights of suspects and defendants but not the rights of victims. Criminal suspects do not have to speak with police, and if they choose to do so, they are guaranteed the right to an attorney during custodial interrogation if they want one. Defendants have the right to an attorney during every critical stage of the court proceedings, including arraignments, pretrial hearings, trials, and sentencing. In contrast, victims are not represented by lawyers unless they choose to hire a lawyer during a civil proceeding. Although it can be argued that the prosecutor is essentially the lawyer for the victim, the prosecutor is technically the lawyer for the government and may pay very little attention to the physical, financial, or emotional needs of victims. Victims often have to take time off from work or other obligations to appear in court, and when cases go to trial, they are subjected to the scrutiny of the media and grueling cross-examination in a courtroom in which they must be confronted by the defendant. As a result, victims have often complained that they are the forgotten component of the criminal justice process or are twice victimized—once when the crime first occurs and again when they encounter the criminal justice process.

Although the previously mentioned reality strikes many people as unfair, it occurs because suspects and defendants have so much to lose from the criminal justice process, in which the awesome power of the state is brought to bear against the individual. People accused of crime stand to lose their freedom, sometimes for life. Under the law, if we are ready to take away someone's freedom—in some cases even their life—we must "do it right" by providing the protections in accordance with the Constitution. The law does not plan to take away the freedom of the victim, and hence the victim's rights are not guaranteed in the Constitution.

This logic often does not convince victims or their advocates, however. In the 1970s, the nation saw a major trend in the direction of ensuring that victims, too, would have certain rights under the law. Thus, beginning in 1980, when Wisconsin passed the first "victims' bill of rights," states began to pass laws providing victims with certain statutory, if not constitutional, guarantees and protections. As noted earlier, Congress passed a Crime Victims' Rights Act in 2004. Its provisions mirror many of the rights afforded victims under the laws of their respective states.

Most states have laws requiring **Notification** of victims at various stages during the criminal justice process. For example, if a person charged with a violent crime against the victim is about to be released on bail, the victim is notified; if a convicted offender is about to be released from jail or prison, the victim is notified. Even if an offender will be out of prison for a limited time, as in a work release program, the victim may be notified. Some jurisdictions also require notification when a plea negotiation has been reached. Not surprisingly, all states require that victims be notified if an offender has escaped from prison.

There are several decision-making points at which a victim's input may be accepted. The right of **Allocution** is the right to speak out during these proceedings. Chief among them are the bail hearing, the sentencing hearing, and the parole board hearing. At bail setting, victims are sometimes allowed to argue for a higher bail or, more commonly, to ask that the defendant be forbidden from contacting them. All states allow victims to speak out at sentencing hearings, either in person or in prepared written statements.

Presentence reports—documents prepared by probation officers or other professionals to help judges reach sentencing decisions—typically include a *victim impact statement*. The person preparing the report interviews the victim and obtains information about the extent of the victim's suffering. A victim of an aggravated assault, for example, might describe being unable to sleep peacefully, recurring

nightmares, expensive meetings with a psychiatrist, and a continuing fear of walking alone. When there is no presentence report, victims are allowed to present statements to the presiding judge or to appear in court and testify directly about what they have experienced. In death penalty cases, survivors of the victim are allowed to have the sentencing jury hear details about the suffering they themselves have experienced (Payne v. Tennessee, 1991). Some states also allow victims to appear at parole board hearings to protest an offender's release.

Although the physical and psychological impact of crime may be considered the most obvious aspect, the financial impact can also be devastating. "The financial losses incurred as a result of crime (unforeseen medical expenses, psychological counseling costs, and the need to replace stolen property) can be as debilitating as any other type of injury suffered by crime victims" (Gaboury & Edmunds, 2002, p. 2).

All 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands, have compensation programs that can pay for medical and counseling expenses, lost wages and support, funeral bills, and a variety of other costs (Eddy & Edmunds, 2002). In some cases, the money is derived from state taxes or grant sources; in others, it comes from offenders themselves. It is also common for states to deny convicted offenders the right to profit from books they may write about their crimes. Called "Son of Sam" laws, after the infamous serial murderer David Berkowitz, who claimed he was controlled by the devil through a dog called "Sam," these laws sometimes redirect the income to the victim or to a victim's fund.

Despite the enactment of the above laws, they do not seem to be working to the advantage of the great majority of victims. Research has indicated that only a small percentage of victims are even aware of their existence (Karmen, 2013; National Center for Victims of Crime [NCVC], 1999). As noted earlier, victims also report that compensation takes time and is rarely provided in total.

Notification, which places an added burden on agents of the criminal justice system, seems particularly problematic. It is often unclear who has the responsibility to keep the victim informed, and consequently, no one takes on this task. In communities with well-funded victims' advocates or victims' assistance programs, notification is more likely to occur, but victims' assistance programs may be the first to go when budgets are tight. Likewise, most victims do not exercise their right of allocution at bail, sentencing, or parole hearings. When they do, the research is mixed with respect to their effectiveness, although results are slightly weighed in favor of their having influenced parole

decision makers. For example, several studies document that victims appearing before parole boards have been successful at delaying the offender's release (Karmen, 2009). There are many anecdotal accounts of this happening.

Within the past decade, as mentioned in Chapter 8, some survivors of mass violence have been successful at bringing attention to larger social issues such as the availability of guns, economic inequality, or lack of sufficient mental health services that are associated with crime. In 2020, groups and individuals advocating on behalf of victims of police violence conducted predominately peaceful protests in cities and towns across the country meant to bring about change in how some police are recruited and trained and how they carry out their obligation to serve and protect. Such action is one more way of assuring that victims are not forgotten.

VICTIMIZATION DATA

Information about victimization in our society is best obtained from victims themselves. Persons who have been assaulted or burglarized can tell us when and where the crime occurred, whether they reported it to police, and the degree of physical and emotional harm they experienced, among many other things. These victimization statistics also help us understand the distribution of crime, including its geographical and temporal characteristics. Are certain regions of the country more "crime prone" than others, for example, or are certain months of the year more likely to see a reduction in crime? When victims know something about the person or persons who victimized them, victimization data also can provide information about those who commit crime.

Measurements of Victimization

The National Crime Victimization Survey (NCVS)

The preeminent victimization survey in the United States is the National Crime Victimization Survey (NCVS), sponsored by the Bureau of Justice Statistics (BJS) and conducted by the Census Bureau. The NCVS was introduced briefly in Chapter 1.

In 2018, 73% of eligible households responded to the NCVS interview, resulting in 151,055 households and 242,928 persons (older than 12) completing the survey (R. Morgan & Oudekerk, 2019). Recall that on an annual basis, a member of the household is first asked whether anyone over 12 years old experienced crime during the previous 6 months. If the answer is yes, the victim is interviewed more extensively on the frequency, characteristics, and consequences of the criminal victimization. The same households are recontacted every 6 months for a period of 3 years. The NCVS is

currently designed to measure the extent to which households and individuals are victims of rape and other types of sexual assault, robbery, assault, burglary, motor vehicle theft, and larceny. The survey includes both crimes reported and those not reported to the police. Consequently, and as mentioned in Chapter 9, there are differences between NCVS data and the Federal Bureau of Investigation's (FBI's) Uniform Crime Report (UCR) data.

The NCVS was introduced in 1973 and was then known as the National Crime Survey (NCS). Until that time, the government's main measure of crime in the United States was the UCR, which reflected crimes that were known to police along with arrest data. Many people—for a variety of reasons—do not report their victimizations to police, however. The NCS was developed to try to tap the "dark figure" of crime, or the crime that did not come to the attention of police. A victimization rate, expressed by the number of victimizations per 1,000 potential victims, is reported to the public. Developers of the NCS reasoned that some crime victims might be more willing to report their victimization to interviewers than to police. Furthermore, interviewers could probe and learn more about the effects of victimization. Over the years, these predictions have been borne out because victimization data continually indicate that, overall, at least half of all crimes are not reported to police. Not surprisingly, this figure varies according to specific crimes; reporting rates of auto theft, for example, are dramatically higher than reporting rates of sexual assault.

The NCS was revised in the 1980s and substantially redesigned in 1992, when its name was changed to the National Crime Victimization Survey. Among the changes were the addition of questions asking victims how law enforcement officials responded when they reported their victimizations. Victims also were asked more details about the crime, including whether the perpetrator appeared to be under the influence of alcohol or illegal substances and what they were doing at the time of the crime (e.g., going to work, shopping). The redesign also included a more sensitive and comprehensive approach to asking victims about sexual assault (Karmen, 2001). In addition to reports of household victimization, the BJS also sponsors supplementary reports, such as surveys of school and workplace victimization and victimization of commercial establishments.

The National Survey of Children's Exposure to Violence (NatSCEV)

In June 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) created the Safe Start Initiative to prevent and reduce the impact of children's exposure to violence (Finkelhor, Turner, & Hamby, 2011). Through this initiative, and with the support of the Centers for Disease Control and Prevention (CDC), OJJDP introduced the **National Survey of Children's Exposure to Violence (NatSCEV)**. The survey's goal was to provide a comprehensive presentation of the nature and extent of child and adolescent victimization in the United States. The project estimates children's exposure to violence, crime, and abuse, including child maltreatment, bullying, community violence, domestic violence, and sexual victimization. The survey was conducted between January and May 2008. It measured that past year as well as lifetime exposure to violence for children age 17 and younger across a number of victimization categories: conventional crime, child maltreatment, victimization by peers and siblings, sexual victimization, witnessing and indirect victimization, school violence and threats, and internet victimization.

Together, these two important surveys, as well as other studies, provide information about victimization data. We cover these data next.

Violent Victimization Committed by Strangers

The most recent NCVS indicates that violent victimizations committed by strangers accounted for approximately 45% of all nonfatal violence during 2018 in the United States (R. Morgan & Oudekerk, 2019). The victimization rate of stranger violence reported in the survey was 9.1 per 1,000 persons age 12 or older, while the victimization rate reported to the police was only 4.0 per 1,000 persons age 12 or older. This discrepancy is in line with the overall data from the survey. That is, based on the 2018 survey data, less than half (43%) of all violent victimizations were reported to the police. This is especially the case with rape and sexual-assault victimizations where only 25% of the incidents were reported to the police.

Ethnic/Minority Differences in Criminal Victimization

NCVS data, tabulated by the BJS (Rand, 2009), provide information on the criminal victimization of five ethnic/minority or racial groups: white, Black, Native American, Hispanic, and Asian. The Native American classification is based on those NCVS respondents who identified themselves as persons of Indian, Eskimo, or Aleut descent.

Asians were defined in this context as Japanese, Chinese, Korean, Asian Indian, Vietnamese, and Pacific Islander. Pacific Islander includes those persons who identified themselves as Filipino, Hawaiian, Guamian, Samoan, and other Asian. Respondents who identified themselves as Mexican American, Chicano, Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origins were classified as Hispanic. All the groups are extremely diverse, but the rapidly growing Hispanic/Latinx group reflects perhaps the greatest diversity. Because of this diversity, the BJS considered the "Hispanic" category as consisting of persons of any race in this tabulation. In other words, some Hispanics also report that they consider themselves white, Black, Native American, or Asian, a point that needs to be considered when examining the statistical data on crime and victimization rates.

Table 10.2

Sources: R. Morgan and Oudekerk (2019, p. 10); Truman and Planty (2012, p. 5); Truman and Morgan (2016, p. 9).

Table 10.2 represents *nonfatal* violent victimizations. For decades, Blacks—especially young Black males—have consistently been disproportionately represented among homicide victims. "Homicide rates have consistently been ten times higher for blacks aged 10–34 years compared with whites in the same age group between 1995 and 2015" (Sheats et al., 2018, p. 5). Firearms, especially handguns, were by far the most frequently used weapon. As asserted by Sheats et al. (2018), a variety of social and economic disadvantages have contributed to this propensity for violent victimization, including disproportionate exposure to concentrated poverty, blatant and implicit racism, and limited education and occupational opportunities across the life span.

Criminal Victimization as a Function of Age

In 2018, youth between the ages 12 and 17 were 1.5 times more likely to be offenders (14%) or victims (14%) in violent incidents than their percentage in the general population (9%) (R. Morgan & Ouderkerk, 2019). Perhaps more concerning, studies have shown that approximately 40% of urban youth have been exposed to a shooting, and many report witnessing serious forms of community violence (M. Gardner & Brooks-Gunn, 2009; B. Stein, Jaycox, Kataoka, Rhodes, & Vestal, 2003). In some communities, many youths have reported being victims of violent acts, including being threatened, chased, hit, beaten up, sexually assaulted, or attacked with a knife or gun, and 85% report having witnessed violent acts (Kliewer, Lepore, Oskin, & Johnson, 1998). Approximately 25% of the

victims of violent crime are injured, many of them severely (T. Simon, Mercy, & Perkins, 2001).
Although the preceding are all statistical data, some of which are quite dated, anecdotal reports in 2020 do not belie them. News media not infrequently carry reports of children and young adolescents killed by random gunfire, even while sitting on their stoops or playing in their neighborhoods, for example.
A significant number of children (11%) reported five or more direct exposures to different types of violence, and 1.4% reported 10 or more direct victimizations (Finkelhor, Turner, Hamby, & Ormrod, 2011). Repeated exposure to direct victimization, either of one crime or different crimes, is referred to as **Polyvictimization**. Many children and youth (from ages 6 to 18) who are continually exposed to violence develop difficulty concentrating and learning, as well as anxiety, fear, depression, and PTSD. Polyvictimization incidents often occur when children and youth are most psychologically vulnerable, usually during transitions such as beginning school, middle school, or high school (Finkelhor et al., 2009).
Various kinds of violence have different types of impact on those individuals who experience and witness it. In other words, all violence is not the same. Furthermore, several studies have shown that the psychological impact of being a victim of violence differs from that of being a witness to violence (Shahinfar, Kupersmidt, & Matza, 2001). Research also has found that adolescents who had been physically abused are at a higher risk to commit violent behavior themselves than those who had simply witnessed abuse (Shahinfar et al., 2001). Violence between parents (interparental violence) may be more damaging to the psychological health of a young child than being beaten and chased at school. Furthermore, interparental violence in which weapons are used, such as guns or knives, may be more upsetting to children than those incidents not involving weapons (Jouriles et al., 1998). Moreover, individual reactions to being exposed or subjected to violence exist on a continuum, with some youth showing unusual amounts of resilience and ability to cope at one pole, and others being more vulnerable at the other pole. Most are somewhere in the middle.

PSYCHOLOGICAL EFFECTS OF CRIMINAL VICTIMIZATION

Psychological Impact of Violence

The impact of criminal violence extends even beyond the direct victims and their families and friends. For several decades, it has

been widely recognized that people have a substantial fear of becoming victims of crime, and that this fear is especially strong among women and the elderly (Dansie & Fargo, 2009; Schafer, Huebner, & Bynum, 2006). Daily reports of crime victimization in the media exacerbate the fear, but other things do too. Perceptions of neighborhood safety, the ability to defend oneself, and other factors also contribute. In the United States, since the events of September 11, 2001, fears of terrorism, including domestic terrorism, create additional stress.

The psychological impact of criminal violence on its direct victims is substantial and far reaching. In fact, in many cases, the psychological trauma experienced by victims of crime may be more troubling to the victim than the physical injury or the loss of property. Psychological reactions to criminal victimization can range from mild to severe. The picture becomes even more serious when children become polyvictims. Mild reactions to stress are characterized by a variety of symptoms, including minor sleep disturbances, irritability, worry, interpersonal strain, attention lapses, and the exacerbation of prior health problems (Markesteyn, 1992). Severe reactions, on the other hand, may include serious depression, anxiety disorders, alcohol and drug abuse problems, and thoughts about or attempts at suicide (S. D. Walker & Kilpatrick, 2002). One of the most devastating and common reactions to criminal victimization is PTSD. Recall that PTSD was mentioned and covered in more detail in earlier chapters. It is sometimes used as a defense to criminal conduct, for example, and it may be highly relevant in civil cases in which psychologists testify about the effects of a civil harm (e.g., personal injury resulting from a respondent's negligence, or sexual harassment). It is a psychological reaction to a highly disturbing, traumatic event, and it is usually characterized by recurrent, intrusive memories of the incident. The memories tend to be vividly sensory, are experienced as relatively uncontrollable, and evoke extreme distress (Halligan, Michael, Clark, & Ehlers, 2003). According to the *DSM-5* (American Psychiatric Association, 2013), PTSD may occur when a person has exposure to actual or threatened death, serious injury, or sexual violence. It may develop when the person has directly experienced a traumatic event, witnessed the event, or learned that the traumatic event happened to a close family member or close friend.

Forensic psychologists assessing crime victims or consulting with legal professionals should be alert both to the possible presence of PTSD and to current research on its symptoms, duration, and its effects. Even continual reliving or retelling of a criminal event, for

example, may intensify PTSD (Strange & Takarangi, 2012). In addition, the usual but not inevitable course is for symptoms to be strongest soon after the event and then diminish over time. We discuss PTSD again shortly.

HOMICIDE VICTIMIZATION

In 2018, approximately 16,214 people were murdered (or were victims of nonnegligent manslaughter) in the United States (FBI, 2019a). There were 5 murders per 100,000 people in 2018, but these numbers vary across different regions. In general, homicide victims represent the smallest proportion (1.3%) of violent crime victims, but the psychological devastation experienced by family members and acquaintances who survive them is enormous. The nation's youth are especially vulnerable. Murder rates of young racial minority males living in impoverished areas of large cities are much higher, with 1 in every 333 becoming a victim of a homicide before reaching the age of 25. The homicide rate of juveniles in the United States is very high compared to other developed, industrialized nations. In 2016, 1,865 children and adolescents were homicide victims by firearms (Cunningham, Walton, & Carter, 2018).

Homicides of young children are committed primarily by family members (71%), usually by "personal weapons" (such as hands and feet) used to batter, strangle, or suffocate victims (Finkelhor & Ormrod, 2001). Data gathered from 44 different countries revealed that 56.5% of child homicides were committed by parents, and 12.6% were committed by acquaintances (Stöckl, Dekel, Morris-Gehring, Watts, & Abrahams, 2017). Parents committed the majority (77.8%) of homicides of infants under the age of 1. Approximately 95,000 children are murdered each year globally (United Nations International Children's Emergency Fund [UNICEF], 2014). Children between the ages of 15 and 19 years represent 57% of the global child homicides, followed by children under the age of 5 years (20%; Stöckl et al., 2017; UNICEF, 2014).

According to Finkelhor and Ormrod (2001b), victims in the United States include approximately equal numbers of boys and girls. In other parts of the world, the risk for homicide is particularly high for young boys, who account for 70% of all child homicides globally (Stöckl et al., 2017). Usually, very young children are killed by relatives who do not want the child or believe they are ill equipped to provide for the child. When young children (younger than 5 years of age) are killed by parents, it is usually as a result of the constant attention they require. Two of the most common triggers of young-child homicide are crying that will not stop and toileting accidents (U.S. Advisory Board on Child Abuse and Neglect, 1995). These

fatalities appear to be more common in economically deprived regions and in families marked by divorce or absence of the father. The aggressor, however, may be another male figure in the household.

Table 10.3

Source: FBI (2019a, **Table 10**).

Table 10.4

Source: FBI (2019a, **Table 10**).

Middle childhood (ages 6–11) is a time when homicide risk is relatively low, whereas the risk of homicide for teenagers (ages 12–17) is high, remaining constant at 10% higher than the average homicide rate for all persons (J. Fox & Zawitz, 2001). Unlike homicides of children younger than age 12, relatively few homicides of teenagers (9%) are committed by family members.

Relationship of the Victim to the Offender

Table 10.3 shows the relationship of the victim to the offender, based on 2018 data reported by the FBI. As illustrated, about 13% of the homicides were a result of one family member killing another family member. **Table 10.4** shows the number of victims killed within the family compared to other known and unknown relationships.

Death Notification

Notification of family members of a death that resulted from violent crime is among the most challenging tasks for professionals whose responsibility it is to deliver the message (Ellis & Lord, 2002). The percentage of people who have lost someone due to a homicide incident is very difficult to estimate. A study by Zinzow, Rheingold, Hawkins, Saunders, and Kilpatrick (2009) conducted a structured telephone survey involving a national sample of 1,753 young adults. The survey measured the loss of a family member or close friend to a drunk driving accident (vehicular homicide) or murder (criminal homicide). The survey further measured the psychological impact on the survivors as a result of these unexpected deaths. The study found that, overall, 15% of young adults survived losing a close friend. Most survivors had lost either a close friend (39%) or non-immediate family member, such as a cousin, aunt, or uncle (47%). In addition, approximately 7% of the young adults reported losing a family member or close friend as a victim in a drunk-driving accident. Psychological impact of these sudden deaths resulted in drug abuse, depression, and PTSD. Survivors were almost twice as likely to experience past year PTSD, depression, and drug abuse/dependence (but not alcohol abuse).

An accidental sudden death is also very often the most traumatic event in the lives of family members and loved ones. **Death notification** is highly stressful and intense, and the survivors have had no time to prepare psychologically. An inappropriate or poorly done notification can prolong survivors' grieving process and delay their recovery from the trauma for years. In the victimology literature, survivors are often referred to as *co-victims*, a term that is defined and discussed later. During notification and thereafter, the co-victim's needs may include (1) an opportunity for venting of emotion, (2) calm, reassuring authority, (3) restoration of control, and (4) preparation for what the co-victim needs to do next (Ellis & Lord, 2002).

Forensic psychologists would most likely be involved in death notification by training and providing supportive counseling to police officers, mental health professionals, and death notification teams who are expected to provide the services to families and co-victims of violent crime on a regular basis. These notification activities would be based on research literature on what works best for survivor recovery. There are several models for training death notifiers, but the best-known and probably the most heavily relied on model was developed by Mothers Against Drunk Driving (MADD; Ellis & Lord, 2002). Even with the availability of the training protocol offered by MADD, however, many death notifiers lack formal training (Stewart, Lord, & Mercer, 2001). Several other handbooks or manuals with training suggestions for death notification are also available. The U.S. Department of Justice published a manual in 2004 titled *Coping after a Homicide: A Guide for Family and Friends*, which is helpful.

The U.S. Office for Victims of Crime (OVC), in cooperation with the National Sheriffs' Association, has prepared a handbook titled *First Response to Victims of Crime 2001* (Gillis, 2001), and the National Organization for Victim Assistance (1998) has published the second edition of the *Community Crisis Response Team Training Manual*. Chapter 6 of the manual is directly related to procedures and suggestions for death notification. J. Lord (1997, 2001) has also been a leading expert in developing practices for death notification and has written several manuals or brochures for the OVC. In 1995, the OVC supported the MADD protocol in revising their death notification curriculum and tested it in seven sites (Ellis & Lord, 2002). Experienced death notifiers reported that their greatest unmet educational needs were the following:

- Specific details on how to deliver a notification
- How to manage immediate reactions of the family
- How to manage their own reactions

- General aspects of death notification

According to Ellis and Lord (2002), death notifiers should be sensitive, mature, positive, and calm persons who sincerely wish to become notifiers. Stressed, anxious individuals who lack confidence in delivering the message properly should not be selected as notifiers. Because death notification is a stressful event for all participants, burnout is a prominent danger for those professionals who are intimately involved on a regular basis. An important role for the psychologists in these situations is to provide support and counseling to the victim service providers and be watchful for burnout symptoms.

Reactions of Homicide Co-Victims

> *My brother was killed by another kid 16 years ago, when he was 15. My family's never been the same. People who talk about "closure" or "moving on" just don't get it. There's never "closure."*
> *My father's in prison because he killed my mother. He can rot there forever. I don't care*.

These statements highlight the terrible suffering and grief faced by what are called **Co-victims** of violent crime. Both direct victims and those who are close to them are likely to feel the effects of what occurred for many years to come. This is particularly so with violent crimes.

The term *co-victim* is often used to emphasize the depth of the homicide's emotional impact. In the aftermath of the murder, it is the co-victim who deals with the medical examiner, the criminal and juvenile justice system, and the media. The term co-victim may be expanded to any group or community that is touched by the murder: a classroom, a dormitory, a school, an office, or a neighborhood. Most of the individuals who make up these communities are wounded emotionally, spiritually, and psychologically by a murder, some more deeply than others (Ellis & Lord, 2002, p. 2). Mass shootings—such as those discussed in Chapter 8—produce many co-victims. The tragedy at Sandy Hook Elementary School in 2012 had numerous co-victims, both children and adults, although they surely prefer to call themselves survivors. Other examples are the co-victims in the Colorado theater shooting case of 2012, the Boston Marathon bombing, the Mother Emanuel church killings, the Parkland and El Paso shootings, among many other crimes. However, co-victims of homicide exist even when just one life has been lost. In recent years,

police lethal shootings of unarmed Black men have come to public attention, along with their co-victims.

As noted previously, some co-victims have responded to these tragedies by becoming activists seeking to bring about changes in gun laws or criminal justice training and policies. Others have sought privacy and shied away from public appearances. Some have turned to victim service mental health providers or other community resources, while others have preferred to obtain support from one another. Co-victims or survivors of individual tragedies, such as the killing of a single youth, have responded in similar variable fashion. Below we discuss an additional mass shooting incident and research on services to its co-victims.

Psychological Services Following Mass Shootings

On St. Valentine's Day, 2008, 120 students were attending class in an auditorium on the Northern Illinois University (NIU) campus. (Ironically, the Parkland school shooting in 2018 also took place on February 14, ten years later.) On the stage at the front of the auditorium a professor was giving a lecture for the class "Introduction to Ocean Sciences." As the professor was discussing "diatoms and microbiotic animals from the deep sea," a thin young man carrying a shotgun kicked open a side door at the back of the stage. The man was armed with several weapons, including a 12-gauge shotgun, a Glock semiautomatic pistol, two additional handguns, eight ammunition-loaded magazines, and a knife. At first, students thought it was a prank.

As the man walked toward the podium, he said nothing before firing, first hitting the startled professor and then, with the shotgun, fired directly at students sitting in the front row. Reloading the shotgun once more (for a total of six shots), he fired again into the stunned student audience. As students ran for the exits, the assailant stepped from the stage and walked up one aisle shooting with the two handguns directly at students desperately trying to escape. He then went down another aisle while shooting, and eventually returned to the stage and abruptly took his own life. When it was over, the shooter had killed 5 (not including himself) and wounded 21. The police found at least 60 shell casings in the room after the shooting. The campus came together immediately after the tragedy, with memorials, and mental health and counseling services were readily available. The university retained a forensic psychologist to conduct a complete psychological autopsy on the shooter to learn what prompted the violence and whether it could be prevented in the

future. The psychologist investigated the shooter's background, examined all available documents, and interviewed people who knew or had worked with him in the past. It was learned that the shooter was a former graduate student at the university who had done well academically but had difficulty emotionally. The psychologist also discovered that he had a history of major depression and had attempted suicide at least six times. (Much of the preceding information was gathered from the extensive report on the shooting published by NIU in 2010.)

In an important study following the shooting, Miron, Orcutt, and Kumpula (2014) investigated how college female students psychologically handled their post-trauma emotions following the horrifying mass violence at NIU. The study only involved female students as participants because the researchers had begun a longitudinal study prior to the shooting on psychological adjustment patterns to trauma. Therefore, the reaction to the mass shooting incident was a logical extension of the study already in progress. The study "investigated how several pre- and post-trauma factors predict post-traumatic stress symptom (PTSS) in both the acute and distal aftermath of a campus mass shooting using a sample with known levels of pre-trauma functioning" (p. 791). PTSS is characterized by re-experiences of the trauma in painful recollections, flashbacks, or recurring dreams or nightmares (VandenBos, 2007). If PTSS becomes severe, it may lead to a diagnosis of PTSD.

The Miron et al. (2014) study involved 573 undergraduates, most of whom (78.4%) were on campus at the time of the shooting and many (70%) saw emergency first responders or police surrounding campus buildings. Approximately half of the participants (49%) were in a building placed on lockdown during the shooting, and many reported seeing individuals who had been wounded or killed, or knew someone who died in the shooting. Some heard gun shots or were in the building where the shooting took place, and a small percentage (2%) were in the auditorium during the shooting.

Data were collected at three different times. The first data collection had taken place prior to the school shooting when students participated in the early study as part of an introductory psychology course. The second assessment began 17 days after the shooting, with a majority of the participants responding within 35 days of the incident. The third assessment took place 8 months after the shooting incident. The results showed that close to a majority of the students (46%) exhibited resilience following the shooting, indicating they had recovered from the initial reactions to the shooting fairly quickly. Many of the students reported high rates of PTSSs shortly

after the shooting (42%) but gradually recovered over the next 8 months. A small number (11.9%), however, had the stress symptoms persist over time and met the criteria for probable PTSD. The groups who adjusted relatively quickly or eventually appeared to have had fewer traumatic events in their lives and greater emotion regulation skills.

The Miron et al. (2014) results were similar to results of studies found in the aftermath of the 2007 shootings at Virginia Tech (Hughes et al., 2011). In the Virginia Tech shooting, 49 students and faculty were shot, 32 of whom died. The Hughes et al. (2011) study found that high levels of PTSSs (probable PTSD) were experienced by 15.4% of the respondents 4 months after the incident. As in the Miron et al. study, the Hughes et al. researchers found that vulnerability factors, such as a personal history of prior trauma and loss, predicted both onset and persistence of these negative reactions. A majority of the students recovered psychologically, but some took longer than others.

In a similar study, Felix, Dowdy, and Green (2018) conducted an investigation on student healing and recovery following the attack in the community of Isla Vista where half of the students from the University of California at Santa Barbara (UCSB) reside. In 2014, a 22-year-old man unaffiliated with UCSB killed six students and wounded 13 others before shooting himself. The man shot or stabbed the victims in different locations of the community. The researchers found that student-initiated events, such as a candlelight vigil, spiritual or religious memorials, and some community-building events, were the most helpful to students in their grieving process.

Psychological Services to Victims and Co-Victims of Homicide: A Recap

In summary, to be effective, victim service providers must be knowledgeable and carefully trained to deal with the wide range of reactions and needs of victims and co-victims as well as the investigative and judicial processes involved in homicide cases. Such service providers recognize cultural diversity, understand the role that culture and ethnicity play with regard to individuals and groups, and understand the socioeconomic and political factors that affect these groups (C. I. Hall, 1997). Co-victims may respond to the notification of the death of their loved one in a way that is compatible with their cultural/ethnic ways of dealing with death, in combination with their psychological, emotional, and spiritual strengths and weaknesses. Family members exhibit a wide range of emotions when a loved one is murdered. The available research suggests that the reactions of

survivors of homicidal death differ significantly from those of people who grieve the loss of a loved one who died nonviolently (Sprang, McNeil, & Wright, 1989). The process of mourning, for families of murder victims, lasts longer, is more intense, and is more complex (Markesteyn, 1992). The grief reactions of homicide survivors appear to be deeper, display rage and vengefulness more often, and result in longer lasting anxiety and phobic reactions (Amick-McMullen, Kilpatrick, Veronen, & Smith, 1989; Markesteyn, 1992). As pointed out by L. Miller (2008), "the cruel and purposeful nature of murder compounds the rage, grief, and despair of the survivors" (p. 368). The greater the perceived intentionality and malevolence of the murder, the higher is the co-victims' distress. Co-victims often suffer from intrusive and repetitive images of the violence; nightmares; and episodic, turbulent emotions of anger and grief. Excessive yearning or searching for the deceased, feelings of loneliness or emptiness, a sense of purposelessness or futility, and emotional numbness or detachment are also frequent symptoms of grief brought on by the violent death of a loved one (Carlson & Dutton, 2003). In addition to these symptoms, homicidal death bereavement responses include rage, desire for revenge directed toward the killer, and frustrations with the criminal justice system (S. A. Murphy et al., 1999).

Co-victim reactions may be especially intense if the deceased was subjected to torture, sexual assault, or other intrusive or heinous acts (Ellis & Lord, 2002). Co-victims often need to be reassured that the death was quick and painless and that suffering was minimal. "If the death was one of torture or of long duration, they may become emotionally fixated on what the victim must have felt and the terror experienced" (Ellis & Lord, 2002, Chap. 12, p. 8). If the offender was of another racial/ethnic or other minority group, the co-victim may develop a biased view of that particular group, which may have to be dealt with during counseling.

SEXUAL VIOLENCE VICTIMIZATION

In Chapter 9, we provided an overview of sexual violence offenders and their patterns of offending. The next chapter will describe intimate partner and family violence with an emphasis on physical violence and psychological abuse. In this section, we provide an overview of sexual violence victimization, including characteristics of the victim and the effects of the sexual violence on the victim's life and mental health. We begin briefly with data on sexual violence against women.

Based on data collected by the National Intimate Partner and Sexual Violence Survey, Black, Basile, et al. (2011) write,

> Approximately 1 in 5 Black (22.0%) and White (18.8%) non-Hispanic women, and 1 in 7 Hispanic women (14.5%) in the United States have experienced rape at some point in their lives. More than one-quarter of women (26.9%) who identified as American Indian or as Alaska Native and 1 in 3 women (33.5%) who identified as multiracial non-Hispanic reported rape victimization in their lifetime" (pp. 2–3).

When sexual coercion and unwanted sexual contact are included in the survey, studies have found victimization prevalence rates jump even higher, some as high 40% to 50% (Goodman-Williams & Ullman, 2020). Goodman-Williams and Ullman (2020) note, "The consequences of sexual victimization can include physical and emotional distress, substance abuse, and reduced abilities to pursue educational and professional goals" (p. 389).

The assailant could be an intimate partner, a relative, a friend, a date, a known person, or a stranger. A large portion (51%) of sexual violence against women and girls is perpetrated by an intimate partner, which could be a current or former spouse, girlfriend, or boyfriend. Another 40% is perpetrated by an acquaintance.

Characteristics of the Victims

Age

Rape and sexual assault are primarily crimes against youth, at least according to available statistics. These statistics must be viewed guardedly, however, in light of the low reporting rates of sexual assault in general, as noted in Chapter 9. Older women, married women, and men, for example, may be less likely to report this type of victimization. The National Women's Study (Tjaden & Thoennes, 1998a) reported the following data concerning the age of victims:

- 32% of sexual assaults occurred when the victim was between the ages of 11 and 17;
- 29% of all rapes occurred when the victim was younger than age 11;
- 22% occurred between the ages of 18 and 24;
- 7% occurred between ages 25 and 29;
- 6% occurred when the victim was older than 29.

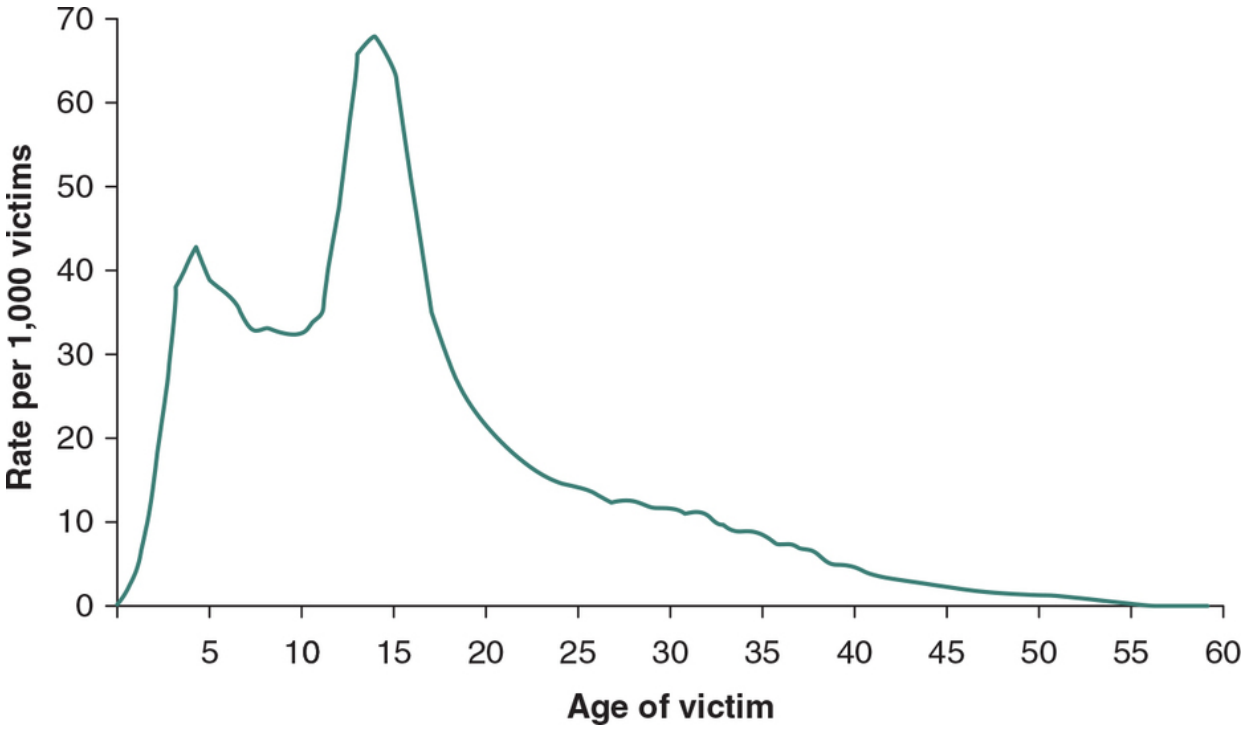
Again, these data must be viewed cautiously, because sexual assault of older individuals both within their residences and in health care facilities, are likely to go unreported, as are incidents of marital and acquaintance rape. For example, Rennison (2002) estimates on the basis of self-report surveys that 63% of completed rapes, 65% of attempted rapes, and 74% of completed and attempted sexual

assaults are not reported in the United States. Second, although the study was very comprehensive at the time, the data are somewhat dated.

More recent data collected by Finkelhor, Hammer, and Sedlack (2008) reveal that 29% of the sexually assaulted victims were age 17 or younger, which is somewhat in line with the Tjaden and Thoennes (1998a) data listed earlier. An estimated 44% of the young victims surveyed by Finkelhor and his associates experienced an act of sexual penetration. Law enforcement was contacted in only 30% of these cases. In one third of all sexual assaults reported to law enforcement, the victim was younger than age 12. Additional data collected from the 2018 NCVS indicates that approximately 24% of all victims of sexual violence reported in the survey were age 20 or younger (Morgan & Oudekerk, 2019). However, the NCVS underestimates the incidence of sexual assaults against children because it does not collect reports on crimes against children younger than age 12. The graph (**Figure 10.1**) created by Snyder (2000) over 20 years ago still represents the distribution of victimizations well.

Gender

Overall, according to official statistics, an estimated 91% of the victims of rape and sexual assault are female (FBI, 2019a; Planty, Langton, Krebs, Berzofsky, & Smiley-McDonald, 2016). Although data on the number of male victims who have been sexually assaulted over their lifetimes are difficult to find, the best estimates have ranged between 5% and 14% (Finkelhor, Shattuck, Turner, & Hamby, 2014; Planty et al., 2016; Rosin, 2014). However, two surveys conducted independently by the Centers for Disease Control and Prevention and the BJS discovered widespread sexual victimization among men in the United States (Stemple & Meyer, 2014). In fact, some forms of male victimization are “roughly equal to those experienced by women” (Stemple & Meyer, 2014, p. e19). Recent data are beginning to reveal “an alarmingly high prevalence of both male and female victimization” (Stemple & Meyer, 2014, p. e19). (See **Focus 10.3** for more information on this topic.) Children and college students, persons with disabilities, and incarcerated individuals are most vulnerable to be raped or otherwise sexually assaulted. Additionally, in the United States, LGBTQ adults are at a higher risk of sexual violence victimization than heterosexuals (Krebs et al., 2016; Wilson & Newins, 2019).



Description

Figure 10.1 Age Distribution of Victims of Sexual Violence
Source: H. N. Snyder (2000).

The child sex offender (CSO) is almost always male, but the victim may be of either gender, indicating a crossover pattern for some offenders. As mentioned in Chapter 9, however, researchers are beginning to question the assumption that women rarely commit sexual assaults against children (Becker & Johnson, 2001; Sandler & Freeman, 2007). Heterosexual sexual assault—specifically male adult with female child—appears to be the more common type, with available data suggesting that three quarters of male sex offenders choose female victims exclusively (Langevin, 1983; Lanyon, 1986). Homosexual child sex offending—adult male with male child—appears to be substantially less frequent, occurring in about 20% to 23% of the reported cases. A small minority of child sex offenders choose children of either gender.

Extent of Injury to Victims

Data on physical injury from sexual assault reveal that 58% of female victims of sexual violence suffered physical injury during the attack, such as cuts, bruises, internal injuries, broken bones, gunshot wounds, or rape injuries (Planty et al., 2016). Sexual violence refers to the completed, attempted, or threatened rape or sexual assault. About 35% of the women who received physical injury during the

attack said they sought treatment for their injuries, usually at a hospital, doctor's office, or emergency room.
Focus 10.3

Sexual Victimization of Males
Over the past 20 years, a number of high-profile media stories highlighted the fact that sexual assault cannot be defined only as male against female. Chief among these media accounts were the priest-abuse scandals, wherein men in the United States as well as across the world revealed that, as young boys, they had been abused by priests. (Although girls also were abused by priests, boys were more vulnerable because they often came into contact with priests as altar boys. Furthermore, despite their vows of celibacy, priests were not unknown to have consensual sexual relationships with adult women or men.)
Other media stories—including civil suits—focused on the Boy Scouts of America and accusations by adult men that they had been assaulted by troop leaders or counselors in their youth. Still another example was the case of Jerry Sandusky, the Penn State assistant football coach who was imprisoned after being charged and convicted of some 45 counts of child sexual abuse occurring between 1994 and 2009. Receiving less public attention were studies of sexual assault in juvenile facilities, and prison rape, indicating that both male and female inmates were extremely vulnerable to sexual assault by both prison and jail staff and other inmates.
In an incisive article, Stemple and Meyer (2014) have argued that a new approach to studying sexual assault is needed. They note that both official statistics and research paradigms focus on sexual assault primarily as a male against female crime and view females as powerless and helpless victims. Some assumptions (e.g., that male victims experience less harm or that all sex is welcome to men) discourage further inquiry into male victimization. Furthermore, while it is well acknowledged that female rape victims often do not report their experience to police, male rape victims are just as likely to not report, and sometimes for different reasons. Stemple and Meyer say that, because of the dominant methods of gathering sexual assault data and the dominant paradigms for studying it, we ignore the harm suffered by males raped by females, same-sex assaults of males, and highly vulnerable men and boys with disabilities or in institutional settings.

QUESTIONS FOR DISCUSSION

1. Sexual assault is often not reported to authorities for many different reasons. Are these reasons the same regardless of

one's sexual orientation or gender identity? If not, what reasons would be the same and which ones would be different?
2. Should sexual assault of adult women be considered more harmful than sexual assault of adult men?
3. Unequal power relationships are often at the root of the sexual assault of women and girls (e.g., the jailer against the inmate, the uncle against the niece, the trio of college fraternity brothers against the first-year student attending their party). Are power relationships at work when men and boys are assaulted as well?

These data suggest that the majority of victims will not display overt physical evidence that most people believe is characteristic of violent sexual attacks. One reason offenses against adult males are not taken seriously is that they do not evidence the same amount of force. NCVS data indicate that women who required medical care for rape reported injuries more than men but that both did have significant injuries (12.6% of women, 8.5% of men) (Stemple & Meyer, 2014). Unfortunately, many people who see no clear evidence of physical injury will conclude that the victim must have consented. In addition, even though some attacks do not result in physical injury or death, sexual assaults inflict enormous psychological harm on victims, especially children. Similar to women, "men who experience sexual abuse report problems such as depression, suicidal ideation, anxiety, sexual dysfunction, loss of self-esteem, and long-term relationship difficulties" (Stemple & Meyer, 2014, p. e20).

Relationship of the Victim to the Offender

Intimate Partner and Dating Violence

The legal scope of rape has traditionally been confined to imposed sexual contact or assault of adolescent and adult females who are not related to the offender. In light of the fact that rape most often occurs when the offender is an acquaintance, a family member, or a spouse, this traditional definition is drastically outdated. Kilpatrick, Whalley, and Edmunds (2002), for example, report compelling evidence that most rapes are of intimate partners and not strangers. Their data indicate that

- 24.4% of rapists were strangers;
- 21.9% were husbands or ex-husbands;
- 19.5% were boyfriends or ex-boyfriends;
- 9.8% were relatives; and
- 14.6% were other nonrelatives, such as friends or neighbors.

More recent data from the NCVS covering 2005 to 2010 show similar results (Planty et al., 2016). The survey indicates that 8 out of 10 victims of sexual violence knew the offender. About one third of

victims who knew the assailant said the victimization was committed by an intimate partner. Another 6% revealed the offender was a relative or family member, and 38% said the offender was a friend or acquaintance. Strangers committed 22% of the attacks, a percentage that remained basically unchanged from 1994 to 2010. Still, many people (including the victims themselves) do not define sexual attacks as rape unless the assailant is a stranger. Thus, if the victim is sexually assaulted by a husband, boyfriend, or a “date,” she is unlikely to report the incident. Depending on the study, 15% to 20% of female college students report experiencing date rape or other dating violence (Eshelman & Levendosky, 2012). In fact, sexual assault on college campuses has received very recent public attention, much like the sexual assault in the military discussed earlier. Many young women have reported being sexually assaulted during or after fraternity or other parties, for example, but others have been assaulted walking to their residence halls from an evening class.

Dating and intimate-partner rape victims may suffer three types of abuse: sexual, physical, and psychological (Eshelman & Levendosky, 2012). Sexual abuse includes refusing to use a condom or other contraception or demanding or physically forcing sexual actions. Physical abuse includes a continuum of actions “from slapping or hitting to more severe acts such as stabbing, burning, and choking” (Eshelman & Levendosky, 2012, p. 216). Psychological abuse includes behavior such as intimidation, social isolation, humiliation, verbal abuse, and other behavioral patterns designed to control the victim. Victims of dating violence often receive repeated trauma from their “dates” or boyfriends, and the psychological effects of repetitive abuse tend to be more severe than the effects of single-event abuse. Moreover, “the experience of multiple abuse types is more likely to lead to mental health problems than exposure to only one type of abuse” (Eshelman & Levendosky, 2012, p. 224). Depression and PTSD are two of the more common psychological problems associated with intimate partner or dating sexual violence (Taft, Resick, Watkins, & Panuzio, 2009).

Criminal justice officials and the public frequently feel that marital or date rape is unimportant because they believe that it is less psychologically traumatic to the victim and more difficult to prove. Some prosecutors, for example, admit they are reluctant to prosecute marital or date rape cases because of concerns that it is difficult to convince juries that husbands or boyfriends could be sexual assailants. However, as mentioned earlier, available data suggest that more than a third of the total rapes and sexual assaults

are committed by an intimate partner, often a spouse (Planty et al., 2016).

Additional Victimization Data

Approximately 90% of the time, the sexual assault victimization involves a single offender, a percentage that has been consistent over the past two decades (Planty et al., 2016). In addition, the NCVS reveals that 16% of rape or sexual assault victims experienced two or more rape or sexual assault victimizations, often by the same assailant over time (Oudekerk & Truman, 2017).

Between 2005 and 2010, victims reported that the assailant possessed or used a weapon 11% of the time. According to the victims, the offender had a firearm 6% of the time and a knife in 4% of the attacks. The most common reason given by adult victims of rape or sexual assault for reporting the crime to the police was to prevent further crimes by the offender against them. The most common reason given by the victim for *not* reporting the crime to the police was that it was considered a personal matter. Nationally, per capita rates of rape are found to be highest among residents ages 16 to 19, low-income residents, and urban residents (Greenfeld, 1997). There are no significant differences in the rate of rape or sexual assault among racial groups.

Juvenile victims were more likely to be victimized in a residence than adult victims (H. N. Snyder, 2000). The most common nonresident locations for sexual assaults of juveniles are roadways, fields/woods, schools, and hotels/motels. The weapons most commonly used in sexually assaulting juveniles were hands and fists.

Child Sexual Abuse

Child sexual abuse is the exploitation of a child or adolescent for another person's sexual and control gratification (Whitcomb, Hook, & Alexander, 2002). The global prevalence of child sexual victimization is estimated to be about 27% among girls and approximately 14% among boys (Garcia-Moreno, Guedes, & Knerr, 2012). In the United States, the prevalence of child sexual victimization is approximately 25% to 27% in girls and an estimated 16% in boys (Pérez-Fuentes et al., 2013). A survey study by Wurtele, Simons, and Moreno (2014) revealed that 6% of the men and 2% of the women indicated some likelihood of having sex with a child (age 12 or younger) if they were guaranteed they would not get caught or punished. In addition, 9% of the men and 3% of the women revealed some likelihood of viewing child pornography on the internet.

In most cases of child sexual abuse, the offender and the victim know one another, often very well, and the crime frequently involves

relatives (incest). Many victims are simply looking for affection, wanting only to be hugged or cuddled or to have human contact. Some offenders justify their own behavior by saying the child acted "seductively." Very often, the child may participate in the molestation primarily because the child is too frightened to protest. Although this is difficult for many to understand, research indicates that child sex offenders, on average, tend to have positive feelings toward their victims, generally perceiving them as willing participants, and that they frequently victimize children living in their immediate households (Miner, Day, & Nafpaktitis, 1989). These "positive feelings" are presumably restricted to crimes that do not involve sexual penetration, however. In many cases, the sexual behavior between the offender and the same child has gone on for a sustained period.

Interviewing Child Victims of Sexual Abuse

Forensic interviews are invaluable sources of legal information that are collected from a wide range of individuals. Among the most challenging interviews are those conducted with young children who have been victims of sexual abuse. Newlin et al. (2015) define the forensic interview of children as follows:

> A forensic interview of a child is a developmentally sensitive and legally sound method of gathering factual information regarding allegations of abuse or exposure to violence. This interview is conducted by a competently trained, neutral professional utilizing research and practice-informed techniques as part of a larger investigative process. (p. 3)

Following three decades of developmental research and practice, forensic psychologists and other professionals have gained significant knowledge about how to maximize children's potential to accurately convey information about their past experiences (Newlin et al., 2015). It must be stressed that, although we discuss interviewing child victims of sexual abuse here, the principles apply to interviewing children in other contexts as well. Nevertheless, when the research cited in the following refers specifically to sexual abuse, it will be noted.

One of the major responsibilities of forensic psychologists who interview children is to be highly competent at this task. However, good child forensic interviewing is not easy to learn (Lamb, 2016). It takes considerable practice and continual feedback from experienced professional interviewers over time. Consequently, professional organizations, including the APA, strongly recommend that professionals who conduct child forensic interviews have formal and

periodic training. Computer-assisted technology may become an important alternative or assistant in training professionals in the near future (Lamb, 2016).

Ongoing research demonstrates that the informativeness and accuracy of children's accounts increase when forensic interviewers follow research-based child interviewing techniques and strategies (M. Magnusson, Ernberg, Landström, & Akehurst, 2020). Several research-based models or protocols for conducting forensic interviews with children have been developed. Child forensic interviewers "often receive training in multiple models and use a blended approach to best meet the needs of the child they are interviewing" (Newlin et al., 2015, p. 2). In addition, across the United States "state statutes and case law dictate aspects of interview practice, further demonstrating that no one method can always be the best choice for every forensic interview" (Newlin et al., 2015, p. 2). Statistically, child forensic interviewing is a rapidly growing practice. For example, the National Children's Alliance reported that child forensic interviewers at 854 child advocacy centers in the United States interviewed 236,589 children during 2017 (Fessinger & McAuliff, 2020). Again, these were not all victims of child sexual abuse.

Although there are several research-based models or protocols currently being used for interviewing children, nearly all them recommend the following rules and strategies:

- Interview the child as soon as possible to minimize forgetting.
- Establish rapport at the beginning of the interview to make the child feel comfortable.
- Explain purpose of interview and go over basic ground rules (For example, give instructions to the child to say "I don't know" rather than guess).
- Use open-ended questions: "Tell me what happened." Open-ended questions allow children to elaborate in their own words and to include salient details without prompting by interviewers.
- Avoid asking yes or no questions and other forced-choice questions.
- Ask simply worded questions a child can understand.
- Do not ask suggestive questions that signal the answer expected.
- Follow up with child's answers to open-ended questions with more specific questions.

Among the more prominent forensic interview models is the National Institute of Child Health and Human Development (NICHD) Standard Protocol, developed by Orbach et al. (2000). It is a heavily research-

based structured protocol for professionals conducting forensic interviews with suspected child sexual abuse victims. The NICHD is used by professionals across the globe. Several field experiments in Israel, the United States, the United Kingdom, and Canada, demonstrated that interviewers using the Protocol elicited more accurate information and that the information they elicited was of high quality (Lamb, 2015). The NICHD Standard Protocol's techniques and strategies were developed based on three decades of advances in scientific knowledge concerning children's memory, communicative skills, social vulnerabilities in answering adult questions, moral (what is right and wrong) development, and cultural differences. Recently, the NICHD was revised to improve forensic interviews with children who are reluctant to report the abuse but whose victimization was substantiated using independent information (Hershkowitz & Lamb, 2020; Hershkowitz, Lamb, & Katz, 2014). Research reveals that many young victims of sexual abuse do not, or are reluctant, to disclose abuse when interviewed, especially when the offender is a member of their own family (London, Bruck, Ceci, & Shuman, 2005, 2007; London, Bruck, Wright, & Ceci, 2008). As noted by London et al. (2008), "the overall pattern is that many children simply do not willingly tell" about their sexual abuse (p. 43). This reluctance often occurs even when there is clear evidence that sexual abuse did occur. (See **Perspective 10.1**, in which Dr. London writes about her background and her research interests.)

From My Perspective 10.1

Study What You Love and the Job Will Come

Kamala London, PhD



Kamala London

Growing up in an industrial midwestern city, as a kid, I remember hearing people talk about *college*. College sounded like a mysterious place. I had a hard time envisioning what a *campus* looked like or how it functioned. My parents divorced when I was five. My brother and I moved with my mom to an apartment complex, and I recall her working long hours at a car dealership in order to cover our rent.

I knew we were poor. We got free public lunches, which I found embarrassing because back then your yellow lunch ticket marked you as one of the poor kids. I remember wishing I could afford the cool clothes and tennis shoes other kids at school could afford. I wanted a horse. I wished I could take piano lessons. But for me, the worst part of being poor wasn't that we couldn't afford to buy things; the worst part was the lack of control we had over our lives. The worst part of being poor, to me, was that other people have so much control over you. We had little autonomy over where we went and what we could do with our home. For example, we had to get rid of my beloved beagle, Patches, because the landlords disallowed pets.

My mom worked a lot of hours to pay rent and buy groceries, and we wore our apartment key on a chain around our necks: the first generation of latch-key kids. Fortunately, school came easy to me academically, but there were several times I almost dropped out because college seemed out of reach.

I am so thankful for many people who encouraged me and believed I could succeed.

First, my mom, who always told me that, although we were poor, we could have dignity. And she told me I could do whatever I wanted. She told me I did not have to fall into a trap of doing what others expected and to go after life with passion.

My third-grade teacher taught me how to properly shake hands and encouraged me to go into public speaking. My high school debate teacher moved me onto the varsity debate team as a freshman. He made me believe I was smart. I called him years later to tell him I had my doctorate and was at Johns Hopkins and he replied he was not surprised and knew I would go far.

When it was time for college, I stayed home and commuted 1 hour each way. My first semester was a steep learning curve as I figured out life as a college student: finding parking, making it from building to building in 10-minutes between classes. I loved the college campus and I thrived. I found my identity. I loved everything about college, from taking Shakespeare classes to geology.

Coming from a blue-collar family, I thought about college as a means to an end. I had a professor for one of my pre-law classes, Professor William Baum, who was my assigned advisor. He was in a wheelchair from an accident he had in high school. He carried around his academic books in a burlap bag. When I went to see him in office hours, he played classical music. I told him I loved classical music but never had opportunity to listen to it. Not long after, he and his wife took me to my first classical concert. Today, I play the violin in my spare time and my 16-year-old also plays. He was born into a very different life than I was.

I loved law and loved public speaking, so I decided to be a prosecutor who could fight on behalf of victimized women and children. Toward the end of my freshman year, I was so fortunate to be in a criminal justice class where a police sergeant came by recruiting college-level police interns. I spent the next 3½ years working at a large police department, mostly taking minor police reports and other odd jobs like helping bond people out of jail.

In the meantime, back at college, Professor Baum told me, “Study what you love and the job will come.” I started taking psychology classes and volunteered to do research for a psychology professor. I discovered a new field, psychology and the law, and became fascinated by human memory. I noticed that when

I conducted police interviews, people responded very differently to questions like “What did he look like?” versus “Was he taller than you or shorter than you?”

I took a leap of faith and studied what I loved, deciding to double major in pre-law and psychology. After college, I was admitted to a graduate program at the University of Wyoming, where I received my doctorate in developmental psychology. After my PhD, I completed a 4-year postdoctoral fellowship in forensic psychology at the Johns Hopkins Medical School in Child and Adolescent Psychiatry.

Fast-forward a few decades and I am a tenured full professor, a researcher, and occasionally an expert witness. I love my graduate students and my undergraduate research assistants. I struggle to balance work and life. Some days I feel ecstatic, like the Cat and the Hat, riding a bike while balancing a cake and a rake. And other days, I feel like I am doing a subpar job as a mother and as a scholar. But I love what I do: I love being a mother, animal lover/outdoorsperson, as well as my professional roles teaching and conducting research (but not so much faculty meetings).

Thank you, Professor Baum. I studied what I loved and the job came. And thank you, Mom, for believing in me and encouraging me to find my own path. I own a house. Just last week, I called into a Zoom remote faculty meeting deep in the woods on a lone ride with my horse. The horse realized I was distracted and frequently stopped to graze. My colleagues likely think I am a strange animal, but it was a lovely day of riding. And the best faculty meeting ever.

I hope you take advantage of the privilege to go to college and study what you love. The job will come.

Dr. London is a professor at the University of Toledo in Ohio. She conducts research on how courtroom procedures can be tailored to suit children's developing social and cognitive skills. She is featured in a 2020 Showtime docuseries, Outcry. *She has testified as an expert witness in the United States and abroad, and her research has been cited in cases before the United States Supreme Court. She spends as much time outdoors as possible, having fun playing with her family, which includes three sons, two dogs, a cat, and two horses*.

The forensic interview has three stages: (1) the pre-substantive phase, (2) the substantive phase, and (3) the closure phase. The pre-substantive phase, also known as the rapport building phase, is also the stage where ground rules are set. "These may include instructions to say, 'I don't know' rather than guess, or to indicate whether they do not understand a question" (D. A. Brown et al., 2019, p. 1626). During the rapport building the interviewer might ask the child about their personal interests. The importance of rapport building and emotional support at the early stages when interviewing

reluctant children cannot be overemphasized (Hershkowitz & Lamb, 2020; Saywitz, Wells, Larson, & Hobbs, 2019). “Whether children are being interviewed in clinical, evaluative, or investigative contexts, meaningful rapport between children and interviewers seems to facilitate communication and to encourage children to affirm and describe their traumatic experiences (Hershkowitz & Lamb, 2020, p. 177).

The transition between the pre-substantive phase and the substantive phase is usually accomplished by asking the child a “practice narrative” which involves asking the child to describe a past, unrelated event in detail (Magnusson et al., 2020). The substantive phase begins with open-ended questions about the incident under investigation (“Tell me what happened.”). Forced choice or yes/no questions are strongly discouraged. As asserted by London, Hall, and Lytle (2017), “the major concern expressed by developmental psychologists about forced-choice questions is that children tend to pick a response regardless of whether they know the answer” (p. 287). In general, a young child’s self-generated statements are far more reliable than a child’s responses to forced-choice questions. In addition, London et al. (2017) found that even adding a third choice beyond the two-part yes or no choice, such as a “something else” alternative, did not improve children’s accuracy.

Specific, but still open-ended, questions are usually reserved for the end of the substantive phase. The closure phase is characterized by discussing neutral topics, combined with emotional support for how well the child did in the interview.

Psychological Effects of Child Sexual Abuse

Research indicates strongly that any form of sexual abuse in childhood results in long-term, interpersonal, social, and psychological problems in many children, adolescents, and adults (Cantón-Cortés, Cortés, & Cantón, 2015; Domhardt, Münzer, Fegert, & Godbeck, 2015; Hillberg, Hamilton-Giachrisis, & Dixon, 2011). Some of the psychological and behavioral problems are even found in preschool victims (Hébert, Langevin, & Bernier, 2013; Langevin, Hébert, & Cossette, 2015). Reports of depression, shame, suicidality, sleep disorders, substance abuse, feelings of isolation, fears and intense anxiety are not uncommon in both male and female victims. Depression and PTSD are the symptoms most commonly found among adolescents and adults who were sexually assaulted as children (Gospodarevskaya, 2013; Wherry, Baldwin, Junco, & Floyd, 2013). Some studies report that 30% to 40% of individuals who experienced sexual abuse in childhood report a lifetime history of depression, compared with 10% to 20% of individuals without a

childhood history of sexual abuse (Musliner & Singer, 2014). Both male and female victims report these psychological and interpersonal problems.

The overwhelming evidence from both clinical and empirical studies is that most victims of sexual abuse are negatively affected by their experience (Pérez-Fuentes et al., 2013). However, the long-term effects of child sexual abuse appear to differ significantly from individual to individual. Although some victims apparently suffer no negative long-term consequences, studies with adults confirm the long-term effects of sexual abuse mentioned in the clinical literature for a majority of the victims (Browne & Finkelhor, 1986).

Studies also suggest that sexual abuse by fathers or stepfathers may have a more negative impact than abuse by perpetrators outside the home. Furthermore, and not surprisingly, the use of force or physical coercion in the assault usually results in more trauma for the child (Browne & Finkelhor, 1986). Experiences involving penetration or attempted penetration and genital contact by mouth are more troubling than acts involving touching of unclothed breasts or genitals.

Child Sexual Abuse Accommodation Syndrome (CSAAS)

The child sexual abuse syndrome (CSAS), or **Child sexual abuse accommodation syndrome (CSAAS)**, originally proposed by Summit (1983), is reserved for a cluster of behaviors that occur in children who have been victims of sexual abuse by a family member or by a trusted adult. According to Summit, children do not necessarily have an innate sense that sexual activity with an adult is wrong. However, if the sexual activity continues, the adult usually must pressure or threaten the child to prevent others from knowing about the activity. Often, the abuser presents these threats and pressures in such a way that the child is led to believe something terrible will happen (perhaps to a family member) if this “private” knowledge becomes known. Hence, the child is placed in the position of being responsible for the welfare of the family. The child also feels helpless to stop the activity. Thus, the child must “accommodate” these secrets and incorporate them into their daily living pattern. According to this view, children who have been sexually abused feel ashamed, fail to report the abuse, and deny that it occurred when questioned. Summit believed that mental health professionals could verify that sexual abuse had occurred if they found behavioral indicators of the CSAAS, such as comments by a child indicating precocious sexual knowledge. In addition, those who support the

existence of CSAAS believe it is acceptable for the interviewer to be more suggestive in questioning these children, asking specific and sometimes leading questions.

