

COURTS, CRIME, AND CORRECTIONAL POLICY

Chapter 9

The Politics of Justice

- Courts are “political” institutions because they attempt to resolve conflicts in society
- Some of the nation’s most important policy decisions have been determined by courts
- Common law
- Statutory law

Litigious America

- Steep rise in lawsuits and attorneys.
 - In 1960, there were 285,000 practicing attorneys; in 2011, there were 1.2 million attorneys.
 - There are around 15 million civil cases filed each year; the highest estimated median damage awards are medical malpractice (\$600,000) and product liability (\$350,000).

Tort Reform

- A **tort** is a civil wrong or injury case involving private parties. The role of the court is to provide a remedy in the form of damages.
- Reform Efforts
- Supporters/Opponents

Judicial Federalism

- The Supremacy Clause of the U.S. Constitution (Article VI)
- **Judicial federalism** refers to state courts' exercise of their authority to interpret their own state constitutions to guarantee protections of individual rights beyond those protected by the U.S. Constitution.

Judicial Federalism

- Nationalizing the Bill of Rights
- Extending Personal Liberties
- Judicial Policy Divergence
 - Activism vs. Restraint

TABLE 9-1 Incorporating the U.S. Constitution's Bill of Rights into the Fourteenth Amendment

Year	Issue	Amendment Involved	Court Case
1925	Freedom of speech	I	<i>Gitlow v. New York</i> , 268 U.S. 652.
1931	Freedom of the press	I	<i>Near v. Minnesota</i> , 283 U.S. 697
1932	Right to a lawyer in capital punishment cases	VI	<i>Powell v. Alabama</i> , 287 U.S. 45
1937	Freedom of assembly and right to petition	I	<i>De Jonge v. Oregon</i> , 299 U.S. 353
1940	Freedom of religion	I	<i>Cantwell v. Connecticut</i> , 310 U.S. 296
1947	Separation of church and state	I	<i>Everson v. Board of Education</i> , 330 U.S. 1
1948	Right to public trial	VI	<i>In re Oliver</i> , 333 U.S. 257
1949	No unreasonable searches and seizures	IV	<i>Wolf v. Colorado</i> , 338 U.S. 25
1961	Exclusionary rule	IV	<i>Mapp v. Ohio</i> , 367 U.S. 643
1962	No cruel and unusual punishment	VIII	<i>Robinson v. California</i> , 370 U.S. 660
1963	Right to a lawyer in all criminal felony cases	VI	<i>Gideon v. Wainwright</i> , 372 U.S. 335
1964	No compulsory self-incrimination	V	<i>Malloy v. Hogan</i> , 378 U.S. 335
1965	Right to privacy	I, III, IV, V, IX	<i>Griswold v. Connecticut</i> , 381 U.S. 363
1966	Right to an impartial jury	VI	<i>Parker v. Gladden</i> , 385 U.S. 363
1967	Right to speedy trial	VI	<i>Klopfer v. North Carolina</i> , 386 U.S. 213
1969	No double jeopardy	V	<i>Benton v. Maryland</i> , 395 U.S. 784

Origins of the Dual Court System

Dual System -> State and Federal Courts

The U. S. Constitution determines which cases are heard in federal or state court.

Each state has at least one U.S. district court.

Origins of the Dual Court System

Widespread agreement at the Constitutional Convention on the need for a national judiciary.

Scope of Powers was an issue

A single Supreme Court vs. a Supreme Court and lower federal courts

Original v appellate jurisdiction of Supreme Court

States rights advocates wanted state courts to have original jurisdiction

Types of Jurisdiction

Original Jurisdiction: Courts that hear cases for the first time. These courts decide on guilt or innocence or resolve civil disputes on the merits of the facts of the case.

Appellate Jurisdiction: Courts that hear cases on appeal from a lower court. These courts primarily determine whether a mistake was made at trial.

