

Criminal justice authority



Criminal Justice Authority Evaluation The criminal justice system has always operated under discretionary authority. This includes law enforcement, the court system and corrections. Police officers enjoy the benefit of whether to charge for small infractions and whether an incident requires force to be applied. The court system uses discretionary authority in sentencing of the guilty. The department of corrections uses discretionary authority in the everyday running of the prison system, as they are the rulers of their community.

Within this paper all of these fields will be evaluated and how the roles of a civilian oversight committee will fit in. There is a growing awareness of how complex police work is. This has come from an examination of the officers' use of discretion in their daily policing activities. There is also of the critical role that community leaders have in the vitality of their neighborhoods. Discretion is used at all levels of law enforcement not just with the patrol officers. There is a special interest in how the core of police authorities uses discretion to enforce the law.

Negative policies (things officers may not do) have at least two limits. First there is that they are unhelpful and irrelevant restrictions. There are rules that limit what they should do which gives supervisors rope with which to hang them with. Second there is a large gray area of necessary discretion and the feeling of not wanting anyone telling them what they should do. Because of the inattention of administrators of the day-to-day policing the beliefs that officers are being told what not to do and will use this to hand an officer crosses the line is across the board with officers.

These rules fail to tell the officers what they should do in a positive way (Kelling, 2011). Police discretion cannot be structured by issuing policy statements or proscribing certain actions. There can and will be serious concerns if the departments do not develop policy guidelines that are clear and concise. Discretion is not only on patrol levels but all levels of criminal justice organizations. The portrayal of police work is inaccurate in some cases. Police do not make arrests on whether a law had been violated or not.

A contributor to crime control is the low-level personnel decision makers. Social problems are solved by criminal law and unlawful behavior is diverse in nature. Criminal justice agency policies have an impact on other agencies. The idea of doing away with discretionary authority in law enforcement is in the minority (Kelling, 2011). The judicial system is made up of discretionary authority. Judging can be described as Main, (2006) “ the art or science of making discrete choices among competing courses of action” (p. 4).

In order for judges to rule fairly and equitably they must have the discretion to practice any lawful route. The core of the judicial function is the right to exercise discretion. Judges have the discretion to allow certain courses of actions such as mistrials, motion to exclude, testimony of certain witnesses (whether to exclude them or not) and sentencing of the accused. A judge will make choices at their discretion with the help of different options. The judicial system puts their trust in the judges to make informed and sound judgments.

A judge can be persuaded by the arguments of the court advocates. A judge is in the higher position and must see, evaluate and hear the testimony with

firsthand knowledge. There are situations that a judge will not use their own discretion to make a decision but will rely solely on the testimony and there will be only a yea or nay decision (Main, 2006). There are judicially-imposed conditions. These conditions can be used by judges to pursue a variety of objectives.

There are four categories that overlap: Main, (2006), “(1) Germane Conditions which are conditions that reflect a close nexus with the criteria for deciding the motion that is precipitating the court order; (2) Fairness Conditions which are the conditions inspired by notions of fairness; (3) Efficiency Conditions which are conditions designed to ensure the efficient processing of cases; and (4) Power Conditions which are conditions expressing judicial fiat” (p. 6). These conditions are applied by the courts.

These are concrete conditions but judicial discretion to these conditions must contemplate a number of variations. The judicial system has the authority to induce or impose these conditions (Main, 2006). Corrections are probably the area where discretionary authority can become corrupt more easily. One of the biggest infractions is the misuse of authority. This is the McCarthy (1996), “ intentional misuse of discretion for personal material gain” (para. 8). There are three offenses that comprise this type of corruption. They are directed against the inmates (McCarthy, 1996).

The acceptance of gratuities or rewards from inmates for special consideration in obtaining normal prison privileges; the acceptance of gratuities for help in obtaining or protecting illicit prison activities; and the mistreatment or extortion of inmates by staff or personal gain (McCarthy,

1996, para. 8). Discretionary conduct is broken down in three different forms. They are nonfeasance, misfeasance, and malfeasance. An improper action that an official may lawfully do is referred to as misfeasance. This includes giving special privileges for some type of gratuity.

Direct misconduct is referred to as malfeasance. This includes smuggling in contraband and extortion. The failure to live up the expectations of a correctional official is referred to as nonfeasance. This will include ignoring the rules of the organization and ignoring the inmate violations. Legislature gives corrections so much discretionary authority that it allows for the opportunity of corruption. Low-level employees are responsible for controlling and monitoring inmate behavior. This means that they have to make discretionary decisions which will either penalize or reward inmate behavior (McCarthy, 1996).

Discretionary acts are given a wide berth by the public until something happens that a complaint is filed. We allow for police officers to arrest or charge, judges to sentence or rule on motions, and corrections officers to control the inmate population using discretionary authority. Some of these are abused and need to be looked into. There are committees formed called civilian oversight committees. The role of these committees is makes sure the officers in the criminal justice system does not abuse their power of discretion. Police should be accountable to the public for the way that they treat people.

A civilian oversight committee will oversee the “ conduct on behalf of the public” (Stone & Merrick, 2002, p. 1). This is to correct or curb those that

abuse their power. The civilian oversight committee will look into any questions of the abuse of power in the arrest, the questioning and the use of force, lethal or non-lethal. Some think that civilian oversight should go even farther into policing. Not just the patrolman but the higher ups in the organization also. Police chiefs have the discretion as to whether to punish or withhold punishment of an officer that has been accused of abusing their power.

Civilian oversight committees are being considered to look more deeply into the supervisors that are abusing their power (Stone & Merrick, 2002). Civilian oversight committees are being used across the world. They will look out for the fundamental rights of the citizens in relation to law enforcement. In some areas the institutional structures and the legal structure enforcing those rights are incomplete and weak. A strong civilian oversight is an effort to strengthen these structures (Stone & Merrick, 2002).

As more and more civilian oversight committees are formed the criminal justice system will be able to operate more at their discretion because they will be closely monitored. The discretionary authority of law enforcement can cross the lines of good police work. Choosing when to charge an individual with breaking the law can lead to questions of bias. The judicial system appears to run solely on the discretion of the judge. There are conditions that are finally and a judge cannot be discrete when considering these conditions. There are many different variations that determine a judge's final ruling.

Out of all the areas of the criminal justice system the corrections area are more apt to use their discretionary authority for corruption. Giving the low-level employees the room to penalize or reward inmates because of their behavior at their discretion opens the door for corruption. Civilian oversight committees will assure that police, judges, and corrections officers do not abuse their discretionary authority. With civilian oversight committees monitoring these criminal justice systems the public can be assured that they will get fair treatment regardless of what organization they are dealing with.

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