However, there is question about the validity of the CSAAS, specifically because it may prompt the child to hide or deny the abuse, and leading questions are needed to draw out the correct information. Reviewing the literature on this topic, Bruck and Ceci (2009) noted that children who are abused may not initially report it for the reasons noted earlier. However, when questioned directly, but not suggestively, they do not deny it. “These findings lend no support to the notion that children who deny having been abused must be pursued with relentless suggestive questioning because otherwise they will not disclose the details of their abuse” (p. 156). Bruck and Ceci also note that, while highly suggestive interviews prompted children to report abuse, children also gave false reports, or reported events that did not occur.

Almost three decades ago, J. E. B. Myers (1991) observed, “At this point, professionals have not reached consensus on whether a syndrome exists that can detect child sexual abuse” (p. 82). Haugaard and Reppucci (1988) wrote, “The principal flaw with the notion of a specific syndrome is that no evidence indicates that it can discriminate between sexually abused children and those who have experienced other trauma” (pp. 177–178). Many of the behaviors listed by Summit (1983) may occur in any child who has experienced other types of trauma besides sexual abuse, although the behaviors usually do not demonstrate precocious sexual awareness. “As a result, one cannot reliably say that a child exhibiting a certain combination of behaviors has been sexually abused rather than, for instance, physically abused, neglected, or brought up by psychotic or antisocial parents” (Haugaard & Reppucci, 1988, p. 178).

In sum, CSAAS has questionable validity as a meaningful diagnostic tool or indicator of sexual abuse. Even precocious sexual awareness may not be reflective of abuse. Moreover, it is particularly problematic if it results in highly suggestive questioning of children, leading to false reports. On the other hand, some have observed that children are highly vulnerable to PTSD, a more useful concept in describing the psychological impact of child sexual abuse (Whitcomb et al., 2002).

In child sexual abuse cases, the forensic psychologist may be asked to evaluate the child to determine if the allegations have foundation and, if they do, what level of trauma has been experienced. It is crucial, then, for the psychologist to be aware of current research on the reliability of children’s reports of victimization (Bruck & Ceci,

2009). This is relevant information in both criminal cases, when someone is charged with the abuse, and civil cases, such as when child custody is at issue, as we discussed in Chapter 6. The forensic psychologist may also be asked to assess the competency of the child to testify in the case and may help in preparing the child to testify. Finally, the psychologist may act as an expert witness in the case, such as testifying about the validity of children's memory or level of understanding.

Psychological Impact

Sexual assault produces a broad spectrum of psychological reactions in its victim. In much of the literature on sexual assaults, "victims" are now often referred to as a "survivors," "a label that emphasizes their strength and avoids the connotation of passivity associated with the label of 'victim'" (Felson, 2002, p. 136). However, we continue to use the more recognized term *victim* in this context because we are talking about *victimization* of all kinds in this chapter and discussing the many *victim* services available. Nevertheless, it is understandable that people who have experienced such attacks prefer to refer to themselves as survivors, because that term connotes emotional strength and emphasizes that they are in control of their lives.

Sexual victimization usually provokes some type of reaction and physical, social, psychological, and often economic or—in the case of students—academic loss. After a sexual assault, some student victims have difficulty concentrating, begin to miss classes, and fall behind in their school assignments. Some withdraw completely from high school or college. Furthermore, service providers and psychologists should be aware that many victims of sexual assault are often concerned about people finding out about it, including family members (Kilpatrick, Whalley, & Edmunds, 2002).

Among the more common psychological reactions to sexual assault are PTSD, self-blame, suicide ideation, helplessness, anger, or depression. Some studies suggest that survivors of sexual violence make up one of the largest groups of PTSD sufferers in the United States (Benfer et al., 2018; Goodman-Williams & Ullman, 2020). Moreover, PTSD effects can be long lasting with the symptoms present for months or even years.

Some studies also indicate that there is a robust relationship between sexual assault and suicide ideation and suicide attempts (Dworkin, DeCou, & Fitzpatrick, 2020). Suicide ideation refers to thinking about, considering, or planning suicide. Self-blame for the sexual assault is also quite common among women. Sigurvinsdottir, Ullman, and Canetto (2020) found that lifetime prevalence of suicidality was high among Black women, with 45% of participants reporting lifetime

suicidal ideation, and 32% reporting lifetime suicide attempts. Over time, they decreased their suicide ideation, but the number of suicide attempts remained the same. We urge caution in interpreting these results, however, because there is no comparison with other racial groups.

Preliminary data from the previously mentioned study also suggest that self-blame may be a major factor in the suicidality findings. In an earlier study, the researchers found that “rape victims were also 13 times more likely than non-crime victims to have actually made a suicide attempt (13% vs. 1%)” (Kilpatrick et al., 2002, Chap. 10, p. 15). Dworkin et al. (2020) recommend that clinicians working with sexual assault survivors should be especially vigilant for indicators of suicide risk.

Overall, the quality of life usually suffers as victims experience sleeplessness, nightmares, social isolation, flashbacks, and intense feelings of insecurity. Studies find that rates of PTSD in victims are significantly higher after a rape than after nonsexual assault (Elklit & Christiansen, 2013; Faravelli, Giugni, Salvatori, & Ricca, 2004). Some evidence also suggests that women who are sexually attacked by strangers are more likely to develop PTSD than women who know their assailants (Elklit & Christiansen, 2013; Ullman, Filipas, Townsend, & Starzynski, 2006). Although this research focused on women as victims, it is important to stress that similar findings might be found with respect to men as victims. Forensic psychologists and other psychologists working in forensic settings are often asked to do an assessment, provide treatment, or become an expert witness in sexual assault cases. The assessment may be done to evaluate the victim’s suffering, responses, and reactions, especially if they appear to be life-threatening. The psychologist should be very knowledgeable about the victim’s cultural and ethnic background and how that culture perceives victims of sexual assault. A number of rating scales and psychological inventories are available to document the victim’s level of trauma.

INTERNET VICTIMIZATION

Online Sexual Solicitation

In recent years, the news media have raised alarms about the dangers of the internet. The major theme centers around the contention that child and adolescent online profiles and other social media channels frequently attract aggressive sexual predators. Based on their extensive research on the issue, Wolak, Finkelhor, Mitchell, and Ybarra (2008) conclude, “The research about Internet-initiated sex crimes makes it clear that the stereotype of the Internet

child molester who uses trickery and violence to assault children is largely inaccurate" (p. 112). They find that most internet-initiated sex crimes consist of adult men who use the internet to meet and entice underage teenagers into sexual meetings. Very frequently, as we noted in Chapter 9, the teenagers realize they are communicating with an adult. The behavior of the perpetrator is still criminal, however, because even if a "consensual" sexual encounter occurs, the perpetrator is committing statutory rape and also could be charged under "luring" statutes.

Sextortion has recently been identified as an emerging online threat to minors (Wolak, Finkelhor, Walsh, & Treitman, 2018). Sextortion involves threats to expose sexual images or other embarrassing evidence of sexual activity to coerce victims to provide additional pictures, sex, money, or other favors. Threats of physical harm if the victim does not comply are not uncommon in these incidents. Sextortion is also a blackmail method used for outing LGBTQ persons who want to keep their sexual orientation private. During the COVID-19 pandemic—likely because people were spending more times at home—there was a surging number of threatening e-mails alleging that the recipient had been recorded conducting personal activities while watching pornographic videos (Rash, 2020). The sender threatened to send the videos or other sensitive information to the recipient's entire contact list unless the recipient paid money using Bitcoin. Sextortion incidents can be considered a form of serious victimization, leading not only to humiliation of the victim but sometimes to suicide. In addition, persons who engage in sextortion may be charged with extortion, blackmail, bribery, cyberstalking, or child pornography if the crime involves a minor.

Many online sexual solicitors are not physically dangerous, as few (less than 5%) online solicitors are arrested for violent contact sexual offenses (Seto, Hanson, & Babchishin, 2011). However, the use of the internet specifically for the commercial sexual exploitation of children and youth is another matter. This includes such behaviors as circulating pornographic images of children or of children being assaulted. It also includes luring children for purposes of sex trafficking and offering children to others for sexual purposes—a topic to be discussed below. An estimated 570 arrests for internet-facilitated commercial sexual exploitation of children were made in the United States in 2006 (K. Mitchell, Jones, Finkelhor, & Wolak, 2011). Increasingly, offenders and traffickers are using the internet to facilitate the sexual trafficking and exploitation of children. As noted by K. Mitchell et al. (2011), "[t]he domain of technology-facilitated crimes against children has been characterized by two features: rapid

growth and changing dynamics" (p. 46). The internet is an effective and efficient medium for reaching large and diverse audiences interested in the sexual exploitation of minors.

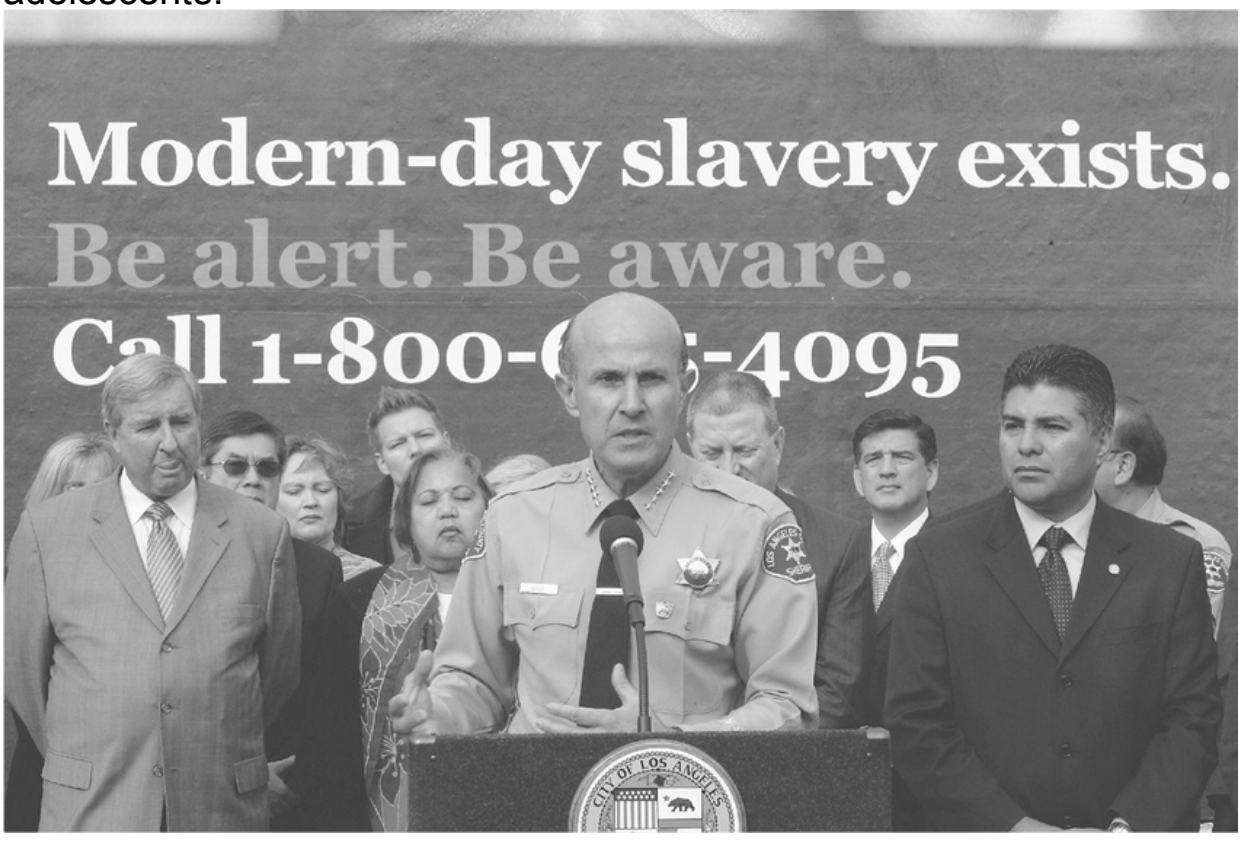
Much of the current information about the extent of internet sexual exploitation of minors has been drawn from the National Juvenile Online Victimization (N-JOV) study. The study was designed to investigate the characteristics and extent of internet-related sex crimes against minors (K. Mitchell et al., 2011). The study provides some estimation of how new technologies, including the internet and other digital media, are being used to produce, advertise, distribute, and sell materials and contact information pertaining to the use of minors for sexual purposes.

HUMAN TRAFFICKING

Human trafficking is the third leading criminal enterprise in the world and is one of the fastest growing and possibly represents the most lucrative criminal enterprise globally (Adams & Flynn, 2017; Cecchet & Thoburn, 2014; Rafferty, 2013; United Nations Office on Drugs and Crime [UNODC], 2018; Volgin, Shakespeare-Finch, & Shochet, 2019). **Human trafficking** is the economic exploitation of an individual through force, fraud, or coercion (APA, 2014c). The U.S. Department of State (2010) broadly defines it as when "one person obtains or holds another in compelled service" (p. 7). "Trafficking occurs within domestic services, agriculture and food processing, construction, hospitality and service industries, textile and garment work, health care, and the commercial sex trades, among other areas" (Hume & Sidun, 2017, p. 9). Overall, victims of human trafficking constitute one of the most traumatized and marginalized population in the United States (Ramirez et al., 2020).

"Captors psychologically enslave victims through mechanisms such as isolation, intimidation, fear, shame, and by creating a sense of hopelessness and helplessness" (Ramirez et al., 2020, p. 1). Although the term *trafficking* implies travel or movement from one location to another, victims do not have to be literally transported to be labelled victims of trafficking (Miller-Perrin & Wurtele, 2017). Trafficking is defined by exploitation rather than movement. Although law enforcement officials in many jurisdictions are beginning to pay more attention to this problem (see **Photo 10.1**) the number of trafficked victims is extremely difficult to estimate. Currently, there is no uniform system for collecting data on the victims (Miller-Perrin & Wurtele, 2017). Second, the covert nature of human trafficking often prevents identifying who is a victim and who is not, especially involving victims of sexual exploitation. Third, victims are fearful of retribution from their traffickers. Victims also tend to be highly

distrustful of authority figures such as law enforcement because they may be runaways or undocumented immigrants. Despite these drawbacks, the best estimates report that approximately 20.9 million people across the globe are victims, and many of them are children (International Labour Organization, 2017: Muraya & Fry, 2016; UNODC, 2012). In the *UNODC's Global Report on Trafficking in Persons 2012*, sexual exploitation was by far the most common form of human trafficking (79%), followed by forced labor (18%). The UNODC noted that other forms of exploitation—forced or bonded labor, domestic servitude and forced marriage, organ removal, and the exploitation of children in begging, the sex trade, and as soldiers—are underreported. Although victims (survivors) of human trafficking often suffer a life of slavery under psychologically and physically damaging living conditions, our focus in this section of the chapter is on sexual exploitation, especially pertaining to children and adolescents.



► Photo 10.1 Sheriff in Los Angeles speaking about trafficking on Human Rights Awareness Day, 2019
HECTOR MATA / Staff/Getty Image

Child and Adolescent Sex Trafficking

The most lucrative of all human trafficking is sexual exploitation, especially involving women and girls. "Unfortunately, the demand for

sex with minors is extremely high in the US" (Kenny, Helpingstine, Long, & Harrington, 2020, p. 2). Child trafficking "occurs when a person recruits, transports, transfers, harbors or receives a child less than 18 years of age for the purpose of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs" (Albright, Greenbaum, Edwards, & Tsai, 2020, p. 2). It has been reported that the age of trafficked children for sexual exploitation has been getting younger, as young as 7 to 10 years of age (B. Wilson & Butler, 2014). In addition, in the United States, children and adolescents who have been victims of commercial sexual exploitation (CSE) are predominately girls of color (Bath et al., 2020; Landers, McGrath, Johnson, Armstrong, & Dollard, 2017; Phillips, 2015). Some statistics indicate that sex trafficking victims in the United States are 53% Black/African American, 22% Hispanic, and 5% white/Caucasian (Kenny et al., 2020). Research also suggests that "histories of CSE among cisgender, heterosexual boys as well as individuals who identify as lesbian, gay, bisexual, transgender, and queer are underreported" (Bath et al., 2020, p. 2).

Child sex trafficking "is the act of recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation, regardless of the use of illicit means, either within or outside a country" (Rafferty, 2013, p. 559). Usually, the definition includes children and adolescents under the age of 18. It is roughly estimated that roughly 300,000 children and adolescents become victims of CSE in the United States each year (W. Adams, Owens, & Small, 2010; Hopper, 2017). However, "reliable estimates of incidence and prevalence are difficult to obtain given the clandestine nature of trafficking, the lack of a central database to track cases, differences in definitions and use of terms, rarity of victim disclosure, under-recognition by authorities, and differences in research sampling methods" (Albright et al., 2020, p. 2). Victims are brought in from other regions of the world, including Africa, Asia, Central and South America, and Eastern Europe. Many are also from Mexico and Canada.

Historically, youth who experienced CSE were arrested and detained on "prostitution" charges (Bath et al., 2020; Kenny et al., 2020). Some victims are also charged with illegal drug use that often accompanies sexual victimization (Kenny et al., 2020). Many traffickers use substances on the victims to ensure that they would work longer hours. More recently, "significant efforts have been made through **Safe harbor legislation** that decriminalize youth victims of CSE and divert them to specialized services" (Bath et al., 2020, p. 2).

Approximately 34 states and the District of Columbia have implemented Safe Harbor legislation as of 2020. The innovation of specialty courts for youth reflects one recent approach by U.S. juvenile justice and child welfare agencies to intervene on behalf of youth impacted by or at risk for CSE. These courts “employ a non-adversarial, non-punitive approach to connect youth to rehabilitative and therapeutic services” (Bath et al., 2020, p. 2).

Bath et al. conducted a study focused on one specialized court in Los Angeles County, California, called the Succeeding Through Achievement and Resilience (STAR) Court. The study’s findings revealed that the STAR Court was helpful in identifying the need for mental health and substance use treatment, establishing linkages and referrals to these treatment services, and stabilizing the life of those who were exposed to the unsettling life of CSE. In the future, it would appear that forensic psychologists could play a major role in the research, assessment, and psychological services aspects for these specialized courts.

Although women and girls represent a majority of the victims of CSE, a significant proportion of victims are men and boys (Raney, 2017). The vulnerability appears prevalent for runaway, homeless boys who self-identify as gay, bisexual, and transgender/transsexual (J. A. Reid, 2012). Many of these boys feel misunderstood and rejected by family, friends, and peers due to their sexual identity, and they seek other avenues outside the home for acceptance and companionship. They are often easy prey for traffickers. Of the estimated 1.7 million runaway children in the United States, about 23% are considered at risk to become sexually exploited (Hammer, Finkelhor, & Sedlak, 2002).

The commercial sexual exploitation of children (CSEC) comes primarily in two forms: child prostitution and the production and distribution of child pornography. Traffickers usually select children who appear to be the most vulnerable, largely because they are easier to control. Traffickers are not only strangers; they may be mothers, fathers, siblings, relatives, friends, and adult acquaintances. In a notorious child pornography case whose facts were recounted in a 2014 Supreme Court decision (*Paroline v. United States*), an 8-year-old girl was raped by her uncle, who videotaped the assault and circulated it on the internet. Law enforcement officials ultimately uncovered more than 35,000 images of the rape on home computers in the United States alone. The uncle was convicted, imprisoned, and ordered to pay restitution.

The Paroline case centered on a man who had downloaded the images on his computer and had served some time in prison for this

offense. The Supreme Court case focused on how much compensation he should pay the victim under the Crime Victims' Rights Act of 2004 (see **Focus 10.1**) as a result. In similar cases of individuals downloading images of the girl's rape, courts across the United States had attached various amounts, from $100 to $3,000. A federal appeals court had determined that Paroline was responsible for the total suffering the girl had experienced, which was estimated at $3.4 million. The Supreme Court disagreed and indicated that Congress should come up with some sort of formula for deciding how to assess compensation in similar instances. The reader may wonder, as did the dissenter, Justice Kagan, how such a formula could be devised. Justice Kagan would have had Paroline be responsible for the total amount.

Psychological Effects on CSEC Victims

CSEC victims (which include adolescents as well as children) often show symptoms of depression, anxiety, shame, low self-esteem, hopelessness, sleep disorders, and PTSD. In addition, they also may have physical injuries, sexually transmitted diseases, and a variety of other health concerns.

Clinical and forensic psychologists and other mental health professionals have discovered that trauma resulting from an accumulation of traumatic events such as experienced by CSEC victims often results in a more pervasive and complicated form of PTSD, called Complex PTSD (Muraya & Fry, 2016). **Complex PTSD** pertains to significant psychopathology encompassing several psychological functions including relationships, emotions, behavioral and cognitive domains (Herman, 1992; Muraya & Fry, 2016). CSEC victims during their captivity "may be gagged, stripped, kept naked, drugged, given alcohol, starved, burned, or even undergo genital mutilation" (B. Wilson & Butler, 2014, p. 497). These conditions may exist over an extended period, compounded by repeated sexual exploitation. Complex PTSD usually emerges after prolonged and repeated trauma.

CSEC victims often come from homes where they were maltreated. Some studies suggest that 85% of sexually exploited and trafficked children and adolescents may have been abused or neglected by parents or caretakers (Gragg, Petta, Bernstein, Eisen, & Quinn, 2007). In addition, the childhood households of trafficked children and adolescents are frequently characterized by parental substance abuse, domestic violence, and constant crises. In many cases, children and adolescents run away and live on the streets, a lifestyle that renders them vulnerable to trafficking and prostitution. Often runaway youth turn to "survival sex" for their daily needs, where

sexual acts are exchanged for shelter, food, and in some cases drugs (Institute of Medicine & National Research Council, 2013). In addition, “gay and transgendered youth are frequently cut off from family and peers, experience considerable stigma and isolation, and are at greater risk for being homeless, which, in turn, increases the likelihood of selling sex” (Miller-Perrin & Wurtele, 2017, p. 132).
Dire poverty is perhaps one of the dominant factors that lands children, adolescents, and adults into commercial sex exploitation. In many areas of the world, parents are forced to sell one or more of their children to traffickers so that the family can survive. It should be mentioned that women and girls in many parts of the world experience gender inequality and gender-based discrimination, and are overall devalued as persons (Miller-Perrin & Wurtele, 2017). Traffickers therefore take advantage of the devaluation of women and girls in disadvantaged communities and are willing to pay for them at low prices in their recruitment strategies.

Psychological Services

Unfortunately, research on the extent and manner in which psychological services are being delivered to victims of sexual exploitation is extremely sparse. In a recent survey conducted by the National Census of Victim Service Providers (NCVSP; Oudekerk, Warnken, & Langton, 2019), it was determined that approximately 12,200 victim service providers operated in the United States in 2017. About 45% of these VSPs were nonprofit or faith-based organizations and 43% were governmental agencies with staff or programs to service crime victims. The remainder involved hospital, medical, or emergency services (2.9%), tribal services (2.1%), and university, colleges, or education facilities (2.0%). Although the NCVSP represents the first comprehensive data collection on all victim service providers in the United States, the survey does not provide what specific type of victim services these agencies provide. Moreover, there is a paucity of research concerning the best practices to effectively address the lifetime trauma experienced by victims of commercial sexual exploitation (Rafferty, 2017; B. Wilson & Butler, 2014).
One thing is clear: Intervention starts with a comprehensive assessment of each child or adolescent victim. As asserted by McIntyre (2014), “[c]hild survivors of commercial sexual exploitation and trafficking are in need of comprehensive assessment as a critical first step in providing assistance post-exploitation” (p. 39). Children who have been sexually exploited in this way may be unwilling, reluctant, or unable to tell who they are, where they came from, and what happened to them in the early stages of post-exploitation

experiences (McIntyre, 2014). The comprehensive assessment process should capture two domains of the victim's life: (1) the trafficking experience and (2) the cultural, social, and family environment from which they came.

According to McIntyre (2014), the assessment of the trafficking experience should develop into four stages that determine the following: (1) the victim's vulnerabilities before recruitment; (2) the methods and strategies used in the victim's recruitment; (3) the trafficking process, including the travel, transportation, and transfer of the child or adolescent to the intended location of exploitation (brothel, club, pub, hotel, private home); and (4) the intended category of exploitation. The social and personal environment evaluation should include a narrative of the victim's views and perceptions of self (including strengths and weaknesses), and a social history about the family, culture, and community of origin. McIntyre believes that the child's discovery of, and ability to increase, personal strengths and resources will help the victim thrive in recovery and safeguard against future threats.

Once again, psychologists and other mental health professionals should be able to provide culturally relevant services (Rafferty, 2017). This is crucial in the assessment of CSEC survivors, who often come from developing countries. Psychologists must be culturally knowledgeable and sensitive to the beliefs and values that exist in the communities from which these survivors came. Rafferty emphasizes that Western-based assessment procedures and therapeutic approaches are not always compatible or effective for dealing with the needs of victims from developing countries. For example, some cultures disapprove of receiving assistance for emotional problems and shame those who do. Spirituality is another strong component for resolving problems in many cultures and communities. When working with CSEC victims, Rafferty suggests nonverbal activities, such as art therapy, music, dance movement therapy, yoga, and drama participation.

The APA Task Force (APA, 2014c), Rafferty (2017), and M. Crawford (2017) have outlined or identified a number of ways mental health practitioners can help commercially sex trafficked victims. (See **Focus 10.4** for a list of examples.) A number of other researchers have been active in uncovering the needs of survivors of CSEC (e.g., Salisbury, Dabney, & Russell, 2015). Furthermore, because CSEC is not easily detected, there are calls for uncovering this form of victimization in children and adolescents who are reticent about revealing what has happened to them. Adolescents in particular are often arrested for minor offenses, such as theft, burglary, or drug

possession. According to Andretta, Woodland, Watkins, and Barnes (2016), “[t]he availability of a brief, objective, and nonintrusive screener for the purpose of generating likelihood of CSEC victimization is sorely needed in cities where thousands of youth are arrested per year” (p. 266).

Focus 10.4

Preventing Human Trafficking, Helping Survivors

Many researchers, advocates, and mental health professionals are concerned about the extent of commercial sex trafficking in the United States, as well as globally. As noted in the text, an APA task force has issued recommendations to combat this problem and help survivors. APA members have also testified before Congress when it considered legislation such as the Runaway and Homeless Youth and Trafficking Prevention Act. In that testimony, psychologists emphasized that human trafficking is extremely difficult to measure because of the lack of a centralized database, the diversity of situations, and difficulty obtaining information from the victims. They also emphasized the severe physical and mental health consequences experienced by the victims but emphasized as well that they can and do heal.

Here are some of the recommendations directed specifically to psychologists. They are encouraged to do the following:

- Develop and validate psychological measures for the assessment of the mental health and psychological needs of the victims.
- Provide career counseling and psychotherapy in line with the cultures and abilities of the survivors.
- Contribute toward the prevention of human trafficking through community involvement, teaching, and informing the general public.
- Design, conduct, analyze, and publish investigations related to human trafficking.
- Work with law enforcement agencies on investigations of human trafficking as well as help in the prosecution of traffickers. (This recommendation is especially directed at forensic psychologists who consult with law enforcement, serve as trial consultants, or testify in court.)
- Provide culturally sensitive assessments of sexually exploited trafficked survivors.
- Provide services to juvenile justice agencies in identifying juveniles who have been victims of sexually exploited trafficking

and refer the victims to the proper social and psychological services.

QUESTIONS FOR DISCUSSION

1. Survivors can and do heal. Discuss how such healing is most likely to occur.
2. Do you agree that all arrested juveniles should be screened for evidence of sexual exploitation? What about all homeless or runaway children?
3. The Runaway and Homeless Youth and Trafficking Prevention Act referred to earlier modified an earlier law by, among other things, extending shelter services to 30 days and allowing shelters to provide trauma-informed and gender-responsive services for youth. What other services should be offered to runaway, homeless, and/or sexually exploited children and adolescents?

Mental health professionals should advocate for changes in policies and legislation to increase and improve services, especially for vulnerable trafficked groups, such as male survivors, LGBTQ persons, and migrants (Albright et al., 2020). Foreign-national trafficked persons experience additional challenges, such as stigmatization associated with ethnicity and nationality and language barriers.

SUMMARY AND CONCLUSIONS

Forensic psychologists and other mental health practitioners will be increasingly employed as consultants, instructors, expert witnesses, evaluators, therapists, and service providers to victim service organizations in the coming years. In this chapter, we explored some of the many areas in which their services will be most needed in the very near future and emphasized the need for a deep appreciation for multiculturalism and diverse cultural norms and values. The knowledgeable forensic psychologist will also be capable of working with many victims with disabilities, a group that represents a very large, diverse, but underserved population in American society.

We reviewed some highlights of victims' rights, with an emphasis on victims who must deal with the criminal justice system. In addition to a federal law guaranteeing rights to crime victims, all states and some additional jurisdictions make some provisions for addressing the rights of victims. Nevertheless, programs and providers often are not funded sufficiently, and court interpretations of the statutes vary. Crime victimization data were covered briefly, focusing on some of the racial and ethnic-minority differences reported in the available victimization statistics. The psychological effects of criminal

victimization, particularly violent victimization, were described in some detail. PTSD appears to be the most common psychological reaction to crime of all kinds, although the reactions are usually most intense and long lasting after a violent incident. The *co-victims* of homicide incidents, especially when the dead victim is a family member, are particularly devastated and in many cases may never fully recover. Sexual assault also represents a highly traumatic event that is often followed by a wide range of psychological reactions and disorders, especially PTSD. Child sexual abuse is not only common, but also has long-lasting psychological damage for many of its victims. However, the chapter also emphasized that victims respond to trauma and disaster differently, with some coping extremely well while others struggle. Consequently, the existence of "textbook syndromes" as a direct result of victimization should be viewed cautiously and with the expectation that many—perhaps most—victims do not exhibit a set pattern of symptoms.

Many children today are victims of sexual crimes, including the production and distribution of child pornography, luring on the internet, and child sex trafficking. The psychological effects of these victimizations cannot be overestimated, but effects are individual. Psychologists often must assess the impact and submit reports in both criminal and civil cases. The child sexual abuse accommodation syndrome, proposed in the 1980s, has not been sufficiently documented and has questionable validity. Some mental health examiners have found evidence of PTSD in exploited children, but this is not necessarily universal. Negative psychological consequences are invariably documented, however, just as they are in other forms of sexual crimes against children.

The forensic interviewing of children has become a heavily addressed topic in professional literature. Such interviewing can occur in many contexts, but here it was discussed mainly in reference to children who were believed to be victims of sexual abuse. Particularly over the past decade, protocols have been adopted, which offer guidelines for such interviewing. However, forensic interviewing of this nature requires highly skilled and competent professionals who have training and experience.

Human trafficking, including commercial sexual exploitation, is of major concern. Victims of this crime suffer long-term, often lifetime effects. They often cannot reveal their victimization, and they are sometimes arrested for sex offenses, such as prostitution. In some communities, particularly large urban areas, specialized courts or court dockets are maintained to divert such victims from criminal court processing and into human services. Research indicates that

the psychological effects that accompany being a victim of sexual exploitation include but are not limited to PTSD, depression, and suicidality.
The chapter focused on serious, predominantly violent crime, but it is important to know that property crimes such as burglary and identity theft take a toll on their victims. Because there is scant research in this area, we have alluded to it only briefly here. Research on the effects of white-collar crime victimization is needed as well. All crimes engender psychological effects and leave emotional scars on their victims. Therefore, an area worth exploring for those forensic psychologists interested in doing research would be the psychological effects of these understudied but very common offenses.

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QUESTIONS FOR REVIEW

1. What is monocultural psychology, and what challenges does it present to forensic psychologists?
2. Are persons with disabilities more likely to be victims of crime? Explain your answer.
3. What are the two venues in which victims of crime may seek recourse?
4. List and describe any five rights granted to victims as a result of the Crime Victims' Rights Act of 2004.
5. What type of information about victimization is available from the NCVS?

6. List some of the common psychological effects of crime on its victims.
7. What role do forensic psychologists play in dealing with the co-victims of criminal homicide?
8. What role do forensic psychologists play in dealing with adult victims of sexual assault?
9. What role do forensic psychologists play in dealing with victims of child sexual abuse?
10. Describe Summit's child sexual abuse accommodation syndrome and state the controversy associated with it.

Descriptions of Images and Figures

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The horizontal axis is labeled, Age of victim and ranges from 0 to 60, in increments of 5. The vertical axis is labeled, Rate per 1,000 victims, and ranges from 0 to 70, in increments of 10. The approximate data from the graphs are tabulated as follows.

CHAPTER ELEVEN FAMILY VIOLENCE AND CHILD VICTIMIZATION

CHAPTER OBJECTIVES

- Review the various issues around family violence and its psychological consequences.
- Describe intimate partner violence.
- Describe forensic assessment of violence in the family and between intimate partners, including assessment instruments used.
- Review research on child abuse and its psychological consequences.
- Emphasize the strengths and limitations of human memory in reporting victimization and crime.
- Examine child abduction and its psychological effects.
- Introduce elder abuse and neglect, and review its devastating effects.

The wall between the two apartments was thin, and Brenda often heard shouting and cursing coming from next door. The day after she heard banging noises, she knocked on her neighbor's door, saw her bruises, and urged her to contact a woman's shelter, which had a mental health consultant on its staff.

School officials were concerned when Eric, always a sullen child, arrived at school one morning with scrapes on his face. In the nurse's office, it was learned that he also had a sprained wrist. An on-site school psychologist spoke with Eric, determined he was being abused at home, and called Child Protective Services.

Forensic psychologists and other clinicians working within forensic settings frequently encounter both perpetrators and victims of violence in families and between intimate acquaintances. The tasks they perform include doing assessments, consulting with legal authorities and social service providers, and testifying in courts. For example, as noted in Chapter 6, psychologists conducting child custody evaluations are advised to consider whether there is violence in the home as well as the effects of that violence on parents and children. However, in their final report, they should not conclude that violence did in fact occur. Forensic psychologists working as consultants to law enforcement may conduct workshops on preventing and responding to family violence.

Family violence in all its manifestations is found at all socioeconomic levels and spares no age, race, religion, or ethnic group. This chapter begins with a discussion of the violence directed at spouses or other intimate partners, then moves to child abuse and the more serious or unusual physical forms of abuse, including infanticide, medical child abuse, and abusive head trauma. Repressed and recovered memory is covered in some detail because this topic has received

considerable attention in research and clinical literature and because it sometimes plays a significant role in the courtroom concerning various kinds of child abuse and other traumatic experiences. It continues to be one of the most controversial topics in clinical and forensic psychology today. Child and adolescent abduction—though rare—is presented as a special area that has not received the professional attention it deserves.The chapter ends with another topic that is often overlooked, abuse and neglect of older adults. There is a rapidly growing demand for forensic geropsychologists, and we provide some of the career opportunities in that expanding discipline.

INTIMATE PARTNER AND FAMILY VIOLENCE

The broad term **Family violence** (also known as domestic or intrafamilial violence) refers to any assault, including sexual assault, or other crime that results in the personal injury or death of one or more family or household member(s) by another who is or was residing in the same dwelling. It often occurs in intimate relationships, such as between current or former spouses or partners. As such, it is more likely to be called *intimate partner violence (IPV)*, a term that also encompasses violence in a relationship where the two individuals may not be living together (or have lived together but are now living apart).

IPV is a worldwide problem. “Many global and United States health organizations, including the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC), define IPV as including acts of physical, sexual, and psychological violence that occur within formal and informal partnerships” (Rowe & Jouriles, 2019, p. 399). In a comprehensive study conducted by the CDC, researchers discovered that 24% of women and 14% of men had experienced severe physical violence from an intimate partner during their lifetimes (Breiding, Chen, & Black, 2014). In another study, approximately 30% of women worldwide indicated they had experienced physical or sexual IPV during their lifetimes (Devries et al., 2013; Rowe & Jouriles, 2019).

Table 11.1

Source: FBI (2019a).

* *Note:* When neither spouse is listed as a victim, other family members, such as children, siblings, or other relatives, were the victims.

Approximately 13% of all homicides in the United States involve one family member killing another family member (Federal Bureau of Investigation [FBI], 2019a). Nearly one third of the victims of family homicides were wives slain by a husband or ex-husband, usually during an argument (see **Table 11.1**; FBI, 2019a). The table also shows other circumstances that have led to spousal-victim homicides. Approximately 1 in 4 American, British, and Australian women report experiencing a physical assault by an intimate partner at some point in their lives (Bedi & Goddard, 2007; Perez, Johnson, & Wright, 2012). Forty percent reported being injured enough to require medical attention (although they did not necessarily seek it) during their most recent assault (Perez et al., 2012).

Whether referred to as domestic, family, intrafamilial, or intimate partner violence, it is found across all ethnic and racial groups and all socioeconomic classes. It occurs against people of all ages, cultures, and living conditions. However, research indicates that violence directed at women is more likely to occur in homes characterized by poverty, communities with few resources, socially isolated families, and subcultures where there is greater acceptance of gender inequities (L. E. Walker, 1999). In recent years, it has become apparent that women's improving economic contributions are not only important resources for a family's financial well-being but also are likely to result in a decline in family violence (Powers & Kaukinen, 2012). Some data have supported this hypothesis for brief periods, but latest reports show an increase in homicides (FBI, 2019a). Despite ebbs and flows, violence in the home and between intimate partners continues to occur at all socioeconomic levels and is a major social problem, perhaps most particularly during times of crisis. (See **Focus 11.1**)

It should be emphasized that both men and women perpetrate domestic or intimate partner violence, and some studies suggest that there is little difference in aggression between the sexes in this regard (e.g., Archer, 2002; Straus & Gelles, 1990). As pointed out by Menard, Anderson, and Godboldt (2009), however, these studies often are based on large community samples that self-report aggression using such measures as the Conflict Tactics Scales (CTS), to be discussed later. Self-reported aggression in this context includes situations in which a couple may have a physical altercation that does not necessarily result in calling police and that does not represent a pattern of continuing or escalating violence (M. P. Johnson, 2006). By contrast, official data such as the National Crime Victimization Survey (NCVS), records from shelters, and studies by

other researchers indicate that IPV *that is persistent and escalating* is perpetrated chiefly by men against women.

Although *domestic violence (DV)* has been the term used in the past to define a pattern of behaviors used by one partner to establish and maintain power and control over the other, *intimate partner violence*, or *IPV*, is the term that is increasingly used in its place (Daire, Carlson, Barden, & Jacobson, 2014). IPV has emerged as a term to describe various types of relationship violence. Daire et al. (2014) write, “IPV encompasses the traditional power and control violence described by the term DV but also includes relationship violence that does not stem from one partner’s attempt to control his or her partner” (p. 170). Although IPV and DV continue to be used interchangeably in the literature, Daire et al. view IPV to be a more inclusive term and one that reflects current trends in the research literature.

Focus 11.1

Violence During a Health Crisis

Domestic violence (DV) and intimate-partner violence (IPV) are of major concern, both nationally and globally. Professionals in many disciplines emphasize that this violence occurs across all socioeconomic levels, all races and ethnicities, and all adult age groups. Researchers are now bringing attention to increases in this violence that occur in the midst of both natural disasters—such as earthquakes, hurricanes, and floods—and in the midst of health care crises, such as the COVID-19 pandemic of 2020.

The pandemic was accompanied by extreme and unexpected stress in many ways. Workers were furloughed or terminated because their places of employment were shuttered, if temporarily. Schools were closed, and people were advised—sometimes required—to remain at home as much as possible for their safety and the safety of the general public. This meant that families, intimate partners, and acquaintances were housed in, sometimes in large numbers and in close quarters. In many communities, law enforcement officers reported increased domestic violence calls and victim hotlines and shelters reported increased calls for service. On the other hand, there was also reduction in such calls. Does this indicate there was less, not more, violence? Highly unlikely. As Kofman and Garfin (2020) note, “both [findings] tell an unsettling story.”

Several scholars published articles both to bring attention to this problem and to suggest steps to take to increase safety of victims (e.g., Jarnecke & Flanagan, 2020; Kofman & Garfin, 2020). The steps they suggested included volunteer efforts and donations to

shelters as well as public funds to provide housing for women and children whose safety was in jeopardy. In addition, they noted that social media, including apps specifically intended for reporting abuse, should be encouraged. Even paper flyers providing information on available resources might be circulated.

Dealing with the psychological aftereffects of the pandemic, as they specifically affect victims of DV or IPV will challenge mental health providers as well. “Long-term, the pandemic may serve as a critical inflection point for implementing planning and preparedness guidelines to protect DV victims and survivors in the face of the ongoing threat of COVID-19 and the inevitability of future disasters” (Kofman & Garfin, 2020).

QUESTIONS FOR DISCUSSION

1. What is meant by the comment that both more and fewer calls to law enforcement and hotlines tell an unsettling story?
2. Why might increase in domestic violence occur during natural disasters?
3. A few suggestions to help DV and IPV victims during the pandemic are mentioned in this box. What additional suggestions would you offer, both in the short term and for long-term planning?

Despite changes in relationship trends in recent years, there appear to be different *motivations* for the violence used by men and women (Menard et al., 2009, citing the research in this area). The motivations for IPV—as they are for all forms of human violence—are highly variable, but the overriding motive of male offenders who abuse women is believed to be to establish or maintain power and control over them. Even so, we cannot assume that this is characteristic of all male-perpetrated violence within the home (J. B. Kelly & Johnson, 2008). When women use violence against their partners in domestic situations, it is most often for self-defense, in anticipation of violence, or in retaliation for violence perpetrated against them (Meuer, Seymour, & Wallace, 2002). Many male abusers are serial abusers. That is, if they leave or are left by one partner they have been abusing, they quickly become involved with another partner whom they soon abuse. Furthermore, this cycle or pattern of abuse is not easily broken, as we shall see.

The Typical Development of an IPV Relationship Based on Power and Control

Over two decades ago, Meuer et al. (2002) outlined the typical sequence that characterizes the pattern of such violence, which they

refer to broadly as domestic violence. Again, in light of recent findings, it is important to stress that the typical sequence outlined below specifically describes the type of relationship in which one partner seeks excessive control and power over the other.

Meuer et al. (2002) identify nine stages of domestic violence or IPV. It should be noted that we use binary-sex pronouns (he and she) in the descriptions that follow because cisgender, heterosexual relationships are the most common in society. We also refer to the abuser as male because that is the most typical for these abusive relationships. However, IPV also occurs in same-sex relationships, a topic we will return to in the pages ahead.

The *first stage* of such relationships identified by Meuer et al. (2002) seems wonderful and intense, with the husband or partner taking an active interest in everything his spouse or partner does and everywhere she goes. He wants to be with her all the time, flatters her, confides in her, and proclaims he wants to spend the rest of his life with her. Meuer et al. observe that many victims mistake these obsessive and controlling behaviors as devotion, rather than recognizing them as red flags that may lead to an abusive relationship. *Stage 2* emerges when he begins to insist on knowing her whereabouts at all times, begins making decisions for her, and demands her loyalty to the relationship. He indicates he is in charge, will make the rules, and expects her to follow them and attend to his needs. During this stage, he also may begin to blame a former spouse or partner for the problems in a previous relationship, saying —for example—that that person had him arrested without cause or unjustifiably obtained a restraining order against him. During *Stage 3*, the woman becomes adjusted to the attention, jealousies, and control he displays. She makes a commitment to him—usually under his pressure—and convinces herself that she is happy to be with someone who cares so much for her. *Stage 4* is characterized by the beginning of excessive control through psychological and emotional abuse. He begins to demand control over things dealing with all phases of her life, including clothing, hairstyles, and how she should act. He becomes angry if she deviates from his requests. His actions communicate that she is unattractive or that her appearance is somehow faulty.

Stage 5 is characterized by the first incident of physical abuse. The victim will probably view the response as an aberration that is unlikely to occur again. The abuser says he is sorry and that it will never happen again. She accepts his apology and explanation and may wonder what she did to prompt his behavior. In *Stage 6*, the psychological and physical abuse occurs again. The victim will ask

the abuser why he is repeating such behavior, and he will, in turn, blame the victim for prompting his abusive behavior by not meeting his expectations. He makes it clear that she is responsible for setting him off and that it will not happen again if she changes her ways. The victim at this stage begins to internalize the blame more completely. *Stage 7* occurs roughly simultaneously with Stage 6. Meuer et al. (2002) refer to this stage as the beginning of the isolation process. The abuser wants to know who she spends time with and either asks her to not see them again or forbids her to do so. He further makes it difficult for her to see anyone and gets excessively suspicious if she has a good time with anyone but him. Eventually, she stops seeing people of whom he disapproves, and she becomes increasingly isolated.

As the relationship continues, she experiences considerable emotional conflict and confusion. This phase represents *Stage 8*. The abuser blames the victim, and the victim is confused about what is wrong. In *Stage 9*, the abuser increases his use of psychological threats and physical force to gain and maintain control and dominance. If she confronts him or threatens to leave him, he escalates his use of threats and force. The victim may eventually conclude that it is safer to stay in the relationship than to leave. She may feel she cannot make it on her own for a variety of reasons. During the later stages, the abusive behavior is usually followed by promises that he will never do it again. As noted by Meuer and her colleagues (2002), most IPV victims repeatedly attempt to leave the relationship but return when they believe they cannot overcome the obstacles of getting away from the abuser.

According to these researchers, leaving the relationship is not always the best approach and may increase the potential danger to the victim. Other research has found that the most potentially lethal time for victims of abuse is immediately after leaving the relationship (J. Campbell, Glass, Sharps, Laughton, & Bloom, 2007). In addition, there is evidence that victims who try to leave are often stalked, harassed, and threatened on an ongoing basis. The stalking may occur even when a divorce is filed or granted. It was originally believed that if a woman who was abused could be persuaded to leave the abusive relationship, the violence would stop, but “many batterers continue to harass, stalk, and harm the woman long after she has left him, sometimes resulting in someone’s death” (L. E. Walker, 1999, p. 25). In many cases, most of the reported injuries from domestic violence occur *after* the separation of the couple. Evidence also suggests that women who leave their abusers are at a

75% greater risk of being killed by them than those who stay (Wilson & Daly, 1993).

The preceding perspective—that leaving may not be the best thing—is strongly resisted by advocates of victims of IPV, who maintain that getting out of the relationship is still precisely what victims must do. For the person being abused, it seems to be a no-win situation: "If I stay, this will get worse; if I leave, he will come after me." In addition, society itself places obstacles in the victim's path. For example, economic options are limited, and deeply entrenched cultural norms hold the victim responsible for dealing with the violence against herself (Dobash & Dobash, 2000). Also, community support is too often unavailable. If shelters, support groups, and a supportive law enforcement response were *consistently* present, the chances for successfully escaping an abusive situation would increase. In general, advocates maintain, the risk of staying is much greater than the risk of leaving. This is a complex issue and one not clearly resolved by the empirical data. However, it is probably fair to say that most practicing psychologists working with victims of abuse would be supportive of their efforts to leave but would also help them to identify the resources necessary to enable them to do that.

It is also a reality that—for a multitude of economic and psychological reasons—some women who are abused often return to their abusers, sometimes over and over (M. E. Bell, Goodman, & Dutton, 2007; Eckstein, 2011; Silke, 2012). Explanations for this phenomenon have been numerous and varied: a lack of financial resources, blaming oneself for the violence, believing the children need a father, pressure from family members, inadequacy of temporary shelters, and a strong emotional attachment to the abuser.

Psychological Characteristics of Batterers

Battering is a term often reserved for *physical violence* experienced in intimate relationships, such as in a dating relationship, marriage or partnership, or separation and divorce. Some researchers use the term *battering* to represent the more serious and frequent abuse, including the more severe psychological abuse. Men who batter often deny or minimize their use of violence, or they blame it on others. In fact, the shoving, kicking, striking, choking, hitting, or punching inflicted on the victim is often not seen by the batterer as abuse (Meuer et al., 2002). Rather, he justifies his behavior as being provoked by, triggered by, or in response to something done by the victim. In other words, he perceives his behavior as a natural and understandable reaction to frustration. Again, however, we must emphasize that this refers to the relationship in which the violence is

perpetrated to exert power and control over the victim. It may not be characteristic of all relationships in which IPV occurs.

A strong predictor of whether a man will abuse his spouse or partner appears to be whether he has experienced or witnessed violence in his own family while growing up (Meuer et al., 2002). Violence is learned behavior that is often passed down from one generation to the next (Eron, Gentry, & Schlegel, 1994; L. E. Walker, 1999). Not all men from abusive or violent homes become abusers themselves, of course. Those who do, compared to those who do not, are less capable of attachment to others; are more impulsive; are more lacking in social skills; and possess different attitudes toward women, the masculine role in the family, and violence. Some research has also indicated that many batterers have serious mental disorders in addition to their problems with power and control over women that encourage their use of violence (D. Dutton & Golant, 1995; L. E. Walker, 1999). It appears, therefore, that treatment programs that focus on both the batterer's emotional problems and his misguided beliefs and values may help in the amelioration of IPV for those abusers who show signs of psychopathology.

Similar to other offenders discussed in earlier chapters (e.g., rapists, stalkers), batterers also have been studied for purposes of developing typologies or batterer types. Sometimes these typologies are incorporated into "profiles" of abusers. A well-validated typology or profile would allow a systematic examination of how and why different men use violence against their wives and partners, as well as help design effective prevention and treatment strategies for dealing with them. Interestingly, though, typologies may also be used in surprising ways, particularly in court settings. For example, in a recent case in which a woman was accused of killing her abusive partner, a forensic psychologist testified for the prosecution that, despite substantial evidence introduced by the defense, the man did not match the profile of an abuser (R. Snyder, 2019).

Although we have urged caution with respect to typologies, it is worthwhile to highlight some to provide illustrations. After a thorough review of the research literature on batterers in domestic situations, Holtzworth-Munroe and Stuart (1994) were able to identify three types of male batterers that emerge with consistency in a variety of studies:

(1) family only, (2) dysphoric/borderline, and (3) generally violent/antisocial. The typology is based on the severity and frequency of the violence, the generality of the violence (only within the family or outside the family), and the amount of emotional or mental dysfunction exhibited by the batterer.

Family-only batterers are typically not violent outside the family and engage in the least amount of severity and frequency of violence. Their violence tends to be periodic, primarily when stress and frustration reach a peak, and they do not demonstrate discernible indications of severe mental disorders or psychopathology. In addition, they are least likely to have previous arrest records and alcohol problems and are most likely to apologize after the violence. Their major problems are being inappropriately assertive in their relationships and their tendency to misinterpret social cues. Consequently, they have resorted to violence rather than appropriate nonviolent means to resolve conflicts with their partners. This group is estimated to constitute about 50% of the known batterers (Holtzworth-Munroe & Stuart, 1994).

Dysphoric/borderline batterers exhibit mental disorders and are psychologically disturbed and emotionally volatile. These individuals often engage in moderate to severe spousal abuse, including psychological and sexual abuse. Although this group's violence is mainly confined to the family, they may also exhibit some extrafamilial violence. Their anger is generalized and explosive in nature and is apt to be displayed anytime they become frustrated. The disturbed batterer also tends to have serious alcohol and drug abuse problems. It is estimated that this group comprises about 25% of the known batterers.

Generally violent/antisocial batterers are more likely to use weapons and more prone to inflict severe injury on wives, partners, and other family members, in addition to engaging in extrafamilial violence. They also are more likely to have an extensive history of contacts with police, including arrests and convictions. Generally violent batterers tend to be highly impulsive and explosive. Moreover, they exhibit serious problems with alcohol and drug abuse, and many show characteristics of psychopathy. Overall, they probably make up about 25% of the batterer group (Holtzworth-Munroe & Stuart, 1994).

Mental health professionals have made some progress in the treatment of batterers, both with programs in the community and in prison settings. However, researchers have not yet concluded that any specific approach to treating batterers is significantly more effective than others, assuming equivalent training of the providers and a comprehensive treatment strategy (American Psychological Association [APA], 2003b). Most treatment programs include some form of cognitive-behavioral psychotherapy, although the specifics vary with the types of abuse for which the offender is being treated. Waltz, Babcock, Jacobson, and Gottman (2000) suggest that generally violent batterers and disturbed batterers are unlikely to

benefit from short-term treatments focusing on anger management. According to Waltz et al., these approaches often assume—incorrectly—that the acquisition of anger control and attitude change are sufficient. However, a variety of broader, more complex issues may interfere with short-term treatment approaches. Long-term treatment strategies that concentrate on cognitive-behavioral and psychopathological issues are more likely to be effective. How effective these strategies are for psychopaths who are batterers remains an unfinished story, however. We simply do not have enough empirical data to know what works with this troubling group.

For family-only batterers, treatments that focus on violence, abusive behavior, and relationship problems are likely to be successful because they appear to be more sensitive and empathic to the needs of others. One thing is clear, however. The form of treatment used by mental health professionals must address the offender's use of dominance and control, as well as the attitudes and cognitions that underlie his acts of violence.

Dropping out of treatment programs is a common problem that many clinicians face with their clients. Research has found that batterers who complete their treatment programs are less likely to recidivate (Cattaneo & Goodman, 2005). Interestingly, the source of referral to treatment as well as supervision appear to have some effect on the completion of treatment; that is, batterers who are referred by courts—rather than enrolling in a program voluntarily—and who are supervised while attending the programs are more likely to complete their treatment (S. J. Barber & Wright, 2010). It seems clear, then, that efforts should be made on three fronts: mandate treatment, encourage retention in treatment, and supervise offenders to make it less likely that they will drop out of the program.

Battered Woman Syndrome

***Battered woman syndrome* (BWS)** is a term first used by psychologist L. E. (Lenore) Walker (1979), who identified the syndrome based on a volunteer sample of abused middleclass women. In her clinical practice, Walker observed a cluster of behavioral, cognitive, and emotional features that she believes are frequently found in women who have been physically and psychologically abused *over a period of time* by their partners. She later documented BWS more fully on the basis of extended interviews with 435 abused women of various socioeconomic groups (L. E. Walker, 1984). The core features she identified include feelings of learned helplessness (Seligman, 1975), the development of survival rather than escape skills (e.g., appeasing the batterer rather than planning to leave), low self-esteem, and feelings of depression.

Later, Walker (2009) began to view BWS as a form of post-traumatic stress disorder. In recent years, she has developed and modified the Battered Woman Syndrome Questionnaire (BWSQ).

In her earliest and still often-cited work, Lenore Walker (1984) contended that battering relationships generally follow a three-stage cycle of violence: (1) the tension-building phase, (2) the acute battering incident phase, and (3) the honeymoon or contrition phase. The cycle has similarities to the nine-stage sequence later proposed by Meuer et al. (2002) and discussed earlier. During the tension-building phase, there may be minor physical, emotional, or verbal abuse, and the victim often tries to placate her abuser but with only limited success. This initial phase is followed by a second one that is characterized by an escalation of serious physical violence and the inability of the woman to placate the batterer at all, no matter what she does. This acute battering phase is followed by the "honeymoon stage" (also referred to as the "loving and contrition stage"), in which the batterer expresses his regret for the assaultive behavior and vows to change his ways. He may send her flowers, give her gifts, and pay a great deal of attention to her. At some point, however, he communicates to her that the violent incident was her fault. Soon, the violence cycle is repeated.

According to L. E. Walker (1979), a woman qualifies for BWS when she has experienced the complete cycle at least *twice*. L. E. Walker (1989) further suggested that the third stage of the cycle often disappears as the relationship continues to deteriorate over time and the violence increases. She argued that, over time, the tension-building phase becomes more common, whereas the contrition phase eventually drops out of the cycle completely. Unless some effective intervention takes place, when Stage 3 disappears, many abused women are in grave danger of becoming homicide victims.

Although Lenore Walker admitted that not all abused women report many of the features she described, other researchers challenged her general propositions on BWS (Levesque, 2001) and its scientific validity (see McMahon, 1999). Some observed that syndrome evidence in general—including battered women syndrome—is ripe for challenge in the courtroom because its scientific underpinning is questionable (Petrila, 2009). Levesque (2001) argued that one of the real dangers of indiscriminately applying the BWS label to all abused women is that it may mistakenly lead the public, lawmakers, and the courts to perceive women's positions in violent relationships to be essentially identical. As Levesque points out, cross-cultural analysis indicates that the abusive relationship dynamics found in U.S. studies on mainstream culture may not apply to other societies, cultures, or

even subcultures within the United States: “Thus, different groups may experience maltreatment events differently, which may exacerbate the difficulties others face in situations that happen to garner the same label” (p. 51).

The term *BWS* also portrays a stereotypical image of abused women as helpless, passive, or psychologically impaired, and the relationship is seen as matching a single, stereotypical pattern of all domestic violence cases (M. A. Dutton, 1996). In contrast to the expected stereotypical pattern of depression, helplessness, and passivity, many abused women demonstrate a wide range of behavioral patterns and emotions that often reflect survival skills and effective adaptations to a serious, life-threatening situation. Unfortunately, the BWS label undermines the enormous coping skills and psychological strength of many—if not most—abused women across a broad spectrum of cultural and social circumstances.

Evan Stark (2002) strongly recommends that psychologists and other mental health practitioners, when preparing forensic assessments and legal testimony for the courts, emphasize the *process* of unique coercive control used by some batterers, rather than focusing strictly on the generalized psychological trauma assumed to be experienced by all women who have been abused. Stark argues that stressing the systematic use of the abuse, coercion, and control in a *particular* relationship and the harms associated with this complete domination is a more meaningful approach than simply trying to identify the psychological damage done to the victim. Many victims, he notes, do not exhibit clearly discernible clusters of psychological maladjustment, depression, and helplessness outlined in much of the literature, even though they may have been subjected to incredible amounts of coercion, domination, and abuse during a lengthy relationship. Furthermore, Stark concludes from the extant research that most abused women experience neither the cycle of violence nor learned helplessness. Some experience a range of psychological and behavior problems that fall outside the purview of BWS, whereas others demonstrate virtually no mental health problems at all. Stark also cautions about a common misconception that the severity of domestic violence can be measured by those physical injuries and emotional disturbances that come to the attention of the police and medical personnel. These groups do not learn about the tyrannical control and low-level violence that, when administered chronically and over an extended period, severely affect the victim’s quality of life. Nevertheless, the behaviors may not follow an identifiable syndrome.

Same-Sex IPV

Researchers in recent years have given considerable attention to the issue of IPV between members of the same sex. As a general proposition, virtually all of the literature reviewed above applies in this context as well. For example, Potoczniak, Mourot, Crosbie-Burnett, and Potoczniak (2003) find some striking similarities in the research literature in the violence cycle and stages of abuse between same-sex IPV (SS-IPV) and opposite-sex IPV (OS-IPV). Similar to OS-IPV perpetrators, SS-IPV perpetrators blame their partners, are extremely controlling, and are highly self-focused. SS-IPV victims also often follow many of the same characteristics described for OS-IPV victims (Hellemans, Loeys, Buysse, Dewaele, & DeSmet, 2015; Messinger, 2011). The major difference between OS-IPV and SS-IPV incidents appears to be how the community, police, medical personnel, and available social service programs (e.g., women's shelters) respond to the victims.

Turrell (2000) investigated same-sex domestic violence among lesbians, gay women, and gay men (female participants were allowed to choose between the labels *lesbian* and *gay woman*). Turrell discovered a sexual abuse prevalence rate of 13% for gay men, 11% for gay women, and 14% for lesbians in a past or present relationship. Of those who reported sexual abuse, other physical abuse was also common. Specifically, 44% of abused gay men in Turrell's sample, 58% of abused gay women, and 55% of abused lesbians reported being physically harmed in a past or present same-sex relationship.

Research also suggests that female victims of same-sex IPV find help at different places from those of the female victims of opposite-sex IPV. For example, OS-IPV victims find domestic violence shelters more helpful than many other resources, whereas female victims of SS-IPV reported these same shelters to be the *least* helpful (Potoczniak et al., 2003; Renzetti, 1992). Furthermore, SS-IPV female victims most often find friends to be the most helpful resources, followed by counselors and relatives. It is no surprise that SS-IPV female victims report that the police, attorneys, and medical professionals are generally *not* helpful. Interestingly, one of the very few studies that examined the help-seeking behaviors of gay male victims of SS-IPV (Merrill & Wolfe, 2000) found that many male victims not only sought help from friends and counselors, but also found gay domestic violence programs very helpful (Potoczniak et al., 2003).

The preceding research was conducted at a time when the LGBTQ community had achieved little recognition or social justice. Today, with

far greater acceptance of sexual orientation and gender identity, findings like those mentioned earlier would likely be very different.

Mental Health Needs of Children Exposed to IPV

Research on the effects of IPV on children began in the early 1980s and has experienced a rapid growth since that time (Goddard & Bedi, 2010). Exposure to intimate partner violence occurs when children "see, hear, are directly involved in, or experience the aftermath of violence between their caretakers" (Olaya, Ezpeleta, de la Osa, Granero, & Doménech, 2010, p. 1004). According to this definition, approximately 15.5 million children living in the United States are exposed to IPV incidents every year (McDonald, Jouriles, Ramisetty-Mikler, Caetano, & Green, 2006). Some believe this estimate is too low (Knutson, Lawrence, Taber, Bank, & DeGarmo, 2009).

A large number of studies report that children exposed to IPV have different mental health needs than those children not exposed (Goddard & Bedi, 2010; Olaya et al., 2010). More specifically, these children are more likely to have symptoms of post-traumatic stress disorder (PTSD), mood problems, loneliness, lowered self-esteem, and a greater tendency toward self-harm. Other studies (E. Cummings, El-Sheikh, Kouros, & Buckhalt, 2009; Gelles & Cavanaugh, 2005; Goddard & Bedi, 2010) report that IPV exposure affects the child's ability to regulate their emotions and appears to be linked to a greater tendency to violence during adolescence and into adulthood. Witnessing domestic violence has also been associated with psychopathic traits in adult male offenders (Dargis & Koenigs, 2017).