Differences between Federal and State Courts

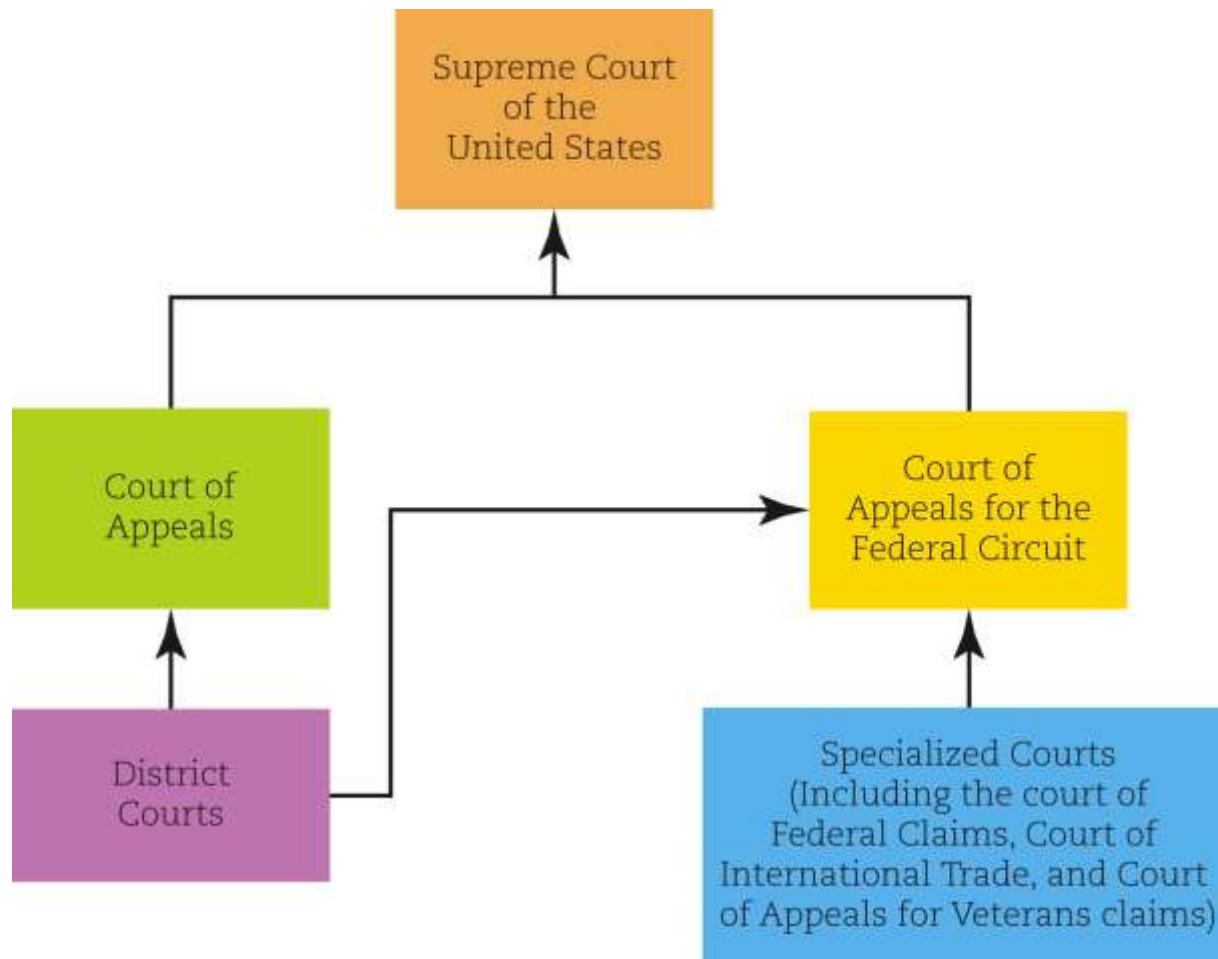
Article III, Section 2 of the U.S. Constitution specifies which types of court cases are heard in federal courts. These cases involve:

1. the U.S. Constitution;
2. laws of the United States;
3. foreign policy;
4. maritime jurisdiction;
5. a state and citizen of another state (modified by the Eleventh Amendment); and
6. litigants from different states are almost always tried in federal courts.

