**Arrest and Summons Chapter 14 PPRA – Arrest and Custody Powers – Short Sheet –** [**PDF**](https://www.legislation.qld.gov.au/view/pdf/2022-03-25/act-2000-005)

**Without a warrant:** Police have broad powers to arrest without a warrant PPRA [s 365](#arrestwithoutwarrant) including at the direction of another officer.[[1]](#footnote-1) If the officer is of the opinion person has not signed that bail undertaking wired or not fulfilling or is about to breach their bail conditions, the officer can arrest without warrant.[[2]](#footnote-2) If the person has been given a notice to appear or a summons, the officer can arrest if there is a reasonable suspicion of interfering with the witness or is likely to fail to appear.[[3]](#footnote-3)

**With a warrant:** Sections [369- 373](#arrestwwarrant), the police officer may apply for an arrest warrant, even if proceedings had started by summons or notice to appear the warrant must be sworn on grounds including in the case of the summary offences because the officer believes notice to appear or complaint and summons would be ineffective, the justice can refuse to consider the application until it is fully prepared.

Duties after arrest: Part 6, s [391 – 395](#release). As soon reasonably practical advise the person they are under arrest and the nature of the offence, where under a warrant, the officer must inform the person of the warrant stop officer details are to be given to the person for thing released.

**When arrest ends:** It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was arrested.[[4]](#footnote-4) However, that will not apply if the officer suspects another offence has been committed, is detained for another reason or as in custody for another offence will stop if there is insufficient evidence the same obligation to release applies.[[5]](#footnote-5) In the case of people intoxicated in a public place, the police can take the person to a place of safety such as a hospital.[[6]](#footnote-6)

*Practice note*: Minor Drug Offending (posing cannabis or associate items): [PPRA S 379](#drugarrest). If the conditions in the section are met, the officer *must* give an opportunity for a drug diversion assessment program. However, noting the Queensland police OPMS’s, this is not a caution which is not allowed for drug offences.[[7]](#footnote-7)

**Alternatives to Arrest / NTA & Summons**

Notice to appear[[8]](#footnote-8) to avoid the delay of a complaint and summons under the [*Justices Act*](https://www.legislation.qld.gov.au/view/html/inforce/current/act-1886-017#sec.47) s 42-56A. A notice to appear has the same effect as a complaint and summons.[[9]](#footnote-9) A failure to answer to a NTA is not an offence of contravening a direction of requirement under s 791.

NOTE

PPRA Warrants for failure to answer to a NTA may result in a warrant being issued,[[10]](#footnote-10) the PPRA warrant does not carry a penalty. Whereas the [*Bail Act*](https://www.legislation.qld.gov.au/view/pdf/2018-03-31/act-1980-035) warrants under s 33 require cumulative sentences.

|  |
| --- |
| **365 - Arrest without warrant** |
| (1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—  (a) to prevent the continuation or repetition of an offence or the commission of another offence;  (b) to make inquiries to establish the person’s identity;  (c) to ensure the person’s appearance before a court;  (d) to obtain or preserve evidence relating to the offence;  (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;  (f) to prevent the fabrication of evidence;  (g) to preserve the safety or welfare of any person, including the person arrested;  (h) to prevent a person fleeing from a police officer or the location of an offence;  (i) because the offence is an offence against section 790 or 791;  (j) because the offence is an offence against the Domestic and Family Violence Protection Act 2012, section 177, 178 or 179;  (k) because of the nature and seriousness of the offence;  (l) because the offence is—  (i) an offence against the Corrective Services Act 2006, section 135(4) [[11]](#footnote-11) ; or  (ii) an offence to which the Corrective Services Act 2006, section 136[[12]](#footnote-12) applies.  (2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 15.  (3) Subject to the Youth Justice Act 1992, section 13, it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence. |

|  |
| --- |
| **Arrest with Warrant Powers** |
| **369 Arrest under warrant**  (1) It is lawful for a police officer acting under a warrant issued under any Act or law to arrest the person named in the warrant.  (2) In this section—  ***arrest*** includes apprehend, take into custody, detain, and remove to another place for examination or treatment.    **370 Arrest warrant application**  (1) A police officer may apply to a justice for a warrant to arrest a person for an offence (***arrest warrant***) .  (2) The police officer may apply for the warrant whether or not a proceeding has been started against the person by complaint and summons or notice to appear.  (3) The application must be sworn and state the grounds on which the warrant is sought.  (4) If the application—  (a) relates to an offence other than an indictable offence; and  (b) is made because the applicant reasonably believes proceeding or continuing to proceed against the person named in the application by complaint and summons or notice to appear would be ineffective;  the application must state the belief and the reasons for the belief.  (5) The justice may refuse to consider the application until the police officer gives the justice all the information the justice requires about the application in the way the justice requires.  *Example—*  The justice may require additional information supporting the application to be given by statutory declaration.    **371 Issue of arrest warrant**  The justice may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting—  (a) that the person has committed the offence; and  (b) for an offence other than an indictable offence, proceedings by way of complaint and summons or notice to appear for the offence would be ineffective, including because the person can not currently be located or served with a complaint and summons or notice to appear for the offence.    **372 What arrest warrant must state**  (1) An arrest warrant must state the following—  (a) the name of the applicant for the warrant and the applicant’s rank, registered number and station;  (b) that any police officer may arrest the person named in the warrant;  (c) the offence the person is alleged to have committed.  (2) It is sufficient to describe an offence in the words of the law defining it, or in similar words.  (3) A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.    **373 Compliance with limitation of proceedings**  (1) This section applies to an arrest warrant issued under [section 371](https://www.legislation.qld.gov.au/view/html/inforce/current/act-2000-005#sec.371)(b) .  (2) For the [*Justices Act 1886*](https://www.legislation.qld.gov.au/link?version.series.id=506b5b47-5bcd-438c-b6a7-27cb65143289&doc.id=act-1886-017&date=2022-08-04&type=act), [section 52](https://www.legislation.qld.gov.au/link?guid=_fac41bce-aef4-4666-a4e1-9a52203d8cf4&id=sec.52&version.series.id=506b5b47-5bcd-438c-b6a7-27cb65143289&doc.id=act-1886-017&date=2022-08-04&type=act)[[13]](#footnote-13) or another provision of an Act that imposes a limitation of proceedings for the offence by reference to when a complaint was made for the offence or to when proceedings for the offence are started, a complaint is taken to be made, and the proceedings started, when the warrant is issued. |