McGee (2000, cited in Bedi & Goddard, 2007) describes some of the self-reports provided by IPV-exposed children and teens:

> *One [nightmare] was that when I was asleep he got a knife and stabbed me. (Boy, age 5; p. 71)*
> *I'd think about my mom being hit and then I just would walk out of school and come home. . . . I didn't like the thought of her being on her own with him, so I stayed home all the time. (Girl, age 15; p. 81)*

The relationship between child abuse and IPV exposure has been the subject of much controversy. Some researchers and practitioners argue that the two are different and therefore should remain distinct categories. On the other hand, evidence that IPV results in negative outcomes for the child has led some countries, such as Australia and

the United States, to consider IPV as a form of psychological child abuse, a topic to be discussed in the next section (Bedi & Goddard, 2007; Goddard & Bedi, 2010).

The first step for psychologists and other mental health professionals working with troubled children is to identify the IPV home environment; that is, does IPV occur and if so, what is its severity and frequency? As we discussed in Chapter 10 with respect to the forensic interviewing of sexually abused children, the interviewer must be skilled at this task. Most IPV-exposed children are reluctant to report or discuss the situation, and they may feel shame, guilt, or fear (Olaya et al., 2010). In addition, it is important for the psychologist to realize that there may be more than violence between adult partners happening. Research has demonstrated that co-occurring or different forms of child abuse are common in families identified for domestic violence (Margolin et al., 2009). The more frequent and severe the IPV, the more likely that various kinds of child abuse are also occurring.

Roles of the Forensic Psychologist in IPV Cases

Forensic psychologists are often asked to do risk assessments of batterers at all stages of the criminal justice process, from pretrial assessment to sentencing to correctional release. Early on, a victim of partner abuse may request a restraining order or order of protection from the court. This is a judicial command that the abuser refrain from contacting the victim for a specified time period. The psychologist may be asked to be an expert witness during a civil or criminal trial. If the batterer is a defendant in a criminal case, the psychologist may be asked to assess their level of danger if released on bail before the next court appearance. In a criminal trial in which a defendant assaulted or killed an abusive partner (a rare occurrence), the defense may request the forensic psychologist to identify whether the defendant qualified for BWS or PTSD. In a recent such trial, however, as noted earlier, the prosecutor put on the stand an expert who gave the opinion that the victim did not fit a batterer profile (R. Snyder, 2019).

During the jury-selection process in criminal cases, the forensic psychologist may also be asked to evaluate the extent of myths about family violence within the jury pool or community; once a jury has been chosen, a jury consultant might be asked to assess how these individuals are likely to respond to the testimony presented by both sides of the case. In civil matters, the psychologist may be asked to evaluate the family dynamics or parental suitability to help in

custody decisions involving the children. Finally, in many instances, psychologists and other mental health professionals will recommend crisis intervention or treatment or will provide the services themselves.

Risk Assessment: Is the Victim Safe?

One of the most frequent tasks performed by forensic psychologists in this context is risk assessment—that is, assessing the likelihood of recidivism. The one thing that all practitioners who work with family violence can agree on is that the ongoing safety of the victim must be considered first and foremost (Petretic-Jackson, Witte, & Jackson, 2002). Failure to put this factor into the equation may result in the death or serious injury of one or more family members. As discussed in previous chapters, many risk assessment instruments, both actuarial and based on structured professional judgment (SPJ), are available for assessing the risk of violence. In the case of IPV, forensic psychologists may use the **Ontario Domestic Assault Risk Assessment (ODARA)** (Hilton et al., 2004), which is a brief actuarial measure that can be scored by police officers, because it contains items referring to information that is readily available to them (e.g., prior domestic violence, number of children, substance abuse, threats of violence). Results of the ODARA have been used to assist in making bail decisions early in the criminal justice process. Continuing research suggests that the ODARA holds predictive power for general risk of recidivism among IPV offenders. This research indicates that these offenders often have criminal careers that include stalking, sexual assault, and some nonviolent property offenses (Eke, Hilton, Meloy, Mohandie, & Williams, 2011; Hilton & Eke, 2016).

Hilton and her colleagues (e.g., Hilton, Harris, & Rice, 2010a, 2010b) have also studied a more extensive use of the ODARA in combination with other risk assessment instruments. Recognizing that forensic psychologists have more case material available to them, they posited that such information as an offender's antisocial behavior, the presence of a mental disorder, childhood abuse, and a juvenile record might be combined with the data available from the ODARA to render the risk assessment even more reliable when applied to domestic violence. Interestingly, they discovered that some of the previously mentioned variables added little to the information already included in the ODARA. However, clinical information about an offender's history of antisocial behavior was critical. Antisocial behavior is tapped well by the Psychopathy Checklist-Revised (PCL-R). Thus, Hilton, Harris, Rice, Houghton, and Eke (2008) developed a new measure, the **Domestic Violence Risk Appraisal Guide**

(DVRAG), which combines risk factors identified in both the ODARA and the PCL-R for a presumably more effective instrument to measure domestic violence recidivism by male assailants. It is not intended to be a replacement for the ODARA but rather as a measure accompanying it. Because the DVRAG is still quite new, it awaits further research on its effectiveness. Thus far, both the ODARA and the DVRAG have received positive reviews in the IPV literature. Nonetheless, they are subject to the same criticisms that have been leveled at other actuarial instruments (K. S. Douglas, Hart, Groscup, & Litwack, 2014).

Another instrument that may be useful for predicting violence risk in family situations is the **Spousal Assault Risk Assessment (SARA)**, developed by Kropp, Hart, Webster, and Eaves (1998). The SARA is a 20-item checklist designed to screen for risk factors in individuals suspected of or being treated for spousal or family-related assault. It is used when a clinician wishes to determine the degree to which an individual poses a threat to their spouse, children, or other family members. The SARA is an example of an SPJ instrument. Recall that SPJ instruments offer guidance to clinicians and encourage them to weigh the risk factors that are present in reference to that particular case (that is, using their professional judgment). They are also intended to help in the management of risk, based on the result of the assessment.

Another non-actuarial risk assessment measure specifically intended to predict domestic violence recidivism is Danger Assessment (DA), developed by Jacquelyn Campbell (1995). The first part of the DA is designed to determine the severity and frequency of battering by presenting the victim with a calendar of the past year. They are then asked to mark the approximate dates when physically abusive events occurred and to rank the severity of the incident on a 1 to 5 scale (ranging from 1, *low*, to 5, *use of weapon*). The second part of the DA is a 15-item questionnaire requiring a yes or no response to each item. The items are intended to provide an overview of the range of tactics used by the batterer.

Again, researchers and clinicians continue to debate the validity of actuarial instruments versus those based on structured professional judgment. Hilton, Harris, and Rice (2010b) report that they as well as other researchers found that the DA and SARA had only a modest ability to distinguish recidivists from non-recidivists. Others, however, have reported better results (Belfrage et al., 2012; Helmus & Bourgon, 2011). Psychologists and other clinicians now have a wealth of meta-analyses and individual studies on risk assessment measures to guide their decisions as to which to use.

Conflict Tactics Scale (CTS)

One of the most commonly used assessment instruments for determining the *extent* of intimate partner violence (rather than or in addition to the likelihood of recidivism) is the **Conflict Tactics Scale (CTS)**, developed by Murray Straus (1979). The CTS measures the frequency and severity of behaviors that partners engage in during an argument (Levensky & Fruzzetti, 2004).

During the early stages of its development, CTS-generated data were surprising and controversial, indicating that 1 in 6 marriages had included an incident of physical violence, and that IPV appeared to be as high among women as it was among men (Langhinrichsen-Rohling, 2005). According to Langhinrichsen-Rohling, the CTS data gave us a look behind closed doors of intimate partner violence early on. Although the CTS is still widely used, researchers and practitioners have identified many limitations (see Levensky & Fruzzetti, 2004, for a comprehensive review of its limitations). However, as noted earlier in the chapter, some studies using the CTS led to the misleading conclusion that men and women were equally likely to engage in interpersonal violence, without taking into consideration the forms and motivation for the behavior. In an attempt to address the criticisms, a Revised CTS and child–parent CTS were later developed.

Assessment of Victim Reactions

Although the BWS, discussed earlier in the chapter, is facing considerable opposition in the research community, there is support for the presence of PTSD symptoms in the victims of IPV, with rates ranging from 45% to 84% (T. L. Jackson, Petretic-Jackson, & Witte, 2002; Jones, Hughes, & Unterstaller, 2001; Perez et al., 2012). For example, abused women residing in domestic violence shelters usually display higher rates and severity of IPV-related PTSD symptoms compared to abused women not in shelters (Perez et al., 2012). This is partly attributed to the higher rates of violence they have experienced during the pre-shelter period, along with the fear of retribution from their abuser because they have fled the home. Assuring long-term safety for the survivor, therefore, is a priority. Lack of this assurance is a reason some women return to their homes after seeking shelter, particularly when the abuser promises to reform or threatens further harm to children or even pets if the victim does not return.

Several measures commonly used to assess the level of PTSD symptomatology are the PTSD Symptom Scale (Foa, Riggs, Dancu, & Rothbaum, 1993), the Posttraumatic Diagnostic Stress Scale (Foa,

Cashman, Jaycox, & Perry, 1997), the Crime-Related Post-Traumatic Stress Disorder Scale (Saunders, Arata, & Kilpatrick, 1990), the Distressing Event Questionnaire (Kubany, Leisen, Kaplan, & Kelly, 2000), and the Traumatic Life Events Questionnaire (Kubany, Haynes, et al., 2000).

Assessing PTSD in victims is important if the assault case is prosecuted as well as for treatment purposes. Documentation of PTSD is crucial in many respects. For example, it may prompt prosecutors to pursue the case more aggressively and it may be a factor to consider in plea negotiation or at sentencing. Documentation of PTSD also may be relevant to an eventual civil case against the abuser. In the very rare cases where an abused woman kills her abuser, a defense based on PTSD is more effective than one based on BWS. Documentation of PTSD is also relevant to the treatment of victims of violence and sexual assault and the treatment of women offenders.

The forensic psychologist is likely to administer formal psychological tests and inventories or other appropriate psychological measures to determine whether any discernible changes in attitude, cognitive functioning, behavior, and emotions are a result of the abuse. In any forensic setting, documentation is critical at all phases of the assessment process. Documentation may include court records; police reports; mental health and medical records; investigative reports of friends, family, or neighbors or other witnesses; and related legal proceedings such as depositions, trial transcripts, and protection orders. The evaluator should be aware that "unconventional sources" might provide invaluable documentation as well. These include "date books, logbooks, telephone messages, diaries, letters (including threatening letters from partners), tapes, photographs, and other records" (Stark, 2002, p. 232). The family makeup and situation is also relevant. This considers the ages of family members, social class, occupational status, level of acculturation, prior exposure to violence, normative approval of violence, family structure, and cultural coping strategies (T. L. Jackson et al., 2002; West, 1998). It is important for the clinician to realize that the victim may have the distorted belief that she is the cause of the abuse and is at a loss regarding what to do about it.

PTSD is especially common in intimate partner violence when the abusive partner engages in stalking, various forms of harassment, and threats of violence after the relationship has ended (Eshelman & Levendosky, 2012). As described earlier, "[s]talking is defined as a course of conduct directed at a specific person that would cause a reasonable person to feel fear" (Catalano, 2012, p. 1). The threats of

violence are especially destructive to the psychological well-being of the victim. Risk assessment procedures are important, particularly when the court is contemplating issuing a permanent order of protection. Although temporary restraining orders (TROs) are not as difficult to obtain in most jurisdictions, permanent orders need a stronger showing that the person against whom the order is sought poses a threat to the person seeking the protection.

Cattaneo and Chapman (2011) point out, however, that although research on risk assessment has been very helpful in prediction, it has not been particularly helpful in the management of risk. That is, the goal of clinicians and practitioners who work with cases of IPV is to prevent future abuse, not just predict it. This is one reason why some researchers favor SPJ instruments over actuarial instruments; SPJ instruments facilitate risk management by encouraging clinicians to create scenarios of possible violence and develop management plans in light of these scenarios (K. S. Douglas et al., 2014).

As noted by Kropp (2004), the term *risk assessment* is not synonymous with victim safety planning. He writes, “In practice . . . decisions about risk likely involve consideration of the imminence, nature (e.g., emotional, physical, sexual), frequency, and seriousness of the violence in addition to the likelihood that it will occur” (p. 678). In addition, Kropp emphasizes that there is no such thing as “no risk” in the context of spousal or intimate partner violence. All spousal or intimate partner assaulters are dangerous to some degree, and risk assessment instruments do not allow us to rule out the danger completely. Risk assessment can, however, inform us “regarding the nature, form, and degree of the danger” (p. 677). Several forensic risk assessment instruments are good at predicting future violence—including IPV—but *prevention* of future violence demands more research attention.

Necessary Training for IPV Assessment

Forensic psychologists and other mental health workers who deal with IPV and its victims should have special training that emphasizes that assault by an intimate partner is a unique form of violence that differs in important ways from other forms. It is also important that forensic psychologists are thoroughly trained in empirically based, best-practice guidelines. Whereas violence from strangers is often an isolated, onetime event, the type of violence found in IPV is an ongoing occurrence characterized by repetitive abuse from a once-trusted person over a long period of time. In short, IPV is a process that has incalculable cumulative effects over time. Moreover, the victim may feel trapped in the home or situation in which it occurs, often with no *perceived* hope for escape. “Because of marital

commitments, financial ties, and child care, victims of intimate partner violence cannot as easily remove themselves from the situations as can victims of abuse by a nonintimate" (Petretic-Jackson et al., 2002, pp. 300–301). This perceived hopelessness may lead to depression and inhibiting feelings of helplessness for some victims, but—as noted earlier—many other victims handle the situation quite differently. Consequently, forensic psychologists and other clinicians must be prepared for the wide range of psychological symptoms and coping mechanisms that victims will display.

CHILD ABUSE

"Children are the most victimized segment of the population" (Finkelhor, 2011, p. 14). In 2011, state and local child protective services in the United States received an estimated 3.4 million referrals of children being abused or neglected (U.S. Department of Health and Human Services [DHHS], 2017). An estimated 683,000 children were victims of a combination of maltreatments, such as neglect and physical abuse. (See **Photo 11.1**.) Nearly 40% of the children reported as abused or neglected were under the age of 6. Approximately 50% of the maltreated children were found to have been maltreated two, three, or more times. Overall, studies estimate that 1 in 7 children in the United States experience some form of child maltreatment in their lifetimes (Finkelhor et al., 2009). Most police departments today have assigned special investigators designated to conduct investigations of child abuse.



► Photo 11.1 A child cowers in fear before an adult male's wrath.
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About 1,720 children died of maltreatment in 2018 in the United States, a rate of 2.39 per 100,000 children (Children's Bureau, 2020). Of the child maltreatment fatalities, approximately 46.6% occurred among children younger than age 1. Parents and other caretakers account for about one fifth of all *violent* crimes committed against children, and more than half of these crimes are against children 2 or younger (D. E. Abrams, 2013).

Types of Maltreatment

There are four major types of child maltreatment: (1) neglect, (2) physical abuse, (3) sexual abuse, and (4) emotional abuse. *Neglect* refers to failure to provide for a child's basic needs, such as lack of appropriate supervision or failure to provide necessary food, shelter, or medical care, and represents the largest category of maltreatment. Neglect may also include failure to educate a child or attend to special education or emotional needs. *Physical abuse* refers to anything that may cause physical injury such as punching, beating, kicking, biting, shaking, throwing, stabbing, choking, burning, or hitting. This category of maltreatment is the second most frequent. *Sexual abuse*—which we covered in Chapter 9—includes activities by

a parent or caretaker such as sexual fondling, rape, sodomy, indecent exposure, and commercial exploitation through prostitution or the production of pornographic materials. *Emotional abuse* refers to behavior that impairs a child's emotional development or sense of self-esteem or worth and may include such things as constant criticism or rejection.

According to the Children's Bureau (2020), over two thirds (72.8%) of maltreatment victims experience neglect. About 46% are physically abused, and 0.6% are sexually abused. Only 7% reportedly are emotionally abused, a figure that probably is greatly underestimated. Eight percent of the children are medically neglected or abused. Boys and girls are about equally neglected or physically abused, but girls are 4 times more likely to experience sexual abuse. About one quarter of the victims experience more than one type of maltreatment. An estimated 60% of children seen by a physician for a physical abuse injury will return with further inflicted injuries. Approximately 10% will eventually die from the continual abuse. Although abusive injuries are seen at all socioeconomic levels, fatal cases of abuse are most common in families living in poor economic situations. Children of all races and ethnicities experience child abuse.

It should be mentioned that rates of child sexual abuse have declined 62% since the 1990s (Finkelhor & Jones, 2012). This conclusion is based on three independent sources of agency data and four separate large victim surveys (Finkelhor & Jones, 2012). However, this decline has not been conclusively reported for other forms of child abuse, such as physical abuse in particular. The reasons for the decline are multiple and complex, and they include such factors as better awareness and prevention programs.

Pet Abuse

Research has discovered that pet abuse often accompanies child abuse (Arkow, 1998; Levitt, Hoffer, & Loper, 2016). That is, adults who abuse their children also tend to abuse the family pet, which is usually a treasured companion of abused children. Abusers often threaten to harm or kill a pet to frighten a child into secrecy about the abuse, particularly about sexual abuse. A strong relationship also exists between pet cruelty and spousal abuse. In one study, more than half of the victims at a women's shelter reported that their pets had been harmed or killed by their partner and that they delayed coming to the shelter for fear of harm to their pets left at home (Ascione, 1997). A growing body of research also suggests that violent people often commit considerable cruelty against animals in general, particularly against pets and stray animals (Merz-Perez,

Heide, & Silverman, 2001). In their study, Levitt et al. (2016) discovered that of 150 adult male offenders who were charged with animal cruelty, 144 had other documented criminal offenses prior to and/or following the animal cruelty offenses. The Levitt et al. study examined 400 incident reports of animal cruelty and neglect by adult males from police and sheriff departments, animal control agencies, and district attorney's offices across the United States. Males under age 18 were excluded from the study because juvenile records are usually sealed, and women were excluded because of the rarity of cases.

Levitt et al. (2016) also divided the animal cruelty offenses into three types: active, passive, and sexual animal abuse. The first two types are likely familiar to most readers, while the third may be surprising. Active abuse included strangling, kicking, beating, stabbing, burning, and mutilation. Passive abuse included failure to provide adequate food, water, shelter, or veterinary care. Sexual animal abuse includes a wide range of behaviors, such as vaginal, anal, or oral penetration, fondling, penetration using an object, and killing or injuring an animal for sexual gratification (Vermont Humane Federation, 2017).

In the Levitt et al. study (2016), over 50% of those who were arrested for active cruelty had an arrest for IPV, including DV. In addition, one third of those arrested for animal sexual abuse had been arrested for sexually assaulting a person, with many of the victims being under age 18. Specific relationships between passive abuse and criminal behavior were unclear in this study.

Up to this point, research concerning animal sexual abuse has been rare. However, beginning in 2016, the National Incident-Based Reporting System (NIBRS) began to collect more data on animal cruelty reports, ranging from dog fighting to animal sex abuse. According to DeGloria (2015), this expanded collection occurred because FBI investigators were finding high rates of animal sexual abuse among serial sexual homicide predators. Given the apparent connection between various forms of animal cruelty and violence toward humans, continuing research on this topic is needed.

Dynamics of Family Violence

Abusive families tend to be socially isolated and lack an extended network of family and friends for social, financial, and emotional support. The family situation is usually unstable, punctuated by stormy relationships between adults, one or more children who are resented or unwanted, financial constraints, heavy alcohol or drug abuse, or feelings of being trapped with little way out. As discussed earlier in the chapter, male abusers tend to be impulsive, immature, frustrated persons who believe it is their right as the "man of the

household" to dominate the woman. Not all family violence is based on this need to control, however. Data and concepts relating to adult violence were covered earlier in the chapter. In this section, we focus on the violence committed against children.

The psychological factors associated with the abuse may differ according to gender, but also from person to person. Some men become especially abusive if they are forced into providing primary care while the woman works because they interpret this situation as a loss of self-esteem and their traditional masculine role. Women who abuse tend to be overstressed, depressed, and frustrated. For both male and female abusers, the precipitating event for the abuse tends to be the infant's or child's crying or lack of toileting.

There are uncertainties concerning the relative contribution of child abuse to later psychopathology in the victim (Knapp & VandeCreek, 2000). According to Knapp and VandeCreek (2000),

> Little is known about the impact of mitigating factors, such as having otherwise positive parental figures, receiving an early treatment after the abuse, or having a robust personality or a strong social network. Similarly, more needs to be known about the impact of exacerbating factors, such as having otherwise destructive parental figures, receiving blame or no treatment after the abuse, having a fragile personality, or lacking a strong social network. (p. 370)

Infanticide, Neonaticide, and Filicide

When parents kill or try to kill their children, we react with horror. Although these are rare occurrences, they inevitably attract extensive media attention. In a shocking incident that occurred many years ago but is still familiar to many, Andrea Yates drowned her five children in a bathtub. As we noted in Chapter 5, she was found not guilty by reason of insanity and remains hospitalized in a psychiatric facility. In another tragic case, the then-lawyer Joel Steinberg physically beat Lisa, the 6-year-old girl whom he and his partner, Hedda Nussbaum, had illegally adopted to the point where she was hospitalized and died from her injuries shortly thereafter. An infant boy, also illegally in their care, was found tethered in his crib and was returned to his biological mother. Nussbaum, who had lived with Steinberg for some 12 years, had been severely beaten and fit the classic profile of an abused woman. Although first charged in Lisa's death, she testified against Steinberg and was not prosecuted. Both adults were apparently heavy drug users, and the children were physically and emotionally neglected. A photograph of Lisa at school taken before her death

depicted a very sad-looking little girl with dark circles under her eyes. Steinberg, subsequently disbarred, was convicted of manslaughter. He spent 17 years in prison and was released on parole in 2004. Nussbaum changed her name shortly afterward and moved to a different state.

An estimated 1,200 to 1,500 young children are killed each year by a parent or other person, representing about 12% to 15% of the total homicides in the United States (Child Welfare Information Gateway, 2012; Emery & Laumann-Billings, 1998). As mentioned earlier, an estimated 1,700 children die from maltreatment and neglect, but this is a separate figure from those who are killed. In other words, it is not clear how many of these deaths are considered criminal homicides. Parents are responsible for a majority of homicides of children under age 5. Thirty-three percent were killed by their fathers, and 30% were killed by their mothers. Children under 5 who were not killed by a parent were murdered by a male offender in a majority of cases (80%; Cooper & Smith, 2011, pp. 6–7).

Infanticide, although the term literally means the killing of an infant, has become the umbrella term for homicide of children up to 2 years of age. Because there are significant differences between parents who commit infanticide within the first 24 hours after birth and those who kill a slightly older child, two additional terms are often used in the research and clinical literature. Specifically, **Neonaticide** refers to the killing of the newborn within the first 24 hours, whereas **Filicide** refers to the killing of a child older than 24 hours. It should be noted that neonaticide is rarely used in legal settings; infanticide is usually the preferred legal term for lawmakers and legal scholars (Nesca & Dalby, 2011). Again, infanticide in the legal system refers to the killing of children up to the age of 2. We will continue to use the term *neonaticide* in this section, since researchers have consistently used it to distinguish different psychological motivations of the offender. In addition, almost all the research focuses on women who kill their children rather than men who do so.

Mothers who commit neonaticide tend to be young, unmarried women who deny or conceal their pregnancy, fearing the disapproval or rejection from their family and society (Dobson & Sales, 2000). Mothers who commit filicide (children older than 1 day and up to 2 years) tend to be older and married and often demonstrate symptoms of depression. Mothers of the second group are most often in situations they perceive as hopeless and dire. They believe that killing the child is the only way to prevent the child's suffering or potential suffering living under adverse conditions. When mothers kill

or try to kill more than one child, however, these age distinctions may not apply.

Traditionally, women who kill their children—regardless of the age of the children—have been viewed by the legal system (and the public) as very likely suffering from serious mental problems. When the children are infants, the clinical diagnosis is often “postpartum depression,” a depressive episode believed to be brought on by childbirth. However, it is important to realize that three categories of mental reactions may be apparent after childbirth: postpartum blues, postpartum depression, and postpartum psychosis (Dobson & Sales, 2000). The most common is *postpartum blues*, characterized by crying, irritability, anxiety, confusion, and rapid mood changes. Approximately 50% to 80% of women show some minor features of postpartum blues between 1 and 5 days after delivery (Durand & Barlow, 2000). The symptoms may last for a few hours to a few days and are clearly linked to childbirth. Although researchers indicate that the symptoms do not generally last more than 12 days, the sheer exhaustion that accompanies many if not most births can extend “blues” to a longer time span. The connection between postpartum blues and infanticide has not been supported by the research literature. As noted by Dobson and Sales,

> [t]his mental disturbance is unlikely to play a major causative role in either neonaticide or filicide, because it occurs too late to affect mental status in women who commit neonaticide, and because its duration of less than 10 days is too short to play a major role in filicide, which can occur at any time during the 1st postpartum year. (p. 1105)

Note that Dobson and Sales place 1 year, not 2 years, as the cutoff for filicide.

Postpartum depression occurs during the weeks and months following childbirth. The symptoms—some of which also occur with postpartum blues—include depression, loss of appetite, sleep disturbances, fatigue, suicidal thoughts, disinterest in the newborn child, and a general loss of interest in life’s activities. The woman with postpartum depression often feels guilty for being depressed when she should be happy about a new baby. The incidence rate among childbearing women ranges from 7% to 17% in North America (Dobson & Sales, 2000). However, in contrast to postpartum blues, postpartum depression does not appear to be directly connected to childbirth but is more a clinical form of depression that is present before childbirth and may or may not be a recurring disorder across

the life cycle of the woman. Although women with postpartum depression may commit infanticide or filicide, research finds that this not common after childbirth.

The third category of mental problems associated with the postpartum period is *postpartum psychosis*, a severe mental disorder that is rare, occurring in 1 out of every 1,000 women following childbirth. Usually, the psychotic features are highly similar to the symptoms of serious bipolar depression and appear to be directly connected to childbirth. Many years ago, a young mother took a rifle and shot to death her infant, who was approximately 3 months old. In the weeks preceding the tragedy, she had remained in her home with shades drawn and had refused the entreaties of her husband to seek mental health services. Prosecutors did not charge her in the death because they could not find any mental health expert to testify that she was not suffering from postpartum psychosis. Although some believed this was an abuse of prosecutor discretion and that the woman received favorable treatment, the prosecutor obviously believed the defense would easily be able to find a mental health expert who would testify to the presence of postpartum psychosis. As noted by Dobson and Sales (2000), “[a] number of epidemiological studies have provided clear scientific evidence supporting the link between childbirth and postpartum psychosis” (p. 1106). Sometimes the psychosis is severe enough to lead to the mother’s attempted suicide, together with an attempt to kill her baby (Kendall & Hammen, 1995). There is some documentation that many women (estimates range from 20% to 40%) who commit filicide are suffering from postpartum psychosis (Dobson & Sales, 2000).

Nesca and Dalby (2011) contend that many infanticides (both neonaticides and filicides) may also be a result of PTSD. They point out that studies have reported a PTSD prevalence rate of 24% to 33% following an uncomplicated childbirth. They further argue that forensic research using comprehensive evaluations revealed that PTSD—in combination with depression—was the major clinical finding of these studies. Although these results are intriguing as another explanation of infanticide, considerably more research needs to be undertaken before any tentative conclusions can be drawn.

Overall, few infanticides are committed by mothers who suffer depression, despair, PTSD, or psychosis. In the case of neonaticide, it “is generally committed by women who often conceal the pregnancy, give birth away from a hospital and then suffocate, strangle, or drown the unwanted newborn before hiding the corpse” (T. Porter & Gavin, 2010, p. 99). However, the reality is that another adult—such as the baby’s father or the father of the mother—may

also be responsible for the infant's death. In some cases, the baby's father is the father of the mother. An incapacitating mental illness of the mother is rarely an explanation. However, infant homicides can result from acts of omission, such as neglecting to watch the child in a hazardous environment, or acts of commission, such as delivering a swift blow to silence a crying infant. In these cases, a manslaughter (nonnegligent) charge or verdict is more likely to be rendered. The adult may not have intended to cause death, but they are still responsible.

Medical Child Abuse

Medical child abuse—formerly called Munchausen syndrome by proxy (MSBP)—is a rare form of child abuse in which a parent (almost always the mother) *consistently* and *chronically* subjects a child to medical attention without any "true" medical condition or symptoms being present. "Munchausen is characterized by an adult's chronic and relentless pursuit of medical treatment, involving some combination of consciously self-inflicted injury and falsely reported symptomatology" (Robins & Sesan, 1991, p. 285). The term *Munchausen syndrome* was apparently coined by the London physician Richard Asher (1951) to describe patients who consistently produced false stories about themselves to receive needless medical examinations, operations, and treatments. Asher named the syndrome after Baron von Munchausen, a distinguished German soldier and politician who was born in 1720 (Dowdell & Foster, 2000). Asher named the behavior after von Munchausen because of the many fabricated stories of incredible travels and brave military exploits he would tell to friends and acquaintances, including his physicians (Raspe, 1944). Today *medical child abuse* is the term commonly used by researchers (Yates & Bass, 2017), as well as in the *DSM-5*. We will use that preferred term, despite the fact that the more cumbersome term is used in the cited research.

In medical child abuse, the child's presenting symptoms are either falsified or directly induced *by the parent*. In fact, the word proxy as in the original terminology refers to the parent's dominating influence in the presentation of symptoms to the medical staff. The most common cluster of symptoms reported by the parent concerning the child's condition involves seizures, failure to thrive, vomiting, diarrhea, asthma/allergies, and infections (see M. S. Sheridan, 2003, pp. 441–443 for a complete list of symptoms). Symptom inducement by the parent may include adding fat to stools in order to produce a laboratory abnormality, initiating starvation in the child, placing blood into the child's urine sample before lab testing, or injecting

contaminating or toxic material intravenously into the child's bloodstream (J. B. Murray, 1997; Pearl, 1995).

Medical child abuse cases have been found in homes of all socioeconomic levels, and the victims are most often young children ranging in age from 6 months to 8 years. Both sexes appear to be equally susceptible to being victimized. The term *serial MSBP* was reserved for those cases involving more than one child in the same family (R. A. Alexander, Smith, & Stevenson, 1990).

The case histories of medical child abuse commonly illustrate an "overinvolved" mother and an "emotionally distant" or physically absent father. The mothers are often described as "emotionally empty" and lonely and frequently have experienced significant emotional, physical, and sexual abuse during their own childhood and young adulthood (Robins & Sesan, 1991). The mother often appears to others as the ideal parent and comes across as very concerned, devoted, attentive, and loving. However, she is also seen as overprotective and obsessed with the child's illness (M. L. Brown, 1997; Voltz, 1995).

The offending mother is often sophisticated about medical conditions, has some fascination with medical procedures and diagnoses, and may even be a health professional herself. Suspicions that medical child abuse may be present should be entertained when the parent is unusually attentive to the child and is very reluctant to leave the child's side during a medical examination or treatment. This, though, can be said of many if not most parents. A better sign is when a child has a series of recurring medical conditions that do not respond to treatment or follow an unanticipated course that is persistent, puzzling, and unexplained. Another indicator is when laboratory findings or symptomatology are highly abnormal and discrepant with existing medical knowledge. The extreme forms of this child abuse may lead to serious injury or death. Verification of medical child abuse can also be achieved when the symptoms disappear after the suspected perpetrator and victim are separated (M. S. Sheridan, 2003).

Although there have been many cases reported in the literature, the prevalence or incidence of the problem is difficult to determine, largely due to the challenge of identifying actual illnesses as opposed to fabricated ones and the general lack of knowledge about this unusual form of child abuse. The best estimates range from 2 to 2.8 per 100,000 in children under 1 year of age and 0.4 per 100,000 in children younger than 16 years of age (Ferrara et al., 2013; Schreier, 2004; Sharif, 2004). Furthermore, the mortality rate for children who are victims appears to range from 6% to 10%, when suffocation and

poisoning are involved (Ferrara et al., 2013). Poisoning may occur when the parent or caretaker either injects or forces intake of substances that are poisonous in nature in order to make the child sick. Suffocation may occur with the forced ingestion of drugs, medications, or substances that cause breathing problems.

In most cases, child protective services are brought into play if medical child abuse is suspected. Rarely are criminal charges filed unless the behavior has resulted in serious injury or the child has died. The forensic psychologist may become involved at both the child protection and the prosecution stages of the case. If the parent is unwilling or unable to stop the behavior, the child may need to be removed from the home until effective intervention or some appropriate arrangement with the parent is accomplished. If the case is serious enough to warrant criminal charges, the forensic psychologist may become a *court-appointed* evaluator, which means they are being asked directly by the court to provide pertinent information (Sanders & Bursch, 2002). As noted in earlier chapters, many states now require special training and certification for those who provide these and similar services for courts (Heilbrun & Brooks, 2010).

In the case of suspected medical child abuse, the psychologist must review all available medical records on both the child and the suspected parent and do a psychological assessment of both parent and child. According to Sanders and Bursch (2002), a significant number of women who engage in falsifying illness in their children also complain of many unsubstantiated illnesses within themselves. Siblings should also be evaluated, as they too may have been subjected to abuse. In most cases, the court will be interested in whether there is evidence that child abuse occurred, as well as how the child has been harmed as a result of the alleged abuse. The court may also be interested in treatment options for the perpetrator and what management or treatment programs are recommended. In keeping with forensic guidelines, though, psychologists should avoid serving as both the evaluator and the treatment provider.

Abusive Head Trauma

Another form of child abuse is **Abusive head trauma (AHT)**, previously known as shaken baby syndrome. This is when a parent or caretaker shakes a baby so hard that serious brain damage occurs. It can also occur if an infant is thrown to the floor, to a hard surface, or beaten with fists. The brain damage can result in intellectual disability, speech and learning disabilities, blindness, paralysis, seizures, hearing loss, or death. A baby's brain and blood vessels are very fragile and can be easily damaged by whiplash

motions, such as shaking, jerking, and jolting. The neck muscles are not strong enough to control head movements, and rapid movement of the head can result in the brain being damaged from banging against the skull wall.

AHT is difficult to diagnose, unless a witness accurately describes the incident. Medical personnel report that many babies who have symptoms of AHT are brought in for medical attention for a fall, difficulty breathing, seizures, vomiting, altered consciousness, or choking. Sometimes the adults in these cases admit that they shook the baby but that it was done only in an effort to resuscitate the infant. To diagnose AHT, physicians look for bleeding in the retina or retinal detachment, blood in the brain, and increased head size indicating excessive accumulation of fluid in the tissues of the brain. Fixed pupils, inactivity, and breathing problems may also be evident. In addition, spinal cord damage and broken ribs may be present, depending on how the baby was held during the shaking.

Although there are incomplete statistics on the frequency of AHT, there is consensus that brain trauma is the leading cause of death and disability in infants and young children (Dubowitz, Christian, Hymel, & Kellogg, 2014) and that shaking is involved in many of these cases (Duhaime, Christian, Rorke, & Zimmerman, 1998; Showers, 1999; Smithey, 1998). B. Russell (2010) writes that, of those children diagnosed with AHT, about 30% die as a result of their injuries, and only 15% survive with no lasting effects. Ellis and Lord (2002) estimate that 10% to 12% of all infant deaths related to abuse and neglect can be attributed to AHT. Furthermore, studies indicate that 70% to 80% of the perpetrators of AHT are male, and most often they are the parent of the child (Child Abuse Prevention Center, 1998; Ellis & Lord, 2002). Both male and female babies are equally victimized, and AHT cuts across all socioeconomic levels. Frustration from a baby's incessant crying or from eating and toileting problems is usually reported as the precipitating event leading to the severe shaking. Ignorance of the dangers of shaking a baby is typical, and the overwhelming majority of offenders have poor child-rearing skills. In many hospitals today, parents are asked to watch educational videos on AHT and on infant care in general before leaving the hospital with their newborns.

REPRESSED AND RECOVERED MEMORIES

In the late 20th century, one of the most controversial topics in forensic psychology and psychology in general was the question of whether a "lost" memory of abuse or other crime can be recovered at

a later time. The topic remains of great interest to some researchers today, although there is increasing skepticism that significant memories are buried and suddenly recovered (e.g., Alison, Kebbell, & Lewis, 2006; Otgaar et al., 2019). The topic is often referred to as **Repressed memory**, recovered memory, or, less frequently, false memory (to imply questionable validity of the reported memory itself). "According to the *repression perspective*, people become incapable of recalling memories of childhood sexual abuse precisely because these memories are so emotionally traumatic" (Engelhard, McNally, & Van Schie, 2019, p. 91).

The raging debate (also known as the "memory wars") was especially prominent during the 1990s, when there was a dramatic increase in reports of repressed memories of child sexual abuse and satanic ritual abuse (Patihis, Ho, Tingern, Lilienfeld, & Loftus, 2014). In fact, Pendergrast (1996) estimated that several million cases of recovered memory arose by the mid-1990s. On one side of the debate are those who believe that memories of personal traumatic events can be repressed and remain inaccessible for years until revealed during psychotherapy. Moreover, this side is convinced that with skillful therapy, these repressed memories can be fully and accurately recovered when the person feels it is psychologically safe to do so. On the other side of the debate are those who believe that the existence of repressed memories is highly unlikely and—at the very least—questionable. This side, most strongly represented by memory experts and researchers argues that recovered memories of abuse are largely false memories that sometimes can be inadvertently developed by therapists.

The notion of repressed memories has been around at least since the time of Sigmund Freud (1915/1957), who was certainly the most influential in bringing the concept into the limelight. Freud wrote that "the essence of repression lies simply in the function of rejecting and keeping something out of consciousness" (p. 105). To minimize anxiety and fear, we supposedly push out of our awareness painful or extremely troubling memories, and it is assumed we do this unconsciously. Current clinical thinking broadens the term *repression* to include a wide range of cognitive processes:

> Repression refers to the psychological process of keeping something out of awareness because of unpleasant affect connected with it. The "something" may be a memory (or part of a memory), a fantasy, a thought, an idea, a feeling, a wish, an impulse, a connection, and so forth. (Karon & Widener, 1999, p. 625)

Repression may include loss of memory of the trauma (amnesia) in some individuals and partial, fragmentary memory in others. According to Freud (1915/1957)—and some contemporary clinicians—a repressed or submerged memory continues to linger in the unconscious until it is retrieved during psychotherapy or under certain other conditions, such as dream analysis, hypnosis, or some other "method of recovery." For many individuals, these repressed memories are never satisfactorily retrieved and may continue to raise havoc by causing psychological problems across their life spans—at least, this is the position held by some clinicians. These clinicians are convinced that they encounter many forms of repression—particularly memories of early childhood abuse—during their routine practice. On the other side of the ledger are cognitive scientists who question the frequency of "true" repression and the clinical assumptions of how or why it occurs.

The courts have had to face the issue of repressed memories in numerous cases. Adults who were allegedly the victims of abuse, especially sexual abuse, claim in civil or criminal trials that they had initially forgotten these traumatic experiences but eventually remembered them, usually with the help or guidance of therapists and often under hypnosis or some other "discovery" process. The courts refer to repressed-then-recovered memory as "delayed discovery." The alleged abuser, often the father or another family member, having been named, disclaims abuse, countering that the victim's memories are false and that they have been implanted by the psychotherapist, investigator, or evaluator (Partlett & Nurcombe, 1998). The accuracy of these recollections has been the center of the contentious debate of experts spanning nearly 30 years, as well as among the experts providing testimony in the courtroom. As noted by Patihis et al. (2014), "In the courtroom, beliefs about memory often determine whether repressed-memory testimony is admitted into evidence" (p. 519).

It should be mentioned that criminal prosecutions cannot be brought against someone after the statute of limitations for that crime has expired (Stogner v. California, 2003). The *statute of limitations* is the legal time limit placed on the filing of criminal charges or a civil complaint. In criminal cases, it is typically 1 to 3 years after the event, except for murder, for which the period does not expire. In civil cases, the time for filing a complaint varies, but is typically under a few years. However, many states have begun to extend statutes of limitations, particularly in civil cases, when sexual abuse was at issue. This is in recognition that it may take years for victims of sexual abuse to come forward—even when repressed memories are not at

issue. Those who support these extensions believe they are needed to procure justice for survivors of sexual abuse, while those who do not support the extensions believe they are unfair to people accused of crime or civil wrongs. It is important to stress that most of these cases do not involve repressed memories, however. That is, most survivors of sexual abuse have always recalled the abuse they suffered in the past.

In both civil and criminal cases, the defense tries to call an expert witness to challenge the testimony offered by the prosecution's or the plaintiff's witness. The focus is usually on questioning the circumstances under which the original report was elicited and the interviewing methods of investigators or other involved professionals (Berliner, 1998). Some victims, under the repeated urging of their psychotherapists and often combined with discovery methods such as hypnosis, come to remember (often suddenly) that they were sexually abused by parents, siblings, relatives, friends, or strangers. Convinced that these abuses are the core ingredient of their maladjustment or current difficulties or that their abusers should be punished, a significant number of these victims seek redress through the courts, primarily civil courts. Although these recovered memories may have foundation in some cases, these claims must be evaluated very carefully by the forensic psychologist before proceeding to the legal arena. Lilienfeld and Loftus (1998) wrote some time ago, "The question of whether traumatic memories can be repressed for long periods of time (i.e., years or decades) and then suddenly recovered in intact form is perhaps the most controversial issue in clinical psychology today" (p. 471). Although it is no longer the most controversial issue, it cannot be put aside as a consideration in a likely small number of cases.

In recent years, the term *repressed memory* has largely been replaced by the term *dissociative amnesia*, a diagnosis found in the *DSM-5* (American Psychiatric Association, 2013). This change occurred because the label "repression" "became controversial in the memory wars and is now seldom used in a credible context in scientific publications" (Otgaar et al., 2019, p. 1078). Many clinicians prefer the term *dissociative amnesia* when traumatic experiences become inaccessible.

Scientific studies of repressed memory have yet to substantiate the existence of this phenomenon, however (Engelhard et al., 2019; Otgaar et al., 2019; Shaw & Vredevelt, 2019). For example, Engelhard et al. write, "the notion that people can encode terrifying experiences yet become incapable of remembering them until years later is a claim devoid of convincing empirical support" (2019, p. 92).

Shaw and Vredevelt conclude that the concept of repressed memory has been widely criticized by most scientists who study memory. As Otgaar et al. (2019) note, among certain groups of professionals, notably legal and forensic psychologists, memory scientists, and experimental psychologists, skepticism regarding repressed memory is high. Among other professionals, such as psychiatrists, clinical psychologists and psychotherapists, the belief in repressed memories remains high, generally above 50%. The repressed memory controversy is significant not only in the United States but throughout Europe as well (Shaw & Vredeveldt, 2019).

Special-Expert Panels on Repressed Memory

According to McNally, Perlman, Ristuccia, and Clancy (2008), the controversy surrounding repressed and recovered memories of child sexual abuse has been among the most bitter in the history of psychology. In an effort to clear up some of the controversy and debate on repressed or recovered memories, the APA appointed a "working group" of researchers and clinicians to study the issue and arrive at some consensus on what is known and how to proceed. Called the APA Working Group on Investigation of Memories of Childhood Abuse ("Final Conclusions," 1998), the panel of clinicians and researchers was able to come to the following five conclusions:

1. Controversies regarding adult recollections should not be allowed to obscure the fact that child sexual abuse is a complex and pervasive problem in America that has historically gone unacknowledged.
2. Most people who were sexually abused as children remember all or part of what happened to them.
3. It is possible for memories of abuse that have been forgotten for a long time to be remembered.
4. It is also possible to construct convincing pseudo-memories for events that never occurred.
5. There are gaps in our knowledge about the processes that lead to accurate and inaccurate recollections of childhood abuse.

But there were important issues on which the APA Working Group could not agree, mostly concerning the nature of early memory of abuse and its recovery. Although the group clearly strove to find consensus, the debate between some clinicians and researchers apparently became heated and polarized, resulting in a special issue in the December 1998 edition of *Psychology, Public Policy, and Law* that presents both sides. In this section, we will focus on the dominant view generally accepted by the cognitive and

developmental scientists, but we will also give some attention to other perspectives where appropriate.

Before we proceed, however, we should mention that a similar panel of experts on repressed or recovered memory met in the United Kingdom shortly before the APA group convened. The group, called the British Psychological Society's (BPS) Working Party on Recovered Memories, was convened for the purpose of publishing a position statement on the phenomenon for members of the BPS, the media, and the interested citizen. The resulting document, which took more than 10 months to be finalized, is commonly referred to as the BPS Report (see BPS, 1995). The conclusions of the BPS Report generally coincide closely with the conclusions of the APA Final Report described earlier. For example,

> [l]ike the BPS Report, the APA Final Report concluded that it was possible for memories of abuse that had been forgotten for a long time to be remembered, but that it was possible to construct convincing pseudomemories for events that never occurred. (Davies, Morton, Mollon, & Robertson, 1998, p. 1080)

However, Davies et al. (1998) also concluded that the APA Working Group neglected some important research findings that should have been addressed. They thought, for instance, that the APA panel neglected to establish an agreed-on scientific framework on which to base their discussions. More specifically,

> there appears to be little consensus over the relevant evidence and methods of proof. In the absence of such fundamentals, the temptation is to revert to a political framework, which is unproductive from the standpoint of advancing theory and practice. (Davies et al., 1998, p. 1080)

But even more relevant to our discussion here is the observation that

> the Final [APA] Report contains little serious discussion as to how memory mechanisms might mediate such diverse effects: The cognitivists merely accuse the therapists of clinging to a scientifically unsupported view of repression, and the therapists look in turn to the recent work of Van der Kolk (e.g., Van der Kolk & Fisler, 1995) as providing a

> rationale for a special and different form of memory associated with trauma. (Davies et al., 1998, p. 1080)

Where does the repressed memory debate stand in the 21st century? In one study, Magnussen and Melinder (2012) asked licensed psychologists in Norway whether they believed in the existence of recovered memories of traumatic events. Sixty-three percent of the psychologists said “yes.” In the United States, Patihis et al. (2014) found high levels of belief in repressed memories among college undergraduates (78%). A majority of these students (65%) also thought that repressed memories could accurately be recovered through therapy. A large portion of these students said that the source of this information was television (Otgaard et al., 2019). Similar results were found among the public in the United States, with 84% accepting the existence of repressed memories and 78% believing in their accurate recovery. On the other hand, the Patihis et al. study discovered that experimental and research clinical psychologists were, by far, the most skeptical about repressed memories and their recovery. However, other mental health professionals, including *practicing* clinical psychologists, were more accepting of repressed-memory possibilities.

Because the topic of repressed or false memory is so important in forensic psychological practice we will pay special attention to the issue in this section. We begin by briefly reviewing some of what research has revealed about human memory in general.

Research Sketches of Human Memory and Its Limitations

In its simplest terms, memory involves acquisition, storage, and retrieval. Acquisition, also called the encoding or input stage, is the initial step in the memory process and overlaps considerably with the sensory perceptual process. Sensory perception is the process of organizing and making sense of the information received from the senses, such as sight, hearing, smell, taste, somatosensory receptors, and vestibular and kinesthetic senses. Memory storage, also called retention, is when information becomes “resident in memory” (Loftus, 1979). In the retrieval stage, the brain searches for the pertinent information and retrieves it, a process somewhat like searching for a document in a filing cabinet or laptop.

In any discussion of forensic matters and memory, it will be helpful to begin with four important points about memory made by three of the leading scientists in the area, Peter Ornstein, Stephen Ceci, and Elizabeth Loftus (1998a):

- Not everything gets into memory.
- What gets into memory may vary in strength.
- The status of information in memory changes across time.
- Retrieval is not perfect (i.e., not all that is stored gets retrieved).

In reference to the first point, some experiences may not be recalled because they were not entered into memory in the first place. The human cognitive system is limited in its information-processing capacity and cannot simultaneously attend to everything going on in the environment. We have to be selective in what is noticed. Consequently, considerable information is never processed, a point made earlier in discussions of eyewitness testimony

Concerning the second point raised by Ornstein et al. (1998a), several factors may influence the strength and organization of the resulting memory "trace." In addition, strong memory traces may be readily retrieved, whereas weak traces may be more difficult to recover. The strength of the trace depends on such factors as the length of exposure to an event, the number of exposures, the age of the individual, and how significant or prominent the event is to the person. Again, these points are important in considering eyewitness testimony. With increasing age (at least through young adulthood), there are corresponding changes in information-processing skills and the cognitive templates that have been developed from previous experiences.

The third point refers to what may happen once the information is stored and perhaps is one of the most important points concerning forensic issues. That is,

> the memory trace can be altered during the course of the interval between the actual experience and a report of it. The passage of time, as well as a variety of intervening experiences, can influence strongly the strength and organization of stored information. (Ornstein et al., 1998a, p. 1028)

A considerable amount of research indicates that humans continually alter and reconstruct their memory of past experiences rather than simply store past events permanently and unchangingly (Loftus, 2005; Strange & Takarangi, 2015; Sutton, 2011). Memory is not like a video camera that accurately stores events to be played back when necessary. Moreover, this alteration or "reconstructive process" is often done without the person's complete awareness. The individual is aware of the content of memory but is not usually aware of the transformations that have occurred during the brain's encoding,

retention, and retrieval. The perspective that memory is continually vulnerable to revision is known as the reconstructive theory of memory. Overall, though, this reconstructive process probably does not *substantially* alter the *major* theme of the original memory for most people, but it does introduce a number of errors in *specific* descriptions of the event. For example, witnesses to a car accident may all report that two cars collided (as opposed to one car and one truck), but the specific details of the incident may vary considerably. In young children, memory traces are often not as strong because children generally lack the requisite knowledge and experience to fully appreciate the event. Thus, the memory traces of young children may undergo more rapid decay than those of older children. A growing body of research also indicates that young children (such as preschoolers) are usually more susceptible to the influences of misleading information received after the event than are older children and adults (Bruck & Ceci, 2009; Ceci, Ross, & Toglia, 1987; Ornstein et al., 1998a).

The fourth point refers to the common observation that not everything in memory can be retrieved all the time. Social pressures, stress, anxiety, information overload, and the low strength of the information itself are some of the many factors that may interfere with quick and immediate retrieval under certain conditions. Many clinicians believe that memory of traumatic events may be encoded differently from memory for unremarkable events (Alpert, Brown, & Courtois, 1998). More specifically, some suggest that the enormous differences between normal resting states and high levels of arousal might result in changing the entire process of how memories are stored and retrieved. In the APA Working Group Report, as mentioned previously, the clinical group placed considerable reliance on the work of Van der Kolk and Fisler (1994, 1995) as evidence for memory repression. As pointed out by Davies and his colleagues (1998), Van der Kolk and Fisler emphasized the difference between memories of traumatic events and memories of events that are merely stressful. More specifically, Van der Kolk and Fisler (1994) stated that traumatic memories may somehow be “frozen” in their original form and unmodified by further experience. Consequently, reliving these traumatic experiences can be retraumatizing because retrieving them is actually like reexperiencing them. But note that this phenomenon refers to actively *avoiding* reliving the trauma, not *repressing* the event. If anything, Davies et al. note, Van der Kolk and Fisler are referring to state-dependent memory rather than repressed memory. **State-dependent memory** refers to the research findings that the things we experience in one emotional or physiological state

—such as happiness, fear, or even intoxication—are sometimes easier to recall when we are again in that same state. Recent research has indicated, for example, that witnesses who were moderately intoxicated should be interviewed immediately if possible rather than waiting until they have “sobered up” (Compo et al., 2017). (See **Focus 11.2** for more on this interesting phenomenon.) Although a person who does not like to revisit that same state of pain and trauma may avoid doing so as much as possible, it does not mean that person is *repressing* the memory, at least according to the typical clinical definition of repression.

Focus 11.2

State-Dependent Memory

State dependent refers to the observation that a memory acquired in one state of consciousness cannot be recalled until the person returns to the same state of consciousness. The person will have great difficulty remembering the events if in a different psychological state. For example, if a person learns new material while under the influence of alcohol, he tends to recall it better if he is again under the influence of alcohol.

State-dependent learning was first described in 1784 but was not subjected to much scientific study until the 1960s (Schramke & Bauer, 1997). Early research concentrated on differences induced by drugs and alcohol, and then interest shifted to the effects of mood or emotion states on memory and learning. For example, research has discovered that the negative events are recalled better when people are in a negative mood (Lewinsohn & Rosenbaum, 1987), and positive events are recalled better while in a positive mood (Ehrlichman & Halpern, 1988). Research later found that state-dependent learning may be influenced by drugs, moods, level of activation (e.g., anxiety levels), arousal (i.e., sleep and wakefulness), or environmental settings (i.e., where the original memory was acquired) (Slot & Colpaert, 1999; Weingartner, Putnam, George, & Ragan, 1995). Pertaining to environmental settings, if you misplace your keys, trying to remember where you left them is often not as effective as physically retracing your steps in the actual environment. If a person hides money while intoxicated and forgets where the money was hidden, recall is likely to be enhanced by being similarly intoxicated and placed in the same environment.

QUESTIONS FOR DISCUSSION

1. What are some ways in which police investigating a crime might make use of the research on state-dependent learning?

2. What might be an explanation for the research findings that positive events are remembered better when one is in a positive mood and negative events remembered better when one is in a negative mood?

In addition, the scientific evidence clearly indicates that memories from early infancy are highly unreliable, incomplete, and full of error. The phenomenon of infantile or childhood "amnesia" has long been noted by developmental psychologists (Dudycha & Dudycha, 1941). (See **Focus 11.3**.) **Infantile amnesia** refers to the common observation that adults are usually unable to recall events that occurred before the age of around 3 years. According to the BPS Report (BPS, 1995), for instance, "nothing can be recalled accurately from before the first birthday and little from before the second. Poor memory from before the fourth birthday is normal" (p. 29). Most of us have little trouble remembering certain things that occurred when we were 7 years of age, such as a birthday party or a special occasion, but prior to that, things often become quite hazy. Even some things about our seventh birthday or other ordinary memories of early childhood may be nothing more than reconstructions based on stories told to us by parents or relatives (Knapp & VandeCreek, 2000, p. 367). However, scientists are not in complete agreement as to when this period of infantile amnesia ends for most children (Bruck & Ceci, 2012; Ornstein, Ceci, & Loftus, 1998b) or exactly why it occurs (Harley & Reese, 1999; see **Focus 11.3**).

Claims and assertions of abuse during childhood are complicated by the fact that the very definition of abuse is culturally determined, and behaviors that would be taken by adults to be clear instances of abuse might not be viewed in a comparable fashion by children and vice versa (Ornstein et al., 1998b). For example, as Ornstein et al. (1998b) point out, insertions of anal suppositories, urinary catheterization, and other invasive medical procedures during the first few years of life may be perceived by the young child as "abusive."

Many practitioners believe that traumatized children are more likely to reenact traumatic events than to describe them verbally (Alpert et al., 1998). Although many children are unable to give verbal descriptions of events that had taken place in their early years, they showed evidence of their memory in their behavior and play, where they reenacted the abuse events (Alpert et al., 1998). It is clear that children interpret and respond to trauma according to their developmental level and maturity, but description of the behavioral pattern in children has been limited. Terr (1991, 1994) developed a model (derived from clinical observations of hundreds of traumatized

children) of two types of childhood trauma, each with corresponding memory encoding and retrieval. By her description, Type I trauma consists of sudden, external, single events that result in stereotyped symptoms of childhood PTSD along with not only detailed memories but also misperceptions and mistimings regarding characteristics of the events. Type II traumas are those that involve “long-standing or repeated exposure to extreme external events.” According to Terr, memory loss is most common in this kind of trauma. However, as pointed out by Ornstein et al. (1998b), scientists who study memory have found that repetition enhances memory rather than diminishing it: “Research on memory with children and adults suggests that people are more likely to forget an isolated event than a series of repeated events, even though the repeated events may become blended into a typical script” (p. 1000).

Focus 11.3

Infantile Amnesia

It is widely believed by psychologists that a vast majority of humans cannot recall events that occurred prior to age 3, a phenomenon called infantile amnesia. For some unknown reason, adolescent and adult memory of early childhood events appears to begin sometime after the third or fourth birthday. Consequently, all those hours spent with baby—rocking to sleep, playing, changing diapers, feeding, laughing, and cuddling—may be lost forever in the baby’s mind. Childhood memories are fragile, but the common assumption is that infant memories are virtually nonexistent.

However, some research (Bauer, 1996) suggests that a baby may store those events in a different kind of “preverbal memory.” It appears that even infants in the first year of life are able to retain bits of information about unique episodes over time (Mandler, 1988, 1990) but because they do not possess language skills, they cannot put these experiences into words at a later time. Very young children often rely on forms of memory (e.g., kinesthetic memory) that do not depend on verbal processing to be cognitively stored.

Other factors probably also contribute to the difficulty in recalling early childhood memories. Howe and Courage (1997) propose that childhood memories emerge as the cognitive self develops: The cognitive self is “a knowledge structure whose features serve to organize memories of experiences that happened to ‘me’” (p. 499). If the cognitive self is immature, the ability to recall remains disorganized and partly inaccessible. As children get older, the ability to maintain and organize information seems to increase. Other developmental aspects that probably affect childhood memory are

the dramatic neurological and perceptual changes that occur during early childhood.

Although there is some question of whether memories of childhood events prior to age 3 can be recovered, some recent research suggests that emotionally laden events that occurred when some preschool children were 4 years of age were remembered into late childhood and adulthood (C. Peterson, Morris, Baker-Ward, & Flynn, 2014). In addition, preschool children who had an elaborate discussion with their parents concerning a recent experience were more likely to remember the event later in life (C. Peterson et al., 2014). Furthermore, young children who are encouraged to tell coherent narratives about what happens to them also appear to increase later memory of early childhood events.

QUESTIONS FOR DISCUSSION

1. What is your earliest childhood memory? Approximately how old were you when the event you remember occurred? Was it an emotionally laden event?
2. In light of the research cited in the last paragraph, consider the pros and cons of discussing with a preschool child emotionally laden events that (a) happened to him and (b) happened on a national scale.

Perhaps more troubling for the courts and to the psychological profession is that under certain circumstances, *false* memories of abuse can be created, often by psychotherapists or evaluators themselves. Note that this is a different issue from children's reports of *contemporary* abuse, a topic discussed in the previous chapter. As reported by Roediger and Bergman (1998), "[a] substantial body of experimental evidence (buttressed by a long collection of anecdotal cases) shows that events that never happened can be vividly remembered, or that events can be remembered in ways quite different from the way they occurred" (p. 1102). Repeated suggestions, confrontations, or the use of highly suggestive "memory recovery" techniques may cause the creation of memories that are not true (Knapp & VandeCreek, 2000). (Recall that highly suggestive interviewing is also problematic in obtaining reports of contemporary abuse.) A growing literature further suggests that it is relatively easy to create pseudo-memories in some individuals, but it may be more difficult in others. "The available evidence makes clear that individuals who have been exposed to repeated suggestive techniques over long periods of time sometimes provide highly detailed and coherent narratives that happen to be false" (Ornstein et al., 1998a, p. 1045). The tendency of clinicians to unintentionally engender symptoms or recollections in their patients is called the **iatrogenic effect** (*iatros* is

the Greek word for physician, and *genic* refers to cause). In other words, clinicians who firmly believe in and are perceptually sensitive to certain symptoms as indicative of a specific disorder may, in effect, prompt the patient to think similarly. In this sense, certain therapists who are convinced that childhood sexual abuse is the basic cause of many symptoms of maladjustment may have a strong propensity to look for and interpret a variety of behaviors as symptoms of sexual abuse. In effect, the clinician may encourage the reconstruction of memory in the patient to include accounts of sexual abuse that may have never occurred. In addition, the scientific research indicates that young children may be disproportionately vulnerable to suggestive influences, either during psychotherapy or more generally through daily living (Ceci & Bruck, 1993). However, Bruck and Ceci (2004) have also noted that susceptibility to suggestion is highly common in middle childhood as well. Otgaar et al. (2019) warn that "[t]aken together, these different threads of evidence imply that falsely recovered memories of abuse continue to pose a substantial risk in therapeutic settings, potentially leading to false accusations and associated miscarriages of justice" (p. 1089).

In summary, repressed memory of childhood abuse and its recovery by psychotherapists or through suggestions via self-help books or workshops should raise some red flags for further inquiry and reasonable evaluation and assessment by the forensic psychologist. We do not mean to imply that it could not happen—only that the overwhelming bulk of the research evidence suggests that if it does, it is very likely subject to error and will need further corroboration from independent sources and careful assessment.

As asserted by Roediger and Bergman (1998),

> [f]ar more mysterious is how painful events, banished to an unconscious state for years through some mechanism of dissociation or repression, could be brought back to consciousness and recollected with great fidelity . . . no evidence from the voluminous literature on human memory makes us think this is possible. (p. 1095)

This is especially the case for adults who suddenly recollect from their "unconscious" traumatic events that happened 20 to 40 years previously. Furthermore, and as noted by McNally and Geraerts (2009), some of the "recovered" memories are extremely implausible, including memories of satanic ritual abuse, space alien abduction, and living in past lives. Second, people typically remember these episodes after undergoing procedures specifically designed to

unleash repressed memories (e.g., guided imagery, hypnosis). Third, a large number of people who reported having recovered memories of terrible abuse have later retracted their reports. Finally, a few studies also demonstrate that false memories can be created in some individuals (about 30% in college students; S. Porter, Yuille, & Lehman, 1999). Overall, McNally and Geraerts find very little convincing scientific evidence to support the repressed memory–recovery paradigm.

The research clearly indicates that memories of emotional events are reasonably good and accurate, and very, very rarely are they repressed or forgotten (Alison et al., 2006; Roediger & Bergman, 1998). Many people have reported their memories for high-impact events with considerable accuracy, a phenomenon referred to as **Flashbulb memory** (R. Brown & Kulick, 1977). People in their 60s and older remember vividly what they were doing when they heard that President Kennedy was assassinated, and those older than 35 or 40 remember where they were when the space shuttle *Challenger* that contained teacher–astronaut Christa McAuliffe exploded in 1986. All but the youngest among us remember what we were doing when two hijacked airliners crashed into the World Trade Center on September 11, 2001. You also likely recall some high-impact event that occurred during your childhood. People often feel that they remember with high accuracy even minor details of emotional events, such as earthquakes, tornadoes, and other natural disasters (Roediger & Bergman, 1998). Nevertheless, these are not all personal traumatic events, such as a sexual assault.

