

27 March 2024

Mark Hunt
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Ref: OIA 109686

Tēnā koe Mark

Official Information Act request: Powers of a bailiff

Thank you for your email of 12 February 2024, requesting, under the Official Information Act 1982 (the Act), information relating to the powers and duties of bailiffs in New Zealand. Specifically, you requested:

- 1. Are they permitted to carry weapons (since they have the powers of a constable)?*
- 2. How do bailiffs in practice, arrest people?*
- 3. Can bailiffs pull vehicles over?*
- 4. Do bailiffs carry handcuffs?*
- 5. What is the procedure when a person is arrested?*

Your request has been referred to me for response, as it falls within my responsibilities as Group Manager, National Service Delivery and is being managed in accordance with the provisions of the Act.

On 11 March 2024, the Ministry of Justice (the Ministry) advised that pursuant to section 15(1) of the Act, we had decided to grant part of your request. However, more time was required to finalise a response. You were advised that you could expect a final response by 27 March 2024, without undue delay.

You were also informed that parts 1, 3 and 4 of your request were refused under section 18(d) of the Act, on the basis that the information is publicly available. You were made aware that a bailiff is appointed for the exercise of powers and performance of duties set out in section 68 of the District Court Act 2016, and that the information could be found here: legislation.govt.nz/act/public/2016/0049/latest/DLM6942360.html.

After further consideration, parts 1 and 3 of your request should have been refused under section 18(g) of the Act, as this information is not held by the Ministry. The Ministry would need to create new information to respond to this part of your request, that is, the Ministry would need to undertake a review of the District Court Act, and any other relevant legislation, to answer your questions. If you would like to understand more about the powers and functions of a bailiff further, you may wish to seek independent legal advice.

Furthermore, part 4 of your request should not have been refused. In response to this part of your request, I can advise that in practice, bailiffs do not carry handcuffs.

In response to parts 2 and 5 of your request, please refer to the document attached to this letter. This document is the standard guidance a bailiff follows when executing a civil warrant for arrest issued within their duties and powers. Please note, some information that is out of scope of your request has not been provided.

The following is a list of acronyms used throughout the document as summarised below:

COLLECT	A computer application used by the Collections business group
CR	Central Registry (an extension of the court registries around New Zealand, providing a number of centralised services on behalf of business owners and the Ministry)
WM	Workload Management
H-AFM	Hearing Assessment of Financial Means
FAH	Financial Assessment Hearing
OE	Order for Examination

If you require any further information, please contact Media & Social Media Manager Joe Locke at media@justice.govt.nz.

Please note that this response, with your personal details removed, may be published on the Ministry website at: justice.govt.nz/about/official-information-act-requests/oia-responses/.

If you are not satisfied with this response, you have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted by email to info@ombudsman.parliament.nz or by phone on 0800 802 602.

Nāku noa, nā



Tracey Baguley
Group Manager, National Service Delivery

Standard Operating Procedures

Bailiff

National Service Delivery Operations Support

November 2022

Pages 2 - 87 have been removed as they are out of scope of your request

Out of scope

Execute a Civil Warrant to Arrest

General Guidelines

A Bailiff may be required to execute a civil warrant to arrest when a debtor fails to attend a civil enforcement or financial assessment hearing and is unable to pay the debt in full.

Receive a warrant to arrest

You must write your initials and the time and date onto the warrant when you receive it.

In some cases, more than one of the following warrants may be issued against the same person:

- A warrant to seize property; or
- a High Court writ or warrant.

In this case the warrants must be executed in order responding to the date and time the application was received by the court and is noted on the printed warrant.

Prompt execution

The Bailiff must execute the Warrant to Arrest promptly.

NOTE: A Bailiff is required to regularly update the COLLECT profile notes on actions taken to resolve a warrant to arrest.

Therefore, it is important that Bailiffs document the steps taken in attempting to execute each Warrant.

Warrant must be withdrawn or executed

If a judgment debtor against whom a Warrant to Arrest has been issued appears at Court voluntarily, the Warrant will be withdrawn or executed.

If a warrant to arrest is withdrawn or executed, the Deputy Registrar will ask the Bailiff to return the warrant immediately.

Time of execution

A Warrant to Arrest may be executed at any hour of the day or night, but not on: Sunday, Christmas Day, Anzac Day or Good Friday.

Execution on any of those days is void.

Right of entry

The powers of a Bailiff when entering onto premises in order to execute a Civil Warrant to Arrest derive from common law in conjunction with the New Zealand Bill of Rights Act 1990. Bailiffs are entitled to be at a property to complete the warrant and are unable to be trespassed. However, consider health and safety and complete the visit another time if appropriate.

Refer to [Civil Warrant to Seize](#) for more information.

Bail debtor

If the Creditor has indicated they wish to be present at the hearing, bail the Debtor to appear at the nearest court within 7 days.

Financial hearing over the phone

If the creditor does not need to be present at the hearing, encourage the Debtor to call the 0800 4 FINES contact centre (on their own phone) to resolve the fines and complete the hearing over the phone.

Priority of execution

If there is more than one Warrant for the same person, they may all be executed at the same time as there is only one act of arrest.

