TRANSIT POLICE

SEIZURE

Effective Date: May 9, 2005
Revised Date: November 21, 2023; July 29, 2026
Reviewed Date: 2011
Review Frequency: Annual[1]
Office of Primary Responsibility: Deputy Chief Officer Administrative Services

TABLE OF CONTENTS (with Quick Links)[2]

POLICY 2
Definitions 2
General 3
PROCEDURES **4**
PART "A" – SEIZURE OF FIREARMS AND REGULATED ITEMS 4
Seizure for Public Safety Reasons 5
Seizure on Failure to Produce Documentation 6
Seizure as Evidence of an Offence 6
PART "B" – SEIZURE OF OTHER ITEMS 7
Doctrine of Plain View 7
Seizure from Lawyer Claiming Solicitor-Client Privilege 7
Subject–Matter of or involved in an Offence 7
Non-evidentiary Property Seized from Arrested Persons 7
Seizure of Witnesses' Electronic Devices in Order to Preserve Evidence 7
Seizure of Virtual Currency or Digital Assets from Electronic Devices 8
PART "C" – ITEMS NOT REPORTABLE TO A JUSTICE 9
APPENDIX "A" 10
DETENTION/FORFEITURE/RETURN OF SEIZED ITEMS – FORMS & RESOURCES 10
REPORT TO A JUSTICE – When it is required, what forms to use, and timeline 11
DETENTION EXTENSION – How to apply for an extension of the detention order 14
RETURN OR FORFEITURE OF SEIZED ITEMS – The different processes for: exhibits at trial; property obtained by crime; and files with no charges or resulting in a Stay of Proceedings. 17
LIST OF FORMS 19

[1] BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing requires that procedures relating to gathering of evidence, including search and seizure must be examined annually "to ensure consistency with legislative amendments and applicable case law related to right to equal treatment, protection and benefit under the law".

2 Use **CTRL + HOME** to return to the Table of Contents from anywhere in this document.

POLICY

Definitions

Charter – *Canadian Charter of Rights and Freedom* [1982].

Court Liaison Unit – Any Transit Police Personnel assigned to the Court Liaison Unit to perform court notifications and help facilitate court related matters (i.e., Court Liaison Officer, Court Clerk).

Criminal Code – *Criminal Code of Canada*, RSC 1985, c. C-46, as amended from time to time.

Firearm – A barreled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barreled weapon and anything that can be adapted for use as a firearm.

Form 5.2 Report to a Justice – A Form 5.2 Report to a Justice is required to document and report the items seized by a peace officer during the execution of their duties, where either ownership is in dispute or the continued detention of the thing seized is required for the purposes of any investigation or court proceedings.

Found Property – Any property that is found by a Member to not be in possession of the lawful owner and is not linked to an investigation or required for future investigation.

Found Property as Evidence – Any property that is found by a Member to not be in the possession of the lawful owner but is linked to an investigation or required for an investigation.

Items obtained by consent – Items linked to or required for an investigation which are given voluntarily to Transit Police by the lawful owner, and documented (in writing) in accordance with s. 490 (3.1) of the Criminal Code of Canada.

Member – For the purpose of this policy, includes a Designated Constable (all ranks), the Chief Officer or a Deputy Chief Officer and, as authorized by the Chief Officer, a Designated Law Enforcement Officer of the Transit Police.

Metro Vancouver Transit Police ("Transit Police") – The operating name of the South Coast British Columbia Transportation Authority Police Service (Designated Policing Unit and Designated Law Enforcement Unit).

Relinquished Property – Any property voluntarily surrendered to Transit Police by the lawful owner (or person in lawful possession) knowing that the property will not be returned to them.

Regulated Item – All firearms, firearms ammunition, prohibited devices, restricted weapons, and prohibited weapons as defined in the *Criminal Code* and *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or*

Restricted.

Safekeeping Property – Any property turned over to Transit Police for a temporary period of time, with the expectation that it will be returned. This will also include a prisoner's property that is not taken by sheriffs when the prisoner is transported to court, as well as readily apparent valuables belonging to a deceased person whose death is under investigation, in accordance with Transit Police **Policy OB080 – Sudden Death**.

Seized Property – Any property taken by a Member during the course of an investigation, and is not considered found property, relinquished property, or safekeeping property. This includes property seized temporarily until it is determined not to have been used in or obtained through the commission of an offence, or until the rightful owner can be identified.