It is interesting to note that a majority of people in the U.S. general public have beliefs that run counter to the extensive research findings on memory. For example, in the early 21st century, two thirds of the U.S. public believed memory acts like a video camera, nearly half believed memory is permanent and unchanging, and over half thought that memory can be enhanced through hypnosis (Simons & Chabris, 2011, 2012).

Roles of the Forensic Psychologist in Child Abuse Cases

In the past, clinicians rarely became involved in addressing forensic issues in child abuse before the cases were adjudicated (Melton, Petrila, Poythress, & Slobogin, 1997). This has changed in recent years, however. Forensic psychologists are becoming involved much earlier in the process. Today, the forensic psychologist may assume a crucial role in the early stages of a case and then be asked to return to the role of a “neutral” expert in the adjudication and disposition.

For example, the clinician may be asked by a court to determine whether child abuse or neglect likely occurred and, if so, what should be done about it. Recall from Chapter 6, however, that in custody proceedings forensic evaluators are advised not to act as investigative officers, so in that context this presents ethical dilemmas. The answer to the second question—what should be done?—may require immediate (emergency), short-term, or long-term predictions and decisions and is essentially a risk assessment determination.

According to Melton, Petrila et al. (1997), the second question focuses on the extent to which the child is in imminent danger. Early in the case, this might involve removing the child from the home for the child's protection. This usually only happens when there is some credible evidence of abuse or neglect. What constitutes credible evidence varies from state to state. If credible evidence is established, subsequent measures are taken to ensure the safety of the child. About four fifths of all complaints reported to child protective services are not substantiated. This may be because no credible evidence is available, or it may be because there is no abuse. Unfortunately, when high-profile child abuse cases are publicized in the media, there is often anecdotal evidence that complaints were filed but were not investigated properly.

In most states, the credible evidence standard does not require the psychologist or mental health professional (usually a caseworker) to consider conflicting evidence or to complete a comprehensive report in the case but "merely requires the fact finder to present minimal evidence to support the allegations against the alleged perpetrator" (Owhe, 2013, p. 316). In most areas of the country, anyone can make a report of suspected child abuse or neglect, and this is often done anonymously. Perhaps more important, the finding that abuse or neglect probably exists (regardless of the standard of proof) can affect children and families significantly (Owhe, 2013). It should be emphasized that many jurisdictions are beginning to establish multidisciplinary teams for investigation, assessment, and intervention in child abuse or neglect cases. Consequently, the forensic psychologist rarely acts alone or without the expertise of other mental health professionals. Still, as pointed out by Melton et al. (1997, 2007, 2018), the forensic psychologist may be regarded as the team's sole expert in a variety of assessments and predictions.

The adjudication and disposition of the case refers primarily to the criminal proceedings against the alleged abuser. However, they may also occur in civil proceedings, such as hearings to decide whether

visitation should be allowed. During adjudication, there are four issues that may involve the forensic psychologist:

1. What is the most appropriate procedure for taking a child's testimony?
2. Under what conditions is a child's out-of-court statement (hearsay) admissible?
3. Is the child competent enough to provide accurate testimony in abuse cases?
4. Did abuse or neglect occur, and if so, who is responsible?

The first issue—which first emerged in sexual abuse cases—concerns identifying what special procedures would allow a child to testify without placing that child under enormous duress in the presence of the defendant. In many cases, the child's disclosures are the strongest, if not the only, piece of evidence and are vital to identification and prosecution (McWilliams, 2016). Moreover, "the child is notoriously vulnerable while giving evidence against abusers, especially parents, when proof of the charge will result in separation. Many children are highly suggestible and subject to recantation when faced with the reality of parental separation" (Partlett & Nurcombe, 1998, p. 1260). These problems of recantation and suggestibility are especially troubling when accusations of abuse made during custody proceedings give one parent an advantage over the other.

Clinicians who evaluate abused children are required to be skillful and sensitive to a wide range of factors. For example, as noted in Chapter 10, open-ended questions are widely recognized as revealing the most quality information when interviewing young children (London et al., 2005, 2008, 2017; McWilliams, 2016). Close-ended questions (yes/no or forced-choice questions) result in significantly less and often inaccurate information, especially when interviewing children. Suggestive questioning, on the other hand, is likely to contaminate the child's (or adult's) memory and reliable information. Suggestive questioning implies or leads to a certain answer which may result in misinformation from the child.

In addition, the reports must be "fair, unbiased, and measure up to standard of proof equal to the gravity and seriousness of the allegations and impending consequences" (Owhe, 2013, p. 325). Budd, Felix, Poindexter, Naik-Polan, and Sloss (2002) report that

> clinicians may be asked to assess the child's developmental or emotional functioning and needs, the effects of maltreatment on the child, the risk of harm should the child be united with his or her parents, the impact of separation from the biological family on the child's functioning, or the

> advantages and disadvantages of potential visitation or placement options. (p. 3)

"Guidelines for Psychological Evaluations in Child Protection Matters" were first passed in 1999 and were recently revised (APA, 2013b). The Guidelines list six questions psychologists are frequently asked to address: (1) What, if any, maltreatment occurred? (2) How seriously has the child's psychological well-being been affected? (3) What therapeutic intervention is recommended? (4) Can the parent(s) be successfully treated to prevent harm to the child in the future; if so, how, and if not, why not? (5) What would be the psychological effect upon the child if returned to the parent(s)? (6) What would be the psychological effect upon the child if separated from the parent(s) or if parental rights were terminated?

The Guidelines, along with multiple other guides in the professional literature, caution psychologists against allowing their personal biases and values to influence their assessments, and they recommend the use of multiple methods during the assessment process (tests, interviews), not unlike assessments in child custody evaluations. The psychologist also should be highly sensitive to and knowledgeable about the cultural, socioeconomic, and diversity issues relevant to the child's situation and aware of any cultural norms that may be relevant (e.g., involvement of extended family members, variations in disciplinary approaches). With regard to the ultimate issue question discussed in other chapters (e.g., should this child be removed from the custody of his parents?), the choice of providing the answer is again left to the individual psychologist. However, if they choose to offer such an opinion, the recommendations "should be based on articulated assumptions, data, interpretations, and inferences based upon established professional and scientific standards" (Guideline 13).

Assessment in child protection matters is very common, as are suggestions for how these assessments should be conducted (Condie, 2014). Very few surveys describe in detail current forensic practice—for example, how they are actually being done—or which procedures are most useful. In their survey of one urban juvenile court system, Budd et al. (2002) found that psychologists conducted 90% of the evaluations of children. Unfortunately, many of the evaluations were not based on multisource, multisession information but were based on much more limited data. However, many of the evaluations did emphasize the strengths of the child.

In recent years, training of forensic psychologists in interviewing skills has advanced considerably (Lamb, 2016). Proper training is not

accomplished overnight. According to Lamb, “[t]here is now clear evidence that improvements in interviewing practice occur reliably only when training courses involve multiple modules, distributed over time, with repeated opportunities for interviewers to consolidate learning and to obtain feedback on the quality of the interviews they do conduct” (p. 710).

CHILD ABDUCTION

A person is guilty of **Child abduction** (kidnapping) if that person unlawfully leads, takes, entices, or detains a child under a specified age with intent to keep or conceal the child from parent, guardian, or other person having lawful custody. Child abduction is relatively rare among violent crimes against children and adolescents. It makes up less than 2% of all violent crimes against juveniles reported to law enforcement (Finkelhor & Ormrod, 2000). Child abductions are most often divided into three classifications based on the identity of the perpetrator: (1) family abductions (representing 49% of reported abductions cases), (2) acquaintance abductions (27%), and (3) stranger abductions (24%). Many of the following statistics are drawn from the U.S. Department of Justice report, *Kidnapping of Juveniles*, prepared by Finkelhor and Ormrod (2000).

Family Abduction

Family abduction is committed mostly by parents (80%), a phenomenon so common in child abduction cases that it is labeled *parental abduction*. “Parental abduction encompasses a broad array of illegal behaviors that involve one parent taking, detaining, concealing, or enticing away his or her child from the parent having custodial access” (J. J. Wilson, 2001, p. 1). The U.S. Department of Justice (2010) estimates that there are 200,000 parental abductions annually in the United States. Noncustodial parental abduction usually involves a child younger than age 6—most often around age 2. Both genders are equally victimized. The perpetrators are also evenly distributed (50% each) between men and women. The abduction generally originates in the home. Those children who become victims of family abduction are often thrust into a life of uncertainty and isolation, because the abductor is always fearful of discovery and that the child will be returned to the custodial parent.

Juveniles are more likely to be kidnapped by family members or acquaintances than by complete strangers. Acquaintances are people they know but who are not family members. Acquaintance kidnapping most often involves a teenage female victim (72%). The perpetrator is often also a juvenile (30%) and is frequently a boyfriend or former boyfriend (18%). The most common motives are

to seek revenge for being spurned, to force a reconciliation, to commit a sexual assault, or to evade parents who want to break up the relationship. In some instances, gang members kidnap other teenagers (whom they know) for intimidation, retaliation, or recruitment. A third type of acquaintance abduction involves family friends or employees (e.g., babysitters) who remove children from their home for the purpose of sexual assault or retaliation against the family. Acquaintance abduction victims suffer a higher rate of injury compared to victims of the other forms of abduction, possibly because the victim is usually older and therefore more likely to resist the abduction. Another reason may be that intimidation, which often is associated with more physical force, is the primary motive in many of these abductions. Parents and caretakers are often critical of how law enforcement officials handle family abductions. In one extensive survey, only 45% were satisfied with how police handled their family abduction situation, compared to 75% satisfaction with how police responded to reports of abduction by strangers (Hammer, Finkelhor, Ormrod, Sedlak, & Bruce, 2008).

Slight Acquaintance and Stranger Child Abductions

A slight acquaintance is a “nonfamily perpetrator whose name is unknown to the child or the family prior to the abduction and whom the child or family did not know well enough to speak to” (Wolak, Finkelhor, & Sedlak, 2016, p. 2). The child may recognize this person from the neighborhood, doing repair work at school, spending time in the playground, or working at a local ice cream store. Stranger abductors are those the child does not recognize, although usually the offender has some level of familiarity with the child (e.g., by watching the child from a distance). These kidnappings are usually called stereotypical kidnappings because they are believed to often end in tragedy, have traumatizing effects on communities, and they receive considerable attention from the national media.

Wolak, Finkelhor, and Sedlak (2018) define stereotypical kidnappings as

> [a] nonfamily abduction in which a slight acquaintance or stranger moves a child (ages 0–17) at least 20 feet or holds the child at least 1 hour, and in which one or more of the following circumstances occur. The child is detained overnight, transported at least 50 miles, held for ransom, abducted with intent to keep the child permanently or killed. (p. 2)

According to A.-J. Douglas (2011), although parents usually admonish their children to stay away from strangers, most neglect to tell them not to allow anyone, even someone they know or recognize, to take them somewhere without parent consent. Many parents have established “code words” with their children and warn them not to go with an acquaintance other than a police officer unless the person uses the code word. Tragically, some abductors have dressed as police officers.

Victims are typically abducted from either a public outdoor location or their own residence. Outdoor locations, such as streets, highways, parks, playgrounds, beaches, lakes, and amusement parks, are especially favorite locations of stranger abductors (Finkelhor & Ormrod, 2000). Based on NIBRS data, the school is usually not the location for child abductions, including family abductions.

Two recent and important studies on acquaintance and stranger child abductions were conducted by Warren and associates (2016) and Shelton, Hilts, and MacKizer (2016). The Warren study investigated 463 incidents of single-victim child abduction identified by federal law enforcement agencies as serious. The Shelton study examined 32 incidents in which the children were abducted from inside their residences. The Shelton data were gathered from the FBI Behavioral Analysis Unit as well as local and state law enforcement.

Both studies found that most acquaintance and stranger abductions were motivated by the offender’s sexual interest in the child, with the majority of the child victims being Caucasian females between the ages of 6 and 17 (average age of 11). Surprisingly, very few of the abductors were on a state or federal sex offender registry. Warren et al. (2016) found that 55% of the abducted female and 49% of the male victims were killed or never found. Asphyxiation was the primary cause of death in most cases.

Other studies report that when the child is murdered, it is usually within the first 24 hours after the abduction (W. D. Lord, Boudreaux, & Lanning, 2001). Some experts on child abduction investigations believe the first three hours are the most critical, as 74% of the abducted children who are murdered are killed within that period (Bartol & Bartol, 2013). About one third of the child survivors of these extreme abductions are injured enough to require medical attention.

As mentioned above, the Shelton et al. (2016) study focused on residential abductions by an acquaintance or stranger. About 60% of residential abductors were known by the victim or the victim’s family. In most cases, the offender entered through the front door, which was typically unlocked. Entry usually occurred between midnight and 8 a.m. while the family was sleeping. Upon exiting the residence, the

child old enough to walk went with the offender without resistance, suggesting that the offender was nonthreatening in his approach. Interestingly, siblings were sometimes sleeping in the same room as the victim during the abduction and often witnessed the event. According to Shelton et al., far too often the siblings did not mention seeing the abduction, probably due to fear of reprisal from the offender. Shelton et al. recommended that trained forensic interviewers be involved in the investigation to uncover what the sibling knew about the incident. Research on stranger and acquaintance abductions also indicates that many of the offenders have criminal records, but most of their previous crimes were not sexual in nature (Beasley et al., 2009). The most common previous offense is burglary.

Because of the seriousness of stranger or slight-acquaintance child abductions, federal law enforcement is usually involved, putting into action its Child Abduction Rapid Deployment (CARD) teams. Although these types of abductions are relatively rare compared to the number of family or close-acquaintance abductions, the nature of the crimes has far-reaching, traumatizing effects on both the family and the entire community. In addition, these abductions receive considerable media publicity and have been highly influential in molding public opinion about the risk and frequency of stranger abduction sexual homicides.

NISMART

The National Incidence Study of Missing, Abducted, Runaway and Throwaway Children (NISMART; Asdigian, Finkelhor, & Hotaling, 1995; Finkelhor, Hotaling, & Sedlack, 1990; Johnston & Girdner, 2001) is a report describing the results of a nationwide telephone survey created in 1988. **NISMART** is a research program designed to establish clear definitions and provide scientifically based estimates of abducted children and children missing for other reasons (Wolak et al., 2018). The study determined estimates of the number of family abductions to both domestic and international destinations nationwide. It is the most up-to-date, comprehensive study currently available. More important to our discussion here, the NISMART-1 survey reported some of the common behavioral and psychological characteristics of parental abductors. The following characteristics were outlined by Johnston and Girdner (2001):

- Abducting parents are likely to deny and dismiss the other parent's value to the child. They believe that they, more than anyone else, know what is best for their child. In some cases, the motivation to abduct may also be an attempt to protect the child from a parent who is perceived to be likely to molest,

abuse, or neglect the child, which in some instances may be a legitimate concern.
- Abducting parents usually take very young children (the mean age is 2 to 3). Such children are easier to transport and conceal, are unlikely to protest verbally, and may be unable to tell others their name or provide other identifying information.
- Most abducting parents are likely to have a supportive social network of family, friends, or social communities that provide assistance and emotional and moral support. This pattern is especially prevalent when the abductor has no financial or emotional ties to the geographical area from which the child was taken.
- Most custody violators do not consider their actions illegal or morally wrong, even after the involvement of the district attorney's office.
- Mothers and fathers are equally likely to abduct their children, although at different times. Fathers tend to abduct before there is a child custody order in place, whereas mothers tend to abduct after the court has issued a formal custody decree. (p. 5)

Parental kidnappers who appear to be the most dangerous to the other parent or the child manifest paranoid, irrational beliefs and delusions that do not dovetail with reality (Johnston & Girdner, 2001). This risk is especially high in those abductors who have a history of domestic violence, hospitalization for mental disorders, or serious substance abuse. They may feel overwhelmed by their divorce and may be convinced that their former partners have betrayed and exploited them. Revenge may emerge as a dominant motive for the abduction. Fortunately, this type of parental abductor is relatively rare. Interestingly, one study found that approximately 75% of male abductors and 25% of female abductors had exhibited violent behavior in the past (Greif & Hegar, 1993).

NISMART-2 was conducted in the later 1990s, and collected stereotypical kidnappings from a national sample of law enforcement agencies. NISMART-2 found that stereotypical kidnappings were quite rare. Only 115 incidents occurred in 1997.

NISMART-3

NISMART-3 was conducted in 2010 to 2011 and utilized the same methodology (law enforcement agency information) used in NISMART-2. The survey revealed that an estimated 105 children were stereotypically kidnapped by strangers or slight acquaintances between October 1, 2010 and September 30, 2011. Essentially, NISMART-3 study found the number of stereotypical kidnappings in 2011 were similar to those found in NISMART-2. However, the case

outcomes for the victims seem to improve. “Eight percent of stereotypical kidnapped children in 2011 were killed, compared to 40 percent in 1997” (Wolak et al., 2018, p. 4). That is, 92% of the victims in 2011 ended with the child being recovered alive, compared to only 57% in 1997. In recent years, new technology and digital communication systems, such as cell phones, monitoring devices, and the internet, played a role in solving the crimes involving two thirds of the victims.

The 2011 report found that 81% of the kidnapped victims were girls, and half were between the ages of 12 and 17. Sixty-nine percent of the kidnapped children were reported to law enforcement when parents or others contacted police to report the child was missing. Surprisingly, no one missed 31% of the kidnapped children. In some cases, the child was returned before he or she was missed. “For example, children were taken from their beds late at night, sexually assaulted, and returned while their families still slept” (Wolak et al., 2018, p. 10). Other children were not missed “because they lived in situations where no one kept track of where they were” (p. 10).

Psychological Impact of Family Abduction

The experience of family abduction can be emotionally traumatic to both the child and the left-behind parent (Chiancone, 2001). The incident can be particularly damaging in cases in which force is used to carry out the abduction, the child is concealed, or the child is held for a long period of time. According to the first NISMART survey, abductors use force in 14% of parental abductions and coercive threats in 17% (Chiancone, 2001; Finkelhor et al., 1990). The length of time separated from the left-behind parent is one of the major determinants of the emotional impact the incident has on the abducted child (Agopian, 1984). According to Chiancone, children held for short periods (less than a few weeks) usually do not give up hope of being reunited with the other parent and do not suffer the emotional reactions found in long-term abductions.

However, the story is different for those children who experience long-term
abductions. In reference to the Agopian study, Chiancone writes,

> They [the children] were often deceived by the abducting parent and frequently moved to avoid being located. This nomadic, unstable lifestyle made it difficult for children to make friends and settle into school, if they attended at all. Over time, younger children could not easily remember the left-behind parent, which had serious repercussions when they were reunited. Older children felt angry and confused

> by the behavior of both parents—the abductor for keeping them away from the other parent and the left-behind parent for failing to rescue them. (2001, p. 5)

Chiancone (2001) also indicates that left-behind parents commonly experienced feelings of loss, rage, and impaired sleep, and more than half reported loneliness, fear, or severe depression. Social support and professional intervention are often important in helping them adjust to this traumatic experience. The psychological damage done to both the child and the left-behind parents prompted all 50 states and the District of Columbia to enact laws that treat family abductions as a felony under certain circumstances (U.S. Department of Justice, 2010).

ELDER ABUSE AND NEGLECT

Approximately 4.3 million older Americans are victims of various kinds of abuse each year (Roberto, 2016). In addition, approximately 5% of all homicide victims between 1980 and 2008 were older persons (Cooper & Smith, 2011). Currently, there is no consensus on the definition of *elder abuse* or universally accepted term consistently used "by the scientific and practice communities, advocates, or state and local governments" (Roberto, 2016, p. 303). Perhaps the most straightforward definition for our purposes is this: **Elder abuse** is defined as the physical, financial, emotional, sexual, or psychological harm of an older adult, usually defined as age 65 or above (C. E. Marshall, Benton, & Brazier, 2000). Some researchers (Acierno et al., 2010) use 60 as a minimum age of the victim for studying elder abuse. In addition, older adults rarely experience just one kind of abuse. They often experienced multiple abuses simultaneously (Ramsey-Klawsnik & Heisler, 2014; Roberto, 2016).



► Photo 11.2 Older adult male in isolated situation. Some older adults suffer a range of physical and emotional abuses. iStock/Wavebreakmedia

Melton et al. (2018) find that “the typical victim of elder abuse is very old (over 75) and frail, with great needs for personal care to remain clean, oriented, well nourished, and safe” (p. 525). In such a situation, even a well-meaning family member may lapse in providing continual care, especially when the caregiver is poorly educated and facing many life challenges, such as divorce, unemployment, substance abuse, and poor health themselves (Melton et al., 2018).

Abandonment is usually included in the definition of neglect and is characterized by such things as desertion of an elder at a hospital, a nursing facility, or other similar institution or public place such as a bus station. Financial abuse is also prevalent in cases of elder abuse. This refers to the illegal or improper use of an elder’s funds, property, or assets. Sexual abuse, on the other hand, is relatively uncommon and refers to nonconsensual sexual contact of any kind with an older person. The laws that protect elders and definitions of elder abuse vary from state to state, although all states have some form of legislation that addresses the problem (Berson, 2010). Many states have passed laws that require the police and the courts to formally

respond to accusations of elder abuse (E. Morgan, Johnson, & Sigler, 2006; B. Payne, 2008). Furthermore, 16 states mandate that certain professionals who suspect elder abuse must report it (B. Payne, 2008).

According to the National Elder Mistreatment Study (Acierno et al., 2010)—a study based on self-reports of the victims over a 1-year period—the prevalence of elder abuse in the United States was 4.6% for emotional abuse, 1.6% for physical abuse, 0.6% for sexual abuse, 5.1% for neglect, and 5.2% for financial abuse by a family member. Cognitive impairments of the older individual, such as compromises in judgment and decision-making ability, appear to be major factors precipitating abuse, especially financial abuse.

Relatively little of the mistreatment of older persons is reported to authorities. There are multiple reasons why this is the case:

> Reasons older adults give for not disclosing abuse include embarrassment, belief that they are responsible for what happened, worry that the perpetrator might harm them even more, fear of being placed in a nursing home, not believing that help is available if they expose the abuse, acceptance of a long-standing abusive situation as one that must be tolerated, and not recognizing their situation as an abusive one (Roberto, 2016, p. 302). Older men are more resistant to reporting abuse than older women.

Adult children are the most frequent abusers of their parents (National Center on Elder Abuse, 1999). Other family members and spouses ranked as the next most likely abusers of older people. Men tend to be the most likely perpetrators of elder mistreatment, although women are more likely to be involved in elder neglect (Administration on Aging, 1998). Most cases of elder abuse and neglect take place at home, because most older people live at home rather than in nursing homes or institutions.

The emotional or psychological abuse can range from name-calling or giving the “silent treatment” to intimidating and threatening the individual. It may also involve treating the older person like a child and isolating the person from family, friends, or regular activities.

Because elder maltreatment is often subtle and provides few clear or recognizable signs of the mistreatment, it is extremely difficult to say exactly how many cases there are in the United States each year. The best estimates indicate that only 1 out of 14 domestic elder abuse incidents comes to the attention of authorities, even after the enactment of mandatory reporting laws in many states (Acierno et

al., 2010; Pillemer & Finkelhor, 1988; B. Payne, 2008). B. Payne (2008) writes, “Those providing care to older persons, criminal justice officials, human service professionals, researchers, and policy makers must come to agreement that failing to intervene in elder abuse cases is, in and of itself, a form of mistreatment” (p. 711). Meeting the many needs of older adults is an important role for psychologists today, some of whom specialize in this area as geropsychologists. Geropsychology is a specialty “that applies the knowledge and methods of psychology to understanding and helping older persons and their families to maintain well-being, overcome problems and achieve maximum potential during later life” (Bush & Heck, 2018, pp. 4–5).

Roles of the Forensic Psychologist in Elder Abuse Cases

Melton and his colleagues (2018) posit that, for the forensic psychologist, the issues of elder abuse and neglect are closely related to child abuse cases in many respects: “The legal architecture for responses to abuse and neglect of elderly and disabled adults is closely analogous to that for responses to child abuse and neglect” (p. 525). *Dispositional evaluation* refers to an assessment of the attitudes, desires, and motivations of an individual. There are, however, two major differences between forensic evaluations for child abuse and those for elder abuse:

> First, clinicians conducting dispositional evaluations in cases involving elders or other dependent adults need to be aware of the service alternatives for adults with disabilities, and they need to have a realistic view of the care needs that the victim presents. In that sense, the scope of an evaluation in an elder maltreatment case may have much in common with an evaluation for limited guardianship. (Melton et al., 1997, p. 479)

Guardianship refers to the appointment of authority over an individual’s person or estate to another person when that individual is considered incapable of administering their own affairs. Guardianship —also discussed in Chapter 6—can come in many forms, but the two that are most pertinent here are general and specific or special guardianship. As the name implies, a *general guardian* is one who has the responsibility for general care and control of the person and the estate, whereas the *specific guardian* is one who has special or limited powers and duties with respect to the person. For example,

the specific guardian may have the legal authority to make only certain treatment decisions, whereas in other areas, the affected person is free to make other decisions. These guardianships also may be called limited guardianships.

The second major difference between child abuse and elder abuse evaluations is that in the latter, the victim is presumed to be competent until there is a legal determination otherwise. In addition, about one fourth of the complainants in the elder abuse cases are the victims themselves (Melton et al., 1997). Furthermore, there may be significant financial conflicts of interest, especially if the assigned caregivers are financially (and perhaps emotionally) dependent on the victim. Consequently, the clinician needs to be aware of and sensitive to the complicated relationships that may exist between the guardians and the victim.

In these situations, the forensic psychologist may be asked to do a clinical assessment of an individual's capacities. As noted by Moye (2020), "[m]any clinicians who work with older adults find that they are increasingly asked to assess a person's decisional or functional abilities" (p. 5). For example, a 79-year-old man may appear to have the capacity to live at home alone and make good medical decisions about his health but is beginning to show signs of making questionable financial decisions, even though he was able to make sound decisions and invest skillfully when he was younger. Under these conditions, a capacity assessment may be requested.

Capacity assessment is usually specific to a particular function, as opposed to the more global assessment of competence. Whereas competence assessment often has to do with criminal matters, capacity assessment is usually more focused on civil and clinical matters. Increasingly, both psychologists and legal professionals have moved away from the term *competent* to avoid the all-or-nothing status that the word conveys in the eyes of many (Moye & Wood, 2020).

Thus, rather than asking, "Is this individual competent?" the questions has shifted to "Does this individual have the capacity to do _____, with supports?" With this shifting perception, the term *capacity* is seen not as global but as task specific and situation specific. (Moye & Wood, 2020, p. 11)

A capacity assessment will try to answer the question as to whether a person has the requisite ability to perform a task or make a decision in question, while conserving as much self-determination of the older adult as possible. For example, persons with mild to moderate dementia often retain capacity in some areas and struggle with others (Page & Matthews, 2020). "Using capacity evaluations to

identify cognitive and functional strengths ensures optimal engagement and reduces excessive disability for persons living with dementia" (Page & Matthews, 2020, p. 27). The assessment report should emphasize ways to support the older adult before subtracting some of their rights and responsibilities.

The APA (2014d) published *Guidelines for Psychological Practice with Older Adults*, intended to assist psychologists in evaluating their readiness for working with this population. The Guidelines represent an update of the guidelines published in 2003. In the updated Guidelines, the APA emphasizes that

> [u]nquestionably, the demand for psychologists with a substantial understanding of later-life wellness, cultural, and clinical issues will expand in future years as the older population grows and becomes more diverse and as cohorts of middle-aged and younger individuals who are receptive to psychological services move into old age. (p. 35)

The Guidelines list 21 recommendations that psychologists who work or plan to work with older adults should consider in their practice.

SUMMARY AND CONCLUSIONS

Forensic psychologists are all too familiar with the results of violent victimization. When the perpetrator of the violence is a family member or an intimate partner, the effects are particularly devastating. Psychologists evaluate victims of violent crime to assess the extent of their psychological injury. Results of those evaluations may then be used in civil or criminal proceedings. As consultants to the legal professional, they also may educate them about research on domestic and intimate partner violence, including research on child victimization and abuse of older adults. In this chapter, we focused on the services provided to victims of family violence, as well as the information that has been gathered on the characteristics and extent of the crime itself.

Family violence is a very broad term that includes spouse or intimate partner violence (IPV), child abuse, and sibling on sibling violence, among other permutations. In this chapter, we focused on IPV, child abuse, and elder abuse. We also discussed child abduction by noncustodial parents and strangers.

Many researchers today refer to IPV rather than spousal assault or domestic violence between adult partners. This is because intimate partners often are not married or do not reside in the same domicile. Yet, the characteristics of the violence and the relationships are similar. Researchers have made considerable progress in their study

of IPV. Whereas earlier studies focused primarily on female victims, often describing them as passive, depressed, and helpless, later research focused on descriptions of the abuse relationship and features of the male batterer. Likewise, researchers have explored IPV between same-sex couples and between couples in which the woman is the abuser. In the great majority of intimate partner abuse situations, however, the male is the abuser. Recently, researchers have focused more attention on the effect of IPV on the children who witness it. Many believe that exposing children to violence between adults is a form of emotional abuse.

Child abuse—also referred to as maltreatment—can take one or more of four forms: neglect, physical abuse, sexual abuse, and emotional abuse. In any form, it is a continuing and disturbing problem. After reviewing statistics associated with this crime, we focused on the most severe forms, including infanticide, sexual abuse, the little-researched medical child abuse, and abusive head trauma. Evaluations of children who have allegedly been abused, including sexually abused, are among the most challenging for psychologists in forensic practice. These evaluations often occur in the context of divorce proceedings, which were covered in Chapter 6.

A related area, alleged instances of child abuse in the distant past, has been extremely controversial for many psychologists. These cases often— but not inevitably—revolve around the issue of repressed or recovered memory. The phenomenon of repressed or recovered memories has remained of interest to many clinicians, often under a different name—dissociative amnesia. While clinical psychologists, psychiatrists, and psychotherapists are most likely to support its existence, experimental and forensic psychologists are most likely to question it. We presented the research associated with this topic as well as conclusions from both American and British working groups. Although the repressed memory issue is far from resolved, it is important to note that the empirical research to this point does not strongly support widespread forgotten memories. It is possible, though, that some victims of sexual assault do forget and later recall their victimization many years after the abuse.

The chapter ended with coverage of services to older age groups and elder abuse. Until recently, this topic has been underresearched by psychology, but not ignored by the law or by victim advocates. Data indicate that older adults often do not report to officials the abuse or neglect they experience at the hands of family members. When such abuse is reported, it may result in guardianship proceedings, in which the care and custody of an older person may be removed from family members and transferred to other individuals or to the state.

Psychologists in forensic practice are likely to encounter these issues primarily when they are involved in such guardianship proceedings or when they assess the civil capacities discussed in Chapter 6, such as testamentary capacity or capacities to consent or refuse treatment. With a growing population of older individuals, these and other services are likely to be needed well into the future.

KEY CONCEPTS

Abusive head trauma (AHT) 456
Battered woman syndrome (BWS) 442
Battering 440
Capacity assessment 475
Child abduction 468
Conflict Tactics Scale (CTS) 447
Domestic Violence Risk Appraisal Guide (DVRAG) 446
Dysphoric/borderline batterers 441
Elder abuse 473
Family violence 436
Family-only batterers 441
Filicide 452
Flashbulb memory 466
Generally violent/antisocial batterers 441
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Ontario Domestic Assault Risk Assessment (ODARA) 446
Repressed memory 457
Repression 457
Spousal Assault Risk Assessment (SARA) 446
State-dependent memory 462

QUESTIONS FOR REVIEW

1. Summarize Meuer, Seymour, and Wallace's stage theory of domestic violence.
2. What obstacles are placed in the path of victims of intimate partner violence who want to leave the relationship?
3. Why is the term *battered woman syndrome* controversial?
4. What progress has been achieved in the treatment of batterers?
5. What are the major differences between same-sex intimate partner violence (SS-IPV) and opposite-sex intimate partner

violence (OS-IPV)?
6. List and describe briefly the four major types of child maltreatment.
7. What are the key psychological features of medical child abuse?
8. What conclusions were reached by the APA Working Group on Investigation of Memories of Childhood Abuse?
9. What is the role of the forensic psychologist in child abuse? In parental abduction? In elder abuse?

PART SIX CORRECTIONAL PSYCHOLOGY

Chapter 12 • Correctional Psychology in Adult Settings
Chapter 13 • Juvenile Justice and Corrections

CHAPTER TWELVE CORRECTIONAL PSYCHOLOGY IN ADULT SETTINGS

CHAPTER OBJECTIVES

- Describe the tasks of psychologists and other mental health professionals in adult corrections.
- Sketch the correctional system and how it operates.
- Summarize the legal rights of inmates, including the right to treatment.
- Review the research on the psychological effects of imprisonment.
- Describe treatment approaches to dealing with specific groups of offenders.

The correctional officer who was serving as the “tour guide” for the college students visiting the maximum-security facility seemed to be enjoying the break from his usual routine. Early on, he rolled up his pants leg and showed students the scars he sported from fights with inmates; then he showed them a collection of makeshift weapons that had been confiscated from their cells. The tour guide briefly led the students past a few observation cells in which prisoners with serious mental illness were in stripped down surroundings, one sobbing quietly. As the group was leaving the facility, a student muttered, “Just get me out of here.”

High school students visiting a local jail as part of a social studies class were surprised to see some detainees with laptops and other chatting with jail officers. About half of the detainees seemed sad or angry. The few women all looked very sad. Their cells were larger, and none chatted with officers, all of whom were male.

In 2020, amidst a global health crisis, prisons and jails were met with unexpected challenges: increasing numbers of inmates and staff testing positive for COVID-19. In some cases, deaths resulted. In light of the reality of correctional settings, there were numerous calls for early release of inmates who were near the ends of their sentences, were elderly, or had not been convicted of violent crimes. Some correctional systems complied, granting early parole with or without home confinement.

Corrections today is a high-profile, complex operation that consumes very large portions of the operating budgets of the federal government and virtually all states. Nevertheless, beginning in 2008, the population of people under correctional supervision in the United States began to decline (Kaeble & Glaze, 2016). At year-end 2015, about 6,741,400 persons were under such supervision, a decrease of about 115,600 from the year before (Kaeble & Glaze, 2016). That figure indicated that 2.7% of adults were under some form of correctional supervision, representing the lowest rate since 1994.

Persons under correctional supervision include those in prisons and jails as well as in the community, on probation or on parole. The decline is due primarily to lower numbers of incarcerated prisoners in federal and state prisons; declining numbers in jails are less dramatic (Kaeble & Glaze, 2016).

In a report focusing exclusively on prison populations in 2017, Bronson and Carson (2019) highlighted these continuing downward trends. Nonetheless, the number of individuals incarcerated remain staggering, at a rate of about 440 per 100,000 population. The federal system accounted for one third of the overall change in the prison population. Nearly half of federal prisoners were serving a sentence for a drug-trafficking offense. Among state prisoners, fewer had been convicted of a drug offense (15%), and slightly more than one half were serving sentences for violent offenses. Bronson and Carson's comprehensive report includes numerous details about prisoner demographics as well as differences among states. (See **Table 12.1** for selected findings.)

Many factors can account for the overall fewer number of individuals under correctional supervision, including falling crime rates and the diversion of low-level offenders to special courts, both discussed in earlier chapters. Furthermore, court decisions requiring solutions to overcrowded prisons in the 1990s prompted states to decriminalize some offenses or shorten sentences. California, for example, lost a long battle in the courts when the U.S. Supreme Court in Brown v. Plata (2011) upheld lower court decisions requiring the state to reduce its prison population. California's system had been designed for 80,000 inmates, but its population had doubled that by the time the initial suits were brought. Significantly for mental health professionals, a key component of the decision was the finding that the state of mental health care for inmates had deteriorated because of overcrowding conditions. Long before then, though, many prison systems across the United States were under mandates to improve mental health care delivered to those under their supervision. As will become clear in this chapter, these mandates were not necessarily carried out.

Table 12.1

Source: Adapted from Bronson and Carson (2019).

Mental health care is a major issue, not only in the nation's prisons, but also in its jails. Jails serve primarily as both (a) temporary detention facilities for those awaiting trial or a resolution of their cases and (b) facilities for convicted offenders serving short sentences, typically under a year. Although some offenders are in jail for other purposes (e.g., awaiting transfer to a prison or awaiting

extradition to another state), the majority are there as detainees or short-term inmates convicted of misdemeanor crimes. Jail conditions are often unstable, overcrowded, and understaffed. In early 2014, a homeless veteran, charged with trespassing, died while in custody in New York's Rikers Island, one of the nation's largest jails, where the average daily population at the time was 12,000. His cell had heated to 100 degrees because of a faulty heating system. The incident resulted in the demotion of the superintendent and the appointment of a new one. Though some positive changes were made, Rikers remained known for deteriorating conditions and violence, and it was scheduled for gradual closure beginning in 2021.

In 2020, about 70% of the women at Rikers were awaiting trial, primarily for nonviolent offenses. According to S. Singer (2020), 85% of the women are mothers, and about the same percentage have substance abuse disorders. Citing an independent report, Singer notes it is not uncommon for them to have suffered violence at the hands of men or to report having a mental illness. Such anecdotes, not always widely reported, are not unusual within the nation's jails. We will visit the issue of jail violence and mental health later in the chapter.

The majority of all offenders (approximately two thirds) in both federal and state systems are under community supervision, which includes probation, parole, and their many variants. House arrest, electronic monitoring, halfway houses for newly released offenders, day reporting, and intensive supervision are examples of sanctions included under the term ***Community corrections***. Probationers traditionally represent the majority of offenders under community supervision (Kaeble & Glaze, 2016; Glaze & Herberman, 2013), because they are predominantly nonviolent offenders. Community supervision consists primarily of probation and parole, with or without intermediate measures such as intensive supervision programs and halfway houses. **Probation** is a court-ordered period of correctional supervision in the community, usually as an alternative to incarceration, but it could also occur after a short stay in jail. **Parole** is a period of conditional supervised release in the community following a prison term, and it represents approximately 18% of offenders under community supervision.

In this chapter, we focus on the services offered by forensic psychologists to the wide variety of individuals under correctional supervision, particularly in prisons and jails. As we noted in Chapter 1, correctional psychologists sometimes prefer to use that title rather than calling themselves "forensic psychologists." Some have also expressed concern that the broad field of forensic psychology has

not given sufficient attention to the type of graduate training that is of benefit to those who want to pursue careers in corrections (Magaletta et al., 2013). Recognizing the great need for services of qualified mental health professionals in the correctional system, correctional psychologists advocate practicums and internships early in a graduate student's career (Magaletta, Patry, Cermak, & McLearen, 2017).

In the United States, correctional psychology is a vibrant and growing field. In Canada, a long and rich tradition of correctional psychology has had an enormous impact on the field, particularly in the United States and Europe (see Wormith & Luong, 2007, for a comprehensive review). Correctional treatment research by Canadian correctional psychologists (e.g., Andrews & Bonta, 1994; Hanson, Bourgon, Helmus, & Hodgson, 2009; Hanson & Harris, 2000) has been instrumental in the development of correctional psychology as a viable profession.

The chapter begins by providing an overview of key concepts and the legal rights of inmates that are pertinent to psychological concepts. We then focus on two issues of great concern: (1) the rates of mental illness, including serious mental illness, within the prison and jail populations and (2) the excessive use of solitary confinement, often for extended periods of time. As will be seen, these two issues often overlap. We then examine the assessment and treatment roles of correctional psychologists as well as aspects of the prison and jail environments that present obstacles to effective treatment. By far the greatest research attention is paid to the work of psychologists who consult with or work in institutional settings, yet correctional and forensic psychologists as a group are more likely to come into contact with persons under community supervision than inmates within correctional facilities. During the latter part of the chapter, therefore, we focus on community corrections and the contributions of forensic psychologists in that realm.

INSTITUTIONAL CORRECTIONS

The United States has the highest **Incarceration rate** of any industrialized country, with the numbers of inmates behind bars having increased steadily over the past quarter century and only beginning to decrease in recent years. Incarceration rate refers to the number of individuals who are incarcerated, per 100,000 population. As noted above, in the second decade of the 21st century, about 440 of 100,000 persons in the United States were

incarcerated in federal or state prisons or jails (Bronson & Carson, 2019).

The crimes for which offenders are incarcerated are not only those considered the most heinous. In 2017, just over half of the offenders in in state prisons were serving time for violent offenses, and about 15% were for drug offenses. As might be expected, robbery, murder, rape/sexual assault, and aggravated assault accounted for the great majority of violent crimes sentenced offenders in state facilities had committed. In the federal system, about half of the inmates were serving sentences for drug offenses.

Decreases in the prison population reflect lower numbers of both men and women—and women made up 7% of the total prison population in 2017 (Bronson & Carson, 2019). As noted in **Table 12.1**, incarcerated women have higher rates of drug offenses than men and lower rates of violent offenses.

In the sobering book *Just Mercy*, later adapted into a movie, Bryan Stevenson, founder of the Equal Justice Initiative, provides numerous anecdotes about prisoners trapped in the U.S. criminal justice system, often in overcrowded facilities. (Recall **Focus 7.2** in Chapter 7, wherein we covered a few of Stevenson's juvenile-related cases.) Noting the collateral consequences of incarcerating women primarily for drug-related offenses and nonviolent crimes, Stevenson writes not only about the conditions of imprisonment but also about the effects on the lives of their children. In some states, even after reentry into society, women (as well as men) are barred from receiving public benefits, such as housing allowances. "In the last twenty years, we've created a new class of 'untouchables' in American society, made up of our most vulnerable mothers and their children" (Stevenson, 2014, p. 237). Women in one noteworthy prison were sexually assaulted by male guards, and the warden allowed guards entry into showers during prison counts. "The culture of sexual violence was so pervasive that even the prison chaplain was sexually assaulting women when they came to the chapel" (Stevenson, 2014, p. 238).

Privatization

Finally, it is important to make note of privatization within the correctional system. Privately operated facilities—as opposed to government facilities—house many inmates, although these numbers are decreasing as well. Nonetheless, at year end 2017, 8% of state and federal prisoners were held in private facilities in 27 states as well as under the jurisdiction of the Federal Bureau of Prisons (Bronson & Carson, 2019). In the first decade of the 21st

century, the average percentage of state inmates in private facilities ranged widely among states—over 40% in New Mexico and under 5% in Maryland, for example (Y. Kim & Price, 2014). Today, despite some decreases, the federal government and many states are still showing interest in turning to the private sector to hold inmates. For-profit facilities developed rapidly in the 1980s and 1990s, then began to lose favor as researchers questioned their effectiveness. Within the past decade, this has been a highly controversial, and often political issue (Y. Kim & Price, 2014; Lindsey, Mears, & Cochran, 2016; Makarios & Maahs, 2012; Powers, Kaukinen, & Jeanis, 2017). On one side are those who want to maintain this corporate approach; on the other are those who believe that oversight of persons convicted of crimes should be a governmental responsibility. Lindsey et al. (2016) have argued that the private versus public debate has thus far been primarily ideological, with insufficient evidence to weigh the relative merits of the two approaches to corrections (See **Focus 12.1** for more discussion on private prisons.)

Many legal scholars and researchers in the social sciences are concerned about the disproportionate confinement of the poor and racial or ethnic minorities. The conditions within many prisons, including overcrowding and violence within the facility, give further cause for concern. In recent years, for example, the disturbing topic of prison rape has received increasingly more research attention (Neal & Clements, 2010; Stemple & Meyer, 2014) as well as legal commentary (Stevenson, 2014). Although few scholars advocate the total abolition of jails and prisons, many are calling for alternatives to incarceration, especially for nonviolent offenders.

Forensic psychologists working within or in consultation with **Institutional corrections**, then, must find ways to do their work within a system that often must justify its own operation, and many perform this work admirably (Gendreau & Goggin, 2014; R. D. Morgan, Kroner, Mills, & Batastini, 2014). However, it is clear that highly capable and compassionate mental health providers can experience severe burnout working in these settings (Gallavan & Newman, 2013). (Recall **Perspective 8.1** in Chapter 8 in which Dr. Gowensmith thoughtfully mentions his early work in this field.)

The psychologist in a correctional setting also must work in an environment that often diminishes the likelihood of therapeutic success. Inmates often get transferred to other prisons, correctional officers may not support the psychologist's role, administrators may cut their budgets, there is little time to conduct research, and the limitations on confidentiality suggest to prisoners that psychologists

are representatives of the prison administration rather than advocates for their own interests. We cover these and other issues later in the chapter.

For the time being, it is important to note that many professional groups have established a variety of guidelines and standards for providing services in correctional facilities. These include the "Standards for Health Services in Prisons," published by the National Commission on Correctional Health Care (NCCHC; 2008, 2015), and the American Correctional Association's (ACA's) *Performance-Based Expected Practices for Adult Correctional Institutions*, now in its 5th edition (ACA, 2017). It should be noted that the excellent standards developed by the International Association for Correctional and Forensic Psychology (IACFP; Althouse, 2010) were retired in 2019. Many of the standards advocated by the IACFP were incorporated into NCCHC and ACA standards, which have been revised periodically and which have mechanisms for enforcement.

Focus 12.1

Corporatizing Punishment

Shortly before leaving office, in August 2016, President Barack Obama urged the Federal Bureau of Prisons (BOP) to begin phasing out its use of private prisons for federal offenders. In February 2017, a new administration, and a new attorney general, announced an opposite stance: Under the new administration, private prisons would be encouraged, supposedly giving the Bureau of Prisons the flexibility to manage federal inmates. This announcement was encouraging news to states that sought more development of for-profit prisons as well. Stocks in the two largest private prison corporations—CoreCivic (formerly the Corrections Corporation of America) and Geo Group rose 100% after the presidential election of 2016.

Private, for-profit incarceration facilities have a long history in corrections, but they were used primarily for juveniles, and presumably with an emphasis on rehabilitation. In the modern era, they began to reemerge in the 1980s and developed rapidly between 1990 and 2009. Between 1990 and 2009, the number of prisoners in private prisons increased by over 1600% (Shapiro, 2011). In 2016, Immigration and Customs Enforcement (ICE) reported that private prisons held nearly three quarters of federal immigration detainees. As noted in the text, at year's end 2017, 8% of state and federal prisoners were held in private facilities (Bronson & Carson, 2019). Interestingly, 42 juveniles under the age of 17 were held in private

facilities under contract with the BOP. States held about 900 such prisoners in adult facilities.

It is important to emphasize that privatization also occurs on a smaller scale—that is, services within a state or federal prison may be contracted out. These include, for example food services, substance abuse treatment services, educational programming, and mental health services. However, these subcontracted services receive less criticism than the large scale private prison.

The yearly cost of maintaining one inmate in a government-operated prison is often greater than one year's college tuition. Proponents of private prisons indicate they are cost effective, reduce recidivism, and produce jobs. A significant amount of research indicates that cost savings are minimal, that private prisons do not reduce recidivism any more than public prisons, and that they have an overall negative impact on all services (Bales, Bedard, Quinn, Ensley, & Holley, 2005; C. Mason, 2012; Shapiro, 2011).

Nonetheless, the research is not unequivocal. A study examining recidivism rates of inmates in private and public reentry centers in Colorado, for example, found overall recidivism was comparable between the two groups (Powers et al., 2017). In a national study (Makarios & Maahs, 2012) researchers found that private prisons were less crowded than state or federal prisons, but federal prisons were better than private prisons at providing work, treatment, and educational programs. State prisons also provided better work opportunities, but were not better than private prisons at treatment or educational programs.

In addition, anecdotal accounts of conditions in many private prisons indicate additional problems, such as poor staff training, poor quality medical care, and high levels of violence—problems that are found in public prisons as well. Of note, however, a 2012 U.S. Supreme Court decision (*Minneci v. Pollard*) limited the options for inmates held in private prisons to sue these entities for constitutional violations.

Prisoner advocacy groups now fear that privatization of prisons and juvenile facilities will lead to continuing cuts in services, including mental health services, because these institutions are seeking profit. In addition, because there will be beds to fill, there will be great incentive for imprisoning more individuals rather than reduce the overall prison population.

QUESTIONS FOR DISCUSSION

1. Obtain more information about CoreCivic or the GEO Group and discuss what you have learned.

2. Does the government (federal or state) have an obligation to "manage" offenders directly, or is it acceptable to contract out this management to the private sector?
3. What might be advantages and disadvantages for the correctional psychologist working in public versus private facilities?
4. Many detention facilities that house immigrants seeking entry into the United States are privately operated. Obtain and discuss any one media article that refers to conditions in these facilities.

In addition, psychologists working in corrections are expected to conform to the ethical code of the American Psychological Association (APA). The "Specialty Guidelines for Forensic Psychology" (APA, 2013c) also are relevant to the work of psychologists working within the correctional field. Finally, psychologists must be aware of all state and federal laws and regulations that pertain to the care and custody of jail and prison inmates.

OVERVIEW OF CORRECTIONAL FACILITIES

Persons detained, accused, or convicted, when not allowed to remain in their own homes, are housed in several types of facilities: detention centers, jails, prisons, and community-based facilities. The term *detention center* is applicable primarily to the federal facilities that hold people on a temporary basis while their status is being reviewed (e.g., immigration status), but jails—which are operated by local governments, are also used to detain. As noted earlier in the chapter, **Jails** are distinct from prisons, because they primarily hold persons for short time periods. People in jail are temporarily detained, held for lack of bail while awaiting trial or other court proceedings, or sentenced to confinement after having been convicted of a misdemeanor. **Prisons** are facilities operated by the federal government and all states for those convicted of felonies, and typically sentenced to terms of more than 1 year. **Community-based facilities** are less secure institutions, such as halfway houses or transition homes, typically intended as **Intermediate sanctions** for offenders deemed to need less security than would be provided in jails or prisons but more than would be available in their own homes.

On any given day, approximately half of the individuals held in jails are innocent; they are detainees, not convicted of the crime of which

they are accused. Ultimately, some may be found guilty, but until then, they are considered innocent. Approximately another half are serving short-term sentences for misdemeanor offenses. The proportion of detainees and sentenced misdemeanants varies widely by jurisdiction, however. In some facilities, up to 70% of the population comprises **Pretrial detainees** who were unable to afford bail or who were denied bail because they were considered dangerous. Jails also may house a vast array of individuals awaiting transfer to prison, to a mental institution, to another state, to a juvenile facility, or to a military detention facility, though such individuals awaiting transfer usually make up a small portion (rarely more than 5%) of the jail population. In effect, though, jails hold a collection of persons at various stages of criminal, civil, or military justice processing. In some communities, jails also serve as temporary overnight shelters for individuals whom police arrest on minor charges, believing they need a safe haven.

As noted above, in the federal system, pretrial detainees are held in **detention centers**. When space in federal detention centers is not available, persons accused of federal crimes or awaiting sentencing are detained in state or local jails. Federal detention centers have been heavily publicized since the terrorist attacks of September 11, 2001, because the government held individuals for questioning about possible terrorist involvement. “Makeshift” detention centers were opened, and numerous individuals were turned over to Immigration and Naturalization Services (INS)—now Immigration and Customs Enforcement (ICE)—and deported after secret deportation proceedings before immigration judges. In 2016, ICE reported that nearly three quarters of federal immigration detainees were held in private facilities. In recent years, this has become a major humanitarian issue, particularly because both adults and children have been detained.

Prisons, operated by states or by the federal government, hold only persons convicted of felonies. They are classified by the level of security maintained over the inmates: minimum, medium, and maximum, with gradients sometimes in between these three main alternatives. Different custody levels are also found within as well as among prisons. Thus, an inmate may be kept in close custody in a medium-security prison for disciplinary reasons, and an inmate in a maximum-security prison may have attained “trustee” status, requiring minimal custody.

In the 1990s, **Supermax prisons** were introduced in the federal government and approximately 41 states. These are extremely high-security facilities (or units within a maximum-security prison)

supposedly intended to hold the most troublesome, violent inmates. As we will see later in the chapter, however, numerous concerns have been raised about these facilities and about solitary confinement in general. Prison systems also may include specialized facilities, such as work camps, hospitals, classification centers, and units for inmates with mental disorders. Boot camps, prison farms, forestry centers, and ranches for young offenders who have committed primarily nonviolent crimes are other examples of specialized facilities.

In some states, jails are under the control of the state rather than local government, and jail/prison functions are combined. Thus, detainees and sentenced offenders—both misdemeanants and felons—may be kept within the same facility, though they may be placed in separate housing units. A typical approach in these "mixed systems" is to have one or two facilities designated as maximum security, with the balance being medium- or minimum-security facilities capable of housing persons accused of crime as well as those who have been convicted and sentenced.

The federal prison system is highly organized and centralized under the **Federal Bureau of Prisons (BOP)**. (See **Focus 12.2**.) It consists of a network of facilities that are called penitentiaries, correctional institutions, prison camps, and halfway houses, as well as the detention centers referred to earlier. They are located on a continuum of five security levels: minimum, low, medium, high, and administrative. The nation's one federal supermax facility, located in Florence, Colorado, is classified at the administrative level. The facility houses approximately 900 male inmates, including some persons convicted of high-profile crimes, such as the Boston Marathon bomber.

In addition to the features summarized above, jails and prisons can be contrasted on an important point that affects the work of psychologists. Prisons are far more likely than jails to offer programs, including recreation, work programs, substance abuse treatment, and a variety of rehabilitative programs. This can be attributed to several factors. First, because a jail stay is relatively short, inmates are less likely to benefit from meaningful programming. Second, most jails are operated by local governments and do not have funds available for much beyond their custodial function. Third, most jails are operated by law enforcement professionals, such as county sheriffs, rather than corrections professionals. The law enforcement community is not trained to provide services to offenders or alleged offenders; it is trained to enforce the law, protect the public, and provide service to the

community. Programming for detainees and inmates is not considered a priority. Nevertheless, there are exceptions, and programming can be found in many jails nationwide. Short-term programs, such as those addressing substance abuse, domestic violence, and prevention of disease, are examples. Furthermore, a professional organization—the American Jail Association—publishes standards for operating jails that include training staff and offering a variety of services to detainees and inmates.

Focus 12.2

Career Opportunities in the Federal Bureau of Prisons

Despite the fact that the federal prison populations has decreased, there is a constant need for mental health professionals. The BOP stresses that it has career opportunities for doctoral-level clinical psychologists in facilities around the country (Magaletta et al., 2013). Similar career opportunities exist in the Canadian correctional system, which offers multiple opportunities for practicum sites (Olver, Preston, Camilleri, Helmus, & Starzomski, 2011).

The roles of these psychologists vary depending on the overall mission of the facility (McKenzie, 2013). The BOP is a national leader in offering quality predoctoral internship training for students interested in becoming a professional or correctional psychologist. The internships are fully accredited by the APA, which is an important stamp of approval for the extensive and meaningful training provided.

Staff psychologists in the BOP are autonomous. They are the main providers of mental health services and—in contrast to psychologists in some state prison systems and mental hospitals—are not under the supervision of psychiatrists. Broadly, psychologists provide crisis intervention to acutely suicidal and psychotic individuals, as well as long-term psychotherapy to those individuals seeking to resolve emotional and behavioral problems. They also provide assessments on a regular basis. Staff psychologists have the opportunity to be involved in the following:

- Forensic evaluations for the federal courts
- Psychological evaluations of candidates for the witness protection program
- Assessments of sex offenders for possible civil commitment proceedings
- Hostage negotiation training
- Drug abuse treatment programs
- Suicide prevention programs
- Crisis intervention response teams for trauma victims

- Predoctoral internship training programs
- Employee assistance programs
- Inpatient mental health programs
- Staff training
- Research

Source: U.S. Bureau of Prisons (http://www.bop.gov).

Although psychologists are less likely to be involved in treatment programs in jails than in prisons, their *assessment* and *crisis intervention* services are often in demand in these short-term settings. This is a growing need today (Gowensmith, 2019). Some pretrial detainees, for example, need to be assessed for their competency to stand trial and the variety of other competencies that were discussed in Chapter 5. Whether or not competencies are in question, pretrial detainees are often confused; frightened; and worried about their social, legal, and financial status. In a confusing, noisy, often crowded environment, detainees may experience "entry shock." This is particularly—but not exclusively—a problem for persons being held in jail for the first time. Suicide is the leading cause of death in jails. Research also documents that suicide rates are higher in jail than in prison; some estimates indicate they are at least 5 times higher (F. Cohen, 2008; Steadman, McCarty, & Morrissey, 1989). Although screening for suicide risk is typically done by non-psychological staff upon a detainee's or inmate's entry into the facility, mental health professionals are very much needed to do a more comprehensive assessment and to offer treatment to individuals who are at risk of taking their own lives. Despite this, jails are much less likely than prisons to have well-developed mental health services available to inmates (Steadman & Veysey, 1997). It is for this reason that many communities have now begun to experiment with the mental health courts that were discussed in Chapter 4.

Correctional facilities—both jails and prisons—can be violent, noisy, disorganized, demeaning places that promote isolation, helplessness, and subservience through the use of overwhelming power, often by instilling fear. Many classic and contemporary researchers and commentators have addressed these issues (e.g., Haney, 2006, 2015, 2020b; Sykes, 1958; Toch, 2008). In a classic study, the Stanford Prison Experiment (Haney, Banks, & Zimbardo, 1973; Zimbardo, 1992) researchers simulated a prison environment in the basement of the psychology building at Stanford University. Student volunteers were randomly placed in roles of either guards or inmates, and "guards" were given almost unlimited power over "inmates." The experiment demonstrated how the power of the

situation affected both groups of participants. Although we do not discuss this study in depth here, it has attracted considerable interest over the years and is arguably the most famous experiment in the history of psychology (Griggs, 2014). (See **Perspective 12.1** later in the chapter in which Dr. Haney writes about this as well as his work with death row inmates.)

Despite the multitude of problems that are associated with the conditions of incarceration, many correctional professionals maintain that both jails and prisons can be operated in a humane fashion and can achieve society's dual hope of protecting the public from crime and rehabilitating offenders. Advocates for those in jails and prisons, however, emphasize that truly humane institutions are rare, and that the United States continues to incarcerate individuals at higher rates and for longer periods than necessary.

LEGAL RIGHTS OF INMATES

It is a well-established principle in law that prisoners do not lose their constitutional rights at the prison gate. In a great number of U.S. Supreme Court decisions, especially during the 1960s and 1970s but even to the present, the Court specified minimum rights that were guaranteed to inmates under the Constitution. The cases decided by the Court involved procedures, practices, and conditions of confinement in jails and prisons. In addition to federal constitutional protections, inmates also may have rights that are guaranteed under their state constitutions or under both federal and state statutes, or state courts (e.g., rights pertaining to visitations or educational benefits).

In this section, we cover the key doctrines that are most relevant to psychologists consulting with correctional systems or offering direct services to inmates. This will, of necessity, omit legal protections that are important to inmates but are at most peripheral to the professional concerns of psychologists. For example, inmates have a constitutional right to receive mail (although it may be censored) and to observe religious practices (including dietary practices), unless those practices interfere with institutional security or create excessive economic burdens. Readers are referred to the excellent treatises by Fred Cohen (1998, 2008; Cohen et al., 2011) and John Palmer (1973, 2010) for comprehensive coverage of correctional law that encompasses many areas not to be discussed here.

The principles clearly apply to cases involving prisoners, but they also apply to those serving jail sentences. For this reason, we will use the term *inmate* throughout this section as a more generic term to cover both groups. The rights of pretrial *detainees,* however, are

somewhat different because these individuals have not been convicted of a crime. Nevertheless, in the name of institutional security, detainees can be subjected to many of the same conditions as sentenced misdemeanants, as will be noted shortly. A question still unanswered, though, is the extent to which all of these rights apply to inmates being held in private prisons. In two Supreme Court cases involving federal prisoners held in private prisons (Correctional Services Corporation v. Malesko, 2001; Minneci v. Pollard, 2012), the Court denied the inmate the right to sue officials of the private prisons for violation of constitutional rights, maintaining that there were adequate state tort remedies. The recent case, Minneci, involved an inmate's claim that he was denied adequate medical treatment in violation of the Eighth Amendment prohibition against cruel and unusual punishment. Dissenting in the case, the late Justice Ruth Bader Ginsburg noted that, if Pollard had been held in a federal or state public prison, he would not have been denied the opportunity to sue prison officials. (**Table 12.2** lists key U.S. Supreme Court cases dealing with prisoner rights.)

Right to Treatment

A right closely aligned with the interests of psychologists is the constitutional right of the inmate to receive adequate medical treatment. The case that established this right is Estelle v. Gamble (1976), in which an inmate argued that his Eighth Amendment protection against cruel and unusual punishment had been violated by the failure of prison officials to attend to his medical needs.

Table 12.2

Gamble was on a prison work assignment when a bale of cotton he was loading on a truck fell on him. There followed 3 months of repetitive visits to prison medical staff, during which he was provided with muscle relaxants and other medications. By the end of this period, he had received numerous different medications, blood tests, and blood pressure measurements, along with cell passes permitting him to stay in his cell. At one point, a prescription was not filled for 4 days because the staff had lost it. Eventually, he refused to work, saying that his pain was not dissipating, and he was brought before a prison disciplinary committee and then placed in solitary confinement as punishment. While in solitary, he asked to see a doctor for chest pains; a medical assistant saw him 12 hours later and hospitalized him.

Although Estelle v. Gamble (1976) involved treatment for a variety of physical ailments, it has widely been interpreted to include psychological or psychiatric assistance for serious mental disorders

(F. Cohen, 2008). To deprive the inmate of adequate medical care violates the Eighth Amendment ban on cruel and unusual punishment. The question naturally arises, “What is ‘adequate’ medical treatment?” Inmates clearly do not have a right to “state-of-the art” treatment or therapy. In fact, in the *Gamble* case, even failure to obtain an X-ray of an inmate’s lower back was not considered inadequate. Although the Supreme Court in that case made it clear that inmates had a **Right to treatment**, it did not second-guess the judgment of medical professionals who chose not to order the X-ray.

Estelle v. Gamble (1976) is an important case because it not only clearly stated that inmates have a constitutional right to medical treatment, but also set the standard for deciding whether the Constitution had been violated. Inmates alleging such a violation would have to prove that prison officials were “deliberately indifferent” to their serious medical needs. Simple “negligence” would not be enough to amount to a constitutional violation (although negligence would be sufficient under some *state* laws). In a later case, Farmer v. Brennan (1994), the Court said that a prison official would not be liable unless that official both knew of and disregarded an excessive risk to an inmate’s health and safety. The Court added that if an official *should have known* of a substantial risk but did not, the official’s failure to alleviate the risk did *not* constitute cruel and unusual punishment.

