



Part 06 - Behaviour offences

Executive summary

This chapter covers:

- breach of the peace
- litter offences
- public disorder offences.

Definitions, ingredients, Police powers and procedures are listed under each offence. Where possible, references to case law are given.

The chapter deals with minor offences which should be dealt with quickly and with a minimum of fuss. The power to arrest without warrant should be exercised with discretion. Use it only if the behaviour is violent or likely to precipitate violence, and the suspect does not stop the behaviour when directed.

For information on the application of the New Zealand Bill of Rights Act 1990 when arresting, see the 'New Zealand Bill of Rights' chapter of the Police Manual.

There are a number of behaviour offences that are commonly committed. However, 'breach of the peace' is **not** an offence, although the Crimes Act provides the ability to use force, including arrest, to prevent the breach continuing or recurring.

Key, critical points for staff to note:

- If a behaviour related offence is committed, consider warning, then pre-charge warning, then charging.
- For alcohol offences, if a warning is not appropriate, issuing of an Alcohol Infringement Offence Notice is the next appropriate consideration.

Breach of the peace

Definition

Under section 42 of the Crimes Act 1961, breach of the peace is **not** an offence, but there is provision for its prevention.

A breach of the peace is essentially violence or threatened violence.

There is a breach of the peace whenever harm is actually done or likely to be done to:

- a person, or
- a person's property, in that person's presence, or
- a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance - *R v Howell* (Errol) [1982] QB 416 (CA), at 427.

The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established.

Conversely, not all acts likely to provoke violence will necessarily amount to breaches of the peace - even if they are clearly criminal in themselves. See *Percy v DPP* [1995] 3 All ER 124 (QB), at 131, Collins.

The type of violence which the act might provoke must be violence of a defensive nature, as opposed to violence of a retributive nature. For example, the act of peeping through a bedroom window at night would not amount to a breach of the peace even though its natural consequence was likely to frighten those in the house and cause a violent response from them. *Frey v Fedoruk*, Supreme Court of Canada [1950] SCR 517.

The conduct complained of must be severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. In determining whether it is of this nature, regard must be had to the nature and quality of the conduct, its likely consequences and the context in which it is taking place: *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55; [2007] 2 AC 105 (HL): see also *Dyer v Brady, Bullen, Jones and Munro* [2006] HCJAC 72; [2006] SCCR 629.

Powers and duties in respect of breach of the peace

This section contains the following topics:

- To prevent the continuance or renewal of a breach
 - What is 'reasonable'?
 - What is 'interfere to prevent'?
- To arrest
- To receive a suspect from a witness
- After detaining a suspect

To prevent the continuance or renewal of a breach

If you witness a breach of the peace, you can interfere to prevent its continuance or renewal. You can use no more force than is reasonably necessary - section 42(1) of the Crimes Act 1961 refers.

What is 'reasonable'?

'Reasonable' means having sound judgement, being moderate and ready to listen to reason - in all the circumstances of the case.

What is 'interfere to prevent'?

A Police Inspector erected barricades around a sporting venue to prevent demonstrators from entering. This was done because there had been disruption at a similar event two days earlier. It was held that erecting the barricade was reasonable, and that the senior officer was justified in passing on to his subordinates, who did not have personal knowledge of the reasons, the power to take proper steps to prevent the breach - *Newnham v Police* [1978] 1 NZLR 844.

'Interfere to prevent' may also include seizing and temporarily holding personal belongings - *Minto v McKay* (1987) 2 CRNZ () 330 (CA ()).

Although a Police officer has the duty to take reasonable steps to prevent apprehended breaches of the peace, this section only permits a person to be detained where a breach of the peace has occurred and is either continuing or likely to be renewed: *A-G v Reid* 23/5/86, Thorp J, HC Auckland M920/85. It also only permits action to be taken against the person actually committing the breach.

The interference must be reasonable. In determining whether it was reasonable, the **immediacy** of the breach is relevant.

To arrest

If you are at the scene when a breach of the peace is being committed, or if you have good cause to suspect that a breach has been committed, you, or anyone lawfully assisting you, can arrest - sections 42(2) and 315(2) of the Crimes Act 1961 refer.

Note: You cannot arrest if you merely anticipate a breach - *Reid v Attorney General* [1983] 2 DCR 237.

To receive a suspect from a witness

You can receive from a witness and take into custody the person responsible for a breach of the peace. You must have reasonable grounds for believing that the person handing them over was a witness to the breach - section 42(3) of the Crimes Act 1961 refers.

After detaining a suspect

If you detain someone, you should either file further charges promptly or release the person - section 23(2) of the New Zealand Bill of Rights Act 1990 refers.

Caution: Any undue delay could lead to a civil action against Police.

Procedures in respect of breach of the peace

This section contains the following topics:

- Preventing an anticipated breach of the peace
- Arresting a person
- After arresting the person
- Charging the person

Preventing an anticipated breach of the peace


In *Percy v DPP*[1995] 3 All ER 124 (QB), at 131, Collins J, emphasised that "The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established."

If you anticipate that a breach of the peace will occur, issue lawful instructions to the persons involved. If they fail to carry them out, or breach them, arrest them for obstruction - *Minto v Police* (1991) 7 CRNZ 38.

Arresting a person

Where possible, it is better to arrest for a specific offence rather than breach of the peace. If you decide to arrest, follow these steps.

Step	Action
1	Note what each person is doing before and during arrest.

2	Tell each person they have been arrested for breach of the peace.
3	<p>Give each the rights caution (<i>see PDF below</i>) according to the <u>Chief Justice's practice note on Police questioning</u>.</p> <div data-bbox="284 450 1353 539" style="border: 1px solid #ccc; padding: 5px; margin: 10px 0;">  Rights caution.pdf 87.86 KB </div>
4	Inform each person of their rights according to the New Zealand Bill of Rights Act 1990.

