

# Police Searches

**Police have the right to search you when you are under arrest and, in some circumstances, when you are not under arrest. Dealing with police can be stressful and overwhelming and being searched can be very upsetting. The following information is designed to help you understand the process and know your rights if you are ever searched by police.**

Police can only search you or your property, (including your car) in the following circumstances:

- **you agree to be searched**
- **the officers have a warrant**
- **you have been arrested**
- **you are in a public space that has been declared a 'designated area'**
- **they are allowed to by law, e.g., a drug detection dog has indicated that you are carrying illegal drugs**

It is important to remember that, if you are found with illicit drugs in your possession, you could face fines and/or a prison sentence as well as a possible criminal record.

## Do I have to submit to a search?

If they do not have a warrant or the authority to search you, the police can ask for your permission to be searched. You have the right to say no to this type of search and they cannot force you to be searched. Police do have the right to search you if you have been arrested. There are also certain circumstances where police are able to conduct searches when a person has not been arrested. In those cases you would have to submit to a search.

## When are police allowed to search if I'm not under arrest?

Police can search you if they have 'reasonable grounds' to believe that you are carrying:

- stolen goods
- goods unlawfully obtained e.g., from the sale of drugs
- prohibited drugs (most commonly in response to an indication from a drug detection dog that they have smelt an illegal substance)
- an item that has been, or may be, used in a serious crime (e.g., tools to break into a car/house)
- weapons, knives or dangerous implements, including laser pointers
- items that explode or ignite

- items that could be used for graffiti (e.g. spray paint, texta, gouging tool)

Police may also search you and your car if they have reasonable grounds to suspect that:

- it has been used in connection with a serious offence
- it contains stolen goods or goods obtained unlawfully
- It contains prohibited drugs
- It contains items used in an offence
- there are circumstances that could give rise to a serious risk to public safety (public place, school)
- they suspect someone in the car is wanted for arrest

## What does 'reasonable grounds' mean?

'Reasonable grounds' is a concept in law that commonly applies to police conducting their duties. This concept requires that the officer who exercises the power to search must have sufficient information to reasonably suspect a search is warranted and the police can make that decision based on the circumstances at the time.

### Legal Disclaimer

The information provided on this fact sheet is provided for information purposes only. As such it **cannot substitute for the advice of a medical professional**

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### What are searches in public 'designated areas'?

Police can conduct searches on people in public areas which are 'designated'. In these areas police have far greater search powers. They do not need to have reasonable grounds to search you, your bags or car for weapons. Senior police can make a public area 'designated' if it has had episodes of violence or is a regular trouble spot, including demonstrations that have become violent.

Although police should announce that an area has been designated, they do not have to if it is done at short notice. It is possible that an area is or has become designated and you are not aware of it.

### What will a search involve?

There are two types of searches that can be conducted, a 'pat-down' or a 'strip search'.

#### Pat-down Search

A pat-down search is when an officer uses their hands to feel over the outside of your clothes. In these cases, the officer is able to do the following:

- ask you to remove outer clothing and shoes
- ask you to empty your pockets
- ask you to open your mouth and shake your hair
- look in your belongings and ask you to show them something they believe is a weapon
- use a metal detection device if required

The officer that conducts the search must:

- be of the same gender (unless this is not reasonably possible)
- make a written record of the search
- give you a receipt for anything they take, including drugs

#### Strip Search

This is when you are asked to remove some or all of your clothing. Strip searches are only permitted if a police officer has reasonable grounds to suspect it is necessary and the circumstances are considered serious and urgent. They must provide as much privacy as possible.

The police must make sure you have someone with you if:

- you are under 18-years-old (a parent, guardian or independent person must be present)
- you have a cognitive disability or mental illness (an independent third person must be present)

They do not have to do this, however, if there are urgent or serious circumstances that means they cannot get one of these people to be with you. Currently another police officer can be used as an independent person during the search but these laws are under review and may change.

The search should be carried out by an officer of the same gender where possible. A strip search must not involve a search of a person's body cavities or an examination of body by touch.

### What about drug detection dogs and searches?

Drug detection dogs are used to assist police in detecting the presence of illegal substances such as cannabis, methamphetamine (speed or ice), MDMA and cocaine. The most common way a young person may end up being searched for prohibited drugs is via the use of a drug detection dog. A sniffer dog can give an 'indication' to its handler – most commonly by sitting down – that it smells something. This indication can be considered part of reasonable grounds for police to search you for drugs.

### What should I do if I am being searched?

Being searched by a police officer, whether it be a pat-down or a strip search, can be confronting and highly distressing. It is important to know what your legal rights are and how to ensure that the experience occurs without incident. If you believe you have done nothing wrong, remember the following:

- most importantly, be polite and respectful. Even if you believe that you are being treated unfairly, make sure you do not respond rudely or aggressively
- ask the police officer why you are being searched. It is your legal right to be told why they are conducting the search

## **Police Searches**

- stay calm. Searches can be scary and intimidating but if you are under arrest or they have reasonable grounds you must let them do their job. You can be charged with hindering if you try to stop the search from occurring
- comply with their reasonable requests. A police officer can only use reasonable force to search you and should not hurt you or be rough if you are complying. You can make a formal complaint later if you feel the officer was too rough
- ask for a copy of the record of the search. At the time is best but if you forget you can ask for a copy within one year of the search

Being searched by police is stressful and upsetting but it is important to remember the police have a job to do. They should behave in a professional and dignified manner when they deal with you and if you stay calm and comply with their reasonable requests, the process will be smoother.

If you feel distressed after a search, please talk to someone to help you process your feelings and get further support if you need it. Organisations such as LegalAid, Headspace and YSAS may be of assistance.