

Criminal Justice: An Overview of the System

Module 3: Criminal Law

3.2: Substantive Criminal Law

Bill of Attainder: An unconstitutional type of legislative act that pronounces a person guilty of a crime.

Clear and Present Danger Test: A test developed by the SCOTUS to determine if a First Amendment right can constitutionally be curtailed.

Compelling State Interest: A test of constitutionality created by the SCOTUS that balances the interests of the government against the rights of the individual.

Concealed Carry Law: A set of statutory provisions in some states that allow licensed citizens to carry firearms on their person in a manner not obviously visible to the public.

Criminal Procedure: The body of law that dictates how criminal cases are processed by the criminal justice system.

Cruel and Unusual Punishment: Punishments that are inhumane or violate basic human dignity; prohibited by the Eighth Amendment.

Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Ex Post Facto Law: An unconstitutional type of statute that criminalizes an act after the act has occurred.

Fair Notice: The basic due process requirement that the government give the public notice as to what acts are criminal; closely related to the concept of void for vagueness.

Fighting Words: Speech that is calculated to cause a violent response from their target, which are not protected by the First Amendment.

First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Freedom of Assembly: The First Amendment right of people to gather together, so long as they gather peacefully.

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Freedom of Expression: The First Amendment right of people to express their ideas and opinions through any form of communication.

Freedom of Religion: The First Amendment right of people to practice any religion that they choose (or no religion at all).

Lawrence v. Texas (2003): A landmark SCOTUS decision that struck down a Texas sodomy law, effectively ruling criminal laws that prohibit homosexual sexual activity unconstitutional.

Right to Privacy: Although there is no explicit right to privacy in the text of the Bill of Rights, the Supreme Court has found an implicit right on several different occasions.

Roe v. Wade (1973): A landmark SCOTUS decision that effectively legalized abortion in the United States; the constitutional arguments hinged on the right to privacy.

Schenck v. United States (1919): A landmark SCOTUS decision in which the Court first articulated the clear and present danger test for judging the constitutionality of statutes that impinge on First Amendment rights.

Second Amendment: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Void for Vagueness: The doctrine by which appellate courts strike down laws that are not clear in what exactly they prohibit.