



Part 8 - Searching people

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Policy statement and principles

What

Searching people may be necessary to:

- locate and preserve evidence
- remove weapons or means of escape
- remove and care for a prisoner's property
- locate and remove articles or substances that could impact on the safety of that prisoner or that of other prisoners, members of the public or Police employees
- ensure the safety of a prisoner considered to be at risk of attempting suicide or self harm.

There are three main types of personal searches which have increasing levels of justification and requirements:

- rub-down searches
- strip searches
- internal searches.

This chapter outlines Police powers under the Search and Surveillance Act 2012 to search people, and the statutory rules that apply. It also details Police policies and procedures relating to searches of people including who can conduct and be present at searches; planning searches and assessing risks; and for conducting searches of people.

The chapter applies to all Police searches of people, wherever they are conducted.

Why

Searches must be both lawful and reasonable.

Section [21](#) of the New Zealand Bill of Rights Act 1990 provides that *'Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise'*. If the search complies with section [125](#) of the Search and Surveillance Act 2012, it is likely to be reasonable under section 21 of the New Zealand Bill of Rights Act. However, there is still an overriding requirement of reasonableness such that if the search is carried out in a manner unreasonable in the circumstances, it may breach section 21 even if authorised by the provisions of the Search and Surveillance Act 2012.

How

Police will apply these general principles to all searches:

- The search must be lawful, i.e. you must be authorised by the Search and Surveillance Act 2012 or another enactment to conduct a search, or conduct it with the person's informed consent.
- People being searched must be treated with such dignity, privacy, respect and sensitivity that the individual situation and the safety of employees dealing with them will permit.
- Any force or restraint used on a person being searched must always be reasonable in the circumstances.
- Generally searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person being searched. Some exceptions apply when employees of the same gender identity as the person being searched are not available.
- Where practicable, any search and/or removal of property from the person being searched must be witnessed by another Police employee.
- All property removed or seized from a person searched must be appropriately documented and accounted for.

Powers for searching people

When can people be searched?

Police can search people when they are authorised by legislation to do so.

You must search a person lawfully by always:

- exercising a warrantless power, or
- executing a warrant power, or
- conducting a search with the person's consent.

Note: When a statutory power exists to search a person, you should use that power rather than relying on a consensual search, as consent may be withdrawn by the person at any time. (See the ['Consent Searches'](#) Police Manual chapter).

When making a decision to search, you must consider your tactical options and work within the principles of [TENR](#) (Threat, Exposure, Necessity, Response).

Warrantless search powers

The statutory powers to search people are contained in the [Search and Surveillance Act 2012](#). They include warrantless powers to search a person:

- in custody and who is or is about to be [locked up](#) (s11)
- found in a public place for [evidential material](#) (s16)
- for [arms](#) (s18)
- in relation to [drug offences](#) (ss21, 22 & 23)
- for [offensive weapons](#) (s27)
- after [arrest or detention](#) (ss85 & 88).

Searching items under a person's control

Searching people can include searching anything:

- they are wearing or carrying, or
- that is in their physical possession or immediate control - this could include a place, vehicle, wig, prosthetic limb, or false teeth.

Under section [86](#) of the Search & Surveillance Act 2012, a prosthetic limb may be considered as "an item carried by the person" and may be removed for the purpose of the search. Section [125](#) of the Act broadly lays out the legal procedure about searching a person. A prosthetic limb may be considered as something the person is wearing under section 125(1)(i). Particular care should be taken when removing a prosthetic device (125(3)). If a person is wearing a prosthetic limb that needs to be searched, they may require assistance from a medical practitioner or a personal attendant (s125(1)(g)).

Warrantless searches of people in public places for evidential material

You may search a person in a public place without a warrant if you have reasonable grounds to **believe** that they are in possession of evidential material relating to an offence punishable by 14 years imprisonment or more.

(s[16](#))

Warrantless searches of people in possession of arms

If you have reasonable grounds to...	you may...
<p>suspect a person is carrying arms, or is in possession of them, or has them under their control, and:</p> <ul style="list-style-type: none"> - the person is in breach of the Arms Act 1983, or - the person, by reason of their physical or mental condition: <ul style="list-style-type: none"> - is incapable of having proper control of the arms, or - may kill or cause bodily injury to any person, or - that, under the Domestic Violence Act 1995: <ul style="list-style-type: none"> - a protection order or Police safety order is in force against that person, or - there are grounds to apply for a protection order against them 	<p>do any or all of the following without a warrant:</p> <ul style="list-style-type: none"> - search the person - search any thing in their possession or under their control (including a vehicle) - enter a place or vehicle to carry out one of the above - seize and detain: - any arms found - any licence under the Arms Act 1983 that is found. <p>Note: Arms are "in a person's possession or under their control" if they have access to them. They do not need to be in the person's immediate possession.</p>

(s[18](#)(1)&(2))

Approval for arms related searches

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising any of the warrantless powers outlined above in relation to arms.

Warrantless searches of people in relation to drugs

People found in or on places or vehicles

If you are conducting a search of a place or vehicle under section 20 (relates to some Misuse of Drugs offences -see the [Warrantless powers to search places, vehicles and things](#) chapter) you may, without a warrant, search any person found in or on the place or vehicle.

(s[21](#))

Warrantless searches of people suspected of drug offences

You may search a person without a warrant if you have reasonable grounds to:

- **believe** a person is in possession of:
 - a controlled drug specified or described in [Schedule 1](#), [Part 1 of Schedule 2](#), or [Part 1 of Schedule 3](#) of the Misuse of Drugs Act 1975, or
 - a precursor substance specified or described in [Part 3 of Schedule 4](#), **and**
- **suspect** that an offence against the Misuse of Drugs Act 1975 has been, is being, or is about to be committed in respect of that controlled drug or precursor substance.

