

Endorsing Warrants: Police Training Material

Ministry of the Attorney General

Privileged and Confidential

March 15, 2020

REVISED POST Bill C-75

Issue

- ▶ Concern that there are too many accused on remand awaiting bail determinations who do not need to be held in custody
- ▶ Many accused on remand are in custody in relation to administration of justice (AOJ) offences

The Context

- ▶ *R v Antic*, 2017 SCC 27
 - ▶ Accused persons are constitutionally presumed innocent and a corollary to that presumption is the constitutional right to bail
 - ▶ Presumption that an accused will be released on an undertaking without conditions, unless it is demonstrated that a more onerous form of release is required (the “ladder principle”)[para. 67]

How can we reduce the remand population?

- ▶ Endorse warrants for adult accused or young persons in appropriate circumstances/cases
- ▶ Endorsing warrants allows the police to exercise their power of release, avoiding the need for the accused or young person to be detained and brought before a justice

When can a warrant be endorsed?

- ▶ Section 507(6) allows a justice who issues a warrant to endorse the warrant in Form 29 allowing for the release of an adult accused or young person by the police in the following circumstances:
 - ▶ Warrant in the 1st (section 507)
 - ▶ Private Prosecution (section 507.1)
 - ▶ After release by Police (section 508)
 - ▶ Public Interest Bench Warrant (section 512(1))
 - ▶ Fail to Appear on summons, appearance notice, or undertaking to an officer (section 512.1 and section 512.2)
- ▶ The exception is an offence listed in section 469
 - ▶ These include: murder, treason, crimes against humanity

Form 29 (Section 507(6))

Endorsement of Warrant [note this form may change to accommodate Bill C-75 amendments]

Canada,

Province of,

(territorial division).

Whereas this warrant is issued under section 507, 508 or 512 of the Criminal Code in respect of an offence other than an offence mentioned in section 522 of the Criminal Code, I hereby authorize the release of the accused pursuant to section 499 of that Act.

Dated this.....day ofA.D., at

A Justice of the Peace in and for

R.S., 1985, c. C-46, Form 29; 1994, c. 44, s. 84.

When can a warrant NOT be endorsed?

- ▶ Fail to appear when on a judicial interim release (section 524 would be the process)
 - ▶ Warrant may issue under section 512.3 where an accused has contravened or is about to contravene a release (this initiates the process under section 524)
 - ▶ Section 512.3 is not included in subsection 507(6), nor is it indicated on Form 29 (Endorsement)
 - ▶ These warrants make specific reference to bringing the accused before a justice
- ▶ Material witness warrants (section 698, 704 and 705) - warrants issued in Form 17 or Form 18
 - ▶ These warrants make specific reference to bringing the person before the court after arrest

What happens when a warrant is endorsed under section 507(6)?

- ▶ When a peace officer arrests a person on a warrant, there are two options:
 - ▶ If the warrant has been endorsed in Form 29 by a justice under section 507(6), the police officer may or may not release the accused pursuant to section 499
 - ▶ If the warrant has not been endorsed, the police officer may not release the accused and the accused must be detained and taken before a justice in accordance with section 503

Warrant in the 1st

- ▶ A justice who receives an information laid under section 504 can issue either a summons or a warrant for the arrest of the accused pursuant to section 507(1)(b)
- ▶ If the justice issues a warrant and then endorses the warrant using Form 29, upon arresting an accused on the warrant in the 1st, the police officer has the option to release the accused pursuant to section 499

Private Prosecutions

- ▶ A judge or designated justice to whom a privately laid information is referred and decides to issue process following the *pre-enquete* hearing, shall issue either a summons or a warrant for the arrest of the accused pursuant to section 507.1(2)
- ▶ If the justice issues a warrant and then endorses the warrant using Form 29, upon arresting an individual on a private information warrant, the police officer has the option to release the individual pursuant to section 499

Warrant after release by Police

- ▶ A justice who receives an information laid under section 505 and considers the case made out, can either confirm or cancel the appearance notice or undertaking pursuant to section 508(1)(b)(i) and section 508(1)(b)(ii)
- ▶ If the justice cancels the appearance notice or undertaking, the justice may issue either a summons or a warrant for the arrest of the accused in accordance with section 507
 - ▶ *note: in this situation, any conditions imposed on the original undertaking would be cancelled
- ▶ If the justice issues a warrant and then endorses the warrant using Form 29, upon arresting the accused on the warrant, the police officer has the option to release the accused pursuant to section 499

Public Interest Bench Warrants

- ▶ A justice may issue a summons or warrant pursuant to section 512(1) where the justice has reasonable or probable grounds to believe it is necessary in the public interest, notwithstanding that:
 - ▶ An appearance notice or undertaking entered into before a peace officer has been confirmed or cancelled
 - ▶ A summons has previously been issued
 - ▶ The accused has been released unconditionally or with the intention of compelling his appearance by way of summons
- ▶ If the justice issues a warrant in the public interest and then endorses the warrant using Form 29, upon arresting the accused on the public interest warrant, the police officer has the option to release the accused pursuant to section 499

Fail to Appear Bench Warrants

- ▶ A justice may issue a warrant for the arrest of the accused pursuant to section 512(2) where:
 - ▶ Service of a summons is proved and the accused fails to attend court in accordance with the summons
 - ▶ An appearance notice or undertaking to an officer has been confirmed and the accused fails to attend court
 - ▶ An accused is evading service of a summons after being released unconditionally with the intention of compelling his appearance by way of summons
- ▶ If the justice issues a warrant in any of these circumstances and then endorses the warrant using Form 29, upon arresting the accused on the fail to appear warrant, the police officer has the option to release the accused pursuant to section 499

When public interest or FTA warrants are issued under section 512, what happens to the previous release?