Modern Federal Court Structure

1. 94 district courts;
2. 12 regional courts of appeal and one Court of Appeals for the Federal Circuit; and
3. one U.S. Supreme Court.

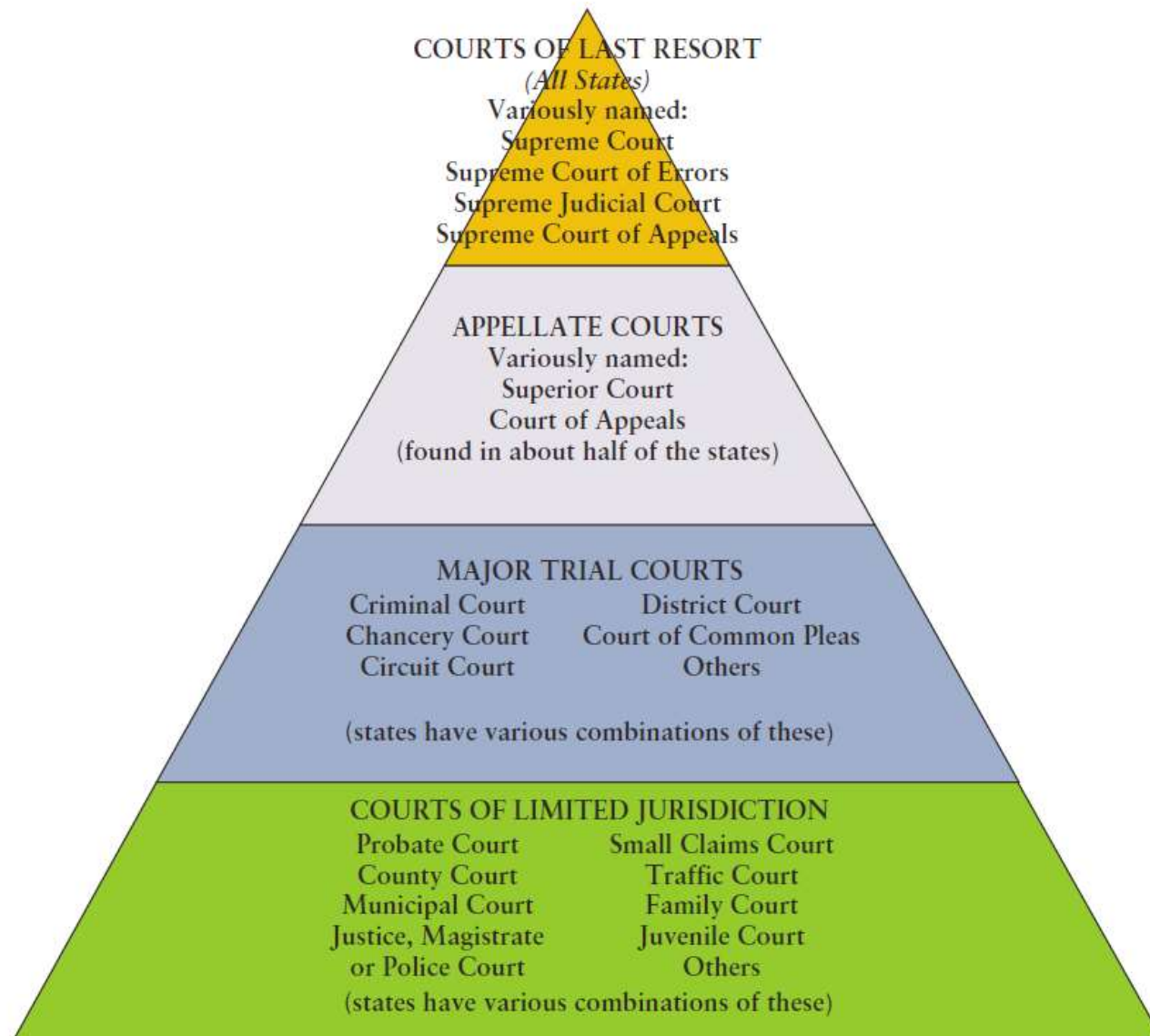
Most federal cases originate at the district court level.