(s[22](#))

Approval for drug related searches

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

Internal search of a person arrested for certain drug offences

If a person is under arrest for an offence against section [6](#) or [7](#) or [11](#) of the Misuse of Drugs Act 1975 and:

you have reasonable grounds to...	you may...
<p>believe that they have secreted within their body any property:</p> <ul style="list-style-type: none"> - that may be evidence of the offence with which they are charged, or - the possession of which by the person constitutes any other offence against section 6 or 7 or 11 of the Misuse of Drugs Act 1975 	<p>require the person to permit a medical practitioner nominated by you, to conduct an internal examination of any part of the person's body by means of:</p> <ul style="list-style-type: none"> - 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.

(s[23](#))

See "Internal searches" in this chapter for more information about:

- the [restrictions on a medical practitioner](#) conducting an internal search
- the [effect of not permitting an internal search](#) on a bail application.

Police and Customs powers relating to delivery of drugs

See Warrantless powers associated with drugs in Part 3 - [Warrantless powers to search places, vehicles and things](#) for your power to search a person involved in a delivery under section 12 of the Misuse of Drugs Amendment Act 1978.

Warrantless searches of people for offensive weapons

You may search a person without a warrant if you have reasonable grounds to **suspect** the person is committing an offence against section 202A(4)(a) of the Crimes Act 1961 (which relates to possession of knives, offensive weapons, and disabling substances).

(s[27](#))

Searches of arrested or detained people

Which power should be used for searching arrested or detained persons

There are two alternative search powers that might be appropriately exercised immediately upon arrest or when detained under a statutory power of detention. These are:

- a rubdown search, under sections [85](#)-[87](#), and
- a warrantless search under section [88](#).

A search may be carried out under one of these provisions before the search conducted under section [11](#) when [people are locked up](#).

Any search undertaken pursuant to section [11](#)(1) & (2), should only be completed by custodial or watchhouse staff before the person is placed into a cell, unless the circumstances are such that an urgent search under section 11 is required. The primary purpose of the section 11 search is not to look for or seize evidential material but to protect the detained person's property and remove items that might be used to harm themselves or others.

Searching people who are, or are to be, locked up in Police custody

You may search a person who has been taken into lawful custody and is:

- at a Police station, or
- in other premises, or in, or about to be placed in a vehicle being used for Police purposes,
and
- **is, or is to be, locked up** (pending a decision on bail or for any other reason).

You may take any money or other property found during the search.

(s[11](#)(4))

This power may be exercised **before** the person is locked up.

(s[11](#)(2))

What does "locked up" mean?

"Locked up" means a person taken into lawful custody and being placed behind a closed or locked door that prevents them from leaving. Examples are a cell or charge room at a Police station or a vehicle used for Police purposes (other than being placed in a Police vehicle only for the immediate purposes of transport).

Searching people after they are locked up

After a person has been locked up they can**only** be searched if:

- they were not searched before being locked up, or
- since being searched before being locked up, they have been in, or are reasonably suspected of having been in, close proximity to:
- a person who was not locked up in Police custody (other than an enforcement officer or a searcher), or
- another person who was eligible to be searched after being locked up but was not, or

there are reasonable grounds to believe the person is in possession of anything that may be used to harm themselves or others.

(s[11](#)(3))

Timing of searches under section 11

Apart from an immediate [rub-down search of an arrested or detained person](#) under section [85](#), or a warrantless search under section [88](#), avoid searching people under section 11 immediately after their arrest. If you do so, a further search under section [11](#) cannot be conducted after the person arrives at the police station unless one of the situations in section 11(3) exists (see above).

If it is necessary to search a person in transit to remove valuable items to prevent the property from being stolen or to prevent an assault, then you should remove all property from the person.

Subsequent searches when prisoners are moved to another station

If a prisoner undergoes a section [11](#) custodial search and is locked up, a further section 11 search can only be conducted if the exceptions in section 11(3) apply.

If a prisoner has undergone a section 11 custodial search at one station and is later transported to another station (having previously been "locked up"), a further section 11 search can only be conducted if the exceptions in section 11(3) apply. If you are certain that another search is required, you should undertake that search under sections 85 or 88 (e.g. to ensure the prisoner is not carrying anything that may be used harm any person, or facilitate their escape). The rationale for using the section 85 or 88 search power is the power of detention that is being exercised at the destination station.

If not practicable to conduct the search under section 85 or 88 you may consider a second search under s11 on the grounds that while the prisoner was in transit they are no longer considered to be "locked up" until they reach the next place of detention where they are to be again "locked up". However, be aware that this rationale has not been tested in court and there is therefore a risk of the search being found to be unlawful.

Any search must be reasonable in the circumstances.

Rub-down searches of arrested or detained people

You may carry out a [rub-down search](#) of a person who is arrested or detained under any enactment, to ensure the person is not carrying anything that may be used to:

- harm any person (including themselves),
or
- facilitate the person's escape.
(s85)

This power may be used on every person who is arrested or detained.

Warrantless searches for evidential material

If you have arrested, or detained a person under a statutory power of detention you may search the 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
- may be used to facilitate the person's escape, or
- is evidential material relating to the offence for which the arrest was made or the person detained.
(s88)

Note: The grounds authorising a search under this section will not apply to every person who is arrested or detained. [Rub-down](#) or [strip searches](#) may be used under section 88 depending on the circumstances.

Seizing samples as evidential material from a person's external body under section 88

The definition of evidential material is broad and under section [3](#), means evidence of the offence, or any other item, tangible or intangible, of relevance to the investigation of the offence.

Only where there are reasonable grounds to believe that evidential material is on a person's body does section 88(2)(c) authorise a search and seizure of evidence from the external body of an arrested or detained person. The scope of the power to seize samples is uncertain as the reasonableness of a specific search depends on the circumstances of the search assessed against an individual's reasonable expectation of privacy from State intrusion in a law enforcement context protected by section [21](#) of the New Zealand Bill of Rights Act 1990 (unreasonable search and seizure).

