

Arrest and detention

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Policy statement and principles

What

The Arrest and Detention chapter ensures that the correct legislative powers are used when arresting or detaining an individual/person(s), and that the arrest or detention is of a reasonable or necessary nature in any particular case.

You cannot detain a person suspected of committing an offence for questioning or while enquiries are being made unless you are acting under legislation or arrest them. If this does not apply, they are free to leave.

Every district must have a **warrant to arrest process** that, irrespective of what agency the warrant originates from, clearly:

- identifies any risk to public safety the offender may pose while at large, and
- **prioritises apprehension** based on that risk, and
- ensures relevant employees are informed of the outstanding warrant, identified risk, and apprehension priority.

Why

When you arrest or detain a person, you are responsible for protecting and keeping them safe from self-harm/suicide or harm from others while in Police detention.

You may have a lawful power to arrest in many situations, but the power is discretionary, and you must always carefully consider your decision.

You should **not** arrest if the person can be brought before the court by way of a summons, a warning, caution, counselling or a referral to another agency in line with the Prevention First focus if it would be a better resolution to the situation being dealt with.

Avoid conflicts of interest - any arrest must, where practical, be carried out by a constable with no personal involvement with the victim or offender.

When you arrest or detain a person, you are responsible for protecting and keeping them safe from self-harm/suicide or harm from others while in Police custody.

Every arrested person has the right to be promptly charged and brought before a court or released (includes release on bail or without charge). If you decide not to arrest or charge a person following a complaint, you should advise the complainant clearly of the reasons for your decisions.

Under the Health and Safety at Work Act 2015 (HSWA), Police have a primary duty of care of its workers and other affected by our work. This includes people in Police custody as well as other people who enter the custody area (such as external agencies etc). Failure to comply with the 'People in Police custody' policy may result in Police employees being subject to enforcement under the HSWA.

All warrants to arrest must be assessed to determine whether the subject is **a risk to public safety**. This is based on their past or current behaviour, including the offences for which the warrant was issued and offending while on bail. (See the standard risk to public safety factors).

How

Apply TENR to all arrest and detention procedures in conjunction with your district **warrant to arrest process** to identify any risk to public safety the offender may pose while at large, prioritise apprehension based on that risk, and ensure relevant employees are informed of the outstanding warrant, identified risk, and apprehension priority.

Force used during an arrest must be reasonable and be used only when it is not reasonable to make the arrest in a less violent manner.

When you arrest or detain a person, you are responsible for protecting and keeping them safe from self-harm/suicide or harm from others while in Police custody by applying the instructions at [People in Police custody](#).

Overview

Purpose of this chapter

This chapter details:

- the key [ingredients](#) of arrest and detention
- legislation giving Police the power to arrest a person [with](#) and [without](#) a warrant
- procedures for [arresting with a warrant](#) and for prioritising apprehension
- how to [request information from MSD](#) when arrest warrants are issued and when requests to stop benefits can be made
- factors to consider when [deciding whether to arrest](#) without a warrant including [TENR](#) and alternatives to arrest in line with the Police Prevention First focus
- [powers associated with arrest](#), e.g. to use reasonable force in making the arrest or to search the arrested person
- the [rights](#) of people who are arrested or detained and the [duties](#) of police to:
 - ensure those rights are given
 - protect them and keep them safe while they are in Police custody
- the role of police in executing warrants to arrest [student loan defaulters](#)
- procedures for [enforcing fines warrants](#) thereby assisting courts to hold defendants accountable.

Use of TENR in all arrest and detention procedures

[TENR \(Threat, Exposure, Necessity, Response\)](#), Police's operational threat assessment tool, must be applied to all arrest and detention procedures. TENR supports the timely and accurate assessment of information directly relevant to the safety of police and others. Its overriding principle is 'safety is success'. TENR will assist you when:

- assessing risk and prioritising apprehension on an [arrest warrant](#), and
- [deciding whether to arrest](#) without a warrant.

Prevention First responsibilities

Prevention First (see *PDF below*) requires all employees to seek prevention opportunities as part of their day-to-day work, to reduce offending and victimisation.

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 [prevention-first-strategy-20-dec-2011.pdf](#)

1.12 MB

This includes:

- acting with urgency against priority and prolific offenders, and encouraging the use of alternative actions to arrest when appropriate
- gathering and using intelligence and critical command information to target policing efforts when deciding whether to arrest
- taking a holistic approach to offending and seeking out opportunities to prevent re-offending, including leveraging off community services and networks to protect vulnerable people, particularly repeat victims.

General duty of care

Where a Police employee has care or charge of a person in custody (or who believes they are unable to leave), the Police employee is under a legal duty of care to provide that person with necessities and to take reasonable steps to protect that person from injury (including self-harm or harm from others).

This duty starts from the moment of arrest and continues until the care of the person is transferred to someone else or the person is released.

This policy, and other relevant Police policies and procedures, details the steps Police employees must take to meet this duty of care, Failure to exercise your duty of care could result in charges or disciplinary action under the code of conduct for misconduct.

Related information

Other Police Manual chapters related to arrest and detention include:

- [People in Police custody](#)
- [New Zealand Bill of Rights](#)
- [Use of force](#)
- [Mechanical restraints](#)
- [Searching People](#)

Arrest and detention explained

What is arrest?

Arrest is lawfully taking a person suspected of committing an offence into custody or temporarily taking their liberty away for any of these reasons:

- safeguarding the public interest (e.g. by preventing the person committing further offences or from destroying evidence)
- ensuring the person appears in court
- protecting the person's own interests.

To be lawful the arresting officer must have a [warrant for the arrest](#) or be acting under a specific statutory power providing for [arrest without a warrant](#).

Arrest requirements

When you arrest a person, you must make it clear to the person by your words and conduct that they are being arrested and ensure the person knows they are no longer free to go as they please.

You must...	and either...
use words of arrest	<ul style="list-style-type: none">- formally touch the person being arrested (e.g. by placing a hand on their shoulder),or- have the person's agreement to the arrest (e.g. they nod or walk towards the patrol car) or their submission to the arrest as a result of using force.

Note that other actions might be considered by a court to be arrest if they caused the person to believe they were arrested. For example, if you:

- physically restrained the person by handcuffing or holding on to them
- put the person in a locked interview room, cell, or Police car so they could not leave.

Words of arrest

Say to the person: "You have been arrested for (give reason)" and then advise them their [rights](#) as an arrested person. Use the [caution](#) printed on the insert card in your notebook or in Checkpoint as a guide on the advice to be given.

Detaining without arrest

Some legislation allows Police to detain a person without formally arresting them so that a legislative power can be exercised. For example, Police can detain people without arrest:

- to search for drugs under section [20](#) or [22](#) of the Search and Surveillance Act 2012
- if they are exercising a search power in relation to a place or vehicle and need to determine if there is a connection between a person at the place or vehicle being searched and the object of that search ([s118](#) Search and Surveillance Act 2012)
- for breath and blood-alcohol testing under Part [6](#) Land Transport Act 1998
- for care and protection while the person is intoxicated and care cannot be provided by taking them to their place of residence or a temporary shelter ([s36](#) Policing Act 2008)
- to obtain identifying particulars for summons under section [33](#) Policing Act 2008.

As with an arrest, a detained person is deprived of their liberty and is not free to go as they please.

Words to convey when a person is detained

If you detain a person under a legislative power, say to the person "You have been detained for (give reason) ..." and then advise them of their rights as a detained person. Use the [caution](#) printed on the insert card in your notebook or in Checkpoint as a guide on the advice to be given.

What is arbitrary detention?

Everyone has the right not to be arbitrarily arrested or detained ([s22](#) New Zealand Bill of Rights Act 1990).

Arbitrary detention is when you arrest or detain a person and:

- you do not have a legislative power to arrest or detain that person (an exception may be a detention essential for the person's personal safety)
- the arrest or detention is unreasonable or unnecessary in the particular case, or while the initial detention was appropriate, the detention continued for an unnecessarily long time.

It may also be arbitrary detention if you arrest a person when in the circumstances of the case, the less serious option of commencing proceedings against them by way of summons would have been a more appropriate response.

Consequences of arbitrary detention

Arbitrarily detaining a person may result in these consequences:

- statements made by the person may be inadmissible in court
- the case against the person could be dismissed
- the arresting or detaining officer may be liable to civil litigation resulting in punitive damages.

Detaining for questioning

You have no power to detain a person suspected of committing an offence for questioning or while enquiries are made, unless you are **acting under legislation or you arrest them**. Detaining a person for questioning without their **informed consent** (given after clear advice that they do not have to stay and answer questions) and without **lawful authority** is arbitrary detention.

Refer to the 'Children and young people as suspects' in [Investigative interviewing - suspects requiring special consideration](#) for information about detaining children and young people for questioning.

Legislation allowing particulars to be obtained

Some legislation allows people to be stopped and/or required to give particulars or information in limited situations. For example:

- a person may be required to give their name, address and date of birth under section 269 of the Sale and Supply of Alcohol Act 2012 (when you suspect the person has committed, is committing or attempting to commit an offence against the Act)
- a vehicle's driver may be required to give their name, address and date of birth and say whether they own the vehicle if they are stopped under section 114 Land Transport Act 1998
- a person may be detained and required to give particulars when a constable believes they have committed an offence and the constable intends to bring proceedings against them by way of a summons (s33 Policing Act 2008).