After arresting the person

Because breach of the peace is **not an offence**, you **cannot** lawfully obtain the arrested person's personal details, or take photographs or fingerprints, unless:

- you are filing a charging document for another charge, or
- the person consents.

Decide in each case whether there is evidence of an offence to the extent that would satisfy the Evidential Test in the Solicitor General's prosecution Guidelines. If there is not, release the person as soon as is practicable - see 'Release Notice' form.


Note: Where further evidence is subsequently obtained, release at this stage does not preclude the person being summonsed for an offence later.

Charging the person

If there is evidential sufficiency, also consider public interest considerations in then deciding whether to warn, issue a summons or charge the person. This decision should be made in consultation with the custody supervisor.

Important: Do not delay this decision; you **cannot** hold a prisoner solely for the purpose of interrogation. Delay would only be justified in situations where, for example, there were many prisoners to process, or a long distance to travel between the scene and the station.

If you decide to charge the person for an offence (breach of the peace is not an offence), follow these steps.

Step	Action
1	Tell the person of the nature of the charges as soon as practicable.
2	Give the rights caution (see PDF below) according to the Chief Justice's practice note on Police questioning . <div style="border: 1px solid black; padding: 5px; display: flex; justify-content: space-between; align-items: center;">  Rights caution.pdf 87.86 KB </div>
3	Inform the person of their rights under the New Zealand Bill of Rights Act 1990.
4	Decide on summons, bail, release or pre-charge warning .
5	Submit a file to your supervisor, including a report outlining the justification for the arrest and release, a copy of the ' Breach of the Peace release notice ' and your notebook entry relating to the incident.

Litter offences

This section contains the following topics:

- Definitions
- Depositing dangerous litter
- Depositing litter
- Wilfully breaking bottles or glass
- Failing to comply with directions of a Litter Control Officer

Definitions

This table outlines definitions of terms under section 2 of the Litter Act 1979 relevant to this chapter.

Term	Definition
Depositing	'Depositing' in relation to litter includes: <ul style="list-style-type: none"> • casting, placing, throwing or dropping litter, and • allowing litter to be cast, thrown, dropped or, without reasonable excuse, to escape, from a motor vehicle or trailer.
Litter	'Litter' includes any refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, or waste matter, or any other thing of a like nature.
Litter Control Officers	'Litter Control Officer' means any person appointed as such under section <u>5</u> or section <u>6</u> of the Litter Act 1979. Note: Under section <u>6</u> (1)(a) every Police constable is a Litter Control Officer.
Occupier	'Occupier', in relation to any land or premises, means any lessee, licensee, or other occupant of the land, and includes the owner or the agent of the owner where there is no apparent occupier.
Private land	'Private land' means every place other than a public place.

Public place	<p>'Public place' includes:</p> <ul style="list-style-type: none">• every motorway, road, street, private street, footpath, access way, service lane, court, mall, and thoroughfare• any public reserve within the meaning of section 2 of the Reserves Act 1977 to which the public generally has access, whether with or without payment of any fee, and any reserve under that Act classified as a nature reserve or a scientific reserve• any park, garden, or other place of public recreation to which the public has access, whether with or without payment of any fee• any beach or foreshore, or the bank of any river or stream, or the margin of any lake, to which the public traditionally has access, whether with or without payment of any fee• any waters to which the public traditionally has access, whether with or without payment of any fee, for bathing or other recreational purposes• every wharf, pier, or jetty (whether under the control of a harbour board or not) to which the public has access• any conservation area within the meaning of the <u>Conservation Act 1987</u>• any airport within the meaning of section 2 of the Airport Authorities Act 1966• any cemetery within the meaning of section 2 of the Burial and Cremation Act 1964• any land vested in or controlled by any local authority (within the meaning of section 5(1) of the Local Government Act 2002 or the Crown, being land that is not occupied pursuant to any lease, licence, or other authority by any private person• any National Park constituted under the <u>National Parks Act 1980</u>• any other place whether public or private in the open air, including any walkway within the meaning of section 4 of the Walking Access Act 2008, to which the public has access, whether with or without payment of any fee <p>but does not include any site for the disposal of litter, or any receptacle installed in any such public place pursuant to this Act or any other Act.</p>
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Depositing dangerous litter

Under section 15(2) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- committed an offence against section 15(1) of the Litter Act 1979, and
- the litter was likely to cause any person any danger, injury, disease or infection.

Powers

You can:

- demand the suspect's name and address (section 7(5) of the Litter Act 1979)
- arrest without warrant (section 315 of the Crimes Act 1961).

Depositing litter

Under section 15(1) of the Litter Act 1979, you must prove the identity of the suspect and that they:

without reasonable excuse, deposited litter, or having deposited it, left it, in or on any public place, or private land, without the occupier's consent.

Powers

You:

- can require the suspect to remove and dispose of the litter appropriately, and you can demand their name and address (section 7(2) & (5) of the Litter Act 1979)
- **cannot** arrest - any charge should be initiated by way of a summons.

Wilfully breaking bottles or glass

Under section 16 of the Litter Act 1979, you must prove the identity of the suspect and that they:

- wilfully and without lawful authority
- broke any bottle, glass or article made of glass
- in or on any public place or private land.

Powers

You can:

- demand the suspect's name and address (section 7(5) of the Litter Act 1979)

- arrest without warrant (section 315 of the Crimes Act 1961).

Failing to comply with directions of a Litter Control Officer

Under section 17(1)(b) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- without lawful excuse
- failed to comply, within a reasonable time, with the directions of a Litter Control Officer.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Personating a Litter Control Officer

Under section 17(1)(d) of the Litter Act 1979, you must prove the identity of the suspect and that they personated or falsely pretended to be a Litter Control Officer.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Refusal to give name to a Litter Control Officer

Under section 17(1)(c) of the Litter Act 1979, you must prove the identity of the suspect and that they:

were required to disclose name and address by a Litter Control Officer and refused to do so, or gave a false name or address.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Wilful obstruction of a Litter Control Officer

Under section 17(1)(a) of the Litter Act 1979, you must prove the identity of the suspect and that they:

- wilfully obstructed a Litter Control Officer

- were acting in the execution of their duties or powers, as conferred by the Litter Act 1979.