The more intrusive the search, the higher standard of justification that police will be required to meet. For example, a penile swab may link the arrested person to the victim by DNA. However, where the person does not consent, the use of force could render the search and seizure unreasonable, not because of the unreasonable manner in which it was carried out but because it occurred at all. This has

yet to be tested in court.

The power to seize a sample as evidential material from the external body of the person under section 88 is independent of the powers to take samples under the Criminal Investigations (Bodily Samples) Act 1995. Nevertheless, evidence should not be seized under section 88 for the purpose of obtaining a suspect's DNA profile. See these chapters in the Police Manual:

- [DNA Sampling](#) for information about DNA sampling powers
- [DNA at crime scenes](#) for information about sources, preservation, recovery, packaging and storage of specimens.

Examples of when samples from a person's external body may be seized

Examples where samples may be seized from the external body of an arrested or detained person as evidential material include:

- a swab to remove blood from the victim of an assault on the arrested person's neck
- fingernail scrapings from the fingers of an arrested rape suspect that may link the offender to the victim by DNA
- a swab of an arrested person's skin for gunshot residue
- penile swabs as detailed below.

The Court of Appeal in *M v R* [2019] NZCA 203 found that there is no power under the SSA to authorise the seizure of bodily specimens where a person is neither detained nor arrested and does not provide informed consent. The taking of the accused's finger nail clippings in this case was therefore not lawful.

Penile swabs

A swab of the arrested person's external genitalia may link that person to the victim by DNA or other biological material (e.g. blood, saliva, hair or foreign material). The penile swab:

- must be taken within 24 hours of the alleged offence
- must be taken by a medical practitioner or nurse
- should be undertaken with the informed consent of the arrested person.

If consent is not given, then the justification for using force to obtain a penile swab would have to be of a high standard. The taking of the penile swab must be conducted in a reasonable manner in the circumstances affording the degree of privacy and dignity consistent with achieving the purpose of the search.

The power of Police to require a respondent to give a penile swab where the person does not consent is yet to be tested in the New Zealand courts. The Canadian Supreme Court dealt with this issue in *R v Saeed* [2016] 1 SCR 518. The accused here was subject to the search pursuant to arrest for sexual assault and was permitted to conduct the penile swab himself.

The majority of the Court found that a penile swab was less invasive than taking a bodily sample, as it was intended to seize the DNA of the complainant, not the accused. It was therefore held that police in Canada have the power to compel suspects to give a penile swab, provided that certain procedural safeguards are adhered to. Included in these procedural safeguards was giving the accused the option to conduct the swab themselves.

Seek guidance from a Police legal adviser where necessary to appropriately assess the circumstances in any individual case.

Searches must be lawful, reasonable and approved

Searches under section 88 for the purpose of seizing samples as evidential material from the external body of an arrested or detained person must be lawful, reasonable and **approved** by a constable who is of or above the level position of sergeant.

Note: The Court of Appeal, in *R v Williams* [2007] 3 NZLR 207, (2007) 23 CRNZ 1 (CA), confirmed that the concepts of lawfulness and unreasonableness were distinct. Searches that are lawful may nevertheless be unreasonable taking into account the manner, time and place of the search.

Restrictions on the application of sections 85-88

Powers to search a person under sections 85-88 may be used by any person who has exercised a power of arrest or detention, or both, under any enactment except:

- Armed Forces Discipline Act 1971, or
- Defence Act 1990, or
- any regulations made under either of those Acts.

(s82)

Rules and obligations when searching people

When exercising a power to search a person you **must**:

- identify yourself
- state the name of the Act under which the search is taking place and the reasons for it unless it is impracticable to do so in the circumstances
- produce evidence of your identity if you are not in Police uniform
- promptly provide the person with a copy of an inventory of any items seized during the search.
(s 125(1)&(4))

Other general powers associated with the power to search people

When exercising a power to search a person, you **may**:

detrain	the person for as long as necessary to enable the search to be carried out
use reasonable force	for the purposes of the search (You should first arrest for obstruction and then use force to complete the search)
use any equipment or aids, e.g. torch	to facilitate the search (while conducting it), if it is used in a way that: <ul style="list-style-type: none"> - involves no or minimal contact, and - is reasonable in the circumstances
ask for assistance from	- a medical practitioner or nurse, and /or - a parent, guardian, or other person responsible for the day-to-day care of the person to be searched if you think it is in the interests of the person to be searched. (See procedures for conducting rub-down and strip searches in this chapter for more information)
ask for assistance from	another officer (from any law enforcement agency) who is also authorised to conduct a strip search and is of the same gender identity as the person being searched, if you are undertaking a strip search.
search	any item: <ul style="list-style-type: none"> - the person is wearing or carrying, or - is in their physical possession or immediate control
seize	anything carried by the person or in their immediate possession or control if : <ul style="list-style-type: none"> - it is the subject of your search, or - may otherwise lawfully be seized.
copy	all or part of a document carried by the person being searched or in their physical possession or immediate control if that document is the subject of your search or may otherwise be lawfully seized
access using reasonable measures	a computer system or other data storage device carried by the person being searched or that is in their physical possession or immediate control, if any intangible material that is the subject of your search may be in that computer system or other device.
copy intangible material	accessed as above that is the subject of your search or may otherwise be lawfully seized, (including by means of previewing, cloning, or other forensic methods before or after removal for examination).
take photographs	or make sound or video recordings, or drawings of any thing being carried or in the physical possession or immediate control of the person being searched if you have reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the search

(s [125\(1\)](#))

Complying with the New Zealand Bill of Rights Act 1990

Searches must be reasonable under section [21](#) of the New Zealand Bill of Rights Act 1990. If the search complies with section [125](#) of the Search and Surveillance Act 2012, it is likely to be reasonable under section 21 of the New Zealand Bill of Rights Act. However, there is still an overriding requirement of reasonableness such that if the search is carried out in a manner unreasonable in the circumstances, it may breach section 21 even if authorised by the provisions of the Search and Surveillance Act 2012.

