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# Arrest and detention

## Executive summary

Key points to note in this chapter:

- You must have a legislative power to arrest or detain that person, and the arrest or detention must be reasonable or necessary in the particular case.
- You cannot detain a person suspected of committing an offence for questioning or while enquiries are made, unless you are acting under legislation or arrest them.
- TENR must be applied to all arrest and detention procedures.
- 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.
- **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).
- Additional 'risk to public safety criteria' apply solely for the purposes of s75B of the Social Security Act 1964. This section enables Police to request a benefit stop by MSD when they cannot locate a beneficiary subject to an unresolved warrant to arrest and who they consider to be a 'risk to public safety'.
- You 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 referral to another agency in line with the Prevention First focus would be a better resolution to the situation being dealt with.
- 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 must advise them of their rights.

- Special provisions relate to the arrest and detention of children and young people. See 'Arresting a child or young person and explaining rights' in the 'Youth justice' chapter.
- 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 decision.

## 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.



[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.

## Related information

Other Police Manual chapters related to arrest and detention include:

- [People in Police detention](#)
- [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 <u>words of arrest</u>	<ul style="list-style-type: none"> <li>• formally touch the person being arrested (e.g. by placing a hand on their shoulder), <b>or</b></li> <li>• 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.</li> </ul>

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 as a guide on the advice to be given.

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