Structure of the State Court System

- Minor Trial Courts
- Major Trial Courts
- Juries: Trial (Petit) Jury and Grand Jury
- Public Defender
- Appellate Courts: District Courts and State Supreme Courts
- Appeals to the U.S. Supreme Court

FIGURE 9-1 The Structure of State and Local Courts



STRUCTURE

The Federal Court System

- Article III of the Constitution invests the judicial power of the United States in the federal court system. Article III, Section 1 specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts.

- Congress has used this power to establish the 13 U.S. courts of appeals, the 94 U.S. district courts, the U.S. Court of Claims, and the U.S. Court of International Trade. U.S. bankruptcy courts handle bankruptcy cases. Magistrate judges handle some district court matters.

- Parties dissatisfied with a decision of a U.S. district court, the U.S. Court of Claims, and/or the U.S. Court of International Trade may appeal to a U.S. court of appeals.

- A party may ask the U.S. Supreme Court to review a decision of the U.S. Court of Appeals, but the Supreme Court usually is under no obligation to do so. The U.S. Supreme Court is the final arbiter of federal constitutional questions.

The State Court System

- The Constitution and laws of each state establish the state courts. A court of last resort, often known as a supreme court, is usually the highest court in a state. Some states also have an intermediate court of appeals. Below these appeals courts are the state trial courts. Some are referred to as circuit or district courts.

- States also usually have courts that handle specific legal matters, e.g., probate court (wills and estates); juvenile court; family court; etc.

- Parties dissatisfied with the decision of the trial court may take their cases to the intermediate court of appeals.

- Parties have the option to ask the highest state court to hear the case.

- Only certain state court cases are eligible for review by the U.S. Supreme Court.

The Making of a Judge

- Appointment
- Interim appointment
- Election
- Appointment-retention election plan
- Status
- Party affiliation
- Disciplining and removing judges
- The personal safety of judges

Pros and Cons of Judicial Elections

- Chemerinsky and Sample
 - \$\$\$
 - Voter knowledge
 - Reform
- Bonneau
 - Data about elections and the legitimacy of courts
 - Do other methods of judicial selection yield higher quality judges?

How States Select Judges

TABLE 9-2 Methods of Selecting State Court Justices and Judges

State Supreme Court (Appellate)

Election

Appointment

Combination

**Partisan
Election
(Run with
a Political
Party Label)**

**Nonpartisan
Election (Do
Not Run with
a Political
Party Label)**

**Selection by
Legislature**

**Governor
Appointment**

**Appointment-
Retention Election**

Alabama
Illinois
Louisiana
Texas
West Virginia

Arkansas
Georgia
Idaho
Kentucky
Minnesota
Mississippi
Montana
Nevada
North Carolina
North Dakota
Ohio^{*}
Oregon

South Carolina
Virginia

Connecticut^{**}
Delaware^{**}
Hawaii^{*}
Maine^{**}
Massachusetts^{**}
New Hampshire^{**}

Alaska
Arizona
California^{**}
Colorado
Florida
Indiana
Iowa
Kansas
Maryland^{**}
Missouri
Nebraska
New Mexico^{*}

(continued)

How States Select Judges Cont.