You must tell the person the reason for your request for particulars.

Detaining intoxicated people for care and protection

If you find someone intoxicated in a public place or while trespassing on private property, you can detain and take them into custody if you reasonably believe they are:

- incapable of protecting themselves from physical harm, or
- likely to cause physical harm to another person, or
- likely to cause significant damage to property,

and you are not satisfied that taking them home or to temporary shelter (if one is available) would suitably protect them from the above.

The person must be released as soon as they cease to be intoxicated and cannot be detained for more than 12 hours unless a medical practitioner recommends a longer detention.

[s36](#) Policing Act

If the person is under 18 years, see information on dealing with [child and young persons welfare issues](#) in the 'Youth justice' chapter. If the child or young person cannot be taken home or do not consent to be taken home, they need to be taken to a social worker - use the on call numbers for Oranga Tamariki to arrange.

Arresting without a warrant

Power of arrest without a warrant

No one can arrest a person without a warrant except under the provisions of:

- the Crimes Act 1961, or
- some other legislation expressly giving power to arrest without warrant.
s315(1) Crimes Act 1961.

However, while constables have a power to arrest without a warrant in many situations, less serious resolutions should always be considered when appropriate. (See '[Deciding whether to arrest](#)', in this chapter).

Arrests under the Crimes Act

Constables and anyone they call to their assistance may arrest and take a person into custody without a warrant when they:

- find the person disturbing the [public peace](#) or committing any offence punishable by imprisonment
- have good cause to suspect the person has committed a [breach of the peace](#) or an offence punishable by imprisonment (e.g. excess breath/blood-alcohol driving offences specified in Part 6 Land Transport Act 1998).

s315(2) Crimes Act

Arrests under Summary Offences Act

After section 315 Crimes Act, section [39](#) Summary Offences Act 1981 is the most common enactment used by police to arrest without a warrant.

You can arrest a person without a warrant, under section 39 Summary Offences Act 1981, if you:

- have [good cause to suspect](#) the person has committed an offence against the Summary Offences Act - except those offences described in sections 18 to 20, 25, and 32 to 38 of the Act, or
- reasonably believe the person has committed an offence against sections 18 to 20, 25, and 32 to 38 **and** fails to give you their name and address when asked or gives particulars you reasonably believe are false.

Arrests under Land Transport Act 1998

In addition to land transport offences where arrests can be made under section [315](#) (2) Crimes Act 1961 (e.g. excess breath/blood alcohol) you may arrest a person without a warrant under some Land Transport Act 1998 provisions. For example:

- section [116](#)(1) - failure to comply with directions given under section 113 (e.g. to provide name and address and other identifying particulars when asked) or section 115 (to prohibit driving)
- section [120](#)(1) - when you suspect the person has committed an offence under sections 58 - 62 of the Act (e.g. driving under the influence of drink/drugs or causing injury or death by carelessly using a vehicle while under the influence of drink/drugs).

For more information on Land Transport Act offences, see the '[Road Policing](#)' section in the Police Manual, including '[Alcohol and drug impaired driving](#)'.

Other legislation giving power of arrest

Other legislation gives constables the power to arrest without a warrant, for example:

- section [40](#) Arms Act 1983 when the person is in possession of a firearm, pistol, airgun or restricted weapon and refuses to give or gives false particulars when police ask for their name and address
- section [50](#) Domestic Violence Act 1995 when the person is suspected of committing a breach of a protection order
- section [310](#) Immigration Act 2009 for the purpose of the turnaround or deportation of a person.

Many powers to arrest without a warrant are restricted to particular circumstances. Always check the relevant legislation if you are not sure.

Breaching public peace

Breaches of peace occur when these events are taking place or being threatened:

- serious disturbances or other forms of violence
- serious damage to property.

You can arrest someone under section [315](#)(2) Crimes Act who you witness breaching the public peace and the breach is continuing or you think it is likely to be renewed.

However, as there is no specific offence for disturbing or breaching the peace, once you have arrested the person you need to determine what other charges, if any, should be filed against the person.

You must decide about other charges within a reasonable time of the arrest (e.g. one or two hours). Release the person immediately if you decide no charges will be filed.

See the '[Public Order Policing](#)' chapters for more information.

Good cause to suspect

You may have gained good cause to suspect from:

- your own observations
- statements from witnesses
- admissions from the offender
- examining the scene
- forensic evidence.

Justification for arresting without warrant

Constables are justified (i.e. not guilty of an offence and not liable to civil proceedings) in arresting a person without a warrant when they either:

- have a power to arrest the person under section [315](#) Crimes Act 1961 or some other legislation, and had reasonable and probable grounds for believing the person committed the offence, or
- found the person committing a [breach of the peace](#) or received them into their custody from another person who they believe witnessed a breach of peace.

See sections [31 to 33](#) Crimes Act 1961.

Arresting children and young people without a warrant

When arresting children and young people without warrant, section [214](#) of the Oranga Tamariki Act 1989 applies. Subject to sections [233](#) (relating to breath and blood alcohol provisions in the Land Transport Act 1998) and [244](#) (relating to provisions in the Immigration Act 1987), section 214 overrides any other legislation in making such an arrest.

A constable may also arrest a child or young person ([CYP](#)) without warrant if the CYP has been released on bail and the constable believes the CYP has breached a condition of that bail and the CYP has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition).

([s214A](#))

See the '[Youth justice](#)' chapter for more information on the law relating to arresting children and young people.

Arresting with a warrant

Warrant to arrest powers

In addition to powers of arrest without a warrant, courts can give Police constables (Police) the power to arrest with a warrant.

Some examples of when courts issue arrest warrants to police are:

- for non-appearance at a court hearing
- for bail-related breaches ([s37 Bail Act 2000](#))
- for [non-payment of fines](#)
- in lieu of a summons (in accordance with section [34](#) of the Criminal Procedure Act 2011, a warrant in lieu of summons is obtained by filing a charging document in conjunction with a summons that despite reasonable efforts has been unable to be served. Then an application is made to the court for an arrest warrant without the defendant being present).

Other agency applications

Arrest warrants may also be issued to Police following applications to court by other government agencies (e.g. Corrections, Community Probation and New Zealand Parole Board).

Who can execute an arrest warrant?

Warrants to arrest may be issued to a named constable or to all constables. Regardless of whom the warrant is issued to, any constable in uniform or who produces Police identification, and certain authorised officers, can execute a warrant to arrest.

All constables and certain authorised officers have the same rights, powers and authorities in relation to every warrant issued to Police.

Arrest with warrant process

This process applies to all warrants to arrest **except** fines warrants, received by Police.

Step	Action
1	If the warrant is issued against a Police PRN or identity number (excluding fines warrants) Police receive an automatic alert in NIA ('Warrant issued - not yet received by Police') when courts enter or modify the warrant in their courts management system (CMS).
2	After receiving the physical warrant from the court: <ul style="list-style-type: none">- modify the NIA alert (or enter details in an alert if the warrant is issued against a non-Police agency)- create a case in NIA- follow the risk assessment and prioritisation procedure (who undertakes this procedure may vary in each district).
3	Assign the case for the warrant to be executed.
4	Before executing the warrant, the officer: <ul style="list-style-type: none">- confirms the warrant is valid or in the case of fines warrants, has not already been executed- in the case of warrants issued for failure to attend court, check that the person has not already attended court voluntarily- confirms the person's identity.
5	In all cases, but particularly when you consider there is a risk to public safety , consider seeking updated information from MSD to assist in locating the offender. (See ' Requests to MSD for information or for benefits to be stopped ' for more information).
6	Execute the warrant. Note: It is good practice to have the warrant in your possession before arresting a person but not essential (s43(4) Policing Act 2008). You must produce the warrant or a copy of the warrant at the time of the arrest or as soon as possible afterwards, if the person asks you to (s316(2) Crimes Act 1961).

Step	Action
7	<p>If you are entering premises to execute the warrant to arrest, you must:</p> <ul style="list-style-type: none">- announce your intention to enter before entry- identify yourself before or on entry, and-give or show the occupier of the premises a copy of the warrant <p>(unless compliance with these requirements would endanger the safety of any person or prejudice the successful exercise of the entry and execution of the warrant).</p> <p>s 162 Criminal Procedure Act 2011)</p> <p>Note: Where your risk and prioritisation assessment has identified a situation of high risk, you should not delay executing the warrant to arrest until it is in your physical possession.</p>
8	<p>After executing the warrant:</p> <p>endorse the warrant to show how it was executed, for example:</p> <ul style="list-style-type: none">- "Executed" and "Gone to court", or- "Executed" and the amount paid <p>sign the warrant and note the time, date, and your QID on the warrant.</p>
9	<p>The officer executing the warrant ensures the NIA alert is expired:</p> <ul style="list-style-type: none">- For warrants issued against non-Police identities, the alert must be manually expired.- For warrants against Police identities, the alert is automatically expired in NIA after a Courts Management System (CMS) update when the warrant is executed, withdrawn or cancelled. However, because there is sometimes a delay in the CMS update, you should still manually expire the NIA alert.
10	<p>Attach the executed warrant to the prosecution file.</p>

Procedures for executing fines warrants

If the warrant is a fines warrant, follow procedures detailed in '[To execute a fines warrant](#)'.

