**Legal Process – Search Warrants**

Certain procedures must be followed when police search or arrest individuals. Failing to do so could result in a mistrial. For the most part, a police officer must have a **search warrant** to search a place or a thing. To obtain a search warrant, a request must be made to a judge who may approve the search if there's reason to believe that the search will produce evidence. The warrant identifies specifically what can be searched. For serious crimes, a police officer may request a warrant for a person to give a cell sample of their DNA to identify hairs, saliva or blood from the perpetrator.

**Check it out for yourself**

Examine the contents of a search warrant by searching for "Form 7.1" in the [***Criminal Code***](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec785_smooth).

**Search**

Remember how Section 8 of the *Canadian Charter of Rights and Freedoms* protects people from unreasonable search or seizure? A police officer cannot barge into any person's home or search a person's body or property on a whim; they must have reasonable grounds to do so. Reasonable and probable grounds is what any reasonable person would agree to be a valid reason to do a search. Depending on the circumstances, the police may make a search with or without a warrant. It may seem strange that the police would have to go through the trouble of getting a search warrant, but it's a question of protecting citizen's rights. We would certainly not want the police to barge into the privacy of our home, at any time of the day or night, and rummage through our personal belongings. This is why the *Charter* exists—to prevent abuse and protect our privacy.

If a judge discovers that a person's right, according to the *Charter*, has been violated, the judge may decide not to allow the evidence in court. As a result, the conviction may not be successful, even if the perpetrator did in fact commit the crime. Therefore, officers must perform their duty and follow procedures laid out in the *Criminal Code* when they are searching for evidence. For more information on searches, check out the section on search warrants in the

[***Criminal Code***](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec785_smooth) PART XV SPECIAL PROCEDURE AND POWERS, sections 483-490.

# Legal Process: Search Without a Warrant

In certain situations, the police may conduct a search without a warrant. The Criminal Code, section 487.11, states, "A peace officer … may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) or 492.1(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant."

Regardless of the situation, the police officers must consider whether they have grounds to get a warrant. A search without a warrant may occur in the following circumstances:

* During an arrest
* If police have good reason to believe there is question of a contravention to the Controlled Drug and Substances Act
* In a situation in which time constraints make it impractical to get one
* At border crossings where searches on a person or a vehicle are common
* In exigent circumstances, when there is a threat to evidence, or to someone’s life or safety.

If there is suspicion of a person carrying a dangerous weapon, section 117.02 of the Criminal Code states that a police officer may perform a search if they believe "on reasonable grounds" that a weapon, an imitation firearm, a prohibited device, any ammunition … or an explosive substance" is likely to be on a person or in a location.

If police officers do find something that can be used as evidence, they may **seize** the objects and must report to the judge anything seized under the search warrant. The judge may request that these items be kept for the completion of the investigation as well as for a preliminary inquiry or for the trial.

**Legal Process: The Arrest Warrant**

Following the investigation, the police officer will apprehend the offender and request attendance at a court hearing. This may occur in one of three ways: issuing an **appearance notice, an arrest with a warrant** or an **arrest without a warrant**.

As most offences are summary conviction offences and less serious indictable offences, more often than not, an appearance notice will be served directly to the offender. The **appearance notice** is a legal document given to and signed by the offender indicating that the accused person must appear in court on the given date and time. In some cases, a person may be charged with a crime without being arrested. For example, after investigating a hit and run accident, police may take their findings to the Crown and recommend that charges be laid against a person. In those cases, the accused would receive a **summons**, a legal document ordering them to appear in court on a certain day and time.

**Check it out for yourself**

* Look at Section 501 of the [***Criminal Code***](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec785_smooth) to find out what an appearance notice must contain.
* Examine an appearance notice in Form 9 (Search for Form 9 in the *Criminal Code*)

In either case, if the accused person fails to appear in court, that person will be served a **bench warrant.** A bench warrant is an arrest warrant issued by a judge when the accused person fails to appear in court.

A police officer may arrest someone accused of committing a serious indictable offence or suspected of committing a serious indictable offence with an **arrest warrant**. To obtain an arrest warrant, the police will provide **information** (a statement, given under oath, providing details of the offence) to a judge or justice of the peace (see Section 501 of the *Criminal Code*). The judge will examine the information and decide if it is in the public's interest to issue a warrant for the person's arrest. As stated in section 511 of the *Criminal Code*, the warrant must include specific information.