TABLE 9-2 (Continued)					
State Supreme Court (Appellate)					
Election		Appointment		Combination	
Partisan Election (Run with a Political Party Label)	Nonpartisan Election (Do Not Run with a Political Party Label)	Selection by Legislature	Governor Appointment	Appointment-Retention Election	
	Washington Wisconsin		New Jersey** New York** Rhode Island** Vermont**	Oklahoma Pennsylvania* South Dakota Tennessee Utah** Wyoming	
Major State Trial Court					
Election		Appointment		Combination	
Partisan Election (Run with a Political Party Label)	Nonpartisan Election (Do Not Run with a Political Party Label)	Selection by Legislature	Governor Appointment	Appointment-Retention Election	Method of Selection Varies within the State
Alabama Indiana Louisiana New York Tennessee Texas West Virginia	Arkansas California Florida Maryland Georgia Missouri Idaho Kentucky Michigan Minnesota Mississippi Montana Nevada North Carolina North Dakota Ohio* Oklahoma Oregon South Dakota Washington Wisconsin	South Carolina Virginia	Connecticut** Delaware** Hawaii** Maine** Massachusetts** New Hampshire** New Jersey** Rhode Island** Vermont**	Alaska Colorado Illinois* Iowa Nebraska New Mexico* Pennsylvania* Utah** Wyoming	Arizona Kansas

*These states have very unique and complex methods of selecting justices and judges. For specific information on the state, see: "Methods of Judicial Selection," http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=:

**The State Senate, State Legislature, or a separate committee must confirm the governor's appointee.

Money In Judicial Elections

TABLE 9-3 Money in Judicial Elections

Election Type	Total Number of Candidates	Total Raised	Number of Candidates Who Raised Money	Average Raised by Candidates Who Raised Money
Partisan	47	\$30,860,366	40	\$771,509
Nonpartisan	52	\$12,002,219	47	\$255,366
Retention	24	\$679,781	3	\$226,594
Total	123	\$43,542,366	90	\$483,804

Note: Data are for 2008.

Source: National Institute on Money in State Politics, “Diversity in State Judicial Campaigns, 2007–2008”; accessed at <http://followthemoney.org/press/PrintReportView.phtml?r=412>.

Judicial Decision Making

- Partisanship in state courts
- Activism vs. Restraint

Crime in the States

- Trends in crime rates: crime rates declining somewhat this decade; however, incarcerations have increased
- Variations among states
- Juvenile crime
- Hate crimes
- Crime victims

U.S. Crime Rates

TABLE 9-4 Crime Rates in the United States

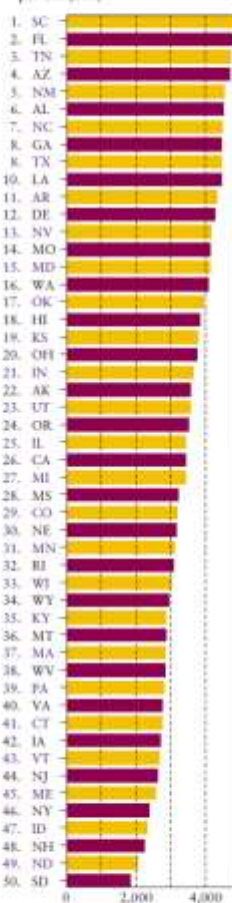
	Rate Offenses Reported to Police per 100,000 Population									
	1960	1970	1980	1985	1990	1995	2000	2003	2005	2009
Violent crimes	160	360	581	558.1	729.6	684.5	506.5	475.8	469.0	429.4
Murder	5	8	10	8	9.4	8.2	5.5	5.7	5.6	5.0
Forcible rape	9	18	36	36.8	41.1	37.1	32	32.1	31.8	28.7
Robbery	60	172	244	209.3	256.3	220.9	145	142.2	140.8	133.0
Aggravated assault	85	162	291	304	422.9	418.3	324	295.4	290.8	262.8
Property crimes	1716	3599	5319	4666.4	5073.1	4590.5	3618.3	3588.4	3431.5	3036.1

Source: Federal Bureau of Investigation, "Crime in the United States, Uniform Crime Reports 2009." http://www2.fbi.gov/ucr/cius2009/data/table_01.html.



