

<b>Policy Name:</b>	<b>RETENTION OF PROPERTY FOR COURT PURPOSES (FORM 5.2)</b>		
<b>Policy #:</b>	OP 5.2	<b>Last Updated:</b>	2022-04-07
<b>Issued By:</b>	SUPPORT SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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**RELATED POLICIES**

*OP 4.4 Asset Forfeiture*

*OP 4.18 Drug Investigations*

*OP 5.1 Seized Property*

*OP 5.3 Release of Seized Property*

**1. PURPOSE**

- 1.1. To provide Surrey Police Service (SPS) Members with information regarding the detention of seized property.
- 1.2. To outline the policy describing the importance of documenting the detention of seized property for investigative and court purposes.
- 1.3. To describe the procedure and the required forms necessary to lawfully detain seized property for investigative and court purposes.

**2. SCOPE**

- 2.1. This policy applies to all SPS Members.

**3. POLICY**

- 3.1. Section 490 of the *Criminal Code* (Detention of Things Seized) mandates the judicial oversight of all property seized by Members during the investigation of any *Criminal Code* offence or offence under any other federal statute enacted by the Parliament of Canada.

- 3.2. Section 24 of the British Columbia *Offence Act* parallels section 490 in that it also mandates the judicial oversight of all property seized by Members during the investigation of any offence under a provincial statute.
- 3.3. All Members must complete a Report to A Justice (Form 5.2) to document all property seized under common law powers or pursuant to the execution of a search warrant. There are six types of Report to Justice forms:
  - i. Form PCR 087 – for seizures of property under federal statutes (e.g., *Criminal Code* or *Controlled Drugs and Substances Act*);
  - ii. Form PCR 815 – for seizures of property under provincial statutes (e.g., *Cannabis Control and Licensing Act*);
  - iii. PCR 094 (Attachment to Report to A Justice) – to document the seizure of additional property items when there is insufficient space on the original Form 5.2 to list all items;
  - iv. Form PCR 095 (Orders Relating to Report to A Justice) – to apply for the following:
    - a. Detention Order for Things Seized (to detain property for three months or 90 days after the original date of the property seizure);
    - b. Order For Further Detention of Things Seized (to detain property past the original three months);
    - c. Order Of Forfeiture of Things Seized (to forfeit seized items to the Crown);
    - d. Order For Return of Things Seized (to return seized items to a named individual);
  - v. Form PCR 088 – for seizure of blood samples pursuant to a search warrant or blood demand for an impaired driving investigation; and
  - vi. Form PCR 141 (Form 5.07 – Report to A Provincial Court Judge Or The Court – DNA Analysis) – to document the seizure of a DNA sample following the execution of a DNA warrant.
- 3.4. A Form 5.2 related to property seized pursuant to a search warrant or under common law powers must be submitted as soon as practicable.
- 3.5. A Form 5.2 related to property seized pursuant to a Telewarrant must be submitted no more than seven (7) days after the execution of the Telewarrant.
- 3.6. The Detention Order for Things Seized (the Detention Order) section on Form PCR 087 and Form PCR 095 authorizes the detention of the property for a period of 90 days and is signed by a Justice of the Peace.
- 3.7. Members must apply to extend the Detention Order if the investigation will last longer than 90 days. This application must be made in advance, prior to the expiry date of the original Detention Order.

- 3.8. Members seeking to make an application for further detention of things seized beyond the original 90 days (up to one year) must contact the Court Services Branch and the application will be heard by a Justice of the Peace and may be further forwarded to a Provincial Court Judge.
- 3.9. Members seeking to make an application for further detention of things seized beyond one year must contact the Court Services Branch and the application will be heard by a Supreme Court Judge.
- 3.10. Members must be aware that all expired Detention Orders are a violation of section 8 (unreasonable search and seizure) of the *Canadian Charter of Rights and Freedoms*.