It is important that the judgment debtor be advised of each debt in respect of which an arrest is made. **If the judgment debtor wishes to make payment but is unable to pay everything, the arrest should still be carried out.**

NZ Bill of Rights Act

Whenever a judgment debtor accompanies a Bailiff, whether voluntarily or following formal arrest, they must be advised of the reason for the arrest and their right to consult a lawyer.

Debtor not at the address on the warrant

The Bailiff should carry out enquiries as appropriate and necessary and return the warrant to the Court with a report on the situation. **A Bailiff has no statutory authority to actively and physically search a premises or property for a debtor.**

Arrests at place of work or third parties' premises

If an employer or third party is uncooperative and/or refuses a Bailiff entry into their premises to make an arrest, but the **Bailiff can see the debtor, the Bailiff can insist on making the arrest** or seek Police assistance. If the debtor cannot be seen, the Bailiff must leave.

Comply with Health and Safety procedures

Complete a [risk assessment](#) before visiting the premises and comply with all [Health and Safety procedures](#) while executing the warrant.

Relevant Legislation

[District Court Act – Section 150](#)

[New Zealand Bill of Rights Act 1990 – Section 23](#)

Health and Safety

[Risk assessment procedures](#)

[Route plans and check-in procedures](#)

[Hazards](#)

[Emergency procedures](#)

[Personal Protective Equipment \(PPE\)](#)

[Health and Safety Equipment](#)

Process

Step 1

While in the office, check the notes in the debtor's civil COLLECT profile to ascertain whether the creditor wishes to be present at the hearing.

Step 2

Request payment in full of the outstanding debt amount.

If debtor refuses, or is unable to make payment in full, go to Step 3.

Step 3

If the creditor did not request to appear at the hearing:

- advise the debtor they can provide a deputy registrar with their financial information, and
- provide them with the 08004FINES number to call on their own phone to allow the contact centre agent to conduct an assessment of financial means.

If the creditor wishes to be present at the hearing, advise the debtor they are under arrest and go to Step 6.

Step 4

For financial assessment warrants:

- advise the debtor to accompany you to the court for a means assessment, or
- [bail the debtor](#) to appear at their closest court on a date within the next 7 working days, and
- advise the creditor of the hearing date by phone if short timeframe.

Note: you cannot bail a debtor to a hearing centre.

Step 5

For a contempt of enforcement proceedings warrant:

- advise the debtor to accompany you to the court where the hearing will be held, or
- [bail the debtor](#) to appear at their closest court on a date within the next 7 days, and
- advise the creditor of the hearing date by phone if short timeframe.

Provide the details of the arrest and that the debtor received and understood their rights on the warrant, including the time and date.

Advise the debtor they are responsible for arranging their own transport home after the arrest has been completed.

Step 6

People being arrested have rights.

Immediately advise any debtor being arrested:

- the reason for the arrest, and
- their right to consult a lawyer.

The debtor has a right to choose whether or not they wish to consult a lawyer and will be given the opportunity to use a phone at the court.

Step 7

- Enter a completion code in WM before updating COLLECT,
- Upload the return of service,
- Add any additional notes in the judgment order details screen,
- Update the enforcement status,

If the warrant is not executed:

- If the warrant is not executed on a H-AFM, send [letter 202 to CR re non-service](#) (not printed from COLLECT),
- Upload the letter 202 in COLLECT,
- If the warrant is not executed on another application eg FAH/OE, notify CR by sending letter 12. This can be obtained from civil notices in COLLECT.

Civil Arrest Script

Use the script below when completing an arrest for non-appearance at a civil enforcement hearing.

Procedure step	Script
Before the arrest	<p>My name is [first name] and I am a Bailiff from the [District Court].</p> <p>[Display ID card]</p> <p>I have a warrant for your arrest because of your failure to appear at a civil examination at the [District Court] on [date].</p> <p>The examination was concerning a debt between [Judgement Creditor] and yourself.</p> <p>You can avoid arrest by making payment of [\$.c] in full to me now.</p>
Making the arrest	<p>I am arresting you under section 150 of the District Court Act 2016.</p> <p>You have the right to consult and instruct a lawyer without delay and in private.</p> <p>You will have the opportunity to contact a lawyer immediately on arrival at the court if you choose to do so.</p> <p>Be aware that anything you do or say to me now may be used as evidence.</p> <p>Do you understand your rights?</p> <p>[Repeat as necessary]</p>

Issue a Bailiff's bail bond

If a Bailiff needs to bail a participant during the execution of a warrant to arrest:

- prepare the bail bond using [form RS 04B2](#)
- make sure the bail is for no more than 7 days (if the bail is more than 7 days, due to public holidays or the debtor's health, then the bail must go before a deputy registrar or judge for consideration)
- sign the notice
- hand the notice to the debtor and ask them to sign the notice
- make sure the debtor understands the conditions of bail, and
- provide the debtor the original bail bond and scan and email the duplicate to the central registry (CR) at civilenforcement@justice.govt.nz
- For Financial Assessment Hearings only: advise the creditor of the hearing date by phone if short timeframe.

Note: this has the same effect as a deputy registrar granting bail; meaning it is an offence for the debtor to fail to appear at the specified date and time, and this offence will be reported to the police. The maximum penalty for this offence is a \$1000 fine, or 3 months imprisonment.

Relevant Documents

[Execute warrant to arrest](#)

[202 Letter to CR re non-service](#)

[Form 110 - Notice of bail](#)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Pages 95 - 134 have been removed as they are out of scope of your request