The above standard for finding liability is vague in the context of psychological treatment, and has not be sufficiently addressed in subsequent Court decisions. Nevertheless, it is clear that inmates should be afforded treatment at least for serious mental illness carrying such diagnoses as psychosis, clinical depression, and schizophrenia. A constitutional right to receive treatment for mental illness that is less serious or for substance abuse is not a certainty, but the professional correctional standards advocate meeting all mental health and substance abuse needs of inmates.

Right to Refuse Treatment

Although inmates have a right to treatment, they cannot be forced to participate in treatment programs. This applies to both physical and psychological treatment. However, if the state has a very strong interest in seeing the inmate’s behavior changed, some leeway exists. In the Supreme Court case, McKune v. Lile (2002), the Court allowed prison officials to effectively punish an inmate for refusing to participate in a program, although the state argued—and the Court agreed—that it was not acting punitively.

Lile was a convicted rapist within 2 years of completing his sentence and being released. The state of Kansas had a strong interest in enrolling him in a sex offender treatment program that required him to disclose his history of offending, but it did not guarantee that the information would be confidential. This requirement that offenders take responsibility for their actions is common in treatment programs and is not limited to sex offenders. In a 5–4 decision, the Court ruled that although inmates still may not be *forced* to participate in a treatment program, they can be *persuaded* to do so with threatened loss of privileges, provided that the state's interest in rehabilitation is high, as it was in this case.

The Court has issued one decision on the right of inmates to refuse treatment in the form of psychoactive drugs (Washington v. Harper, 1990). In that case, the Court acknowledged that an inmate could challenge on order to take these drugs, but that the challenge could be done in an administrative hearing within the prison and did not need to be heard in a state or federal court. In Washington, felons with severe mental disorders were housed in a special unit within the prison system. Anti-psychotic drugs were frequently used to control disruptive behavior. If an inmate refused to be treated with these medications, the inmate was allowed to challenge the treatment in an administrative hearing before a three-person panel comprising a psychologist, a psychiatrist, and a member of the prison administration.

Harper and other inmates wanted a judicial review, before an independent court, rather than an administrative review. They also wished to be afforded a right to counsel, rather than the lay adviser allowed in the administrative hearing. The Supreme Court majority (6–3) found no fault with the procedure in use.

Right to Rehabilitation

People are often surprised to learn that, although there is a right to *treatment* for physical and mental disorders, an inmate has no constitutional right to *rehabilitation* in correctional settings. In this context, **Rehabilitation** refers to a variety of programs that presumably should increase the likelihood that the inmate will not reoffend upon release from prison. In a wide range of cases, inmates have asked the courts to grant them constitutional rights to participate in substance abuse programs, job training programs, educational programs, and programs for violent offenders, among many others. They have consistently been rejected. This is not to say that such programs should not exist. In fact, "[i]t is clear . . . that a penal system cannot be operated in such a manner that it

impedes the ability of inmates to attempt their own rehabilitation, or simply to avoid physical, mental, or social deterioration" (J. W. Palmer & Palmer, 1999, p. 221). Thus, a lack of *any* meaningful rehabilitative opportunities, particularly within a prison system, would be regarded with suspicion by the courts. The key principle is that individual prisoners do not have a constitutional right to participate in any particular program. Corrections officials are given the discretion to decide who will be assigned to these programs.

Prison Transfers

Inmates have no constitutional right to be held in a specific facility, including one in their home state or close to their family. In many prison systems, it is not unusual for prisoners to be moved from one facility to another, often with little or no notice. One prominent correctional scholar was fond of commenting wryly that, on any given day, half his state's prison population was on a bus.

The type of **Prison transfer** that has constitutional implications is the transfer to a civil mental institution. Inmates with mental disorders who are facing a transfer to a mental health facility outside of the prison system are entitled to a hearing before this occurs (Vitek v. Jones, 1980). In reality, transfers to mental institutions are rarely challenged (F. Cohen, 2000, 2008). Furthermore, inmates with mental disorders, when transferred, are usually sent to a mental health unit or facility within the prison system. Because it is not clear whether such transfers require hearings such as those outlined in the *Vitek* case, prison systems sometimes provide them as a matter of policy if the inmate protests the transfer.

Privacy and Confidentiality

Inmates have very little right to privacy in prison or jail settings. Despite the fact that some inmates call their cells their "houses" or "homes," the law does not treat them this way. It should be noted, too, that in some medium- and many minimum-security prisons, inmates do not have cells—they are housed in open barracks-like quarters, often in bunks, with very little privacy.

In the leading case on this issue, Hudson v. Palmer (1984), the Court gave corrections officials wide leeway in conducting unannounced cell searches without the presence of inmates. Prisoners had asked to be allowed to be present when the cell searches were conducted, arguing that their property—including objects having sentimental value—was sometimes destroyed or was missing after these searches. Although not condoning malicious destruction of property, the Court majority nevertheless left these

searches to the discretion of prison officials, in the name of maintaining institutional security.

Related to privacy, the confidentiality of psychological records is a topic of direct concern to the forensic psychologist. Psychologists have an ethical obligation to preserve inmate confidentiality to the maximum extent possible. In the event that third parties within or outside the facility are provided with psychological information, "release of confidential information" forms should be completed by inmates and kept in the files. Interestingly, even more basic than confidentiality is the actual *adequacy* of the records. Despite the fact that lower courts have made it clear that adequate records are prerequisite to continuity of care (F. Cohen, 2008), there is widespread concern about poor recordkeeping in many correctional facilities. According to Fred Cohen (2008), a lawyer and a scholar of correctional law,

> In my own work encompassing a large number of prisons, I would say that broadly deficient mental health records is the most consistently encountered problem I uncover. . . . What may be surprising is that even in relatively sophisticated systems, the mental health records are sometimes so deficient that there often is no treatment plan or only an old one that has not been changed or updated; what is there is illegible; there is no medical history or a clinically inadequate one; treatment recommendations are sparse or nonexistent; and there are no follow-up or progress notes. (pp. 10–12)

Cohen adds that "decent treatment" may in fact be occurring in some cases, but this would not be evident from the files. He includes in his 2008 book a helpful guide for ensuring a properly prepared mental health file.

Rights to Competency for Execution

No prisoner-related issue in recent years has received more attention from the Supreme Court than that related to competency for execution. In a range of cases, some of which are covered in more detail later, the Court has declared that adults who are too mentally ill to appreciate what was happening to them or were intellectually deficient or have dementia cannot be put to death. Standards for determining who meets these thresholds are continually debated.

This issue began with the Supreme Court's landmark ruling in Ford v. Wainwright (1986), in which the Justices ruled that executing a death row inmate who was "insane"—or too mentally disordered to appreciate what was happening to him—violated the Constitution. Since the *Wainwright* ruling, many forensic psychologists and psychiatrists have been troubled. Some psychologists resist participating in evaluations of an inmate's **Competency to be executed**, knowing that their recommendation could facilitate the inmate's death. Some psychiatrists—who have the authority to prescribe medication—have not wanted to prescribe psychoactive medication that would stabilize the inmate enough to allow them to be put to death. It should be noted that the American *Psychiatric* Association has recommended that members not participate in these evaluations.

Furthermore, lawyers representing death row inmates have argued that they should have a right to refuse the medication. In February 2003, a federal appeals court became the first federal court to rule that death row inmates do *not* have such a right.

Competency for execution has reached into related areas since the *Wainwright* ruling. For many years, and even up to the present, the Court has wrestled with the mental status of adults other than those with severe mental illness. These include inmates with intellectual disability and various forms of dementia. As is discussed later, the Court has placed restrictions on execution of individuals with intellectual disability but has given some leeway to states to set standards in that regard. Likewise, inmates with dementia might be excused from execution, depending upon the extent of their inability to recall their crime and understand what is happening.

Rights of Pretrial Detainees

Under the law, persons accused of crime and held in jails or detention centers may not be punished. As noted earlier, they are innocent unless and until they are proven guilty. However, courts allow detainees to be placed in highly restrictive conditions and to suffer significant invasions of privacy in the name of institutional security. In addition, a detainee can be placed in isolation for violating the rules of the facility.

In the landmark U.S. Supreme Court case on this issue, Bell v. Wolfish (1979), detainees in a federal facility challenged a number of actions taken by administrators in the name of institutional security. For example, detainees were placed in groups of three and more in what were intended to be two-person cells, and they were sometimes put in makeshift accommodations due to overcrowding.

They were not allowed to stand and watch if their cells were searched. They were not allowed to receive packages containing food items or personal items from outside the institution. Finally, they were submitted to visual body cavity searches after contact visits (visits from the outside). In a 6–3 decision, the U.S. Supreme Court ruled that these were not punitive conditions and were justified in the name of institutional security.

As noted earlier, in addition to the Constitutional protections, inmates and detainees may have certain rights under their state constitutions or laws passed by state legislatures. Confidentiality of records, rights to participate in rehabilitation programs, and visitation rights (e.g., the right to see one's children) are all areas that vary widely from state to state. The psychologist working in a correctional setting, then, must be aware not only of the rights guaranteed under the U.S. Constitution, but also of the laws specific to the state where the facility is located.

We turn now to two topics that are of great concern to forensic and correctional psychologists, many legal scholars, and generally groups and individuals who bring attention to the need for reform in corrections. These are the increasing percentages of inmates with mental illnesses, in both jails and prisons, and the use of solitary confinement, including for those inmates with mental illness.

The Extent of Inmates With Mental Disorders

In reality, both jails and prisons hold substantial numbers of individuals with severe mental disorders (Althouse, 2010; Faust & Magaletta, 2010; James & Glaze, 2006). Recall Perspective 8.1 in Chapter 8, in which Dr. Neil Gowensmith focuses on the great need for mental health services in these settings. In fact, despite some reductions in the correctional population in recent years, there is little indication that the percentage of inmates with serious mental disorders is declining. Inmates have a constitutional right to adequate mental health care, as noted earlier, but nevertheless the lack of adequate mental health care in jails and prisons across the United States is widely acknowledged by commentators and courts alike (F. Cohen, 2008; Heilbrun & Griffin, 1999; R. D. Morgan, Gendreau et al., 2016). In line with the ruling in *Estelle v. Gamble*, courts not infrequently try oversee and fix this problem. Recall that in Brown v. Plata (2011), the U.S. Supreme Court agreed with lower courts that the state of mental health care in California prisons had deteriorated to the point that Eighth Amendment rights of prisoners were violated.




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► Photo 12.1 A prisoner with mental illness is silhouetted as he peers out from the small opening of his cell door.
© AP Photo/Troy Maben.

A great number of individuals with mental disorders continue to languish in jails and prisons without adequate psychological intervention (see **Photo 12.1**). It has been estimated that at least 10% to 15% of men in jails and state prisons have severe mental disorders and are in need of treatment (Ax et al., 2007; H. R. Lamb, Weinberger, & Gross, 2004; Steadman, Osher, Robbins, Case, & Samuels, 2009). Preliminary data from the Mental Health Prevalence Project (MHPP; Magaletta, Dietz, & Diamond, 2005) suggest that the rates of psychiatric disorder among *federal inmates* may not be that different:

> [O]ur overall estimates suggest that the populations may actually be more similar than previously thought. Although the two jurisdictions (i.e., federal and state) do house correctional populations that are dissimilar along certain demographic and criminological dimensions, mental health might not be one of them. (Magaletta, Diamond, Faust, Daggett, & Camp, 2009, p. 241)

Studies also indicate that the need among female inmates is even greater than among male inmates (Magaletta et al., 2009), an estimate that is somewhat confounded by the fact that women, compared with men, may be more likely to self-disclose their need for mental health services. Some studies reveal that two thirds of women in a state correctional institution report symptoms of psychological and mental disorders (Faust & Magaletta, 2010; Reichert, Adams, & Bostwick, 2010). In a survey of female inmates, James and Glaze (2006) reported that 77% of women in the federal correctional system and 70% in the state correctional systems used mental health services while incarcerated. In addition, 60% of male inmates reported receiving these services while incarcerated. Faust and Magaletta (2010) found that female inmates who had a history of mental health treatment (inpatient and out-patient), suicide attempts, and drug abuse before incarceration used psychological services at a greater level than those who did not show these pre-incarceration characteristics. Faust and Magaletta concluded that these results suggest that “those familiar with accessing mental health services in the community are more comfortable with and able to request them once incarcerated” (p. 6).

Segregation

Segregation, also referred to as solitary confinement or isolation, refers to the separation of an inmate from the general jail or prison population. This may be done for a variety of reasons. As depicted in the anecdote at the beginning of the chapter, prisoners with mental illness are sometimes isolated in observation cells, even for days or weeks. In addition, inmates may be placed in **Disciplinary segregation**, as punishment for violation of rules, or in **Protective custody**, to keep them away from other inmates who may prey on them. Supermax or ultramax facilities hold large numbers of allegedly violent and recalcitrant inmates in **Administrative segregation** for years at a time, and this term is also sometimes used for the temporary isolation of inmates while an alleged violation is being investigated. And, of course, in death penalty states, prisoners on death row are usually held in solitary in single cells for years at a time. Depending on the state, they may have more or less opportunity to interact with other death row prisoners.

Whatever terminology is used, and for whatever purpose, it is clear that isolating prisoners is a common practice in North America, in both the United States and Canada (R. D. Morgan, Gendreau et al., 2016). Although only about 5% of the prisoner population is in isolation at any one time, it is also estimated that close to one fifth of all prisoners in the United States have served some time in segregation (Beck, 2015). It is important to emphasize that confinement conditions vary widely. Prisoners almost invariably spend 23 hours in their cells, with meals delivered there, and 1 hour allowed for exercise in small yards. They are typically allowed a shower three times a week. Some prisons allow limited non-contact visitations, and reading materials or even television may be allowed. Courts have allowed corrections officials to segregate inmates but have placed some restrictions on the duration and the conditions of the confinement, particularly in the case of disciplinary segregation. Inmates also have a right to a hearing before being placed in disciplinary segregation, but this right is rarely exercised, and even if exercised, hearings are run in a perfunctory fashion. Challenges to being placed in segregation are rarely successful.

Conditions of segregation have been monitored more carefully than *duration* by the courts, though they are often considered in relation to the duration. Thus, placement in a stark cell with no opportunity to shower for 48 hours is not legally problematic; placement in the same cell and under the same conditions for 2 weeks probably would be. Hygiene, nutrition, the physical condition of the cell, and

the physical condition of the inmate are all taken into consideration. "It is clear that there is not yet a minimum standard set on the number of days or other conditions that will constitute cruel and unusual punishment in punitive isolation in every situation" (J. W. Palmer & Palmer, 1999, p. 80). Thus, although psychologists may be concerned about the effects of isolation on the mental state of the inmate, and although inmates have argued unsuccessfully that isolation is per se cruel and unusual, the courts have placed limits on only the most egregious of situations.

Few limitations have been placed on the *duration* of protective custody or administration segregation, but again, conditions may be scrutinized. The Supreme Court has yet to hear a case involving conditions of confinement in supermax facilities, but lower courts have weighed in on this issue. As noted earlier, conditions vary in these facilities, depending upon the state. The extraordinarily high level of security needed to house inmates in supermax facilities results in extreme isolation and unprecedented restrictions on personal freedoms (DeMatteo, 2005b). Essentially, these institutions often function "very close to the edge of what the Constitution allows" (Collins, 2004, p. 2).

Conditions in isolation are particularly harmful to inmates who are at psychological risk or have mental disorders. Indeed, a lower federal court (Madrid v. Gomez, 1995) made that very point. Reviewing conditions in the secure housing unit (SHU) at Pelican Bay State Prison in California, the court found that the following violated the Constitution's prohibition against cruel and unusual punishment: a pattern of excessive force by correctional officers within the facility, the lack of adequate provision of medical and mental health care, and the holding of inmates with mental illness in the SHU. Nevertheless, the court did not find a constitutional violation in the SHU for *stable* inmates:

> Conditions in the SHU may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time. They do not, however, violate exacting Eighth Amendment standards, except for the specific population subgroups [the mentally ill] identified in this opinion. (Madrid v. Gomez, 1995)

The vast majority of the psychological literature has condemned the use of solitary confinement for extended periods, and most particularly for prisoners with fragile mental states (e.g., Grassian,

1983; Haney, 2008, 2020a; Immarigeon, 2011; Toch, 2008). Some see solitary as a harmful form of punishment with no valid penological purpose (Haney, 2020b). (See **Perspective 12.1** in which Dr. Haney discusses isolation as well as work with inmates on death row.) Civil liberties groups across the nation have sought to limit the use of extreme isolation in the nation's jails and prisons (e.g., S. Kim, Pendergrass, & Zelon, 2012). While the consensus is that isolation may be necessary as a punitive measure for violent inmates for short periods, it is also believed to be used unnecessarily and for extended periods. Depending upon the jurisdiction and the prison, isolation can range from separation in a sparse but clean cell to placement in a cell the size of a parking space with another inmate. S. Kim et al. (2012) reported that interviews with inmates, family members, and corrections officers—as well as reviews of prison documents—documented highly negative effects of solitary confinement on both inmates and corrections officers.

Haney (2020b) is highly critical of the use of isolation but notes that some inmates have found ways to mitigate the harm they suffer. "In my experience," he writes, "the prisoners who are most likely to survive solitary confinement with their psyches most intact are ones who have learned to respect the threat that it represents to their mental and physical well-being. They take proactive steps to adjust to it." He adds that those inmates try to follow a routine and to "transcend their circumstances, creatively fashioning a vicarious social world to substitute for the actual one that has been taken away." They talk to one another through concrete walls and pipes, write to friends and family, and seek as many phone calls and non-contact visits as they are permitted.

Not everyone is in agreement that isolation is inevitably problematic, however. Interestingly, a 1-year study of the effects of solitary confinement in Colorado (Metzner & O'Keefe, 2011; O'Keefe, Klebe, Stucker, Sturm, & Leggett, 2010) showed that only a small percentage of offenders (7%) were adversely affected, the majority were stable, and 20% actually showed improvement in their level of functioning. The study has been widely criticized because its findings were so different from other literature on negative effects of isolation. However, it also has been praised for its methodological rigor (Gendreau & Goggin, 2014). Gendreau and Goggin (2014) note that it is imperative that the Colorado study be replicated in other jurisdictions.

Most recently, Morgan, Gendreau, et al. (2016) reported on two meta-analytic reviews of the effects of administrative segregation on

inmates' well-being. Interestingly, the reviews were conducted simultaneously but by two groups of researchers unaware of each other's involvement in a meta-analytic review. The two groups—one at the University of Cincinnati (14 studies) and the other at Texas Tech University (19 studies) reached essentially the same conclusions—that the negative effects of segregation had been quite exaggerated. Ten studies overlapped—that is, they appeared in both meta-analyses.

From My Perspective 12.1

The Pursuit of Things That Matter

Craig Haney, PhD, JD



Craig Haney

I came of age professionally in the late 1960s and early 1970s, when the discipline of psychology, like other academic fields, was suffering a "crisis of relevance." The civil rights movement was still underway, the Vietnam War was raging on, and college students across the country were searching for knowledge that genuinely could "make a difference." I was no exception. As a beginning graduate student in social psychology, I struggled to understand exactly how the abstract studies of attitude change and the like that we were engaged in could speak to the pressing issues of the day, even though I was working with Philip Zimbardo, whose reputation as someone engaged with important, applicable topics was already well established. Zimbardo sensed my restlessness and sent me on a mission that I had no idea would shape my entire career. The mother of a man named William "Billy" Doss had written Zimbardo, pleading for help after her son had been convicted of a brutal crime and sentenced to death. She was certain he had been the victim of

psychologically manipulative police interrogation tactics of the sort that Zimbardo had written about in a *Psychology Today* article. Doss was confined to the “death house” at the Trenton State Prison (coincidentally, located in the city where I was born). The prison at Trenton was the state’s major maximum security prison and had been made famous as the site of sociologist Gresham Sykes’s well-known book *Society of Captives*, published about 15 years earlier. I had read the book—it was already a classic in the field—and I was eager to see the prison firsthand and also to interview Mr. Doss and learn about his case. It was the first prison I had ever been in and I remember being taken aback when I was escorted to the warden’s office to exchange pleasantries and express my gratitude to him for allowing the tour and interview, only to see the sign outside his office indicating that this was where the “Principal Keeper” resided. I had seen the term *keeper* referenced throughout Sykes’s book, but it was one thing to see the written reference and quite another to see it in person. Although once in widespread use in prisons throughout the United States, by the late 1960s and early 1970s, the use of the term *keeper* seemed to be a dehumanizing throwback to some bygone era. I was even more unsettled later that day when I heard the sound of Mr. Doss being brought to me in the chapel area where I was waiting to interview him, as the lead officer in the entourage advancing in my direction announced to anyone within earshot that they were escorting a “dead man walking”—what I was told was the way custody staff routinely warned others that a condemned prisoner was in their midst.

Doss’s death sentence was commuted to life in prison a year later, along with hundreds of others, when the United States Supreme Court invalidated the system of capital punishment that was in operation across the country in the landmark Furman v. Georgia (1972) case. He remained in prison and died a natural death there many years later, at age 46. However, the various injustices that I learned had occurred in Doss’s capital case seemed to me at the time to have facilitated his conviction and death sentence (including, among other things, a problematic police interrogation that led to a questionable “confession” by an especially suggestible defendant, potentially unreliable eyewitness testimony that was contradicted by other evidence, an apparent rush to judgment in an attempt to solve a high-profile case, and no meaningful attempt to humanize the defendant in the course of his trial). For me, grasping the significance of those injustices actually crystalized the possibility and the promise that the discipline I was studying at the time—social psychology—could be used to accomplish something good and

meaningful in ways I had not seen perceived beforehand. I saw the discipline as capable of providing some of the intellectual tools needed to help improve the quality of justice dispensed and pierce the padded fictions that hide what really goes on inside the nation's criminal justice system. In the idealistic way that only a naïve graduate student could, I began to plan a career based on the vision and hope that a careful, empirical analysis of the criminal justice system could—no, certainly would—contribute to making it better. So, some 50 years later, here I am.

I am also sure that at least some of what I saw on that visit had a significant influence on me when Philip Zimbardo, Curtis Banks, and I met to plan the details of what came to be known as the Stanford Prison Experiment that we conducted several months later and further strengthened my commitment to study the criminal justice system. As it turned out, I would return a number of times to Trenton State Prison much later in my professional life, when I spent many hours there interviewing other prisoners who, like Doss, were facing the death penalty. My role in each of these cases was to compile and analyze the men's social and institutional histories and put their lives and their crimes in a larger social context for the jurors who would be called upon to decide whether they lived or died. Remarkably, one of these cases involved a killing that occurred inside the prison's death row unit, where two men who had already been sentenced to death engaged in a violent, fatal encounter when, despite long-standing conflicts between them, they were placed together in a small recreation "cage" inside the unit. The case required me to explain to the nature of "prisonization" to the jurors, as well as, as the *New York Times* called them, "the rules of death row." The defendant was ultimately acquitted of all charges, in part, I suspect, because the jurors learned something that has been confirmed for me repeatedly over the course of my career—that prison life is fundamentally different from life anywhere else in our society.

Dr. Haney is Distinguished Professor of Psychology and a UC Presidential Chair at the University of California, Santa Cruz. He teaches undergraduate and graduate students and conducts research on a range of criminal justice-related topics. He is the author of Death by Design: Capital Punishment as a Social Psychological System *(Oxford*, 2005), Reforming Punishment: Psychological Limits to the Pains of Imprisonment *(2006)*, *and the recently published* Criminality in Context:

The researchers found that, despite the fact that there were negative effects, they were not significantly different from the negative effects experienced by incarceration in general or the negative effects experienced by non-segregated prison populations. Even when isolation occurred for more than 60 days—a time period considered extremely harmful—the researchers found no reason for greater concern. They studied such effects as anger, depression, psychosis, cognitive functioning, and physical health. However, two exceptions were highlighted: Some inmates displayed mood disturbance and self-injurious behavior, but they were not of the magnitude that would be expected based on previous commentary and research. The researchers also found a small insignificant increase in recidivism after release from prison, but a decrease in institutional misconduct.

In summary, the weight of opinion among mental health professionals is to employ solitary confinement in very limited ways and to avoid using it for long time periods. Furthermore, it should be avoided altogether for offenders with mental disorders. Morgan, Gendreau, et al. (2016) emphasize that, although their research results must be considered carefully, they are not advocating a greater use of segregation or placing inmates in isolation for long periods. They also point out that, for those inmates who are placed in these restrictive environments, mental health services should be available. “Currently, services typically consist of psychotropic medications, brief check-ins at the inmate’s cell front, or infrequent meetings in private with a clinician” (p. 458). This, they suggest, is not sufficient and not consistent with a best practices approach.

ROLES OF THE CORRECTIONAL PSYCHOLOGIST

Correctional psychologists are sometimes distinguished from psychologists working in correctional facilities. The correctional psychologist typically has “specific academic and/or program training in correctional philosophy, systems, offender management, forensic report writing, treatment aimed at reducing recidivism, and outcome research” (Althouse, 2000, p. 436). Many—if not most—psychologists working in corrections do not have this specific background. Furthermore, not all psychologists hold doctorates, whether PhDs or PsyDs. Although it is estimated that more than 90% of psychologists working in the BOP hold doctorates, it appears

that those working in state prisons and local jails are more likely to have master's degrees or certificates of advanced study. The future, however, holds far greater opportunity for doctoral psychologists to be employed in both federal and state correctional facilities. Psychologists at all levels clearly offer valuable services to corrections. For our purposes, therefore, we use the terms *correctional psychologist* and *psychologist working in corrections* interchangeably. Finally, as mentioned in Chapter 1 and earlier in this chapter, correctional psychologists often do not consider themselves *forensic psychologists*, though in the broad sense of this term, we do so in the text. For some psychologists, a limitation of working in correctional settings is the amount of time they are able to allocate for research (Kroner, 2019). In one study (Boothby & Clements, 2000), psychologists reported that research endeavors occupied approximately 2% of their time.

Some research suggests that psychologists working in correctional settings were only "moderately satisfied" with their jobs, particularly due to lack of opportunities for advancement and professional atmosphere (Boothby & Clements, 2002). Other research projects reveal that correctional psychologists report a high degree of job satisfaction when they are employed at facilities with a higher security level as compared to minimum-security facilities (Garland, McCarty, & Zhao, 2009; Magaletta, Patry, & Norcross, 2012). Although it may be tempting to think that perceived safety issues were a reason, a similar study (MacKain, Myers, Ostapiej, & Newman, 2010) found that safety was not a major concern among the psychologists they studied, nor was it a factor in the earlier Boothby and Clements (2002) study.

A number of other studies have examined job satisfaction or burnout among staff in correctional facilities, although these studies are often not limited to psychology staff (e.g., Garland et al., 2009). Two exceptions are the work of MacKain, Myers, Ostapiej, and Newman (2010) and Senter, Morgan, Serna-McDonald, and Bewley (2010). MacKain et al. (2010), using self-report inventories similar to those used by Boothby and Clements (2002), studied specific facets of satisfaction among prison psychologists in North Carolina and found that economic factors (health benefits, job security), work relationships, and perceived administrative support were related to job satisfaction. Interestingly, correctional psychologists appear to be more satisfied with their personal lives than psychologists working in such settings as public psychiatric hospitals or mental institutions. These results suggest that psychologists employed in correctional facilities should be educated about the potential stressors of their

work. Furthermore, students planning to become correctional psychologists should receive course work about the inherent stressors of correctional settings as well as its benefits. In addition, the stressors may not be as apparent as one would think, as MacKain et al. (2010) found. In sum, as Magaletta et al. (2013) observed, the field of forensic psychology in general needs to do a better job of preparing students for these careers.

PSYCHOLOGICAL ASSESSMENT IN CORRECTIONS

Psychological assessment refers to all of the techniques used to measure and evaluate an individual's past, present, or future psychological status. Assessment usually includes, but is not limited to, the use of psychological tests, or personality inventories, questionnaires, or other measuring instruments. The last two decades of the 20th century saw a large increase in the number of commercially available measures and tests specifically intended for use in forensic and other clinical settings. This includes a variety of psychological measures that are presently in use in prisons and jails across the United States. Some are screening instruments to quickly detect the presence of a mental disorder, including suicide risk or other self-harm, while others are more detailed. As an example, all inmates entering the Federal Bureau of Prisons are administered the Psychology Services Inmate Questionnaire (PSIQ), a fill-in-the-blank self-report form that assesses past mental health services and evidence of current psychological problems (Magaletta et al., 2009). Most recently, researchers are scrutinizing the Personality Assessment Screener (PAS; Morey, 1997), which is derived from a widely used Personality Assessment Inventory (PAI; Morey, 1991, 2007). A study of the PAS in three criminal justice samples found this 22-item self-report instrument to be promising for quickly tapping psychological dysfunction in jail detainees, incarcerated sex offenders, and inmates in the general population (Edens, Penson, Smith, & Ruchensky, 2019).

In addition to questionnaires and other psychological instruments, assessment involves interviews with the individuals being assessed, interviews with others, direct observations, and reviews of case records. As indicated earlier, however, a research-validated screening tool, if available, would be of great help to the correctional psychologists.

In corrections, assessment is warranted *at a minimum* at several points in an inmate's career: (1) at the entry level, when they enter

the correctional system, and at which point a screening tool like the PAS might be most useful; (2) when decisions are to be made concerning the offender's reentry into the community; and (3) at times of psychological crisis. Beyond these very minimal requirements, however, reassessments should be done on an ongoing basis. "Behavioral changes in inmates, which occur as time is served, demand constant reassessment and reassignment" (J. W. Palmer & Palmer, 1999, p. 307).

More specialized types of assessment are also performed, depending upon the jurisdiction. For example, in death penalty states, psychologists may be involved in assessing inmates for intellectual disability (in light of the *Atkins, Hall, and Moore* cases: Atkins v. Virginia, 2002; Hall v. Florida, 2014; Moore v. Texas, 2017) or extent of mental disorder (Ford v. Wainwright, 1986) with reference to their competency to be executed. (See **Focus 12.3** for additional information on *Moore v. Texas*.) In the federal government and those states that have sexually violent predator (SVP) laws, psychologists may administer measures to assess inmates about to be released for the likelihood of future sexual offending.

For the correctional system intent on pursuing both security needs and rehabilitative goals, assessment also is a key component to providing treatment. James Bonta (1996) has identified three historical generations of assessment for the purpose of offering treatment. During the first generation, assessment was performed chiefly by individual clinicians who relied on their own professional experience and judgment. In the second generation, standardized assessment instruments were adopted, although these included primarily static risk factors (such as prior record or number of violent incidents within a facility) focused mostly on making decisions about an offender's custody level. The third and present generation of assessment includes both risk and needs factors. Thus, a standardized risk/needs assessment instrument takes into consideration both prior violent incidents (a risk factor) and an offender's attitude toward authority (a needs factor). We will discuss risk/needs assessments as well as its associated RNR (risk/needs/responsivity) treatment approach in more detail shortly.

Focus 12.3

Moore v. Texas: Intellectual Disability and Death, Revisited

In 1980, Bobby James Moore was convicted of murder after the attempted robbery of a food market, during which he shot and killed a 70-year-old grocery clerk. He was 20 years old at the time of the crime, and he was subsequently sentenced to death. In 1995, he

was granted a new sentencing hearing because his lawyers in the first trial had failed to present mitigating evidence, including the fact of impaired mental development. He was resentenced to death in 2001. In 2017, the U.S. Supreme Court vacated that death sentence, and Moore was resentenced to life. In June 2020, at age 60, Moore was released on parole after spending 40 years on death row.

As a child, Moore twice failed first grade, but was promoted to second grade because the school believed he should be with children his age. In fifth grade, he was hit by other children with a chain and brick. Neuropsychologists examining him said he had likely suffered a traumatic brain injury (TBI) as a result. Through his early years, he was beaten by a father who called him stupid, and he was socially promoted from grade to grade. He eventually dropped out of school in the ninth grade. At the age of 13, he could not tell time, did not know days of the week, months of the year, or seasons. He was thrown out of his home, lived on the streets, played pool, and mowed lawns for money. Once imprisoned, he obeyed rules and was able to learn some skills.

Between 1971 and 1989, Moore was administered IQ tests seven times, attaining an average score of 70.66, which indicated mild intellectual disability. In addition, mental health practitioners reviewed his adaptive performance at cognitive, social, and practical skills and found significant deficits.

Although a lower court found that these deficits should reduce his sentence to life in prison or even merit a new trial, the highest appellate court for criminal appeals (CCA) in Texas did not agree. First, that court focused on scores of 78 and 74 that Moore had attained, but did not consider the scores below 70. The Court did not consult current medical standards to determine intellectual disability, a point made by the judge who dissented in the CCA's decision. Instead, the court used outdated criteria for assessing intellectual disability, and the focus was on Moore's adaptive strengths, rather than his deficits. The CCA then ruled that his death sentence should stand.

Moore appealed to the U.S. Supreme Court, arguing that current psychological and psychiatric standards for determining intellectual disability—not the outdated standards—should be applied in this case. Amicus curiae briefs on his behalf were submitted by national and international groups, including the APA. By current professional standards, these briefs argued, Moore was an intellectually disabled individual and therefore—in keeping with *Atkins v. Virginia* and *Hall v. Florida*, ineligible for the death penalty. In a 5–3 decision, the U.S.

Supreme Court agreed that contemporary professional standards should apply and sent Moore's case back to the Texas court for resentencing consistent with the decision. As noted, he was sentenced to life and was released on parole in June 2020.

QUESTIONS FOR DISCUSSION

1. It is clear that an IQ score alone is not sufficient to find a person eligible or ineligible for the death penalty. In its previous cases, the U.S. Supreme Court gave leeway to states to decide on their own standard for assessing intellectual disability. Does this case represent a retreat of that position? Assuming that the death penalty will remain an option in some states, should there be a national standard for determining intellectual disability?
2. In the three Supreme Court cases referred to, the majority gave considerable deference to the psychiatric/psychological professions, essentially ruling that current professional standards should inform but not dictate the legal decision. Dissenters, however, believed that this deference to experts was not warranted. What is your opinion on this?
3. Moore obviously had some strengths and was able to manage living in his community. Why is it important to focus on adaptive deficits rather than adaptive strengths in assessing whether to put someone to death?

Initial Inmate Screening and Classification

As a matter of institutional or systemwide policy, correctional facilities require entry-level assessments so that inmates can be "psychologically processed" and assigned to a particular facility or unit. Ideally, no individual should be placed in the general correctional population without having been screened for evidence of problem behaviors or mental states. Thus, screening should be done as soon as possible after entry into the facility. As noted earlier, a wide variety of assessment instruments are available for these purposes, the most widely used being the PAI (Morey, 1991, 2007) and its derivative, the shorter PAS (Morey, 1997).

In jails, especially for pretrial detainees, this screening process may be very cursory. It will focus on whether the person is a suicide risk, indications of substance abuse, history of hospitalizations and medications, and indicators of violence. Because few facilities have psychological staff available round the clock, initial screening may be done by corrections staff, such as caseworkers or corrections officers. It appears that initial psychiatric evaluations of inmates occur in virtually all jails (Steadman et al., 1989).

In prisons, screening and classification become more complex. In many states, an offender is first sent to a classification or reception center, which may or may not be within the facility to which the offender is eventually sent. States with large prison systems (e.g., Texas, New York, California, and Florida) have centralized processing centers. The new prisoner may spend several days or even many weeks in this assessment center, separated from those already in the system, until assigned to an institution based on security needs as well as to specific programs. The classification committee may recommend, for example, that a prisoner be assigned to an aggression management program or an educational program to improve his reading level. The committee might recommend that another prisoner be offered substance abuse treatment and that contacts with her children be facilitated.

The reception unit in many prisons includes psychologists, psychiatrists, social workers, or other professionals who administer tests, interview the offender, review records, and offer programming and treatment recommendations.

Competency to Be Executed

One very specialized area demanding the assessment skills of correctional or forensic psychologists revolves around the death penalty. As noted earlier, the Constitution prohibits the execution of offenders who are so mentally disordered that they are unaware of the punishment that is about to be imposed and why they have to suffer it (Ford v. Wainwright, 1986). The question of competency can be raised for any person who has been sentenced to death and who appears to have become severely mentally disordered while awaiting execution (Zapf, 2015).

Severe intellectual disability also can save an offender from being put to death. In Atkins v. Virginia, 2002, the Court ruled that some intellectually disabled persons (then referred to as mentally retarded) could not be executed. Intellectual disability is a chronic condition that should ideally be taken into consideration at the sentencing phase in a capital case. Because the Supreme Court ruled on this only in 2002, persons who challenge their execution in this manner are often already on death row. However, the Court in the *Atkins* case did not specify how mental disability should be decided. In a later decision on this matter (Hall v. Florida, 2014), the Court still did not do so, but it did indicate that the decision could not be made on the basis of an IQ score alone. In a later decision on this matter (Moore v. Texas, 2017), discussed earlier and in **Focus 12.4**, the Court made it clear that assessment should be in keeping with

current professional mental health standards. Finally, the Court has also ruled that a prisoner with dementia who could not remember his crime could not be executed (*Madison v. Alabama*, 2019).

In sum, then, if an offender on death row challenges the execution on the basis of their mental disorder, intellectual disability, or dementia, the forensic psychologist may be called in to perform an assessment of the offender's competency for execution. It should be noted though, that in the case of mentally disordered offenders, they cannot refuse psychoactive medication intended to make them competent for execution. This interpretation has raised ethical concerns among mental health practitioners who resist restoring a prisoner's mental state or prescribing drugs against their wishes, only to make the prisoner eligible to be put to death (Weinstock, Leong, & Silva, 2010).

Together, these Supreme Court decisions reignited a long-standing philosophical debate on the critical role of mental health professionals with respect to offenders sentenced to die (e.g., Bonnie, 1990; Brodsky, 1980; Mossman, 1987; Weinstock et al., 2010). (See **Focus 12.4** for a discussion of additional issues relating to the death penalty.) Competency for execution assessments have been fraught with much controversy and debate as to "whether, and to what extent, psychologists (or psychiatrists and other mental health professionals) should become involved in this type of evaluation" (Zapf, 2015, p. 229).

The great majority of psychologists working in correctional settings will never be asked to conduct an evaluation of a death row inmate's competency to be executed, for two main reasons. First, in states with the death penalty, the death row population is usually kept at one maximum-security facility, at least as these prisoners approach their execution date. Only a small minority of psychologists work in or contract with these facilities. Second, prisoners under sentence of death are far more likely to appeal their death sentence on other grounds (e.g., inadequate assistance of counsel) than to raise the issue of incompetency. However, the Court's recent rulings in Hall v. Florida (2014) and Moore v. Texas (2017) may increase significantly the number of offenders who challenge their execution on the basis of intellectual disability. Furthermore, as noted earlier, in the most recent case on a related issue, the Court ruled 5–4 that it violated the Eighth Amendment to put to death a prisoner who suffered from severe dementia and could not remember his crime (*Madison v. Alabama*, 2019). Madison died in prison not long after the ruling, at the age of 69. He had been on death row for about 30 years.

A number of forensic psychologists have offered suggestions to their colleagues who may be conducting evaluations of competency to be executed (e.g., Heilbrun, 1987; Heilbrun, Marczyk, & DeMatteo, 2002; Small & Otto, 1991), particularly on the basis of mental disorder. In a model report published by Heilbrun et al. (2002), psychologist Mark Cunningham used the following techniques in his competency assessment:

- Clinical and forensic interview of the prisoner;
- Psychological testing, including the MMPI-2 and the Personality Assessment Inventory (PAI);
- Interview of a corrections officer on the death row unit;
- Cell observation;
- A second interview with the prisoner;
- Telephone interviews with persons such as friends, relatives, the prisoner's ex-wife, and his spiritual adviser, which ranged in length from 12 minutes to 70 minutes; and
- Reviews of numerous legal, health, military, and prison records, as well as journal entries and letters in support of clemency. (p. 96)

Focus 12.4

Death Is Different

The United States is the only North American or Western European nation in which capital punishment is employed. Public support for this approach has declined steadily over the past 30 years, with now roughly one third of the adult population supporting its use. Approximately 31 states as well as the federal government continue to have capital punishment on the books, but the number of individuals who have actually been executed remains small. In four or five states, governors have placed a moratorium on putting prisoners to death. As of June 2017, there were approximately 2,800 prisoners on "death row," with their time since sentencing ranging from just over a year (e.g., the Boston Marathon Bomber) to over 20 years. Ironically, the Boston Marathon Bomber was sentenced to death under federal law, but in a state that does not have the death penalty on its books.

Until recently, no federal prisoner had been put to death since Timothy McVeigh, the domestic terrorist responsible for the Oklahoma City Bombing in 1995. McVeigh was executed in 2001. However, in 2020, the U.S. Justice Department announced that federal executions would begin again in July of that year. Four inmates filed last-minute appeals to the U.S. Supreme Court but that

Court allowed the planned executions. By the fall of 2020, all had been executed.

Arguments against the death penalty may be morally based, pragmatic, research–based, or all three. They include but are not limited to the following:

- It is morally wrong for government to take a life in this manner.
- The death penalty is extremely costly to carry out; it costs more to execute someone than to keep them in prison for life.
- Jurors who are death qualified differ demographically, educationally, and politically from those who are not.
- The death penalty is given disproportionately to members of minority groups, particularly African Americans.
- The race of the victim affects who will get the death penalty; it is given more when victims are white and the perpetrator is Black than for any other racial or ethnic victim–offender relationship.
- People have been wrongfully convicted, including some who were on death row.
- The drugs used to give lethal injection are difficult to obtain or are ineffective, causing unnecessary suffering during the killing process.
- It is a greater punishment to keep someone in prison for life than to put them to death.
- Even someone convicted of killing can atone for the crime and can make positive contributions within a prison setting.
- It is not fair for someone to be put to death in one state for committing the same crime as a person in another state that does not have the death penalty.

QUESTIONS FOR DISCUSSION

1. Why do you think public support for the death penalty has declined in recent years?
2. What are the arguments *in favor of* the death penalty? Do they outweigh those against? Are there more arguments against the death penalty that are not listed earlier? Where do you stand on this issue?
3. Which of the arguments against or for the death penalty are relevant to psychological research and the practice of forensic psychology?

TREATMENT AND REHABILITATION IN CORRECTIONAL FACILITIES

A dominant task of the psychologist in the correctional system is to provide *psychological treatment,* a term that encompasses a wide

spectrum of strategies, techniques, and goals. Boothby and Clements (2000) reported that direct treatment took up approximately 26% of psychologists' time in correctional settings, second only to administrative tasks. In addition to providing services to those inmates who have mental disorders, psychologists also offer services directly targeting substance abusers, sexual offenders, psychopaths, arsonists, and those prone to violence such as domestic abusers. In addition, virtually any inmate, regardless of their offense, may require treatment of symptoms such as depression, anxiety, and stress (including post-traumatic stress) that might not necessarily qualify as a full-fledged mental disorder.

R. D. Morgan, Kroner, Mills, and Batastini (2014) observe that the goals of treatment can be characterized broadly as either mental health stabilization or rehabilitation. In the first goal, prisoners are helped to adjust to their environment and to develop effective coping skills. The prisoner who is depressed upon hearing that his wife is seeking a divorce or is fearful of being assaulted in prison may be in need of mental health stabilization. High levels of violence in a prison and overuse of isolation can contribute to an increase in mental health problems among prisoners. The second goal relates to providing treatment that will prompt the individual to desist from future offending. Substance abuse treatment, anger management, and sex offender treatment all fall into this second category. Several recent meta-analyses have indicated that treatment is effective when it is offered (R. D. Morgan et al., 2014).

The most common treatments used within correctional institutions are person-centered therapy, cognitive therapy, behavior therapy, group and milieu therapy, transactional analysis, reality therapy, and responsibility therapy (Kratcoski, 1994; Lester, Braswell, & Van Voorhis, 1992). In recent years, more attention has been given to the benefits of motivational interviewing, the primary objective of which is "increasing an offender's problem acceptance and recognition, highlighting the benefits of change, and helping him or her reach a decision to change while continuing to support self-efficacy" (Rosenfeld, Howe, Pierson, & Foellmi, 2015). Dialectical behavior therapy, particularly as it targets anger, aggression, and impulsivity, also has received attention (Rosenfeld et al., 2015).

Today, psychological treatment often follows the risk/needs/responsivity principles of Andrews and Bonta, most specifically by reducing an offender's criminogenic needs (Andrews & Bonta, 2010; Gendreau & Goggin, 2014). Additional research has found that treatment that adheres to principles of RNR is both effective in reducing recidivism and cost-effective compared to no

treatment or treatment that does not adhere to RNR principles (Romani, Morgan, Gross, & McDonald, 2012).

Principles of Risk, Needs, and Responsivity (RNR)

In corrections, it is important to assess both needs and risks, particularly if a treatment regimen is to follow. In previous chapters, we have given some attention to risk factors, those that make it more likely that an individual will engage in antisocial behavior (e.g., early onset of offending), as well as protective factors, those that cushion or protect the individual (e.g., a caring adult). Principles of **Risk/needs/responsivity (RNR)** (Andrews & Bonta, 1994) are now firmly established in the correctional and forensic psychology literature and have been demonstrated to be effective in achieving rehabilitative goals (Gendreau & Goggin, 2014).

Andrews and Bonta (1994) identified two main categories of needs: criminogenic and noncriminogenic. **Criminogenic needs** are dynamic factors (Gendreau, Cullen, & Bonta, 1994) subject to change. An offender's attitude toward employment or degree of alcohol use are examples. "The importance of criminogenic needs is that they serve as treatment goals: when programs successfully diminish these needs we can reasonably expect reduction in recidivism" (Gendreau et al., 1994, p. 75). **Noncriminogenic needs** are those that may be subject to change but have been found to have little influence on an offender's criminal behavior. Psychological states such as depression, anxiety, or low self-esteem are examples. Although these states may lead to adjustment problems for the individual, they are not strongly correlated with criminal behavior in the great majority of offenders. However, these needs should still be addressed in treatment. The depressed or highly anxious offender still needs help.

One of the foremost risk/needs scales available in corrections is the **Level of Service Inventory–Revised (LSI-R)** (Andrews & Bonta, 1995), which was developed in Canadian correctional facilities and has since been introduced in American corrections. A similar instrument, the **Level of Service/Case Management Inventory (LS/CMI)** (Andrews, Bonta, & Wormith, 2004b) helps identify risks and needs as well as interventions that might be used to change an offender's patterns. The LSI-R—which is scored on the basis of records reviews and interviews with offenders—assesses offenders' criminogenic needs along 10 domains, including personality characteristics, pro-criminal attitudes, family/marital history, and

substance abuse. The LSI-R has been the focus of considerable research (e.g., Gendreau, Little, & Goggin, 1996; Simourd & Malcolm, 1998). Many studies have supported its use with male offenders (Hollin, Palmer, & Clark, 2003), female offenders (Folsom & Atkinson, 2007; E. J. Palmer & Hollin, 2007), and youthful offenders, both male and female (Catchpole & Gretton, 2003). Not all research supports its use with female offenders, however; as we note later, a considerable amount of research suggests that the needs of female offenders are different and are not tapped by many of the actuarial instruments in use (Van Voorhis, Wright, Salisbury, & Bauman, 2010). Although earlier surveys suggested that psychologists in the United States were less inclined to use actuarial instruments (Boothby & Clements, 2000; Gallagher, Somwaru, & Ben-Porath, 1999), this has changed, at least among clinicians engaged in the practice of forensic psychology (Heilbrun & Brooks, 2010). Part of this is due to the fact that, as Otto and Heilbrun (2002) predicted, instruments with good predictive ability are increasingly being sought as courts demand more scientific accountability. Recall from our discussion of structured professional judgment instruments in previous chapters that many clinicians continue to prefer instruments that leave room for their professional judgment.

It should be noted that psychologists are just one of several professional groups providing this therapy. Psychiatrists, social workers, and mental health counselors are also involved in most correctional facilities. This is an important point because the method of treatment used depends largely on the professional training and orientation of the clinician. Psychiatrists, for example, are more likely to favor psychoactive drugs as part of a treatment regimen, although some studies suggest that this approach is increasingly being supplemented with individual therapy (Heilbrun & Griffin, 1999). Social workers are more likely to use group treatment approaches, in which inmates talk about their concerns, experiences, and anxieties while the social worker generally directs and controls the topic flow. As indicated by the Boothby and Clements (2000) study, group therapy does not seem to be the norm among psychologists in correctional facilities, but it is still widely used by other clinical professionals. Sixty percent of the treatment provided by the psychologists in that study was in an individual format. The researchers found this problematic, given the high need for mental health services in the nation’s jails and prisons. A different survey of 162 professionals representing a range of professional groups (R. D. Morgan, Winterowd, & Ferrell, 1999)

indicated a far greater use of group therapy. In that study, 72% of the respondents offered group therapy to inmates, and their time was about equally divided between group and individual treatment. These practitioners also estimated that 20% of all inmates in their facilities received some group therapy. When delivered effectively, group therapy has several advantages over individual therapy in correctional settings. It is, of course, more practical, given the limited number of treatment staff and high prison population. In addition, group therapy provides prisoners with opportunities for socializing, group decision making, developing altruism, and developing functional peer relationships that individual treatment typically does not provide (R. D. Morgan et al., 1999).

On a more negative note, few professionals in the previous study (only 16%) reported that their departments were conducting research on the effectiveness of group or other therapy. Perhaps more sobering, 20% indicated that no supervision was offered to therapists who facilitated group therapy sessions.

TREATMENT OF SPECIAL POPULATIONS

Like the general population, offenders vary widely in their background experiences and their needs. Although treatment should be individualized as much as possible to recognize these differences, programs are often established to address common needs of groups of offenders. For example, prisons—and to a lesser extent jails—may offer programs for inmates who are elderly or very young, female inmates who killed their abusers, sex offenders, psychopaths, inmates who are parents, substance abusers, inmates with intellectual disabilities, and inmates under sentence of death. Although we do not cover all of these categories in this section, readers are advised that an extensive literature in correctional psychology is available covering each of these areas (e.g., Becker & Johnson, 2001; Kratcoski, 1994; R. D. Morgan et al., 2014, and references therein).

Substance-Abusing Offenders

Substance abuse often co-occurs with mental disorders. Nevertheless, many individuals with substance abuse problems are not mentally disordered. With or without accompanying mental disorder, though, their numbers within correctional facilities are increasing. Statistics in recent years suggest that about one fifth of state prisoners and slightly over half of all federal prisoners are serving time for drug offenses. Even more revealing, however, is the fact that 53% of state and 45% of federal inmates in 2004 met the

DSM-IV criteria for drug dependence or abuse (Welsh, 2007). Even with recent moves to reduce sentencing for persons convicted of drug offenses, the problem of substance misuse among persons convicted of non–drug-related offenses will remain.

Although correctional facilities recognize the need for treatment of offenders with substance abuse problems, the availability of professional treatment is limited (Belenko & Peugh, 2005). Welsh (2007) reports that, although nearly half of drug-dependent inmates are in some type of substance abuse program, fewer than 15% receive treatment from a trained professional. Peer counseling or self-help groups (such as Alcoholics Anonymous or Narcotics Anonymous) or drug education is more likely to be available. It is significant that current literature reviews on treatment of prisoners often do not mention substance abuse treatment (e.g., R. D. Morgan et al., 2014) but focus instead on treatment of special populations such as the seriously mentally disordered, the intellectually disabled, violent offenders, and sex offenders. In addition to the need for more professional programs, there is great need for more research on identifying the specific needs of offenders and their performance in treatment programs (see, generally, Simpson & Knight, 2007).

One approach to the treatment of substance abusers that has received favorable research results is the therapeutic community (TC), discussed again later in this chapter. In this model, trained counselors interact with a small group of offenders, establishing therapeutic relationships and engaging them in a process of taking responsibility for and changing their substance-abusing behavior (De Leon, Hawke, Jainchill, & Melnick, 2000). Prisons with TCs in place often contract out this program to private providers in the community, and it is typically offered to inmates who are preparing to leave the prison setting. At its best, a prison-based TC can be highly effective for offenders with substance problems. In general, research has documented the effectiveness of TCs when they are intensive, behavior based, and focused on targeting an offender's drug use (MacKenzie, 2000). However, TCs also encounter obstacles to their smooth operation, including untrained staff, staff turnover, budget cuts, and changes in treatment providers (Farabee, 2002; Saum et al., 2007). On the whole, however, "prison-based TCs coupled with aftercare treatment in the community can reduce both recidivism and relapse into drug use" (Wormith et al., 2007, p. 883).

Violent Offenders

Violent behavior has been defined as the intentional and malevolent physical injuring of another without adequate social justification (Blackburn, 1993). Psychological services to inmates who have committed violent crimes or who otherwise demonstrate propensities toward violent behavior are common in many correctional facilities. Corrections officials place a high priority on both controlling such behavior within prison and jail settings and reducing its likelihood once an inmate has been released. Therefore, programs that address this problem in the inmate population are appreciated, if not always well funded. As a group, however, violent offenders are extremely challenging. “When compared to other offenders, they tend to be less motivated for treatment, more resistant or noncompliant while in treatment, have higher attrition rates, demonstrate fewer positive behavioral changes while in treatment, and demonstrate higher recidivism rates posttreatment” (Serin & Preston, 2001, p. 254).

Serin and Preston (2001) also note that a major impediment to treating violent offenders has been confusion over the definition of the population along with failure to recognize that violent individuals are not all alike. This lack of homogeneity, the authors emphasize, requires differential treatment, but it is rarely offered. For example, programs for violent offenders too often do not distinguish between offenders displaying instrumental aggression and offenders who have anger-control problems. Instrumental aggression is coolly committed for the purposes of achieving a particular goal. Thus, it makes little sense to place an offender who commits their crimes using instrumental aggression into a program teaching them to control his anger. On the other hand, anger control is an important skill to develop in individuals who are impulsive, have substance abuse problems or mental disorders, or lack social, relationship, or parenting skills. Although differential treatment is an important goal, it is very difficult to achieve, particularly within an institutional setting. As Serin and Preston acknowledge, few settings have the resources —both financial and human—to provide multiple programs for different types of violent offenders. Even when more than one program is offered, the identification and matching of offenders with specific programs are challenging tasks. In addition, the population of violent offenders who qualify as psychopaths requires different strategies, as we will see shortly.

R. D. Morgan et al. (2014) are far more optimistic about treatment programs for violent individuals, providing they last a minimum of 6 months and are based on RNR principles. Their goal is to help offenders learn nonviolent alternatives by providing them with skills

to identify negative lifestyles and “heighten their awareness of violence, responsibility, and control” (p. 809). Essential components of these programs include encouraging offenders to address their own cognitive distortions and develop effective conflict-resolution skills.

Programs for violent offenders differ widely in their approach, but many have two common features: (1) teaching techniques for self-regulating aggression and (2) addressing cognitive deficits. In the first category, motivated offenders are taught relaxation skills or “stress inoculation” approaches to reduce the arousal that results in inappropriate aggression. In the second category, motivated offenders are challenged to confront the irrational beliefs or biases that lead to violence. Defining problems in hostile ways or failing to anticipate the consequences of aggressive behavior are examples. Programs that address cognitive deficits, therefore, strive to change the thinking patterns of offenders by persuading them that the approaches they have used to this point have not resulted in successful outcomes in their relationships with society or with others in their environment. A prerequisite to a successful program outcome, however, is the motivation of the offender.

Although a variety of violent offender programs have produced some positive treatment effects, “few provide the rigor (i.e., control groups) to conclude that intervention for violent adults reduces violent recidivism” (Serin & Preston, 2001, p. 260). Advocates of violent offender programs maintain that such programs at the least *reduce the risk* of future violence and should ideally be followed up with community supervision and treatment once inmates are released. Furthermore, even when studies do not demonstrate positive posttreatment effects, the design of the study itself—not the treatment offered—may be the problem. As always, more methodologically sound research is needed to continue the progress toward effective programming.

Interestingly, some research indicates that it is far more difficult to provide intensive treatment for high-risk offenders in the community than in a controlled prison environment. Despite the numerous challenges within an institutional setting that were discussed above, the clinician has more control within a residential program. In addition, *milieu* treatment—such as can be found in therapeutic communities within the facility—is a possibility. A major disadvantage of institutional treatment is the difficulty in generalizing it to noninstitutional settings (Quinsey, Harris, Rice, & Cormier, 1998).

It should be mentioned that pharmacological approaches are also used in the management of violent offenders, particularly those for

whom violence can be attributed partially to biological factors. These would include some individuals with brain injuries, schizophrenia, dementia, and clinical depression, among other disorders. Anti-psychotic medications are often used in prison settings to control acute violent behavior in a crisis situation, such as a psychotic episode. Nevertheless, the vast majority of violent offenders neither require nor would benefit from pharmacological treatment (Serin & Preston, 2001), and correctional psychologists as a group are unlikely to advocate it. When such treatment is indicated, it should also be accompanied by psychological interventions such as those mentioned.

Criminal Psychopaths

Individuals who qualify as criminal psychopaths present special challenges to society as well as to prison administrators. It has been a long-standing conclusion that psychopaths are essentially untreatable and continually demonstrate low motivation in treatment or rehabilitation programs. Hare (1996) asserts,

> There is no known treatment for psychopathy. . . . This does not necessarily mean that the egocentric and callous attitudes and behaviors of psychopaths are immutable, only that there are no methodologically sound treatments or "resocialization" programs that have been shown to work with psychopaths. Unfortunately, both the criminal justice system and the public routinely are fooled into believing otherwise. (p. 41)

In fact, Hare suggests that group therapy and insight-oriented treatment programs may actually help the psychopath develop better ways of manipulating and deceiving others.

Psychopaths often volunteer for various prison treatment programs, show "remarkable improvement," and present themselves as model prisoners. They are skillful at convincing therapists, counselors, and parole boards that they have changed for the better. Upon release, however, there is a high probability that they will reoffend, and their recidivism rate is not usually reduced following treatment.

"Treatment participated in by many psychopaths may be superficial, intended mainly for impression management" (S. Porter et al., 2000, p. 219). Other research has concluded that psychopaths are less motivated to seek treatment, more likely to drop out, and more likely to reoffend following treatment than those who did not receive treatment (Polaschek & Daly, 2013).

Rice, Harris, and Cormier (1992) investigated the effectiveness of an intensive therapeutic community program offered in a maximum-security psychiatric facility. The study was retrospective, in that the researchers examined records and files 10 years after the program was completed. Results showed that psychopaths who participated in the therapeutic community exhibited higher rates of violent recidivism than psychopaths who did not. For non-psychopaths, the results were the reverse: Non-psychopaths were less likely to reoffend if they had participated in the program. Rice et al. note that the psychopaths in their study were an especially serious group of offenders, with 85% having a history of violent crimes. It is possible that a group of less serious offenders would show better results. Nevertheless, the researchers concluded, “The combined results suggest that a therapeutic community is not the treatment of choice for psychopaths, particularly those with extensive criminal histories” (p. 408).

It should be mentioned that the treatment program reported on in the Rice et al. (1992) article had controversial features, including emotion-laden encounter groups among inmates in the facility. Although often cited as evidence of the difficulty in effectively treating psychopaths, the study cannot be generalized to psychopaths in other institutional settings. As Skeem, Polaschek, and Manchak (2009) have observed, these high-risk offenders were subjected to intensive, radical, and involuntary treatment. Rosenfeld, Howe, Pierson, and Foellmi (2015) note that the pessimistic research on the treatment of psychopaths has primarily relied on the PCL-R scale and also has used recidivism as an outcome. That dominantly used scale does not sufficiently capture short-term reductions in psychopathic traits, which might be achieved by some of the modern treatment approaches. For example, some studies do suggest that *under certain conditions,* some psychopaths do benefit from treatment (Skeem, Monahan, & Mulvey, 2002; Skeem, 2009). Specifically, both the level of violence and the frequency of offending can be reduced, if psychopaths are provided *intensive* treatment in a *conventional* violence reduction program. Skeem et al. (2002) found that psychopathic patients who received seven or more treatment sessions during a 10-week period were approximately 3 times less likely to be violent than psychopathic patients who received six or fewer sessions. These results support earlier findings reported by Salekin (2002), who also discovered that a range of treatment interventions appeared to be moderately successful for psychopaths, especially if the treatment was lengthy and intensive.

Likewise, Bonta (2002) has suggested that psychopathy should be considered a dynamic factor, not a static variable: “Antisocial personality . . . does not need to be viewed as such a stable, intractable aspect of the person” (p. 369). Note that Bonta is not differentiating psychopathy from antisocial personality disorder (APD), which may be the dominant way of viewing it in the future. That is, both psychopaths and those with APD may receive similar treatment. Bonta argues that certain features of the antisocial personality—impulsiveness, risk taking, callous disregard for others, shallow affect, pathological lying—can be linked with realistic treatment goals. All of these are features of the psychopath as well.

Sex Offenders

As noted in Chapter 9, sex offenders are an extremely heterogeneous group. Most of the research has focused on two predominant groups: rapists and child sex offenders, the two sex offender groups that are the most likely to be imprisoned and the most difficult to treat, although within each group, some types of offenders are more amenable to treatment. Recall that we gave considerable attention to the typologies developed in an attempt to understand these offenders. However, extreme care should be used in applying these typologies, very few of which have been submitted to empirical validation (Heilbrun et al., 2002). The classification system developed and revised by the Massachusetts Treatment Center research group—again, discussed in Chapter 9—is the most respected system available, but it is also relatively complex. An especially negative label (e.g., sadistic rapist) may have unfair consequences for the individual. In prison, it may hinder their adjustment to incarceration, may affect their security level, or may limit their chances for an early release. In addition, although many psychologists believe the risk assessment instruments specifically devised for sex offenders are useful, these instruments also have many limitations (T. W. Campbell, 2003).

Psychologists and other clinicians continue to search for effective strategies to prevent future crime by sex offenders who, *as a group,* are highly resistant to changing their deviant behavior patterns (Bartol, 2002). The BOP reports that half of the sex offenders held under its jurisdiction are rated recidivism risk, according to their scores on the Static-99 (Cameron, 2013). Psychological treatment for these sex offenders—which is voluntary—concentrates on improving basic cognitive skills, such as reducing criminal thinking or criminal lifestyles, and improving emotional self-management and

interpersonal skills. Success rates were not indicated in the Cameron report.

After an extensive review of the research and clinical literature on sex offender treatment, Furby, Weinroth, and Blackshaw (1989) concluded, “There is as yet no evidence that clinical treatment reduces rates of sex reoffenses in general and no appropriate data for assessing whether it may be differentially effective for different types of offenders” (p. 27). The Furby et al. review included all variants of therapeutic approaches.