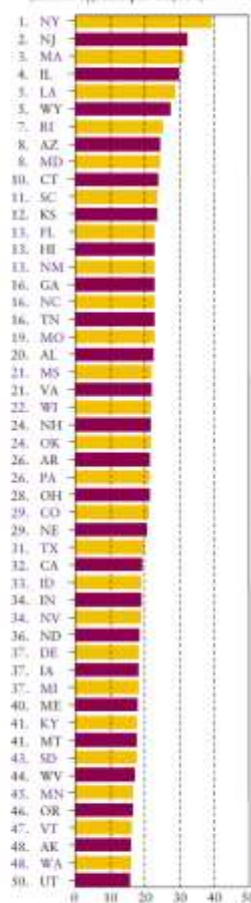
Crime Rate, Police Protection, Incarceration Rate

Crime Rate
(offenses known to the police
per 100,000)



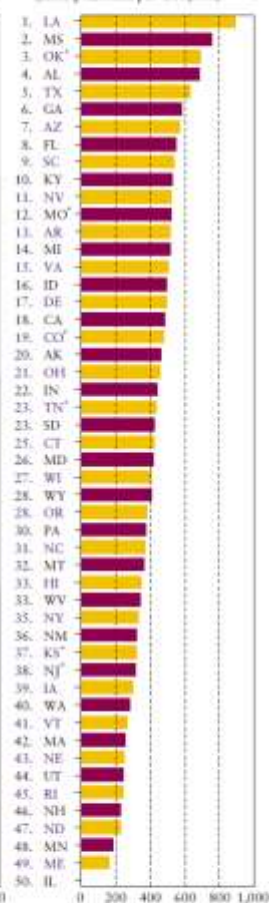
Note: Data are for 2008.
Source: Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports 2008. Available at http://www.fbi.gov/ucr/cius2008/data/table_05.html.

Police Protection
(sworn officers per 10,000)



Source: U.S. Census Bureau, Public Employment in 2007. Available at www.census.gov.

Incarceration Rate
(state prisoners per 100,000)



Note: Data are for 2007. No data provided for Illinois in 2007. *Includes an estimated 6,200 inmate sentences to more than one year, but held in local jails or houses of corrections.
Source: Public Agenda, "Incarceration Rate by State," 2010. Available at <http://www.publicagenda.org/charts/incarceration-rate-state>.

Law Enforcement Officers

- Nationally, there are 800,000 full-time sworn peace officers.
- 13,000 local police departments
- 3,067 county sheriff departments
- 50 state police departments
- 9% work for state
- 31% for counties
- 60% for municipal/local agencies

Police Protection in the States

- Police “Culture”
- Police and Crime Reduction
- Community Policing
- Police Crackdowns
- “Broken Windows”
- Citizen Action
- Police Efficiency

The Politics of Prosecution

- Prosecutor's Discretion
- The Role of Grand Juries
 - Grand juries follow the recommendations of prosecutors in over 98 percent of the cases presented to them.
- Plea Bargaining
 - In 90% of cases guilty pleas are before judge not jury

