

Crim B Template

Arrests:

- i. **Without warrant- s365**
 1. Is the suspect an adult?
 2. PO reasonably suspects person committed/ is committing an offence?
 3. Reasonably necessary?
 - a. Prevent continuation/ repetition of offence?
 - b. Establish identity
 - c. Ensure court appearance
 - d. Obtain/ preserve evidence
 - e. Prevent interference with person giving evidence
 - f. Prevent fabrication of evidence
 - g. Safety and welfare of a person
 - h. Prevent person fleeing place of offence
 - i. Offence against s790/791
 - j. Offence is against DV Act
 - k. Nature and seriousness of offence
 - l. Offence against Corrective Services Act

Investigative arrest- s365(2)

Lawful for PO, without warrant, to arrest a person PO reasonably suspects has committed/is committing an IO, for questioning the person about the offence, or investigating the offence

1. Reasonable time to investigate- s403
2. Person detained for 8+ hours? (2)
3. Person questioned for 4+ hours? (4a)
 - Detention starts upon arrest
4. Did police apply for extension? s405
5. Rearrest after release based on new evidence? s381

ii. Arrest with warrant-

1. Did PO apply to justice?
2. Was it sworn and state grounds?

If granted:

1. Did justice reasonably suspect person committed the offence?
2. Summons/ notice to appear would not be affective for non IO?
3. Warrant contain identity of applicant, offence alleged, statement that any officer can arrest?

Form of arrest-

- 1) Arrest by actual physical restraint
- 2) Arrest by words followed by submission to authority – *Dellit v Small; Ex parte Dellit* [1978] words sufficient to affect an arrest
R v O'Donoghue- come to station to answer questions but you don't have to. Hadn't been arrested and it was just a request. He thought he wasn't free to go but that was in his head
Norton v R (No 2)- 'a person is under arrest if they are not free to go. PO must make it clear they are free to go.'

1. Did PO inform person they're under arrest and nature of offence arrested for? (391(1))
2. If done with warrant, nature of warrant (2)
3. Before release did PO give name, rank, station of PO in writing? (3)

Arrested person taken before court- s393

- a. Arrested without warrant
- b. Arrested with warrant
- c. Arrested under s367/368 (not 365)
- d. Received into custody person arrested

Williams v R– HC. Delays (arrested at night, police workload, distance to Court) can affect what is 'reasonably practicable'.

Norton- incidental questioning can occur

Force-

s615- power to use force

R v Hardy- handcuffing can amount to excessive force in some instances: 'mere fact that person is arrested is [not] sufficient justification for cuffing'

1. Force used to prevent escape from lawful custody? (2)
2. Force unlikely to cause death/ GBH? (3)
3. If so, was it a critical situation? (s616)
 - a. Person committed/is committing/about to commit an offence punishable by life imprisonment? (s616(1a))
 - b. PO reasonably suspects person is doing /about to do, something likely to cause GBH/death of another person; and PO reasonably suspects she cannot prevent the GBH/ death other than in how authorised under this section? (2a&b)

Citizen's arrest-

1. Person called upon to assist PO in arrest of person suspected of committing offence, knows person calling is a PO unless person knows that there is no reasonable ground for the suspicion? (s46CC)
2. Did person take arrested to justice/ custody of a PO? (s52CC)

Identification procedures- s617

s35-43

Searching person in custody- 442/443

Taking ID particulars- s467

Forensic procedures-

Intimate- doctor/ dentist

DNA samples- authorised PO 476-478

1. With consent?
2. Request for intimate made because of suspicion of IO? (449(2))

3. PO explained procedure, why proposed, and that person may refuse, and give reasonable time for consideration of explanation (454)
4. Consent recorded/ written? (455)
5. If no consent, under intimate procedure order? (502(1)) Magistrate may grant if satisfied on BOP that there'll be evidence (461(1)), balance rights of accused and public (461(2-3))
6. DNA/ non-medical exam- approval of senior PO? (481-482)