Despite this pessimistic appraisal, other reviews have been more favorable. For example, meta-analyses of the sex offender treatment literature have indicated that, on the whole, sex offenders are better if they are treated than if they are untreated (e.g., Gallagher et al., 1999). A meta-analysis examining 69 studies (Schmucker & Losel, 2008) indicated that cognitive-behavioral programs had positive effects. The cognitive-behavioral approach has also received positive reviews from Laws (1995) and Hanson, Bourgon, Helmus, and Hodgson (2009), who conducted a meta-analysis of 23 treatment programs offered in institutions and the community. Surveys indicate that the majority of sex offender treatment programs in the United States and Canada are cognitive-behavioral and social learning in orientation (Olver, Nicholaichuk, Gu, & Wong, 2012).

This treatment contends that maladaptive sexual behaviors are learned according to the same principles as normal sexual behaviors and are largely the result of attitudes and beliefs. Cognitive-behavioral therapy, compared to traditional verbal, insight-oriented therapy, has demonstrated short-term effectiveness in eliminating exhibitionism and fetishism (Kilmann, Sabalis, Gearing, Bukstel, & Scovern, 1982), some forms of pedophilia (W. L. Marshall & Barbaree, 1990), and sexual violence and aggression (N. G. C. Hall, 1995; Polizzi, MacKenzie, & Hickman, 1999). Cognitive-behavioral treatment currently offers the most effective method for the temporary cessation of deviant sexual behavior in motivated individuals. (See **Focus 12.5** for common features of cognitive-behavioral treatment programs.)

The key words relative to the success of cognitive-behavioral treatment are *temporary cessation* and *motivated individual.* There is now widespread agreement among researchers and clinicians that sex offenders cannot be “cured.” The challenge of cognitive-behavioral therapy—and all therapies for that matter—is not in getting the motivated offender to stop the deviant sexual patterns but in preventing relapse across time and situations. Thus, a

treatment approach demonstrating much promise in the treatment of sex offenders is called **Relapse prevention (RP)**. “RP is a self-control program designed to teach individuals who are trying to change their behavior how to anticipate and cope with the problem of relapse” (W. H. George & Marlatt, 1989, p. 2). The program emphasizes self-management; clients are considered responsible for the solution of the problem.

In accordance with the principles outlined by Andrews and Bonta (2010), however, clinicians also need to work on reducing criminogenic needs in high-risk sexual offenders and in matching their treatment to the learning style of the client (Hanson et al., 2009). Negative peer associations, aimless use of time, an antisocial lifestyle, deviant sexual interests, and attitudes tolerant of sexual crime are examples of criminogenic needs. Interestingly, Bourke and Hernandez (2009) found that federal inmates convicted of offenses relating to internet child pornography had a high incidence of self-reporting prior instances of hands-on child sex offenses. The study was criticized on methodological grounds and for premature conclusions, although the authors did note that it was preliminary and merited replication studies.

Focus 12.5

The Cognitive-Behavioral Approach: Key Elements

Of the many therapeutic interventions that have been tried in corrections, the **Cognitive-behavioral approach** seems to hold the most promise. It consists of counseling (group and individual) and training whereby offenders develop cognitive skills that will presumably help them to adopt alternative, pro-social behaviors rather than the antisocial behaviors that resulted in their criminal convictions. There is no universally implemented cognitive-behavioral treatment program; rather, treatment providers decide on an approach consistent with their own training and the needs of the offenders under their care. Any or all of the following elements might be found in a cognitive-behavioral treatment program:

- Social skills development training (e.g., learning to communicate, to be assertive rather than aggressive, and to resolve conflicts appropriately)
- Decision making (e.g., learning to weigh alternatives, learning to delay gratification)
- Identifying and avoiding “thinking errors”— misguided assumptions that facilitated criminal offending (e.g., “Women want to be shown who’s boss.”)

- Training at solving problems (e.g., interpersonal problems with one's intimate partner)
- Self-control training and anger management (e.g., avoiding hostile attribution)
- Building self-esteem (e.g., recognizing good qualities and providing self-reinforcement)
- Cognitive skills training (e.g., learning to reason)
- Relapse prevention (learning to avoid situations that might lead to further offending)
- Practical skills training (e.g., applying for work)

As noted in the text, the cognitive-behavioral approach has shown success when programs are properly implemented and carried out and offenders are motivated to change. It is not perfect. However, although other therapeutic approaches (e.g., behavior modification) have not had promising results (with some exceptions), cognitive-behavioral therapy gives reason to hope.

QUESTIONS FOR DISCUSSION

1. Assuming that the elements listed above are important, what other services and programs should be available to prisoners?
2. Is cognitive-behavioral therapy likely to be more or less effective for certain groups of offenders?

Sex offender treatment programs exist in virtually every state and in the federal prison system, and they represent a major endeavor engaged in by correctional psychologists, as well as community psychologists who have sex offenders among their patients. Group therapy is a common approach to working with sex offenders, just as it is with violent offenders or substance abusers. The vast majority of programs require the offender to take responsibility for their crime as a first step. In fact, denying responsibility for the crime is considered a significant risk factor for future offending. Recall the case McKune v. Lile (2002) in which the Supreme Court essentially allowed punishment of an inmate who refused to participate in a treatment program, partly because it required him to reveal offenses for which he had not been charged. The inmate argued that there was no guarantee that by revealing these offenses he would not be prosecuted—a classic "Catch-22" situation. Interestingly, however, some recent research suggests that treatment can be successful even if a person denies responsibility for past crimes. In one study, sex offenders were found to participate effectively in treatment even when they denied their offense (Watson, Harkins, & Palmer, 2016). In another study, denial of responsibility was not significantly

associated with recidivism for certain offender types (Harkins, Howard, Barnett, Wakeling, & Miles, 2015).

Sex offender treatment programs vary widely in approach, in the extent to which they are evaluated, and in the degree of success when evaluation research is conducted. Recent meta-analyses (Hanson et al., 2009) are making progress in identifying the common features of those programs that are most likely to reduce recidivism. Treatment programs are less likely to be available to jail inmates because of the short-term nature of jail confinement. However, inmates who are subsequently released to the community may be referred to community treatment programs.

Women Prisoners

In recent years, women's rates of incarceration have sometimes increased faster than men's rates, but overall women's rates are lower than men's. Women made up about 7% of the prison population at the end of 2017 (Bronson & Carson, 2019), a proportion that has remained consistent. Compared to men, women are in prison more for drug or property offending than for violent offenses. Typical female offenders are mothers who are poor, undereducated, unskilled, and victims of physical and sexual abuse (Reichert et al., 2010).

Although increasing research attention is now being given to incarcerated women, they still remain forgotten offenders compared with incarcerated men. Recall the anecdotal account of Stevenson (2014), who writes of sexual victimization of imprisoned women as well as the effects on their children as a result of the incarceration. Some studies have focused on assessing needs and validating actuarial risk assessment instruments with female offenders (e.g., Folsom & Atkinson, 2007; E. J. Palmer & Hollin, 2007; Van Voorhis et al., 2010), but research on effective treatment approaches is not widely available. Yet mental health concerns are becoming increasingly apparent. For example, in one study (Reichert et al., 2010), 60% of the incarcerated women in a state prison showed symptoms of PTSD or other mental disorders. Other studies have identified similar statistics (Owen, 2000). Since most female prisoners are likely to have prior abuse histories (between 60% and 85%), they are generally in need of trauma-based treatment (Messina, Grella, Burdon, & Prendergast, 2007). A vast majority of women offenders are also in need of substance abuse services. Many women serving time have had a history of victimization—often violent victimization and often at the hands of fathers, spouses, or intimate partners. This victimization may continue right into the

prison system, at the hands of corrections officers or other staff (Stevenson, 2014). As Owen (2000) observes, “[c]losely related to mental health problems is the need to recognize the impact of the physical, sexual, and emotional abuse experienced by women offenders” (p. 196). Treatment approaches that increase their self-confidence, recognize their victimization but enable them to take charge of their lives and teach them life skills offer the best hope for women who are incarcerated.

Scholars agree that problems faced by female prisoners are similar to but also distinct from the problems faced by male prisoners. For example, due to the small numbers of women in prison, there are far fewer correctional facilities available, thus severely restricting opportunities for female inmates to be near their families or to have occupational, educational, or social activities while incarcerated. More important, their relationships with their children are often severely hampered. In essence, the available literature suggests that different treatment priorities may be warranted for women who are incarcerated (Van Voorhis et al., 2010).

Treatment in Jail Settings

Psychological treatment of inmates in jail settings is considerably different from treatment in prisons. The short-term nature of the jail stay suggests that **Crisis intervention** and limited treatment goals are typical. Moreover, treatment in jail settings is far more likely to consist of stabilizing medication rather than therapy. Nevertheless, the treatment models discussed above can still be implemented, even in short-term jail settings.

Providing treatment services to the non-sentenced jail population—the detainees—is especially challenging. First, it is impossible to predict how long the individual will remain in detention because pretrial release is a continuing possibility for the majority of detainees. Some detainees may have charges dismissed, or they may plead guilty to their offenses, meaning that they will be placed on probation or transferred to prison. Second, even while in custody, numerous disruptions will occur in the individual’s schedule. For example, court appearances, visits, meetings with attorneys, population head counts, and even recreational opportunities are unpredictable. Third, treatment services must be generic and not tied to criminal activity because the detainee is only charged with, not convicted of, crime. Thus, sex offender treatment or a program for domestic abusers is inappropriate when applied to detainees who are presumed innocent until proven guilty.

Even sentenced inmates serving time in jail provide challenges to the forensic psychologist, largely due to the short-term nature of their sentence. The therapist therefore must forego long-term goals, even if they believe such goals are in the greater interest of the client. “Mental health professionals who are willing to work toward less traditional treatment goals can function within the jail with minimal goal conflict” (Steadman et al., 1989, p. 103). They are advised to develop release-planning goals that will link the individual to community-based mental health agencies. In addition, they are urged to keep in mind that the jail environment itself is crowded, noisy, and lacking in privacy, and that inmates have very little control over their lives. Such conditions can exacerbate mental disorder. Not surprisingly, therefore, “the primary treatment goals for jail inmates will usually be crisis stabilization and maintenance at an appropriate level of functioning while in custody” (J. F. Cox, Landsberg, & Paravati, 1989, p. 223).

As discussed at the beginning of this chapter, jails—sometimes even more than prisons—have a number of features that can impede efforts to offer treatment. Today, limited budgets and overcrowding are major concerns (Luskin, 2013). For these reasons, the processing of mentally disordered offenders in specialized mental health courts is a good option, particularly if they have been charged with less serious offenses. As numerous researchers have noted, the cost of providing mental health services to severely disordered inmates in both jails and prisons is enormous (Heilbrun et al., 2012). In the case of newly arrested individuals with severe mental disorders, well-functioning mental health courts assist in diverting them to effective community resources.

OBSTACLES TO THE TREATMENT OF INMATES

The correctional environment itself creates numerous challenges for the clinician offering services to inmates. In this section, we discuss some of the main obstacles.

Confidentiality

As noted in earlier chapters, forensic psychologists often find that they cannot guarantee total confidentiality to the persons whom they assess. This is clearly true of psychologists working in correctional settings, particularly prisons and jails, and it includes treatment as well as assessment. For example, when the security of the institution is at stake, the inmate presents a threat of suicide, or a third party is in danger, confidentiality cannot be guaranteed.

Limitations on confidentiality include “knowledge of escape plans, intentions to commit a crime in prison, introduction of illegal items (e.g., contraband) into prison, in addition to suicidal or homicidal ideation and intention, court subpoenas, and reports of child or elder abuse or neglect” (R. D. Morgan et al., 1999, p. 602). Psychologists and other treatment providers are advised to inform inmates of these limitations on confidentiality prior to the provision of assessment and treatment services. As a result of these limits, the inmate may perceive the treatment provider as a representative of the administration. When this happens, the work of psychologists in correctional facilities becomes especially challenging (Milan, Chin, & Nguyen, 1999).

Coercion

Another obstacle to successful treatment is its coercive aspect. Institutional treatment often— although not invariably—operates on the principle that psychological change can be coerced. Conversely, traditional forms of psychological treatment have been successful only when subjects were willing and motivated to participate. This basic principle applies regardless of whether the person is living in the community or within the walls of an institution that has overwhelming power over the lives of its inmates. Thus, although inmates have a right to refuse treatment, their refusal can create far more problems than their grudging acceptance. For example, refusal may mean transfer to another facility, delay in being released, or a restriction on privileges (McKune v. Lile, 2002).

Some researchers question the conventional wisdom that coercion and treatment cannot coexist (see, generally, Farabee, 2002). The critical variable appears to be not the fact that the individual is incarcerated but rather the individual’s willingness to participate or perceived need for treatment. In addition, some studies indicate that even a recalcitrant inmate can eventually benefit from treatment programs (e.g., Burdon & Gallagher, 2002; Gendreau & Goggin, 2014; Harkins et al., 2015; Prendergast, Farabee, Cartier, & Henkin, 2002).

Reviewing studies on inmate participation in treatment, R. D. Morgan et al. (2014) note that inmate reluctance to *seek* treatment can be a major barrier. In this case, the inmate is not refusing help but rather is deciding not to ask for it. In addition to concerns about confidentiality mentioned earlier, inmates also may perceive the need to seek psychological help as a weakness and may fear being stigmatized by other inmates. In addition, in some cases they worry that seeking treatment will result in being placed in isolation or losing

good-time credits toward early release. R. D. Morgan et al. recommend that mental health professionals try to overcome this barrier by providing information about available resources and how to access them during inmate orientation programs, as well as providing outreach services to inmates in their living units.

Environment

Another obstacle to effective treatment in prisons and jails is the unusual nature of the prison environment itself. The list of negative features ranges from overcrowding, violence, and victimization by other prisoners and staff, to isolation from families and feelings of a lack of control over one's life.

In the late 1950s and 1960s, a number of psychologists working in correctional settings helped establish therapeutic communities for inmates facing adjustment problems in prisons (Toch, 1980). As mentioned earlier in the chapter, these therapeutic commuities were special living quarters where inmates would be housed separately from the rest of the prison population and would be involved in decision making, group therapy, and operating their own living quarters within the broad prison setting. Although these inmates did not have significantly better recidivism rates than other inmates (Gendreau & Ross, 1984), prison life was made more tolerable for them, and job satisfaction for the staff improved. Today, few prison programs offer therapeutic community settings, primarily because of budgetary constraints and space limitations. When available, they are more likely to be offered to inmates with substance abuse problems. In general, research has documented the effectiveness of therapeutic communities when they are intensive, behavior based, and focused on targeting an offender's drug use (MacKenzie, 2000). Continuing research has shown positive results with the therapeutic community approach with respect to drug offenders (Saum et al., 2007).

Many observers note that prison environments are worse today than they were in the 1960s, when therapeutic communities were first proposed. Overcrowding, violence, and deteriorating physical conditions characterize a substantial number of the nation's prisons and jails. Although overcrowding has lessened in recent years, there is ample evidence of violence, including sexual violence, and deteriorating conditions (S. Singer, 2020; Stevenson, 2014). It is impossible to know the true number of assaults, because many assaults are not reported. In early 2000s, awareness of sexual violence was brought to attention, and in an attempt to address this issue, Congress passed the **Prison Rape Elimination Act (PREA)**.

Among other things, it mandates prisons and jails to report incidences of rape of which they are aware. Mental health professionals have written about the need to research the problem of prison rape and design programs for both prevention and treatment (Stemple & Meyer, 2014; Neal & Clements, 2010).

Living conditions for inmates who are kept in isolation for disciplinary reasons or presumably for their own protection (e.g., those with mental disorders) are particularly problematic from a psychological perspective, especially if the stays in isolation extend for months or even years at a time. As mentioned earlier, however, not everyone agrees that isolation is damaging, particularly because offenders are kept under varying conditions. Although it would be unfair to suggest that the typical jail or prison faces these seemingly intractable problems, correctional psychologists encounter them all too often, and they contribute significantly to the stress experienced by both inmates and staff.

Treatment is also made difficult by other aspects of even the most humane jail or prison environment. The drop-out factor, wherein inmates do not complete a planned treatment program, is a major obstacle to providing effective treatment (R. D. Morgan et al., 2014). Jail sentences are typically short, so continuous treatment is highly unlikely to occur. In both jails and prisons, inmates “miss” appointments with clinicians for a wide variety of reasons. Even when inmates themselves want to attend, they may be prevented from doing so for security or disciplinary reasons. A cellblock may be locked down for a day, for example, while officials conduct cell searches, investigate a disturbance, or conduct medical tests. An inmate involved in an altercation may be placed in disciplinary segregation, making it unlikely that regular visits to a therapist will be allowed. Therapy for inmates in segregation typically consists of medication, visits at an inmate’s cell door, or an occasional one-on-one session (R. D. Morgan et al., 2016). For security reasons, prison inmates are transferred to other facilities with little warning. Finally, budgetary constraints in many facilities result in cutbacks to all but the most essential services.

Interestingly, recent efforts to bring telepsychology to prisoners (as well as parolees) have been lauded as a possible solution (Batastini & Morgan, 2016; Farabee, Calhoun, & Veliz, 2016). Telepsychology involves patients working with therapists at a distance, such as when an inmate is seated in a therapy room in prison and the mental health professional is in their office. Telepsychology may be a way of not only reducing costs, but also be an efficient method to maximize the number of treatment sessions.

Despite these difficulties, studies show that when psychological treatment is provided, it is effective. Citing their earlier meta-analysis (R. D. Morgan et al., 2012), R. D. Morgan et al. (2014) write that "a comprehensive meta-analytic review of interventions for incarcerated offenders found significant improvements for general mental health outcomes, improved coping skills, and improved institutional adjustment with fewer behavior problems . . . all goals of basic mental health services in jails and prisons" (p. 806). M. S. Martin, Dorken, Wamboldt, and Wootten (2012) found similar positive results for persons with major mental illnesses. Recent publications by other correctional psychologists (e.g., Gendreau & Goggin, 2014; W. L. Marshall, Boer, & Marshall, 2014; Rosenfeld et al., 2015) also support the effectiveness of psychological treatment within jails and prisons.

COMMUNITY-BASED CORRECTIONS

As we noted at the beginning of the chapter, the great majority of adults under correctional supervision remain within the community, either in their own homes or in transitional or group homes, camps, ranches, or similar facilities. Community-based placements other than one's own home generally hold individuals for less than 24 hours a day, allowing them opportunity to work, attend school, participate in job training, or attend counseling or treatment sessions. Community-based facilities are operated by state or federal governments or by private organizations under government contract. In the criminal justice literature, such placements are referred to as "intermediate sanctions," representing points on a continuum between probation and jail or prison, as well as between prison and parole. They may also be referred to as "probation plus" or "parole plus." The offender who lives in a halfway house upon release from prison, for example, is on parole with the added restrictions imposed by the rules and supervision of the halfway house administration.

Intermediate sanctions are also used with offenders who remain in their own homes, such as offenders assigned to house arrest or electronic monitoring. The forensic psychologist offering services to offenders under community correctional supervision, therefore, soon learns that they have a variety of living arrangements as well as conditions of release.

A common condition of release is the requirement that an offender attend counseling or therapy. Thus, many community psychologists have on their caseload individuals who have been ordered to seek treatment, not unlike the orders of outpatient treatment discussed in

Chapter 6. We do not revisit here the issue discussed earlier in the present chapter, revolving around whether change can be coerced. Although it is not irrelevant in this context, the coercion here is not as clear-cut as coercion within the institutional environment of the jail or prison, particularly the latter. Nevertheless, the forensic psychologist should be alert to the fact that their clients might only be seeking help because of the fear that they could be incarcerated if they do not meet the conditions of release.

Like the psychologist working with detainees and inmates, the psychologist working in community settings performs both assessment and treatment tasks. Evaluations of an individual's competency to stand trial or competency to participate in a variety of judicial proceedings are often performed in the community. In addition, the community psychologist may assess an offender's appropriateness for a particular treatment program, such as a program for sex offenders. Risk assessments are increasingly being performed within the community, as well. For example, before downgrading a probationer from an intensive supervision program (defined further later) to "regular" probation, the court or the probation authority may ask the psychologist to assess the risk to the community if the probationer is no longer supervised as diligently. The principles associated with risk assessment, as well as with risk/needs assessment discussed earlier in this chapter and in Chapters 4 and 5, are not repeated here.

The role of the psychologist in treating offenders in the community deserves our careful attention. In most ways, the principles applied and the standard of practice are no different from what the psychologist would adopt in the treatment of any other client. Nevertheless, a number of factors render the correctional client distinctive. The common thread among all these factors is the importance of communication between the psychologist and the representatives of the criminal justice system. First, as noted earlier, the coercive nature of the treatment may create problems, although it is far less coercive than treatment in jails and prisons. Second, the psychologist may be placed in the untenable position of being an "enforcer," similar to the probation officer. Thus, if the client misses an appointment, the psychologist must decide whether to report this lapse to the probation officer, who may or may not see this as a serious problem. Third, in a somewhat related vein, the psychologist may be called on to make decisions involving privileges that they would rather not have to make. A parolee receiving treatment may wish to attend the out-of-state wedding of a sibling, for example, a decision that would typically be left to the supervising officer.

Community psychologists are often called on to render opinions on such matters, which many believe are out of their purview. Fourth, the limits of confidentiality must be recognized and communicated to the individual. Typically, the client in these situations is not the offender but the supervising agency, which may be a court or a probation/parole department. In some jurisdictions, the court imposing the conditions of release may require periodic progress notes from the treating clinician. In addition, in the event that probation or parole is revoked, summary notes from the psychologist's records may be subjected to court scrutiny. Fifth and finally, the criminogenic needs of the offender require continual assessment and addressing.

The last decade of the 20th century saw some promising work describing and evaluating the work of psychologists vis-à-vis conditionally released offenders in community settings. Heilbrun and Griffin (1999), describing a number of well-regarded programs in the United States, Canada, and the Netherlands, concluded that there was no single "ideal" program; rather, it was important to use

> the full range of treatment modalities that have been developed during the past decade. . . . By employing treatments such as recently developed psychotropic medications, psychosocial rehabilitation, skill-based psychoeducational interventions designed to improve relevant areas of deficits, and relapse prevention, it is likely that treatment response in a forensic program will be enhanced. (p. 270)

Despite the fact that there is no single "ideal" program, however, it is likely that programs based on the now well-established RNR principles of Andrews and his colleagues (e.g., Andrews & Bonta, 2010; Andrews, Zinger, et al., 1990), described earlier in the chapter, have the greatest chance of success at reducing reoffending.

SUMMARY AND CONCLUSIONS

This chapter has provided a description of the role of psychologists working primarily with adult offenders (and sometimes with detainees) in both institutional and community settings. Although we include them under the broad mantle of forensic psychology, we recognize that many do not consider themselves as such, rather as correctional psychologists.

We began with an overview of jails and prisons, focusing on distinctions between the two that are most relevant to the

psychologist. Because of their short-term nature, for example, jails offer fewer programs and are less likely to enable the psychologist to have long-range treatment goals. Jails also engender more crisis situations, such as suicide attempts by detainees. The chapter also included a review of those legal rights of inmates that are most likely to affect the work of psychologists.

A major concern of mental health professionals consulting with or working within corrections today is the apparent increase in inmates with mental disorders. Some inmates enter jails and prisons with pre-existing mental illness; others acquire it as a result of their experience within the system. Not surprisingly, conditions in some jails and prisons—overcrowding, sexual victimization, violence—are breeding grounds for mental deterioration. Placement in solitary confinement, or isolation, especially for long periods, is another red flag. Finally, inmates must deal with separation from family and with how they will adjust when they are finally reunited.

The work of psychologists in adult corrections can be divided into the two broad but overlapping areas of assessment and treatment. We reviewed the many situations under which psychologists are asked to assess various abilities of detainees and inmates, as well as their mental states. In recent years, psychology has seen the development of many assessment instruments for use in these forensic settings; studies indicate, however, that psychologists are not making extensive use of these instruments, preferring more traditional measures such as the clinical interview. At a minimum, assessment is needed when inmates enter the facility, before they are released, and when they are in crisis situations. Ideally, though, assessment should be a continuing enterprise and should occur as indicated throughout the inmate's stay.

The assessment of a death row inmate's competency to be executed is unlikely to involve the typical correctional psychologist. Nevertheless, this is an area of immense importance and one that has engendered considerable debate. Some psychologists, such as those who are philosophically opposed to the death penalty, believe they should not be involved in such assessments. Others believe it is their professional duty to offer the services as they are required. Furthermore, because a federal court has now given authorities the go-ahead to force medication on a death row inmate to render the inmate stable enough to be executed, this issue will undoubtedly be of even more concern. In death penalty states where psychologists have or will have prescription privileges, the matter will be especially salient. We did not cover this debate in detail within the chapter, but we discussed suggestions given to those forensic psychologists who

conduct “competency for execution” assessments. With the Supreme Court’s recent decisions in Atkins v. Virginia (2002), Hall v. Florida (2014), Moore v. Texas (2017), and *Madison v. Alabama* (2019) assessments of cognitive ability may become more frequent as well.

Psychologists are only one of several professional groups offering treatment services to inmates, both individually and in groups. The treatment model—or treatment approach—that tends to be the most favored is the cognitive-behavioral approach, although others are also in evidence. Cognitive-behavioral approaches—which have received the most positive evaluation results—are based on social learning theory. They assume that criminal behavior is learned much like other behavior and that the motivated inmates can “unlearn” the behavior. Consequently, these approaches encourage inmates to identify their thinking patterns, their assumptions, and their expectations, and to recognize the consequences of their behavior both for themselves and their victims. Research indicates that motivated inmates can benefit from these approaches, which are often used with a wide range of offenders, including violent offenders, sex offenders, and substance abusers. Among the least motivated inmates for such treatment are persistent violent offenders and psychopaths, although we hesitate to draw generalizations, particularly about the first group.

Features of the prison and jail settings can present numerous obstacles to effective treatment, so much so that some psychologists prefer not to approach this challenge. Limitations on confidentiality, budgetary restraints, violence and overcrowding within the facility, inmate schedules and inmate transfers, and sometimes a lack of support from administrators and correctional officers are not unusual. Yet many psychologists find immense satisfaction performing this work. Professional organizations offer guidelines and provide support, and increasingly more research is published identifying effective strategies and approaches in a wide variety of situations.

The chapter ended with a review of community treatment programs with offenders who are on probation; on parole; or under intermediate sanctions, such as intensive supervision. In recent years, we have begun to see more descriptions and evaluations of community programs within the psychological literature. Although community programs provide their own special challenges (e.g., offenders not appearing for their treatment session), they also have the advantage of being in a more realistic environment that does not present the numerous obstacles of institutional settings.

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QUESTIONS FOR REVIEW

1. Explain the difference between institutional and community corrections.
2. List the main differences between prisons and jails.
3. Does the constitutional right to treatment include a right to psychiatric/psychological treatment? Explain your answer.
4. Which two categories of offenders have been determined incompetent to be executed, according to the U.S. Supreme Court? Discuss the implication of these Court rulings for forensic psychologists.

5. Identify the tasks that might be assumed by psychologists in relation to both screening and classification of inmates.
6. Provide an illustration of a treatment program for each of the following special populations: violent offenders, criminal psychopaths, female prisoners, sex offenders, and inmates in jail.

CHAPTER THIRTEEN JUVENILE JUSTICE AND CORRECTIONS

CHAPTER OBJECTIVES

- Introduce the juvenile justice system and its history.
- Review landmark U.S. Supreme Court cases pertaining to the rights and protections of juveniles.
- Introduce the methods and procedures used in psychological assessments of juveniles.
- Discuss juvenile comprehension of constitutional rights.
- Review social science research on false confessions of juveniles.
- Review representative approaches to the rehabilitation of juveniles.
- Describe and assess multisystemic therapy.
- Review model approaches to the treatment of juvenile substance abusers, violent offenders, and sex offenders.

L. R. was thrown out of her home at age 13, following several years of “incorrigibility” both at home and at school. She joined a group of street kids, who offered her protection, but also introduced her to drugs and sex work. Police took her into custody for drug possession at age 15. The juvenile court wanted to know how best to help her.

O. T., a 15-year-old who had been belligerent toward both classmates and teachers, arrived at school one morning with an army knife that belonged to his father. He tried to stab a teacher and assaulted a fellow student before he was stopped. The prosecutor declined to have him tried in criminal court. “In this state, we help kids, we don’t punish them,” he said.

B. A. joined a violent gang at age 14. As part of the gang initiation, he robbed an elderly couple in their home and physically assaulted the 8-year-old brother of a rival gang member. The juvenile court wanted to know if he would be violent in the future.

The juvenile justice system provides numerous opportunities for the forensic psychologist. For over a century, juveniles who are accused of crime, particularly minor offenses, have been treated differently from adults. Although still held responsible, they are not considered as responsible as adults due to their immaturity. Even when their crimes are serious ones, juveniles as a group are considered more likely to be rehabilitated. Juvenile courts, then, were established to recognize these differences and to attempt to arrive at suitable dispositions that would reduce the likelihood that young offenders would continue on a path of offending. Unfortunately, despite good intentions on the part of some, but not all, founders of that system, many juvenile courts lost their way. Beginning in the 1960s, the U.S. Supreme Court tried to bring justice back, but as we will see shortly, the juvenile justice system as a whole had many problems. Nevertheless, some commentators have noted that most recently,

and particularly in light of a more developmental approach to juvenile offending, there is reason for optimism (Grisso, Fountain, NeMoyer, & Thornton, 2019).

In this chapter, we begin with statistical information on juvenile offending, review in more detail changes in the legal system and court decisions over the years, and discuss juvenile rights and conditions of confinement for some juveniles today. The chapter ends with a focus on selective rehabilitation programs that have received positive research reviews.

DATA AND OVERVIEW OF IMPORTANT ISSUES

Various data indicate that juveniles today are more likely to come into contact with police, courts, and correctional facilities than at any other time in history, but nonetheless these numbers have declined over the past decade. For example, arrest data for 2011 reveal that police took into custody some 1.47 million juveniles that year, indicating that arrests were down 11% from 2010 and down 31% since 2002 (Puzzanchera, 2013). In 2015, police arrested 649,970 persons under age 18, representing an 8.4% decline from the previous year (Federal Bureau of Investigation [FBI], 2016). In 2018, police arrested 127,039 (FBI, 2019a). (See **Focus 7.1** in Chapter 7.) There were some increases, however, in murder, rape, and motor vehicle theft, but these numbers were small compared with property offenses. Decreases in arrests may reflect numerous factors, ranging from police ignoring petty offenses or referring youth to community resources to an actual decline in the number of crimes committed by youth. In recent years, programs that involve police collaboration with mental health professionals to help youth with mental health conditions have received positive reviews (Janopaul-Naylor, Morin, Mullin, Lee, & Barrett, 2019).

Another source of data is the number of cases that are processed in juvenile courts. In 2010, juvenile courts in the United States handled approximately 1.4 million delinquency cases, or cases in which juveniles ages 10 or over were charged with violations of the criminal law (Puzzanchera & Robson, 2014). The number decreased slightly in 2014, at 975,000 cases (Hockenberry & Puzzanchera, 2017) and again in 2018, at 744,500 (Sickmund, Sladky, & Kang, 2020) While most juveniles reach juvenile court as a result of an arrest, about 15% to 19% are referred by parents, school personnel, social agencies, or probation departments (C. Knoll & Sickmund, 2010; Puzzanchera, Adams, & Sickmund, 2010; Sickmund, 2004). Recent data indicate that 27% of the cases handled by juvenile courts

concerned offenses against persons (violent offenses), 34% of the cases were property offenses, 13% dealt with drug law violations, and 26% were public order offenses (Hockenberry & Puzzanchera, 2017). Public order offenses include obstruction of justice, disorderly conduct, weapons offenses, liquor law offenses, and nonviolent sex offenses such as lewd behavior.

In a typical year, juvenile court judges waive jurisdiction over an estimated 1% of all formally handled delinquency cases (Puzzanchera & Addie, 2014; Puzzanchera & Robson, 2014). The number of such waivers has decreased in recent years—a peak of 13,200 in 1994 down to 3,600 in 2018 (Sickmund, Sladky, & Dang, 2020). Over the years, the vast majority (90%) of waived cases involved males, age 16 or older. As Jordan and McNeal (2016) observed, however, decreases in judicial waivers could be reflective to some extent on increases in prosecutorial and statutory waiver. An unknown number of juveniles, chiefly between the ages of 14 and 18 (but sometimes younger), are tried in criminal rather than juvenile courts because prosecutors have the discretion to bring their cases there rather than to juvenile courts (Redding, 2010). In the anecdote at the beginning of this chapter, the prosecutor did the opposite. However, it is also noteworthy that some juveniles automatically are sent to criminal courts when charged with specific serious crimes.

For those cases that go through the juvenile court system, a number of outcomes are available. Early on, intake workers may divert the youths to community programs or place them on an informal probation system. As Grisso et al. (2019) note, diversion services have proliferated in recent years. If youths are adjudicated, outcomes include dismissal (the equivalent of a not-guilty verdict in adult criminal courts), a finding of delinquency (either by plea agreement or a judge's finding of guilt), and subsequent disposition that involves probation or out-of-home placement such as in a treatment facility, group home, or wilderness camp. The most common disposition for juveniles is probation.

The number of youths in residential placement also has declined, in 2016 reaching the lowest number since 1975 (Hockenberry & Sladky, 2018). Offenses against persons accounted for the almost half of both detained and committed youth, followed by property offenses. Gender and race/ethnicity data indicated that boys were far more likely to be detained and committed than girls. The percentages of Black and white juveniles, again both detained and committed, were greater than Hispanic or other races (Puzzanchera & Hockenberry, 2019).

Surveys of residential facilities for juveniles (e.g., detention centers, treatment centers) indicate a wide range of differences among them, including operation, number of residents, and the services they provide. (See **Focus 13.1** for more information.) Data also indicate that in 2017, half of youth who had been detained remained in detention 3 weeks after admission, and half of committed youth remained in residential placement after 16 weeks (Puzzanchera & Hockenberry, 2019).

Juvenile courts may exist as separate entities or may be part of the broader "family court" or "domestic court" system that was covered in Chapter 6. In general, they operate more informally than criminal courts and employ a different lexicon or terminology. (See **Table 13.1** for a list of terms used in many juvenile courts.) Regardless of how these courts are structured, judges, lawyers, and social service representatives consult with psychologists and other clinicians for a wide variety of reasons.

Focus 13.1

Juvenile Residential Facilities: A One-Day Snapshot

Approximately every two years since 2000, the Office of Juvenile Justice and Delinquency Prevention has sponsored a one-day census of all public and private juvenile residential facilities in every state. This includes both detention facilities, where youths who have been taken into custody are awaiting further processing of their cases, and treatment and rehabilitation facilities, where adjudicated youth have been assigned. In 2016, tribal facilities in eight states were included. There were 1,772 facilities represented, holding 45,567 juveniles. Following are highlights from the census based on the 1-day census of October 26, 2016 (Hockenberry & Sladky, 2018):

- More than half were publicly operated; they held 71% of juveniles, with private facilities holding 29%.
- A small proportion of facilities (3%) operated over capacity, and these held 4% of juveniles.
- The number of youth in residential placement continues to decline over about two decades.
- More youth were held in local than state facilities.
- Only 16% of private facilities were owned or operated by a for-profit agency.
- Most private facilities (57%) were residential treatment centers.
- Group homes and shelters accounted for the remainder of private facilities.
- The predominant public facility types were detention and reception/diagnostic centers.

- The remaining public facility types were training schools, ranches or wilderness camps, residential treatment centers, and group homes, in descending order of numbers.
- Youth were locked in their sleeping rooms at least some of the time, by most local and state facilities; less than 10% of private facilities reported locking youth in their room at any time.
- Other than locked sleeping rooms, slightly more than half of the facilities reported one or more confinement features (e.g., outside locked doors, secure day rooms). Type of confinement features and extent of use varied widely and was typically related to size of facility.
- Close to 90% of facilities reported educational programming; reception/diagnostic centers were least likely to report school attendance
- Substance abuse problems were screened in most facilities either through self-report questionnaires, staff observation, or standardized instruments.
- On-site mental health professionals evaluated all youth in two thirds of the facilities, while the remainder evaluated some youths. Group homes and residential treatment centers were most likely to have all youths evaluated.

QUESTIONS FOR DISCUSSION

1. These selected findings are from a comprehensive report. What other information would you want to know? Access the publicly available report (Hockenberry & Sladky, 2018) and determine whether your questions were addressed.
2. Is it surprising that a small percentage of private facilities were for-profit? What if any is the significance of a private residential facility for juveniles being for-profit or nonprofit?

As recently as a decade ago, researchers (e.g., Viljoen, McLachlan, Wingrove, & Penner, 2010) observed that the juvenile justice system as a whole had become more adultlike, with juvenile court judges giving tougher sentences and more juveniles being processed in criminal courts. More recently though, there is a parallel move to recognize that juveniles are not identical to adults in terms of their decision-making capacities (e.g., Grisso et al., 2019). As noted at the beginning of this chapter, developmental psychologists, many of whose research was cited in Chapter 7, have had considerable influence on juvenile justice policy making (Grisso et al., 2019). Expert witnesses have cited this research in both juvenile and criminal courts, and it is often reflected in decisions of appellate courts, including the U.S. Supreme Court.

Whether in juvenile or criminal court, defense lawyers may require an assessment of their client's overall intellectual functioning. When juveniles waive their constitutional rights, such as the right to remain silent or the right to a lawyer during police interrogation, judges (and defense lawyers) often want to know whether the juveniles possessed the necessary cognitive skills to make such a waiver. Psychological assessments are often sought very early in a youth's contact with the justice system to determine the youth's mental health needs (M. Williams, Rogers, & Hartigan, 2019). They also may be sought to assess a youth's risk of violence or determine if they are amenable to rehabilitation. In addition to this, juvenile court judges, and some criminal court judges, as well as lawyers often want to know whether treatment is available to meet the needs of a given young offender, along with the cost of such treatment and the probability that it will be effective.

In addition to the preceding assessment tasks, psychologists are called on to offer treatment to juveniles, both within juvenile facilities and in community settings. In this chapter, we discuss the involvement of psychologists at each of these stages, from the early contact with the justice system to the treatment of juveniles in correctional facilities or in the community. To begin though, we provide a brief history of the juvenile courts and review legal rights of juveniles that are relevant to the practice of forensic psychology.

Table 13.1

A BRIEF HISTORY OF THE JUVENILE COURT

The first juvenile court was established in the United States in 1899, in the state of Illinois. A broad group of social activists had influenced the Illinois legislature to establish a judicial system for children that was to be separate from that faced by adults. Children were presumed to be in need of protection, less accountable for their offenses than adults, and more amenable to rehabilitation once they had strayed. It was also believed that many children were neglected by their caretakers and required the intervention of the state for their own best interest. Thus, the first juvenile court was intended to serve the needs of *all* children who needed supervision (at-risk children), not only those who were charged with violating the law. Today, every state has juvenile courts, either standing on their own or as part of a larger family court system.

The first juvenile courts were strongly based on a *parens patriae* rationale. The doctrine of **Parens patriae** (literally, "parent of the country") gives the state the power to intervene in a child's life, even

over the objections of the parents, because such intervention is presumed to be in the best interest of the child (BIC). The doctrine has survived and remains a strong component of much juvenile law today, including custody-related law discussed in Chapter 6. With regard to juvenile delinquency, the law is also very oriented toward recognizing the legal rights of juveniles, at least in principle.

Prior to the establishment of the juvenile courts, children who allegedly broke the law were handled through the social service system or were taken before criminal courts. In the mid-19th century, the nation's largest cities had **Houses of Refuge**, which were institutional settings presumably intended to protect, nurture, and educate neglected or wayward children. Children who were sent to Houses of Refuge were poor or homeless, were considered incorrigible, or had committed usually minor law violations—or some combination of the above. Houses of Refuge in the 19th century—with some exceptions—very rapidly earned the reputation of being emotionally cold facilities that often exploited their young charges by contracting their domestic and manual labor to households in the community (Bernard, 1992).

Young offenders who were processed in criminal courts were allowed to remain in the community if they stayed out of trouble. This is similar to the probation of today, but there were few probation officers available to monitor behavior and offer support and guidance as needed. The early probation officers were volunteers or police officers assigned to this special duty (Cromwell, Killinger, Kerper, & Walker, 1985). It was not until the end of the 19th century that states began to authorize probation and provide funds for probation officers on a systematic basis. Before that time, probationary status was available only in areas where there were volunteers or police willing to take on these supervisory tasks. Many young offenders thus were sentenced by criminal courts to serve time in prisons or reformatories. The latter were intended primarily for first-time offenders. Their purpose was to give these offenders a second chance, offering them education and discipline in preparation for a law-abiding life. Like the Houses of Refuge, many of those reformatories were criticized for abusing young offenders, ruling by fear, and not delivering on their promise to provide education and rehabilitation (Bernard, 1992; R. Johnson, 1996).

The juvenile courts clearly were trying to change children and their families, but it is highly questionable whether they were effective. Until the 1960s, they operated very informally, and judges and other court officers had very broad discretion over the lives of juveniles. The courts were supposedly intended to help juveniles, preferably

within the community and within their own homes. Sometimes, parents themselves took their children to these courts if they considered them “incorrigible.” Proceedings were informal and closed to the public, and all aspects of the juvenile’s life were subjected to inquiry by the court. Psychiatrists and psychologists working in child guidance clinics provided judges with cognitive and personality test results and offered recommendations based on their interviews with the child and family members (Rothman, 1980).

Gradually, despite the allegedly good intentions of the founders of the juvenile court movement, the courts gained the reputation of being authoritarian, imposing unreasonable expectations on juveniles and their families, particularly the economically disadvantaged. When these expectations were not met, juvenile judges were not averse to sending juveniles to secure training schools, where they encountered punitive treatment rather than effective rehabilitation. These decisions to institutionalize were routinely made with little attention to due process of the law; juveniles in most courts did not have the assistance of lawyers, nor did they have reasonable opportunity to confront the witnesses against them or to challenge the actions of court officials. Juvenile courts also routinely urged—and in some cases required—juveniles to confess their offenses. When juvenile court judges believed that the juveniles were not appropriate for juvenile court, they would transfer them to criminal court, where they would presumably be treated the same as adults.

Supreme Court Decisions

Two U.S. Supreme Court cases in the 1960s signaled a need to change procedures in juvenile court. One—Kent v. United States (1966)—required that a judge hold a hearing before transferring a juvenile to adult court. Morris Kent Jr. was no angel. The 16-year-old was charged with housebreaking, robbery, and rape while on probation. When arrested, he admitted committing the crimes and was confined in a receiving home for children. The juvenile court, however, quickly transferred his case to adult criminal court over the very strong objections of his attorney, who argued that Kent could be rehabilitated if maintained in a juvenile setting.

In criminal court, Kent was found not guilty by reason of insanity regarding the rape charge but was found guilty of housebreaking and robbery. He was sentenced to 30 to 90 years and transferred to a mental institution in accordance with the insanity finding. Kent’s lawyer appealed the original decision of the juvenile court to transfer his case to criminal court.

The U.S. Supreme Court ruled unanimously that the juvenile had a Constitutional right to have the assistance of an attorney and to

challenge the transfer. The Court also suggested factors that judges could consider in deciding whether a transfer was appropriate. These included (1) the juvenile's sophistication, maturity, and general living environment; (2) the seriousness of the alleged crime; (3) the manner in which it was committed (e.g., level of violence); (4) whether the alleged crime was against persons or property; (5) the juvenile's prior record with the criminal or juvenile system; (6) the prospect of rehabilitation if kept in the juvenile system as well as prospects of adequate protection of the public; (7) the prosecutorial merit of the case; and (8) if two or more defendants were charged, the benefit of having them tried in the same court. These eight factors were later adapted and adopted for use by juvenile courts in many states. The Supreme Court opinion in *Kent* also presents a scathing indictment of the juvenile court system as it operated at that time, serving as a precursor of the landmark case that would follow, In re Gault (1967).

A year after Kent v. United States (1966), in *In re Gault*, the Supreme Court dramatically altered procedures associated with delinquency hearings. Gerald Gault had been taken into custody by police, taken to the police station, and subjected to two hearings before a judge who ultimately adjudicated him delinquent and sent him to a juvenile training school, where he could have been kept until his 21st birthday. Gerald was 15 years old at the time of his offense. His crime? He had placed an obscene phone call to his next-door neighbor. Although his parents were present at the delinquency hearing, Gerald was not represented by counsel, and his alleged victim did not appear in court to testify against him.

In a lengthy opinion that traced the history of the juvenile court in the United States, the Supreme Court noted that Gerald Gault, like Morris Kent before him, had been subjected to proceedings that could only be characterized as *a kangaroo court*—a term sometimes used for court proceedings that disregard the law or do not uphold its spirit. The Court therefore ruled that juveniles facing delinquency proceedings and possible institutionalization had, at a minimum, the following constitutional rights:

- The right to confront and cross-examine witnesses against them
- The right against self-incrimination (often referred to as a privilege but actually a right)
- The right to written notice of the charges against them
- The right to the assistance of a lawyer in their defense

The Court did want to preserve the privacy of juveniles, however, noting that closed proceedings could still be the norm in juvenile courts. In a later decision (McKeiver v. Pennsylvania, 1971) it refused

to extend the constitutional right to a jury trial to juveniles. States do have the option of allowing delinquency proceedings to be open, as well as to allow juries in juvenile courts, but very few do.

Although In re Gault (1967) was a decision widely hailed by children's rights advocates, it should not be assumed that it cured all the ills of juvenile courts. Just over 20 years after the *Gault* case, Barry Feld (1988) reported research that fewer than half of all juveniles were represented by lawyers in delinquency proceedings. Other research across 15 states suggested higher rates of representation, 65% to 97% depending on the jurisdiction. As recently as just over a decade ago, fewer than half of all juveniles were represented by lawyers in delinquency hearings (Kehoe & Tandy, 2006). In some jurisdictions, as many as 80% of youth waived their right to counsel (Kehoe & Tandy, 2006). It is also well recognized that the *quality* of legal representation varies widely across the nation and is often poor (Melton, Petrila, Poythress, & Slobogin, 2007, 2018).

When juveniles are *not* represented by lawyers, it is likely that they waived that right. In some cases, this was done on the advice of parents or other authority figures. Juveniles also have a constitutional right to a lawyer during custodial interrogation, but most juveniles speak to police without a lawyer present (Grisso, 1998; Melton et al., 2007; Viljoen, Zapf, & Roesch, 2007). Thus, the validity of waivers—that is, whether the juveniles understood the consequences of giving up their rights—is another topic of great interest to researchers to the present day (Eastwood, Snook, Luther, & Freedman, 2016; Grisso et al., 2019; Rogers et al., 2010).

Shortly after these Court rulings in the *Kent* and *Gault* cases were announced, Congress also began to scrutinize the juvenile justice system. In 1974, Congress passed the **Juvenile Justice and Delinquency Prevention Act (JJDPA)**, a law that encouraged states to do better by the juveniles in their care. The act strongly advocated the diversion of juveniles from formal court processing whenever this could be accomplished. This prompted the establishment of numerous community programs across the country aimed at keeping juveniles out of the justice system and providing them with a second chance.

In addition, Congress was particularly concerned about two groups of juveniles. These were (a) the juveniles who were being detained in adult jails, sometimes within sight and hearing distance of adults who were also detained or had been convicted and were serving sentences, and (b) the status offenders who had committed no "crimes" but were nevertheless being held in secure institutions, often with more serious delinquents. Recall that status offenders are

juveniles whose offenses might include running away from home, "incorrigibility," or truancy (skipping school)—in other words, behaviors that only they can commit by virtue of their status as children or adolescents. The JJDPA mandated that states receiving funds for juvenile justice programs must remove all juveniles from adult jails and must also remove status offenders from secure institutions. The latter mandate is referred to as the **Deinstitutionalization of status offenders (DSO)** requirement. Throughout the 1980s and 1990s, Congress passed numerous amendments to the JJDPA, some of which extended deadlines for states to meet the mandates of the law (I. M. Schwartz, 1989). Nevertheless, the JJDPA remains a strong piece of legislation supporting the rights of children in the juvenile justice system. A national office, the **Office of Juvenile Justice and Delinquency Prevention (OJJDP)**, oversees the legislation, provides grants for research on juvenile issues, and helps set national juvenile justice policy to this day.

By the end of the 20th century then, both court decisions and legislation were in place to recognize the rights of juveniles while also providing them with protection and treatment. Despite this, numerous observers commented that the juvenile justice system was in disarray (e.g., Amnesty International, 1998; Feld, 1999). Of particular concern was increasing evidence that racial and ethnic minorities were disproportionately detained and incarcerated (Leiber, 2002; H. N. Snyder & Sickmund, 1995). This problem became known as **Disproportionate minority confinement (DMC)**. It should be pointed out that the latest available government statistics show some decline in the overall use of detention and out-of-home placement for Black versus white youth, but the rates are still disproportionate, as noted above in **Focus 13.1**.

The treatment of girls and ethnic minorities also gained more attention as the 20th century came to a close. Researchers and scholars noted that, although girls had benefited from the movement to deinstitutionalize status offenders, the needs of girls in detention and treatment were not being met by the juvenile justice system (Chesney-Lind & Shelden, 1998; Federle & Chesney-Lind, 1992). Still others pointed to the need for culturally sensitive programs within the juvenile justice system to recognize the needs of Native American, Black, Latinx, and Asian American youth (Eron, Gentry, & Schlegel, 1994). Those who support such ethnocentric programming do not say that it alone will make a difference if other principles for facilitating positive change are not applied. As W. R. King, Holmes, Henderson, and Latessa (2001) observed, these programs are

syringes rather than cures: “Syringes do not heal people by themselves; however, syringes are indispensable tools for delivering medicine” (p. 501).

The overall conditions in juvenile detention and treatment facilities also received considerable attention nationwide (Amnesty International, 1998; Parent et al., 1994; Puritz & Scali, 1998). Change, however, was slow to occur. By statute and case law, juveniles held in institutions have a variety of legal rights, but they need advocates to see that these rights are acknowledged, and advocacy is lacking for many. They have a right to be in a sanitary environment and to be protected from other violent juveniles and abusive staff, but researchers have identified problems—including problems of sexual victimization—in a number of states (Beck, Cantor, Hartge, & Smith, 2013; Beck, Guerino, & Harrison, 2010). Juveniles also may not be held in excessive isolation or under unreasonable restraints, but most institutions permit the use of isolation and restraints when needed (Snyder & Sickmund, 1995). Juveniles must receive adequate medical care, mental health care, and education, and they must have access to legal counsel, family communication, recreation, exercise, and programming (del Carmen, Parker, & Reddington, 1998; Puritz & Scali, 1998). Despite these rights, reviews of conditions of confinement in detention centers, training schools, camps, ranches, farms, and other facilities for juveniles nationwide have indicated substantial and widespread problems in living space, health care, security, solitary confinement, and control of suicidal behavior (American Civil Liberties Union, 2014; Parent et al., 1994).

Finally, also toward the turn of the century, as noted above and in earlier chapters, developmental psychology began to uncover and report many differences between juveniles and adults. These differences were critical to such topics as responsibility for criminal actions, police questioning of juveniles, juveniles waiving their Miranda right, plea bargaining, and juvenile sentencing (e.g., Fine, Fountain, & Vidal, 2019; Fountain & Woolard, 2018; Murrie & Zelle, 2015; Shulman & Steinberg, 2016). (See **Perspective 13.1** in which Dr. Fountain writes about her work with justice-involved youth.) Research on juvenile decision making was cited in many U.S. Supreme Court decisions, some of which are discussed later. (See also **Table 13.2** listing Supreme Court cases relevant to juveniles.)

From My Perspective 13.1

Have a Plan, But Be Ready to Take the Side Roads

Erika N. Fountain, PhD



Erika Fountain

From middle school on, I knew I wanted to be a psychologist, but if you had told me when I first started college that I would be a social scientist working as a psychology professor, I would have laughed. You see, I was going to be the kind of psychologist who saw patients and worked with children. Instead, I ended up on the opposite end of the psychology spectrum, conducting policy-focused research with justice-involved youth. I have never seen a single patient. I also wouldn't change a thing.

My dreams of becoming a clinical child psychologist took a dramatic turn after I stumbled into a legal psychology course. For the first time in a while, I was fully engaged. I was hooked. This course opened my eyes to a world I did not know existed. In this world, scientists were exploring the disproportionate impact the legal system has on people of color, researching how some interrogation techniques increase false confessions, and showing that eyewitness memory is pretty unreliable. I was also completely oblivious to the fact that much of this groundbreaking research was being done at my own university, Florida International University. So, I jumped at the opportunity to join my professor's research lab when she offered me a position. I was thrilled, but I also had no idea what I was doing.

A year later, I had learned so much—I had designed my own research project, was collecting data with other students, attending weekly lab meetings to discuss and develop projects, and applying to

be a lab manager in one of the legal psychology labs. All of a sudden, research was everywhere. Have you ever heard a phrase you have never heard before and then you seem to hear it everywhere and all the time? This was like that. I had no idea what social science research was before then. Later, I found myself immersed in not one but three labs. Now, with the image of a clinical psychologist far in the rear view, I was beginning to learn just how much I loved being able to answer important psycholegal questions with social science and research methods.

In all the excitement, though, I almost forgot one of the things I had originally cared so much about—working with youth. While working in the legal psychology labs on projects ranging from the detection of deception to eyewitness memory, I had the opportunity to assist a developmental psychologist with some data collection. The lab was working with youth at alternative high schools, and I was responsible for interviewing a handful of them about how they saw their future selves. Many had been involved with the legal system. There was something incredibly rewarding about getting to know them by talking about their hopes and dreams. Of course, through these conversations, I also started to hear stories about their run-ins with the law and how they had gotten into too much trouble to go back to their old school. Through their stories, I started to hear how they saw the legal system and how clear it was that they did not really understand it.

After graduating from college, I realized I had to find a way to combine my passions for legal psychology and working with youth. I was accepted into a doctoral program working with Dr. Jennifer Woolard at Georgetown University so that I could study how youth and their families interact with the legal system. Throughout my graduate work, I found myself stretching into new areas once again and continuously wondering about how my work could have a real impact, ensuring my work didn't stay filed away in the lab, and how our team might inform juvenile justice policy and practices.

While working with Dr. Woolard, I began to understand the complexities involved in juvenile justice work. The juvenile justice system is built on the idea that adolescents are different from adults and therefore should be treated differently. Unfortunately, though, we don't always account for those differences when we ask justice-involved youth to make important legal decisions such as accepting a plea bargain and waiving the right to trial. I started to learn more about the juvenile courts and how the legal expectations placed on youth did not necessarily match what they are developmentally prepared to do. The various constraints of our current legal system

do not truly allow adolescents the necessary time to fully consider their options, the alternatives, and the long-term implications of their decisions. The way the process currently works, we leave kids vulnerable to making shortsighted decisions without a full understanding of the implications of those decisions. I was starting to learn why perhaps some of those teens I had interviewed before, who had *experience* with the legal system, still had little *understanding* of it. My new goal was to continue doing this work with an eye toward how I could bring about real change by engaging with policy makers and ensuring that the decision makers understood what our research was showing.

I've learned that the path is not always clear even if you think you know exactly where you're going and how to get there. You might consider exploring the side roads, because sometimes they are what lead you to great discoveries about who you are or could be. Having a firm sense of where you want to go is important, but being flexible and open to opportunities is equally so. Take joy in exploring the unknown: join the lab, enroll in that one class that sounds interesting, explore other options just for the sake of exploring. For me, doing so has been the greatest learning experience of all.

Dr. Fountain is an assistant professor of psychology at the University of Maryland, Baltimore County. She currently directs the Youth Justice Lab, supervising projects examining legal decision making, youth and family engagement with the legal system, and the relationship between developmental science and juvenile justice policy. She lives in Baltimore with her partner, Marianna, and their pup, Peanut. She is often exploring the outdoors by hiking nearby trails or spending her time attempting to bake the perfect sourdough.

As noted by Grisso, Fountain, NeMoyer, and Thornton (2019), "[i]n the past 20 years . . . we have witnessed the beginnings of a remarkable rehabilitation of the U.S. juvenile justice system. Increasingly, juvenile justice policies are driven by recognition of youths' developmental immaturity" (p. 114). Grisso et al. highlight decreases in incarceration rates, increases in diversion and other community-based services, and calls for evidence-based assessment and rehabilitation methods. Nevertheless, as Dr. Fountain notes in her essay, continuing work is necessary to assure that the needs of justice-involved youth are recognized.

Against this backdrop, we now turn to the specific tasks that are performed by forensic psychologists in consultation with the juvenile justice system.

JUVENILE ASSESSMENT: AN OVERVIEW

As we have noted throughout the book, assessment is an essential component of the daily professional life of the forensic psychologist. Also called psychological evaluation, assessment refers to all the techniques used to measure and evaluate an individual's past, present, or future psychological status. It may be considered "the act of determining the nature and causes of a client's problem" (Lewis, Dana, & Blevins, 1994, p. 71). Thus, interviews, observations, and reviews of records and other documents are all part of the assessment process. Typically, when assessing a juvenile, the psychologist also administers a variety of tests to measure the juvenile's cognitive abilities and personality attributes, and in many cases measures to assess risk of violence or sexual offending.

Table 13.2

*Table does not include *Jones v. Alabama*, an important case regarding juvenile life without parole that is scheduled for argument in Court's 2020–2021 term.

The mental health needs of juveniles is a critical issue to address. As noted by Williams, Rogers, and Hartigan, (2019, p. 143), studies "have consistently demonstrated high rates of psychological impairment among adolescent offenders, with half or more being diagnosed with mental disorders." Williams et al. replicated the effectiveness of a dominant self-report measure of emotional well-being, the MAYSI-2 (Grisso & Barnum, 2006), which is a clinical screen to rapidly evaluate the mental health needs of delinquent youth. The measure includes such scales as suicide ideation and angry-irritable, both of which highlight crucial needs to be addressed if a youth is in custody. Substance use and depression and anxiety are also measured. While supporting the continued use of the instrument, Williams et al. nonetheless encourage more research directed at interpreting scores for girls. Interestingly, the MAYSI-2 can be administered by non-psychologists, including juvenile corrections workers in a detention setting or as an important component in a juvenile court intake (Grisso et al., 2012).

For more general assessments conducted by psychologists in a variety of contexts, the evaluation usually includes phone or in-person interviews with relevant adults, including family members, and peers. Some forensic psychologists recommend observing the juvenile in a natural setting (e.g., in school, with parents and siblings at home) if possible. Although some forensic psychologists urge very wide-ranging assessment, others believe assessments should be limited in scope and should address only the referral question (e.g., Did this juvenile possess the necessary cognitive ability to waive their

right to a lawyer? Is it likely that this juvenile is competent to stand trial?). Until recently, in most jurisdictions there were no clinical requirements and few legal restrictions associated with these assessments; the specific approach taken was left to the individual clinician. Now, more states are endorsing specific guidelines or certification procedures for clinicians who will be submitting evaluation results to the courts (Heilbrun & Brooks, 2010). In addition, there is a wealth of information in the form of handbooks, guidelines, and research studies that offer suggestions to clinicians (e.g., American Psychological Association [APA], 2013b, 2013c; Grisso, 1998; Kruh & Grisso, 2009; Melton et al., 2018; Weiner & Otto, 2014).

The clinical literature advises forensic psychologists to be extremely cautious in assessing juveniles if their practice has been limited primarily to adults. "It is possible to conduct a seemingly competent evaluation but fail to obtain the data necessary to construct a complete picture of the developmental and familial context for the youth's clinical presentation and delinquent behavior" (Heilbrun, Marczyk, & DeMatteo, 2002, p. 187). Heilbrun, Marczyk, and DeMatteo add that normal adolescent defensiveness and mistrust may make youths appear cold and remorseless. For instance, children of ethnic and racial groups that have experienced discrimination in society may be distrustful of authority figures, including the mental health professionals evaluating them. Adolescents as a group also may be reluctant to disclose embarrassing information that may actually help in their defense. For example, a juvenile may be charged with assaulting an individual who sexually abused him in the past, and the juvenile may be reluctant to disclose that abuse. Examiners also must be alert to the possibility of serious psychopathology, which can be overlooked in adolescents by clinicians accustomed to the symptomatology and clinical presentations of adults (Heilbrun et al., 2002).

Although assessment is an essential component of treatment, treatment does not necessarily accompany assessment. In fact, as we mentioned in earlier chapters, psychologists are warned to avoid —or at least be cautious of—dual roles of evaluator and treatment provider. The mental health practitioner evaluating the juvenile's competency should not be the person who has treated the juvenile in the past, nor should she be the person asked to restore the juvenile to competency if found not competent. Nevertheless, clinicians are often advised to include recommendations for treatment in assessment reports, if such treatment is known to be available (Grisso, 1998). As noted earlier, instruments such as the MAYSI-2

attempt to identify clinical and behavior problems in juveniles very early in their interaction with the juvenile justice system.

Risk Assessment

Assessing risk is a common task of the forensic psychologist in numerous settings. In fact, William et al. (2019) suggest that researchers have focused more on assessing risk than on identifying clinical needs, with some exceptions. Courts and juvenile facilities are interested in knowing the likelihood that a juvenile will commit violence or other serious offending in the future. Recall that this is an important consideration in sentencing juveniles who have been convicted of serious crimes, including homicide (Fairfax-Columbo, Fishel, & DeMatteo, 2019). Judges also take risk into consideration in deciding whether to transfer juveniles to criminal courts (or vice versa) or deciding whether to impose community or institutional sanctions. Juvenile corrections decision makers often want to match a juvenile's placement setting or program with their risk level. A number of risk assessment instruments have been designed especially for juveniles, the two most prominent being the Structured Assessment of Violence Risk in Youth (SAVRY; Borum, Bartel, & Forth, 2006) and the Youth Level of Service/Case Management Inventory (YLS/CMI; Hoge & Andrews, 2002).

Risk assessment instruments are widely used by forensic psychologists assessing both juveniles and adults, and there is a rich literature evaluating their validity and effectiveness. However, both commentators and professional standards warn mental health practitioners to choose the instruments they use very carefully and assure that they reflect best practices. The SAVRY and the YLS/CMI have both received favorable reviews and have demonstrated good predictive validity (e.g., Olver, Stockdale, & Wormith, 2014). In a recent article, Viljoen, Shaffer, Gray, and Douglas (2017) emphasized that risk assessment of juveniles should take into consideration the enormous changes in adolescent development and the likelihood that risk level fluctuates as a result. In their study of adolescent probationers, Viljoen et al. found that both the SAVRY and YLS/CMI could use improvement in their ability to measure short-term changes, though each instrument still holds promise for continued use with adolescents.