Planning and assessing risk

Dignity and privacy versus safe police work

People being searched must be treated with such dignity, privacy, respect and sensitivity that the individual situation and the safety of employees dealing with them will permit.

There will be situations when it is necessary to search a person immediately they are apprehended and/or detained, which may be in public view. Many people will be uncomfortable with this, but your primary consideration must be the safety of Police employees and the need to preserve evidence.

Use your search powers in a manner appropriate to the place and circumstances. Remember that the search may be contested in court and the court will apply the "unreasonableness" test in terms of the New Zealand Bill of Rights Act 1990.

Search risk assessment

Always conduct a search risk assessment, taking into account the factors below, before searching a person. In most cases (unless the search is authorised by search warrant) this will be a quick mental assessment. Apply TENR as part of your planning (for more information, see the [TENR - Operational Threat Assessment](#) chapter).

	Factors
When	<p>Timing of search. Can the search safely wait until the person is taken to another safe and private place (e.g. private premises out of view of public, Police station)?</p> <p>Consider:</p> <ul style="list-style-type: none"> - risk of weapons and firearms that may be carried and used - risk of violence - the person's demeanour (e.g. are they affected by drugs and/or alcohol, poor mental health) - securing of evidential material
Where	<p>Location and environmental factors:</p> <ul style="list-style-type: none"> - lighting available to conduct the search - hazards that may exist at location (e.g. dangerous chemicals present at a clan lab) - presence of accomplices, gang members, intoxicated people, protesters or other potentially aggressive people who may interfere with the search
How	<p>Type of search:</p> <ul style="list-style-type: none"> - Rub-down search - Strip search - Internal search
Who	<p>Consider:</p> <ul style="list-style-type: none"> - appropriate gender for searchers and number of employees of that gender available to conduct search - for example, are there special considerations required as a consequence of transgender status of the person to be searched or of Police employee searchers? - whether reasonable force may be required and the impact that may have on the location of the search.

See also 'Risk assessment when planning searches', in Part 5: [Carrying out search powers with or without a warrant](#)

Mobility device / notebook records

Your mobility device/notebook records on the exercise of warrantless powers should, except for custody searches, include your reasons for searching people.

Who can conduct and be present at searches?

Who can search people in Police custody?

People in Police custody can only be searched by:

- Police employees:
 - holding the office of constable
 - authorised by warrant under section 24 Policing Act 2008 (authorised officers) to perform one of the policing roles set out in Schedule 1 giving them the powers of a constable to search a person (i.e. Police jailers, escorts, guards or specialist crime investigators)
 - **searchers** requested by the Police employee in charge of the place or vehicle where the person is detained, to search a specific person.

Assistants during a search

If it is in the interests of the person to be searched, these people may provide assistance during a search:

- medical practitioner or nurse, and / or
- parent, guardian, or other person responsible for the day-to-day care of the person to be searched

If the search is a strip search, you may also request the assistance of another officer (from any law enforcement agency) who is:

- authorised under any other enactment to conduct strip searches, and
- of the same gender identity as the person to be searched.

(s125(1)(g)&(h))

Searchers

You may use a searcher to conduct a search of a person who is to be locked in Police custody:

if...	and you...
<ul style="list-style-type: none"> - the searcher is someone of the same gender identity as the person to be searched, or - the search must be carried out within a reasonable time of the person being taken into custody 	are satisfied the searcher has received appropriate training before being used to conduct a search.

The searcher **must** carry out the search as if they were a Police employee.

(s12)

Note: Searchers can only be used to conduct a search under section 11 (when a person is, or is about to be, locked up). Searchers **cannot** conduct searches for evidential material.

Selecting searchers

Examples of suitable searchers include respected citizens in the community, medical practitioners, nurses, existing community based volunteers who assist Police with search and rescue, victim support etc.

Searchers must be people who:

- are mature, confident, reliable and trustworthy
- will maintain confidentiality
- have no conflict of interest with the person to be searched
- have no criminal convictions / adverse or suspect intelligence recorded.

The need to use searchers who are not Police employees is more likely to occur at smaller Police stations servicing remote rural areas. Stations should consider maintaining a short list of trained searchers of both gender identities rather than relying on one person of each gender identity.

What type of searches are searchers permitted to conduct?

Searchers may only carry out rub-down and strip searches.

Gender identity of people conducting searches

In general, searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person to be searched and any person not of the same gender identity should not be present during a search. (Note that gender identity is not about sexual orientation but the gender (male or female) that a person being searched, or the searcher, identifies with).

Exceptions to same sex people conducting searches

Type of search	Exceptions				
<u>Rub-down search</u>	<p>If a constable, authorised officer or searcher of the same gender identity is not available within a reasonable time and there is no practicable alternative, a constable, authorised officer or searcher of the opposite gender identity may conduct or assist in the search.</p> <p>A medical practitioner, nurse, parent or guardian who provides assistance during a search under section 125(1)(g) does not have to be of the same gender identity as the person being searched.</p>				
<u>Strip search</u>	<p>A strip search may only be carried out by a person of the same gender identity as the person to be searched, and no strip search may be carried out in view of any person who is not of the same gender identity as the person to be searched. (s 126(4))</p> <p>In extreme and urgent situations where sufficient same gender identity constables, authorised officers or searchers are not available, a constable, authorised officer or searcher not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.</p>				
<u>Internal search</u>	<p>If a person voluntarily consents to an internal search by a medical practitioner, but not in the presence of a constable, authorised officer or searcher of the same gender identity as them:</p> <table border="1"> <thead> <tr> <th>then ...</th> <th>if...</th> </tr> </thead> <tbody> <tr> <td> <p>a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:</p> <ul style="list-style-type: none"> - protect the medical practitioner from violence, and - restrain the person if they become violent </td> <td> <ul style="list-style-type: none"> - the medical practitioner does not feel safe to be left alone with the person to be searched, or - there is an assessed risk that the person to be searched may become violent. </td></tr> </tbody> </table>	then ...	if...	<p>a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:</p> <ul style="list-style-type: none"> - protect the medical practitioner from violence, and - restrain the person if they become violent 	<ul style="list-style-type: none"> - the medical practitioner does not feel safe to be left alone with the person to be searched, or - there is an assessed risk that the person to be searched may become violent.
then ...	if...				
<p>a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:</p> <ul style="list-style-type: none"> - protect the medical practitioner from violence, and - restrain the person if they become violent 	<ul style="list-style-type: none"> - the medical practitioner does not feel safe to be left alone with the person to be searched, or - there is an assessed risk that the person to be searched may become violent. 				