Powers

You:

- **cannot** arrest - any charge should be initiated by way of a summons.

Procedures in respect of litter offences

For all of the Litter Act offences, follow these steps.

Step	Action
1	Ask for and record any explanation.
2	Consider whether the explanation indicates wilfulness or lack of reasonable excuse.
3	Record the: <ul style="list-style-type: none"> • number and type of passers-by (this can be used as evidence to prove that people could have been endangered) • suspect's sobriety • suspect's full particulars and verify these.

4	<p>Decide whether to warn, report for summons or arrest.</p> <table border="1" data-bbox="284 280 1353 1146"> <thead> <tr> <th data-bbox="284 280 582 465">If you decide to..</th> <th data-bbox="582 280 1353 465">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 465 582 586">warn</td> <td data-bbox="582 465 1353 586">record your decision</td> </tr> <tr> <td data-bbox="284 586 582 772">report for summons</td> <td data-bbox="582 586 1353 772">inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td data-bbox="284 772 582 1146">arrest (where that power exists)</td> <td data-bbox="582 772 1353 1146"> <ul style="list-style-type: none"> • give the rights caution according to the Chief Justice's practice note on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider a <u>pre-charge warning</u> if relevant criteria are met. </td> </tr> </tbody> </table>	If you decide to..	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest (where that power exists)	<ul style="list-style-type: none"> • give the rights caution according to the Chief Justice's practice note on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider a <u>pre-charge warning</u> if relevant criteria are met.
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5	If possible, have the suspect clean up the litter. If necessary, do it yourself.								
6	Complete the file and arrange the filing of the charging document.								

Public disorder offences

This section contains the following topics:

- Definition of public place
- Public disorder offences

Definition of public place

A number of provisions in the Summary Offences Act 1981 concern public disorder offences; that is, socially unacceptable behaviour in a public place, or within hearing or view of a public place.

'Public place' means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle carrying or available to carry passengers for reward - section 2(1) of the Summary Offences Act 1981 refers.

Without limiting the definition of the term 'public place' in subsection 2(1) above, for the purposes of the Act, a person is in a public place if they are in any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, which is in a public place - section 2(2) of the Summary Offences Act 1981 refers.

Public disorder offences

Public disorder offences in this chapter include:

- Disorderly assembly
- Disorderly behaviour
- Drinking in a public place
- Excreting in a public place
- Fighting in a public place
- Indecent exposure
- Intimidation
- Language offences
- Offensive behaviour
- Obstructing a public way
- Resisting and obstruction
- Throwing stones
- Unlawful assembly

Disorderly behaviour

This section contains the following topics:

- Definitions
- Ingredients and powers in respect of disorderly behaviour
- Procedures in respect of disorderly behaviour

Definitions

This table outlines the key definitions of terms relevant to disorderly behaviour.

Term	Definition
Disorderly behaviour	'Disorderly behaviour' is behaviour seriously disruptive of public order. It must cause a disturbance to public good order which in the particular circumstances of time and place, any affected members of the public could not reasonably be expected to endure because of its intensity and/or its duration - <i>Brooker v Police</i> [2007] NZSC 30; <i>Morse v Police</i> [2011] NZSC 45
Insulting behaviour	'Insulting behaviour' is behaviour that insults and seriously annoys one or more of those present - <i>O'Connor v Police</i> [1972] NZLR 379

<p>Offensive behaviour</p>	<p>Within the legal framework post the New Zealand Bill of Rights Act 1990, the Supreme Court reformulated the test for determining whether conduct is disorderly or offensive in terms of s4(1)(a) Summary Offences Act 1981 in that proof of disturbance of public order is required. The word 'offensive' is to be interpreted in the context of a provision concerned with offences against public order. The offence must be to such an extent, or of such a kind, that it disturbs or disrupts public order - <i>Brooker v Police</i> [2007] NZSC 30; <i>Morse v Police</i> [2011] NZSC 45.</p> <p>'Offensive behaviour' is behaviour that an ordinary and reasonable New Zealander would consider to wound the feelings of, or arouse real anger, resentment, disgust or outrage in, the type of person actually subjected to it.</p> <p>In deciding this, consider:</p> <ul style="list-style-type: none"> • what was done or said, and • the intent of the suspect, and • the age, sex and other characteristics of the person exposed to the behaviour, and • all the other circumstances, including the time and place of the behaviour. <p><i>O'Brien v Police</i> (unreported, High Court Auckland, 12 October 1992, AP219/92) refers.</p>
<p>Riotous behaviour</p>	<p>'Riotous behaviour' involves force or violence that is likely to cause alarm in at least one person of reasonable firmness and courage - <i>Scott v Parkinson & Howard</i> (1912) VLR 389.</p> <p>Riotous behaviour is more serious than disorderly behaviour, but falls short of the offence of riot. Because it is also disorderly behaviour, it is rarely filed as a charge</p>

Threatening behaviour	'Threatening behaviour' has not been defined by the courts. According to the Police legal section's commentary on the Act, a threat is 'a declaration of an intention to punish or hurt'. If the person has the power to carry out the threat, the offence may become an assault.
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Ingredients and powers in respect of disorderly behaviour

Under section 3 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in or within view of any public place
- behaved, or incited or encouraged any person to behave in a riotous, offensive, threatening, insulting or disorderly manner that was likely to cause violence against persons or property.

In the case of insulting behaviour, you must also prove that the suspect knew that the person insulted was likely to be present - *O'Connor v Police* [1972] NZLR 379.

If a court finds that a charge under this section is not proven, it can convict under section 4, whether or not a charge has been filed under that section - section 44 of the Summary Offences Act 1981 refers.