- ▶ Release conditions remain in effect until varied or cancelled by a justice or the case is concluded
- ▶ Therefore, when a warrant is issued, release conditions remain in effect
- ▶ If a police officer decides to release an accused on a warrant that has been endorsed in Form 29, the police officer can:
 - ▶ If new conditions are considered necessary in the circumstances, the officer should release a new undertaking that captures both the new and original conditions of release, with a new date to attend court
 - ▶ If no new conditions are deemed necessary, the officer should release on an appearance notice with a new court date
 - ▶ In either case, if no new charge is laid (ie FTA), the officer should identify the underlying substantive charge(s) on the new release document

Request for a warrant be endorsed

- ▶ Either duty counsel, accused counsel or the Prosecutor may request that the court endorses the warrant using Form 29
- ▶ In determining whether to make the request, a Prosecutor will consider the background of the accused, the circumstances and nature of the offence and any administration of justice considerations, such as:
 - ▶ The nature and number of any previous fail to appear charges or convictions
 - ▶ If the accused comes from a disadvantaged group e.g. the accused suffers from a mental illness or is homeless
 - ▶ Whether the accused self-identifies as Métis, Inuit or First Nations
 - ▶ Whether the offence involves violence
 - ▶ Purpose of the appearance e.g. plea, trial or preliminary inquiry

Determining whether to release the accused

- ▶ The police officer should confirm that the warrant is properly endorsed in Form 29
- ▶ In determining whether to release the accused, a police officer may consider:
 - ▶ Any information received from the Prosecutor about the case
 - ▶ The circumstances and the nature of the offence e.g. did the offence involve violence
 - ▶ The background of the accused e.g. does the accused have a history of non-attendance or non-compliance with court orders
 - ▶ The length of time the warrant has been outstanding
 - ▶ If a police release would ensure the attendance of the accused at court and address any other concerns such as public safety

Release Options

- ▶ If the warrant is endorsed on Form 29, a peace officer *MAY* pursuant to section 499:
 - ▶ Release the accused on an appearance notice (Form 9)
 - ▶ Release the accused on an undertaking with conditions (Form 10)
 - ▶ Release the accused on an undertaking with a promise to pay an amount not exceeding \$500 if they fail to comply with any condition of the undertaking (Form 10)
 - ▶ Release the accused on an undertaking with a deposit to the peace officer of money or valuable security whose value does not exceed \$500, if the accused is not ordinarily resident or not ordinarily residing within 200km of the place of custody (Form 10)
- ▶ When a justice endorses a warrant, pursuant to subsection 507(7), the subsequent release under section 499 is deemed to have been confirmed under section 508

Undertaking to a Peace Officer

- ▶ Where an accused is released on an undertaking before a peace officer pursuant to section 499, the peace officer can impose conditions in Form 10 (subsection 501(3))
- ▶ Conditions that can form part of the undertaking can include:
 - ▶ Reporting at specified times to a peace officer or other specified person
 - ▶ Remain in jurisdiction
 - ▶ Notify peace officer of change in address, employment, or occupation
 - ▶ Abstain from communicating with victim(s) or witness(es)
 - ▶ Abstain from possessing firearms and surrender firearms/authorizations
 - ▶ Any other condition specified that is necessary to ensure the safety and security of any victim or witness

Summary

When can a warrant be endorsed?

- ▶ Warrant in the 1st (section 507)
- ▶ Private Prosecution (section 507.1)
- ▶ After release by Police (section 508)
- ▶ Public Interest Bench Warrant (section 512(1))
- ▶ Fail to Appear on summons, appearance notice, or undertaking to an officer (section 512.1 and section 512.2)

When can a warrant NOT be endorsed?

- ▶ Fail to appear when on a judicial interim release (section 524 would be the process, warrant issues under section 512.3)
- ▶ Material witness warrants (section 698, 704 and 705) - warrants issued in Form 17 or Form 18

Summary Cont.

- ▶ If a warrant is endorsed in Form 29, a police officer may release an accused on an appearance notice (Form 9)
- ▶ The peace officer may also release an accused on an undertaking (Form 10)
- ▶ An undertaking has conditions, and can include:
 - ▶ Release the accused on an undertaking with a promise to pay an amount not exceeding \$500 if they fail to comply with any condition of the undertaking (Form 10)
 - ▶ Release the accused on an undertaking with a deposit to the peace officer of money or valuable security whose value does not exceed \$500, if the accused is not ordinarily resident or not ordinarily residing within 200km of the place of custody (Form 10)
- ▶ In determining whether to release the accused, the police officer may consider the circumstances and the nature of the offence, the background of the accused, the length of time the warrant has been outstanding and if a police release would ensure the attendance of the accused at court and address any other concerns such as public safety