Seizure – The taking of a thing from a person by a public authority without that person's consent, including instances when ownership is in dispute. [See case law: *R. v. Dyment [1988] 2 SCR 417 (SCC)* and *R. v. Law [2002] 1 SCR 227 (SCC)*]

Transit Police Personnel – Members and Civilian Professionals who work for the Transit Police.

General

1. The *Charter* guarantees a right against unreasonable search and seizure. Sections 489.1 to 490.1 of the *Criminal Code* and ss. 21 to 24.2 of the provincial *Offence Act* create a statutory framework for the detention, disposal, forfeiture, and return of seized property. Authorities and responsibilities of police with regards to seizure have also been affected by case law.

2. The BC Provincial Policing Standards ("BCPPS"), established under the authority of the *Police Act*, require that police services in BC develop written policy governing procedures for assuring compliance with constitutional and other legal requirements regarding search and seizure, with or without warrant. [BCPPS Addendum D.8.1]

3. Seizure will be undertaken only when clearly authorized by law.

4. All seized items will be:

    (1) Kept secure and safeguarded;

    (2) Maintained in a manner that meets evidentiary requirements, where appropriate;

    (3) Reported and recorded as required by legal requirements; and

    (4) Disposed of as ordered by the court, directed by legislation or in accordance with established retention and destruction/disposal policies. (In the case that policy conflicts with a court order or legislation, the court order or legislation will take precedence).

5. All Members, by the end of their shift, will account promptly and accurately for any property seized.

6. Any seized item, regardless of its value, seized by a Member, during the performance of their duty, will be considered and treated as an exhibit or property.

7. Transit Police Personnel who are appointed as Special Provincial Constables (i.e., Exhibit Custodian and Court Liaison Unit) and Designated Law Enforcement Officers ("DLEOs" or "CSOs") may assist in the care, custody and control of seized items and evidence, as permitted within their respective legislative authority.
   (1) DLEOs may only handle non-evidentiary items for safekeeping. When DLEOs handle such items, both they and the investigating Member must submit appropriate text pages in PRIME that clearly identify: the property; who provided the property to whom; and how it was handled.

8. All exhibits or property will be handled in accordance with the relevant provisions of **OF020 – Exhibit/Property Control.**

   (1) Seizures of illicit tobacco have unique procedures. See Transit Police SOP95 – Illicit Tobacco Investigations for more.

PROCEDURES

s.15 [redacted]

s.15 [redacted]

s.15 [redacted]

PART "A" – SEIZURE OF FIREARMS AND REGULATED ITEMS

9. Firearms may be seized under one or more of several authorities in the *Criminal Code*:

   (1) Seizure with reasonable grounds to believe there is a danger to self or public (no warrant if exigent) under s.117.04 of the *Criminal Code*;

   (2) Seizure from a person without documentation under s.117.03 of the *Criminal Code*;

[3] Although the legal requirement is for police to apply for an extension of detention at 180 days after seizure, it is Transit Police policy to apply for an extension of detention at 150 days after seizure.

(3) General warrantless seizure powers under s. 489 of the *Criminal Code*;

(4) Warrant seizure powers under s. 487 of the *Criminal Code*; and

(5) Exigent seizure powers when firearm believed to be involved in an offence under s. 117.02 of the *Criminal Code.*

10. Any time a Member seizes a firearm, they must complete a Report to Justice by way of a Form 5.2 and observe the 150-day renewal deadline. Members will be required to articulate in their PRIME General Occurrence Report ("GO report"), the reasonable and probable grounds leading to the seizure.

11. Any time a Member seizes a firearm, they will query the firearm's serial number on the Canadian Police Information Centre ("CPIC"). If the firearm is not already listed on CPIC, the Member will make note of this fact on the GO report so that the Transit Police CPIC Coordinator can create a new entry for the firearm.

    (1) After the new CPIC entry has been created, the Transit Police CPIC Coordinator may add diary dates to the CPIC entry in order to check the firearm's status annually and, if the firearm has been destroyed or returned to its lawful owner, will amend the entry to have the firearm removed from CPIC.

Seizure for Public Safety Reasons

12. A Member must have and articulate in their GO report, reasonable grounds to believe that:

    (1) It is not desirable in the interests of safety of the person, or of any person, for the person to possess any weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance (s.117.04 (1) of the *Criminal Code*).