Additional information: See '[Offensive Behaviour](#)'.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of disorderly behaviour

When faced with behaviour that contravenes section 3 of the Act, follow these steps.

Step	Action
1	Obtain full details of the offending behaviour, the victim, the suspect and any witnesses, and verify. Check that the offence occurred in, or within view of, a public place and obtain proof of disturbance of public order.

2	Record any injuries or damage, whether alcohol was involved, and the type and number of people present.							
3	Find out if the suspect was driving or in charge of a motor vehicle at the time. At the discretion of the court, they may be disqualified from driving.							
4	Decide whether to warn, report for summons or arrest. Consider whether: <ul style="list-style-type: none"> • a breach of the peace is imminent • the conduct is likely to be repeated. 							
5	If the offence was minor, warn the suspect. If the offender is co-operative, no further action may be necessary. Verify the identity of the offender before letting them go and record your decision.							
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7	Prepare the prosecution file and file the charging document.
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Disorderly assembly

This section contains the following topics:

- Ingredients
- Exception
- Power of arrest

Ingredients

In accordance with section [5A\(2\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- were a participant in a disorderly assembly, and
- were warned by an officer to disperse or otherwise desist;
- and without reasonable excuse:
- continued to participate in the assembly, or
- participated in another disorderly assembly in circumstances in which it was reasonable to deem the warning to have also applied to the new assembly.

Exception

Section [5A](#) does not apply to any group of people who assemble in a public place for the purpose of demonstrating support for, or opposition to, or otherwise publicising, any point of view, cause or campaign.

Power of arrest

You can arrest under section [39\(1\)](#) of the Summary Offences Act 1981.

Unlawful assembly

This section contains the following topics:

- Ingredients
- A lawful assembly can become unlawful
- Exception when protecting a house
- Power of arrest

Note: For further information on 'Unlawful Assembly and Rioting' please refer to Part 7 of this chapter.

Ingredients

<p>Unlawful assembly</p> <p><u>Section 86, Crimes Act 1961</u></p>	<p>An assembly of 3 or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the persons so assembled:</p> <p>(a) Will use violence against persons or property in that neighbourhood or elsewhere; or</p> <p>(b) Will, by that assembly, needlessly and without reasonable cause provoke other persons to use violence against persons or property in that neighbourhood.</p>	<p>Three elements must be proven beyond reasonable doubt:</p> <ul style="list-style-type: none"> • Assembly of at least three people; • Those people had a common purpose. The common purpose may be lawful or unlawful. Each defendant must be a willing participant in the assembly and share the common purpose; • The members of the assembly must conduct themselves in such a way as to cause the kind of fear described in (a) and (b). <p>The conduct causing alarm must relate to the common purpose in that it was expected or reasonably anticipated by the members of the assembly at the time they formed the intent to carry out their common purpose. Similar conduct by each defendant will not be sufficient for common purpose, for example, when a social gathering turns into a riotous disturbance.</p>
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A lawful assembly can become unlawful

In accordance with section [86\(2\)](#) of the Crimes Act 1961, people who are lawfully assembled may become an unlawful assembly if, with a common purpose, they conduct themselves in such a way that their assembling would have been unlawful if they had assembled in that manner for that purpose.

Exception when protecting a house

In accordance with section [86\(3\)](#) of the Crimes Act 1961, it is lawful for three or more people to assemble for the purpose of protecting the house of any one of their number against persons threatening to break and enter that house in order to commit a crime therein.

Power of arrest

You can arrest under section [315\(2\)](#) of the Crimes Act 1961.

Forcibly hindering

This section contains the following topics:

- Ingredients
- Direct participation or interference necessary
- Power of arrest

Ingredients

In accordance with section [21\(2\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- forcibly hindered or prevented
- any person from
- working at or exercising
- any lawful trade, business, or occupation.

Direct participation or interference necessary

Hindering must have been occasioned by direct participation or interference (*Ports of Auckland Ltd v New Zealand Seafarers Industrial Union* [1999] BCL 80).

Note: To forcibly hinder or prevent a person from working requires actual physical force or a threat of it.

Power of arrest

You can arrest under section 39(1) of the Summary Offences Act 1981.

Drinking in a public place

This section contains the following topics:

- Ingredients
- Minor drinking in a public place
- Powers in respect of drinking in public places offences
- Procedures in respect of persons other than minors drinking in public places offences
- Alcohol bans and enforcement

Ingredients

Under section 38(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in or on any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle that is carrying passengers for reward
- drank intoxicating liquor; or
- supplied or offered intoxicating liquor to any other person for consumption there; or
- had in their possession, or under their control, any intoxicating liquor for consumption there.

Note: These offences do not apply in licensed premises, e.g. ferries that have a liquor licence.

Note: A conveyance carrying passengers under charter is deemed to be carrying them for reward - section 38(2) of the Summary Offences Act 1981 refers.

Minor drinking in a public place

There are a number of offences involving a minor and alcohol, for which an Alcohol Infringement Offence Notice may be issued. The penalty for each offence is \$250. Consult the AION book for full details.

See the 'Minors' chapter in the Police Manual for good practice guidance on 'policing minors in public places'.

Powers in respect of drinking in public places offences

Under section 39(2) of the Summary Offences Act 1981, you can arrest any person if:

- **you see** the offence

and

- the suspect fails to give name and address on demand, or
- you believe that the details given are false.

Note: You have **no** power of search **prior** to arrest.


If you intend to prosecute the suspect, you can seize and remove any intoxicating alcohol (and the vessels containing it) that you have reasonable grounds to believe is intended for consumption in contravention of section 38.

If a person is convicted of an offence against section 38, the alcohol and vessels seized are forfeited to the Crown - section 45(1) and (2) of the Summary Offences Act 1981 refers.

Procedures in respect of persons other than minors drinking in public places offences

If you find someone other than a minor drinking in a public place, follow these steps.

Step	Action
1	Decide whether to warn, issue an AION, arrest or report for summons.
2	Consider whether: <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false.