#### **4. PROCEDURE**

##### **Completing the Report To A Justice Form 5.2 and Application for Detention Order**

- 4.1. Upon seizing property under common law powers or following the execution of a search warrant, Members must:
  - i. complete one of the Report to A Justice Form 5.2 reports listed in paragraphs 3.3.i to 3.3.vi. An Attachment to Report to A Justice may be used to document larger amounts of seized property;
  - ii. complete the Detention Order section on the relevant forms as this authorizes the detention of the seized property for three months/90 days (seized property cannot be legally held without a Detention Order);
  - iii. retain a copy of the completed Form 5.2 for the Member's records and include a scanned copy into the PRIME-BC General Occurrence (GO) report; and
  - iv. submit the completed Form 5.2 to the Court Liaison Clerk responsible for forwarding completed Form 5.2's to the Court Registry for authorization by a Justice of the Peace.
- 4.2. For major projects, members may personally attend the Surrey Provincial Court and submit the Form 5.2's to a Justice of the Peace for authorization.

##### **Application for Further Detention of Things Seized**

- 4.3. When a Detention Order lapses (the 90 days detention period expires), the seized property may be re-claimed by the possessor of the property.
- 4.4. Members must apply to the court to further detain seized property beyond 90 days if additional time is needed to continue the investigation.
- 4.5. If Members need to further detain seized property beyond the first 90 days, Members must initiate the process to apply for further detention of things seized at the **60-day** mark. Members must:
  - i. draft an affidavit in support of the Member's application outlining the reasons for seeking further detention of the seized property beyond 90 days;

- a. ensure that the affidavit is affirmed/sworn/declared by the affiant and signed by a Commissioner;
- ii. contact the Surrey Provincial Court to schedule a hearing with a Justice of the Peace to make the application for further detention by either:
  - a. calling the Surrey Provincial Court at **604-572-2200** (select option 2 and ask to speak to a Justice of the Peace), or;
  - b. e-mailing [REDACTED] to request a hearing date;
- iii. complete a Notice of Application for Hearing once a hearing date with a Justice of the Peace is confirmed;
  - a. Members must ensure that the following information is clearly indicated on the Notice of Application for Hearing for the possessor of the property: the date of the further detention hearing, the Court Services Branch phone number: **604-681-0260** and [REDACTED] to attend via teleconference;
- iv. complete an Affidavit for Service. An Affidavit for Service is a document swearing that the Member served or attempted to serve the possessor of the property with the Notice of Application for Hearing;
- v. serve or attempt to serve the possessor of the property with the Notice of Application for Hearing:
  - a. if the Member is unable to serve the Notice of Application for Hearing, the Member must document on the Affidavit of Service the number of attempts and the reasons why the attempts to serve were unsuccessful (e.g., no forwarding address, person has moved, unable to contact, or person avoiding service);
  - b. if Members have the name and e-mail address for counsel representing the possessor of the property, the Members have the option of serving the Notice of Application for Hearing directly to counsel via e-mail attachment. Members must ensure that any e-mail reply from counsel includes an acknowledgement that counsel received the Notice of Application for Hearing; and
  - c. all Members must serve the Notice of Application for Hearing **three (3) clear business days BEFORE** the date of the hearing with the Justice of the Peace;
- vi. ensure that any documents requiring a Commissioner's signature are signed by a Commissioner for Taking Affidavits (e.g., may be another Member);
- vii. complete the Order for Further Detention of Things Seized section on Form PCR 095;
- viii. e-mail all documents to [REDACTED] (e.g., Member's affidavit, Notice of Application for Hearing, Affidavit of Service, Form PCR 095 Order for Further Detention of Things Seized) and, if applicable, the e-mail chain with counsel prior to the scheduled hearing date with the Justice of the Peace. Members will receive an e-mail reply from a Justice of the Peace at the Court Services Branch with instructions on attending the further detention hearing.

4.6. Members may request assistance from the SPS General Counsel, Legal Services prior to the hearing date with preparing for the further detention hearing and/or if Members are aware that counsel representing the possessor of the property will be taking part in the hearing.

- 4.7. On the assigned hearing date and time, Members must call the Court Services Branch at **604-681-0260**, enter [REDACTED] to speak with a Justice of the Peace regarding the further detention hearing. The Justice of the Peace may re-schedule a new date for the application to be heard by a Provincial Court Judge if there is a dispute regarding the application for further detention.
- 4.8. Members seeking the further detention of property seized **beyond one year** must consult with Crown Counsel who must make an application in Supreme Court to further retain the property.