Showing warrants to arrest under s162

The option under 162 of the Criminal Procedure Act '**to show**' a copy of the warrant, applies regardless of whether the occupier is also the subject of the arrest warrant.

It is best practice for Police to have the original warrant or a copy of the arrest warrant in their physical possession, especially if the matter is not urgent, before entering premises. Before using the option to 'show' an electronic copy of the warrant on a Police mobility device, you should consider the operational practicalities. E.g. you may:

- not be comfortable handing your device over to the occupier to view the warrant
- need to stand with them scrolling through the device, enlarging or reducing parts of the warrant so that they can read it
- need to take time to explain the contents of the warrant if they have difficulty reading or understanding the on screen text.

Note that section 162 of the CPA will not apply to all situations where a constable seeks to enter premises to execute an arrest warrant. E.g. where a warrant to arrest has been issued under another enactment.

Prioritising apprehension following risk assessment

Every district must have a streamlined warrant to arrest process that, irrespective what agency the arrest warrant originates from, clearly:

- identifies any risk to public safety the offender may pose while at large

- prioritises apprehension based on that risk and ensures relevant employees are informed of the:
 - outstanding warrant to arrest
 - identified [risk to public safety](#), and
 - apprehension priority.

Risk assessment and prioritisation procedure

Using the [TENR](#) operational threat assessment tool, follow these steps to assess an offender's risk and prioritise apprehension.

Step	Action
1 Assess the threat	<p>Immediately a warrant to arrest is received, assess the threat posed by the offender, taking into account:</p> <ul style="list-style-type: none"> - intent - the seriousness of the offence(s), including the current charge(s) faced by the offender, where applicable, and history of offending - capability - e.g. is the offender actively avoiding apprehension and/or court? - opportunity - the likelihood of re-offending and the offender's proximity to the victim - physical environment - are there problems with access to the target location? Is the location fortified or are there other hazards? <p>This may require consultation with other government agencies.</p>
2 Assess the exposure	<p>Assess the exposure to Police employees, Police operations and the public, taking into account:</p> <ul style="list-style-type: none"> - safety - whether the offender is considered to pose a risk to public safety - security - are your communications secured? Is there potential to lose or damage Police equipment? Can cordons be established and maintained to contain the offender.
3 Assess the necessity to act	<p>Assess the safety and security risk and assign the file, giving priority to those offenders considered to pose a risk to Police or public safety.</p>
4 Develop a response	<p>While the offender is at large, ensure the assessed safety and security risk level and the apprehension priority is:</p> <ul style="list-style-type: none"> - entered as a NIA alert, and - noted on the arrest file. <p>Prepare an apprehension plan where the safety and security risk is deemed to be high.</p>

Risk to public safety

Risk to public safety reflects the risk posed by an offender to the safety of any member of the public. This is based on their past or current behaviour, including the offences for which the warrant to arrest was issued and offending while on bail. It is not solely based on the perceived potential for an offender to progress to more serious behaviour. For example, an offender is not a risk to public safety just because they have carried out multiple daytime burglaries on houses where nobody was home but you think that the next time there 'might' be somebody home and the offender 'might' react in a violent way.

Factors to consider in assessing risk to public safety include (but are not limited to):

- current intelligence regarding the offender's behaviour
- seriousness and number of active charges and previous convictions
- previous risk assessments undertaken including probation reports, National Offender Prioritisation Matrix, [ODARA](#)
- offender's association with any organised crime group, and other geographic or criminal influence
- known or suspected use or access to weapons and/or drugs
- active [NIA](#) alerts
- in the case of charges under [s56-62](#) of the Land Transport Act, whether the nature of any active charge and the offender's previous convictions give you a belief that further offences of this nature are likely to be committed.

Risk to public safety for the purposes of s213 Social Security Act 2018

Under section [213](#) of the Social Security Act 2018 Police may, if they consider a beneficiary who is the subject of an unresolved warrant to arrest to be a "risk to public safety", and when they are unable to locate the person, request MSD to immediately stop the person's benefit. Note that there are several exclusions from the definition of "beneficiary" in section 214 including a "young person" under the Oranga Tamariki Act 1989.

Note: Solely for the purpose of section 213, MSD and Police have agreed **additional criteria** be met before a beneficiary can be considered to pose a "risk to public safety" enabling Police to request an immediate benefit stop. (See '[Criteria for Police requesting benefits be stopped](#)'). However, districts **must** continue to prioritise apprehension pursuant to a warrant to arrest **whenever** the offender is considered to be a risk to public safety, regardless of whether or not there are grounds for requesting a benefit stop.

Confirm warrant is valid

If the warrant is a fines warrant, check warrant has not already been executed.

For all other warrants, take these steps to confirm the warrant is valid before making an arrest.

Step	Action
1	Contact the issuing court to confirm the warrant is still valid. If the warrant was issued for failure to attend court, check also that the person has not already attended court voluntarily and been issued with a "Notice of hearing to withdraw an outstanding warrant to arrest". In these cases, the warrant should not be executed, unless there are good reasons to do so (see ' Warrants for failure to attend court: voluntary court appearances ' below).
2	Have the original warrant sighted and verified as valid by another Police employee if it is not in your possession. In the normal course of events it is good practice to have the original warrant or a copy of it in your possession when the warrant is executed. Note: Record in your notebook, details of any court officer, bailiff or Police employee who confirms the warrant is valid.

Confirm person's identity

Step	Action
1	Make reasonable enquiries to ensure the person you are arresting is the person named in the warrant. Do this by asking the person: - for proof of identity (use passports or other suitable means to identify people entering or leaving New Zealand) - if they have any outstanding warrants to arrest. If the person admits to a warrant's existence and their failure to appear in court or pay fines, record any admission in your notebook, and if possible, ask the offender to endorse your notebook entry.
2	If the warrant relates to failure to appear in court, complete a NIA query to: - check the person's physical description against that in NIA - confirm the charge is still active and there have been no court appearances since the warrant was issued (check the charge and not just the alert). Be aware however, that voluntary appearances may not be reflected in NIA. If the person has made a voluntary appearance and is in receipt of a "Notice of hearing to withdraw an outstanding warrant to arrest", you should only arrest them if there are good reasons for doing so - see below.

Warrants for failure to attend court: voluntary court appearances

Many people with warrants to arrest for failure to attend court actually turn up at court later than the appointed time and seek to make a voluntary appearance. Courts have introduced a new strategy for dealing with these cases, following a successful trial in Auckland.

A court registrar, if available, will:

- include the person if possible, on the criminal list that day if one is operating, or

- where the registrar issued the warrant to arrest, withdraw the warrant to arrest and enter a voluntary appearance.

Where the defendant is not able to have their warrant to arrest withdrawn because the registrar who issued it is not available, or they are not able to appear before the judge on the criminal list that day, the defendant will be issued with a "Notice of hearing to withdraw an outstanding warrant to arrest". This form details the new hearing date and the fact the warrant is still active.

Police must be aware that NIA may not reflect the new court date in these situations.

You must carefully consider whether to execute a warrant to arrest for failure to attend court when dealing with a person who has made a voluntary appearance and is awaiting a court appearance. In the majority of these cases, it will **not** be appropriate to arrest the person and if Police do so, there is a risk that the detention may be found to be "[arbitrary](#)".

When checking with courts on the validity of a warrant to arrest for failure to attend, check for voluntary appearances. If a person is in receipt of a "Notice of hearing to withdraw an outstanding warrant to arrest", you should only execute the warrant if there are good reasons for doing so (e.g. if the person is engaged in criminal activity or will clearly be unable to attend court on the noted day (e.g. because they are in Auckland pending an appearance set for Invercargill the next day).

Legal protections

Arresting the wrong person

If you are authorised to execute a warrant, but arrest the wrong person, you are protected from criminal responsibility ([s30\(1\)](#) Crimes Act 1961). However, you must act in good faith and have reasonable grounds for believing the person being arrested is the person named in the warrant. This protection applies to anyone asked to assist Police make the arrest.

Note that you are not necessarily protected from civil liability if you arrest the wrong person.

Irregularities in warrants

If you act in accordance with the warrant, you are not responsible for any irregularity in a warrant to arrest or lack of jurisdiction in the issuing process.

([s44\(1\)](#) Policing Act 2008).

Requests to MSD for information or for benefits to be stopped

Requests for information from MSD

If the subject of a warrant to arrest is assessed as posing a risk to public safety for the purposes of section [213](#) Social Security Act 2018, (see '[Criteria for Police requesting benefits be stopped](#)' below), follow the [process for requesting MSD to stop benefits](#) (s213) when requesting information to assist in locating the offender.

In **all other cases** needing further information to locate an offender to execute a warrant to arrest, request updated information from MSD using the General Warrant Request ("GWR" - POL 4141 available in the 'MSD Forms' node in NIA).

If the offender is a current or former client of MSD, MSD will return the latest benefit address and information about whether they are currently on a benefit or have been in the past. **Note** that benefits cannot be stopped under this process.

Effect on the benefit of a warrant to arrest beneficiary

Under section [213](#) of the Social Security Act 2018, benefit payments to beneficiaries who have a warrant to arrest that has not been cleared after notification by Work and Income, Ministry of Social Development (MSD) may be stopped.

Beneficiaries who have a warrant to arrest outstanding for more than 28 days will be sent a letter by MSD advising them that they have 10 days to resolve their warrant or their benefit will be stopped or reduced. This process is managed by Ministry of Justice (MOJ) and MSD. Police are not involved.