3	If you decide to...	then...
	warn	record your decision
	Issue AION	Use AION book, penalty is \$250
	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time
	arrest	<div data-bbox="549 916 587 965" style="display: inline-block; vertical-align: middle;"></div> <div data-bbox="612 922 863 960" style="display: inline-block; vertical-align: middle;">Rights caution.pdf</div> <div data-bbox="1181 931 1299 963" style="display: inline-block; vertical-align: middle; text-align: right;">87.86 KB</div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider pre-charge warning if relevant criteria are met.
4	Obtain all relevant details from the suspect and witnesses, and verify.	
5	Prepare the prosecution file and file the charging document.	

Alcohol bans and enforcement

See: '[Enforcement of alcohol bans](#)'.

Excreting in a public place

This section contains the following topics:

- Ingredients and powers
- Procedures in respect of excreting in a public place offence

Ingredients and powers

Under section 32(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- urinated or defecated
- in any public place other than a public toilet.

It is a defence if the suspect had reasonable grounds for believing that they would not be seen - section 32 (2) of the Summary Offences Act 1981 refers.

If the suspect was not seen, but you think further action is necessary, consider arresting or summoning the suspect on a charge of offensive behaviour.

Additional information: See 'Offensive Behaviour'.

Powers

Under section 39(2) of the Summary Offences Act 1981, you can arrest if:

- you see the offence




and

- the suspect fails to give name and address on demand, or
- you believe the details given are false.

Procedures in respect of excreting in a public place offence

When you have reason to believe that a person has urinated or defecated in a public place, follow these steps.

Step	Action
1	Decide whether to warn, arrest or report for summons. Note: The usual procedure is to warn or report.

2	<p>Consider whether:</p> <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false. 									
3	<table border="1"> <thead> <tr> <th data-bbox="284 481 501 667">If you decide to...</th> <th data-bbox="505 481 1358 667">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 667 501 790">warn</td> <td data-bbox="505 667 1358 790">record your decision</td> </tr> <tr> <td data-bbox="284 790 501 976">report for summons</td> <td data-bbox="505 790 1358 976">inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td data-bbox="284 976 501 1615">arrest</td> <td data-bbox="505 976 1358 1615"> <div data-bbox="518 1077 1326 1167" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justices practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met. </td> </tr> </tbody> </table>		If you decide to...	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<div data-bbox="518 1077 1326 1167" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justices practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
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warn	record your decision									
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4	Obtain all relevant details from the suspect and witnesses, and verify.									
5	Prepare the prosecution file and file the charging document.									

Fighting in a public place

This section contains the following topics:

- Ingredients and powers
- Procedures in respect of fighting in a public place

Ingredients and powers

Fighting includes striking, punching, kicking, wrestling, mauling, slapping and scratching, between two or more people who are each taking, or have been taking, a willing and active part.

Under section 7 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they were fighting in a public place.

Note: You need not prove that both parties were exchanging blows - *Taylor v DPP* [1973] AC 964.

Powers




You can arrest under section 39(1) of the Summary Offences Act 1981.

Note: You do not have to charge both or all the parties. If one suspect is not caught, the other can still be charged with 'fighting with a person or persons unknown'.

Procedures in respect of fighting in a public place

If two or more people are fighting in a public place, follow these steps.

Step	Action
1	Separate the suspects.
2	Ask each suspect to describe the incident out of the other's hearing. Find out if either suspect was simply acting in self-defence.

3	Note each suspect's physical and mental condition, and any signs of intoxication.								
4	Look for independent witnesses. This is the best way to find out what really happened and to ensure that you do not arrest innocent people.								
5	Check that all the ingredients of the offence are met.								
6	<p>Decide whether to warn, report for summons or arrest.</p> <table border="1" data-bbox="279 750 1364 1892"> <thead> <tr> <th data-bbox="279 750 502 952">If you decide to...</th> <th data-bbox="502 750 1364 952">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="279 952 502 1064">warn</td> <td data-bbox="502 952 1364 1064">record your decision</td> </tr> <tr> <td data-bbox="279 1064 502 1265">report for summons</td> <td data-bbox="502 1064 1364 1265">inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td data-bbox="279 1265 502 1892">arrest</td> <td data-bbox="502 1265 1364 1892"> <div data-bbox="510 1355 1324 1444" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights_caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met. </td> </tr> </tbody> </table>	If you decide to...	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<div data-bbox="510 1355 1324 1444" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights_caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
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report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time								
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7	Obtain all relevant details from suspects, victims and witnesses, and verify.
8	Prepare the prosecution file and file the charging document.

Indecent exposure

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures in respect of indecent exposure

Definitions

This table outlines the key definitions of terms relevant to indecent exposure.

Term	Definition
Expose	This means to uncover, display or exhibit.
Genitals	Genitals are the sex organs, not including pubic hair or breasts.
Intentionally	'Intentionally' means on purpose.
Obscene	An act is obscene if it is objectionable or repugnant to an average person's standards of decency or morality - <i>Philpott v Police</i> (unreported, High Court Christchurch, 13 July 1993, AP 138-142/93).

Ingredients and powers

Under section 27(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within view of, a public place
- intentionally and obscenely exposed any part of their genitals.

It is a defence to prove that the suspect had reasonable grounds for believing they would not be observed - section 27(2) of the Summary Offences Act 1981 refers.

Note: If the act was intentional, obscene and witnessed, the suspect should be charged, even if they failed to cause offence.




Powers

You can arrest under section 39 (1) of the Summary Offences Act 1981.

Procedures in respect of indecent exposure

If an offence against section 27 appears to have been committed, follow these steps.

Step	Action
1	Decide whether the ingredients of the offence are met. Consider: <ul style="list-style-type: none">• Did the offence occur in, or within view of, a public place?• Was it intentional?