In cases where you are required to search a transgender person of the same gender identity and are concerned about conducting the search, bring the matter to the attention of your supervisor.

Transgender people

See the [Searching transgender and intersex people](#) section in this chapter for information on determining the appropriate gender for the person conducting the search.

Sexual orientation and gender identity of Police employees conducting searches

A Police employee's sexual orientation has no bearing on their suitability or otherwise to conduct a search of any person. Only their gender identity (male or female) must be considered in determining suitability.

It should be remembered that in all cases of intrusive searching we take a detainee centric approach in respect of rights. Should an objection be made to the search in respect of the use of a transgender Police employee, then the senior officer present should consider

the continued appropriateness of using the transgender employee to conduct the search.

Rub-down searches

What is a rub-down search?

A rub-down search is a search of a clothed person in which you may:

- run or pat your hand over the body of the person being searched, whether outside or inside their clothing (other than the underclothing)
- insert your hand inside any pocket or pouch in their clothing (other than the underclothing)
- for the purpose of permitting a visual inspection, require the person being searched to:
 - open their mouth
 - display the palms of their hands or the soles of their feet
 - lift or rub their hair.

(s85(2))

Rubdown search may include visual examination

A rubdown search may include 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 include the insertion of any instrument, device, or thing into any of those orifices. (s87)

Things that can be done to facilitate a rub-down search

To facilitate a rub-down search you may require the person being searched to:

- remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) being worn by them, except when they have no other clothing, or only underclothing, under that outer clothing, and
- remove any head covering, gloves, or footwear (including socks or stockings) being worn.

You may also search:

- any item carried by or in their possession, and
- any outer clothing removed, raised, lowered, or opened for the purposes of the search, and
- any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

(s86)

Rub-down searches of arrested or detained persons

You may carry out a rub-down search when a person is arrested or detained under a statutory power of detention, to ensure that they are not carrying anything that may be used to:

- harm any person, or
- facilitate the person's escape.

(s85(1))

Searches after arrest or detention to be conducted as soon as practicable

Conduct a rub-down search for weapons or easily disposed of items as soon as practicable after a person's arrest or detention and before placing them in a vehicle or secure area. If possible, do this out of the public's view to give the person privacy and avoid interference from sympathisers and adverse public reaction.

If it is not practicable to complete a full rub-down search immediately after arrest or detention:

- conduct a visual examination of their head, torso, arms and legs as a preliminary check for weapons and evidential material, and
- remain with them and closely observe them to prevent them from:
 - using anything they may be carrying or have concealed to harm any person or facilitate their escape
 - hiding or disposing of any evidence.

If the suspect is transported in a vehicle, check the seat and surrounding area (e.g. floor, door etc) of that vehicle afterwards.

Rub-down search of all prisoners unless unjustified in circumstances

All prisoners must undergo a rub-down search as soon as they arrive at the custody area or station unless:

- it would be unjustifiable to search the person because, for example:
 - it is a minor charge
 - all evidence is located
- the prisoner is:
 - not placed into a cell or left unsupervised and is being immediately bailed, or
 - not at risk of harming any person or escaping before they are bailed, or
- there is justification in the circumstances to conduct a [strip search](#) instead.

Using metal detectors

If available, all searches must include the use of metal detectors immediately upon arrival in the cell block, regardless of where the detainee has come from.

Prisoners taken into custody at court

Follow these steps when people are taken into custody at court.

If the person is...	then...
waiting for a bail bond to be completed	<ul style="list-style-type: none"> - keep them separate from prisoners in custody being transferred to a custodial or health facility - carry out a risk assessment to decide whether they need to be searched (rub-down search) to remove weapons, cigarettes, lighters or other material that may cause damage to a cell or injury to another person. <p>Note: If the person is unable to be kept separate from custodial prisoners, they must be rub-down searched as if they were a custodial prisoner.</p>
remanded into custody for transfer to a custodial or health facility	<ul style="list-style-type: none"> - rub-down search them before placing them into a cell (if possible, the search should be witnessed by another constable, authorised officer or searcher), unless there is justification for a strip search instead - record any articles removed (use PROP or your notebook, then record in PROP) - complete subsequent processing and documentation after the prisoner is returned to the Police station.

Conducting a rub-down search

Preparing for the search

Follow these steps to prepare for the rub-down search and to satisfy the requirements of section [125\(1\)](#)).

Step	Action
1	Identify yourself to the person being searched.
2	Advise the person of the name of the Act under which the search is taking place and the reason for it unless it is impracticable to do so in the circumstances. You may detain the person to enable the search to be carried out (at the place of initial detention or while they are travelling to or at any other place where the search is carried out), but only for as long as necessary to conduct the search.
3	Obtain the assistance of: - a medical practitioner or nurse - a parent, guardian or other person for the time being responsible for the day-to-day care of the person to be searched if you consider that is in the interests of the person being searched.
4	If practicable, conduct the rub-down search and removal of any property: - in the presence of another constable, authorised officer, searcher - in view of any surveillance cameras or video monitoring systems.

Carrying out the search

Follow these steps to conduct the rub-down search. (See also [Searching trans \(transgender\) and intersex people](#) when applicable).

s.6(c) OIA

Completing the search

On completion of the search follow these steps.