**Check it out for yourself**

Examine the contents of an arrest warrant by searching for "Form 7" in the [***Criminal Code*.**](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec785_smooth)

**Legal Process: The Arrest Warrant (Continued)**



The judge must have reasonable grounds for the warrant. Reasonable grounds means that a reasonable person would conclude that the suspect had committed a criminal offence, based on the information available. The sheriff, deputy or police officer will deliver the warrant to inform the accused of the charge and the date and time of the court hearing. After being summoned, the accused will usually go to the police station to give a statement and be fingerprinted if that person is accused of committing an indictable offence.

If the accused fails to go to the police station, this person may be served a bench warrant (see Section 502 or 510 of the *Criminal Code*). If the police have reasonable grounds to believe that the accused will not appear in court, an arrest warrant may be served.

Just as there are situations in which a police officer may search without a search warrant, there are also situations in which a police officer may arrest a person without a warrant. Section 495 of the *Criminal Code* states that a warrant is not necessary if:

* a person has committed an indictable offence (except for certain crimes).
* the officer has reasonable grounds to believe a person has committed or is about to commit an indictable offence.
* a person is committing a criminal offence.
* a police officer has reasonable grounds to believe that there is a warrant of arrest for the person.
* it is necessary to establish the identity of the person.
* there is a need to secure or preserve evidence of or relating to the offence.
* it is necessary to prevent the continuation or repetition of the offence or the commission of another offence.

**Legal Process: The Arrest**

It is extremely important that the police officer follow proper arrest procedures to ensure the protection of a person's rights. If a person's rights, as outlined in the *Charter*, are not respected, a judge may decide to disallow the use of any evidence the police obtained while violating those rights. As a result, the judge's decision to exclude evidence may affect the outcome of the trial. For this reason, a police officer must do the following when arresting an individual:

* Police officers must identify themselves as police officers.
* The police officer may show persons that they are under arrest by touching them or by simply telling them that they are under arrest.
* The police officer must say something that clearly shows that they are not free to leave and that they must obey the instructions.
* If there is a struggle, the police officer may use reasonable force to make an arrest. The force will depend on the circumstances.
* The police officer must state why the arrest is taking place and show them the warrant if there is one.

Following the arrest, the police officer must explain why the person has been arrested. The person has the right to remain silent and the right to contact a lawyer. The person can only be kept in custody if he or she is charged with an offence. Any person who has been arrested must be taken before a judge or justice of the peace within 24 hours or as soon as possible.

Rather than arrest a person, the police may decide to **detain** that person. A **detention** is a request to retain someone in order to answer questions. Once more, since the person's liberty is being deprived, the police officer must inform the individual of the reason for being detained as well as the right to retain a lawyer. The person cannot be forced to answer questions while detailed, but if the person refuses to go with the police, that person may then be arrested.

If a person is charged with an indictable or dual offence, that person must allow the police to take fingerprints and photographs while the individual is in custody. The police do not have this right for an offence if the offence is a summary conviction offence. If the police serve a person with a summons, they will set a date, time and place for fingerprints and photographs. The police may also ask a person charged with an offence to appear in a police line-up. However, the person may agree or refuse.

**Legal Process: Case Studies**

Now let's look at legal process in action. Examine each of the following cases. Then, open a new Word document or grab a notebook and answer the questions provided. Once you have thought carefully and recorded your answer, open the extra document titled "Expert Opinion" to read an instructor's analysis of the case. Compare it to your answers and update them as needed to make accurate study notes you can use later.

**Case 1: Pocket Search**

The accused, while walking home one night, was stopped by a police officer. The officer said he was patrolling the area because of an increase in the number of burglaries. The accused said that he worked the late shift at a nearby business. The officer thought he detected the odour of crystal meth smoke and felt that the accused appeared high. He also observed a suspicious bulge in the jacket of the accused. The officer demanded that the accused empty his pockets. He refused. The officer quickly reached into the man's pocket and retrieved a small packet that later proved to contain crystal meth. The accused was then arrested and charged with illegal possession of methamphetamine. He argued that the meth should not be admitted into evidence due to the illegality of the search.

1. Summarize the key points of the case.
2. Should the evidence from the search be admitted into evidence? Why or why not?

**Case 2: House Search**

The police received information from a reliable source that they would find illegal weapons in Silky's house. They went to a judge and persuaded her to issue a warrant allowing them to enter Silky's house and search for illegal weapons. Accordingly, three days later, the police went to the house. Silky would not let them in so they entered by force. In the subsequent search, they discovered a stash of cocaine in the back of a closet. The police seized the cocaine and lined up everyone in the house and strip-searched the occupants in the hope of finding more drugs.