13. If these grounds exist, an officer may apply to a justice for a warrant to search for and seize:

    (1) Any weapon or other regulated item; and

    (2) Documents relating to these items (licenses, registration certificates, authorizations).

14. There are provisions for search and seizure without a warrant because of a risk to public safety (s. 117.04 (2) of the *Criminal Code*). In such cases, the Member must:

    (1) Report the seizure to a justice (s. 117.04 (3) of the *Criminal Code*) Form 5.2; and

    (2) Apply within 30 days of the seizure for an order for disposition of the seized item (s. 117.05 (1) of the *Criminal Code*) using an affidavit with the completed Form 5.2 attached.

15. At the disposition hearing, the justice may order that the item be forfeited or disposed of if it is not desirable in the interests of safety that the person from whom the item

was seized possesses any regulated item. The justice may also make a prohibition order if the circumstances warrant doing so (s. 117.05 of the *Criminal Code*).

16. If the Member fails to apply for a disposition hearing within the time period, the item must be returned to the person from whom it was seized (s. 117.06 of the *Criminal Code*).

17. Any documentation that cannot be found and relates to an item that has been seized due to a public safety reason (s.117.04 (1) or (2) of the *Criminal Code*) is automatically revoked as of the time of the seizure (s. 117.04 (4) of the *Criminal Code*).

Seizure on Failure to Produce Documentation

18. A firearm or other regulated item may be seized if the person is in possession of the item and fails to produce for inspection documentation authorizing the possession of the item when asked to do so. This provision does not authorize a search of any kind (s. 117.03 (1) of the *Criminal Code*).

19. Upon seizure, the Member must submit a Form 5.2 and wait 14 days from the date of seizure to allow the person from whom the item was seized to claim the item and produce the documentation authorizing possession of the item. If the item is claimed and the documentation produced, the item must be returned without delay. If the item is not claimed or documentation is not produced, the Member must take the item before a provincial court judge (s. 117.03 of the *Criminal Code*).

    (1) The judge may return the item to the person from whom it was seized, or the owner, if they can show that they may lawfully possess the item. If no lawful possession can be established, the judge may order it be forfeited (s. 117.03 of the *Criminal Code*).

Seizure as Evidence of an Offence

20. When an offence has been committed in relation to a restricted weapon, firearm or ammunition, a Member acting on reasonable grounds may, without a warrant, search a person or a vehicle or a place (other than a dwelling-house) and seize such articles if there are exigent circumstances[4].

21. A seized firearm or other Regulated Item must be dealt with as follows.

    (1) If the item is no longer required for purposes of an investigation or court proceedings, and there is no dispute as to who is the lawful owner, the item must be returned to the owner and this reported to a justice (by way of a completed Form 5.2); or

    (2) If the item is required for purposes of an investigation or court proceedings, the officer must submit a Report to a Justice by way of a completed Form 5.2.

[4] Police have ancillary powers in exigent circumstances to carry out a duty: a) where there is no statutory authority necessary to carry out that duty; and b) the public interest in carrying out that duty in the circumstance exceeds the adverse interference with individual liberty or property. This ancillary power should only be employed with considerable restraint and deliberation, and only in circumstances where there is an objectively compelling public interest to advance the investigation.

PART "B" – SEIZURE OF OTHER ITEMS

Doctrine of Plain View

22. A Member may seize any item in plain view that may provide evidence of the commission of an offence if:

    (1) There is a pre-existing lawful reason for visual inspection of the person, premises, or vehicle;

    (2) The discovery of the item is inadvertent; and

    (3) The item is apparently incriminating evidence.

Seizure from Lawyer Claiming Solicitor-Client Privilege

23. A Member who, during the course of a warrant search, has seized items under the authority of the *Criminal Code* or any other federal law, from a lawyer claiming solicitor-client privilege regarding the items seized will:

    (1) Seal them in an envelope or other opaque container without examining them or making copies;

    (2) Convey the items without delay to the justice who issued the warrant; and

    (3) Ensure the items are subject to any terms and conditions that might have been imposed by the judge in the warrant itself.

    A judge, on application, will subsequently examine the items and make a ruling regarding disclosure and detention.

Subject–Matter of or involved in an Offence

24. These items will be forfeited unless the lawful owner satisfies the court that they were not involved in the offence and police had no reasonable grounds to believe that the item would or might be used in an offence (s. 491 of the *Criminal Code*).