2	<p>If you have grounds for believing that an offence against section <u>27</u> has been committed, decide whether to warn, report for summons or arrest.</p> <table border="1" data-bbox="288 344 1358 1458"> <thead> <tr> <th data-bbox="288 344 507 528">If you decide to...</th> <th data-bbox="507 344 1358 528">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="288 528 507 651">warn</td> <td data-bbox="507 528 1358 651">record your decision</td> </tr> <tr> <td data-bbox="288 651 507 835">report for summons</td> <td data-bbox="507 651 1358 835">inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td data-bbox="288 835 507 1458">arrest</td> <td data-bbox="507 835 1358 1458"> <div data-bbox="523 943 1331 1025" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met. </td> </tr> </tbody> </table>	If you decide to...	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<div data-bbox="523 943 1331 1025" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
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3	Obtain all relevant details from suspects, victims and witnesses, and verify.								
4	Prepare the prosecution file and file the charging document.								

Intimidation

This section contains the following topics:

- Definitions

- Ingredients and powers
- Procedures in respect of intimidation

Definitions

This table outlines the key definitions of terms relevant to intimidation.

Term	Definition
Forcibly	<p>This means using intimidation or an implicitly menacing show of force, as well as violence. A picket line passively obstructing access to a place is not displaying forcible prevention - <i>Ihaia v Police</i> [1982] 2 NZLR 211 (CA).</p> <p>However, if a picket line offers a show of force, this is forcible prevention, even if the victim turns away and no violence occurs - <i>Police v Brown</i> (1981) 1 DCR 145.</p>
Intent	<p>Intent may be proved by the circumstances alone. Driving without lights past a person's house and then knocking on the door at 1.00 am shows an intent to intimidate, even if the resulting encounter is civil - <i>Eiao v Police</i> (unreported, High Court Masterton, 30 July 1986, M9/86).</p>

Ingredients and powers

Under section 21(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they, with intent to frighten or intimidate:

threatened to injure the other person or a member of their family, or damage their property

or

followed that other person

or

hid any property owned or used by that other person or deprived them of it, or hindered them in its use

or

watched or loitered near the house or other place where the person lived, worked,

carried on a business or happened to be

or

stopped, confronted or accosted that other person in any public place.

Under section 21(2) of the Summary Offences Act 1981, you must prove the identity of the suspect, and that they forcibly hindered or prevented any person from working at or exercising any lawful trade, business or occupation.

For any of the offences under section 21, you need not prove the suspect intended to carry out the threat(s) - *R v Syme* (1911) 6 Cr App R 257.

Powers




You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of intimidation

When dealing with a complaint of intimidation, follow these steps.

Step	Action
1	<p>Decide whether the threat is genuine. Don't accept that the first person to complain is in the right.</p> <p>Remember: Threats can be difficult to prove and some people tell lies, so be patient and get to the bottom of the matter.</p>

2	<p>If the threat is genuine:</p> <ul style="list-style-type: none">• tell the CIB and your supervisor• interview the victim and obtain a statement including:<ul style="list-style-type: none">◦ the suspect's identity, or as many clues to it as possible◦ full details of the threat and the accompanying conversation, including any weapons used◦ any motive for, or history behind, the threat◦ any previous threats◦ evidence of its source◦ any corroboration• if victim protection is needed, discuss it with your supervisor and take any necessary action• preserve the evidence (take possession of any letter or writing if possible, and photograph any damage)• interview independent witnesses promptly• make enquiries to find out whether the suspect had any excuse, colour of right, or lawful justification• interview the suspect and obtain a statement.
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3	<p>Decide whether to warn, report for summons or arrest.</p> <table border="1"> <thead> <tr> <th data-bbox="285 282 502 465">If you decide to...</th> <th data-bbox="502 282 1353 465">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="285 465 502 589">warn</td> <td data-bbox="502 465 1353 589">record your decision</td> </tr> <tr> <td data-bbox="285 589 502 772">report for summons</td> <td data-bbox="502 589 1353 772">inform the suspect of this. It may be feasible to issue a summons at the same time</td> </tr> <tr> <td data-bbox="285 772 502 1413">arrest</td> <td data-bbox="502 772 1353 1413"> <div data-bbox="518 875 1326 960" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met. </td> </tr> </tbody> </table>	If you decide to...	then...	warn	record your decision	report for summons	inform the suspect of this. It may be feasible to issue a summons at the same time	arrest	<div data-bbox="518 875 1326 960" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the Chief Justice's practice notes on Police questioning • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
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4	Prepare the prosecution file and file the charging document.								

Language offences

This section contains the following topics:

- Definitions
- Addressing indecent or obscene words
- Addressing threatening, alarming, insulting or offensive words
- Using indecent or obscene words
- Using threatening or insulting words

- Procedures in respect of language offences

Definitions

This table outlines the key definitions of terms relevant to language offences.

Term	Definition
Addressing	Directing the language at a specific person or persons; usually accompanied by acts or gestures.
Alarming words	Words that disturb, frighten or agitate; for example, shouting 'fire' in a crowded theatre.
Indecent words	Words that an average person finds seriously repugnant or distasteful.
Insulting words	Words with a meaning or double meaning that refer offensively to a person's character, upbringing or way of life.
Obscene words	Words used to refer to sexual acts or organs in a manner and in circumstances that make such references offensive to the community's standards of propriety - <i>Police v Drummond</i> [1973] 2 NZLR 263 (CA ()).
Offensive words	Words intended to outrage or hurt the feelings of the person to whom they are directed.
Reckless	Reckless use of language is more than careless; it is knowing the consequences of using certain words, and using them anyway.
Threatening words	Words that convey an intention to harm a person, or that person's family, property or the like.

Addressing indecent or obscene words

Under section 4(1)(c)(ii) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place,
- addressed indecent or obscene words to any person.

In determining whether words are indecent or obscene, the court must consider the circumstances pertaining at the material time, including whether the suspect had reasonable grounds for believing the hearer would not be offended - section 4(3) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Addressing threatening, alarming, insulting or offensive words

Under section 4(1)(b) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in any public place
- addressed words to a person
- intending to threaten, alarm, insult or offend.

