

MODULE 2

Police Discretion

Focus Question - What is discretion and how is it used by the police?

Overview

This module introduces students to the concept of discretion and in particular, to the discretion bestowed upon police officers. Students are invited to identify discretionary factors in real-life scenarios and to reflect on the possible reactions by police officers in these scenarios. Students then compare and contrast the range of possible reactions from actual police officers with those in an ideal society.

Learning Objectives

- To understand the complexities of police discretion.
- To reflect on how police discretion is exercised in real life scenarios.

ACTIVITY 1

Thinking Like An Officer

Materials

- Copies of *Police Discretion* (one per student)
- Copies of *Police Discretion Scenarios* (one per group)
- Copies of *Police Discretion Flow Charts* (one per student)

Teaching and Learning Strategies

1. **Distribute the handout, *Police Discretion*, to students. Introduce the concept of discretion and the notion that different officers from the same police force can have different reactions because they use discretion when responding to various situations.**
2. **Ask students to think of examples of situations where police would exercise discretion.**



Teacher's Key

Some examples include:

- Speeding - sometimes an officer will let the driver go without a ticket after hearing an explanation, while sometimes an officer will issue a ticket.
- Breaching a curfew - sometimes an officer will issue a caution or warning and let a young person go when breaching their curfew, while other times an officer will arrest the young person for failing to comply with bail conditions that include a curfew.
- Defacing public property - sometimes an officer will issue a caution or warning and let an individual go, while other times an officer will arrest that individual for mischief.

3. **Divide students into groups of 3-4 and distribute the handout, *Police Discretion Scenarios*. Ask each group to identify and list discretionary factors that a police officer may consider for each scenario. Discuss as a class.**



Teacher's Key

Scenarios	Possible Discretionary Factors
1	• Perceived honesty of Dane • Perceived remorse of Dane • Dane's past involvement with the criminal justice system • Frequency of theft incidents in the electronics store
2	• Perceived honesty of Brooke • Perceived remorse of Brooke • Brooke's past involvement with the criminal justice system
3	• Jamie's explanation as to why he is out past his curfew • Perceived remorse of Jamie • Past warning already issued to Jamie • Level of concern from parent/guardian about Jamie's curfew
4	• Perceived honesty of Keysha • Perceived behaviour of Keysha – anything suspicious? • Further investigation and evidence collected about identity of suspect
5	• Rate of crime/gang activity in the neighbourhood • Public safety • Perceived behaviour of the individual – anything suspicious?
6	• Perceived aggression from Jeremy • Jeremy's level of cooperation

4. **While still in their small groups, ask students to consider the following questions:**

- How do you think a police officer as defined in Module 1 (i.e. the objective, actual police officer) would react to the scenarios?
- How do you think police officers *should* react (i.e. the ideal officer)?
- Are the two reactions different? If so, how?

5. **Distribute the handout, *Police Discretion Flow***

ACTIVITY 1 Thinking Like An Officer (Cont'd)

Charts, to students. Explain that these are examples of *some* of the possible police reactions to each scenario. Be sure to tell students that there is no official “answer key”. Lead a discussion about the impact of the various responses on the individuals involved, the police force, the community, society, etc. Ask the class whether they agree or disagree with the proposed outcomes, and whether they would do something different.



Extension

Ask students to write a reflection on the topic of police discretion. Students may provide an answer to one of the following questions, or write on a related topic of their choosing.

- What conclusions can be drawn about police discretion?
- Should police discretion be limited through legislation?
- Would I (or should I) now act differently knowing that police have discretionary powers?

POLICE DISCRETION

Discretion: the power or right to decide or act according to one's own judgment; freedom of judgment or choice.¹

Police Discretion: the freedom of judgment and choices given to police officers in specified circumstances in accordance with their governing policies.

Due to police discretion, police officers have a range of choices to make when faced with certain situations. This means that different officers may make different choices even if they are all faced with the same situation.

Police discretion is most often used in the field, and officers base their choices on the surrounding circumstances and factors, such as officer safety, that need to be taken into consideration. Because every officer is different, with different attitudes and backgrounds, there is no absolute right choice and officers have flexibility in dealing with the situations they encounter. For example, when anyone commits a minor offence, officers have the discretion to let that person go after a warning or to charge that person and bring him/her to jail.

