

LEGAL STUDIES

Assess the extent to which the criminal investigation process balances the rights of victims, offenders and society.

In order to balance the rights of all members of the community, the criminal investigation process must adhere to a strict set of guidelines to ensure this equilibrium to the highest degree possible. Comprehensive protocol regarding the gathering of evidence and the use of technology and legislation dictating the nature of search and seizure, arrest, detention and bail enables this process to effectively meet the often precarious balance between the rights of victims, offenders and society.

The presentation of evidence is of paramount importance in criminal trials. Clear procedure regarding the gathering of evidence ensures that justice can be achieved and, to different extents, the rights of victims, offenders and society upheld. Each piece of evidence must adhere to the Evidence Act 1995 (NSW), with any unlawfully obtained information constituting inadmissible evidence and therefore jeopardising the legitimacy of presented arguments. This can include oral testimony, physical items and video surveillance and also scientific-based evidence such as fingerprints or DNA samples. The nature of the criminal process means that evidentiary presentations are key in securing convictions or acquittals, and therefore that any evidence must be meticulously handled. In the murder case *R v Stafford* (originally 1992) a mishandling of evidence condemned the accused, Graham Stafford, to 14 years' imprisonment; further, independent investigations into the case found that police had not gathered evidence in a lawful manner and eventually Stafford's conviction was overturned in September 2009. Graham Stafford's rights, as an alleged offender, were forfeited by a lack of consternation by police gathering evidence in a case that highlighted the definite importance of following concrete investigational processes to balance the rights of all.

Increasingly, technology has become an integral utility in gathering evidence and proving criminal charges. Evidence proven by scientific and forensic examination can establish a variety of factors that would otherwise be unobtainable, including DNA and fingerprint evidence and video surveillance. Attained through provisions stated in the Crimes (Forensic Procedures) Act 2000 (NSW), these factors lend considerable weight to cases and can determine guilt, as demonstrated in *Forbes v Queen*. Benjamin Forbes was convicted of unlawful sexual intercourse in 2009, with the guilty verdict based wholly on DNA evidence. This, according to the Sydney Morning Herald in its May 2010 article 'Court dismisses DNA appeal case' has 'left key questions on the use of DNA in criminal trials'. The use of technology in the criminal investigation process is fraught with difficulties in balancing rights to achieve justice; whilst new technologies do gain convictions and can protect the rights of victims by establishing substantial evidence, it is often difficult to make conclusive outcomes based on this.

Police, with reasonable grounds to do so, may search members of the community and seize possessions that are unlawful so as to protect society's right to live safely. Search and seizure is governed by particular provisions outlined in the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), with limitations of police powers in this matter so as to safeguard citizens' rights. Searches must only be conducted if police have substantial reason to believe that a person is carrying any illegal, dangerous or stolen article, and if such an article is found it may lawfully be confiscated. This police power is often wrought with controversy, due to the often intrusive and humiliating nature of public searches; regardless of any protection stated in LEPPRA, search and seizure is a largely confronting part of the criminal investigation process and one that, if not undertaken with strict procedure, can forfeit the rights of people in the community – whether they be offenders or not.

Under LEPRA, police can also lawfully arrest suspects with reasonable grounds; if this cannot be established a warrant is needed to do so. A warrant is obtained from a magistrate or judge and authorises police to undertake a particular act, including arrest, search and seizure. Police need to have significant reason to receive a warrant, just as they are required to have significant reason to make an arrest without this document. When procedure is incorrectly followed, the rights of individuals are jeopardised – acutely described in the September 2011 SMH article ‘Rebuke for police over Kyogle shoplifting arrest’. After a teenage boy, Joel Williams, was arrested by police for shoplifting, his mother and brother attempted to pull the officer away and were ‘promptly charged with hindering police’. However, the Supreme Court found them absolved of guilt for this as police had not acted in a lawful manner initially and should not have made the arrest at all. Williams, as an offender, did not receive rightful treatment at this level of the criminal investigation process and illuminated to police the utter importance of following protocol in order to balance the rights of all members of the community.

Once arrested, police may detain suspects for interrogation without charge for a limited number of hours and after the correct information has been issued to the suspect in a caution. This details an individual’s rights, including the right to silence and partial right to a lawyer. Minors must be in the presence of a guardian and any interview is video and audio recorded so as to ensure complete transparency throughout the procedure. After four hours in detention (this may be extended to up to eight hours) the individual must be either released unconditionally or charged with an offence. The strict guidelines throughout detention and interrogation processes are effective in protecting the rights of victims, offenders and society. However, a controversial law – established after the September 11 attacks of 2001 – has enabled for an excess of police powers regarding detention. Under the Anti-Terrorism Act 2004 (Cth), any individual suspected of actions pertaining to terrorism may be held without charge for 14 days, and the similar NSW law Terrorism (Police Powers) Act 2002 allows for preventative detention in these circumstances. Whilst regularly detention and interrogation balances the rights of all, the laws against terrorism are overtly severe; in most cases it could be argued that, to hold an individual without charge lawfully for two weeks, the likelihood of police procuring such a charge would be diminished and the detainee’s rights devastatingly hindered.

To retain the basic legal principle that an accused person is innocent until proven guilty, offenders can apply for bail to be temporarily released from prison whilst awaiting trial. Conditions may be met to ensure bail is given, such as monetary fees or monitoring equipment, and it is usually only granted to those charged with lesser offences. The Bail Act 1978 (NSW) details that a presumption in favour of bail must be given for summary offences, although this legislation has seen a multitude of amendments since its creation. If bail is denied, the accused is held on remand until trial; this is usually limited to indictable offences or if the individual is seen to be at risk of fleeing the jurisdiction. Bail is an unassumingly important factor in the criminal investigation process and allows for the rights of offenders to be upheld whilst also lessening congestion within the prison system, although statistics continue to be surprising regarding this matter. A paper entitled ‘A Case For Reform’ by former Director of Public Prosecutions Nicholas Cowdery states that 25% of the NSW prison population remains unconvicted and, even more unbelievably, that over 50% of juvenile offenders in detention are being held on remand. Bail is a vital feature of the criminal investigation process and, to maintain the rights of all members of the community, should be accessible to all suitable individuals.

The rights of victims, offenders and society are largely balanced by the criminal investigation process, providing that the guidelines and protocols in place are followed to meticulous detail. Lawful gathering of evidence and the use of technology and provisions regarding search and seizure, arrest, detention and bail enable all members of society to live safely and freely whilst granting police enough power to maintain law in the community. Often precarious in any situation, these rights are taken into careful consternation during this process and remain largely protected and balanced.