Assessment of Competence to Waive Miranda Rights

There is good evidence that many juveniles, like many adults, cannot understand their Constitutional rights (Grisso & Schwartz, 2000;

Rogers et al., 2010). Psychologists who evaluate them must be knowledgeable not only about the law but also about adolescent development and decision making (Grisso, 1998; Heilbrun et al., 2002). Like adults, juveniles have a Constitutional right not to incriminate themselves during their dealings with the criminal justice system. Juveniles do not have to answer questions posed by police if in custody without a lawyer present (Fare v. Michael C., 1979; Miranda v. Arizona, 1966). In addition, they do not have to take the stand during a delinquency proceeding, and they have the right to confront witnesses against them (In re Gault, 1967). The preceding cases also established that juveniles have a right to have an attorney present during custodial interrogation and have a right to the assistance of counsel in delinquency proceedings. (See, again, **Table 13.2** for a summary of other Supreme Court cases relevant to juveniles.)

In reality, many if not most juveniles waive these constitutional rights, as do many adults. The police questioning of juveniles who have been taken into custody is far more likely to occur solely in the presence of a parent or non-lawyer guardian than in the presence of an attorney. Research suggests strongly that these adults often encourage the juveniles to cooperate with police, answer their questions, and confess to their offenses. “At the time of their children’s arrests, many parents themselves are anxious, fearful, or confused during the police encounter. Others are angry at the youth and contribute to the coercive pressure of the interrogation” (Grisso, 1998, p. 44). Interestingly, researchers have begun to explore family dynamics when a child becomes involved with the justice system and have urged that educating families about their rights and responsibilities can reduce systemic injustices (Cavanagh, Paruk, & Cauffman, 2020).

Under the law, a waiver is a valid one if it is made willingly, knowingly, and intelligently. At what age can the average juvenile meet this standard? Moreover, even if the average juvenile can meet the standard, what about *this* juvenile who is being confronted by police under stressful conditions? In Fare v. Michael C. (1979), the Supreme Court noted that a juvenile’s waiver of the right to a lawyer before being questioned by police while in their custody (custodial interrogation) should be given very careful scrutiny if it comes to the court’s attention (see **Focus 13.2** for this and a more recent case on this issue). Thus, when defense attorneys challenge these waivers or when judges themselves decide there is reason to question their validity, forensic psychologists may be called in to evaluate the juveniles’ cognitive development and the extent to which they

understood what they were doing. A psychologist also may be asked to testify as an expert witness regarding research on adolescent development.

Focus 13.2

From *Michael C.* to *J. D. B.*: Questions of Interrogation and Custody

The U.S. Supreme Court case Fare v. Michael C. (1979) involved a juvenile's waiver of his right to an attorney during police interrogation. Michael C. was a 16-year-old charged with murder. After arrest and at the police station, he was told he had a right to see an attorney, but he apparently interpreted this *Miranda* warning as a police trick. Described as immature, distraught, and poorly educated, Michael C. repeatedly asked to see his probation officer instead of a lawyer. He was told his probation officer would be contacted after he answered some police questions. Asked again if he wished to see an attorney, he said he did not.

The U.S. Supreme Court ruled against Michael C., in a 5–4 decision, though the Court did express concern as to whether juveniles have the capacity to fully understand the warning given to them, and warned judges to consider the social circumstances of the interrogation, including the age, education, intelligence, and background of the youth. Nevertheless, Michael C.'s request to see the probation officer was not considered the equivalent of a request to see a lawyer, and the Court said police did not err in refusing to grant the request.

About 30 years later, J. D. B., a 13-year-old seventh grader, was taken out of his classroom by a uniformed police officer, led to a conference room, and questioned about his involvement in a burglary and theft of a digital camera (J.D.B. v. North Carolina, 2011). Two police officers (one a school resource officer) and two representatives of the school administration were in the room, and the door was shut. J. D. B.'s grandmother, who was his legal guardian, was not contacted. The adults engaged him in small talk over a 45-minute period and at one point encouraged him to do the right thing and tell police what he knew. After he admitted to the burglary, he was told he didn't have to keep talking and could leave the room if he wanted to. Attorneys later representing J. D. B. argued that he was in custody, that he was not given adequate *Miranda* warnings, and that his confession was not a valid one.

Lower courts had determined that the youth was not in custody when questioned and therefore that the *Miranda* warning was not even required. The Supreme Court cited psychological research on adolescent development, and noted that J. D. B.'s age should have

been taken into consideration in deciding whether he perceived himself free to leave. Because age had not been sufficiently taken into consideration at the trial court level, the Supreme Court sent the case back to the state courts for a further review of the circumstances surrounding the questioning.

QUESTIONS FOR DISCUSSION

1. The crime these two juveniles were accused of were very different. Does that matter?
2. Why might Michael C. have asked to see his probation officer rather than a lawyer? Should he have been allowed to do so?
3. What factors would you consider in deciding whether J. D. B. perceived himself to be free to leave the conference room?

Psychologist Thomas Grisso has been one of the leading experts in adolescent development, the legal rights of juveniles, and a variety of forensic assessments. Early research by Grisso (1981) found that most juveniles age 14 and younger did not understand the meaning of the *Miranda* warning, nor the implications if they chose to waive their rights. Juveniles who were slightly older—15 and 16—had similar difficulty if they were of below-average intelligence. As noted, research has continued to document that age and suggestibility are strong predictors of comprehension of one's legal rights (e.g., Eastwood et al., 2016; Fountain & Woolard, 2018; N. E. S. Goldstein et al., 2013).

Grisso (1998) recommends that mental health professionals use three categories of instruments to assess whether a juvenile had sufficient competency to waive their rights. First, an instrument specifically designed for that purpose, such as the Comprehension of Miranda Rights (CMR) and its offshoots (e.g., the Comprehension of Miranda Rights–Recognition [CMR-R], the Comprehension of Miranda Vocabulary [CMV], and the Function of Rights in Interrogation [FRI]). Second, the examiner can use any standardized test of cognitive ability. Third, the examiner may use a standard personality inventory. Grisso also recommends a review of school, mental health, and juvenile court records, when available, as well as interviews with parents or caretakers along with the youth. In other words, Grisso recommends conducting a very extensive assessment in an effort to determine whether the youth provided a valid waiver of the right to an attorney during custodial interrogation.

Psychologist Richard Rogers and his colleagues (e.g., Rogers, Hazelwood, et al., 2009; Rogers, Rogstad, et al., 2010) also have conducted extensive research on comprehension of *Miranda* rights, including by juvenile suspects. They have developed and validated a Miranda Vocabulary Scale (MVS) to assess an individual's

understanding of very basic terms used by police. Rogers (2011) notes that juveniles present formidable challenges to *Miranda* comprehension because of their young age, lack of maturity, and limited education. Based on available data, Rogers provided a conservative estimate that—out of 1.5 million juvenile arrests—311,000 juvenile suspects had impaired *Miranda* abilities (Rogers, 2011).

False Confessions

In addition to evidence that juveniles have trouble understanding their legal rights, there is evidence that they sometimes confess to crimes they did not commit. As we discussed in Chapter 3, a false confession may occur for a wide range of reasons, some of which relate to psychological tactics used by police (e.g., Kassin, 1997; Kassin et al., 2010). For example, police may deceive a suspect into thinking they have evidence that they do not actually have, or they may befriend the suspect and convince the person that they are their only link to freedom. A juvenile eager to go home, or a juvenile who wants to protect a family member or friend, may decide to tell police what they want to hear. The highly publicized Central Park Five case is only one illustration of many similar cases that have been documented. An evaluating clinician clearly should be alert to the possibility of a false confession.

Although false confessions are of concern regardless of the age of the suspect, it should come as no surprise that juveniles may be particularly susceptible to making them. Redlich and Goodman (2003) examined the suggestibility of three different age groups (12- and 13-year-olds, 15- and 16-year-olds, and 18- to 26-year-olds) in an experimental situation similar to many used in the false confession research (e.g., Kassin, 1997). Participants were given a computer task and told to not press a particular key. They were then told that they had pressed it when they really had not. In some experimental situations, the experimenter provides participants with "false evidence," in this case that they pressed the key. Researchers then tabulate the number of "false confessions" and try to determine what, in addition to age, distinguishes participants who "admit" to something they did not actually do from those who do not.

Redlich and Goodman (2003) examined whether (a) scores on the Gudjonsson Suggestibility Scale (GSS) and (b) the presentation of false evidence would predict and facilitate a false confession. The GSS is an instrument designed to measure the extent to which individuals are susceptible to being influenced by others. Results indicated that 69% of all participants falsely confessed or complied, 39% internalized (believed they had pressed the forbidden key), and

4% confabulated (made up details about their behavior during the study). However, significant age differences emerged. For the mid-level age group (15- and 16-year-olds), false confessions occurred particularly when false evidence was presented. The youngest age group falsely confessed both when false evidence was presented and when it was not. In general, the two youngest age groups were more likely to say they had done something wrong than were the young adults. With respect to individual differences, scores on the GSS predicted compliance (admitting to the "offense") but not internalization or confabulation.

Evaluating Adjudicative Competence

Juveniles whose cases are heard in criminal courts must, like adults, be competent to stand trial. Otherwise, the trial of an incompetent defendant violates due process of the law (Drope v. Missouri, 1975; Dusky v. United States, 1960). When a juvenile's case is heard in criminal court, competency to stand trial—if it is raised—is measured in accordance with the *Dusky* standard discussed in Chapter 5: sufficient present ability to consult with one's lawyer and a rational and factual understanding of the proceedings. Although most courts have not set a separate standard for juveniles, the *Dusky* standard is altered in some jurisdictions to inquire more carefully into the juvenile's decision-making abilities (Oberlander, Goldstein, & Ho, 2001).

Requiring courts to inquire more carefully into a juvenile's competence is a good move because many developmental psychologists and legal advocates for children believe that adjudicative competence in juveniles and adults is not identical. Even if a juvenile is knowledgeable about the role of the attorney and able to understand the charges, they may not be an *effective* participant in these proceedings. According to Richard Bonnie (1992), effective participation requires an ability to make decisions, weigh alternatives, and understand consequences—abilities he referred to as "decisional competency."

Juveniles may be particularly at a disadvantage when it comes to **decisional competency**. Although adults also may have deficits related to effective participation, juveniles—given their stage of development—are more likely to have these deficits and are thus at greater jeopardy. In addition, those juveniles who come before the juvenile courts are even more likely than other juveniles to be emotionally or socially immature or to have intellectual disabilities or mental disorders. The problem does not disappear if the juveniles are transferred to criminal court. In fact, it might be even greater, because criminal court judges are not attuned to the needs of

juveniles, having dealt with the legal question of competency primarily with adult defendants.

Competency to stand trial—or adjudicative competence—in the *juvenile* court with respect to delinquency proceedings has emerged as an issue only since the early 1990s (K. Larson & Grisso, 2012). Since then, there has been an explosion of research in this area (Fogel, Schiffman, Mumley, Tillbrook & Grisso, 2013: Murrie & Zeller, 2015; Shulman & Steinberg, 2016). At this point, statutes or case law in about half the states *require* an inquiry into adjudicative competency in juvenile courts. In the remaining states, the competency inquiry is raised on a case-by-case basis. Precipitating the interest in juvenile competence has been research conducted by the MacArthur Research Network, discussed next, as well as the extensive research on adolescent cognitive development and decision making by Steinberg and his colleagues, cited in earlier chapters (e.g., Steinberg, 2010a, 2020; Steinberg & Cauffman, 1996).

MacArthur Juvenile Competence Study

In an effort to shed some light on the juvenile competency question, the MacArthur Research Network began gathering data in 1999 for a multisite study of adjudicative competence in juveniles. Major questions addressed by the research were the following (see the **MacArthur Juvenile Competence Study** home page at www.mac-adoldev-juvjustice.org):

- Compared to adults in the criminal justice system, do youth in the juvenile justice system more often manifest deficits in abilities related to adjudicative competence?
- If so, in what abilities are these differences most apparent, and how are those abilities related to development?
- What types of youth are at greatest risk of adjudicative incompetence due to developmental immaturity? Might developmental immaturity interact with mental disorders to create increased risks of deficits in abilities related to adjudicative incompetence? Is there an age below which incompetence to stand trial should be presumed?
- What methods could clinicians and courts use to identify youth who are seriously deficient in abilities related to adjudicative competence?

In the first phase of the above study, Grisso et al. (2003) compared abilities of 927 adolescents in juvenile detention facilities and community settings and 466 young adults (ages 18–24) in jails and community settings in Philadelphia, Los Angeles, northern and eastern Virginia, and northern Florida. In addition to a standard

battery of tests and record reviews, the groups were asked to respond to vignettes and were administered the MacArthur Competence Assessment Tool–Criminal Adjudication (MacCAT-CA) and a newly developed MacArthur Judgment Evaluation. The two youngest adolescent groups (ages 11–13 and 14–15) were found to be 3 times and 2 times (respectively) as likely as the young adults to be seriously impaired in competence-relevant abilities. The 16- and 17-year-old juveniles did not differ from the young adults.
In addition to age, intelligence was also a predictor of poor performance. Gender, ethnicity, socioeconomic background, prior experience with the legal system, and symptoms of mental health problems were not predictors (although few individuals with serious mental health problems were included in the sample). The adolescents also tended to make choices that reflected compliance with authority and psychosocial immaturity. Grisso and his colleagues (2003) recommend that legal standards recognize immaturity as a possible indicator of incompetence to stand trial. In other words, children who are immature are unlikely to meet the standard for competency in criminal court. They recommend also that states rethink transferring juveniles age 13 and younger to criminal courts, given the high proportion of youth in that age group who were considered significantly impaired (about 30% total but more than half of those with below-average intelligence).

JUVENILE AMENABILITY TO REHABILITATION

The decision as to whether a juvenile is likely to benefit from rehabilitative services and what types of services are most promising may be made at several points during juvenile justice processing. In addition, **Amenability to rehabilitation** commonly takes into consideration a juvenile's present treatment needs. Two contexts in which courts request these evaluations are the judicial waiver decision and the disposition decision.

Waiver Decisions

Judges in both criminal and juvenile courts are often faced with the decision of whether to transfer jurisdiction of juveniles, or "waive" a juvenile to the other court. Most **judicial waivers** are made at the request of prosecutors who want to prosecute juveniles in adult criminal courts. In making the transfer decision, judges consider factors such as those recommended by the U.S. Supreme Court in Kent v. United States (1966), discussed earlier in the chapter.

The transfer by judges is only one of several possible forms of waiver. A great number of juveniles are tried in criminal courts as a result of **legislative waiver**, also called **statutory exclusion or waiver by statute**. These are waivers whereby the legislative branch has ordained that juveniles of specified ages will have their cases heard in criminal courts when charged with specific crimes. For example, in the vast majority of states, a 15-year-old charged with murder will automatically be tried in criminal court. (A criminal court judge may transfer their case to juvenile court, but this rarely occurs.) Still another form of waiver, **Prosecutorial waiver**, gives prosecutors the authority to decide whether the case will be taken to juvenile court or criminal court. Most state statutes allow some combination of these waivers, depending on the age of the juvenile and the seriousness of the offense.

Important policy debates have occurred with respect to juvenile waivers. Should juvenile cases be heard in criminal or juvenile courts? Those who want to keep them in juvenile courts (such as the prosecutor referred to in the anecdote at the beginning of this chapter) argue that too many adolescents are consigned to the adult system, where the emphasis is on punishment more than on rehabilitation (Bishop, 2000). In addition, research indicates that transferring juveniles to adult criminal courts increases their recidivism and promotes life-course criminality. Furthermore, the potential of having their cases heard in criminal court apparently does not deter juveniles from committing crime (Redding, 2010).

Even when juveniles have been transferred to criminal courts, however, an amenability for rehabilitation evaluation may be requested. A defense attorney, for example, may desire such an assessment for help during the plea negotiation process or during the sentencing phase, if their client is convicted. Those who believe that some juvenile cases should be heard in criminal courts believe that a more punitive orientation is required, particularly for older adolescents. They argue that when the crime is a serious one, such as sexual assault or murder, it is not fair to the victim or survivors if the offender receives punishment of a few years in a juvenile facility and is then allowed to go free.

There is considerable debate about even trying juveniles in criminal courts, a phenomenon that increased steadily in the 1990s but appears to have diminished in recent years. All but one state (Nebraska), along with the District of Columbia, enacted or expanded transfer provisions between 1992 and 1999 (Sickmund, 2003). In 2010, juvenile court judges waived jurisdiction over an estimated 6,000 juveniles, primarily males age 16 or 17 (Puzzanchera & Addie,

2014; Puzzanchera & Robson, 2014). By 2014, juvenile courts waived approximately 5,200 juveniles, a decrease of 42% from the highest number of waivers in 2006. These data suggest “a nationwide trend away from overreliance on out-of-home placements for juveniles toward community-based alternatives” (Cruise, Morin, & Affleck, 2016, p. 611). Part of this trend reflects the increasing effectiveness of evidence-based treatment for juveniles within the juvenile justice system and outside institutional settings. Juveniles being considered for transfer to criminal court have a good deal to lose. Prosecution in criminal court involves public proceedings, a criminal record if found guilty, and possible incarceration in an adult prison. A juvenile who is considered an unlikely candidate for rehabilitation in the juvenile system is not likely to get rehabilitative services once transferred to adult settings. Research has also documented that juveniles charged with serious crimes in criminal courts and juveniles facing property offenses in juvenile courts both get harsh dispositions (Podkopacz & Feld, 1996). However, juveniles sentenced in criminal courts typically get longer sentences than those in juvenile court for similar crimes (Redding, 2010).

Finally, a substantial number of juveniles have received sentences of life without the possibility of parole, even when their crimes did not rise to the level of murder. Recall from Chapter 7 that life without parole sentences have been restricted in recent years, but they remain possible if a judge considers a juvenile “irreparably corrupt” or “permanently incorrigible,” phrases that were used in the latest Supreme Court cases on this issue. Recall also that the Court scheduled a new case on this issue, *Jones v. Alabama*, to be argued in November 2020. The Court is expected to clarify the extent to which a sentencing judge must find permanent incorrigibility.

At the beginning of the 21st century, some 2,500 prisoners who were juveniles at the time of their crimes were serving life without parole (LWOP) sentences. Recall Terrance Graham, whose case (Graham v. Florida, 2010) was discussed in Chapter 7. In Graham’s case, the U.S. Supreme Court established that a LWOP sentence is cruel and unusual punishment for juveniles, at least for those not convicted of murder. In two later companion cases, the Supreme Court ruled that *mandatory* life without parole in a murder case was also unconstitutional (*Jackson v. Hobbs,* 2012 and Miller v. Alabama, 2012). Although state laws required judges to sentence juveniles convicted of murder to life-without-parole sentences, the Court ruled that judges should have the discretion to give less severe sentences upon consideration of the juvenile’s age, the nature of the crime, and possible mitigating factors. The Supreme Court has since ruled that

prisoners who had been given *mandatory* LWOP sentences before the Jackson and Miller cases were announced, could have their sentences reconsidered (Montgomery v. Louisiana, 2016).

Disposition

Disposition is the equivalent of sentencing in the adult context. Once a juvenile has been adjudicated a delinquent in a delinquency hearing, the judge chooses from a variety of disposition alternatives, ranging from community-based services to confinement in a secure facility. The least common disposition is secure confinement. In most jurisdictions, however, juvenile judges themselves do not choose among a variety of community alternatives. The judges place juveniles in the custody of juvenile justice officials (e.g., a juvenile correctional agency or a department of human services) who determine the best program approach for each juvenile. That said, placement in a secure facility must be made by a juvenile court. In either case—community setting or institution—psychological assessment may occur later in the process rather than in consultation with the juvenile court. Juvenile correctional officials may want help deciding on a programmatic approach for a particular juvenile. A juvenile probation officer, for example, may wonder whether a boy is a good candidate for a substance abuse program in the community.

The extent to which psychologists actually do consult with the juvenile courts for amenability to rehabilitation evaluations varies by jurisdiction. It appears that they are used more prior to judicial waivers than prior to disposition, though after the most recent life without parole cases we may see them occurring more in criminal courts, particularly when judges must decide what qualifies as "permanent incorrigibility" (Fairfax-Columbo et al. 2019).

Conducting the Evaluation

A number of manuals and suggestions are available for psychologists conducting psychological evaluations relating to transfer and disposition decisions (e.g., Grisso, 1998; Melton, Petrila, Poythress, & Slobogin, 1997; Melton et al., 2007). As Hecker and Steinberg (2002) observed, though, "an empirically validated 'gold standard' for the predisposition evaluation of juvenile offenders remains elusive" (p. 300). Psychologists are typically advised to review the juvenile's files, including school, social service, and juvenile court records. In addition, they are advised to obtain information about family history and substance use and abuse, as well as to assess intellectual, academic, personality, and vocational functioning, using a range of possible measures. Furthermore, although most juvenile offenders

are not *seriously* emotionally disturbed, mental health needs are common, and—according to research—very prevalent (e.g., Grisso, 2008). Juveniles in correctional facilities, for example, are believed to have mental health issues ranging from conduct disorders to severe depression and suicidal tendencies (LeCroy, Stevenson, & MacNeil, 2001). Developmental disabilities and cognitive impairment also plague both institutionalized juveniles and those under community supervision (K. Day & Berney, 2001). Many juvenile offenders also are substance abusers, often with significant chemical dependency problems, and many others are sex offenders. Developing and validating instruments for the evaluation of juvenile sex and violent offenders (e.g., J-SOAP, ERASOR, Static-99, Static-2002) have become robust activities in recent years. The psychologist assessing juveniles, therefore, should be aware of both assessment techniques and the range of treatment and rehabilitation services available, in the community as well as within institutional settings.

Many psychologists are concerned about the possible negative effects of labeling juveniles. Of particular concern are those labels that suggest the prospects for change are not good. In recent years, for example, juvenile psychopathy has received considerable research attention. It has prompted the development of a special version of Hare's Psychopathy Checklist, the Psychopathy Checklist: Youth Version (PCL: YV; Forth, Kosson, & Hare, 1997). Recall from Chapter 7 that some researchers have argued that it is premature to place this pessimistic label on juveniles who may possess psychopathic characteristics that they may well outgrow (Edens, Skeem, Cruise, & Cauffman, 2001; Edens & Vincent, 2008; Seagrave & Grisso, 2002). Edens et al. (2001) also suggest that labeling adolescents this way may violate the two ethical principles of social responsibility and do no harm. In addition, there is concern that labeling a juvenile as a psychopath will be harmful in various legal proceedings (Viljoen, MacDougall, Gagnon, & Douglas, 2010). In an evaluation of a juvenile's amenability for rehabilitation, for example, labeling the juvenile a psychopath would almost assuredly guarantee that they will be transferred to criminal court. Somewhat in response to the previously discussed controversy, many researchers now prefer to refer to "juveniles with psychopathic characteristics" (e.g., callousness) rather than "juvenile psychopaths." In addition, research on both identification and treatment of such juveniles is expanding rapidly (Salekin, Leistico, Trobst, Schrum, & Lochman, 2005) as is research on protective factors that might reduce the likelihood that psychopathy would develop (Salekin & Lochman, 2008).

Another pessimistic label that might be problematic is *life course–persistent offender* (LCP), in accordance with Moffitt's (1993a) adolescent limited adolescent-limited (AL)–LCP dichotomy, also covered in Chapter 7. Some diagnostic categories in the *DSM-5* (e.g., attention-deficity/hyperactivity disorder [ADHD], conduct disorder) are problematic if the individuals working with the juvenile after the assessment do not understand the limitations of these diagnoses as well as their significance. Labels that make their way into files of juveniles in correctional facilities or community programs may be as damaging as the labels that make their way into school files of non-delinquent children.

Hecker and Steinberg (2002) appraised the quality of psychological evaluations submitted to juvenile courts prior to disposition as well as the effect of the reports on judges' decision making. They reviewed 172 predisposition reports submitted to juvenile courts in Philadelphia between 1992 and 1996 by four independent practitioners who were licensed psychologists in Pennsylvania.

Findings included the following:

- A vast majority of the assessments included a standardized measure of intellectual functioning, but few included a standardized personality measure; instead, projective tests were typically administered for measuring personality.
- There were no statistically significant individual differences in either judges' acceptance or rejection of recommendations or among clinicians in whether their recommendations were accepted or rejected.
- A high percentage of recommendations were accepted; in fact, recommendations were fully rejected in only 8 of the 172 cases.
- Many reports lacked information about the juvenile's mental health, criminal, or substance abuse history, all of which the researchers considered crucial information because of their links to recidivism.
- Judges were most likely to accept recommendations if the reports included information about mental health, regardless of the quality of this information. This was troubling to the researchers, who believed that reports did not include sufficient detail in this area, as noted earlier.

Hecker and Steinberg (2002) emphasized that their study may not be representative of other jurisdictions, considering the small number of judges and clinicians as well as the small number of cases in their sample. Nevertheless, they described a useful coding scheme by which researchers might evaluate predisposition reports, along with their impact on judicial decisions in other jurisdictions.

In sum, research on amenability to rehabilitation evaluations suggests that they vary widely in quality, despite the fact that there is some consensus on what should be included in the evaluation reports. Most sources recommend comprehensive evaluations that will assess the juvenile's family background; determine developmental, cognitive, and emotional functioning; and identify promising treatment options. Evaluators are advised to avoid labels that might be pessimistic and suggest that there is little hope for the juvenile. As Grisso (1998) has noted, a pessimistic report may become a self-fulfilling prophecy if the rehabilitation staff becomes discouraged: "Reservations about the prospect for change . . . should always be coupled with suggestions to staff that might increase the prospects" (p. 192).

Although Grisso was correct to be concerned, he and others have been more hopeful of late. For example, Grisso et al. (2019) observed that developmental research—much of which we referred to in Chapter 7—is reforming how we treat juvenile offenders. Citing national data, they note that pretrial detention and post-adjudication incarceration have dropped by half, diversion programs have proliferated, and juvenile justice policies are requiring sound assessments and rehabilitation methods. This apparent change of heart is reflected not only in modifications of some state statutes but also in fewer transfers of juveniles to criminal courts.

OUT-OF-HOME PLACEMENTS

As noted earlier in the chapter, cases handled by juvenile courts have decreased in numbers in recent years, and this has been accompanied by a decrease in out-of-home placements. Nonetheless, although probation remains the modal disposition for juveniles in juvenile court, some 1,852 juveniles were held in confinement out of their homes in 2015. These placements included training schools, treatment centers, wilderness camps, and group homes, both public and private (see **Table 13.3** for total numbers of residential placements).

Facilities that hold juvenile offenders vary widely in size, organizational complexity, and layout (Sedlak & McPherson, 2010a). They range from the simple, one- or two-building structures to complex facilities that consist of multiple buildings. Some are small, handling as few as 10 youths, while the largest may hold into the hundreds. (See **Photos 13.2 and 13.3**)



► Photo 13.1 and 13.2 Juveniles confined in a secure residential placement setting.
iStock/Motortion
iStock/Motortion

Table 13.3

Source: Adapted from Hockenberry, Wachter, and Sladky (2016).

It may be surprising that about 12% of youth in residential placement live in facilities that house both offenders and nonoffenders (Sedlak & McPherson, 2010a). This is because some youth facilities house youth who are in custody because the juvenile court wants to protect them (Sedlak & McPherson, 2010a). For example, they may have been abused or neglected, or they do not have a parent or guardian. In some instances, families may have voluntarily placed them in a private facility for mental health or substance abuse treatment. Although such facilities are not of high security, they are still considered highly restrictive placements.

Juveniles, like adults, also may be provided with intermediate sanctions, which are less restrictive than residential placement but more restrictive than the standard probation under which the juvenile remains in their own home with conditions attached. Examples of intermediate sanctions are day reporting centers and intensive supervision programs. In intensive supervision programs, probation officers ideally have a small caseload, conduct frequent monitoring, and provide intensive counseling and other services to juveniles.

A major difference between juvenile and adult corrections is the number of private facilities available, although as was noted in the previous chapter, the private prison industry for adults is growing despite debates about whether it should be encouraged. Interestingly, while private facilities for juveniles also experienced growth, recent figures indicate that more than half of all facilities were *publicly* operated in 2016, and they held 71% of the juveniles in residential placement (Hockenberry & Sladky, 2018). In 2017, private facilities held 9% of all youth being detained and 40% of youth committed (Hockenberry & Sladky, 2018). Detention centers, then, are primarily

run at local and state levels; treatment centers are almost evenly divided between state and private facilities, with a small percentage at the local level (Hockenberry & Sladky, 2018).

Private facilities are operated by private nonprofit or for-profit corporations or organizations. Those who work in such facilities are employees of the private corporation or organization. Private facilities have the advantage of restricting their populations to those juveniles they believe they are best able to help, but they are not necessarily the best option for youth and may suffer from a lack of oversight. Nevertheless, some innovative treatment programs have been tried and tested in private facilities.

Juvenile Detention

As **Table 13.3** indicates, also included under the rubric of juvenile corrections is **juvenile detention**, which is defined as a *temporary* secure or nonsecure placement pending adjudication or during adjudication proceedings, up to a final disposition. In 2017, local facilities held the greatest proportion of detained youth (70%). Some youth are held in detention following arrest; through their delinquency hearing; and up until the time the judge decides whether to place them on probation, order them to residential treatment, or neither one. Although the term *detention* is widely used to pertain to placement at any point in time, it should technically be used in the above limited sense.

Like adults, juveniles are presumed innocent until proven guilty. Adults, though, have a greater presumption of being released prior to their next court appearance. Adults may be denied bail and held in preventive detention if they are charged with a capital crime or demonstrated to be dangerous (United States v. Salerno, 1987). Juveniles, however, may be held in preventive detention for their own protection or if there is a serious risk that they will commit *any* crime before their next court appearance (Schall v. Martin, 1984). This gives juvenile judges a wide leeway to detain juveniles, although most juveniles are *not* detained. The number of delinquency cases involving detention increased 48% from 1985 to 2007 (Puzzanchera et al., 2010) but decreased 17% between 2007 and 2010 (Hockenberry, 2013).

Far more male juvenile offenders are held in *residential placements* than female juvenile offenders (86% compared to 14%; Hockenberry, 2016). In addition, racial minorities are disproportionately represented among *detained* youth populations, even though they have lower violence risks on average than white youths (Desari, Falzer, Chapman, & Borum, 2012). Recent statistics had Black youths detained at 6 times the rate of white youths (Hockenberry, 2016).

Juveniles in detention—technically defined—have not been adjudicated and thus cannot be placed in a rehabilitation program. For example, a youth accused of sexual assault should not be placed in a treatment program for juvenile sex offenders because he has not been found guilty of that offense. Many public juvenile facilities have detention and treatment wings, with treatment reserved for those juveniles who have been adjudicated delinquent. On the other hand, juveniles in detention *can* be provided with substance abuse treatment, sex education, remedial education, and other such services during the time they are held, similar to youth in residential placement.

Detention centers have come under scrutiny for their overcrowded conditions and disproportionate confinement of racial and ethnic minority youth. The most recent survey of youths in residential placement, including both detained and committed youth, indicated that minority youth accounted for 68% of the population, with Black males forming the largest share (Hockenberry, 2016). As noted earlier, the detention rate for Black youth was nearly 6 times the rate for white youth, and their commitment rate was more than 4 times the rate for white youth. Put another way, Black youth are significantly more likely than youth of any other race to be detained and committed to an out-of-home placement facility. Generally, numerous problems are detected for youth in confinement, whether they be in “detention” or “rehabilitation” (see **Focus 13.3**). However, because of important differences, we will preserve the “pure” meaning of *detention.* Whenever the word is used, the reader should realize that it refers to *temporary* placement and that the youth under these conditions have not yet been adjudicated delinquent, with the exception of those who have been so adjudicated and are awaiting the judge’s disposition (sentencing) decision.

PSYCHOLOGICAL TREATMENT IN JUVENILE FACILITIES

Numerous studies have documented mental health needs of juveniles in the care of the juvenile justice system, particularly those in institutional settings. Some research indicates that nearly two thirds of males and three quarters of females in juvenile detention centers and correctional facilities meet the criteria for one or more mental disorders (Abram et al., 2013; Grisso, 2008). It is also known that the symptoms of mental disorders in adolescence often lead to impulsive, aggressive, and violent behaviors, particularly when the adolescent has two or more mental disorders. In an anonymous survey of youth in residential placements across the United States,

60% reported that they were easily upset, quick to lose their temper, and often angry (Sedlak & McPherson, 2010b). These characteristics do not necessarily indicate mental disorder, however. More significantly, according to Grisso (2008), various forms of clinical depression are found in about 10% to 25% of youth in juvenile justice settings.

The national survey by Sedlack and McPherson (2010b) also found that about half of the youth offenders indicated they were depressed. Fazel, Doll, and Långström (2008) found similar results, although they also discovered that girls in detention or correctional facilities were 3 times more likely to be diagnosed with severe depression than boys. Available data (e.g., Sedlak & McPherson, 2010b) indicate that girls in custody have more mental health and substance use problems and experience a more extensive history of abuse than boys in custody (Blum, Ireland, & Blum, 2003; Hubbard & Pratt, 2002; Teplin, Abram, McLelland, Dulcan, & Mericle, 2002).

Focus 13.3

Youth in Confinement

In 2010 and again in 2013, the U.S. Department of Justice released reports (Beck et al., 2010, 2013) that gained considerable attention in the media. Surveys of youth in juvenile confinement facilities, both state owned and operated and private, indicated that about 12% in the first survey and 9.5% in the second had experienced one or more incidents of sexual victimization over the past year (or since their admission if they had not been confined that long). The facilities included both state and large private residential centers. Incidents involving staff victimization were more prevalent than those involving other youth, but the decline in overall victimization was attributed to a decline in staff victimization (from about 11.2% of youth reporting victimization in the 2010 report to 8.7% in the second). In both surveys, about 2.5% of the youth reported an incident involving another youth. The majority of the incidents involving other youth occurred with force or threats of force, while about one fourth involved offers of favors or protection. In the remainder, the victims were given drugs or alcohol to engage in sexual conduct.

News media sometimes report a range of unacceptable conditions and abuses in detention centers, and juvenile detention or treatment centers have been closed after evidence of physical abuse and neglect of the mental health needs of the residents was obtained. Stories like these come as no surprise to advocates for juveniles, many of whom argue forcefully that juveniles should be placed in secure confinement only as a last resort.

Nevertheless, like adult prison populations, the numbers of youth in residential placement have gone down in recent years, now being at its lowest since 1997 (Hockenberry, 2016). Additionally, nationwide data indicate that the great majority of facilities do provide services to youth in their care. In a recent report (Hockenberry, Wachter, & Sladky, 2016, p. 1), it is noted that "[a]lmost all facilities (87%) reported that a portion of all residents attended some type of school. Most responding facilities routinely evaluated all residents for substance abuse (74%), mental health needs (58%), and suicide risk (90%)."

QUESTIONS FOR DISCUSSION

1. Given the assumption that at least *some* youths should be confined in secure institutions or given out-of-home placement, discuss the "ideal" way of accomplishing this.
2. Comment on the quoted statistics related to the services provided to youth in residential facilities.
3. Are any of the following groups more or less appropriate for secure (locked-down) confinement: girls, juveniles with mental disorders, juveniles with suicidal tendencies, substance abusers, juvenile sex offenders, gang members? To what extent should these characteristics be taken into consideration in deciding whether a youth should be confined?

Grisso (2008) observes that adolescents who suffer from depression, male or female, are commonly very irritable, sullen, and hostile, unlike depressed adults who tend to be sad and withdrawn. The irritable moodiness of these youth increases the likelihood that they will provoke angry responses from their social environments, including peers. In far too many instances, these angry responses escalate to physical aggression and potential violence. This connection between anger and aggression may, in some cases, lead to self-injurious behavior like cutting or head banging.

In addition, Fazel and associates (2008) found that adolescents in detention and correctional facilities are about 10 times more likely to have psychosis (serious mental disorder) than the general adolescent population. These figures held for both boys and girls. Research also links psychiatric disorder in juveniles with suicidal behavior (Wasserman, McReynolds, Schwalbe, Keating, & Jones, 2010).

Related to the above discussion are the observations by Sedlak and McPherson (2010a) concerning the mental health services provided in delinquent youth facilities. In their extensive survey, they discovered that mental health services in the form of evaluation, ongoing therapy, or counseling are nearly universal in the facilities studied. Recall, though, that in the most recent census of residential

facilities (Hockenberry et al., 2016), just under 60% evaluated all residents for mental health needs. Moreover, Sedlak and McPherson found that many mental health personnel were untrained or marginally capable of meeting the needs of the youth held in many of the facilities, a fact that suggests that the quality of the programs—seen as an essential factor by Lipsey (2009)—is lacking. For instance, only half of the youth surveyed were in facilities that provide mental health evaluations or appraisals. Moreover, despite the relatively high suicide risk in the juvenile population in residential placement, screening for suicide risk was not common. Again in the latest survey (Hockenberry et al., 2016), though, 90% routinely screened for suicide risk. Given concerns expressed by Sedlak and McPherson, however, adequate staff training must be assured.

Treatment for mental disorders are not the only needs of youth in institutional settings, of course. In addition to educational needs, they may benefit from substance abuse treatment, self-efficacy, alternatives to violence, nutritional and other health information, and improvement of social skills, among others. Yet research continually shows that good-quality interventions that would be of benefit are not available to many juvenile offenders, both institutionalized and on probation (Haqanee, Peterson-Badali, & Skilling, 2015; Peterson-Badali, Skilling, & Haqanee, 2015).

Developmental disabilities and cognitive impairments also plague both institutionalized juveniles and those under community supervision (K. Day & Berney, 2001). Many juvenile offenders also are substance abusers, often with significant chemical dependency problems. For instance, Loeber, Burke, and Lahey (2002) discovered that 40% to 50% of delinquent youth were found to have substance abuse disorders compared to only 15% of non-delinquent youth.

Youth offenders with multiple limitations abound. It is not unusual, for example, for a juvenile rehabilitation facility to receive a sex offender who suffers from depression and who has abused alcohol and attempted suicide.

Grisso (2008) observes that some adolescents have a mental disorder for a significant period, while others show symptoms of a mental disorder for only a short time. On the other hand, some juvenile offenders do not have mental disorders, developmental disabilities, or substance abuse problems at all. Nevertheless, these adolescents would benefit from treatment programs addressing their violent behaviors or their chronic property offending. Furthermore, a substantial number of juvenile offenders have been victims of violence, including sexual assault, and many have witnessed intimate partner violence (IPV) in their homes. Others have experienced the

effects of intense conflict between parents or a bitter separation or divorce. Over two thirds of the youth responding to the Sedlak and McPherson (2010b) survey reported experiencing some form of trauma, including physical or sexual abuse. Consequently, programs that focus on treatment of juvenile offenders often address the effects of victimization. For example, they offer strategies for developing social skills and improving a self-concept that may have been shattered by years of abuse. A significant number of programs for juveniles incorporate family treatment along with individual and group treatment.

At the end of the 20th century, numerous questions were raised about the efficacy of treatment provided to juveniles, particularly in institutional settings. A noteworthy meta-analytic review of juvenile treatment programs (Whitehead & Lab, 1989) produced discouraging results. The authors analyzed evaluations of juvenile correctional treatment that had appeared in professional journals from 1975 to 1984 and found little positive impact on recidivism. In fact, many of the programs appeared to exacerbate recidivism. The authors also found no support for the superiority of behavioral interventions over other forms. Diversionary approaches, those intended to steer juveniles away from formal court processing, did show some favorable results, however. Numerous researchers since have advocated keeping youth in community settings as much as possible (e.g., Grisso, 2008; Grisso, Fountain, NeMoyer, & Thornton, 2019; Lambie & Randell, 2013)

Not all reviewers were as pessimistic as the Whitehead and Lab (1989) meta-analysis would suggest. As we noted in the chapter on adult corrections, many scholars and researchers have not given up on rehabilitation and are intent on documenting the effectiveness of some programs for some individuals. Psychologists have uncovered a number of principles associated with effective treatment, even in institutional settings. For example, cognitive-behavioral approaches and “multimodal approaches” that integrate group, individual, and family treatment to the extent possible have received good reviews. In a recent meta-analytic overview, Lipsey (2009) found three factors that were associated with program effectiveness: (1) a therapeutic intervention philosophy; (2) serving of high-risk offenders; and (3) quality of the program, meaning that the treatment providers were carefully trained and supervised and lapses in quality were quickly corrected. Interestingly, the Lipsey meta-analysis also found that the level of juvenile justice supervision (e.g., intensive supervision, probation, secure custody) did not show a relationship to the success

of the intervention, suggesting that “effective treatment is not highly context dependent” (p. 143).

APPROACHES TO REHABILITATION

At one point, there was a widely held belief that nothing works in the treatment of juvenile offenders, but in recent years, there has been a discernible shift toward identifying and enabling better treatment (Heilbrun et al., 2016): “This shift . . . parallels and incorporates advancements in the understanding of adolescents’ cognitive, emotional, behavioral, and neurological development” (p. 14). The research evaluating treatment effectiveness studies is also better. Effective treatment and rehabilitation are best described as that which reduces illegal, antisocial behavior and meets the juvenile’s individual needs. There is reason for optimism, as many treatment programs for juvenile offenders are beginning to demonstrate such effectiveness (S. Baldwin, Christian, Berkeljion, & Shadish, 2012; Cruise et al., 2016; van der Stouwe, Asscher, Stams, Dekovic´, & van der Laan, 2014).

Among good treatment results are approaches to working with juvenile sex offenders (Sandler, Letourneau, Vandiver, Shields, & Chaffin, 2017). Many current studies evaluate programs for these juveniles and find decreases in recidivism as well as overall positive effects in juveniles’ attitudes and pro-social behaviors (e.g., Beck et al., 2018). We will discuss this again shortly.

The optimistic trends are especially apparent in community placement approaches, many but not all of which are out of home. However, the effectiveness of institutional treatment programs for juvenile sex offenders and violent offenders cannot be dismissed. Unfortunately, in the past treatment research conducted in institutional settings has often not included both a treatment and a comparison group (Worling & Langton, 2012), signaling some need for caution. In the following section, we review some of the more common forms of treatment available in out-of-home placements.

Group Home Models

For a wide variety of reasons, many juveniles cannot remain in their own homes, yet they do not need to be placed in a *secure* treatment facility. Group homes are a common alternative, allowing juveniles to remain in their community, attend school, and be provided with services in the community on an outpatient basis (e.g., counseling, therapy, substance abuse prevention program). It is an important principle of juvenile justice that the least restrictive placement should be used, a principle that critics charge is too often not honored in practice.

One of the most common models for the treatment of adolescents in a group home setting is the **Teaching-family model**, initiated in 1967 with the opening of the Achievement Place home in Kansas. By the turn of the 21st century, there were approximately 134 such group homes in the United States for delinquents, abused and neglected children, and autistic and developmentally challenged children and young adults (Bernfeld, 2001). In the typical teaching-family home, the teaching parents are a couple with specialized training and usually with master's degrees in human services. They live in a family-like situation with up to seven youths and have assistants available on a daily basis. Consultants serve in a supervisory capacity and integrate treatment, training, and specialized services as needed. "Almost without exception, consultants started out as practitioners and then obtained the extra training to become consultants" (Fixsen, Blasé, Timbers, & Wolf, 2001, p. 163).

Fixsen et al. (2001) have candidly reviewed the growing pains of the teaching-family model, noting how earlier attempts to replicate the apparent success of Achievement Place produced discouraging results. In 1978, the first meetings of the Teaching-Family Association were held, and the association continues to identify goals, produce ethical standards, and provide training and other services to individuals involved in this model (Teaching-Family Association, 1993, 1994, 2020). In addition, the model has attracted positive reviews in the literature (APA, 2003a; Fixsen et al., 2007).

The teaching-family home has many positive features that should be helpful to *nonserious* delinquents who are unable to remain in their own homes, at least temporarily. Warm and compassionate teaching parents, the maintenance of ties with natural family and with the community, and the opportunity to learn prosocial behaviors are among these features. Nevertheless, studies indicate that behavioral gains—including reductions in substance use and increases in prosocial behaviors—while adolescents are in the teaching-family home are typically not maintained when they have left (Mulvey, Arthur, & Reppucci, 1993).

In recent years, many have argued that group homes—like juvenile justice programs in general—should give more attention to cultural diversity and specific cultural needs of individual juveniles (e.g., Eron et al., 1994). Black, Latinx, and Asian American youth, for example, can benefit from a group home placement that encourages them to acknowledge, learn about, and celebrate their cultural heritage. Evaluations of culturally sensitive programs indicate that they lower recidivism and increase self-efficacy (Eron et al., 1994; W. R. King, Holmes, Henderson, & Latessa, 2001). One such program, the

House of Umoja in Philadelphia, provides education, cultural treatment, counseling, and substance abuse treatment to Black male at-risk youth ages 15 to 18. Similar programs funded by the OJJDP operate across the nation, primarily in urban areas.

Likewise, gender-specific programming is critical. Girls, including delinquent girls, often have needs that are very different from those of boys. Delinquent girls are more likely than boys to have been victims of child sexual abuse and IPV; in addition, they are more likely to be lacking in self-esteem (Budnick & Shields-Fletcher, 1998; Sedlak & McPherson, 2010b; Sorensen & Bowie, 1994). They are also less likely than boys to be charged with a violent offense (Snyder & Sickmund, 1999). Adolescent girls also are more likely than adolescent boys to suffer from mental disorders, particularly depression (Sedlack & McPherson, 2010b; Teplin et al., 2002). However, girls also may be more likely than boys to self-report symptoms of depression. Although group home options may appear to be warranted for girls, they often come to these homes with family backgrounds that may be even more complex than those of delinquent boys.

Family Preservation Models

Many advocates for children maintain that they should be kept in their own homes, with their own parents or close relatives, if at all possible (e.g., Gordon, 2002; Henggeler, 1996). They believe that providing a wide range of support services, even to highly dysfunctional families, is in the best interest of the children and adolescents who are part of these families. It must be acknowledged, however, that family preservation is not in the best interest of all children and adolescents. Despite the optimistic appraisals and documented success of family preservation that is covered later, some juveniles may not be well served by intense efforts to make their family situation work for them. This is particularly true of children and adolescents who have been victimized in their own homes, by parents or caretakers or by siblings. As Chesney-Lind and Shelden (1998) indicate,

> [f]amily counseling that is grounded in the notion that maintenance of the family unit is uppermost needs to be critically reviewed in light of the extreme physical and sexual violence that some girls in the juvenile justice system report. In some instances, the victimized girl or boy must be allowed to live away from the parents. (p. 219)

With this caveat, we turn now to a more detailed discussion of family preservation by focusing on treatment programs that have consistently received positive reviews in the research literature.

Multisystemic Therapy

Social psychologist Scott Henggeler developed **Multisystemic therapy (MST)** specifically for application with serious juvenile offenders, including those responsible for violent crimes. MST is heavily based on the systems theory pioneered by psychologist Urie Bronfenbrenner (1979). According to this view, behavior is multidetermined and influenced heavily by interactions with one's social environment. Children and adolescents are embedded in various social systems (their families, their peer groups, their schools, and their neighborhoods). Effective intervention requires that the child or adolescent and all of their social systems be considered. Thus, MST attempts to promote behavior change within the youth's natural environment and uses the strengths within each of the various social systems to bring this about.

Despite efforts to place limits on the numbers of juveniles sent to secure facilities, the United States leads the world and any other developed country in the incarceration of juveniles (Henggeler, 2016). Therefore Henggeler (1996, 2016; Henggeler & Borduin, 1990) has long argued that secure institutions should be avoided if at all possible because antisocial behaviors are only reinforced when serious offenders live among other serious offenders. Thus, in addition to keeping juveniles in their own homes, another goal of MST is to help juveniles break bonds with antisocial peers and develop bonds with prosocial peers. Henggeler has acknowledged that this is one of the most difficult goals to achieve.

MST makes a small team of treatment providers—in this case, therapists—available to families around the clock and helps facilitate a wide range of services. Most treatment providers are master's-level mental health professionals specially trained in the multisystemic approach. Clinical or forensic psychologists supervise the therapists and provide intensive treatment if needed. Therapists meet with youth in natural settings (e.g., the home or school or even in a local park). They identify both risk and resilience factors in a juvenile's life, across all of their social systems. For example, a risk factor at school may be an older boy who has goaded the juvenile into committing offenses in the past. A resilience factor at school may be an art class or a history class that the juvenile likes. Likewise, genuine affection among siblings is a resilience factor in the family; the impending loss of a father's employment is a risk factor. The treatment providers

then provide strategies for addressing the risk factors and capitalizing on the resilience factors.

MST may involve intensive individual counseling, a factor that distinguishes it from **Family preservation models** that target youth whose behavioral problems are usually less serious. MST therapists are generalists. “Because of the varying demands of each family, [they] must be capable of applying a range of empirically based therapeutic approaches. and tailoring interventions to the unique needs and strengths of each family” (T. L. Brown, Borduin, & Henggeler, 2001, p. 458). MST youth are often on probation after having been adjudicated delinquent, with offenses ranging from substance abuse to aggravated assault. However, MST also has been used for non-offending child and adolescent populations and with youth from a variety of cultural and ethnic backgrounds (T. L. Brown et al., 2001; Edwards, Schoenwald, Henggeler, & Strother, 2001). Thus far, it has drawn favorable research reviews (e.g., Burns, Schoenwald, Burchard, Faw, & Santos, 2000; Dekovic´, Asscher, Manders, Prins, & van der Laan, 2012; Henggeler, 2001; Tate & Redding, 2005).

To illustrate, Borduin, Schaeffer, and Heiblum (2009) conducted an evaluation of MST as compared to the usual community services (UCS) mandated by the juvenile court. All the youths and their families who participated in the study were referred by juvenile court personnel. The arrest histories of the youths attest to their serious criminal involvement. The youths, whose mean age was 14, averaged 4.33 previous arrests for sexual and nonsexual felonies. Ninety-five percent of the youths were boys, and most (73%) were white.

Families and youths received MST for 31 weeks on average, whereas the UCS group received cognitive-behavioral therapy for about the same length of time. The researchers measured the effectiveness of the treatment 9 years after initial contact. They selected a follow-up time period that was long enough to allow for adult arrest data on every youth.

Overall, MST had favorable results on family relations (increased cohesion and adaptability), peer relations (increased emotional bonding, social maturity, and decreased aggression), and improved academic performance. In addition, MST created both short- and long-term changes in the youths’ criminal behavior and incarceration. “Youths treated with MST reported decreases in person and property crimes at posttest and were less likely to be rearrested for sexual and nonsexual crimes within the 8.9-year follow-up period than were youths who received UCS” (Borduin et al., 2009, p. 35).

Similar positive results for MST have been reported by Curtis, Ronan, Heiblum, and Crellin (2009) in New Zealand and by Glisson et al. (2010) in the Appalachian region of eastern Tennessee. Schwalbe, Gearing, MacKenzie, Brewer, and Ibrahim (2012) noted that programs that included the intensive family-based therapies such as those provided by MST had positive results for juveniles who were treated in community settings.

It is important to highlight the fact that MST programs do not generally deal with youths who have serious mental disorders, nor are the programs available for youth who are incarcerated. MST is essentially a program delivered in community settings.

Functional Family Therapy

A program similar to MST is **Functional family therapy (FFT)**, which was developed in the 1970s for behaviorally disturbed adolescents whose parents were unable to control their acting-out behaviors. According to Sexton and Turner (2010), "FFT has an established record of outcome studies that demonstrate its efficacy with a wide variety of adolescent-related problems, including youth violence, drug abuse, and other delinquency-related behavior" (p. 339). Furthermore, the positive outcomes of the therapy remain even after a 5-year follow-up, and it also appears to have a positive influence on the siblings of the targeted adolescent. It seems to be especially effective in reducing substance abuse (J. Alexander, Waldron, Robbins, & Neeb, 2013; Waldron & Turner, 2008).

FFT combines social learning, cognitive-behavioral, interpersonal, and family systems theories (Gordon, 2002). Cognitive-behavioral approaches focus on a person's expectations and appraisals. The person is encouraged to examine how attitudes and beliefs may have contributed to his or her present situation. The individual works with the therapist to identify strategies for behavioral change. It is important to emphasize that cognitive-behavioral approaches are effective in both institutional and community settings (Cruise, Morin, & Affleck, 2016; Viljoen, Broderson, Shaffer, & McMahon, 2016).

In functional family therapy, therapists work with the family as a unit and attempt to identify features of family dynamics that result in problematic interactions among members. Attention is focused away from the adolescent as the problem; rather, the family is viewed as a system, with members affecting one another's behaviors. Communication and problem-solving skills are taught, and participants are typically given homework assignments between sessions. Like MST, FFT is used in a wide variety of contexts, not just with youth who have come into conflict with the law.

Although FFT has been used successfully with delinquents, including those referred by juvenile courts (Gordon, 2002), it seems less suited for serious delinquents remaining in the community than MST. The latter was specifically formulated to deal with serious delinquency, and it places considerable emphasis on intensive individual treatment as well as strengthening social systems both within and outside the family group. On the other hand, FFT may be better than MST at providing all members of the family group with skills and strategies to function effectively as a self-supporting group. Nonetheless, according to T. L. Brown, Borduin, and Henggeler (2001), behavioral parent training approaches have not been demonstrably effective with serious juvenile offenders, primarily because of the multiple risk factors (e.g., marital distress, socioeconomic disadvantage, parental depression) that are relatively common in their families. Although FFT is not exclusively focused on parent training, it closely resembles such a model. However, Schwalbe et al. (2012) did find that parent training had positive effects on reducing recidivism, so the efficacy of parent training programs should not be completely discounted.
Another promising program that is modeled after MST and FFT is **Multidimensional Treatment Foster Care (MTFC)**, which is designed to work with chronic juvenile offenders in the child welfare system (Chamberlain, 2003; Chamberlain, Leve, & DeGarmo, 2007). Although it follows MST principles, MTFC's major goal is to minimize youth associations with deviant peers, and to surround the youth with competent adults (specially trained foster parents) who are positive and encouraging.
MST, FFT, and MTFC—to ensure program integrity—require extensive training on the part of those who will deliver the services, but neither one requires that treatment providers hold terminal degrees in the field. Those with master's degrees—and sometimes less—are able to offer treatment when they are well trained and supervised by clinical psychologists. Sexton and Turner (2010) also point out that FFT must be delivered in a clinically specific and precise manner to produce positive results. That is, the therapists must be well trained and supervised before the full desired effects can be achieved. Edwards, Schoenwald, Henggeler, and Strother (2001) and Gordon (2002) have summarized the challenges faced in implementing each of these approaches in communities that have expressed interest in them. Supporters of both approaches have emphasized the need for continual communication between developers of these programs and the service providers, as well as the extensive training and initial supervision required to ensure that treatment will be delivered effectively.

Numerous studies on MST, FFT, and MTFC have extremely encouraging results. In his literature review of the three programs, Henggeler (2016) states, “Although significant treatment effects were not observed in all studies, the vast majority demonstrated meaningful decreases in recidivism and confinement, which were sometimes sustained for many years posttreatment” (p. 588). In addition, the studies showed significant improvements in youth functioning, decreased behavioral problems, less association with delinquent peers, and improved school performance.

Cognitive-Behavioral Treatment

Virtually every juvenile rehabilitation center today incorporates some form of cognitive-behavioral treatment (CBT), which—as noted in Chapter 12—is the psychological treatment approach with demonstrated efficacy for adult offenders as well. CBT is typically used in conjunction with other forms of treatment, such as substance abuse programs or sex offender treatment programs. CBT can be used with any of the treatment approaches discussed earlier. **Focus 13.4** provides an illustration of a cognitive-behavioral approach for serious juvenile offenders used in one juvenile correctional system.

Substance Abuse Models

Like adult offenders, juvenile offenders very often have substance abuse problems that accompanied past offenses and are predictive of future delinquent activity (Puzzanchera, 2013; Snyder & Sickmund, 1999; Weekes, Moser, & Langevin, 1999). In the case of juvenile offenders, however, the treatment must take into account their rapid physiological, psychological, and sociocultural development (McNeece, Springer, & Arnold, 2001). In other words, treatment providers must factor in the emotional turmoil and search for identity and acceptance that are often characteristic of adolescence. Like the other treatment programs discussed, programs that provide individual, group, and family therapy—a multimodal approach—seem to be the most effective for substance abusers.

We should note that many of the approaches discussed thus far in this chapter might include a substance abuse component. For example, both group home and family preservation models frequently implement substance abuse treatment. As stated earlier, for example, FFT seems to be particularly well suited for treating adolescent substance abuse problems. Such treatment also is a component of virtually every publicly supported juvenile rehabilitation center. Private facilities, in which parents enroll their adolescents for inpatient substance abuse treatment, are also common. Interestingly, Ira Schwartz (1989), a onetime head of the OJJDP, has argued

forcefully that these private placements are overused and unwarranted for many youth, calling private treatment centers the new jail for middle-class kids. Moreover, there is very little evidence to support inpatient treatment over outpatient approaches for the vast majority of juvenile substance abusers (McNeece et al., 2001).
Focus 13.4

A Cognitive Intervention Program For Juveniles
Cognitive-behavioral therapy (CBT) is regarded by many mental health practitioners as the most effective form of psychological treatment for both juvenile and adult offenders, and it is delivered in many different forms across institutional and community programs. Various forms of CBT have stressed victim impact, thinking errors or cognitive distortion, behavior modification, and positive thinking, among many factors. In addition, CBT may be used individually or in group settings. We describe one example.
The Juvenile Cognitive Intervention Program (JCIP) is provided to incarcerated juvenile delinquents in Wisconsin in three secure juvenile correctional facilities, two for boys and one for girls. Researchers describe the premise of the program thusly: “If we can change how someone thinks, we can change their behavior” (McGlynn, Hahn, & Hagan, 2012, p. 1111). Treatment providers—who are typically trained social workers—help juveniles recognize their cognitive distortions, change their thinking patterns, and practice using these skills in dealing with problems they may encounter both within the facility and when they are released. Examples of distortions include the following:

- Blaming problems on others
- Perceiving that others are out to harm them, which we refer to in the text as hostile attribution bias
- Minimizing the seriousness of their own antisocial behavior
- Thinking that one’s own views and needs are more important than those of others

The Wisconsin program uses a questionnaire (the HIT [How I Think] Questionnaire; Barriga & Gibbs, 1996) to measure the extent of cognitive distortions in juveniles before and after treatment. The questionnaire is self-administered, and the higher the score, the greater the extent of distorted thinking. McGlynn, Hahn, and Hagan (2012) evaluated the effectiveness of the JCIP with 431 males and 103 females between the ages of 12 and 18. All were adjudicated delinquents, and most had been in several treatment programs and had numerous acts of violent delinquency in their records.

Overall, the program reduced the HIT scores of the participants, indicating that the treatment changed cognitive thinking in a positive direction. Males had higher scores before treatment than females, but scores of both males and females were reduced as a result of the treatment. Interestingly, age was a significant factor in the research. Younger juvenile offenders demonstrated higher scores. The researchers noted that—because efforts are usually made to keep young offenders out of institutional settings—those who are incarcerated are likely to be the ones with the most serious behavioral problems.

The McGlynn et al. (2012) study had limitations, as the authors acknowledge. Nevertheless, they find the study supportive of the use of the JCIP for juvenile offenders.

QUESTIONS FOR DISCUSSION

1. On the basis of the admittedly sketchy description of the program, what questions are left if one is to assess its efficacy? Put another way, what would you want to know before deciding whether this is a valuable program to use with serious delinquents?
2. Given that CBT approaches have been demonstrated to be effective and should be used, what more can and should be done for serious, incarcerated delinquents?
3. Is it possible to change how another person thinks? Explain your answer.

McNeece. Springer, and Arnold (2001) reviewed the variety of programs available for both adult and juvenile substance abusers. These include individual, group, and family therapy; self-help programs; psychoeducational approaches; pharmacotherapy (e.g., Antabuse, methadone, and naltrexone); acupuncture; case management; and both inpatient and outpatient programs. They note that several states are developing specific assessment and receiving centers for juveniles with substance abuse problems. These centers may be attached to the juvenile court or a local drug court, or they may operate independently. Although such assessment and treatment centers may be a step in the right direction, follow-up services are desperately needed, particularly in light of today's nationwide opioid crisis. In a study of six such assessment centers, McNeece and his colleagues (1997) learned that they provided short-term stabilization, but recommendations for extended treatment often were not followed due to a lack of resources and shortage of staff. The crucial importance of follow-up services has been demonstrated in evaluation studies of many other juvenile programs as well.

The professional literature contains numerous descriptions and evaluations of other treatment programs for both adult and juvenile offenders. We provide illustrations later when discussing violence prevention programs and sex offender treatment.

Violence-Prevention Programs

Violence is commonly defined as physical force exerted for the purpose of inflicting injury, pain, discomfort, or abuse on a person or persons. Some definitions include damage to or destruction of property. Thus, vandalism—an offense often seen in juvenile crime statistics—would be included. Programs for juveniles that are aimed at preventing and controlling violence focus primarily on physical harm done to other persons. They are good candidates for cognitive-behavioral intervention because juveniles who commit violent crimes may minimize their actions, and they often display a hostile attribution bias. Like juvenile sex offenders, they may blame others for their actions. Sexual assault is a violent crime; however, it is typically approached in a separate (or additional) treatment program, as we will discuss shortly.

Violence may begin very early in a child's life and often occurs as a result of modeling significant individuals in the child's social network—particularly parents, caretakers, peers, or media heroes. In recent years, as discussed in Chapter 8, increasing attention has been given to violent video games that are thought by many to desensitize children to brutality and encourage them to adopt violent strategies in their own lives. Also gaining attention is the **Biological/neurological perspective**, with some researchers suggesting that biological, genetic, or neuropsychological factors make a significant contribution to aggression (e.g., Fishbein, 2000; Moffit, 1993a; Raine, 1993). Although these researchers do not suggest that these factors "cause" violent crime or delinquency, they do indicate that some individuals may be predisposed to committing violent acts. Consequently, they urge early identification and intervention into the lives of individuals who may be at risk.

Violent behavior may suddenly appear in adolescence—for example, the 14-year-old who takes a gun to school and kills the principal or the 15-year-old who stabs his father to death. However, this onetime violence is highly atypical. Far more typical is the progression from early, aggressive behavior to more serious aggression as a child develops.