According to the Department of Justice, the following factors can affect police discretion with young offenders:²



Environmental factors

- Nature of the community
- Socio-demographic characteristics
- Level and type of crime in the community
- Community police relations

Organizational factors

- Centralization
- Hierarchy
- Policies and protocols
- Dimensions of policing: philosophical; strategic; tactical; organizational

Situational factors

- Seriousness of crime
- Weapon involvement
- Victim – harm, role
- Group/gang crime
- Demeanour
- Age/gender/race

¹See <http://dictionary.reference.com/browse/discretion?s=t>

²See <http://canada.justice.gc.ca/eng/pi/yj-jj/res-rech/discre/toc-tdm.html>

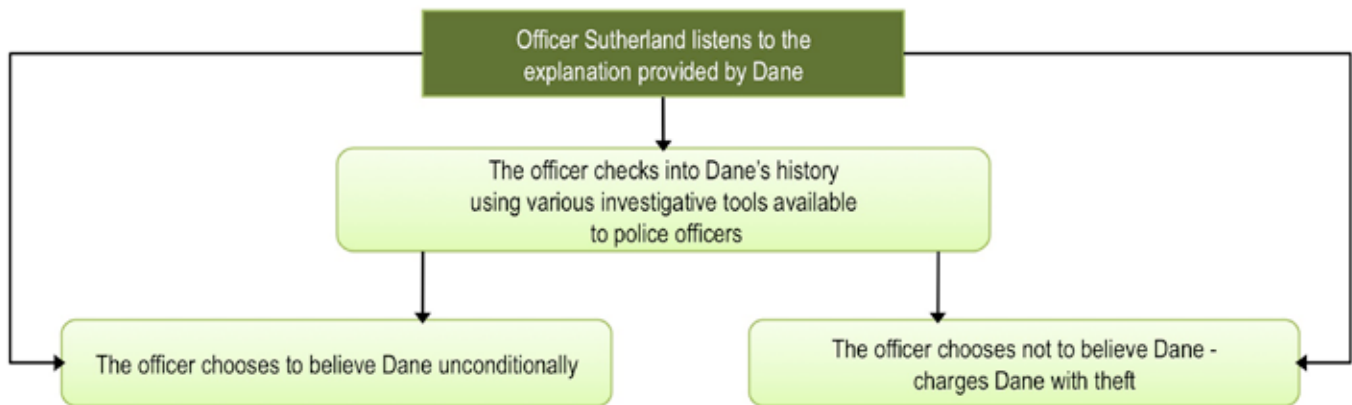
POLICE DISCRETION SCENARIOS

1. Dane is in an electronics store where he and a couple of friends are searching for a potential gift to give to a friend. They are happy to find a video game that is on sale but decide to continue looking around the store. They decide to go grab a bite to eat before making a final decision on what to get for their friend. As they are walking out of the store, the security alarm goes off and the store's security guard notices that Dane has the video game in his hands. Officer Sutherland arrives at the scene and Dane explains to the officer that he did not intend to steal the video game and simply forgot that it was still in his hands. What should Officer Sutherland do?
2. Officer Wilson arrives on scene at a local pharmacy where a young woman, Brooke, was caught attempting to steal a plastic bag full of medication. When questioned, Brooke explains that she was trying to steal some medication so that she could sell it and make some money to help her mom pay their rent. Brooke tells the officer that if her mom cannot make the next rent payment, they will be evicted from their apartment. Brooke has never had any encounters with police and starts sobbing out of remorse for what she has done. Officer Wilson feels sympathetic towards Brooke. What should Officer Wilson do?
3. Jamie is a 17-year-old male who has had a few encounters with the justice system and has recently spent three months in a juvenile centre for assaulting another individual. Jamie has been sentenced to a probation where he is under a curfew and expected to be home by 9PM. Jamie has previously been given a warning in the past for his inability to meet his curfew. Jamie's arresting officer, Officer Gomez, notices Jamie walking down the street at approximately 9:12PM. What should Officer Gomez do?
4. Officer Lee notices a young woman standing at a bus stop who appears to be a suspect in a robbery that just got reported. When Officer Lee approaches the young woman and questions her, she says her name is Keysha and that she had nothing to do with the robbery. Officer Lee has a picture of the robbery suspect and Keysha looks a lot like her. What should Officer Lee do?
5. Officer Jancik is on duty in a neighbourhood known for a relatively high rate of gang activity. Officer Jancik notices a young man walking out of the back exit of an apartment building. As he walks out of the building, the officer notices that the young man is carrying a big duffle bag with something metallic sticking out of it. It is dark so Officer Jancik is not sure what the metallic item is. As the young man continues to walk away from the building, he looks over his shoulder several times which makes him look suspicious, at least in the officer's eyes. What should Officer Jancik do?
6. Officer Rangan is in the middle of arresting a young man who was involved in a group assault on a younger kid. The young man is struggling and resisting arrest and the officer is attempting to take control of him. Jeremy and a few of his friends walk by and notice the officer struggling with the boy. In Jeremy's eyes, it looks like the officer is being overly aggressive with the boy and he starts yelling out, "Hey pal, why don't you pick on somebody your own size?" Officer Rangan has now gained control of his arrest and is upset at this comment. What should Officer Rangan do?

