

Part 5 Internal searches in respect of drugs

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Overview

Internal searches

Sometimes people who have illegal possession of controlled drugs try to avoid detection by concealing the drugs internally in their body. For example, they may try to hide the substance in their mouth or other bodily orifice, or even swallow the substance in a protective wrapping. If you suspect that a person has done this, you have two options. You can:

- have an internal examination or search carried out on them, with their consent
- detain them until the substance has a chance to be expelled naturally, if they do not consent to an internal examination.

The provisions for internal searches **only** apply to people under arrest for an offence against sections [6](#), [7](#), or [11](#) of the Misuse of Drugs Act 1975 and you have reasonable grounds to believe they have secreted within their body any property:

- that may be evidence of the offence for which they are charged; or
- possession of which constitutes any other offence against sections 6, 7, or 11 of the Misuse of Drugs Act 1975

Internal search of an arrested person

Internal search of an arrested person for offence against sections [6](#), [7](#), or [11](#) of Misuse of Drugs Act 1975 is provided for under sections [23](#) and [24](#) of the Search and Surveillance Act 2012.

What is an internal search?

An internal search is an internal examination of any part of the person's body by means of:

- an X-ray machine or other similar device, or
- a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.

([s23](#)(1))

What is not an internal search?

A constable, authorised officer or searcher engaged under section [12](#) may conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but must **not** insert any instrument, device, or thing into any of those orifices.

A visual examination in these circumstances is not an 'internal search' and is permitted as part of a rub-down search.

([s87](#))

Who may conduct an internal search?

An internal search must be conducted by a registered medical practitioner([s13C](#) of the Misuse of Drugs Amendment Act 1978).

What you can search

Under section [85\(2\)\(c\)](#) of the Search and Surveillance Act 2012, you **cannot** conduct an internal search of any part of a suspect's body other than requiring the suspect to:

- open their mouth
- display the palms of their hands
- display the soles of their feet
- lift or rub their hair.

Note: The internal searching of any part of the body of a person by a constable (including a constable requiring any other person to conduct that search) is generally prohibited, other than a search of the suspect's open mouth with their consent.

Circumstances for requiring internal search

The circumstances are that the suspect is arrested for an offence against sections:

- [6](#) (dealing with controlled drugs)
- [7](#) (possession and use of controlled drugs)
- [11](#) (theft, etc, of controlled drugs)

of the Misuse of Drugs Act 1975, can be required to undergo an internal search

and:

- there are reasonable grounds to believe that the suspect has secreted within their body any property:
 - that may be evidence of the offence with which the suspect is charged, or
 - the possession of which by the suspect constitutes any other offence against sections [6](#), [7](#), or [11](#) of the Act.

([s23](#)(2)(a) & (b))

Approval for requiring internal search

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising the power to require a person to permit a medical practitioner to conduct an internal examination of an arrested person.

Suspect must consent

A medical practitioner must not conduct an internal examination if they:

- consider that to do so may be prejudicial to the suspect's health, or
- are satisfied that the suspect is not prepared to permit an internal examination to be conducted. The suspect being searched must **voluntarily consent** to an internal examination.

([s23](#)(3))

The examination must be immediately discontinued if the suspect being searched changes their mind and withdraws their consent or becomes violent.

It is important that the suspect is fully aware of what they are consenting to ('informed consent').

Failure to fully inform the suspect would likely render the search 'unreasonable' and be a breach of the New Zealand Bill of Rights Act 1990. See the [commentary](#) in Westlaw for further discussion on informed consent and search.

Police employee presence at internal search

Can you be present during an internal examination?

You can only be present during the internal examination if:

- both the medical practitioner and the suspect agree to it, and
- you are of the same sex as the suspect, if the suspect identifies as transgender or an intersex person,

then comply with 'Searching transgender and intersex people' policy in 'Part 8 - Searching people' of the 'Search' chapter.

Effect of not permitting internal search on bail application

If...	a court may...
<ul style="list-style-type: none"> - a suspect fails to permit an internal examination to be conducted, and - the court is satisfied the requirement to permit an internal examination by a medical practitioner was properly made on reasonable grounds 	<ul style="list-style-type: none"> - decline to consider the person's bail application, and - order that the suspect continue to be detained in Police custody, until the earlier of the following occurs: <ul style="list-style-type: none"> - the expiry of 2 days after the day on which they were required to permit an internal examination by a medical practitioner - they permit the examination to be conducted.

(s24)

The 'two days without bail' provision allows time for any material concealed in the digestive tract to be naturally excreted, if the suspect has refused permission for the search.

Note: The effect of a suspect not permitting an internal search:

- does not limit a court's discretion to refuse bail
- overrides any contrary provisions about bail in:
 - the [Bail Act 2000](#)
 - the [Misuse of Drugs Act 1975](#)
 - the [Criminal Procedure Act 2011](#).