Most children who reach the juvenile courts on delinquency petitions are older than 10—most are between the ages of 12 and 17. Even so, approximately 9% of juvenile arrests involve children age 14 and younger. In addition, recent juvenile court statistics indicate that 24%

of delinquency cases involving *crimes against persons* (e.g., assault, rape, robbery, violent sexual offenses) were committed by youths younger than age 14 (C. Knoll & Sickmund, 2010). By the teen years, the individual has already "learned" that their violent behavior brings some rewards. Therefore, the treatment of violent behavior usually involves "unlearning" strategies that have seemingly worked up to that point.

Most violence-prevention programs geared at juveniles adopt a cognitive-behavioral or social learning perspective. "Cognitive interventions assume that an angry, aggressive state is mediated through a person's expectations and appraisals and that the likelihood of violence is increased or decreased as a result of this process" (D. Tate, Reppucci, & Mulvey, 1995, p. 778). Violent youth often see hostility where none is intended. Therefore, they are encouraged to reassess their assumptions that others are a threat to them.

Most recently, researchers and treatment providers have emphasized helping juveniles manage the anger they often understandably feel. For example, Goldstein and her colleagues (2013, 2018) have pioneered an approach that not only focuses on reducing hostile aggression but also addresses the unique needs of adolescent girls—a population too often ignored. The program—Juvenile Justice Anger Management (JJAM)—was carefully evaluated by using two comparison groups randomly assigned to JJAM or to treatment as usual in a residential placement setting. Goldstein et al. (2018) found encouraging results and suggests it could be extended to populations outside of institutional settings.

Violence-prevention programs also typically provide juveniles with alternatives to violent behavior, teaching them decision-making skills to put to use when a potentially violent situation erupts. They are encouraged also to avoid placing themselves in volatile situations. Alcoholic substances, for example, are known to facilitate violent behavior, so substance abuse prevention is an important component of many violence-prevention programs.

Guerra, Tolan, and Hammond (1994) observe that a common element related to treatment effectiveness for adolescent violence is the development of social interaction skills: "Improved social skills not only help individuals resolve conflict-producing situations with their peers, but enable them to get along in multiple social contexts" (p. 397).

In the juvenile justice system, programs for serious violent offenders generally operate within institutional settings, primarily in secure settings for youth. From a therapeutic perspective, institutionalization

has the obvious advantages of intervening in a controlled setting, away from criminogenic influences in the youth's natural environment. It also allows intensive treatment, using both group and individual models. Unfortunately, evaluations of institutional treatment have produced mixed results, which is not surprising because the youth themselves are the most challenging to work with. Critics of institutionalization also point out, however, that a major disadvantage of secure treatment is the tendency of adolescents to align with one another and reinforce their own deviant behaviors (Henggeler, 1996), so criminogenic influences remain. Interestingly, M. S. Jackson and Springer (1997) recommend taking advantage of this tendency to align; they suggest that those working with juveniles in incarcerated settings encourage the forming of "therapeutic gangs," which incorporate positive aspects of the juvenile gangs to which many incarcerated youth belonged. The therapeutic gang members work together to identify negative attitudes and values and look for positive alternatives.

Juvenile Sex Offender Treatment Programs

It is believed that a high percentage of all juvenile sex offenders were themselves sexually abused. Gray, Pithers, Busconi, and Houchens (1997) found that 86% of the children in their sample of serious juvenile offenders had been sexually abused themselves. Children who are sexually abused typically do not become abusers. Rather, the devastating effects of sexual abuse are more likely to be internalized and displayed in adjustment problems such as depression, self-destructive behavior, anxiety, and poor self-esteem in both children and adults (Browne & Finkelhor, 1986). Those victims who do become abusers suffer many of these adjustment problems as well. If we consider the well-documented effects of childhood sexual abuse, it is clear that juvenile sex offenders need a treatment program that not only works to prevent future offending, but also recognizes and addresses the emotional trauma they are likely to have experienced.

Adolescent sex offenders, left untreated, are highly likely to continue to offend into adulthood. It has been estimated that 47% to 58% of adult sex offenders committed their first offense during adolescence (Cellini, Schwartz, & Readio, 1993). Becker and Johnson (2001) note that researchers and clinicians are becoming increasingly aware also that prepubescent children commit sexual offenses and that many of these offenses continue into adolescence. Recent juvenile court data show a noteworthy decrease in the percentage of sex offenses committed by juveniles, however (Puzzanchera, 2013). For example, over the 10-year period from 2002 to 2011, sexual offenses

committed by juveniles declined quite dramatically (36% for rape; 35% for other sexual offenses). Despite this significant decrease, juvenile sex offender treatment, much like substance abuse treatment, remains an essential component of many clinical practices. It is available in most public and many private juvenile rehabilitation facilities.

The assessment that precedes treatment for juvenile sex offenders often occurs before they have been adjudicated, however. Youth suspected of or charged with sexual offenses may be referred for evaluation, both by juvenile courts and by social service agencies. In these situations, “it is the job of the assessor to determine the probability that a deviant sexual act occurred, the reason for its occurrence, and whether or not there is need for intervention” (Becker & Johnson, 2001, p. 274). Most recently, researchers have advocated for or worked toward the development of an assessment approach that focuses less on estimating risk of recidivism than on meeting the treatment needs of juveniles charged with sex offenses (Kang et al., 2019).

Whether it occurs before or after a juvenile has been adjudicated delinquent, assessment of sex offenders is controversial. Because of the nature of sexual offending, courts and other juvenile justice officials are particularly interested in knowing not only whether the juvenile is likely to respond to treatment, but also whether the juvenile is likely to reoffend. Considerable progress has been made in developing assessment instruments for juvenile sex offending since the following pessimistic appraisal: “There simply is no way to make clinical assumptions about the risk of re-offense or progression of adolescents’ deviant sexual patterns” (Cellini, 1995, Chap. 6, p. 4). As noted earlier, two instruments—the SAVRY and the YLS/CMI both have received favorable reviews. Nevertheless, researchers continue to urge caution in these assessments, such as by noting that instruments used may not always be able to measure short-term changes in adolescent development (Viljoen et al., 2017).

A very wide range of treatment modalities is available for juvenile sex offenders, including individual and group treatment, family counseling, and psychoeducational classes. Worling and Langton (2012) have summarized treatment goals that are common to many sexual offender treatment programs. They include enhancing accountability and awareness of the impact of the offense on the victim(s), promoting healthy sexual interests and prosocial sexual attitudes, establishing plans to prevent future offending, and if possible involving parents and caregivers in treatment planning. Like

many other researchers, however, Worling and Langton note that the confined setting of incarceration is a barrier to effective treatment. According to Cellini (1995), “[p]eer groups are the preferred method of treatment for 98% of the juvenile and adult programs currently being offered for sex offenders” (Chap. 6, p. 6). The typical peer group program takes a cognitive-behavioral approach, with sex offenders discussing their offenses and the effects on their victims, under the direction of a clinical moderator. Sex education is an important component; juvenile sex offenders are given factual information about human sexuality, and nondeviant sexual interests are promoted. They are encouraged to identify thinking errors—mistaken assumptions regarding their crimes or their victims—and to develop strategies to avoid future offending. Social skills and assertiveness training is an important component of many sex offender treatment programs as well.

Summary of Institutional Treatment

Although we have discussed just a few approaches to the treatment of juveniles in institutional settings, it is apparent that psychologists are faced with a formidable task. Many of the obstacles to treatment that were described in the previous chapter relative to adult offenders exist in juvenile institutions as well. In addition, institutional programs are unable to place much emphasis on working with the family, the environment to which the adolescent frequently returns. Supporters of multisystemic therapy make a good case for its use with violent youth who are allowed to remain in the community and within their own family environment. In addition, there is evidence that a longer stay in an institution does not reduce recidivism (Mulvey, 2011). As Mulvey and others (e.g., Henggeler, 2016) note, community-based supervision and treatment are more effective at reducing recidivism for youth who have committed serious offenses. However, for a few dangerously violent juvenile offenders, incarceration is a necessary alternative for society’s protection. In these cases, intensive treatment should be provided.

Like many earlier researchers, Lambie and Randell (2013) list and document the numerous negative effects of incarceration of juveniles in juvenile facilities as well as in adult prisons, where juveniles are typically but not always separated from adults. It is not unusual to see 16- and 17-year-old youth incarcerated with the adult population. The negative effects—whether incarcerated with adults or other juveniles—include victimization by other inmates as well as staff, lack of mental health care, suicidal behaviors, a lack of adult guidance and prosocial relationships with peers, damages to physical health, educational deficiencies, and difficulty reentering into the community

upon release. Lambie and Randell also make the point that, even when evidence-based treatment is provided within the facility, its positive effects are outweighed by lack of improvement in other factors, such as family cohesion or relationships with peers. In other words, when youth are released, they must still return to an often-problematical family situation and find themselves in communication with antisocial peers.

SUMMARY AND CONCLUSIONS

In 1999, the U.S. juvenile justice system celebrated its 100th anniversary, if one marks its beginning with the establishment of the first juvenile court in 1899. As would be expected, the juvenile justice process of today hardly resembles the process of the first half of the 20th century. Or does it? Early juvenile courts were informal, paternalistic, often very judgmental, and children were rarely represented by lawyers. Clinicians—primarily psychiatrists and psychologists—consulted regularly with these courts, providing wide-ranging evaluations of a juvenile's emotional, cognitive, and mental status, as well as background information on the youth's social history. Although the courts were supposedly intended to "save" children from a life of poverty, they too often placed them in institutions that failed to provide the education, nurturing, and overall physical and emotional care that children need. In the 1960s, a rights-oriented Supreme Court recognized these deficiencies in the juvenile justice system and attempted to correct them by providing juveniles with legal representation and other due process rights. In the 1970s, Congress passed the Juvenile Justice and Delinquency Prevention Act, landmark legislation that, among many other things, began to address conditions in juvenile facilities. In the early 1990s, juvenile crime rates spiked, and many jurisdictions adopted a tough on crime approach to juveniles, which included increasing numbers of transfers to criminal courts. This movement lessened considerably by the turn of the 21st century, but its effects were not reversed.

It is important for forensic psychologists working with the juvenile justice system to be aware of its history. Many concerned advocates for juveniles today fear that problems similar to those of old have reoccurred or, in some cases, never really disappeared. Nevertheless, in very recent years progress has been made in great part due to developmental research on adolescence. As noted in this chapter, there are now fewer transfers to criminal courts, greater focus on effective assessment methods, and more emphasis on keeping juveniles in community settings. Furthermore, there is evidence of effective treatment programs in institutional settings,

though more such programs focusing on special groups (e.g., girls, racial and ethnic minorities) should be developed.

In this chapter, our discussion ranged from issues relating to juvenile comprehension of their rights early in the criminal process to their detention and incarceration as adjudicated delinquents. Much recent research attention has focused on evaluating juveniles' competence to waive their *Miranda* rights and their adjudicative competence. Questions also are raised about the extent to which they are susceptible to making false confessions and even whether they trust their lawyers. Consequently, in evaluating juveniles who are faced with various juvenile court proceedings, forensic psychologists should pay special attention to these factors. Assessments of juvenile's mental health needs are also warranted. Research indicates that many juveniles in detention and treatment facilities have mental disorders that may co-occur with substance misuse.

Conditions of confinement in many secure facilities—both detention and treatment—are extremely disturbing. There is documented overrepresentation of racial and ethnic minority youth, particularly in secure confinement. On the whole—there are always exceptions—the needs of juvenile girls have been overlooked, and the needs of juveniles from various ethnic, racial, sexual orientation, or gender identity groups have been ignored. The results of surveys of conditions and needs of institutionalized juveniles lead many observers to advocate for still greater use of community-based approaches, such as intensive services provided to families or group homes.

Similar to what has been found with adult treatment programs, some common features of successful programs can be identified. Those based on cognitive-behavioral models, for example, have received very favorable reviews. Multimodal programs—those that attempt to incorporate group, individual, and family treatment—also produce good results. Programs that target offenders with high risks and high needs, work intensively with those offenders, and include a follow-up component are also well rated. The follow-up component is particularly important for juveniles who have been institutionalized because they so frequently return to an environment that facilitates their antisocial behavior. This may be why multisystemic therapy—the community-based approach that attempts to address strengths and weaknesses in the juvenile's various social systems (e.g., individual, family, school, community, employment setting)—is highly promising.

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QUESTIONS FOR REVIEW

1. Why is it important to distinguish between detention and treatment/rehabilitation?
2. List and describe briefly assessment roles of forensic psychologists in juvenile justice settings.
3. Discuss the significance of the Supreme Court cases *Kent v. United States* and *In re Gault* to juveniles charged with criminal offenses.
4. Discuss reasons why juveniles as a group may be especially susceptible to waiving their constitutional rights and to making false confessions.
5. What are the strengths and weaknesses of the teaching-family approach?
6. Compare and contrast FFT, MST, and MTFC on such factors as population served, treatment approaches, and evaluation research.

7. What is CBT? Illustrate how it might be used with a juvenile offender found to have committed a sexual assault.

GLOSSARY

Abusive head trauma (AHT)
A form of child abuse in which an adult shakes or otherwise injures an infant so badly that it causes significant brain damage or death.

Accusatorial approach
In police interrogation, an aggressive questioning procedure that assumes the suspect is responsible for a criminal offense and has the goal of obtaining a confession. Compare with information-gathering approach.

Active shooter
One or more individuals engaged in killing or attempting to kill people in a populated area.

Acute dynamic factors
Psychological characteristics that change rapidly (within days, hours, or even minutes) and include such things as mood swings, emotional arousal, and alcohol or other drug-induced effects.

Adjudicative competence
The ability to participate in variety of legal proceedings, including plea bargaining and participating in a criminal trial.

Administrative segregation
A form of custody exercised by prison administrators to isolate an inmate physically from the rest of the prison population for a variety of reasons, including but not limited to protection of the inmate.

Adolescent-limited offenders (ALs)
Individuals who usually demonstrate delinquent or antisocial behavior only during their teen years and then stop offending during their young adult years.

Advance directives
Documents that allow persons to make advance decisions about life-sustaining procedures in the event of a terminal condition or persistent vegetative state or any other later health care decision.

Aftercare
In the juvenile justice system, this term is sometimes used for the equivalent of parole.

Aggravating factors
Circumstances surrounding a crime that heighten its seriousness for purposes of sentencing. An example would be

an excessively heinous or cruel method of carrying out a crime, such as a torture murder.

Aggression
Behavior that is intended to cause harm or damage to another person.

Allocution
The right to speak out during court proceedings, such as at the bail hearing, the sentencing hearing, or the parole board hearing. For example, victims are allowed to speak out at sentencing hearings in state and federal criminal courts.

Amenability to rehabilitation
Refers to the extent to which an offender, particularly a juvenile, is likely to benefit from programs or services available within an institutional or community setting.

American Psychological Association (APA)
The largest professional association for psychologists in the world, with over 117,000 members as of 2017.

Americans with Disabilities Act (ADA)
A federal law that guarantees equal opportunity for individuals with disabilities in state and local government services, public accommodations, employment, transportation, and telecommunications.

Amicus curiae briefs
Document submitted to appellate courts by outside parties to call attention to research or issues that might otherwise escape the courts' attention.

Antisocial behavior
Any behavior that is considered a violation of social norms in society; antisocial behaviors may or may not be defined as crimes.

Antisocial personality disorder (APD or ASP)
A disorder characterized by a history of continuous behavior in which the rights of others are violated.

Appellate jurisdiction
A court's authority to hear appeals from decisions of lower courts.

Approximation rule
In some jurisdictions, a judge looks at the amount of caretaking done by each parent before making a decision on child custody.

Arraignment
Court proceeding during which criminal defendants are formally charged with an offense, informed of their rights, and asked to enter a plea.

Assisted outpatient treatment (AOT)
Court-ordered mental health treatment in the community, on the condition that a person will be hospitalized or rehospitalized if not cooperative with treatment providers.

Association for Psychological Science (APS)
An organization of psychologists dedicated to the advancement of science in psychology. After the APA, it is the next-largest psychological association in the United States.

Attention-deficit/hyperactivity disorder (ADHD)
Traditionally considered a chronic neurological condition characterized by developmentally poor attention, impulsivity, and hyperactivity. More contemporary perspectives also see the behavioral pattern as a deficiency in interpersonal skills.

Battered woman syndrome (BWS)
A cluster of behavioral and psychological characteristics believed common to women who have been abused in relationships. Many researchers, clinicians, and legal scholars do not accept it as a valid syndrome.

Battering
A term often reserved for *physical violence* experienced in intimate relationships, such as in a dating relationship, marriage or partnership, or separation and divorce.

Bench trial/court trial
A civil or criminal trial in which the judge, rather than a jury, is the finder of fact, responsible for reviewing the evidence and rendering a verdict.

Best interest of the child (BIC) standard
The legal doctrine that the parents' legal rights should be secondary to what is best for the child.

Beyond a reasonable doubt
The burden of proof that must be met by the government in all criminal cases.

Bias crimes
Also called hate crimes, these are criminal offenses motivated by an offender's bias against a group to which the victim either belongs or is believed to belong.

Biological/neurological perspective
The research perspective that biological, genetic, or neuropsychological factors make a significant contribution to aggression. Although this perspective does not suggest that these factors "cause" violent crime or delinquency, it does indicate that some individuals may be biologically or neurologically predisposed to committing violent acts.

Blended sentencing
: In the juvenile justice system, this refers to giving juveniles a mix of juvenile and adult sanctions, such as a juvenile treatment program followed by adult parole supervision once the juvenile has reached adulthood.

Boldness dominance
: (fearless dominance) Interpersonal style characterized by fearlessness, calmness, and low stress level when confronted with crises or stress-inducting situations. Believed by some scholars to be a core factor in psychopathy.

Bullying
: A form of peer aggression in which one or more individuals physically, verbally, or psychologically harass a victim who is perceived to be weaker. Although primarily directed at children and adolescents, bullying also may be directed at adult peers.

Bystanders
: Those individuals who are witnesses to a crime or have information about a potential attack.

Callous-unemotional (CU) traits
: Group of personality characteristics believed to be associated with psychopathy, such as self-centeredness and lack of empathy. See also four-factor perspective.

Capacity assessment
: Attempts to answer the question of whether a person has the ability to perform certain tasks or made specific decisions about their welfare and safety.

Case linkage analysis (CLA)
: Method of identifying crimes that are likely to have been committed by the same offender because of similarities across the crimes.

Challenge for cause
: Exercised by an attorney or judge whenever it can be demonstrated that a would-be juror does not satisfy the statutory or other requirements for jury duty.

Child abduction
: Unlawfully leading, taking, enticing, or detaining a child under a specified age with intent to keep or conceal the child from the parent, guardian, or other person having lawful custody.

Child custody evaluations (CCEs)
: Also called parenting evaluations or assessments, these are assessments prepared for courts by mental health professionals to help judges make decisions in disputed custody situations.

Child sexual abuse accommodation syndrome (CSAAS)

A term reserved for a cluster of behaviors that occur in children who have been victims of sexual abuse by a family member or an adult with whom the child has a trusting relationship. The syndrome is controversial and has little empirical support.

Child sex trafficking

Associated with child abduction of some children, this refers to their exploitation for sexual purposes, such as the production of child pornography or prostitution.

Clear and convincing evidence

Legal standard achieved when the truth of the facts asserted is highly probable but does not reach the standard of beyond a reasonable doubt.

Coerced-compliant false confessions

Admissions of guilt most likely to occur after prolonged and intense interrogation experiences, such as when sleep deprivation is a feature. The suspect, in desperation to avoid further discomfort, admits to the crime even knowing that they are innocent.

Coerced-internalized false confessions

These occur when innocent persons—who are tired, confused, and highly psychologically vulnerable—come to believe that they actually committed the crime.

Cognitive factors

The internal processes that enable humans to imagine, to gain knowledge, to reason, and to evaluate. Each person has their own cognitive version of the world.

Cognitive-behavioral approach

An approach to therapy that focuses on changing beliefs, fantasies, attitudes, and rationalizations that justify and perpetuate antisocial or other problematic behavior. Believed to be the most effective treatment approach for both adult and juvenile offenders.

Cognitive flexibility

Refers to the ability to think about something or action in multiple ways.

Cognitive interview

Method of interviewing that uses memory retrieval and various communication techniques aimed at increasing the amount of accurate information from witnesses and victims. Its goal is to make the interviewee aware of all events that happened in a situation.

Cognitive lie detection

Method of interviewing and interrogation that asks questions the suspect does not anticipate.

Cognitive load

During police interviewing and interrogation, this refers to the cognitive demands placed on the interviewee, with the premise that this will make it more difficult for the interviewee to be deceptive. An example would be asking the person to recount events of the past day in reverse order of when they occurred.

Commitment bias

The phenomenon that once a witness commits to a certain viewpoint, such as identification of a face, the witness is less likely to change their mind.

Community corrections

The broad term for a wide variety of options that allow persons convicted of crime to be supervised in the community, such as being placed on probation. Term also applies to parole, the supervision of former prisoners in the community.

Community-based facilities

Correctional facilities that are not institutions and allow supervision of juveniles or adults within their own homes or in special community facilities, such as halfway houses.

Community-oriented policing (COP)

an approach whereby citizens and police work as partners to prevent crime and improve the community

Compensatory damages

Money awards given in civil suits to make up for the harm that the plaintiff has suffered.

Competency restoration

The treatment given to someone found incompetent to stand trial for the specific purpose of rendering the person competent to be tried.

Competency Screening Test (CST)

Sentence-completion examination intended to provide a quick assessment of a defendant's competency to stand trial. The test taps the defendant's knowledge about the role of the lawyer and the rudiments of the court process.

Competency to be executed

The legal requirement that a person convicted of a capital crime and sentenced to death must, at the time of execution, be emotionally stable or intellectually capable enough to understand the meaning of being put to death.

Competency to stand trial

The legal standard that requires that criminal defendants be able to understand and appreciate criminal charges and help their attorneys in preparing a defense.

Complex PTSD

Refers to a more severe symptoms of post-traumatic stress disorder (PTSD), including problems with relationships, emotions, and thoughts.

Composition bias

Characteristic of a police lineup that unfairly encourages a witness to identify the suspect in custody (e.g., no lineup members approximate the suspect's age).

Concurrent validity

In psychological testing, validity measured by comparing one test with another, already established one.

Conditional release

Judicial or administrative release from an institutional setting (jail, prison, psychiatric hospital) on the condition that one demonstrates good behavior in the community or participates in mental health treatment.

Conduct disorder (CD)

A diagnostic label used to identify children who demonstrate habitual misbehavior.

Confirmation bias

The tendency to look for evidence that confirms one's preexisting expectations or beliefs.

Conflict Tactics Scale (CTS)

A measure used by researchers and clinicians to gauge the level of disruption and violence in interpersonal relationships.

Control question technique/test (CQT)

The most preferred procedure by professional polygraphers in cases requiring the investigation of specific incidents, such as criminal acts. Compare with Guilty Knowledge Test.

Correctional psychology

The branch of forensic psychology that interacts with prisons, jails, and other correctional facilities and programs, both in institutional and community settings. Correctional psychologists often prefer that term rather than forensic psychologist.

Co-victims

People close to the victim of a serious crime, such as a murder, who must deal with the medical examiner, the criminal or juvenile justice system, and the media in the aftermath of the crime. Term is often used to emphasize the depth of homicide's emotional impact on the victim's survivors.

Crime scene profiling
: The development of a rough behavioral or psychological sketch of an offender based on clues identified at the crime scene. Also may be referred to as offender profiling.

Criminal homicide
: The unlawful and intentional killing of a human being. The term encompasses both murder and nonnegligent homicide.

Criminal responsibility evaluations
: Assessment designed to determine whether a defense of insanity can be supported. Also called “mental state at time of offense” evaluation or “insanity” evaluation.

Criminogenic needs
: Those dynamic risk factors that have been empirically found to be related to criminal behavior, such as substance abuse or misogynistic attitudes.

Crisis intervention
: The intervention of mental health practitioners into emergency or crisis situations, such as suicide attempts, emotional agitation, or psychotic behavior displayed during confinement.

Critical incidents
: Emergencies and disasters that are nonroutine and unanticipated.

Cross-race effect
: Research findings that people are more accurate in recognizing persons of their own race.

Crossover offending
: engaging in more than one type of sex-offending behavior or victimizing individuals from different relationship categories, genders, or age groups.

Cyberstalking
: Threats or unwanted advances directed at another using the internet or other forms of online communication.

Date or acquaintance rape
: A sexual assault that occurs within the context of a dating or social relationship.

***Daubert* standard**
: Guide to help determine whether expert scientific testimony meets criteria established by the U.S. Supreme Court for reliability and relevance.

Death notification
: Procedure or process used for informing family members of a death resulting from violent crime, accident, or some other incident.

Death penalty mitigation
: In capital cases, attempts by the defense team to reduce or avoid the sentence of death for their client based on factors that lessen the offender's culpability. Examples of mitigating factors are the offender's age and a history of child abuse.

Decisional competency
: Ability to make decisions in one's own best interest. Research indicates that juveniles—given their stage of development—are unlikely to have the emotional sophistication and maturity to make such decisions when confronted with the criminal justice process.

Deinstitutionalization of status offenders (DSO)
: Mandate from the JJDPA that states receiving funds for juvenile justice programs must remove all juveniles from adult jails and must also remove status offenders from secure institutions.

Delinquency hearing (or adjudicatory hearing)
: The equivalent of a criminal trial in adult courts. Juveniles have constitutional rights similar to adult offenders, including rights to an attorney, to confront and cross-examine their accusers, and to not testify against themselves. They do *not* have a constitutional right to a jury or to an open proceeding, though some states grant these rights.

Delinquency petition
: In juvenile courts, the prosecutor's document charging a juvenile with an offense that, if proven, would qualify the juvenile as a delinquent.

Deposition
: Proceedings during which potential witnesses are questioned by attorneys for the opposing side, under oath and in the presence of a court recorder, although typically away from the courtroom.

Detention centers
: Facilities where pretrial detainees are held. Jails serve as detention centers as well as incarceration for persons sentenced to short terms, typically under 1 year.

Developmental dual systems model
: Proposed by Laurence Steinberg, it refers to the difference in cognitive and emotional brain development in adolescents, making them more prone to sensation-seeking and risk-taking behaviors.

Differential experience hypothesis
: States that individuals will have greater familiarity or experience with members of their own race and will thus—in identification

procedures—be better able to discern differences among members of their own race.

Digital investigative analysis
Forensic electronic data recovery, usually for legal purposes.

Disciplinary segregation
Punishment (physical isolation) for violation of rules. Also may be called solitary confinement.

Discovery process
The pretrial procedure by which one party in a civil or criminal case discloses to the other party information vital for their defense.

Disinhibition (externalizing proneness)
Refers to poor self-regulation and impulsivity. Represents one of the key dimensions of the Triarchic Psychopathy Model (TriPM).

Disposition
The resolution of a legal matter. In criminal law, an example would be the sentence a defendant receives. In civil law, the disposition of a case may be a judgment in favor of the plaintiff. In juvenile law, a disposition is the equivalent of a criminal sentence.

Disproportionate minority confinement (DMC)
The observation that racial and ethnic minorities are disproportionately detained and incarcerated.

Diversion
Any one of a number of programs used to steer someone away from formal or traditional court processing, such as diversion of juveniles to a substance abuse program or diversion of some defendants to mental health courts.

Domestic Violence Risk Appraisal Guide (DVRAG)
One of the measures used to assess the extent of violence in a relationship and predict the likelihood of future occurrence.

Double-blind lineup
A lineup procedure in which neither the person making an identification nor the person administering the lineup knows the identity of the suspect.

Dual court system
Refers to the fact that federal and state courts in the United States exist side by side, independent of one another, sometimes in the same geographical location.

Dual-purpose evaluations
Assessment of both a defendant's competency to stand trial and criminal responsibility during the same evaluation. Dual-purpose evaluations are highly discouraged in legal and

psychological literature but still occur with some frequency in many jurisdictions.

***Dusky* standard**
Relates to juvenile and adult competency to stand trial and decision-making abilities. The rule holds that defendants must be able to understand and appreciate the criminal proceedings against them and be able to assist their attorneys in their defense.

Dynamic risk factors
Aspects of a person's developmental history that change over time, such as attitudes, opinions, and knowledge.

Dysphoric/borderline batterers
Batterers who exhibit mental disorders and are psychologically disturbed and emotionally volatile. These individuals often engage in moderate to severe spousal abuse, including psychological and sexual abuse.

Early intervention system (EIS)
Also called an early warning system, this is a program that helps identify psychological and performance problems in law enforcement officers early and provide them with support services.

Early warning systems.
See early intervention system.

Elder abuse
Defined as the physical, financial, emotional, or psychological harm of an older adult, usually defined as age 65 or older.

Emotional intelligence
Ability to know how one's own self and others are feeling and the capacity to be able to use that information to guide thoughts and actions.

Employment compensation claims
Claims involving physical injuries, psychological damage, or emotional distress sustained as a result of one's employment. Employers are required to insure their workers against injury while on the job.

Equivocal death analysis (EDA)
Reconstruction of the personality profile and cognitive features (especially intentions) of deceased persons when the cause of death is not clear. Also called psychological autopsies.

Estimator variables
pertain to potential sources of eyewitness error that are beyond the control of the criminal justice system

Ethical Principles of Psychologists and Code of Conduct (EPPCC)
: Provides ethical standards and guidelines for what is appropriate behavior in clinical and research practice for psychologists.

Ethnocentrism
: Refers to the tendency to interpret events in accordance with one's own cultural heritage.

Excessive force
: Refers to situations in law enforcement where the level of force exceeds the level considered justifiable under the circumstances.

Executive functions
: Higher order mental abilities involved in goal-directed behavior. They include organizing behavior, memory, inhibition processes, and planning strategies.

External stress
: Stress that is outside of one's daily tasks. In the law enforcement context, they include frustrations with the courts, the prosecutor's office, the criminal process, the correctional system, the media, and public attitudes toward policing.

Externalizing disorders
: Maladaptive behavior characterized by going against the social environment, such as acting out, aggressive or antisocial behavior,

Face (or content) validity
: Refers not to what a psychological test actually measures, but to what it superficially *appears* to measure.

Facial composites
: Computerized or artist drawings of faces from information supplied by witnesses.

Factor analysis
: A statistical procedure by which underlying patterns and personality characteristics are identified.

False confessions
: Admissions of guilt that are not valid and are often but not necessarily induced by coercive interrogation procedures.

Family courts
: Specialized courts dealing with issues relating to families, such as divorce and child custody, orders of protection, delinquency proceedings, and guardianship proceedings.

Family forensic psychology

A specialty whose practitioners have extensive knowledge about human development, family dynamics, and the court system.

Family preservation models

Approaches that try to prevent youth with minor behavioral problems and their family from becoming more dysfunctional. The major intention is to keep the family unit together, presuming that this is in the best interest of the family as a whole.

Family violence

Refers to any assault, including sexual assault, or other crime that results in the personal injury or death of one or more family or household member(s) by another who is or was residing in the same dwelling.

Family-only batterers

These are violent offenders who usually do not engage in violence outside the family. Their violence tends to be periodic, primarily when stress and frustration reach a peak.

Federal Bureau of Prisons (BOP)

The major federal agency that coordinates all services provided in federal facilities, such as detention centers, prisons, and hospitals. The BOP also supports research on many aspects of corrections and provides internships for doctoral students interested in careers in corrections.

Filicide

Killing of one's child who is older than 1 year.

Fitness-for-duty evaluations (FFDEs)

Assessments conducted to determine the psychological ability of law enforcement officers to perform their essential job functions, particularly after experiencing a major stressful event.

Flashbulb memory

Refers to memory—usually considerably accurate—of high-impact events, such as an automobile accident or a mass shooting.

Forcible rape

Terminology used by the Federal Bureau of Investigation (FBI) to refer to rape without consent. Distinguished from statutory rape, which involves an underage victim who was not forced, but who is believed to be unable to consent because of age. FBI has now omitted the adjective "forcible" from most of official statistics.

Forensic entomology

Study of insects (and their arthropod relatives) as it relates to legal issues.

Forensic mental health assessments (FMHAs)
Conducted by psychologists and psychiatrists consulting with criminal courts. Competency to stand trial assessments and criminal responsibility evaluations are prominent examples.

Forensic neuropsychology
The application of knowledge from the neuropsychological profession to legal matters. Neuropsychology is the study of the psychological effects of brain and neurological damage and dysfunction on human behavior.

Forensic psychiatrists
Medical doctors trained to provide assessment services to courts in relation to persons who may evidence emotional, cognitive, or behavioral problems.

Forensic psychology
The production of psychological knowledge and its application to the civil and criminal justice systems.

Forensic school psychology
Branch of psychology dealing with legal matters within an educational context.

Forensic social workers
Social workers, typically with a master's degree, who provide services relative to legal matters, such as custody evaluations or assessments in guardianship cases.

Four-factor perspective
A model that sees psychopathy as consisting of four core factors: interpersonal, impulsive, affective, and antisocial. There is continuing debate in the literature as to whether the fourth should be considered a separate factor.

Friendly-parent rule
In child custody determinations, the rule in some jurisdictions that preference will be given to the parent who is most likely to nurture the child's relationship with the other parent, provided the other parents is not abusive.

Functional family therapy (FFT)
Developed in the 1970s for behaviorally disturbed adolescents whose parents were unable to control their acting-out behaviors. It combines social learning, cognitive-behavioral, interpersonal, and family systems theories.

Gender harassment
A form of discrimination, and sometimes recognized in sexual harassment law, it refers to persistent, unwanted comments or behavior directed at an individual because of their gender. Distinguished from sexual harassment in that it implies the

harasser has no interest in sexual contact with the target of the harassment.

Gendered pathways approach
Research that indicates that girls and boys or women and men develop criminal behavior in different ways.

General acceptance rule
Standard for admitting scientific evidence into court proceedings that allows it if it is generally accepted as valid in the scientific community. This was the essence of the *Frye* standard that dominated in courts until the late 20th century.

General jurisdiction
Refers to courts with broad authority over a vast array of both simple and complex cases, both civil and criminal.

Generally violent/antisocial batterers
Batterers who are likely to use weapons and who are more prone to inflict severe injury on wives, partners, and other family members, in addition to engaging in extrafamilial violence.

Geographical jurisdiction
Court authority over a specified geographical area of the country or state.

Geographical mapping
Concerned with analyzing the spatial patterns of crimes committed by numerous offenders over a period of time.

Geographical profiling
Focuses on the location of the crime and how it relates to the residence or base of operations of the offender. Assumes that serial offenders prefer to commit their crimes near their own residences.

Grand jury
A body of citizens (usually about 23 in number) that is directed by the prosecutor to weigh evidence and decide whether there is enough to charge a person with a criminal offense.

Grooming
Pertains to an in-person or online strategy of sex offenders who use various methods to ingratiate themselves to their targeted victim, usually a child or adolescent.

Guilty but mentally ill (GBMI)
A verdict alternative in some states that allows defendants to be found guilty while seemingly affording them treatment for mental disorders.

Guilty Knowledge Test (GKT)
A polygraph test that assesses the extent to which the polygraph examinee is aware of facts about a crime. See also

CQT. The GKT is preferred by researchers, but is used less often by practicing polygraphers than the CQT.

Hastened death evaluations
In states allowing individuals to hasten their death with the help of physician-prescribed medication, these assessments may be conducted if there are questions about the patient's capacity to make such a decision.

Hate crimes
Also called bias crimes, these are criminal offenses motivated by an offender's bias against a group to which the victim either belongs or is believed to belong.

Hate Crime Statistics Act
Federal law that requires law enforcement officials to collect extensive data on reported crimes allegedly motivated by hatred or bias against someone belonging or believed to belong to a specific group.

Hedonistic type
Serial killer who strives for pleasure and thrill-seeking. To this killer, people are simply objects to use for one's own enjoyment. The hedonistic type is divided into lust, thrill, and creature comfort killers.

Hostile attribution bias
The tendency of some individuals to perceive hostile intent in others even when it is lacking.

Houses of Refuge
Institutional settings presumably intended to protect, nurture, and educate neglected or wayward children during the mid-19th century.

Human trafficking
The luring or kidnapping and exploitation of people, including children, for monetary gain. Usually but not necessarily involves sexual exploitation.

Iatrogenic effect
A process whereby mental or physical disorders are unintentionally induced or developed in patients by physicians, clinicians, or psychotherapists.

Incarceration rate
Number of persons incarcerated in prisons and jails per specified number in the population—on national level, reported per 100,000 U.S. population.

Incest
Sexual abuse of adolescents or children by immediate family or relatives.

Infanticide
: Although this term literally means the killing of an infant, it is also used for the killing of a child by a parent, and is then divided into neonaticide and filicide.

Infantile amnesia
: Normal lack of memory of events that happened very early in one's life, typically but not necessarily before age 4.

Information-gathering approach
: A method of police interviewing and interrogation that does not presume guilt on the part of the person being questioned, but rather seeks to obtain information about events surrounding a crime. Compare with accusatorial approach.

Inhibitory control
: The behavioral process of self-regulation or self-control that keeps impulses in check. A key component of executive function.

Initial appearance
: A court appearance if an arrested individual is being held in jail rather than released or cited to appear in court at a later date. Its purpose is to review the need for continuing detention. However, it also may apply to the first proceeding before a judge, whether or not the individual was detained.

Injunction
: A court order to stop or refrain from doing something, usually based on a request from a party who is allegedly harmed by the activity.

Insanity
: In the legal context, this term describes a judicial determination that an individual's mental disorder relieves him or her of criminal responsibility for illegal actions.

Insanity Defense Reform Act (IDRA)
: The federal law passed in 1984 that changed the standard for determining insanity in federal courts and made it more difficult for defendants to use this defense.

Institutional corrections
: Broad term for facilities that confine inmates; applies also to their rules, policies, and practices.

Instrumental violence
: Occurs when the injury of an individual is secondary to the acquisition of some other external goal of the offender.

Intake
: In juvenile law, this is the youth's first official contact with the juvenile justice system; the intake officer often has discretion to

warn the youth, refer the youth for prosecution, or divert the youth to community services.

Internalizing disorders
Maladaptive behaviors that are directed toward the self, such as suicide, depression, or unusual low self-esteem or confidence.

Interdisciplinary Fitness Interview–Revised (IFI-R)
One of the available measures for assessing competency (fitness) to stand trial.

Intermediate sanctions
Supervision that is less restrictive than residential placement but more restrictive than the standard probation under which the juvenile or adult offender remains in their own home with conditions attached. Sometimes referred to as probation-plus or parole-plus. Examples may include intensive supervision, day-reporting requirements, or electronic monitoring.

Intimate partner violence (IPV)
Violent Crimes committed against persons by their current or former spouses, boyfriends, or girlfriends.

Investigative psychology
Umbrella term that refers to a scientific approach designed to improve our understanding of criminal behavior and the investigative process.

Jails
Facilities operated by local governments to hold persons temporarily detained, awaiting trial, or sentenced to short-term (typically under 1 year) confinement after having been convicted of a misdemeanor.

Job analysis
Identification and analysis of the skills, abilities, knowledge, and psychological characteristics that are needed to do a job.

Judicial waivers
The process by which a judge transfers a juvenile's case to criminal court.

Juvenile delinquency
Broad term for variety of antisocial acts committed by youth; some but not all are criminal offenses.

Juvenile delinquent
Young person who commits an act against the criminal code and who is adjudicated delinquent by an appropriate court.

Juvenile detention
Temporary secure or nonsecure placement pending adjudication or during adjudication proceedings, up to a final disposition.

Juvenile Justice and Delinquency Prevention Act (JJDPA)

Landmark federal legislation passed in 1974 that attempted to address the needs of juveniles in the juvenile justice system as well as those considered at risk for delinquency.

Leakage

Term used for behaviors that presumably indicate deception on the part of someone being interviewed.

Least detrimental alternative standard

In custody decisions, the standard that chooses the arrangement that would cause the child the least amount of harm.

Legal parental authority

Having the authority to make legal decisions for the child, such as medical needs and choice of educational system.

Legislative waiver, statutory exclusion, or waiver by statute

Terms used for the automatic processing of juveniles in criminal courts, typically for serious crimes. Many states, for example, require by statute that juveniles 14 and above who are charged with murder be tried in criminal courts. In some jurisdictions, criminal court judges have the authority to transfer the juvenile to juvenile court.

Level of Service Inventory–Revised (LSI-R)

Assesses dynamic and static risk factors to determine offender needs for services as well as risk of reconviction, including for violent offenses.

Level of Service/Case Management Inventory (LS/CMI)

A modification of the LSI that focuses on determining the clinical and social services the individual should ideally receive.

Life course–persistent offenders (LCPs)

Offenders who demonstrate a lifelong pattern of antisocial behavior and who are often resistant to treatment or rehabilitation.

Limited jurisdiction

Refers to authority of lower courts that can only settle small disputes or deal with preliminary issues in a major case.

MacArthur Competency Assessment Tool–Criminal Adjudication (MacCAT-CA)

Used by clinicians to evaluate competence to stand trial.

MacArthur Competence Assessment Tool–Treatment (MacCAT-T)

Used by clinicians to evaluate ability to benefit from treatment.

MacArthur Juvenile Competence Study

Multisite study of adjudicative competence in juveniles.

Malingering

Response style in which the individual consciously fabricates or grossly exaggerates their symptoms.

Manslaughter

The unjustified killing of a human being without premeditation. May be negligent or non-negligent, and does not require intent to kill.

Mass murder

Involves the killing of three or more persons at a single location with no cooling-off period between the killings.

Meanness

Refers to a lack of empathy, of concern about the feelings of others, and of close relationships. Part of the psychopathy TriPM.

Medical aid in dying

enables persons who are terminally ill and approaching death to request help from a physician in hastening it.

Medical child abuse

Formerly called Munchausen Syndrome by Proxy, it is where a caregiver or parent abuses the child by consistently subjecting the child to medical care and procedures without any evidence of a medical condition.

Mens rea

In criminal law, the guilty mind. It refers to the intent that is needed in order to be found guilty of a crime.

Mental State at Time of the Offense Screening Evaluation (MSE)

One of several tools used by clinicians to assess criminal responsibility, typically to determine whether an insanity defense could be supported.

Minnesota Multiphasic Personality Inventory–Revised (MMPI-2)

Self-administered personality inventory used in numerous contexts, including law enforcement screening.

Minnesota Multiphasic Personality Inventory-Revised-Restructured Form (MMPI-R-RF)

Self-report personality inventory used in clinical practice, especially in the selection of law enforcement and public safety personnel. Although the inventory uses many questions from the MMPI-2, researchers have developed its own norms and clinical scales.

Mission-oriented type

Serial killer who believes that there is a particular group of people who are considered undesirable and who must be destroyed or eliminated.

MTC: CM3

Empirically based classification system for pedophiles that underscores the importance of viewing pedophilia as characterized by multiple behavioral patterns and intentions.

MTC: R3

Rape typology consisting of nine discrete rapist types that are differentiated on the basis of six variables.

Multiculturalism

Refers to differences in race, ethnicity, gender, sexual orientation, and disability.

Multidimensional Treatment Foster Care (MTFC)

Treatment model developed specifically with chronic offenders in the child welfare system.

Multisystemic therapy (MST)

A community treatment approach for serious juvenile offenders that focuses on the family while being responsive to the many other contexts surrounding the family, such as the peer group, the neighborhood, and the school.

Murder

The intentional and premeditated killing of one human being by another without justification or excuse.

National Crime Victimization Survey (NCVS)

A government survey that attempts to measure the extent to which households, individuals, and commercial establishments are victims of serious crime.

National Incident-Based Reporting System (NIBRS)

FBI's system of collecting *detailed* data from law enforcement agencies on known crimes and arrests.

National Survey of Children's Exposure to Violence (NatSCEV)

A government-sponsored survey designed to measure the violent victimization of children.

Neonaticide

The killing of a newborn, usually under 48-hours old, sometimes defined as under 24-hours old.

NISMART

A research program designed to provide clear definition and accurate statistics on the number of abducted children in the United States.

Noncriminogenic needs

Needs that are subject to change but have been found to have little influence on an offender's criminal behavior. Psychological states such as depression, anxiety, or low self-esteem are examples used by some researchers.

Non-sadistic rapists

Those who engage in a sexual attack because of an intense sexual arousal prompted by specific stimuli identified in the intended victim. Although rape is always a violent act, the perpetrator's aggression is not considered the significant feature in the attack.

Notification

In victims' rights legislation, refers to the requirement that victims be told about the status of an offender at various stages of the criminal justice process.

Observational learning

The process by which individuals learn patterns of behavior by observing another person performing the action.

Office of Juvenile Justice and Delinquency Prevention (OJJDP)

The federal agency charged with overseeing juvenile justice on the national level, providing grants for juvenile research and programs, and taking a leadership role in setting policies nationwide relative to juveniles.

Ontario Domestic Assault Risk Assessment (ODARA)

Instrument recommended for use by law enforcement officers and others to determine the likelihood that an individual will commit future violence within the family.

Opportunistic rapist

One who engages in sexual assault simply because the opportunity to rape presents itself.

Oppositional defiant disorder (ODD)

In children, this is a disorder whose symptoms include arguing with adults, refusing adults' requests, deliberately trying to annoy others, blaming others for mistakes, and being spiteful or vindictive.

Organizational stress

Refers to the emotional and stressful effects that the policies and practices of the police department have on the individual officer.

Outpatient treatment (OT) orders

Court orders that allow an individual to live in their own home or alternative group or foster home on condition that the individual receive mental health treatment and usually comply with a medication regimen. Also called assisted outpatient treatment (AOT).

Own-race bias (ORB)

The tendency of people to be able to discriminate between faces of their own race better than those of other races.

Paraphilia

The clinical term for various psychological conditions that are exhibited in fantasies, urges, or behaviors involving nonhuman objects, suffering or humiliation of oneself or one's partner, or children or other nonconsenting persons. The paraphilias are not considered mental disorders unless they involve behaviors that are harmful to the individual or others.

Parens patriae

The doctrine in law that establishes the right of the state to substitute its presumably benevolent decision making for that of individuals who are thought to be unable or unwilling to make their own decisions. Applied particularly in cases involving children, juveniles, mentally disordered individuals, and persons who are intellectually disabled.

Parental relocation

An increasingly frequent topic for family courts, in which they are asked to make a decision as to whether the custodial parent should be allowed to relocate the child to a geographical area away from the noncustodial parent.

Parenting evaluation

A term preferred to custody evaluations in some jurisdictions. Assessment of parenting plans is also frequently used.

Parole

The conditional release of an offender after completing a portion of their sentence.

PEACE model

A method of information gathering where the interviewer is encouraged to establish rapport and use open-ended questions.

Pedophilia

Clinical term for sexual attraction to children. However, it may or may not result in actual child molestation or other sexual abuse.

Peremptory challenge

A rule that allows a lawyer to request the removal of a prospective juror without giving a reason.

Personal stress

Stress related to marital relationships, health problems, addictions, peer group pressures, feelings of helplessness and depression, and lack of achievement.

Pervasively angry rapist

This rapist demonstrates a predominance of global and undifferentiated anger that pervades all areas of their life.

Physical parental authority

In custody decision making, the right to make day-to-day decisions affecting the child, such as curfew hours or whether

the child can go out with friends. Compare with legal parental authority.

Plaintiff
Person or party who initially brings a civil suit.

Police and public safety psychology
Branch of
psychology focusing on services provided to law enforcement personnel, including assessment, clinical treatment, and consulting on administrative matters.

Police culture
A set of behaviors and attitudes that are presumed to be characteristic of individuals involved in law enforcement work, such as suspicion, toughness, and protectiveness of other law enforcement officers.

Polyvictimization
Victim's repeated exposure to direct victimization, either involving one type of crime or a variety of crimes.

Post-shooting traumatic reaction (PSTR)
Represents a collection of emotions and psychological response patterns that may occur after a law enforcement officer shoots a person in the line of duty.

Post-traumatic stress disorder (PTSD)
A cluster of behavioral patterns that result from a psychologically distressing event that is outside the usual range of human experience.

Power-control killer
Type of serial murderer who obtains satisfaction from the absolute life-or-death control they have over the victim.

Predictive validity
The extent to which a test predicts a person's subsequent performance on the dimensions and tasks the test is designed to measure.

Preemployment psychological screening
The psychological evaluation that is conducted prior to a conditional offer of employment.

Preponderance of the evidence
Proof that one side in a legal dispute has more evidence in its favor than the other. It is the standard required in most civil suits and may be relevant to criminal proceedings as well, but not to establish guilt.

Presentence investigation (PSI)
Social history, typically prepared by probation officers, that includes information about the offender's family background,

employment history, level of education, substance abuse, criminal history, medical needs, and mental health history. Used by courts for sentencing purposes.

Pretrial detainees
Those persons held in jail before trial because either they are unable to afford bail, or they were denied bail because they were considered dangerous.

Preventive detention
The term used when defendants are jailed before trial specifically because they might flee or are considered too dangerous for pretrial release. Preventive detention for juveniles can be used if they are at risk of committing more crime, not necessarily violent crime.

Preventive outpatient treatment (or commitment)
Court-ordered community treatment to prevent a person from becoming dangerous. A controversial option because it does not require the high standard of dangerousness needed for other involuntary civil commitment, either to an institution or to community treatment.

Prison Rape Elimination Act (PREA)
Federal law requiring prisons and jails to address the problem of sexual assault within such facilities.

Prison transfer
Process whereby prisoners are moved from one facility to another, sometimes without notice.

Prisons
Correctional facilities operated by state and federal governments to hold persons convicted of felonies and sentenced generally to terms of more than 1 year.

Probate courts
Courts that have jurisdiction over a range of civil matters, such as wills and estates, property transfers, and—in some states—divorce and child custody matters.

Probation
A sentence to serve time in the community, subject to supervision and conditions imposed by courts or probation officers.

Prosecutorial waiver
Provision that gives prosecutors the authority to decide whether the case will be taken to juvenile court or criminal court.

Protective custody
A form of isolation in which the inmate is separated from others for their own safety.

P-Scan: Research Version
Measure of psychopathy intended primarily for research purposes but now used by some mental health practitioners in their clinical practice.

Psychological autopsy
Primarily undertaken in an effort to make a reasonable determination of what may have been in the mind of the deceased person leading up to and at the time of death—particularly if the death appears to be a suicide.

Psychological profiling
The gathering of information on a known individual who poses a threat or is believed to be dangerous.

Psychology of crime and delinquency
The science of the behavioral and mental processes of the adult and juvenile offender.

Psychopath
An individual who demonstrates a distinct behavioral pattern that differs from the general population in its lack of sensitivity, empathy, compassion, and guilt. Often involved in antisocial—including criminal—activity. Distinguished from the sociopath in that psychopathy is believed to have a biological origin associated with an inordinate need for stimulation.

Psychopathy Checklist: Screening Version (PCL: SV)
A relatively quick measure of psychopathy.

Psychopathy Checklist: Youth Version (PCL-YV)
An instrument used for the measurement of psychopathic characteristics in young people.

Psychopathy Checklist–Revised (PCL-R)
Developed by Robert Hare, it is the best-known and most heavily researched instrument for the measurement of criminal psychopathy.

Psychosexual evaluations
Assessment of sex offenders not only to decide on a treatment plan, but also to gauge their likelihood of further offending.

Punitive damages
Awards in civil cases that are assessed to punish the defendant or respondent for the harm caused to the plaintiff. Compare with compensatory damages.

Questioned document examination or analysis
Examination of the validity of documents, such as wills or suicide notes.

Racial profiling

Illegal singling out of someone by law enforcement solely on the basis of their race or ethnicity.

Rape
A form of sexual assault characterized by force or threat of force that involves penetration. See also, statutory rape and sexual assault.

Rape by fraud
The act of having sexual relations with a supposedly consenting adult female under fraudulent conditions, such as when a physician or psychotherapist has sexual intercourse with a patient under the guise of effective treatment.

Rape myths
A variety of mistaken beliefs about the crime of rape and its victims held by many men and women.

Reactive violence (or expressive violence)
Refers to physical violence precipitated by a hostile and angry reaction to a perceived threat or dangerous situation.

Recidivism
A return to criminal activity (usually measured by arrest) after being convicted of a criminal offense.

Reconstructive psychological evaluation (RPE)
Reconstruction of the personality profile and cognitive features (especially intentions) after a person is deceased. Also called psychological autopsy.

Reconstructive theory of memory
Perspective that memory is continually vulnerable to revision.

Rehabilitation
Any attempt intended to bring about changes in behavioral or thought patterns.

Reid method
The predominant method used by law enforcement in the United States to interview and interrogate criminal suspects. See also, accusatorial method.

Relapse prevention (RP)
A method of treatment primarily designed to prevent a relapse of an undesired behavioral pattern. Often used in sexual offender treatment.

Repressed memory
State of being unaware that a traumatic event occurred. Many clinicians today prefer the term “dissociative amnesia.”

Repression
Refers to the psychological process of keeping something out of awareness because of the traumatic effect connected with it.

Respondent
Another term for defendant in a civil suit.

Restitution/compensation
Refers to the victim's right to receive restitution or compensation from the offender for the harm suffered.

Right to treatment
Statutory right that stipulates that incarcerated and institutionalized persons have a right to receive care and treatment suited to their needs.

Risk assessment
A systematic process of evaluating the likelihood that a person will engage in dangerous behavior, even though the person has not made a direct or implied threat.

Risk/needs/responsivity (RNR)
Principles identified by Andrews and Bonta, widely believed and documented to be associated with effective psychological treatment.

Rogers Criminal Responsibility Assessment Scales (R-CRAS)
Measures designed to assess criminal responsibility and detect malingering in cases where the defendant is considering raising or has raised an insanity defense.

Safe harbor legislation
Refers to laws that decriminalize sexually-exploited youth victims and provide rehabilitation and treatment.

Safe School Initiative (SSI)
A variety of federal programs designed to increase safety in schools; includes violence prevention as well as ways to deal with problems related to bullying and harassment.

School shootings
General term for school violence, including events involving guns and other weapons.

Scientific jury selection
Procedures used by social scientists consulting with lawyers in efforts to help lawyers select jurors who are most sympathetic to their side. May involve community attitude surveys or other methods to "predict" the ultimate decision of members of the jury pool.

Screening-in procedures
Intended to identify those attributes (almost invariably personality) that distinguish one candidate over another as being potentially a more effective police officer.

Screening-out procedures

Designed to eliminate those law enforcement applicants who demonstrate significant signs of psychopathology or emotional instability or who lack the basic ability or mental acuity to perform the job in a safe and responsible manner.

Self-regulation

The ability to control one's behavior in accordance with internal cognitive standards.

Sequential lineup

A live or photo lineup in which a witness views individuals in a series, requiring the witness to decide on whether to identify one individual before moving on to another. Compare with simultaneous lineup.

Serial murder

Incidents in which an individual (or individuals) kill a number of people (usually a minimum of three) over time.

Sextortion

The use of embarrassing sexual images to force victims to provide money or other favors.

Sexual assault

The broad term to cover a range of sexual offenses, not limited to rape; a term now preferred in many statutes and in research literature.

Sexual harassment

A form of discrimination evidenced by unwelcome sexual comments or behavior directed toward a person based on sex; creates a hostile working environment. See also, gender harassment.

Sexually motivated rapist

Characterized by the presence of protracted sexual or sadistic fantasies that strongly influence the assaults.

Sexually violent predator (SVP)

Term used for the sex offender who is believed to be a continuing danger to society. Under SVP statutes, such offenders can be civilly committed after the end of their prison sentences.

Shadow jury

Used by some trial consultants, these are individuals who match demographically and possibly in attitudes the members of an actual jury. Consultants note how the shadow jury is responding to the trial as it proceeds in order to suggest strategies to the lawyer who hired the consultant.

Shooter bias

Refers to an implicit racial bias among some law enforcement officers to shoot Black juveniles or adults.

Show-up

Identification procedure in which police present a single suspect to the eyewitness(es) to see if the person or persons will identify that individual as the perpetrator. Typically but not always followed by a lineup procedure, where the suspect appears with foils.

Simultaneous lineup

A live or photo lineup in which a witness views individuals all at once, such as standing in a row or in a photo array. Compare with sequential lineup.

Situational factors

Characteristics of the psychosocial environment, such as stress or aggression in others, that encourage or engender violent behavior.

Social cognition

Refers to how people process, store and apply social and interpersonal information about other people.

Socialization factors

Those processes through which a person learns patterns of thinking, behavior, and feeling from their early life experiences.

Sociopath

The individual with a history of serious and typically violent criminal activity. Should be distinguished from psychopath, who does not necessarily commit crimes, but who is distinguished by having an inordinate biological need for stimulation.

Specialized courts

Courts that deal only with particular matters. Family courts, drug courts, mental health courts, sexual trafficking courts, and domestic violence courts are all examples.

Specialty Guidelines for Forensic Psychology

APA and AP-LS Guidelines offered in a number of subject areas associated with research and clinical practice in forensic psychology. Most recent guidelines were published in 2013.

Spousal Assault Risk Assessment (SARA)

Evaluates an individual's risk of committing violence against a spouse or intimate partner.

Spree murder

Refers to the killing of three or more individuals *without* a cooling-off period, usually at two or three different locations.

Stable dynamic factors

Although they are changeable, these factors usually change slowly and may take months or even years to change.

Stalking

Conduct directed at a person that involves repeated physical proximity, nonconsensual or threats that are sufficient to cause fear in a reasonable person.

State-dependent memory

Refers to the research finding that the things we experience in one emotional or physiological state—such as happiness, fear, or even intoxication—are sometimes easier to recall when we are again in that same state.

Static risk factors

Aspects of a person's developmental history that place the person at risk for antisocial activity but that cannot be changed. Examples are parents with a history of criminal activity or the person's own early-onset of criminal offending. Also called historical factors.

Status offenses

A class of illegal behavior that only persons with certain characteristics or status can commit. Used almost exclusively to refer to the behavior of juveniles. Examples include running away from home, violating curfew, buying alcohol, or skipping school.

Statutory rape

Rape for which the age of the victim is the crucial distinction, with the premise that a victim below a certain age (usually 16) cannot validly consent to sexual intercourse with an adult.

Structured professional judgment (SPJ)

Relevant to risk assessment, it refers to a mental health practitioner assessing the likelihood of violence by using clinical judgment aided by guidelines. Some risk assessment instruments are developed based on the premise that SPJ has more validity than—or at least as much validity as—actuarial risk assessment.

Subject matter jurisdiction

The authority of courts over specific issues or legal matters. For example, a family court may have authority over divorce, custody, adoption, and delinquency matters.

Supermax prisons

High-security facilities (or units within a maximum-security prison) supposedly intended to hold the most troublesome, violent inmates, either in complete isolation or in two-person quarters.

Suspect-based profiling
: The process of collecting data on behavioral, personality, cognitive, and demographic data on previous offenders in an attempt to identify other offenders. Often used to detect drug trafficking and terrorism-related criminal activity.

System variables
: originally defined as variables in eyewitness identifications that influence the accuracy of eyewitness identifications over which justice system has (or can exert) control.

Task-related stress
: Stress related to the nature of the work itself. In a law enforcement context, for example, this includes the possibility of being killed in the line of duty.

Teaching-family model
: A model used particularly in group homes for delinquents or for children at risk. It includes adults playing the role of “parent,” encouraging youth to be socialized in a healthy family context.

Tender years doctrine
: A legal assumption, derived from the traditional belief that the mother is the parent ideally and inherently best suited to care for children of a “tender age.” The doctrine is no longer officially used in virtually all states, though in many the mother is presumptively given custody of the child.

Termination of parental rights
: The rare judicial determination that a parent or parents is/are not fit to care for children. Legal authority for the children is removed. Abandonment, serious substance abuse, and severe child abuse may be reasons.

Testamentary capacity
: The mental ability to make a will.

Threat assessment
: Concerned with predicting future violence or other undesirable actions targeted at specific individuals or institutions after an expressed threat has been communicated.

Tort
: Legal term for a civil wrong in which a plaintiff alleges some negligence on the part of the defendant or respondent.

Trial consultants
: Also called litigation consultants. Professionals, often but not necessarily psychologists, who assist lawyers in such tasks as selecting jurors, preparing witnesses to testify, and identifying effective strategies for the cross-examination (e.g., of children).

Triarchic psychopathy model

Represents the major three traits that some scholars argue best describe psychopathic individuals: (1) boldness; (2) meanness; (3) impulsiveness.

Truth default theory

A new theory that proposes humans are far better at detecting truthfulness than deceitfulness.

Ultimate issue

Final question that must be decided by the court. For example, should the expert provide an opinion about whether the defendant was indeed insane (and therefore not responsible) at the time of their crime?

Unconscious transference

Occurs when a person seen in one situation is confused with a person seen in another situation.

Uniform Crime Reports (UCR)

A program operated by the FBI, it is the government's main method of collecting national data on crimes reported to police and arrests. See also NIBRS and NCVS.

Victimless crimes

Crimes that are said to have no victim with the exception of the person who themself is committing them. Examples are gambling, drug offenses, and prostitution. Many criminologists argue that all crimes have victims.

Victimology

The psychological and criminological study of crime victimization, including but not limited to characteristics of victims, victims' rights, and victim assistance programs.

Vindictive rapist

Offender who uses the act of rape to harm, humiliate, and degrade their victims.

Violence

Use of physical force or destruction.

Violence Against Women Act

Federal law containing multiple provisions for preventing and responding to crimes perpetrated against women and girls, particularly in areas of domestic violence and sexual assault.

Visionary type

Serial killer driven by delusions or hallucinations that compel the person to kill a particular group of individuals.

Visitation risk assessments

Evaluations provided to family courts for help in deciding whether and how often children should be allowed to visit noncustodial parents or others.

Voir dire
: A process through which the judge and attorneys question the prospective jurors and possibly disqualify them from jury duty. In some jurisdictions, the questioning can be done only by lawyers.

Voluntary false confessions
: Confessions to crimes one did not commit, offered without coercion by others such as police or family members.

Waiver petition
: An official request to the court that a juvenile's case be transferred to criminal court, or transferred from criminal court to juvenile court.

Weapon focus (or Weapon effect)
: refers to the concentration of a victim's or witness's attention at a threatening object whole paying less attention to other details and events of a crime.

Working memory
: A cognitive process that keeps information in mind to be used later in creative or useful ways.

Workplace violence
: The aggressive actions, including deaths, that occur at the workplace, not necessarily caused by those who work within the organization.

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