1. Summarize the key points of the case.
2. Why are the police not guilty of break-and-enter for forcing their way into the house?
3. Can the drugs be seized? Why or why not? (Hint: Check out the *Charter*.)
4. Are the strip searches legal? Discuss. (Hint: Check out the *Charter*.)

**Case 3: Search Without a Warrant**

After a string of petty thefts and break-and-enters, police investigators thought they had a good idea who was behind the crime wave. In the last break-and-enter, a valuable stamp collection had been taken. The investigators went to the suspect's house to inquire about the stamps. They knocked on the door. The suspect answered and as he chatted to the police through the screen door, they noticed a stamp album in plain view on the kitchen table. They burst into the suspect's house without a warrant and, despite the suspect's protests, seized the album (which turned out to be the stolen one) and promptly arrested and charged the suspect. At trial, the accused argued that the search had been unlawful and that the stamp album should not be entered as evidence. Without the album, the charges would have to be dropped.

1. Summarize the key points of the case.
2. Should the stamp album be allowed into evidence? Explain.
3. What if the police had seen the brother of the accused through the door and recognized him as an escaped convict believed to be armed and known to be dangerous? Explain what the police would have the right to do in that situation.

**Case 4: Detention**

Friday night, after a party, you get into a fight on Main Street. It is a long, drawn-out affair and several people are badly injured, including the police officer who tries to break it up. You are arrested and taken to jail. As it is Friday night and a long weekend, no judge is available. In fact, they are all away for the weekend. The police hold you until Tuesday before bringing you to court.

1. Review the facts of the case.
2. Was this a legal detention? Why or why not? Remember to check out the *Charter*.
3. In these circumstances, what might a lawyer do for you?

**Case 5: Arrest**

During the course of an investigation into excessive cruelty towards online students burdened with too much law homework, a police officer had an in-depth conversation with K. Evans. The officer didn't trust this individual, thinking him mean, evasive and shifty. As a result, the officer said, "I'll have to take you in—You are under arrest!" The accused, K. Evans, yelled "You'll never take me alive!" and ran from the building. He was later captured and charged with escaping lawful custody.

1. Summarize the main points of the case.
2. What is required for a legal arrest?
3. What will the defence argue?
4. What is the correct verdict, guilty or not guilty? Explain.

**Case 6: Right to Counsel**

Police stopped the accused and demanded a breathalyser test. At the police station, the accused was advised of his right to counsel. There was considerable difficulty contacting the lawyer for the accused. It took numerous phone calls, which the police had to place because of the intoxicated state of the accused.

When contact was made, the accused talked to his lawyer for fifteen minutes. During this time, the police did not leave the room and could overhear what the accused was saying. The police said they did not leave the room because they were not asked to. The lawyer did not ask his client if the police were listening. The matter never came up.

1. Were the rights of the accused violated? Explain.

**Assignment: Search and Arrest Procedures**

In this assignment, you’ll show how well you understand the procedures that police officers and other personal must follow during search and arrest.

Use the resources you have explored so far to back up your responses.

**Search and Arrest Procedures**

**Law 120 – Assignment**

1. Identify three situations in which the police may search a home without a search warrant.
2. What is the difference between a bench warrant, an arrest warrant, and an appearance notice?
3. Identify three situations in which an arrested person would not be entitled to a show-cause hearing.
4. You and your partner are police officers patrolling a residential neighborhood. The radio dispatcher sends you to a 911 emergency at a specific address. When you reach the address, a man comes to the door and tells you there is no emergency, and that he won't be inviting you in. You do not know what has happened in this house. Refer to resources such as the Criminal Code and the Charter of Rights and Freedoms (using proper citations) as needed to answer the following questions:

a) Explain your legal rights and responsibilities as a police officer.

b) Explain the legal rights and responsibilities of the occupant of the home.

c) What will you do next?

1. In 500-1000 words, write a description of a crime and an arrest. The crime, the narrator, and the story are up to you, but your description must include the following terms, demonstrating that you know what they mean in a legal situation. Hint: The terms below imply that certain conditions will be present in the story. Plan carefully!

• warrant

• show-cause hearing

• indictable offense

• fingerprint

• detention

• arrest

• reasonable grounds

• summons