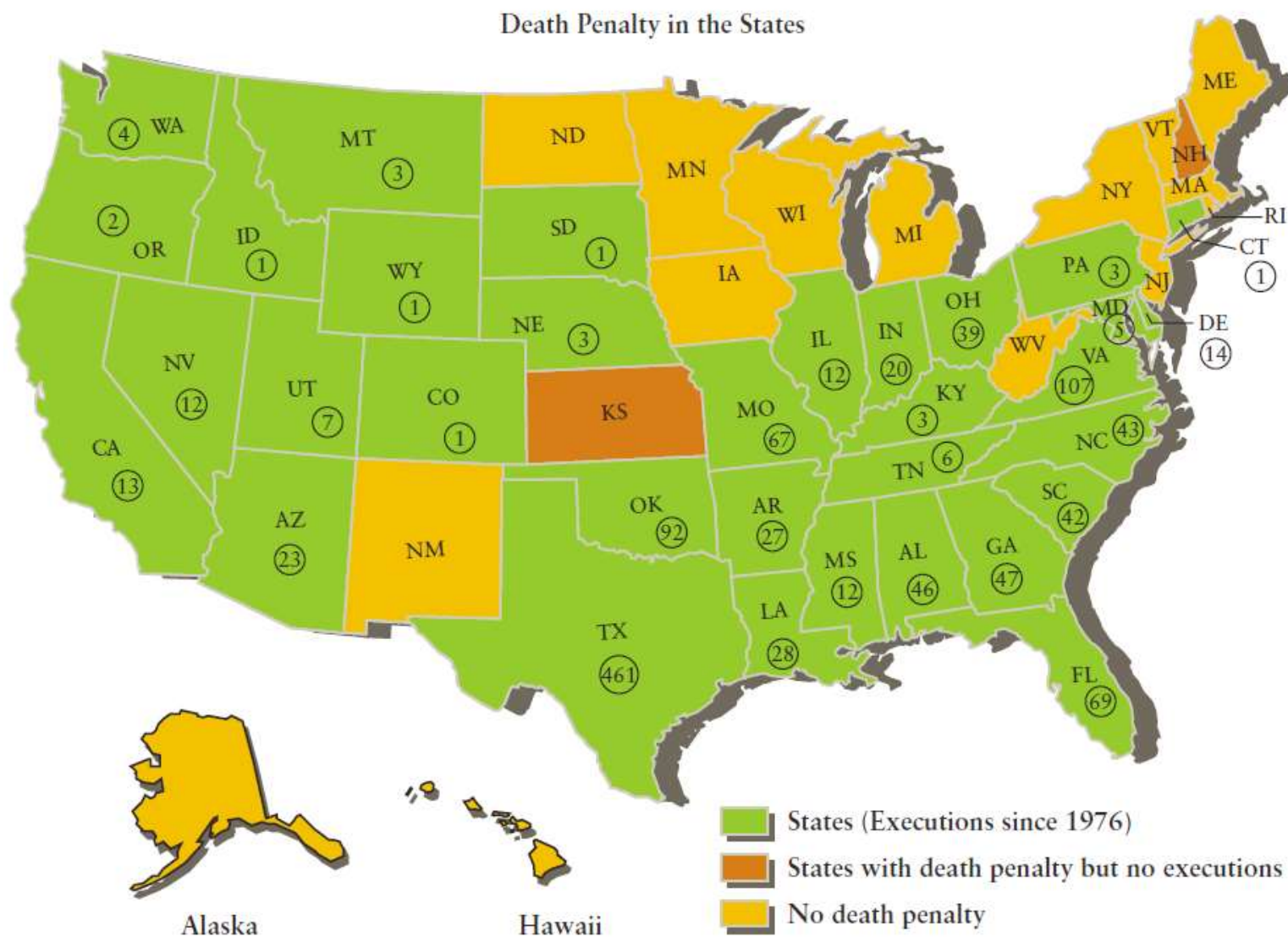
State Correctional Institutions and Policies

- Prisoners in the states
- Rehabilitation
- Sentencing
- Prison overcrowding
- Early release
- The 85 percent solution
- Building new prisons
- Three-strikes-and-you're-out laws
- Issues of probation and parole