Where a warrant to arrest has been issued against a beneficiary assessed by Police as being a risk to public safety for the purposes of section [213](#), Police may, following a good faith attempt to locate the offender, request MSD to stop their benefit immediately. The offender may then be more likely to contact MSD or Police, leading to a quicker apprehension.

Criteria for Police requesting benefits be stopped

Guidance for when Police may request MSD to stop benefit payments to beneficiaries under section [213](#) is as follows:

- the warrant to arrest has been issued in respect of:
 - (i) an offence for which the maximum penalty is 3 years imprisonment or more, or
 - (ii) an offence against section 194 of the Crimes Act 1961 (assault on a child, or by a male on a female) or against section 49 of the Domestic Violence Act 1995 (contravening a protection order), or
 - (iii) an offence against s56-62 of the Land Transport Act 1998 (driving under the influence of alcohol or drugs), or
 - (iv) an offence of breaching a sentence imposed as a result of committing any of (i) to (iii) above

AND

the offender's past or present conduct (including offending whilst on bail) is of a nature that would indicate the safety of any member of the public is considered to be at risk.

See '[Risk to public safety](#)' in the 'Warrants to arrest' section of this chapter for factors to consider when determining if the person is considered to be a risk to public safety.

Exceptions

Benefits cannot be stopped if the offender is under the age of 18 years.

No requirement for Police to request a stop benefit

Police are not required to request MSD to stop an offender's benefit, even when we consider them a risk to public safety. There may be sound operational reasons why police want an offender to continue to receive the benefit (e.g. if there is a plan in place to apprehend the offender on their arrival at the bank to withdraw benefit payment). You have discretion and should use your judgement in making this determination.

Process for requesting MSD to stop benefits (section 213)

All warrants to arrest must be assessed to determine whether the subject of the warrant is considered to be a risk to [public safety](#). If you consider there to be "a risk to public safety for **the purposes of section 213**", (see '[Criteria for Police requesting benefits be](#)

[stopped](#)') follow this process to first obtain information from MSD to assist in locating the offender and then for requesting a benefit stop.

Step	Action
1	<p>Complete a Public Safety Information Request ("PSIR" - POL 4140 available in the 'MSD Forms' node in NIA) to request latest benefit address and benefit status from MSD. No specific approval is required to submit this form. (Note that there is no requirement to obtain a search warrant). When "Submit" is selected, this form will automatically be attached to an email and sent to MSD.</p> <p>MSD will carry out a data match and return information about the offender's current benefit address, benefit status, Social Welfare Number (SWN), bank account and other details to the requesting officer (or alternative contact).</p> <p>The person's details in NIA should be updated with this SWN.</p>
2	<p>Attempt to locate the offender.</p> <p>The minimum enquiries expected to be carried out before requesting a benefit suspension are a door knock on the offender's home or benefit, bail and work addresses. Other enquiries to locate include but are not limited to:</p> <ul style="list-style-type: none"> - door knock on other known addresses - family enquiries and associates - WINZ - Telephone Emergency Subscriber Access (TESA) - NIA - Utilities - Bully Board - Bank - Media.
3	<p>If the offender cannot be quickly located, complete a Stop Benefit Approval Form ("SBAF" - POL 4145 available in the 'MSD Forms' node in NIA) and obtain approval from the District Prevention Manager. If the DPM is unavailable, obtain approval from another constable of or above the position level of Inspector.</p> <p>Obtain approval by generating a SBAF (POL 4145 available in the 'MSD Forms' node in NIA). A NIA task is automatically created for the approver. Let them know via email or phone call, that you have created a task for them.</p>
4	<p>The Prevention Manager (or other employee tasked) must:</p> <ul style="list-style-type: none"> - check that the risk to public safety assessment for the purposes of section 213 has been correctly applied and that sufficient steps have been taken to attempt to locate the offender. This should all be recorded on the request. - provide their approval (or decline) via the NIA task. There is no automated process for the approver to directly advise the requestor that the SBAF is approved or declined. It will show as "Approved" in the Alert window. This should be either communicated by email or phone call. <p>Note: The task must be completed by the approving officer within 24 hours or it will become overdue.</p>
5	<p>When the Stop Benefit Approval has been obtained, complete a Stop Benefit Request POL 4146 - available in the 'MSD Forms' node in NIA.</p> <p>When "Submit" is selected, this form will automatically be attached to an email and sent to MSD.</p>
6	<p>MSD will confirm that action has been taken and the benefit stopped. They will also provide further updates if information comes to light, such as MSD contact with the beneficiary etc.</p> <p>If you receive address information that is more current than what is held in NIA, you should update NIA to reflect this.</p>

Step	Action
7	The onus is on the beneficiary to show MSD that the warrant to arrest has been cleared in order to have their benefit reinstated. When the offender is apprehended or they make a voluntary appearance at court, they will receive a new bail notice. This is their evidence to provide to MSD to show that the warrant has been cleared. Police are not required to notify MSD when a warrant to arrest has been executed that relates to an individual who is a risk to public safety.

Download a step-by-step guide (*see PDF below*) on how to use the NIA process to request benefit stops for warrants to arrest flagged as "Assessed risk to public safety" and information from MSD for general warrant requests.

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 wta-nia-step-by-step.pdf	1.12 MB
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Flowchart: Warrant to Arrest, Risk to Public Safety Assessment Process

Download the 'Warrant to Arrest, Risk to Public Safety Assessment Process flowchart' which demonstrates the process agreed with MSD for seeking information about the status of beneficiaries subject to warrants to arrest and for requesting benefit stops:

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 Warrant_to_arrest_Risk_to_Public_Safety_Assessment_Process.pdf	333.21 KB
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Deciding whether to arrest without a warrant

Discretion to arrest

You have a lawful power to arrest a person in many situations. However, the power to arrest a person is discretionary and you must always carefully consider your decision. Remember the Prevention First strategy to focus on priority and prolific offenders, and maximise the use of Police discretion and alternative resolutions in appropriate circumstances. Keep in mind the requirement to take a holistic approach to offending patterns and look for opportunities to prevent re-offending through referrals to partner agencies.

Factors to consider when deciding to arrest

When you arrest a person, you must be able to justify your action by showing you thoroughly assessed the situation. Use the [IENR](#) operational threat assessment tool when considering whether or not to arrest a person and include the following factors:

Step	Action
1 Assess the threat	Assess the threat, taking into account: <ul style="list-style-type: none">- the nature and seriousness of the offence- intent - the likelihood of the person destroying or disposing of evidence- the likelihood of the person warning accomplices; and interfering with or intimidating witnesses- capability - the likelihood of further offences being committed if the offender is not arrested- opportunity - whether the person is likely to abscond to avoid court, e.g. is there a history of failure to appear at court?- physical environment - are there problems with access to the target location? Is the location fortified or are there other hazards?
2 Assess the exposure	Assess the exposure, taking into account: <ul style="list-style-type: none">- safety - Police and public safety- whether arrest will safeguard the person's wellbeing and interests, e.g. is there a risk of retaliation or intimidation by co-offenders?
3 Assess the necessity to act	Assess the necessity to act, taking into account: <ul style="list-style-type: none">- the nature and seriousness of the offence. The less serious the offence, the less justification for arrest and the more likelihood that an alternative action would be a better case resolution option- whether an arrest is necessary to stop the offence- the person's social and family circumstances, and criminal history. Are there alternatives to arresting the person, e.g. health professionals, family or community support groups?- if there is sufficient evidence of an offence, suspects responsible for family violence related offences or breaches of protection orders should, except in exceptional circumstances, be arrested. See 'Deciding whether to arrest' in the 'Family violence policy and procedures'.
4 Develop a response	Develop a response, taking into account whether: <ul style="list-style-type: none">- this is a situation where:<ul style="list-style-type: none">- a more detailed investigation into the threat environment is required before acting?- prompt action is required to prevent further loss of life or injury?- there are sufficient Police resources and assets available to safely effect the arrest?

Alternatives to arrest

Arresting a person and depriving them of their liberty is a serious act. After considering the factors above, consider whether arrest is necessary and the best response to take in the particular situation.

You should **not** arrest a person if:

- they can be brought before the court by way of a summons (written notice to a person that court action has been started against

them and that they are required to appear and answer the complaint or respond in writing to the complaint). If the offence is not punishable by imprisonment and there are no or insufficient aggravating factors, summons is more likely to be the better way of commencing prosecution

- a warning, caution, counselling or referral to another agency in line with the Prevention First focus would be a better resolution to the situation being dealt with.

Refer to the '[Youth justice](#)' chapter of the Police Manual for information about restrictions on and alternatives to arresting children and young people.

When the person's identity is in issue

If a person's identity is in issue, consider whether taking identifying particulars under section [33](#) Policing Act 2008 and proceeding by way of summons would be more appropriate, than the more serious response of arrest. A desire to use section [32](#) to obtain a person's fingerprints /photographs for evidentiary purposes is not sufficient reason alone to arrest.

Minor offences

Arresting people is not encouraged and may not be necessary for:

- minor behaviour offences not involving or likely to lead to violence against people or property (particularly if the offender stops when asked)
- language offences where the only person who heard the language was a Police employee.

Minor drug offences

The discretion to arrest for minor drug offences is the same as for other offending. Provided the offending does not involve drug dealing, the primary aim should be the person's rehabilitation.