Step	Action
1	<p>Label and secure any property seized. Issue a PROP receipt. If the person is placed in custody, follow the procedures for receiving prisoners' property in the 'People in Police detention' Police Manual chapter.</p> <p>If any property is seized as an exhibit:</p> <ul style="list-style-type: none">- label and secure the exhibit and record it in PROP or IMT- process it appropriately, e.g. by photography, fingerprinting, or scientific examination by ESR, a document examiner etc.
2	<p>Consider whether you are required to report the rub-down search to the Commissioner. This is not required if the search is in conjunction with the person's arrest, detention or being locked up in lawful Police custody. (See 'Notifying when people are searched' in Part 14: Reporting for more information about when reports to the Commissioner are required by section 169).</p>

Strip searches

What is a strip search?

'Strip search' means a search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item(s) of clothing so that the genitals, buttocks, or (in the case of a female) breasts are:

- uncovered, or
- covered only by underclothing.

(s3)

When can strip searches be conducted?

A strip search may be carried out when there is a search power under the Search and Surveillance Act 2012 authorising a search for:

- arms
- offensive weapons
- drugs
- evidential material relating to offences punishable by imprisonment of 14 years or more
- evidential material in the course of an authorised search of a place or vehicle, when any person:
 - is found at the place or in or on the vehicle, or
 - who arrives at the place, or
 - stops at, or enters, or tries to enter or get onto the vehicle
- thing(s) incidental to arrest or detention that may be used to harm any person, facilitate the person's escape or that is evidential material relating to the offence in respect of which the arrest is made or the person is detained
- money or other property after a person is locked up.

All strip searches must be justified

The safety of the person to be searched and those conducting the search is of paramount importance. Strip searches must be justified by either necessity or risk assessment.

Justification by necessity

Strip searches may be justified by necessity when you have reasonable grounds to believe:

- evidential material may be concealed on the person, or
- any thing is on the person who is arrested or detained that may be used to:
 - harm any person
 - facilitate the person's escape

and a less intrusive search may not be sufficient to locate the evidential material or thing that may be used to harm any person or facilitate escape.

Justification by risk assessment

Strip searches may also be justified by an assessment of risk using principles of TENR (Threat, Exposure, Necessity and Response). This includes the risk assessment required for everyone locked up in Police custody that is used to identify risks such as suicidal tendencies, so that the care and safety of the person in custody can be appropriately managed.

A strip search may be carried out when a risk assessment gives you reasonable grounds to believe:

- things such as weapons may be concealed on the person, or
- any thing is on the person that may be used to:
 - facilitate their escape, or
 - harm any person

and a less intrusive search may not sufficiently reduce or remove that risk.

A strip search may also be undertaken following a formal risk assessment of someone to be locked up in police custody where their

behaviour or previous incidents indicate that there is a risk of:

- harm to any person, or
- intentional damage to property

In this instance there need not be a reasonable belief that any item that may be used to injure themselves or others is on them. A strip search may be undertaken.

Customary strip searching must not be authorised

Each case must be considered on its own merits. No general policy to strip search a certain person or class of person can be authorised or adopted and there must be good reason(s) for such a search.

Conducting a strip search

You must carry out a strip search with decency and sensitivity and in a manner that affords to the person being searched the degree of privacy and dignity that is consistent with achieving the purpose of the search.

Preparing to conduct a strip search

After deciding a strip search is justified, follow these steps to prepare for the search and comply with section [125](#).

Step	Action
1	Obtain authority to conduct a strip search from a supervisor with the position level of sergeant or above. If a supervisor is not available, contact your Communications Centre to obtain authority from a supervisor with the appropriate position level.
2	Plan who should be present during and conduct the search. It should be conducted if possible, in the presence of another constable, authorised officer or searcher. You can also use an enforcement officer from another agency authorised under an enactment to conduct strip searches (e.g. a prison or customs officer).
3	<p>Note:</p> <ul style="list-style-type: none"> - The person conducting the search must be of the same gender identity as the person being searched. - Avoid having more than two people present at the search (though this may be unavoidable if the person being searched is violently resisting - see step 1 in the table "Carrying out the search" below). <p>In extreme and urgent situations where sufficient same gender identity constables, authorised officers or searchers are not available, a constable, authorised officer or searcher not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.</p>
4	Identify yourself and the witness to the person to be searched. Advise them of the name of the Act under which the search is taking place and the reason for it, unless it is impracticable to do so in the circumstances.
5	<p>If you consider that it is in the interests of the person being searched, you may obtain the assistance of:</p> <ul style="list-style-type: none"> - a medical practitioner or nurse and/or - a parent, guardian or other person for the time being responsible for the day-to-day care of the person to be searched. <p>You may also seek assistance from an officer from another law enforcement agency who is authorised to conduct searches.</p>
6	<p>Ensure the search place is out of view of:</p> <ul style="list-style-type: none"> - the public and Police employees (other than those involved in the search) - any surveillance cameras or video monitoring systems.

Carrying out the search

Continue with these steps to conduct the strip search.