#### **Consent To Detention**

- 4.9. Members may attempt to obtain consent from the possessor of property to further detain seized property.
- 4.10. Section 490(3.1) of the *Criminal Code* provides for a Consent to Detention. Under section 490(3.1), items can be detained for any length of time, provided the lawful owner/possessor of the property consents to that in writing.
- 4.11. The Consent To Detention should be filed in the court registry after it is signed so there is a record in court that the continued detention of the items is lawful and the Consent To Detention should have an expiry date so the length of time is defined.
- 4.12. Members are not required to schedule a hearing with a Justice of the Peace if consent is obtained.
- 4.13. Section 490(3.1) of the *Criminal Code* may be used in cases where Members have a cooperative respondent.

#### **Hearing Dates**

- 4.14. Upon receiving a phone call or e-mail from a Member applying for a further detention order or order of forfeiture, the Justice of the Peace at the Court Services Branch will set a date for the hearing. All application hearings will be set for either **10:30 am or 2:30 pm** on the scheduled date.

#### **Controlled Substances Seized for Destruction**

- 4.15. When seizing controlled substances listed under Schedules I, II, III, IV or V of the *Controlled Drugs and Substances Act* for destruction, Members must complete a Form 5.2 to document the initial seizure. However, Members are not required to apply to the court for a forfeiture order prior to the destruction of the controlled substances.
- 4.16. When completing the Form 5.2 upon the initial seizure, Members must choose disposition “B - it is being detained to be dealt with according to law”. Under the section “Location Where Detained” on the Form 5.2, write in “For Destruction as directed by Health Canada”.

- 4.17. Members must understand that cannabis is no longer a controlled substance under the *Controlled Drugs and Substances Act* and is therefore subject to the same application for further detention and order of forfeiture process as noted in the above paragraphs.

#### **Property Office Responsibilities**

- 4.18. When Members seize any property, they must secure the property at the SPS Property Office. The Property Office will manage the safekeeping and storage of all seized property.
- 4.19. The Property Office will not return seized property to the possessor of the seized property without a valid Order To Return Things Seized that has been signed by a Justice of the Peace. Upon receipt of an Order To Return Things Seized, a copy of the order will be scanned into PRIME-BC General Occurrence (GO) report / Report to Crown Counsel (RTCC).
- 4.20. All property must be held at the Property Office for thirty-one (31) days from the date any Order is issued by a Justice of the Peace as per the *Criminal Code*. The 31-day period allows for any appeals or disputes related to the property.
- 4.21. If the Property Office does not receive notification of any appeals or disputes regarding the property in question, the Property Office will follow the instructions as per the Order issued by the Justice of the Peace.

#### **Reporting Requirements**

- 4.22. Members must ensure that all documents related to seized property (e.g., Form 5.2, orders for further detention, orders of forfeiture and order to return property) are attached to the PRIME-BC GO file and disclosure package (if applicable).
- 4.23. Members must enter a Police Statement (PS) page documenting their actions, disposition of the seized, and any orders related to the seized property for the Property Office.

## **APPENDIX A: DEFINITIONS**

“Controlled substance” means a substance included in Schedules I, II, III, IV or V of the *Controlled Drugs and Substances Act*.

“Form 5.2” means a Form 5.2 Report to a Justice to document seizures under the *Criminal Code*, section 489.1. This section requires that where a peace officer seizes anything during the execution of their duties where either ownership is in dispute or the continued detention of the thing seized is required for the purposes of any investigation or court proceedings, the peace officer will report the items seized to a justice using a Form 5.2.

“GO” means General Occurrence Report submitted in the PRIME-BC records management system.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“PRIME-BC” means the Police Records Information Management Environment, the provincial police records management system.

“RTCC” means Report to Crown Counsel, an investigational file with multiple reports, pages and notes sent through Police Crown Liaison to Crown Counsel for charge approval.

“SPS” means Surrey Police Service.

## **APPENDIX B: REFERENCES**

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*

*Controlled Drugs and Substances Act, S.C. 1996, c. 19*

*Criminal Code, R.S.C. 1985, c. C-46*

*Offence Act, R.S.B.C. 1996, c. 338*

Public Prosecution Service of Canada, *Section 490 Detention Extension Applications*, November 2, 2021