Children and young persons

Refer to the Arresting a child or young person and explaining rights in the '[Youth justice](#)' Police manual chapter for information about restrictions on and alternatives to arresting children and young people.

When to arrest with fines warrants

See '[Deciding whether or not to arrest](#)' under fines warrants.

Sole caregivers

If you have to arrest the sole caregiver of a young child, first make suitable temporary arrangements for the child's care.

If no suitable caregiver is available within the child's family, arrange help through Oranga Tamariki or community agencies such as:

- church or cultural groups
- Prison Fellowship or the Prisoner's Aid and Rehabilitation Society
- Maori Women's Welfare League.

Conflict of interest

Always act to avoid allegations that the power of arrest was used to resolve a private matter. If the victim or offender is a relative, friend or Police employee, any related arrest or investigation must, where practical, be carried out by an employee with no personal involvement.

Report the arrest to your supervising officer immediately whenever it may appear you have an interest in the case. The supervising officer must review the arrest to confirm it is lawful and if the case should proceed.

For more detailed information see the '[Managing conflicts of interest](#)' chapter in the Police Manual.

Considering action after arrest

Arrest does not of itself require a prosecution. Many minor offenders may be eligible for and in some cases no further action may be required.

As part of your ongoing review of the case, you must consider the sufficiency of the evidence available, the likelihood of conviction and whether prosecution is in the public interest in the circumstances of the case. (See the '[Solicitor-General's Prosecution Guidelines](#)' for information about the tests for prosecutions).

So long as you had good cause to suspect the person had committed an offence, a decision not to prosecute (or to discontinue a prosecution) should not of itself affect the validity of the arrest.

Informing complainants if you do not arrest or charge

If you decide not to arrest or charge a person following a complaint, you should advise the complainant clearly of the reasons for your decision. Just saying that "no further Police action will be taken" is not acceptable.

Where you intend to summons instead of arrest, this should be explained to the complainant.

Reporting

Regardless of whether a decision has been made to arrest or not, it is important to capture relevant information in NIA to ensure that an accurate up to date intelligence picture is maintained for critical command information. For recording and reporting obligations, see: '[National Recording Standard](#)'.

Arresting safely

Planning arrests

Unless you are forced to act immediately in a situation, take time to plan your arrest and organise any necessary back up. Take steps to ensure:

- the safe and humane arrest of the offender
- your own safety and that of colleagues or other people who may be assisting you (e.g. inform the Communications Centre where you are and what is happening).

Plan for the safety of children and young people

By virtue of their age, children and young people are vulnerable. Their safety and well-being must be considered and planned for to ensure they are not unnecessarily exposed to harm or trauma.

Assign a dedicated person to be responsible for ensuring that Police care and protection duties to children or young people are met if:

- children or young people are present when any person is arrested or detained, or
- a person being arrested or detained has responsibilities for the care and protection of any child or young person.

(See the '[Community Impact Assessment](#)' chapter for further guidance on planning for events involving vulnerable people including children and young people).

Getting assistance from the public

If you are unable to get help from another Police employee and yours or anyone else's safety is at risk, consider asking a member of the public over the age of 18-years to help you:

- apprehend or secure the person
- transport a person in your charge to a Police station or other place.

However, while it is an offence for the person to fail to help when asked ([s51 Policing Act 2008](#)) remember you cannot always rely on the support of the public in risky situations.

Using restraints

The use of restraints is a use of force. When deciding whether to use restraints while arresting a person, you must consider whether the use of force is justifiable **and** what level of force, if any, is necessary and proportionate, given all the circumstances known at the time.

Use the [TENR operational threat assessment tool](#) (Threat Exposure Necessity Response) to determine your perceived cumulative assessment (PCA). If this assessment requires you to use restraints, you **must** act in accordance with the law, the Tactical Options Framework (see '[Use of force](#)'), the '[Mechanical restraints](#)' chapter and other [PITT](#) policies and procedures.

For example, you should consider:

- the nature of the charge or reason for detention
- the likelihood of the person trying to escape
- the ability of Police to apprehend the person should they abscond
- Police and public safety
- the person's criminal history, if known
- whether the person is behaving in a manner that suggests they may be dangerous to Police or the public
- whether the circumstances of the arrest suggest a situation of some risk.

In trying to manage the identified risks, ask:

- What is the most appropriate form of mechanical restraint?
- Can I safely apply the mechanical restraint in the situation?
- Am I legally justified in using force to apply the restraint? If so, is the force to be used reasonable, necessary and proportionate, given all the circumstances known. See 'Tactical Options Framework' in the '[Use of force](#)' chapter.

For more information see the '[TENR-Operational threat assessment](#)' and the '[Mechanical restraints](#)' chapter.

Transporting restrained prisoners

A restrained prisoner **must not** be transported in the same compartment with unrestrained prisoners. The other prisoners can be restrained for the safety of the restrained prisoner if operationally necessary.

For more information about restraints and when to use them, see '[Use of Force](#)' in the Police Manual.

Mentally impaired people

Mentally impaired people (includes those with intellectual disability, brain damage or mental disorder) often:

- have little or no control over their behaviour
- act unpredictably
- demonstrate bizarre or violent behaviour.

Be careful when applying restraints to mentally impaired people as some do not feel pain and may be permanently injured trying to free themselves.

If possible, give the person time to calm down and remove anything that might upset them. Get someone the person trusts to help. In some situations this may mean you arrest the person without using restraints.

For more information see '[People with mental impairments](#)' in the Police Manual.

Arresting in a crowd or at demonstrations

Making arrests in a crowd may expose you or others to danger and initiate further disorder or violence.

You should only arrest in a crowd when:

- there is no reasonable alternative, and
- the arrest can be done without causing greater disorder.

Where practical, obtain a supervisor's approval before making arrests in a crowd.

For more information about arresting in crowds or at demonstrations, see the '[Public Order Policing](#)' chapters in the Police Manual.

Property on arrest

When arresting a person with or without a warrant, do your best to minimise the property or belongings that are brought into the station with them. (See 'Detainees' property' in the '[People in Police custody](#)' chapter).

Powers associated with arrest and detention

Introduction

If you have a power of arrest (with or without a warrant) you have other associated powers. They include the power to:

- use reasonable force making the arrest
- enter premises to carry out the arrest
- stop and search vehicles in limited situations
- exercise warrantless search powers after arrest
- search and seize items being carried or in the person's possession or control.

Using reasonable force to make the arrest

If you are justified or protected from criminal responsibility when making (or assisting) an arrest, you are also justified in using any necessary force to make the arrest. The force used must be reasonable and can only be used when it is not reasonable to make the arrest in a less violent manner. Use the [TENR operational threat assessment tool](#) to determine your Perceived Cumulative Assessment (PCA). See 'Tactical Options Framework' in the '[Use of force](#)' chapter.

Having considered TENR and determined your PCA, if this assessment requires you to use force, you must act in accordance with the law and the Tactical Options Framework. For more information, see '[Use of force](#)' and '[TENR-Operational threat assessment](#)' in the Police Manual.

Warrantless powers to enter and search when effecting arrest

Entry without warrant to arrest person unlawfully at large

You may enter a place or vehicle without a warrant, by force if necessary, to search for and arrest a person if you have reasonable grounds to:

- suspect that a person is unlawfully at large,
and
- believe that the person is there.

([s7](#) Search and Surveillance Act 2012)

Note: 'Unlawfully at large' is defined in section [3](#) of the Search and Surveillance Act and includes a number of scenarios, e.g. when a warrant to arrest the person (excluding fines warrants) is in force, or the person has escaped from lawful custody.

Entry without warrant to arrest person suspected of having committed an offence

You may enter a place or vehicle without a warrant and search for and arrest a person who you:

- suspect has committed an offence punishable by imprisonment, **and**
- believe is there, **and**
- believe that, if entry is not affected immediately, **either or both** of the following **may** occur:
 - the person will leave the place or vehicle to avoid arrest
 - evidential material relating to the offence for which the person is to be arrested will be concealed, altered, damaged or destroyed.

([s8](#) Search and Surveillance Act 2012)

Stopping a vehicle without warrant to arrest a person

You may stop a vehicle without a warrant to arrest a person you have reasonable grounds to believe is in or on the vehicle, and who you suspect:

- is unlawfully at large, or
- has committed an offence punishable by imprisonment.

([s9](#) Search and Surveillance Act 2012)

Your powers and duties after vehicle stopped

If you exercise the stopping power under section 9 you may:

- require any person in or on the vehicle to supply all or any of their name, address, other contact details and date of birth, if you have reasonable grounds to suspect they:
 - are unlawfully at large, or
 - have committed an offence punishable by imprisonment
- search the vehicle to locate the:
 - person the vehicle was stopped for if you have reasonable grounds to believe they are in or on the vehicle
 - evidential material in relation to any offence in respect of which the vehicle was stopped, if the person sought has been arrested or is seen fleeing the vehicle before they can be arrested.

(s [10](#) Search and Surveillance Act 2012)

Note: Before searching for evidential material, you must tell the driver the object of your search if they are not the person you stopped the vehicle to arrest.