(s24(3) & (4))

Reporting exercise of power to require internal search

The exercise of a warrantless power requiring a person to permit a medical practitioner to conduct an internal search must be reported to the Commissioner for the purpose of collation for the annual report to Parliament (ss 169(1) and 170(1)). See the section '[Procedure for notifying the Commissioner](#)' in the Search chapter, [Part 14 - Reporting](#) for guidance about how to report the exercise of the power to require internal search.

Further information

For further information see the 'Search' chapter, [Part 8 - Searching people](#) for guidance on internal searches.

Detention in respect of suspected internal concealment of drugs

The powers to deal with internal concealment under sections [13A to 13M](#) of the Misuse of Drugs Amendment Act 1978 are not affected by anything detailed above.

Note: The powers conferred by these sections apply to Police constables and Customs officers.

Some drug dealers conceal the drugs within their person. If you have reasonable grounds to believe that they have done this, but they refuse to submit to an internal search, you are able to detain them until the drugs are expelled naturally. Provisions relating to such internal concealment are dealt with in sections 13A to 13M of the Misuse of Drugs Amendment Act 1978. [Part 2](#) of the Amendment Act sets out special provisions for detection, enforcement and sentencing regarding drug offences.

Remember: The provisions for detaining suspects are principally aimed at people who are importing large amounts of controlled drugs into New Zealand illegally. You should take great care whenever you use the powers given to you in this legislation. If you believe that someone is concealing drugs internally, you should seek the advice of the officer in charge of your nearest Drug Squad as soon as possible.

Power to detain on belief of internal concealment (section 13A)

You can detain (not arrest) a person if you reasonably believe that a suspect has secreted a class A controlled drug or class B controlled drug within their body. The difference to those arrested for sections [6](#), [7](#) or [11](#) offences (above) and detained under sections [23](#) and [24](#) of the Search and Surveillance Act 2012 is that here **the suspect has not been arrested**.

Approval to detain on belief of internal concealment

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising this detention power.

Obtaining a detention warrant

The application for a detention warrant must be made in writing and on oath, and contain:

- the facts on which your belief is based
- the time and place at which the detention commenced
- the address of the detention
- the time and date the person was asked about the examination
- the person's response, and any reasons given for it
- the result of any examination.

The judge can then issue the detention warrant if satisfied that:

- there has been reasonable compliance with the requirements of section [13B](#), and
- there is reasonable cause to believe that the detained person has secreted within their body any

class A or class B controlled drug for any unlawful purpose, and

- the premises in which the person is detained, or proposed to be detained, are suitable for the purpose.

The detention warrant authorises the continued detention of the person in the premises until:

- the expiry of seven days, or any shorter period the judge may specify, or
- the detention is brought to an end because:
 - the person is arrested, or
 - the medical practitioner conducting the examination concludes that the person has nothing secreted, or
 - the officer in charge of the case forms the view that there is no longer reasonable cause to believe that the person has anything secreted, or
- an application for renewal of the warrant is declined, or
- the warrant is cancelled on appeal.

Note: A judge can grant renewals for periods of up to seven days. However, the detention cannot exceed 21 days.

Duties

When detaining a person on belief of internal concealment, you must:

- inform the person of the reason for the detention; and
- hand them a Statement of Rights in the form set out in the [Second](#) schedule to the Act; and
- arrange for a medical practitioner to be present and ask the person, in the medical practitioner's presence, if they wish to undergo an internal medical examination; and
- apply to a district court judge for a warrant authorising the continued detention of the person.

Note: An experienced drugs squad officer and/or customs officer will be involved in this process.

Detainees' rights

The statement of detainees' rights is set out in the [Second](#) schedule to the Misuse of Drugs Amendment Act 1978. It covers such issues as the detainees' right to:

- refuse medical examination
- have access to a personal and/or Court lawyer and doctor
- understand how long they can be detained
- appeal against a detention warrant or against a condition of their detention
- have visitors
- be released from detention
- have Court access
- seek further advice.

Important: You must give the detainee a statement of rights.

Other requirements

Sections 13C to 13M cover the remaining requirements of detaining someone you suspect is concealing drugs on their person. The provisions will be outlined here briefly, but you should make sure that you are familiar with the details of these provisions as set out in the amended Act.

It is the doctor's responsibility to decide whether the detained person has consented to an internal examination.

Gain of consent (section 13C)

This section outlines the doctor's duties to the detainee in gaining their consent or otherwise, and in describing to them the various types of examination. The section also lists the types of examination.

Medical certificate (section 13D)

This section describes the certificate that the medical practitioner completes, and informs them of the areas in which their opinion on the examination results is required. It also tells you who must receive copies of the certificate and the doctor's report.

Detention warrant (section 13E)

This section details the format and requirements for applying for a detention warrant.

Searches associated with detention warrant (sections 13EA - 13EE)

These provisions define and authorise a [rub down](#) and/or [strip search](#) of a person subject to a detention warrant issued under section 13E where the Police constable or the Customs officer has reasonable cause to suspect that the person has hidden on or about their person any Class A controlled drug or Class B controlled drug.

