**4.2 The Judicial Branch**

**SSCG14: Demonstrate knowledge of the criminal justice process.**

**SSCG14a: Explain an individual’s due process rights (e.g., 4th, 5th, 6th, and 14th Amendments).**

Under **due process,** the government must act fairly and in accord with established rules in all that it does. Due process requires that both the ways in which the government acts and the laws under which it acts must be fair. There are two categories of due process: **procedural due process** is how (methods and procedures used) and **substantive due process** is what (the substance and the policies) of government action.

The **4th Amendment** protects American citizens from unreasonable searches and seizures and arbitrary arrests, and is the basis of laws regarding search warrants, wire taps, other methods of surveillance, and topics related to privacy. This amendment introduces the term probable cause; police cannot search or seize property without a warrant or reasonable grounds or suspicions of wrong doing.

The **5th Amendment** provides that the government cannot deprive any person of life, liberty, or property without due process. There are several clauses incorporated into the 5th Amendment. Overall, this amendment imposes restrictions on the government’s prosecution of persons accused of crimes including: due process law and the prohibition of double-jeopardy and self-incrimination.

The **6th Amendment** guarantees certain rights to criminal defendants: right to a speedy and public trial, the right to legal representation, the right to an impartial jury, the right to know who your accusers are, and the nature of the criminal charges brought against you. All of these elements represent the concept of due process.

The **14th Amendment** provides that state and local governments cannot deprive any person of life, liberty, or property without due process. The provisions in the Bill of Rights applied to the national government only; the 14th Amendment extends these rights to include actions by state and local governments and provides for ‘equal protection under the laws’ for all.

**SSCG14b: Categorize different types of crimes.**

Crimes can be categorized in many different ways. Some of the ways are in terms of their seriousness, who they are against, if they violate state or federal law, and even if the criminal action was completed or not.

First, there are different levels of seriousness of crimes. A **felony** is a more serious crime that carries a sentence of one year or greater in a state or federal prison. A **misdemeanor** is a less serious crime that usually carries a fine and a term of less than one year in jail, if at all.

**Personal crimes** are offenses against a person and are crimes that result in physical or mental harm to another person. Examples of personal crimes include **assault,** which isan intentional act that causes fear of harmful or offensive touching, even if contact does not occur. However, the act MUST be intentional. Another is **Battery,** theintentional physical contact or offensive touching where the victim has not given consent to be touched. Finally, **Homicide,** the killing of another human being. All of these crimes can either a felony or a misdemeanor depending on a person’s actions and intentions. For instance a Homicide that was planned and carried out with malice would certainly be a felony, whereas a Homicide that was the result of a person’s carelessness or unintentional error may only be a misdemeanor.

Another category is **Property crimes,** whichare offenses against property and involve an interference with another person’s property. A first type is **Larceny (theft),** which istaking and carrying away someone else’s property with the intent to permanent deprive that person of their property. For example, stealing another person’s vehicle. Another example of property crime is **Burglary,** thebreaking and entering into another person’s home with the intent to commit a felony once inside the home. Similarly, **Robbery** is theft by force; taking property from another person through the use of force, intimidation, or the threat of force. For example, an individual holding up the cashier in a convenience store demanding money from the cash register. The willful and malicious burning of a property or structure, such as the intentional forest fires set in the Great Smoky Mountains in late 2016 is call **Arson.** Finally, like is the Tom Hanks movie, “Catch me if you can,” the creation, altering, forging, or imitating of any document with the intent to defraud another person is called **Forgery**.

**Statutory crimes** are violations of specific state or federal statutes and can involve personal or property offenses, such as drunk driving (DUI) or selling alcohol to a minor. While **Inchoate crimes** are crimes that were begun but not completed. Some examples of this type is Solicitation which is when someone asks, requires, hires, or commands someone else to do a crime. Neither party has to complete the crime; the crime occurs at the point of solicitation. Another example is Conspiracy which is a category of crimes when several individuals come together to engage in criminal behavior such hiring a hit-man

**SSCG14c: Analyze the procedures in the criminal justice process.**

The criminal justice system varies from state to state and from the state to federal level; however, the criminal justice process generally includes the following stages:

* **Investigation** – Police investigate a crime to gather evidence to identify a suspect and support an arrest.
* **Arrest –** An arrest is when police take a suspect into custody until he or she can be brought before the court. There must be probable cause for a suspect to be arrested.
* **Indictment –** An indictment is a formal charge brought by a grand jury or filed by a prosecutor. An indictment is required for capital offenses. The grand jury only hears evidence presented by the prosecutor. The grand jury determines whether there is sufficient evidence to formally charge the defendant.
* **Arraignment –** A judge conducts arraignments; this occurs before trial. The defendant makes his or her plea. The most common pleas are guilty or not guilty.
* **Bail –** Depending on the crime the defendant is charged with, a judge has the option of granting bail. Bail is money or property that a defendant puts forth as security to make sure they will show up for further criminal proceedings such as trial and sentencing. If the crime is serious or if the judge believes that the defendant may flee out of the court’s jurisdiction, bail may be denied or set so high that it would be impossible to post bail.
* **Plea bargain –** Plea bargains usually involve the defendant pleading guilty to a lesser charge, fewer charges than originally charged with in an indictment, or a reduced statement. Plea bargaining helps both the prosecution and defense avoid a potentially long, expensive trial.
* **Trial –** A trial is held before a judge or a jury. The defendant has the choice whether he or she wants a trial by a jury of peers or before a judge alone, called a bench trial. Evidence is presented by both the prosecution and the defense.
* **Verdict –** The verdict is a decision of guilt or innocence. If a defendant is found guilty, it must be ‘beyond a reasonable doubt’, meaning that the judge or jury is 100% certain that the evidence supports a verdict of guilty. If there are multiple charges, the judge or jury may find the defendant guilty on all or some of the charges or may find the defendant guilty of a lesser charge.
* **Sentencing -** The sentencing is determined by the judge. Possible sentences include: a fine, community service, probation, or a period of incarceration in a jail or prison, or a combination of the above.
* **Appeal –** A defendant found guilty of charges has the right to appeal the verdict to an appellate court. The defendant files an appeal in the hopes that he or she will have the verdict reversed or be granted a new trial.

**SSCG14d: Examine the different types of sentences a convicted person can receive.**

**Sentences** are punishments for convicted defendants. The following are the most common types of sentences:

* **Death penalty/capital punishment –** this is the most serious sentence and is reserved for the most heinous crimes, such as murder. Each state decides whether or not the death penalty is a sentencing option for defendants in their state. The most common methods used to carry out the death penalty include lethal injection and the electric chair.
* **Incarceration** is when a defendant is sent to a jail or prison. A **jail** is a short-term lockup center usually run by counties and operated by sheriff’s departments. Inmates housed in jails include defendants awaiting trial and defendants convicted of misdemeanors. **Prisons** are long-term facilities operated by state and federal governments. Most prison inmates are convicted felons serving longer than one year in prison.
* **Probation** is the most frequently used criminal sanction and is served in lieu of incarceration. Probationers are required to adhere to strict conditions, such as regularly reporting to a probation officer, obeying all laws, and staying away from drugs. If a probationer violates any of the conditions of his or her probation, the judge may revoke the probation and send the defendant to jail or prison.
* **Boot camps** are typically reserved for first-time offenders or teenagers. The offenders live in military type barracks and undergo rigorous physical and behavioral training for three to nine months. Offenders who successfully complete boot camp avoid incarceration.
* **Fines** are common for first-time offenders of less serious crimes, such as shoplifting, DUI, or a minor drug possession.
* **Community service** is a way to pay the community back through doing work that benefits the public, such as picking up trash and washing away graffiti.

**SSCG14e: Contrast the procedures related to civil suits with criminal proceedings.**

**Civil** cases do not involve a crime. Civil cases are generally brought by private individuals or corporations seeking to collect money owed or monetary damages. Civil cases also include divorce or issues related to child custody. A civil case begins when a person or entity, called the **plaintiff**, claims that another person or entity has failed to carry out a legal duty owed to the plaintiff. Both parties are referred to as ‘litigants’. The plaintiff may ask the court to order the defendant to carry out certain duties or make compensation. The plaintiff does not have to prove beyond a reasonable doubt, as is required in a criminal case.