Warrantless powers of entry and search incidental to arrest or detention

Searching places after arrest

If you have arrested a person for an offence:

and have reasonable grounds to...	you may...
believe that: <ul style="list-style-type: none">- evidential material relating to the offence is at a place, and- if entry is delayed to obtain a warrant, evidential material will be concealed, altered, damaged or destroyed (CADD)	enter the place to search for evidential material relating to the offence (whether or not the person was arrested there) without a warrant.

(s [83](#))

Note: This search power may only be used by the person making the arrest. The power cannot be delegated to another constable for any reason (e.g. while the arresting constable is processing/interviewing the arrested person). However, other officers can assist the constable at the search scene.

Searching vehicles after arrest

If you have arrested a person:

and have reasonable grounds to...	you may...
believe that evidential material relating to the offence for which they were arrested is in a vehicle	enter and search that vehicle without warrant.

(s [84](#))

Note: This search power may only be used by the person making the arrest. The power cannot be delegated to another constable for any reason (e.g. while the arresting constable is processing/interviewing the arrested person). However, other officers can assist the constable at the search scene.

Producing evidence of your authority

When you exercise a power to enter and search a place or vehicle you must:

- announce your intention to enter and search under a statutory power
- identify yourself (by name or unique identifier)
- if not in Police uniform issued by the Commissioner per the Policing Act 2008, produce evidence of your identity, and
- provide evidence of your authority (search warrant or warrantless power)

(unless compliance is not required in the particular circumstances - see the chapter '[Carrying out search powers with or without a warrant](#)' for more information).

(s [131](#) Search and Surveillance Act 2012)

Warrantless search of arrested or detained person

You may search an arrested or detained person if you have reasonable grounds to **believe** that there is any thing on or carried by the person that:

- may be used to:
 - harm any person (including themselves), or
 - facilitate the person's escape, or
- is evidential material relating to the offence for which the arrest was made or the person detained.

(s [88](#))

Searching and seizing items being worn or carried

When searching an arrested or detained person, you may also:

- search any item:
 - seize any thing in the person's physical possession or immediate control if that thing:
 - the person is wearing or carrying, or
- that is in their physical possession or immediate control, and
 - is the subject of your search, or
 - may lawfully be seized.

(s [125](#)(1)(i) & (j) Search and Surveillance Act 2012)

Searching people who are or are to be locked up

You may search an arrested or detained person who is or is to be locked up in Police custody, using reasonable force if necessary, and take from them all money and property found during the search.

(s [11](#) Search and Surveillance Act 2012)

Note:

- Section [11](#) limits the number of (custodial) searches that can be carried out to one search, unless one of the exceptions under subsection 3 exists.
- You should avoid conducting a custodial search at the scene and interview room, and instead conduct the section 11 search when the person arrives at the watch house.

For more information

For more information about your powers to search:

- **places, vehicles and things**, see '[Warrantless powers to search places, vehicles and things](#)' in the Police Manual
- **people** and the rules applying to searches, see the '[Searching people](#)' chapter, particularly the section on 'Searches of arrested or detained people'. (This section provides guidance on choosing which search provision to use having regard to the limitations on the timing of searches).

Rights and duties

Introduction

This topic outlines:

- the rights of people who are arrested or detained, and
- the duties of Police to ensure people are given their rights when arrested or detained.

Arrested people have the same rights and you have the same duties regardless of whether the person is detained or arrested with or without a warrant.

Rights of people arrested or detained

Under section [23](#) New Zealand Bill of Rights Act 1990, people who are arrested or detained under legislation have the rights to:

- be informed of the reason for arrest or detention at the time of their arrest or detention
- consult and instruct a lawyer without delay and to be told of that right
- have the arrest or detention's validity determined and to be released if it is not lawful
- be charged promptly or released
- be brought before a court or tribunal as soon as possible
- refrain from making any statement and to be informed of that right
- be treated with humanity and respect.

For more information see '[New Zealand Bill of Rights](#)' in the Police Manual.

Arresting/ detaining officer's duty to caution

When you arrest or detain a person or wish to question someone when there is sufficient evidence to charge them with an offence, you must advise the person of their rights using the [cautions](#) for adults and children/young people detailed on the insert card in your notebook.

Chief Justice's Practice Note on Police Questioning

The cautions given to anyone you arrest or detain or who you want to question where there is sufficient evidence to charge that person with an offence are outlined in the [Chief Justice's Practice Note on Police Questioning](#) issued under section 30(6) Evidence Act 2006. The practice note provides guidance on Police questioning and supplements other enactments, e.g. New Zealand Bill of Rights Act 1990, relating to police questioning.

Failure to caution

Failure to advise an arrested or detained person of their rights using the correct [caution](#) may result in:

- a finding that evidence was improperly obtained and exclusion of the evidence
- the case against the person being dismissed.

Care and suicide prevention

Police policies on care and suicide prevention

This topic provides an overview only of the Police responsibilities and suicide prevention practice in the context of initial arrest and detention.

You **must** know and refer to Police policies on care and suicide prevention detailed in the ['People in Police custody'](#) chapter including:

- evaluation and monitoring of people in Police custody
- assessment of risk
- observing people at risk
- health, safety and management plans
- transporting people at risk.

See in particular the section 'Procedures for officers who arrest and detain' in the ['People in Police custody'](#) chapter.

Arresting / detaining officer's responsibilities

When you arrest or detain a person, you have a responsibility to protect that person and keep them safe from self-harm and/or suicide or harm from others (e.g. other prisoners) while they are in Police custody.

Your responsibility starts from the moment you arrest or detain the person at the incident scene or elsewhere, continues whilst transporting to a police station and during processing. Your responsibility does not end until you transfer the person into someone else's custody, (e.g. a custody officer) or the person is released.

Your responsibility derives from the common law, legislation, and is detailed in Police policies and procedures. You must avoid acts or omissions that are unlawful and work within any relevant legal framework.

Failure in exercising your responsibility could result in criminal charges or disciplinary action under the Code of Conduct for negligence or carelessness in the performance of your duty.

Gathering health and safety information

When you arrest or detain a person:

- be alert for information and make enquiries from the person, their friends and family to ascertain if there are any factors suggesting the person might need special care, or could harm themselves or commit suicide while in Police custody
- take steps to manage any concerns or identified risks while transporting the person or while the person is in your care
- ensure any information you gather about the person that might be relevant to their care and safety is recorded in your notebook and passed on to the watchhouse keeper, person in charge of the station or any other employees taking over responsibility for the person's custody.

Assessment and monitoring of arrested people

Anyone arrested or detained in Police custody must be continually assessed and monitored to determine:

- their physical and mental health, particularly whether they have any medical condition or warning signs indicating suicidal tendencies or risks of self-harm
- the level of threat the person may pose to Police employees or other people in custody
- any risk posed to them by other people in custody (e.g. because of the nature of the charge against them or their sexual orientation, affiliations or vulnerability to intimidation)
- any other risk that may arise from being in custody.

Releasing arrested or detained people

Right to be charged or released after arrest

Every arrested person has the right to be [promptly](#) charged and brought before a court or released (s23 New Zealand Bill of Rights Act 1990). Release includes release on [bail](#) or without charge (you do not have to charge everyone you arrest). Also, it may be that an arrested person can be considered for a [formal warning](#), if relevant criteria are met).

What is prompt?

The person does not have to be taken immediately or directly to a Police station or before a judge. You can first take [reasonable](#) steps to investigate the matter, e.g. ask them to:

- help with the enquiry, e.g. by recovering property or identifying premises
- accompany you while you execute a search warrant or check an alibi.

What is reasonable?

What is reasonable will depend on the circumstances, e.g. it is not reasonable to charge a person with receiving and then keep them in custody while investigating a possible charge of robbery.

Release on Police bail

Police may bail a person under section 21 Bail Act 2000 who:

- is charged with an offence (but not one to which section 9, 9A, 10, 12, 16, or 17A of the Bail Act applies - only a court can grant bail in these cases), and
- has been arrested without warrant, and
- cannot practicably be brought immediately before a court.

You must have approval from the officer in charge of the watchhouse before releasing a person on Police bail. (See 'Bail' in the Police Manual for more information about when Police can and should grant bail).

Immediate release

You must release a person immediately if:

- you discover there was no power to arrest
- there is no longer reason to believe the person committed the offence
- you believe the detention is no longer justified for whatever reason
- the person is arrested on a charge that does not proceed
- the person is found not to be the person named in the warrant.

You can still take action against a person by way of a summons if they are released because there was no power to arrest them.

Irregularities in warrants or unsure whether to release?

If there is an irregularity in a warrant, it was issued on false information, or you have any other concerns about the warrant, it should **not be executed** and leave of the District Court Judge, Justice or Community Magistrate should be sought to have the warrant withdrawn or reissued.

Once a warrant is executed, always seek advice from your supervisor, who will consult with legal staff if necessary, if you have any doubts about whether or not an arrested person should be released.

Police must be careful not to hold people when we shouldn't as it opens Police up to a civil claim. Insofar as 'false information' is concerned, a relevant situation could be one where an offender has used a false name and subsequently fails to appear in court. A warrant is then issued in the name of the innocent person and we arrest that person under the warrant (their innocence having been verified through fingerprints and/or photographs). If this occurs, we should release the person immediately.

Release after detention

A person is free to go as soon as the purpose of a detention has been fulfilled, unless you decide to then arrest the person.


Arresting and detaining children and young people

Special provisions apply

There are a number of legislative and policy requirements relating to the arrest and detention of children and young people.