If the intent cannot be inferred from the words used, and if the suspect does not admit intent, a charge under section 4(1)(c)(i) may be more appropriate.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Using indecent or obscene words

Under section 4(2) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used indecent or obscene words.

It is a defence if the suspect had reasonable grounds for believing their words would not be overheard - section 4(4) of the Summary Offences Act 1981 refers.

Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Using threatening or insulting words

Under section 4(1)(c)(i) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within hearing of, a public place
- used threatening or insulting words
- and was reckless about whether anyone was alarmed or insulted by them.

The words need not be addressed to any particular individual. The prosecution must prove, however, that the suspect used them deliberately and took an unjustified risk that someone would be offended - *Purves v Inglis* (1915) 34 NZLR 1051.


Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures in respect of language offences

When dealing with a language offence, follow these steps.

Step	Action
1	Identify yourself and ask the suspect to stop using the language in question.

2	If. .	then. . .
	the suspect complies with your request	no further action may be necessary
	the suspect does not comply	<p>decide whether to warn, arrest or report for issue of a summons. Consider:</p> <ul style="list-style-type: none"> • whether the ingredients of the offence are met • whether anyone other than you heard the language • the suspect's behaviour and demeanour • if the conduct is likely to be repeated
	the above considerations are met	<p>arrest and:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (<i>see PDF above</i>) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • tell the suspect their rights under the New Zealand Bill of Rights Act 1990 • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met
you decide to report for summons	inform the suspect of this.	

3	Obtain full details of the offence, the victim, the suspect and any witnesses, and verify.
4	Prepare the prosecution file and file the charging document.

Offensive behaviour

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

For the definitions of disorderly behaviour and offensive behaviour, see '[Disorderly behaviour](#)'.

Ingredients and powers

Under section [4\(1\)\(a\)](#) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- in, or within view of, a public place
- behaved in an offensive or disorderly manner
- seriously disrupted public order (in the circumstances of time and place and which affected members of the public whom could not be expected to endure the behaviour because of its intensity and/or duration).

A court can convict under this section if a charge filed under section [3](#) is not proven. See '[Disorderly behaviour](#)'.

Powers

You can arrest under section [39\(1\)](#) of the Summary Offences Act 1981.

Procedures

See '[Disorderly behaviour](#)'.

Obstructing a public way

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

This table outlines two definitions of terms relevant to obstructing a public way under section 22(2) of the Summary Offences Act 1981.

Term	Definition
Obstruct	'Obstructs', in relation to a public way, means unreasonably impedes normal passage along that way.
Public way	'Public way' means any road, street, path, mall, arcade or other way over which the public has the right to pass and re-pass.

Ingredients and powers

Under section 22(1) of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- without reasonable excuse
- obstructed a public way

and

- having been warned by a constable to stop
- continued the obstruction, or
- repeated it, or
- moved it to another place to which it was reasonable to assume the warning also applied.

The obstruction does not have to be stationary - *Gordon v Police* (unreported, High Court Christchurch, 26 August 1985, M322/85).

You need not prove that any particular person was obstructed, but rather that the obstruction impeded normal passage - *McLachlan v Police* (unreported, High Court Christchurch, 26 August 1985, M323/85).

The obstruction need only partially diminish the space available for public traffic.

A warning is a precondition to the offence - *Gordon v Police* (unreported, High Court Christchurch, 26 August 1985, M322/85). It should cover whatever time and area is reasonable in the circumstances. For example: "I am warning you not to obstruct this footpath again, either here or in this street, while this football match is in progress."


Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures

When required to deal with a person obstructing a public way, follow these steps.

Step	Action						
1	Obtain details from the victim.						
2	Find independent witnesses and obtain their statements.						
3	Confirm the situation at the scene yourself.						
4	Warn the suspect(s) to stop the obstruction (you don't have to warn them individually). <table border="1" data-bbox="274 1393 1350 2011"> <thead> <tr> <th>If the suspect...</th> <th>then...</th> </tr> </thead> <tbody> <tr> <td>complies</td> <td>take no further action, but obtain the details for a Police 101</td> </tr> <tr> <td>does not comply</td> <td>decide whether to report for summons or arrest. If you decide to report for issue of a summons, inform the suspect.</td> </tr> </tbody> </table>	If the suspect...	then...	complies	take no further action, but obtain the details for a Police 101	does not comply	decide whether to report for summons or arrest. If you decide to report for issue of a summons, inform the suspect.
If the suspect...	then...						
complies	take no further action, but obtain the details for a Police 101						
does not comply	decide whether to report for summons or arrest. If you decide to report for issue of a summons, inform the suspect.						

5	<p>If you decide to arrest:</p> <div data-bbox="284 277 1353 360" style="border: 1px solid black; padding: 5px; margin: 10px 0;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • give the rights Caution (see PDF above) to the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • look for independent witnesses • obtain all relevant details from the suspect and witnesses, and verify • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
6	Prepare the prosecution file and file the charging document.

Resisting and obstruction

This section contains the following topics:

- Definitions
- Ingredients and powers
- Procedures

Definitions

This table outlines two definitions of terms relevant to resisting and obstruction.

