

Police discretion is
essential part of
policing



**ASSIGN
BUSTER**

Police discretion is a constant consideration within Police services. It is seen by many to be both an essential part of policing as well as a constant source of issues. Issues such as the potential for racism, sexism and socialism are ever-present in everyday policing. This essay will look at both the over policing of some areas of the law, such as public order offences and the under policing of other areas, such as domestic violence matters. It will look at why these issues are present and what has been implemented to try and tackle the problem.

The ability for Police to use discretion has a lot of positive aspects. According to Reiner (2000 as cited in Rowe, 2007), the lack of resources in some situations mean that not every infringement on the law will be enforced and that even if the relevant law was precise there would still be variations in the interpretation. This makes discretion an important and inevitable part of modern policing.

Discretion also gives police the ability to take alternative action with some minor matters such as public disorder offences. When circumstances surrounding offences are taken into account, discretion can and should be considered in many of these cases.

To explain some of the issues surrounding public order offences let's consider this scenario. A young male is in town with some friends. He has recently come "of age" and is quite intoxicated by alcohol. As often happens with young males, the alcohol causes him to lose inhibition and he gets a bit noisy, possibly a bit aggressive and is bringing attention to himself with both other members of the public as well as Police. He is seen by Police and taken

aside. He is cooperative with the officers and subsequent checks revealed that the young man has not come to police attention before but is far too intoxicated to remain in the current situation.

At this point the officer has two options, Either arrest him and make him sleep it off in the cells, possibly leaving him with a criminal record, or they could put him in a taxi and get him home, leaving him with nothing more than a hangover and a bit of a wake up call for his behaviour.

Either one of these options is going to achieve the same basic result, getting the young man out of the current situation and therefore keeping disorder to a minimum.

Research has suggested that Police are more likely to use discretion a lot less often in situations like these. According to Edwards (1998), Police officers have greater freedom with public offences in that they are often the witnesses and sole evidence suppliers. This means that, while others who are drinking alcohol in town may not be offended or simply don't care about the young man's behaviour or they don't see the behaviour of an individual as disorderly, a police officer may see otherwise. The subjective view of the officer will come into play and the "offender" will likely be arrested.

From this example, the use of the officer's discretion is probably the best course of action as the likely outcome from a court hearing will be Police diversion, in which the charge will be withdrawn as a "second chance". However, on the other side of the argument is that, there are likely to be many onlookers and they are all interested to see the outcome. If police decide to use discretion, that this may be seen to be the soft option and

<https://assignbuster.com/police-discretion-is-essential-part-of-policing/>

therefore undermining the authority of the police. This may lead to others thinking they can “ get away” with disorderly behaviour and the Police in the area may lose control.

However, if the situation is such that the young man, in his youthful exuberance, is uncooperative with police, this opens up a new issue which is commonly referred to the “ attitude test”, whereby a bad attitude will see the use of discretion a more and more remote possibility. It is widely reported that there is a higher rate of arrest where the disdain and aggression has been directed at police and caused the arrest to occur for other reasons than the greater public good. Therein lays one of the fundamental flaws with police discretion. It gives an individual officer the ability to let personal beliefs and objectives control their willingness to give discretion. Reiner (2000 as cited in CRIM215 course notes, Module 3, pg 50) has found that the group most likely to be “ targeted” by the police are young, black and of a poorer socio-economic background. Coupled with this is the statistics that Maori have a larger youth population and are therefore more likely to be seen in public. Over 34 percent of Maori were under 15 years old in 1997, which is approximately twice that of the European population (New Zealand Statistics, 1997 as cited in CRIM215 course notes, 2010, Module 3).

According to his research, Borrero (2001 as cited in CRIM215 course notes, 2010, Module 3) suggests that young people are more likely to have adverse feelings about the police. This may be due to the perception that youth are more likely to commit offences. According to a study by White and Perrone (1997), of 383 young people, nearly all of them had been stopped by the

<https://assignbuster.com/police-discretion-is-essential-part-of-policing/>

police while in public and half of them were taken to the police station for some reason. That is a high percentage of contact and is perhaps anecdotal evidence that the perception of youth offending is present in policing.

With the high level of police interaction with young people, it is interesting to note the types of crime recorded by police for this group. Maxwell and Morris (1999 as cited in CRIM215 course notes, 2010, Module 3) found that only 10 percent of crimes committed by youth related to violence and three quarters related to dishonesty and property damage. This study is now over ten years old but its findings are still relevant in today's youth, many youths will see disorder and property damage as more of a laugh and violence is not a desired trait or fun thing to do.