Non-evidentiary Property Seized from Arrested Persons

25. Any personal property, including money or other valuables, seized from an arrested person will be brought to the attention of the Member processing the arrested person, who will make a note of it on the arrest report, ensure the security of the property, and follow the regular seizure process (i.e., Report to a Justice).

Seizure of Witnesses' Electronic Devices in Order to Preserve Evidence

26. Members have a duty to identify, collect, and preserve evidence of crime, including photographic or video evidence, or other relevant data that may have been captured by a device possessed by a witness, including media personnel. The preferred method of collecting such evidence from a witness's device is to ask the witness to

voluntarily provide it to the Member for the purpose of assisting a police investigation, or to obtain their contact information in order for the evidence to be obtained later by a follow-up investigator. s.15 [redacted]

27. If the Member has reason to believe that a witness has evidence of a crime on their device, and the witness refuses to voluntarily provide that evidence (as outlined above) to the Member and/or causes the Member to have reason to believe that the evidence will be lost or damaged if the Member does not seize the device immediately, then the Member will seize the device, citing their ancillary common law power to do so.[5]

28. When items are seized pursuant to the authority provided to police for exigent circumstances, Members must ensure that the reasons for the seizure are fully documented in the GO report, just as they would have been in an Information to Obtain had it been practicable to obtain a search warrant.

29. If an electronic device is seized pursuant to exigent circumstances, or by way of a search warrant, Members will submit a Report to a Justice, Form 5.2, reporting the seizure of the device.

Seizure of Virtual Currency or Digital Assets from Electronic Devices

30. S.489.1 of the *Criminal Code* requires police to file a Form 5.2 for virtual currency or digital assets seized from an electronic device pursuant to a warrant, even if that device was already lawfully in police possession and thus the subject of a separate Form 5.2 and s. 490 detention order. (**NOTE**: As of July 18, 2026, other computer data that is not virtual currency or digital assets does not have to be reported to a justice.) The main steps to follow for BC Prosecution Service are:

    (1) Acquire a search warrant for the device;

    (2) File a Form 5.2 for the device;

    (3) Acquire a search warrant for access to the virtual currency or digital assets on the device, and;

    (4) File a Form 5.2 upon receipt of the virtual currency or digital assets from the data extraction report. State “data was seized”.

[5] Police have ancillary powers in exigent circumstances to carry out a duty: a) where there is no statutory authority necessary to carry out that duty; and b) the public interest in carrying out that duty in the circumstance exceeds the adverse interference with individual liberty or property. This ancillary power should only be employed with considerable restraint and deliberation, and only in circumstances where there is an objectively compelling public interest to advance the investigation.

31. If the steps identified in s. 30 above are missed, the Member must seek a remedial warrant for when there was not a Form 5.2 for the data on the device, and then file a Form 5.2.

[See also Transit Police Operations Communication Bulletin 26-009 – Cellular Phone Seizure and Transit Police policy chapters OI030 – Prisoner Care, Control and Transportation and OF020 – Exhibit/Property Control]

PART "C" – ITEMS NOT REPORTABLE TO A JUSTICE

32. The following seized or otherwise acquired types of property are not reportable to a justice, including:

    (1) Property that is not evidence and is voluntarily given or relinquished, such as for safekeeping; and

    (2) Photocopies or photographs of original documents where the original document was not seized.

PART "D" – RETURN OF SEIZED ITEMS BEFORE TRIAL

33. Members are to refer to Appendix "A".

References:

BC Provincial Policing Standards – Addendum 1 - Supplemental Policy Directives – Interim Continuation of Policing Standards Established by the Former British Columbia Police Commission [D1.1.1, D8.1.1, E4.1.3]
Canadian Charter of Rights and Freedom [1982]
Criminal Code of Canada [RSC 1985, c. C-46]
Offence Act [RSBC 1996, c 338]
Transit Police Policy OF020 – Exhibit/Property Control
Transit Police Policy OI030 – Prisoner Care, Control and Transportation
Transit Police Operations Communication Bulletin 26-009 – Cellular Phone Seizure
Transit Police Operations Communication Bulletin 26-005 – Process for Scheduling Your 490 Extension Hearing

APPENDIX "A" FOLLOWS ON NEXT PAGE