Prevention First (see *PDF below*), the Police operating strategy, requires that youth offenders are responded to and dealt with swiftly. The strategy also encourages the use of alternative actions.

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 [prevention-first-strategy-20-dec-2011.pdf](#)

1.12 MB

For detailed information about when children and young people may be arrested, the use of warnings and other alternative actions, interviewing and prosecuting young people, and notifying guardians or nominated persons see:

- the '[Youth justice](#)' chapter
- the 'Children and young persons' sections of [Investigative interviewing - witnesses requiring special consideration](#) and [Investigative interviewing - suspects requiring special consideration](#).

Children and young people defined

These definitions from section 2 Oranga Tamariki Act 1989 apply.

Term	Means a boy or girl
Child	under the age of 14 years

Young person of or over the age of 14 years but under 18 years. It includes a person who is or has been married or in a civil union.

Police powers on court premises

Contempt of Court Act 2019

‘Contempt of court’ is a collection of laws that help facilitate the administration of justice in the courtroom.

Under section 10 of the [Contempt of Court Act 2019](#), a Judge can make an order to remove someone from a court sitting or order that they be taken into custody and detained where the person is:

- wilfully disrupting court proceedings (s 10(1)(a)); or
- wilfully and without lawful excuse disobeying any order or direction of the court in the cause of the hearing of any proceedings (s 10(1)(b)).

Section 10(3) of the Contempt of Court Act empowers Police constables to execute the Judge’s order to remove or take a person into custody.

The detained person may be detained no longer than the time the court rises for the day (s 10(2)).

Courts Security Act 1999

Section 34 of the [Courts Security Act 1999](#) enables constables to use all the powers provided to court security officers in the Act. This means that Police constables may exercise the detention powers in the Act.

The power for court security officers to detain comes from section 20 of the Act. A person can be detained under this section for up to four hours. Where a court security officer exercises their detention powers, they must contact Police afterwards. Police must then assess whether they want to arrest the detained person (s 20(5)). If Police decide not to arrest, the security officer must free the person (s 20(5)).

To exercise the section 20 detention power, the Police officer or court security officer must have reasonable grounds to believe that a person:

- who wants to enter, or is in, a court may recently have committed or attempted to commit a specified offence in the court or may be about to commit such an offence (section 19(1));
- has refused to leave court premises after having been required to do so, or has attempted to re-enter a court after being removed or denied entry, has been warned they will be detained if they persist with their actions and does so (s 19A(1)(a)); or
- has disobeyed a direction from a court security officer to do anything reasonably necessary to protect the safety or security of persons being escorted into or out of a court for services related to the court (19A(1)(b)(i)); or
- has disobeyed a direction from a court security officer to do anything that adversely affects the safety or security of persons being escorted into or out of a court for services related to the court (s 19A(1)(b)(ii)).

The ‘specified offences’ referred to in section 19(1) are defined in section 2 of the Act. They list some specific offences located in the Crimes Act 1961, the Summary Offences Act 1981, the Arms Act 1983, and the Misuse of Drugs Act 1975. A ‘specified offence’ under section 2 also includes any other offence committed within a court that a court security officer or constable believes on reasonable grounds:

- threatens the safety or security of another person on that person’s property and includes an attempt to commit one of the listed offences; or
- may cause serious damage to the court.

Once detained, a court security officer or constable can direct the detained person to do something or not do something if there are reasonable grounds to believe the direction is necessary for safety purposes (s 20(5A)).

These detention powers are not available to court security officers where the person is already in Police custody, unless they are in the courtroom or are about to appear and a Judge has specifically directed that they be detained (s 25).

In practice, Police, if present, may be able to make an arrest instead of detaining the person under section 20. However, there are some additional considerations for Police conducting an arrest on court premises as set out below.

Arrests on court premises

People who are in a courthouse for court proceedings (as a witness or defendant, for example) may be wanted to arrest. Special circumstances apply to conducting arrests on court premises.

There is a convention that Police will not arrest people actively participating in court processes. This is because courts have a duty to ensure people receive a fair trial process. Justice often depends on the ability of defendants and witnesses to appear in court and give evidence (*Jolly v Jolly* [2000] 2 All ER (D) 49). This convention is generally aimed at circumstances where Police make a non-urgent arrest on court premises or in the courtroom, interrupting court proceedings taking place or that are about to take place.

The convention is not limited to arrests inside the courtroom. It also applies to defendants and witnesses who might be waiting outside for their hearing, or who have stepped outside the court building for a short break.

The decision to arrest is ultimately still discretionary. There will be some circumstances where the convention should not be followed, and an offender should be arrested. The courts have recognised that another feature of justice is the ability for the public to use the courts without fear of attack (*Smith v Police* [2020] NZHC 25).

People before the court are under the court's control, and therefore should be treated as a Judge directs. Complying with the Judge's instructions also helps constables to meet their obligation under the District Court Act 2016 to assist the District Court and District Court Judges in executing their duties (s 226). Conducting an arrest that interrupts the administration of justice may breach this obligation.

In the courtroom, there may be times where it is necessary to conduct an arrest without instruction from a Judge because of the urgency and danger present.

When considering making an arrest at the court (but not in the courtroom), first assess the urgency and severity of the situation. An arrest outside the courtroom can still affect the fair trial process because the arrested person may be participating in proceedings. It is recommended that you communicate your intention to arrest to another appropriate court staff member (a Registrar or Deputy Registrar, for example).

Breaching this convention may not make an arrest unlawful, but without good reason it is not appropriate to do so.

Arresting diplomatic or armed forces staff

Arresting diplomatic staff

Diplomatic or consular representatives of other countries may be afforded special privileges and immunities in respect of criminal acts. In some situations they may not be arrested or detained.

For more information about arresting diplomatic staff see the '[Diplomatic and consular privileges and immunities](#)' chapter.

Armed forces deserters and absentees

New Zealand Defence Force (NZDF) is responsible for obtaining warrants to arrest staff who are deserters or are absent without leave. Police assist NZDF to execute arrest warrants and may enter a person alert into NIA.

If Police execute an arrest warrant relating to a deserter, you must:

- advise the nearest NZDF establishment, so they can make arrangements to collect the person
- complete any requested NZDF arrest paperwork needed for prosecution. NZDF will provide papers.

Arresting student loan defaulters

Borrowers who default on loan repayments may commit an offence

Under section [162A](#) of the Student Loan Scheme Act 2011, it is an offence for a borrower living overseas who:

- is in default of their student loan repayment obligation, and
- has been notified of this by Inland Revenue

to refuse to pay or make reasonable efforts to pay.

The offence is punishable by a fine not exceeding \$2000.

Warrants to arrest defaulting borrowers leaving New Zealand

The District Court may issue an arrest warrant under section [162B](#) if satisfied that a person has committed an offence against section [162A](#) **and** is about to leave New Zealand.

The role of police

While it is Inland Revenue's role to apply for an arrest warrant under section [162B](#), only a constable can execute the arrest warrant.

Any prosecution is the responsibility of Inland Revenue and they must file the charging document and prosecute the case.

Powers of a court after warrant is executed

Upon execution of the warrant, the liable person must be brought before a District Court as soon as possible.

If the Court is satisfied the person is about to leave or attempt to leave New Zealand without making arrangements to pay the amount in default, the court may order the person to:

- pay the amount in default or make arrangements with Inland Revenue to pay
- give such security (including the provision of sureties) for the payment of the liability as the court specifies
- not leave New Zealand without the court's written permission
- surrender to the court travel documents or tickets in their possession
- provide the court with any information the court thinks appropriate.

(s [162B](#)(2))

Breaches of court orders

If there is an order in place requiring a person to remain in New Zealand or to surrender travel documents, and that person leaves New Zealand, or attempts, or does an act with the intent, to leave New Zealand, they commit an offence.

The offence is punishable by imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000. Inland Revenue is responsible for filing any charging document for this offence and prosecuting the case.

(s [162B](#)(5))

Note: No offence is committed if, at the time of the person's actions, they were no longer in default of their overseas-based repayment obligations.

Citizen's arrest

Introduction

Everyone has the power of arrest without a warrant in certain circumstances. This section lists some of the more common powers of citizen's arrest.

When can citizens arrest or detain?

Anyone is justified in arresting a person without a warrant (under [s35 Crimes Act 1961](#)) if they find them committing an offence:

- punishable by more than three years in prison, or
- against the Crimes Act at night (21.00 to 06.00 hours).

A person may also be justified in arresting an offender they have reasonable grounds to believe has committed an offence under section 37.

Anyone who witnesses a [breach of the peace](#) can intervene to prevent the breach continuing, and detain the person until they can be placed in Police custody.

([s42 Crimes Act 1961](#))

Owner or occupier's power of arrest

Property owners or occupiers can, without a warrant, arrest any person they find on or in their property committing an offence against any of these [Summary Offences Act 1981](#) provisions:

- section [9](#) common assault
- section [10](#) assault on a Police, prison or traffic officer
- section [11](#) wilful damage to property
- section [29](#) being found on property without reasonable excuse
- section [30](#) peeping or peering into a dwelling house.

An owner or occupier who makes an arrest must as soon as practicable call a constable to their aid and deliver the arrested person into the constable's custody.

([s39 Summary Offences Act 1981](#))

Processing citizen's arrests

When a citizen delivers an arrested person into Police custody, the citizen must sign all the documentation relating to the arrest itself but a Police employee is responsible for carrying out any other required procedures as if they had made the arrest (e.g. dealing with the prisoner's property and completing custody/charge sheets).

