

1.9 Property & Evidence

1.9.4 Seized Property

(Effective: 2005.11.09)

The Criminal Code requires judicial control over property seized by police officers while investigating any offence under the Criminal Code or other statute passed by the Parliament of Canada. In British Columbia, the Offence Act contains procedures that parallel the Criminal Code providing for judicial control over property seized by police officers while investigating any offence contrary to any provincial statute.

A Form 5.2 Report to a Justice must be sent to a Justice of the Peace to ensure that police return seized property as soon as practicable. Failure to comply with this requirement may prevent property from being entered in court as evidence.

1. Seizing Officer - Form 5.2 Report to a Justice

a. **A Form 5.2A Report must be completed whenever officers seize anything, including drugs, for an investigative or legal process.** This would include items seized under Federal or Provincial statutory authority or under common law powers.

b. All seized items, including drugs, must be recorded on a Form 5.2A Report. **A photocopy of the Form 5.2 must be attached to the seized exhibit when tagged in the Property Office.**

c. For Telewarrants or Facsimile warrants (487.1 CCC), a Form 5.2A Report must be filed within a period not exceeding seven days after the warrant has been executed.

d. All seized items must be described to allow a Justice of the Peace to identify the property seized and determine whether or not the continued detention of the property is warranted.

2. There are five different Form 5.2s:

a. Form 5.2A Report to a Justice (Following Seizure of Property And / Or Warrant to Search). This is the basic form used to report a seizure of property.

- Form PCR 087 for seizures conducted under Federal statutes.
- Form PCR 815 (electronic version only - available on the Intranet under Forms) for seizures conducted under Provincial statutes.

b. Attachment to Report to a Justice. This is a continuation of the Form 5.2A, used to list additional property when the space for listing property on the bottom of the Form 5.2A is insufficient;

c. Form 5.2B Report to a Justice (Following Warrant or Demand to Take Blood Samples). This form is used whenever a blood sample is taken pursuant to a warrant or demand for an impaired investigation; and

d. Form 5.07 Report to a Provincial Court Judge of The Court for DNA Analysis. This report is required any time an officer obtains a DNA sample following a DNA warrant.

Completion of Form 5.2 Reports.

3. Prior to forwarding a Form 5.2A, officers shall:

a. Complete the 5.2A report. The application for detention at the bottom of the report shall be completed only when the officer is seeking a detention order ('B' status). A 5.2A attachment form may be used to record lengthy lists of property. The list must include a number, description and the intended disposition for each piece of property on the list.

b. Submit the Form 5.2A as an attachment to the GO report.

c. Ensure that the accompanying report clearly states the justification for the seizure, provides clear direction for the handling of the property, and includes any required follow-up. Whenever possible, the seizing officer shall indicate to whom the property should ultimately be returned.

NOTE: Property cannot be lawfully held without a detention order. Therefore, officers **must** complete the application for detention section of the 5.2 Report. A Detention Order authorises the detention of property for 90 days so that officers can continue an investigation.

Further Detention of Things Seized

4. After the expiry of the 90 day detention period, the property seized can be reclaimed by the owner. Where no charges have been laid with respect to seized property and an investigation is still ongoing, at the **60 day mark** officers shall:

a. Request permission from a Justice of the Peace to further detain the property for an investigation. An officer shall complete and serve/attempt serve one copy of a Notice of Application for Hearing (VPD154) to the possessor of the property and retain another copy for the Property Office;

b. Complete an Affidavit for Service (VPD155) swearing the service/attempt service of the possessor of property. If unable to serve the Notice of Application for Hearing to the possessor of property, document on the Affidavit for Service the number of attempts made and detail reasons for failure. This may include the number of attempts at service, person moved and no forwarding address, evading service, etc;

c. Print-off the Order for Further Detention of Things Seized (PCR095);

d. Update PRIME as to why the officer is seeking the continued detention of the property on a Police Statement (PS) page, transcribe and print-off the PS; and

e. Attach all forms (VPD154, VPD155, PCR095 and PS) to the original Form 5.2A and submit the package to the Property Office who will forward the package to the Justice of the Peace.

Forfeiture Orders

5. Property that cannot be returned such as prohibited weapons/devices or items that are illegal to possess or where there is evidence to support that the property was not lawfully possessed by the person from whom it was seized, the officer shall request permission from a Justice the Peace to have the property forfeited. The officer shall:

a. Complete and serve/attempt serve one copy of a Notice of Application for Hearing (VPD154) to the possessor of the property and retain another copy for the Property Office;

b. Complete an Affidavit for Service (VPD155) swearing the service/attempt service of the possessor of property. If unable to serve the Notice of Application for Hearing to the possessor of property,

document on the Affidavit for Service the number of attempts made and detail reasons for failure. This may include the number of attempts at service, person moved and no forwarding address, evading service, etc;

c. Complete the Order of Forfeiture of Things Seized (PCR095);

d. Update PRIME as to why the officer is seeking a Forfeiture Order for the seized property on a Police Statement (PS) page, transcribe and print-off the PS; and

e. Attach all forms (VPD154, VPD155, PCR095 and PS) to the original Form 5.2A and submit the package to the Property Office who will forward the package to the Justice of the Peace.

Drugs for destruction

6. Drugs tagged for destruction do not require a forfeiture process but may be destroyed by Property Office staff once a Destruction Order is obtained from Health Canada. Officers shall choose disposition "A" on the Form 5.2A and write "Destroy as per Health Canada/Drugs for Destruction Safe" in the section "Location Where Detained."

Hearing Date and Disposition

7. Hearing dates shall be set between Monday and Thursday at 10:00 hrs at 222 Main St., Vancouver B.C., 2nd Floor, Justice of the Peace Offices. Hearing dates may be set **no later than 1 week before the expiry of the Detention Order.**

a. Property Office clerk shall forward the appropriate documents for the hearing and submit a copy of the hearing disposition to the Property Office. This will assist the Property Office in maintaining a record of any upcoming property detention expiry dates.

b. Property in the custody of Crown shall not be released for thirty days following the disposition of the trial period.

Property Office

8. When any property is seized by an officer and deposited at the Property Office, the Property Office is responsible for the safekeeping of the property. As a result, no property in the custody of the Property Office shall be returned to the person from whom it was seized unless an Order to Return Things Seized, signed by a Justice of the Peace, has been received by the Property Office. When the Property Office is notified to release the property, the Property Office shall notify the indicated lawful possessor to claim the property.

9. If the disposition of the property is disputed at the hearing, the Justice of the Peace will assist in setting a hearing date before a Provincial Court Judge. The property disposition hearing shall be set on the officer's regular duty hours. If the disputant is represented by counsel, and if the item seized is of significant value, the officer shall speak to the VPD Legal Advisor and request that a lawyer from the City of Vancouver represent the officer at the upcoming disposition hearing.

10. All property must be held by the Property Office 31 days from the date any Order is issued by a Justice as per the Criminal Code. This provides 31 days for any appeals or disputes in relation to the disposition of the property. After 31 days, if no appeals or disputes are received by the Property Office, the property shall be dealt with as stated in the Order.

See also: [INFORMATION BULLETIN: Report to a Justice-Form 5.2](#)