**Chapter 08 The LGBT Community and the Criminal Justice System**

**Summary**

There can be little doubt that the debate over homosexuality and same-sex marriage in this country remains controversial. While public opinion polls in past years showed a general tolerance for gay lifestyles, more recently Americans have been found to be less willing to grant homosexuals equal rights. It may appear that the United States is less homophobic than in the past, as evidenced by the public opinion polls, but the fact that about half of the respondents do not approve of them, their lifestyle, or of gay marriage suggests that the discussion is far from over. Evidence of the intolerance of homosexuals is seen throughout American history, and it was only in the 1960s, with the famous Stonewall incident, that the gay community began to assert themselves and organize politically in an effort to change people’s understanding of their lifestyle. Despite the apparent progress, homosexuals remain a stigmatized and victimized group. Hate crime legislation, which was enacted in 1990 to provide additional protection against offenders motivated by a racial, religious, or sexual orientation bias, made it a federal crime to victimize homosexuals. Despite the small number of crimes, the symbolic importance of hate crime legislation is an important illustration of the position of gays in America.

The homosexual community has also experienced discrimination and other problems when they have entered certain professions such as law enforcement. Like the society as a whole, while it appears progress is being made in terms of equal treatment, gay police officers still encounter problems in their profession. Similarly, when homosexuals find themselves in court, either as defendants, victims, or witnesses, a number of unique challenges are presented. Juror bias in particular is perhaps the greatest problem in the courts in the administration of justice for gays.

Finally, homosexual behavior in prison has been a long standing problem. Prison rape as well as consensual sex have created numerous problems for prison officials, particularly as it relates to sexually transmitted diseases such as HIV/AIDS. Additionally, the changing nature of prison life for women, with a greater emphasis on punishment rather than rehabilitation, has also affected the nature of social interaction. The nature of homosexual relationships in women prisons historically took on the characteristics of pseudo-families, with less violence and more cooperative roles. As the philosophy of punishment shifted to a model in prison with an emphasis on punishment, the prevalence of pseudo-families appears to have decreased. Female inmates now resemble their male counterparts in terms of their relationships to other inmates.