**Criminal** cases are brought by a local, state, or federal government and involve violation of a law. In a criminal case, the victim does not bring the case against the defendant. The state or federal government serves as the plaintiff. The plaintiff seeks jail time, fines, or both for a defendant.

**SSCG7: Demonstrate knowledge of civil liberties and civil rights.**

**SSCG7a: Define civil liberties as protections against government actions (e.g., First Amendment).**

**Civil liberties** are the protections against government. Civil liberties guarantee the protection of persons and property from the arbitrary acts of government. Examples of civil liberties include: freedom of religion, freedom of speech, freedom of the press, and the guarantee of a fair trial. The **First Amendment** guarantees the freedom of religion, speech, and the press. “Congress shall make no law respecting an establishment of religion or prohibiting the exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances”. The **Bill of Rights** includes the first ten amendments. The first ten amendments were added to the Constitution less than three years after it became effective. The anti-Federalists would not ratify the Constitution without the guarantee of the Bill of Rights being added; the first ten amendments protect the basic rights held by Americans. Thomas Jefferson led the effort to add the Bill of Rights to the Constitution as a requirement for the support of the anti-Federalists.

**SSCG7b: Define civil rights as equal protections for all people (e.g., Civil Rights Act, *Brown v. Board of Education 1954,* etc.).**

**Civil rights** are those positive acts of government that seek to make constitutional guarantees a reality for all people. Examples include prohibitions of discrimination on the basis of race, sex, ethnicity, religion, and sexual orientation.

The **Civil Rights Act of 1964** was a landmark piece of legislation in American history. In addition to voting rights provisions for ALL Americans, the act outlawed discrimination in a number of areas: no persons may be denied access or refused services in various public school accommodations because of race, color, religion, or national origin; the act prohibited discrimination against any person on the grounds of race, color, religion, national origin, sex, or physical disability in any program that receives federal funding; forbids employers and labor unions to discriminate against any person on grounds of race, color, religion, sex, physical disability, or age in job-related matters.

***Brown v. Board of Education 1954*** was a Supreme Court case that made a decision on the subject of separate but equal. The Court reversed *Plessy v. Ferguson*, which had allowed for separate but equal, and struck down laws in four states that required or allowed separate but equal educational facilities for white and African American students. The Supreme Court held that separate but equal was unconstitutional.

**SSCG7c: Analyze due process of law as expressed in the 5th and 14th amendments, as understood through the process of incorporation.**

The concept of **Due process of law** states that the government must act fairly and in accord with established rules and laws in all that it does. One of the first places that this concept is found is in the 5th Amendment. The **5th amendment** guarantees certain protections relevant to criminal and civil legal proceedings, guarantees the right to a grand jury in criminal cases, protects against self-incrimination, forbids double jeopardy, requires that due process of law be a part of any proceeding that denies a citizen ‘life, liberty, or property’, and requires that the government compensate citizens when it takes private property for public use. A **grand jury** is a formal device by which a person can be accused of a serious crime. In federal cases, a grand jury consists of 16 to 23 persons drawn from the federal court district that it serves. At least 12 of the grand jury members must vote to formally charge an individual for a serious crime. It is NOT a trial. **Self-incrimination** means that in a criminal case, the burden of proof is on the prosecution. The defendant does not have to testify, or be a witness, against himself or herself. In crime drama on TV, you have probably heard the phrase “pleading the fifth.” This protection against self-incrimination is where is comes from. Likewise, **Double Jeopardy** is part of the 5th amendment which says that once a person has been charged for a crime, he or she cannot be tried again for the same crime. For example, if an individual is found innocent for a crime of murder, and later advancements in DNA technology actually prove that the person who was acquitted is actually guilty, that person cannot be tried again for that same crime.

In respect to the 14th amendment, the government must treat ALL citizens fairly and apply equal protection under the laws to ALL citizens. The **14th amendment** addresses many aspects of citizenship and the rights of citizens. The most commonly used phrase in the amendment is ‘equal protection of the laws’. This equal protection is accomplished by the process of incorporation. **Process of incorporation** refers to the combination or merger of most of the guarantees in the Bill of Rights into the 14th amendment and their application to the states. In the past, it was believed that the Bill of Rights only protected you from Federal law and not state law. However, through incorporation in the 14th amendment those protections were extended to include state laws as well.