Step	Action
1	<p>You may use reasonable force when necessary to conduct the search or take any money or property found on the person or in their possession.</p> <p>Do not attempt a strip search with only one person of the appropriate gender identity if the person to be searched is likely to resist or be violent. Keep the person under observation until others of the same gender identity authorised to search are available to assist. In extreme and urgent situations a second person not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.</p>
2	<p>If you intend to use any equipment or aid to facilitate the search, use it in a way that:</p> <ul style="list-style-type: none"> - involves no or minimal contact, and - is reasonable in the circumstances <p>e.g. metal detectors.</p>
3	Conduct the search in as seemly a manner as is consistent with the necessity of discovering any concealed item. The extent of the search required, especially regarding the exposure of private parts, is a matter of careful judgement.
4	<p>In most cases, where it is necessary to conduct a search which exposes the bare skin of breasts, genitals or buttocks, the search should be carried out in sections. The upper part of the body should be stripped and re-clothed before the lower part of the body is examined or vice versa as appropriate.</p> <p>A person should only be required to strip completely naked in exceptional circumstances.</p>
5	<p>Use the wall position to search the person thoroughly butdo not:</p> <ul style="list-style-type: none"> - deliberately touch the bare skin of breasts, genitals or buttocks - require them to bend over, lie down or adopt any other position for a visual examination of lower body orifices. The person may be required to squat so that any object clenched or hidden between the buttocks is released.
6	Search anything carried, worn or in the person's immediate possession.
7	<p>If circumstances arise requiring a person of the opposite gender identity who is present but not in view of the search to intervene to protect the person conducting the search, you must:</p> <ul style="list-style-type: none"> - stop the search, and - before resuming, keep the person under observation until other authorised persons of the same gender identity are available to assist with the search using reasonable force.
8	<p>If the person is placed in custody, follow the procedures for receiving prisoners' property in the 'People in Police custody' Police Manual chapter.</p> <p>If any property is seized as an exhibit:</p> <ul style="list-style-type: none"> - label and secure the exhibit and record it in a PROP or IMT - process it appropriately, e.g. by photography, fingerprinting, or scientific examination byESR, a document examiner etc.

Reporting strip searches of people who are in Police custody

If you exercise a warrantless search power involving a strip search of a person, you must report it unless the search was conducted under section 11.

(s[169](#))

See the '[Reporting](#)' chapter for more guidance on when strip searches must be reported, and how.

Police guidelines about strip searching to be publicly available

The guidelines in this chapter concerning the circumstances under which a strip search may be conducted must be made publicly available on the Police website.

A search of the person is not unlawful by reason only of failure by the person conducting the search to comply with a guideline issued by the Commissioner.

(s [126](#))

Note: Any changes made to this strip searching topic **must be immediately notified to Media & Communications** by the **Police Instructions Team** and **Director: Capability** to ensure the guidelines published on the Police website are up to date.

Internal searches

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)

What is not an internal search?

A constable, authorised officer or searcher 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.

When can an internal search be required?

A constable can only require a person to permit a medical practitioner to conduct an internal examination in circumstances listed in section [23](#) of the Act. They relate to people under arrest for some offences against the [Misuse of Drugs Act 1975](#) and when the constable has reasonable grounds to believe the person has certain property secreted within their body.

Section [23](#) does not limit or affect sections [13A to 13M](#) of the Misuse of Drugs Amendment Act 1978. (See the '[Drugs](#)' Police Manual chapter for information about your powers under these sections).

Restrictions on internal searching

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

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

(s23(3))

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

Effect of not permitting internal search on bail application

If...	a court may...
<ul style="list-style-type: none"> - a person 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 person continue to be detained in Police custody, until the earlier of the following occurs: - 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)

Note: The effect of a person 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 [Summary Proceedings Act 1957](#).
(s24(3) & (4))

Police employee presence at internal search

A constable or authorised officer of the same gender identity as the person to be internally examined may be present if both the medical practitioner and the person agree. Police employees not of the same gender identity, must **not** be present during the search.

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. See the '[Reporting](#)' chapter for guidance about how to report the exercise of the power to require internal search.

Searching transgender and intersex people

Who are trans (transgender) and intersex people?

A **trans** person is someone whose gender identity (their sense of being male or female) differs from their physical body at birth. Many, but not all, trans people take hormones or have surgeries to physically change their bodies. Some of the terms trans people use to describe themselves include transgender, transsexual, MtF (male to female), FtM (female to male), whakawahine, fa'afafine or Queen.

In these guidelines, the term "**transgender**" is used to cover all trans people.

An **intersex** person is someone who is born with, or naturally develops, a body that does not fit typical biological definitions of male or female. There is a wide range of differing intersex medical conditions and physical variations. The term 'hermaphrodite' was historically used to describe intersex people. It should not be used by police as it is considered to be derogatory.

Transgender and intersex people often, but not always, have bodies that are different in some ways from other men and women. For this reason:

- Respect the name, pronoun and sex / gender a transgender or intersex person uses to describe themselves. If you are not sure whether someone prefers to be called 'he' or 'she', politely and discreetly ask.
- Do not automatically assume someone's sex / gender identity based on their genitals, breast / chest, or other physical features. (Note also in this regard, that some transgender women wear breast implants, and some transgender men bind their chest or wear a prosthetic in their pants. These might be felt during a rub-down search).

Who should search transgender and intersex people?

In general, searches should be carried out by persons of the same gender identity as the person to be searched. In the case of strip searches, they may **only** be carried out by a person of the same gender identity and no strip search may be carried out in view of any person who is not of the same gender identity as the person being searched.

These requirements can cause difficulty when the gender identity of the person to be searched is unclear.

Establishing who should conduct a search when gender is unclear

Follow these steps if you are aware that someone is transgender or intersex.

Step	Action
1	<p>Ask the person which gender identity they prefer. Most transgender and intersex people will identify simply as male or female and will probably ask to be searched by someone of the same gender identity. For example, a trans woman (MtF) is likely to ask to be searched by a female Police employee.</p> <p>Have the person's expression of preference witnessed by more than one Police employee (if practicable) and record their preference in your notebook.</p>
2	<p>If the transgender or intersex person does state their gender identity :</p> <ul style="list-style-type: none"> - select searchers of that gender identity to conduct the search. (Strip searches must be conducted by a person of the same gender identity but if a searcher of the same gender identity is not available for a rub-down search within a reasonable time and there is no practicable alternative, a person of the opposite gender identity may conduct the search) - follow standard procedures for conducting rub-down and strip searches.

3 If a **transgender person** will not state a preferred gender identity:

- make an assessment of their gender identity based on their gender presentation (e.g. preferred name, clothing)
- use a searcher of the same gender identity as you have determined for a rubdown search unless there is no practicable alternative, or
- in the case of a strip search, explain that based on the information available to you, the strip search will be conducted by two Police employees of the gender identity that the person presents.