The Death Penalty

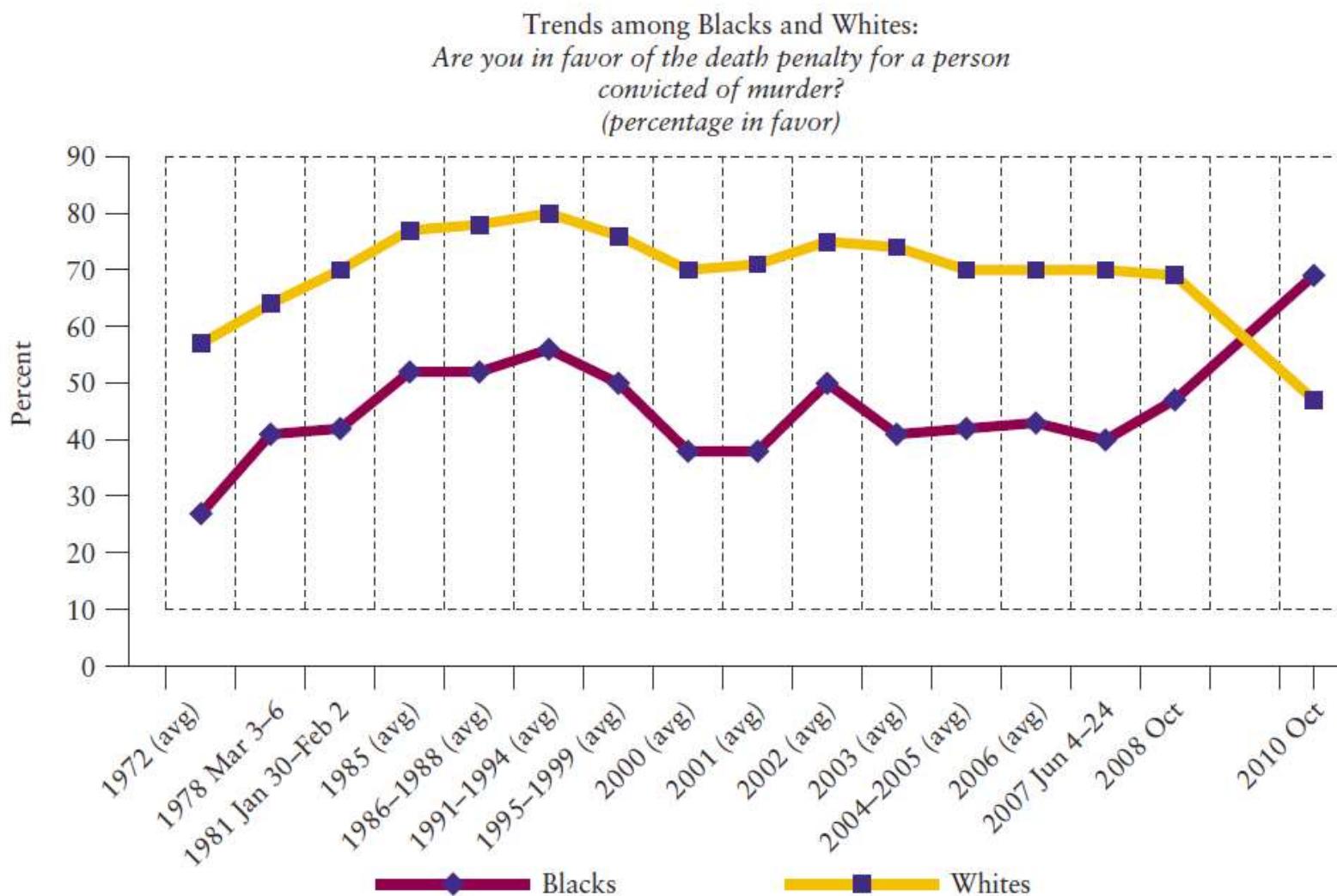
- *Furman v. Georgia* and unfair application
- The death penalty reinstated
- Juveniles and mentally challenged
- Few executions
- Who's on Death Row?
- Methods of executions
- Moratoriums, abandonments, and reinstatements

FIGURE 9-2 Death Penalty Laws in the States



Source: Death Penalty Information Center.

FIGURE 9-3 Racial Differences in Attitudes toward the Death Penalty



Source: Lydia Saad, "Racial Disagreement Over Death Penalty Has Varied Historically," Gallup News Service, July 30, 2007; updates provided by The Gallup Organization.