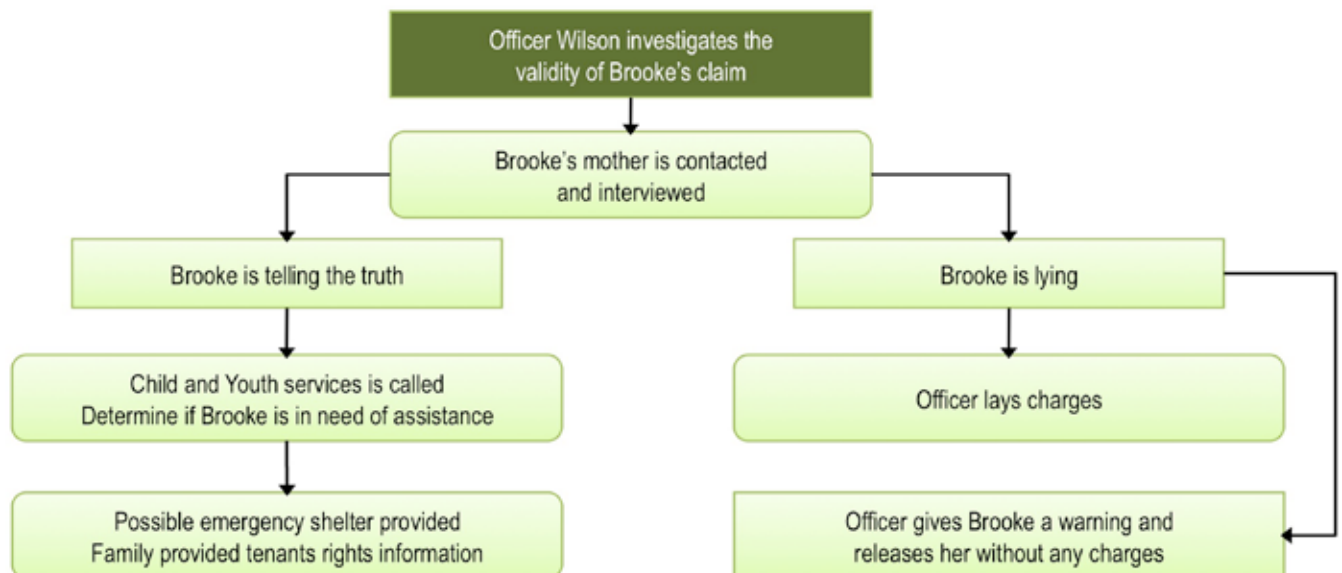
POLICE DISCRETION FLOW CHARTS

The following flow charts offer an idea of how the scenarios could be dealt with by a responding officer. As with any situation, even the slightest difference can change the outcome or decision. Use these flowcharts as a guide to think about the scenarios and the possible outcomes that could be associated with each. Consider how varying factors can change the outcomes. While policing is rarely expressed as a chemical equation, think of it as just that – the addition or subtraction of an element can change the entire structure of the resulting compound.