Note:

- The rub-down search definition under section [13EB](#) is identical to that covered under sections [85](#), [86](#) and [87](#) of the Search and Surveillance Act 2012.
- The strip search definition under section 13EC needs to be read in conjunction with the definition under section [3](#) and the guidelines and rules under section [126](#) of the Search and Surveillance Act 2012. For further information see the section titled 'Strip searches' in the Search chapter, [Part 8 - Searching people](#).

Reporting search associated with detention warrant

A constable undertaking a search under section 13EA must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable cause to suspect the person has hidden on or about their person any Class A controlled drug or Class B controlled drug as required by section [13EA\(2\)\(b\)](#) to the Commissioner.

(s [13EE](#))

Note: The written report must be submitted manually or by email to the Director: Criminal Investigations at

National Criminal Investigations Group, PNHQ who receives the report on behalf of the Commissioner. Search notifications through 'OnDuty' and the Search and Surveillance System only includes Search and Surveillance Act searches and not a search under section [13EA](#) of the Misuse of Drugs Amendment Act 1978.

Scope of detention warrant (section 13F)

This section clarifies what a detention warrant allows you to do and obliges you to do, once it is granted. This includes the Court's obligation to appoint a Court medical practitioner and barrister or solicitor for the detainee. The medical practitioner and lawyer must report back to the Court on specific matters concerning the detention.

Access rights (section 13G)

This section provides for specified people to have access to the detainee.

Expiry of detention warrant (section 13H)

This section outlines the points at which a detention warrant can expire.

Renewal of detention warrant (section 13I)

This section authorises the renewal of detention warrants in certain instances.

Powers of Customs Officers (section 13J)

This section sets out the powers of Customs officers.

Inadmissibility of confession or admissions (section 13K)

This section specifies that any confession or admission made by a person while they are being detained will be inadmissible if it relates to any offence other than the one for which they are being detained.

Right of appeal (section 13L)

A detainee may appeal against a decision to grant or extend a detention warrant. These rights are outlined in this section, along with the provision that any appeal will not prevent the suspect from being detained while the appeal is being determined.

Commissioner's annual report to Parliament (section 13M)

Legislation

The Commissioner must include in every annual report for the purposes of section [101](#) of the Policing Act 2008, the following information for the period under review:

- the number of applications for detention warrants made under section [13E](#) of the Act
- the number of applications for renewals of detention warrants made under section [13I](#) of the Act
- the number of applications for detention warrants and renewals granted and refused
- the average duration of the detention warrants (including renewals) granted

- the number of prosecutions that have been instituted in which has been adduced evidence obtained directly during the detention of any persons pursuant to detention warrants granted and the results of those prosecutions
- the number of rub-down searches and strip searches undertaken under section [13EA](#) of the Act.

Reporting to the Commissioner

A report on POL 258 Report Form (go to Police Forms > Reports) must be prepared and submitted to the Director: National Criminal Investigations Group at PNHQ through the District Crime Manager confirming:

- application for detention warrant
- application for renewal of detention warrant
- whether the detention warrant (including renewals) granted or refused
- average duration of the detention warrant (including renewals)
- whether:
 - strip search and /or rub down search undertaken
 - prosecution has been instituted and the result
 - evidence obtained directly during the detention.

Summary of differences

Differences between section 13A of the Misuse of Drugs Amendment Act 1978 and sections 23 and 24 of the Search and Surveillance Act 2012

This table details the differences between section [13A-13M](#) of the Misuse of Drugs Amendment Act 1978 and sections [23](#) and [24](#) of the Search and Surveillance Act 2012.

Qualification	13A-13M Misuse of the Drugs Amendment Act 1978	Sections 23 and 24 of the Search and Surveillance Act 2012
Standard of proof	Reasonable grounds to believe (and not arrested)	Reasonable grounds to believe and must be under arrest for offence against section 6, 7 or 11 of MDA.
Class of drugs	Must be Class A or B	Any Class arrestable under sections 6, 7, 11 (i.e. A, B, or C).
Search for	Only Class A or B drugs secreted for unlawful purpose	Class A, B or C and any property that may be evidence of offence for which charged, or property of which possession constitutes offence against section 6, 7 or 11.
Who may request?	Any constable or Customs officer Note: Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising the warrantless power to detain.	Any constable Note: Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising the power to require a person to permit a medical practitioner to conduct an internal examination of arrested person.
Who do they apply to/require?	Apply to District Court Judge for a Detention Warrant	Require suspect to permit medical practitioner to conduct internal examination.
Type of medical practitioner	Approved by Commissioner or Comptroller of Customs	Nominated by the constable.
Detention time limit*	7 days renewable in periods of 7 days to maximum of 21 days	Fails to permit examination. Court may decline to consider bail application for 2 days after day on which request made. Remanded in Police custody

*See [Anderson v R](#) [2017] NZCA 293 for the judgement relating to the detention time limit for a section [23](#)

request and the effect of not permitting an internal search under section [24](#) of the Search and Surveillance Act 2012. The longer time limit of detention under the Misuse of Drugs Amendment Act 1978 should be considered.

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