

# Why is discretion important in the criminal process

Law



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Why is Discretion Important in the Criminal Process? Why is Discretion Important in the Criminal Process? Discretion may be defined as the freedom and ability to recognize, differentiate and make a decision about what is wrong or right (Israel & Wayne, 1993). It is, therefore, a judgment that requires foresight and the application of values and principles to facts available to a decision maker. The judgment may be arrived at by considering opposing versions of the facts and predicting how another party may have judged. In the criminal process, discretion is practiced by magistrates, judges, public officials, prosecutors, police officers as well as the defendants (Israel & Wayne, 1993). This paper will discuss the importance of discretion in the criminal process.

Discretion plays a key role in the criminal process starting from the reporting of crime. The public must take initiative to report criminal activities to the relevant authorities. Studies have shown that there is a discrepancy between committed crimes and reported crimes (Snyder, 1990). This has led to questionable figures released by the official statistics of crime. It is, therefore, of a noble cause that citizens report all witnessed crimes for the authorities to be able to publish reliable information and statistics. Citizens should exercise discretion and realize that no crime is too trivial to be reported or feel embarrassed about. Lack of discretion leads to fear of victimization or reprisal. A significant result of correct statistics is the ability to properly plan strategies to curb crimes and improve the security system (Marc, 1992).

Decisions by the police not to bring into play the criminal process establish the limits of law enforcement (Snyder, 1990). They must use discretion to make choices founded on numerous possibilities of courses of action. The <https://assignbuster.com/why-is-discretion-important-in-the-criminal-process/>

law does not cover every possible crime that may be committed to the required details. Likewise, the training police officers receive cannot entail all the situations they will encounter in the line of duty (Marc, 1992). This is where discretion comes into play in law enforcement. It will help the law enforcers to shun special interests from corrupt individuals such as politicians and perpetrators of domestic violence who walk free after offering bribes. When the police identify a suspect, they must use discretion on deciding how to approach them (Snyder, 1990). A consideration is taken as to whether to arrest or employ alternative procedures like issuing a notice to attend court.

Judges and magistrates need to exercise utmost discretion when hearing a matter placed before them in all stages of the case (Marc, 1992).

Admissibility of evidence is one key stage. The judges and magistrates may decide to reject pertinent evidence if the admission is unfair or obtained improperly and unlawfully. Since discretion is a function of judgment, fairness must be the guideline judges use to admit evidence and make decisions. In sentencing, discretion will determine the permissible penalty as the legislature prescribes (Marc, 1992). It is the judges' duty of discretion to give it the right magnitude in consideration of the crime, the offender, subjective and objective elements necessary for handing the penalty (Snyder, 1990).

In conclusion, discretion is a fundamental ingredient in any criminal process. All decisions and judgments prescribed by the law are chosen through a process of discretion in a manner that will make them fair to the human race. Both criminals and their victims are handed judgment and compensation respectively through the discretion of those placed in

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authority to oversee justice (Snyder, 1990).

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## References

Israel, J. H., Yale, K., & Wayne, R. L. (1993). Criminal procedure and the constitution. Minnesota: West.

Marc, M. A. (1992). Rethinking the constitutional right to a criminal appeal. California: University of California.

Snyder, E. A. (1990). The effect of higher criminal penalties on antitrust enforcement. *Journal of Law and Economics*, 33(2).