

United States Constitution

- Came into being on Sept. 17, 1787 at the Constitutional Convention in 1787 after several previous failed attempts to create a government. Officially became law in June of 1788.
- Was essentially a document that created overall federal power, while allowing states to also exist with their own form of government.
- Got away from a form of government where each state acted like its own separate country. Created overall federal power + unity. Articles I through VII establish and delineate federal powers.
- It also denoted what the government may not do; that is why it is called a Constitution—the document “constitutes” what the federal government has. Powers not included in the document are not granted to the government. They are “unconstitutional.”
- Bill of Rights: first 10 amendments to the constitution enacted in 1791. Among them:
 - 1st amendment guaranteeing free speech, freedom to exercise religion, freedom to be bound to an established religion, freedom of the press
 - 2nd amendment guaranteeing right to bear arms
 - 4th amendment protecting from unreasonable searches and seizures, requiring warrants issued on probable cause, etc.
 - 5th amendment guaranteeing indictment by grand jury for serious crimes, freedom from double jeopardy, right against self incrimination, due process at the federal level
 - 6th amendment guaranteeing right to a speedy trial, public trial, trial by jury; right to confront witnesses and to have counsel.
 - 8th amendment protecting against excessive bail, excessive fines, and cruel and unusual punishment.

Crimes: Federal v. state

- There are two criminal systems in the United States: federal criminal system and state criminal system for each individual state.
- Federal criminal law is limited to what powers the federal government possesses in the United States Constitution. State criminal law is much broader.

- Example: the U.S. Constitution allows the government to coin money and gives broad power to create whatever legislation is necessary to carry out its various powers. Thus, counterfeiting money is a federal crime. Same idea is true of mail fraud or other crimes involving the federal postal system, numerous other federal powers.
- More general, common crimes are addressed by each state. Murder, kidnapping, assaults, all sex crimes, etc.: state law.
 - Bank robberies – federal crimes. Store robberies – state crimes.
 - Moreover, each state has its own penalties.
- State of residence governs the law and procedure.
 - Live in Ohio, commit crime in Pennsylvania? Penn law applies, court proceeding in Penn
 - Live in Ohio, commit crime in both Ohio and Penn? Both Ohio and Penn can prosecute. Double jeopardy does not apply because different states, or sovereigns are prosecuting actions that occurred on their respective soil. The feds can also prosecute.
- State and federal crimes: Constitution allows government to regulate interstate commerce...used to make various drug offenses federal crimes. They are also state crimes; defendants could potentially be prosecuted at state level and federal level. Government corruption is another example.
- Drug laws lifted in some states. Colorado – recreational marijuana is now legal. Still a federal crime; can still be prosecuted by the feds.

Felony v. Misdemeanor

- Misdemeanors: less serious crimes.
 - Various driving infractions, various drug possession charges, various levels of less serious assaults, shoplifting, first couple OVI's & DUS's
 - Punishment up to 6 months in jail.
 - Judge generally makes determination of sentence, with input from prosecution and defendant. (Any mandatory misdemeanor sentences?)
- Felonies: more serious
 - Murder, various assaults & sexual assaults, various thefts, various drug offenses, etc.

- Punishment can be 6 months or more in prison
- Jail or prison?
- Judge generally has discretion on sentence, but some crimes have mandatory sentences.

Burdens of Proof

- Probable cause: burden of proof for a law enforcement officer to initiate a criminal investigation, search to be done, determination by grand jury of whether there is enough evidence against a defendant to bring a case against him or her to trial, etc.
 - Least stringent burden
 - Reasonable suspicion leads to reasonable belief
- Beyond a reasonable doubt: burden of proof for the prosecution in proving a crime.
 - Origin is not in the constitution, came from English law, like many other parts of the American legal system.
 - Most stringent burden, significantly higher burden than probable cause. If the defendant can give the court a reason to doubt his or her guilt, and that doubt is a reasonable doubt, prosecution has failed.
 - Example: Casey Anthony, accused of murdering toddler daughter. Prosecution's case was built on evidence that required many assumptions, theories drawn together. Defense presented enough contrary evidence showing that the prosecution couldn't actually say what really happened. Jurors could not say definitively that Casey Anthony murdered her daughter. Doubt created: Casey wasn't the murderer, it was someone else; wasn't even a murder, could've been possible accidental drowning, etc.
 - This burden lies solely on the prosecution. Defense does NOT have to prove the defendant innocent. Best defensive strategy: create reasonable doubt so that the prosecution cannot succeed in its burden.
- Other burdens: preponderance of evidence, clear and convincing evidence. Preponderance almost never plays a role in crim pro, clear and convincing sometimes does.
- Football field illustration:

- Probable cause: only have to kick the football to quarter field.
- Preponderance of evidence: kick the football to half field.
- Clear and convincing: kick the football to 3 quarters field.
- Beyond a reasonable doubt: must kick the football all the way to the end of the field.