



Thomas J. Gardner | Terry M. Anderson

# CRIMINAL LAW

TENTH EDITION

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# Criminal Law

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TENTH EDITION

# Criminal Law

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*Thomas J. Gardner, Terry M. Anderson*

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*Eileen Gardner*  
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Tom Gardner and Terry Anderson's next project is co-authoring a new edition of *Criminal Evidence*.

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# Preface

## ≡ Goals

The first edition of this text was published more than thirty years ago. Its goal was to introduce law enforcement personnel and others in the criminal justice field to the main principles of American criminal law. In the subsequent editions, including this, the tenth edition, we have tried to adhere to that goal and at the same time broaden the scope of the text while also keeping it current. As in past editions, we have attempted to include recent court opinions and legislative acts that illustrate the current status of those principles of American criminal law. We have also tried to include information we believe to be helpful to the study of criminal law, taken from governmental reports, empirical studies, and news accounts of current criminal cases and developments. We hope these additions and changes in the tenth edition serve to advance our goal for this text.

We make extensive use of court opinions, especially United States Supreme Court opinions, and case citations in the text. We use these opinions and case citations primarily to illustrate how the majority of courts interpreted and applied criminal statutes within their jurisdiction. We also identify and cite decisions on key points of criminal law so that teachers and students will have a sound basis for doing more extensive research into such points. It has always been our plan to create a text that would prove useful as both a classroom learning tool and a reference book for post-classroom use. We are gratified that users of our text have found that it met that plan in previous editions, and we hope they will conclude the same about this edition.

## ≡ Features

In this edition we continue to use more detailed case excerpts called Case Close-Ups to examine courts' analyses of difficult or emerging criminal law issues, sometimes including our observations about the possible effect of a court's decision on a particular issue. These case excerpts, of which there are fifteen spread throughout the text, generally include a more detailed factual statement, and a more complete discussion of the court's reasoning, than in the other case excerpts found in the text. In some of the cases, such as *James*

*v. United States* discussed in Chapter 7, we include positions taken by dissenting judges. In Chapter 12 we brought two cases together in one Case Close-Up to illustrate some common problems, the resolution of which might vary from state to state. In Chapter 9 we chose *Entertainment Software Assoc. v. Granholm*, a U.S. District Court case, because it seems likely the reasoning and result in that case represent what most federal courts would do with the issue presented.

Where possible, we chose U.S. Supreme Court cases for the Case Close-Up features. In subject areas where the Supreme Court does not ordinarily issue opinions, we chose opinions of the Federal Circuit courts or the highest state courts. Cases were usually selected because their topics were of current interest, but not necessarily because the opinion represents the majority view on the topic. *State v. Leyda*, a Washington State Supreme Court opinion discussed in Chapter 15, is an example of this. We hope these closer looks at important cases will add substance to our coverage of the issues framed in those cases.

We continue to make references to specific state and federal criminal statutes, as well as illustrations from the Model Penal Code. For example, in Chapter 5 we include excerpts from the Florida “Stand Your Ground” statute, which has been a model for similar legislation in twenty-one other states.

In this edition we have changed the titles of the “Questions and Problems” sections to “Case Analysis and Writing Exercises.” We have added new cases in each chapter, and each chapter has four exercises, most of which are new to this edition.

In this edition we also continue to use charts, boxes, and lists as supplements to text and case summaries. We intend the textual materials and case summaries to serve as the main exposition of criminal law principles, with the boxes and other tools helping to illustrate specific applications or examples of those principles.

## ≡ New to This Edition

### Reorganization

In addition to the features just discussed, we have made other changes and additions to this edition. Continuing the reorganization begun in the ninth edition, we have combined some chapters and shortened others. Chapter 1 in this edition includes material from Chapters 1 and 2 in the ninth edition. Chapter 9, a further reorganization of the ninth edition’s Chapter 10, has been changed to focus on the tension between free speech and “public” crimes, and as a result we changed the title of the chapter to reflect this change in emphasis. The property crimes presented in Chapters 13, 14, and 15 in the ninth edition have been reorganized and given new titles, in part to make possible a substantial expansion of white collar and cyber crimes. Part Five from the ninth edition, “Sex Crimes,” has been deleted. We have combined the two chapters from Part Five and placed them in the new Part Two in the tenth edition, “Crimes Against the Person.” Our goal with these changes is to keep the overall length of the text within established limits, without sacrificing content.

### New Content

In addition to the reorganization changes discussed above, in the tenth edition we have made many substantive additions as well.

- **Chapter 1, Criminal Law: Purposes, Scope, and Sources:** New material on the *ex post facto* clause; a new section on trial versus appellate courts; an update on status crimes, such as prosecution of homeless people; a box on presidential signing statements.
- **Chapter 2, Essential Elements of a Crime:** Additions to strict liability crimes, including those under federal criminal law; new section on general intent–specific intent distinction; expansion of the presumption section.
- **Chapter 3, Criminal Liability:** A new box on attempt and Internet chat rooms; a new box on attempt and *mens rea* for completed crimes; new material in the solicitation section.
- **Chapter 4, Criminal Responsibility and the Capacity to Commit a Crime:** We extensively edited the corporate liability section, added a new box on forced competency, and expanded the diminished capacity section.
- **Chapter 5, The Law Governing the Use of Force:** New material on imperfect self-defense; extensive discussion of the new “stand your ground” laws; the most recent Supreme Court case on use of force when making a lawful arrest.
- **Chapter 6, Other Criminal Defenses:** We updated and rewrote the double jeopardy section, added new examples to diplomatic immunity, added a new case on collateral estoppel, and added a new box on the Supreme Court’s decision on the exclusion of evidence on the defense that another person committed the crime.
- **Chapter 7, Criminal Punishment:** A new box on sentencing, jury trials, and the Sixth Amendment; an updated section on capital punishment; a new section on the kinds of sentences available to sentencing judges.
- **Chapter 8, Jurisdiction:** A new box on the Commerce Clause and federal power to make criminal laws based on interstate commerce; a new box on jurisdiction over military detainees.
- **Chapter 9, Free Speech, Street Crimes, and the Bill of Rights:** We have extensively reorganized and rewritten this chapter to emphasize specific crimes and constitutional limits on the government’s power to regulate the conduct made criminal. We deleted much of the noncriminal, First Amendment material from the ninth edition, as well as much of the Second Amendment material. We added new material on students’ free speech and cyber stalking and a new box on street crimes. We focused the right of privacy section on the abortion decisions, including the most recent Supreme Court decision on the federal ban of partial-birth abortions.
- **Chapter 10, Homicide:** We expanded the discussion and added new examples of statutes for first-degree–second-degree murder distinctions. We added new material on “provocative act” murder as compared to felony murder, and new cases on transferred intent, imperfect self-defense, and adequate provocation in manslaughter crimes. We also updated the discussion on the Oregon “death with dignity” law.
- **Chapter 11, Assault, Battery, and Other Crimes Against the Person:** A new box on simple assault under federal law; new cases on the movement requirement for kidnapping and prosecutions under the Violence Against Women Act.
- **Chapter 12, Sexual Assault, Rape, Prostitution, and Related Sex Crimes:** We integrated language from sexual assault statutes into the rape section, added new cases in the rape shield section, and updated the sexual predator and Megan’s Law sections. We also rewrote and updated the child pornography section.



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