|  |
| --- |
| 379 Additional case when arrest for minor drugs offence may be discontinued |
| (1) This section applies if—  (a) a person is arrested for, or is being questioned by a police officer about, a **minor drugs offence**; and  (b) the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and  (c) the person has not previously been sentenced to serve a term of imprisonment for an offence against the Drugs Misuse Act 1986, section 5, 6, 8 or 9D; and  (d) the person—  (i) has not previously been convicted of an offence involving violence against a person; or  (ii) has been convicted of an offence involving violence against a person for which the rehabilitation period under the Criminal Law (Rehabilitation of Offenders) Act 1986 has expired; and  (e) during an electronically recorded interview, the person admits having committed the offence; and  (f) the person has not been offered the opportunity to participate in a drug diversion assessment program.  (2) If the person is—  (a) an adult; or  (b) a child who has previously been cautioned under the Youth Justice Act 1992 for a minor drugs offence;  *a police officer must offer the person the opportunity to participate in a drug diversion assessment program.*  (3) However, if the person is a child who has not been cautioned previously under the Youth Justice Act 1992 for a minor drugs offence, a police officer may offer the child the opportunity to participate in a drug diversion assessment program.  (4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.  (5) When making the offer, the police officer must give—  (a) the person; and  (b) if a support person is present when the offer is made, the support person;  an oral or written explanation of the consequences of agreeing to participate in a drug diversion assessment program.  (6) If the person agrees, the person must sign an agreement to participate in, and complete, a drug diversion assessment program.  (7) The agreement must include a provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—  (a) the person’s participation in, and completion of, the program; or  (b) if the person failed to participate in, or complete, the program—the person’s failure to participate in, or complete, the program.  (8) The police officer must—  (a) give the person a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the agreement; and  (b) inform the person that failure to comply with the requirement is an offence against section 791.  (9) Also, the police officer must give the chief executive (health) , or a person or organisation nominated by that chief executive for this section, a copy of the agreement.  (10) On the signing of the agreement, the drug, and anything that may be, or has been, used for smoking the drug, is forfeited to the State.  (11) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the police officer is satisfied subsections (6) and (8) have been complied with. |

**For the person to be eligible – tick all boxes**

⃝ Arrested/Questioned for a Minor Drug Offence (cannabis)

⃝ No other connected indictable offences

⃝ Never sentenced for trafficking (drugs or relevant thing), supplying, producing drugs

⃝ The person has not been convicted of an offence against a person, or if they have liability for a criminal record has lapsed.

⃝ The person has made admissions electronically recorded interview

⃝ The person has not been offered an opportunity for drug diversion previously.

⃝ The person agrees to take part in the diversion program.

*“Minor drug offence” is defined in schedule 6 of the PPRA as possessing less than 50 g of cannabis, possessing things that been used to smoking cannabis but does not include where the item is used to the production or supplies cannabis.*

**

1. 365A, however the instructing officer must have a reasonable suspicion for them to have the arrest powers and record the reasons and why. Failure to comply with the record does not amount to an unlawful arrest ss (5). [↑](#footnote-ref-1)
2. 36. [↑](#footnote-ref-2)
3. 368. [↑](#footnote-ref-3)
4. 376(1). [↑](#footnote-ref-4)
5. 367(3). [↑](#footnote-ref-5)
6. S 378. [↑](#footnote-ref-6)
7. [OMP – Page 8.](https://www.police.qld.gov.au/sites/default/files/2022-06/OPM%20-%20Chapter%203%20-%20Prosecution%20Process.pdf)  [↑](#footnote-ref-7)
8. PPRA ss 382-390. [↑](#footnote-ref-8)
9. S 388. [↑](#footnote-ref-9)
10. s 389. [↑](#footnote-ref-10)
11. This section applies if an official with control of a prisoner reasonably believes a person near the prisoner is acting in a way that poses a risk to: the security of the prisoner; or the security or good order of the place in which the prisoner is detained. [↑](#footnote-ref-11)
12. Temporary detention for security offence, offences in corrective service facility [↑](#footnote-ref-12)
13. *Justices Act s* 52 Limitation of proceedings [↑](#footnote-ref-13)