For further information about processing arrested people see '[People in Police custody](#)' in the Police Manual.

Protection from criminal responsibility

Everyone is protected from criminal responsibility for arresting without a warrant:

- any person found at night in circumstances that give you reasonable and probable grounds for believing the person is committing an offence against the Crimes Act that is an offence punishable by 3 years imprisonment or more
- when an offence against the Crimes Act has been committed and you believe on reasonable and probable grounds the person has committed that offence, whether or not they actually did
- any person you believe on reasonable and probable grounds has committed an offence against the Crimes Act and is escaping from or being pursued by someone with a lawful authority to arrest that person.

(ss [36-38 Crimes Act 1961](#))

Assisting Police arrest with a warrant

Citizens are protected from criminal responsibility if they are asked to assist Police make an arrest with a warrant but the wrong person

is arrested.

(s30(2) Crimes Act 1961)

Fines warrants

Introduction

Holding fines and reparation defaulters accountable is a government priority to ensure the integrity of the justice system and maintain public confidence in it.

The primary purpose of Police involvement in enforcing fines warrants is assisting courts to hold defendants accountable. It is not to further general Police enforcement activities.

This section provides guidelines and procedures for enforcing fines warrants, agreed with the Ministry of Justice Collections Unit.

About fines warrants

A fines warrant empowers constables and bailiffs (specified courts' staff) to arrest a person unless the total of unpaid fines specified in the warrant is paid beforehand.

Warrant version

Fines warrants are stored electronically by the Ministry of Justice Collection Unit and unlike other warrants are not received by Police until printed at a NIA terminal. Each time a warrant prints, it shows as a different version of the warrant valid for seven days.

Note that a warrant for outstanding fines is issued when the Registrar enters the details of the warrant into the relevant computer system.

You do not need to have the warrant in your possession at the time of the arrest. The arrested person should be shown the warrant upon their return to the station.

Collections Unit contact

Public contact number

The Ministry of Justice Collections Unit operates a free phone number **0800 4 FINES** (0800 434 637, free for NZ mobile) for defaulters to arrange payment of their fines and reparation.

This number operates between 0700 - 2100 hrs Monday to Friday and 0900 - 1730 hrs on Saturday.

s.6(c) OIA

Airport Police may use this number to assist a defaulter make arrangements to pay and where immediate confirmation is required to allow the defaulter to fly.

Use your QID to identify yourself when enquiring.

Fines warrant enforcement at airports

The Collections Unit provides details to New Zealand Customs Service of any person:

- with outstanding fines warrants amounting to more than \$5000, or
- owing any amount of reparation.

Police at airports are then alerted by New Zealand Customs Service and attend airport immigration if these people try to enter or leave New Zealand.

People affected by fines warrants airport alerts should be:

- prevented from leaving the country until they have paid or made arrangements to pay their fine or reparation with the Ministry of Justice Collections Unit
- arrested if they cannot resolve the outstanding fine.

Avoiding delays to flights

StepAction

- 1 Notify the airline at an early stage of the potential need to off load the passenger's baggage to avoid delays to the aircraft.
- 2 At all times, if there is any risk of delaying a departing flight, allow the passenger to fly and make further enquiries so that where necessary the passenger can be dealt with on their return.
- 3 Follow the normal [procedures to execute a fines warrant](#) when responding to a fines warrant alert from New Zealand Customs Service.

Other operations targeting fines warrants

If you are planning specific operations targeting the execution of fines warrants on a widespread basis (e.g. boy racer events) contact your nearest Collections Unit for their input and assistance.

To execute a fines warrant

Follow these steps to execute a fines warrant.

StepAction

- 1 Check the warrant's [version number](#). If you are not in possession of the warrant, ask the Police Communications Centre to check for you. The version number is found on the top left-hand corner in NIA's "view warrant" screen.

Note that there is no requirement to have the warrant printed and in your possession at the time of the arrest. The person should be shown the warrant upon their return to the station.

- 2 Confirm the warrant is current and [not already executed](#).
- 3 Make reasonable enquiries to check the [person's identity](#).
- 4 Advise the person:
 - they have an outstanding warrant to arrest for unpaid fines
 - their payment options.

If the person offers you cash payment of the fine, follow the [receiving cash payment](#) procedure.

StepAction

- 5 If the fine remains unpaid, [decide whether to arrest](#) the person.

If you decide to:

arrest the person, you must...

bring them to court as soon as possible with a copy of the verify the person's full name, current address, phone number and executed warrant. (The person may be released on Police occupation/ place of work (this information will assist the Collections bail pending a court appearance)

not arrest the person...

Unit and court bailiffs to recover unpaid fines).

If the person offers to pay outstanding fines in full after their arrest:

- accept the payment and follow the receiving cash payment procedure
- release the person on Police bail
- clarify with the court whether the person needs to appear in court and advise the person of the Court's decision.

- 6 If the person is arrested on a fines warrant, an automated email is generated from NIA to Collections to advise them of this and what court the person will be appearing in.

If the person is not arrested contact Collections Unit and advise:

- the person's full name,
- current address,
- phone number, and
- occupation.

- 7 If the warrant is executed, (i.e. the person is arrested or has fully paid their fine):

- create an occurrence using the incident code 2T
- attach all relevant documents to the file including:
 - copy of the warrant
 - signed and witnessed receipt
 - copy of the cleared NIA alert.

Check warrant not already executed

To avoid the risk of wrongful arrest, take care before executing a fines warrant to ensure it has not already been executed by an employee using an earlier version.

Follow this table to check if the warrant has already been executed.

If the warrant is...

then...

version 1

[contact the Ministry of Justice Collections Unit](#) if practical and check the fine has not been paid.
(Payment could have been made without the warrant being printed).

(you are the first person to
print the warrant for
execution)

version 2 or higher

- speak to the Police employee or bailiff shown on [NIA](#) as last printing the warrant to establish the outcome of previous version (contact bailiffs through Ministry of Justice [Collections Unit](#))
- record names and details of anyone you speak to in your notebook.

Fines payment options

Fines defaulters can pay their outstanding fines to the Ministry of Justice Collections Unit by either:

- telephoning the unit direct to arrange payment on 0800 PAYORSTAY (0800 729 677)
- visiting the website [http://www.justice.govt.nz/fines/contact us](http://www.justice.govt.nz/fines/contact-us) and paying in full by credit card
- visiting their local court's Collections Unit.

Deciding to arrest on a fines warrant

Use this table when deciding whether to arrest a person on a fines warrant.

If the person is an international traveller entering or leaving New Zealand...

For all other people...

You should arrest the person if they:

Consider:

- have outstanding fines warrants amounting to more than \$5000 or owe any amount of reparation, and
- do not pay the outstanding fine in full or make arrangements for payment with the Collections Unit.

- amount and number of outstanding fines
- person's fines default history
- your ability to verify the person's details
- the person's likelihood of attending the Collections Unit voluntarily, e.g. if the person is leaving the country soon, attendance may be unlikely.

Refer to [Fines payments options](#) and contact the [Collections Unit](#) to confirm if payment is made.

Note: If the outstanding reparation and any fines are less than \$1000, only arrest in exceptional circumstances.

Do not arrest the person if:

- the fine has been paid in full
- there is any doubt about whether the warrant has already been executed.

Receiving cash payment

Conditions for accepting cash

Collecting cash is a risk for police because an officer's integrity can later be questioned.

Only accept cash payments as a last resort if:

- the person cannot pay the fine directly to the Collections unit (consider delivering the person to the court to make payment),
and
- it is a cash payment (i.e. no cheques or credit cards) for the **full** outstanding fines (**do not accept part payments**).

Receiving cash payment procedure

Follow this procedure if **full** payment of an outstanding fine is made in cash.

Step Action

- 1 Accept the payment if the [conditions](#) for receiving cash payments are met, and print the warrant from [NIA](#).
- 2 Count cash in front of the person from whom it was taken.
- 3 Complete the receipt form on the warrant and ask the person to countersign the receipt. If possible ask another Police employee to co-sign the receipt to confirm all details are correct.
- 4 Give the person a copy of the receipt.

If it is impractical to issue a receipt, enter the details (e.g. name, date, amount, warrant number) in your notebook and ask the person and another Police employee to sign your notebook confirming details are correct.

- 5 Seal cash in a Police exhibit/security bag by sealing all edges with tape.

The employee seizing or receiving the cash signs across the tape. **Note** that staples must not be used.

- 6 Follow the procedures in the '[Cash handling](#)' chapter if the cash cannot be passed to the court promptly by either:

- depositing the money using a court authorised process or,
- delivering the payment with warrant attached to the nearest court or,
- depositing it in a safe and deliver to court at first available opportunity.

Note: It is the executing employee's responsibility to action it, or to ensure another employee attends to this promptly.

- 7 Ensure that the alert in NIA is cleared.

When a person is arrested on a fines warrant, an automated email is generated from NIA to Collections to advise them of this and what court the person will be appearing in.

- 8 If the warrant is executed, (i.e. the person is arrested or has fully paid their fine):

- create an occurrence using the incident code 2T
- attach all relevant documents to the file including:
 - copy of the warrant
 - signed and witnessed receipt
 - copy of the cleared Fines Warrant alert.