Record your assessment and decision in the electronic custody module or custody/charge sheet, or if not available, in your notebook.

4 If only one person of the **transgender person's** preferred gender identity (or if they've not stated a preference, the gender identity you've determined best matches their gender presentation) is available for a strip search, consider options where the person is cooperative, for:

- conducting the search with a second searcher not of the same gender identity being within hearing but out of view of the person being searched (the person conducting the search **must** be of the preferred gender identity), or
- requesting the assistance of a:
 - medical practitioner or nurse, or
 - parent, guardian, or other person for the time being responsible for the day-to-day care of the person to be searched.

5 If an **intersex person** will not state a preference for their gender identity, try to have a male **and** a female constable, authorised officer or searcher conduct the search. Note however, that one searcher will have to become the primary searcher, as it is never appropriate to have a female search one half of a transgender or intersex person, and a male the other.6 If searchers of both gender identities are not readily available for an **intersex person's** search, choose what appears to be the most appropriate gender identity to you (e.g. based on the person's name, clothing etc) and consider requesting the assistance of a:

- medical practitioner or nurse
- parent, guardian, or other person for the time being responsible for the day-to-day care of the person to be searched.

7 Note when assistants are used for transgender and intersex person searches:

- their role is to assist with and witness the search, not to medically examine the person or to ascertain their gender identity or whether they have had surgeries
- the medical practitioner, nurse or parent etc does not have to be of the same gender identity as a transgender person.

8 Follow standard procedures for:

- conducting searches once the gender of the person(s) to conduct the search is decided. Be mindful that many transgender or intersex people will be particularly uncomfortable about having their body touched or viewed and may have previously been ridiculed because of their body or gender identity
- reporting strip or internal searches of people in custody. (See the "[Reporting](#)" chapter for further information).

Surprises during searches

If you only become aware that someone is transgender or intersex in the course of conducting a search:

StepAction

- 1 Stop a strip search and ask the person which gender identity they prefer. The appropriate gender person should then conduct the search. Follow the guidance in the table above depending on whether the person states a preference or not.
- 2 In the case of a rub- down search, complete the search limiting it to the extent necessary to eliminate danger or preserve evidence.
- 3 Record what has occurred in the electronic custody module, custody / charge sheet or your notebook and any steps taken to rectify any possible breaches of section 126(4) (i.e. strip searches must be carried out by someone of the same gender identity as the person being searched and may not be carried out in view of any person not of the same gender identity).

Internal searches

Internal searches are only conducted by medical practitioners. They do not have to be of the same gender identity as the person being searched.

Standard procedures and guidance in this chapter apply when considering [internal searches](#) of transgender and intersex people.

Search positions and personal safety

Deciding on a search position

The type of search position used depends on the person's compliance. Always make a [risk assessment](#) before conducting a search. When deciding which position to use, consider:

- how much space you have
- potential danger from the person being searched
- whether mechanical restraints should be used to mitigate any risk of assault or escape during the search
- amount of help you have
- number of suspects or people to be searched.

Standing position

StepAction

- 1 Have the person face you, with hands open over the head. This ensures that no weapon or evidence is concealed in them.
- 2 Tell the person to turn around and:
 - interlock their fingers on top of the head
 - spread their feet wide enough to ensure an uncomfortable position. The toes should be pointing outward, so that the person is off balance.
- 3 Conduct the search.

Wall position

StepAction

- 1 Have the person face you, with hands open over their head. This ensures that no weapon or evidence is concealed in them.
- 2 Tell the person to stand against the nearest wall or vehicle with:
 - hands above their head and spread apart
 - feet back from the wall, and spread apart
 - toes pointing outward, so they are off balance.

Make sure their hands and feet are sufficiently spread to prevent them making any sudden moves.

- 3 Conduct the search.
- 4 If the person makes an aggressive move, counter by kicking a leg out from under them, or knocking an arm down from the wall.

Kneeling position

The kneeling position offers a reasonable degree of safety to the searcher and is more practical than the [prone](#) position. Use the kneeling position if you are in an open area, and there is more than one suspect.

StepAction

- 1 Ensure the person is not holding a weapon.
- 2 Have the person face away from you, kneel, cross the legs and interlock the fingers on top of the head. This places the person in a very uncomfortable position.
- 3 Conduct the search in a squatting position, keeping your eye on the person's neck at all times.

Prone position

The prone position offers a degree of safety to the searcher.

StepAction

- 1 Have the person lie face down on the ground with:
 - feet spread apart
 - arms straight out to the sides
 - palms facing up.

In this position it is very difficult for a person to get up or throw dirt or debris at you.

- 2 Search the person on the opposite side to which the face is turned. Place your foot on the person's elbow to restrict movement.
- 3 When moving to the other side, walk around the person's body. Do not step between their legs, because you may be tripped.

Keeping yourself safe during searches

All searches are potentially dangerous. Follow these general guidelines to keep yourself safe:

- Take every precaution to protect yourself, e.g. get help from another employee.
- Remain behind the person, so they don't know where you are. Never turn your back on the person being searched.
- Squat instead of bending over, so you are in a more balanced position and not facing the ground.
- Be thorough, so you can confidently pass the person on to another employee. Conduct the search as quickly as possible.
- Be aware of any attempts by the person to stall the search.
- Always remain alert. Keep your attention on the person to prevent any attempt to dispose of evidence or escape. Watch their shoulder, because this will move first.

Protecting your health

Always use safe searching practices to prevent your exposure to HIV or hepatitis B or C infections.

Property removed or seized during a search

If you search a person under any provision in the Search and Surveillance Act 2012 or any other enactment, and remove or seize any property from them, you must promptly prepare an inventory of what was removed or seized and provide the person with a copy. (s 125(4))

When people are in custody, follow the procedures for receiving and recording 'detainees property' in the [People in Police custody](#) chapter. Note that if you take property and retain it as an exhibit for further investigation, you must record it in PROP or IMT.