SCENARIO 1

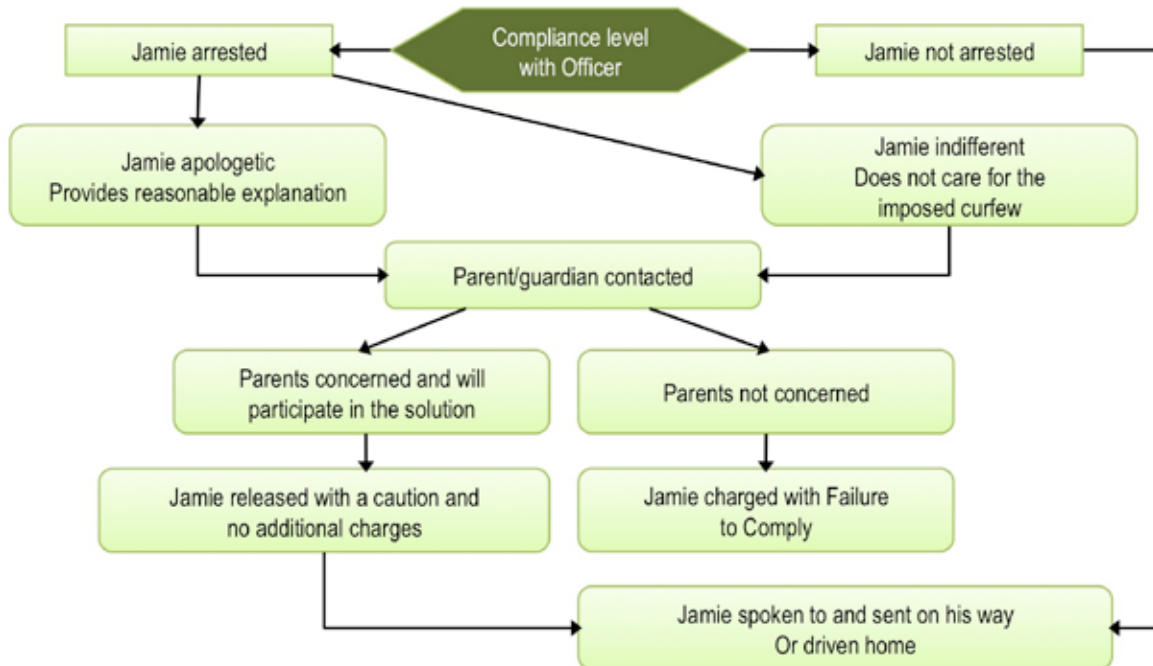


SCENARIO 2

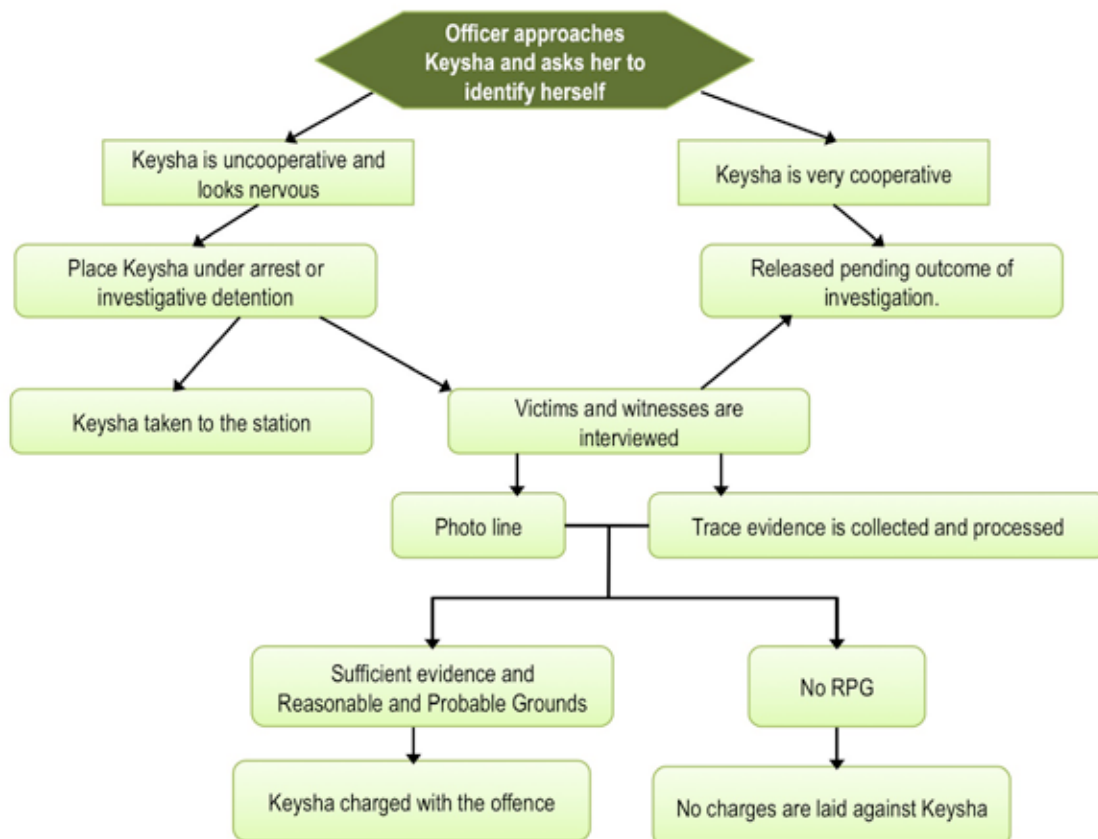


POLICE DISCRETION FLOW CHARTS

SCENARIO 3



SCENARIO 4

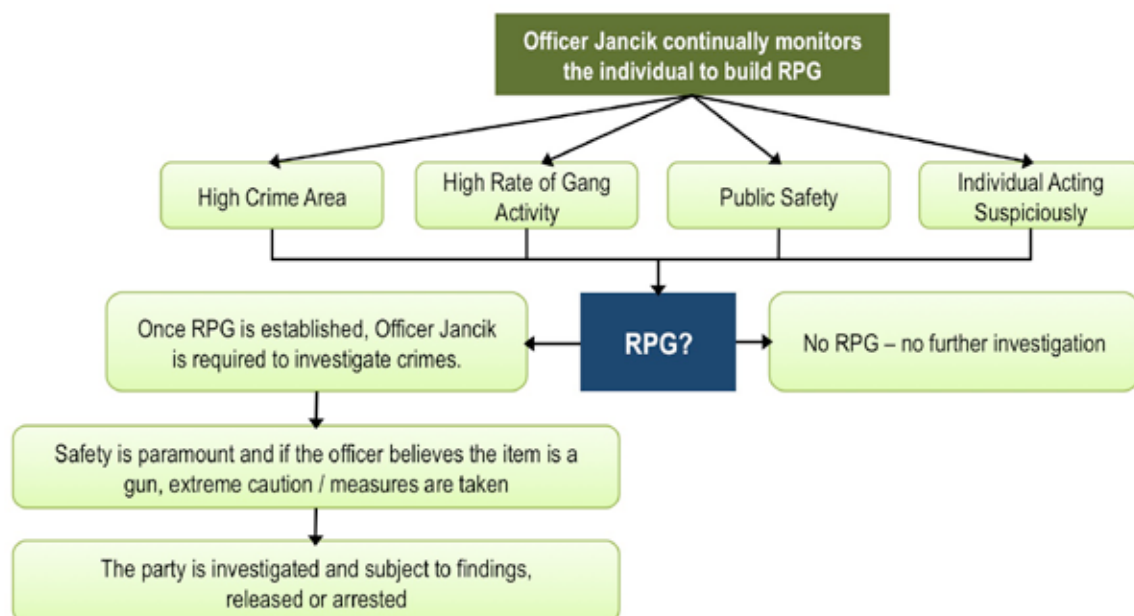


MODULE 2 - Police Discretion
ACTIVITY 1: Thinking Like An Officer

STUDENT HANDOUTS

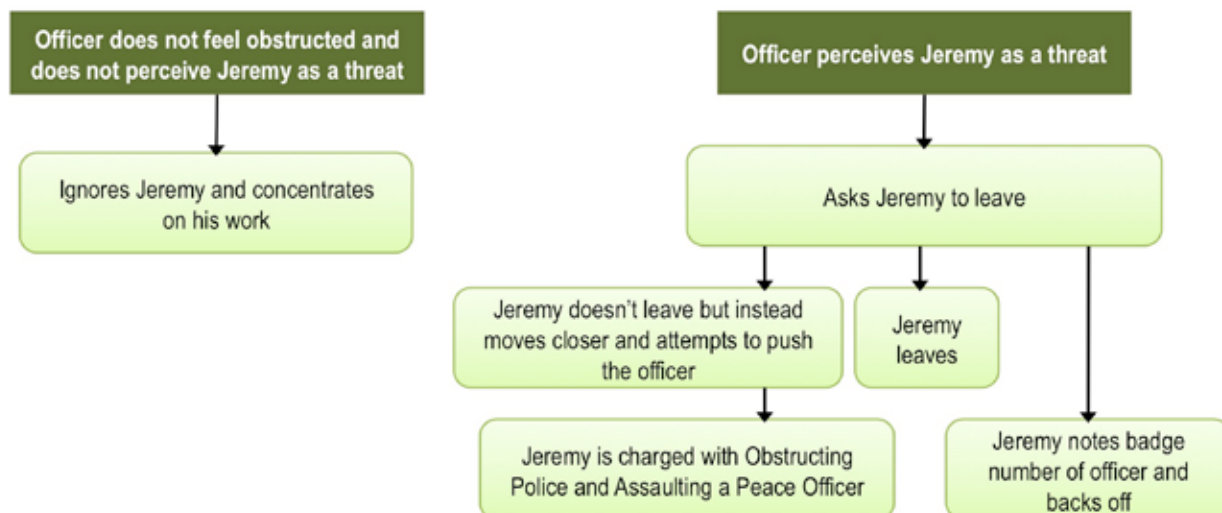
POLICE DISCRETION FLOW CHARTS

SCENARIO 5



Remember, the accused has the right to a trial and is presumed innocent until PROVEN guilty of an offence.

SCENARIO 6



As professionals, police would probably not react. Your right to freedom of speech is respected as long as you do not obstruct the officer from doing his job.