Term	Definition
Acting in the execution of duty	<p>An officer's duty has not been fully defined, but includes taking all necessary and lawful steps to:</p> <ul style="list-style-type: none"> • keep the peace • prevent and detect crime • protect life and property from criminal injury or damage • bring offenders to justice. <p>(<i>Rice v Connolly</i> [1966] 2 All ER 649)</p>

Incite or encourage	'Encourage' means to advise or suggest; 'incite' means to arouse or stimulate. The difference lies in the degree of 'encouragement'.
Intentionally	Intentionally means on purpose. Intent is a question of fact and can be proved by direct evidence or from the circumstances (<i>Lloyd's Bank Ltd v Marcan</i> [1973] 2 All ER 359).
Obstruction	<p>'Obstruction' means preventing or retarding the progress of, impeding (The Concise Oxford Dictionary). In more practical terms, it means "making it more difficult for the police to carry out their duties" (<i>Hinchcliffe v Sheldon</i> [1956] 3 All ER 406).</p> <p>Note: This may be physical obstruction, such as wedging oneself between a Police officer and the suspect; or verbal obstruction, such as lying, or warning suspects of approaching Police. It may also be a matter of delaying Police entry to premises or of failing to carry out instructions.</p> <p>It is not obstruction to:</p> <ul style="list-style-type: none"> • refuse to give name and address unless there is a statutory obligation to do so (<i>Elder v Evans</i> [1951] NZLR 801) • ask Police to leave premises or to refuse to answer questions.
Resisting	Some degree of force on the part of the offender, for example, violently trying to break away from an officer after arrest.

Ingredients and powers

Under section 23 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- resisted or intentionally obstructed, or

- incited another person to resist or obstruct:
 - a constable, prison officer or traffic officer acting in the execution of their duty (or a person helping any of these), or
 - a Police dog working under the control of a Police Dog Handler.

You:

- must prove that the suspect intended to obstruct (*Police v Barcham* (1983) 2 DCR 195)
- do not have to prove that the suspect knew who you were or that you were carrying out your duties (*Pounder v Police* [1971] NZLR 1080).


Powers

You can arrest under section 39(1) of the Summary Offences Act 1981.

Procedures

If you have to take action for an offence under section 23, follow these steps.

Step	Action
1	Ensure that you identify yourself as a Police constable.
2	If the suspect resists or verbally obstructs: <ul style="list-style-type: none"> • give a warning • if the offence continues, arrest.

3	<p>If the obstruction is physical, or blatant - that is, if it really pushes you to the limit - arrest and:</p> <div data-bbox="288 331 1361 421" style="border: 1px solid black; padding: 5px;">  Rights_caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • look for independent witnesses • obtain all relevant details from the suspect and witnesses, and verify • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.
4	Prepare the prosecution file and file the charging document.

Throwing stones

This section contains the following topics:

- Ingredients and powers
- Procedures

Ingredients and powers

Under section 34 of the Summary Offences Act 1981, you must prove the identity of the suspect and that they:

- threw or discharged any stone or other object
- in a manner that was likely to cause injury or damage.

This includes objects discharged from slings, catapults, bows and other such weapons. Objects discharged by firearms are covered by the Arms Act 1983. See: 'Arms' chapter.

This charge is brought only when no injury or damage results. If injury or damage occurs, the suspect should be charged with assault under section 9 or intentional damage under section 11 of the Summary Offences Act 1981.

Powers

You can arrest under section 39(2) of the Summary Offences Act 1981 if:


you see the offence

and

- the suspect fails to give name and address on demand, or
- you believe that the details given are false.

Procedures

If you have reason to believe that a person has committed an offence against section 34, follow these steps.

Step	Action
1	Note the result of the action.
2	Locate any independent witnesses.
3	Isolate and interview the suspect, obtaining full details.
4	Decide whether to warn, report for issue of a summons or arrest. Consider whether: <ul style="list-style-type: none"> • you saw the offence • the suspect failed to give name and address • you believe the details given are false.
5	If you decide to report for summons, inform the suspect.
6	<p>If you decide to arrest:</p> <div data-bbox="280 1738 1353 1823" style="border: 1px solid black; padding: 5px; margin: 10px 0;">  Rights caution.pdf 87.86 KB </div> <ul style="list-style-type: none"> • Caution (see PDF above) the suspect according to the <u>Chief Justice's practice notes on Police questioning</u> • in conjunction with the Custody Supervisor, consider <u>pre-charge warning</u> if relevant criteria are met.

7	Prepare the prosecution file and file the charging document.
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Appendix A

A guide to categories of offences can be found in section 6 of the Criminal Procedure Act 2011.

Widely understood definitions for 'offence' and 'crime' were repealed as one consequence of major changes heralded by the introduction of the Criminal Procedure Act 2011. The following informal definition is intended to provide assistance and has been drafted with assistance from legal experts.

'Offence' and 'crime' are words that are used interchangeably in statute, and there is no material difference between them. They may be described as any act or omission that is punishable on conviction under any enactment, and are demarcated into four categories as defined in section 6 of the Criminal Procedure Act 2011.

Summary of behaviour related offences

This table summarises the offences associated with behaviour.

Offence	Category
Breach of the peace Section <u>42</u> - Crimes Act 1961 Note: Although there is a power of arrest, breach of the peace is not an offence	*Not an offence
Disorderly, offensive, threatening, insulting behaviour Section <u>3</u> - Summary Offences Act 1981	Category 2 offence
Offensive behaviour Section <u>4</u> (1)(a) - Summary Offences Act 1981	Category 1 offence

Language offences Section <u>4</u> (1)(b)&(c) - Summary Offences Act 1981	Category 1 offence
Using reckless or obscene words Section <u>4</u> (2) - Summary Offences Act 1981	Category 1 offence
Fighting in a public place Section <u>7</u> - Summary Offences Act 1981	Category 1 offence
Intimidation Section <u>21</u> - Summary Offences Act 1981	Category 2 offence
Obstructing a public way Section <u>22</u> - Summary Offences Act 1981	Category 1 offence
Resisting and obstruction Section <u>23</u> - Summary Offences Act 1981	Category 2 offence
Indecent exposure Section <u>27</u> - Summary Offences Act 1981	Category 2 offence
Excreting in a public place Section <u>32</u> - Summary Offences Act 1981	Category 1 offence
Throwing stones Section <u>34</u> - Summary Offences Act 1981	Category 1 offence
Drinking in a public place Section <u>38</u> - Summary Offences Act 1981	Category 1 offence

Documentation



[Breach of the Peace release notice.doc](#)

36.5 KB