Family violence situations often fall prey to relaxed decision making with regard to using discretion. Often times when police were called to such an incident it was commonly thought to be someone else's responsibility and not "real" police work. Historically and according to White and Perrone (1997), Domestic violence was considered to be a hands off area when police were involved. It was considered to be a private matter and best dealt with by the family. This attitude is, for the most part, waning as a result of improved legislation and police attitude towards domestic violence as well as the increasing advertisements denouncing domestic violence. Most domestic violence callouts are a result of the victim or a witness calling police instead of Police actively seeking and patrolling. This is the reason that this type of crime generally goes under policed as opposed to more commonly found crimes such as street disorder and traffic related matters. Edwards (1989) also says that Police will often not make an arrest in a Domestic violence

<https://assignbuster.com/police-discretion-is-essential-part-of-policing/>

matter regardless of the facts that it may be warranted and prudent in the situation. To present a comparison to this point, it would be more likely that if two people are fighting in a public area, and are found by Police or it is reported by onlookers, and then it is more likely that they will be arrested than if they were fighting behind closed doors so to speak.

Other research suggests that Police often refer to their own beliefs and judgments of the situation to make decisions of discretion instead of relying solely on the facts and evidence at hand. Edwards (1989) this means that that officers individual perception of the problem will influence the decision made. The issue with this is that, a crime may go unpunished purely because the officer might believe that he she provoked the other and that if the offenders attitude towards the officer is favourable, then discretion is appropriate. Likewise, personally beliefs about race and socio-economic status are used as markers for a result. Edwards (1989). Edwards (1989) goes on to say that Police may be less inclined to offer adequate assistance to women who are black or women from poorer backgrounds as well as those who offer some resistance to the attending Police. For example often family violence situations carry a high level of stress and aggression and the woman who has just been violently assaulted may direct some of her anger and perhaps for lack of a better word helplessness of the situation at attending Police. Edwards (1989).

Evidence from New Zealand research shows this trend for Police to downplay the violence within domestic matters. Cross and Newbold (2010, as cited in CRIM215 course notes, 2010, Module 3), found that of the calls that violence and assaults occurred, only 20% of these matters resulted in an arrest.

<https://assignbuster.com/police-discretion-is-essential-part-of-policing/>

Further to this, when the victim received some tangible form of injury, still only 44% of these cases resulted on an arrest. What is interesting about these statistics is that in 1990 New Zealand Police introduced a policy whereby if an offence was disclosed and evidence exists to support that charge, then the offender must be arrested and brought before the courts. This directive was put in place due to the negative impact it was having on the Police service when officers were overusing their discretionary powers. CRIM215 course notes, (2010) . The system however still allows for Officers to reach an interim conclusion for all parties as often the victim does not want any action taken for fear of retribution from the offender, remember that this type of violence more often than not involves husband and wife and defacto partner relationships and children are often present. On some occasions the decision not to arrest at the time or to gloss over the assaultive nature of some events simply because it may be more productive to allow outside agencies to help guide the victim to seek help such as Protection orders, family counselling and anger management among other options. It is also important to note that some victims have already had, in some cases, extensive dealings with police. They may have a dislike for the police and be uncooperative with Police but they may be more likely to respond to help offered by the other agencies, such as Woman's refuge and victim support. As Walklate (2001) points out, by arresting a person, this must prove to be a deterrent and if there is a fear of retribution against the victim, then the arrest will only serve to get the person away for a short time and may in fact make a peaceful resolution more difficult. In CRIM215 course notes, (2010, pg 13) three disadvantages to the mandatory arrest policy are listed. One of those relates to the above mentioned retaliation of the

offender. Another provides a scenario that Police encounter in many cases. The victim does not always want the offender arrested, they simply want the violence to stop. It also must be noted that when the victim does not want any action and in some cases wasn't even aware that the police had been called. This puts the officers in a difficult situation if for instance the victim is injured and it is clear that it was a result of an assault, that without the early assistance of the victim, a successful prosecution is extremely unlikely. These situations are where other outside supporting agencies may be able to obtain a better result for the victim.

What this essay shows is that while police discretion can be overused in some instances there are and will continue to be evolving thoughts on the effectiveness of the police discretion system. It also shows that for Police discretion to work effectively, policy must continue to be updated so that the personal beliefs of individual police officers cannot become the driving force behind their decision making, instead ensuring that common sense is the only non-mandated thought process that enters into decision making.