

LEGAL STUDIES: *CRIME*

Assess the role of discretion in achieving justice within the criminal justice system.

Discretion plays an important role in the criminal justice system as it allows for all three areas of the process to exercise their ability to make decisions regarding suspects or offenders. Although discretion generally brings offenders to justice, there are also many instances where discretion has been over-used and subsequently quashed by appeal courts, who also exercise discretion.

The police exercise their discretion by choosing to investigate or bring a crime to justice. This is an important aspect of the investigative process, as it allows for police to balance their resources to optimum efficiency. Police may use situational crime prevention techniques including placing a larger police presence in an area with a high crime rate. For instance, the Sydney town of Redfern has a much higher police presence than Vaucluse, proportional to its crime rate. Police also have the power not to investigate crime that has been reported if they feel it is insignificant, however this can leave victims of crimes that are not investigated with significantly diminished faith in the legal system. The Law Enforcement (Powers and Responsibilities) Act 2002 provides police with the ability to use warnings or cautions on suspects, rather than forcing them to become involved in the system. If an officer gives a warning, it is recorded, but it does not go on the offender's record; a caution does. These different options provide police with the discretion to be able to balance resource efficiency and keep people who they believe to be good citizens out of the system. Discretion is therefore a highly important part of the criminal justice process.

Juries and magistrates have significant power over deciding the defendant's guilt, or allowing for a defence to be used. Magistrates decide both questions of law and fact in the local court, whilst juries decide only fact in the district and supreme courts. In recent years, there have been many cases reopened from DNA evidence, such as the case of R v Jama, resulting in the courts finding that the jury wrongly convicted the accused - an abuse of discretion. In R v Jama, DNA evidence supposedly convicting Jama of aggravated sexual assault was actually contaminated. Many sources have said the jury's use of discretion was based on prejudice. Although juries can sometimes abuse their power of discretion, it is a rarity and for the vast majority of other situations, discretion is effectively used in the criminal justice system to achieve justice.

Discretion plays the largest role in the sentencing process. It is up to the judge to decide what sentence to give the offender. The Crimes (Sentencing Procedure) Act 1999 lists many types of sentencing including s9 bond with record, s10 bond without record, s5 imprisonment (a last resort), community service and various diversionary programs. The notorious case of R v Skaf is an example of how discretion is frequently over- or under-exercised in sentencing, thus highlighting that decisions made under discretion are impossible to keep equal. The Skaf brothers and other friends gang-raped a 16 year old girl in 2000, a crime which infuriated the city. Bilal Skaf, the principal in the first degree, made legal history with a prison sentence of 55 years. Skaf appealed this in 2004 to the Court of Criminal Appeal and the court reduced the sentence to 28 years as it felt the first judge abused his discretion. The prosecution then appealed this decision on the grounds that it was too lenient and was re-sentenced in 2006 to 38 years. Inversely, the case of R v Rippard demonstrated a judge using discretion to make an appropriate sentence that left both the offender and most of the victim's family satisfied. Mr Rippard was drink driving and texting when he killed a cyclist. He showed great remorse and guilt for his actions, cooperated with authorities and was rewarded with a significantly reduced sentence of 3 years, four months.

Discretion plays a highly important role in the criminal justice system as it allows for all three areas of the process to exercise their power to make decisions regarding suspects or offenders. Although discretion usually brings offenders to justice, there are many problems which are difficult to address.