

Ministry of the Attorney General / Ministère du Procureur général

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CLD and CSD MEMORANDUM RESPECTING ALL CHIEFS' MEMO

MEMORANDUM TO: Richard Stubbings
Assistant Deputy Minister
Public Safety Division
Ministry of the Solicitor General

FROM: Beverly Leonard
Assistant Deputy Attorney General
Court Services Division

Randy Schwartz
Assistant Deputy Attorney General
Criminal Law Division

DATE: January 13, 2023

SUBJECT: **All Chiefs' Memo:** Bill S-4, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*, received Royal Assent on December 15, 2022, and will come into force on January 14, 2023.

Bill S-4, *An Act to amend the Criminal Code and the Identification of Criminals Act and to make related amendments to other Acts (COVID-19 response and other measures)*, received Royal Assent on December 15, 2022, and will come into force on Saturday, January 14, 2023.

Bill S-4 is available online: <https://www.parl.ca/LegisInfo/en/bill/44-1/s-4>

The Bill makes many changes to the *Criminal Code*, including amendments that:

- empower the courts to order fingerprints at other stages in the criminal process
- make a minor change to the language in the Form 10 undertaking

- create new obligations for persons executing certain warrants
- authorize the expanded use of warrants by means of telecommunication
- eliminate the use of the term “telewarrant”
- amend the *Identification of Criminals Act*

NEW Powers to Order Fingerprints – New Forms 6.1, 6.2, and 11.1

Bill S-4 permits the court to order fingerprinting at the interim release stage (s. 515.01) and at any other stage of the criminal justice process (s. 485.2).

Form 11.1 – New Form

When a release order is made under s. 515 the presiding judicial official may make an order pursuant to s. 515.01 in the new Form 11.1 requiring the accused to appear at a specified time and place for the purposes of fingerprinting under the *Identification of Criminals Act* if the accused is charged with an offence referred to in 2(1)(c) of the *Act*.

In the course of preparing a matter for bail, police should notify the Crown if fingerprinting has not yet occurred on the charges before the court and a section 515.01 order is needed.

- Form 11.1 will be ready for use on January 14, 2023

Forms 6.1 and 6.2 – New Forms

Section 485.2 allows an application to be made requesting the fingerprints of an accused or offender at any other stage of the criminal process, provided (a) sentencing has not concluded, (b) the accused or offender is charged or convicted of an offence that is an offence referred to in 2(1)(c) of the *Identification of Criminals Act*, (c) they were previously required to appear for fingerprints, and (d) the fingerprints could not previously have been taken for exceptional reasons.

The application is to be made in Form 6.1 and the reviewing judicial official (justice of the peace or judge) may then issue a summons in Form 6.2 requiring the accused or offender to appear at a specified time and place for the purposes of fingerprinting under the *Identification of Criminals Act*. The application may be determined *ex parte*.

Before a matter is concluded, particularly one where charges were laid during periods when fingerprinting was not being routinely done, police should ensure that the accused has been fingerprinted for the charges before the court, and if that has not occurred, should bring an application under section 485.2.

- Forms 6.1 and 6.2 will be ready for use on January 14, 2023

Undertakings – Form 10

Bill S-4 makes a minor change to the language in the Form 10 Undertaking.

- Updated Form 10 Undertakings for use with youth and adults will be ready for use on January 14, 2023

NEW Obligations on Execution of Certain Warrants – Replacement Forms 5.1 and 5.2

Bill S-4 creates new obligations for the person executing a warrant issued under the following provisions:

- Section 117.04(1) warrant as required by s. 487.093(1)(a)(ii)
- Section 199(1) warrant as required by s. 487.093(1)(a)(ii)
- Section 395(1) warrant as required by s. 487.093(1)(a)(ii)
- Section 487(1) warrant as required by s. 487.093(1)(a)(ii)
- Section 320.29(1) warrant as required by s. 320.29(5)
- Section 462.32(1) warrant as required by s. 462.32(4)(a)(ii)
- Section 87(1) *Cannabis Control Act* warrant as required by s. 87(4)
- Section 11(1) *Controlled Drugs and Substances Act* warrant as required by s. 11(4)

During execution, the person executing the warrant must give to the person present and in ostensible control of the premises, whether they request it or not:

- a copy of the warrant
- a Notice of Execution of Search Warrant in Form 5.1 (this is an entirely new Form 5.1), which sets out the address of the court before which the thing seized may be brought or from which a copy of the report to a justice (Form 5.2) can be obtained.

If there is no person present and in ostensible control, the two documents (warrant and 5.1 notice) must be affixed in a prominent location in the premises. In the case of a s. 395 or s. 320.29 search of a person, the documents are to be given to that person.

The above requirement to leave copies of the warrant and the Form 5.1 do not apply “if the warrant authorizes the search of anything that is detained under this Act after it has been lawfully seized” (new s. 487.093(2)). This appears to mean that police do not need to leave the warrant and the Form 5.1 if the search is for things that are already in police possession pursuant to a detention order under s. 490.

Form 5.1 – Replacement Form

Previous Form 5.1 (Warrant to Search, which was frequently used in a modified form for various telewarrants) **must no longer be used.**

Form 5.1 is now a Notice – Execution of Search Warrant.

- A general Form 5.1 Notice – Execution of Search Warrant will be ready for use on January 14, 2023, for the purposes of providing the required notice when executing any of the above warrants.
- The Court Services Division (CSD) will work towards having the Form 5.1 Notice included as part of the issued warrant document in the future and will provide an update at a later date when this becomes available.

Form 5.2 – Replacement Form

Bill S-4 replaces the Form 5.2 Report to Justice with a new and updated Form 5.2 Report to a Justice.

- CSD anticipates having this available for use on January 14, 2023, or shortly thereafter.

Warrants by means of “Telecommunication” – NEW section 487.1

Bill S-4 expands the availability of the process of applying by a means of telecommunication to a large number of additional warrants, orders, and authorizations, as well as to warrants under other federal statutes, as opposed to the current limited few. It will no longer be a requirement that it be impracticable to apply for the warrant in person, or that the offence be an indictable one. However, if it is impracticable to submit the application by means of a written telecommunication, it can be submitted by oral telecommunication but a statement of the circumstances for doing so must be stated in the application.

CSD is actively working with the courts to prepare for implementation of this expansion to the warrant by telecommunication regime in Ontario. This work includes the preparation of new forms, updates to the Search Warrant Tracking System, e-Intake, e-Hub, staff training and planning for the availability of judicial resources.

The necessary infrastructure will not be in place to receive and issue all of these warrants, orders and authorizations by means of telecommunication when these amendments come into force on January 14, 2023.

Those warrants that had a telewarrant equivalent prior to January 14, 2023, will remain available by means of telecommunication using the current practices already in place.

Effective January 14, 2023, forms previously used, titled “Telewarrant”, **must not be used** [i.e. modified Form 1 “Information to Obtain telewarrant”, modified Form 5.1 “Telewarrant to Search”]. Instead, the equivalent in-person forms are to be used and are being updated to reflect S-4 changes.

Further updates on details and timing of implementation of the expanded regime will be provided as they become available.

If an officer has any questions regarding the correct form or process, they should continue to contact Jeff A. Pearson, Sr. Product Manager at Jeff.A.Pearson@Ontario.ca (or 416-315-4634).

Section 2 of the *Identification of Criminals Act*

Bill S-4 makes a number of amendments to section 2, which authorizes fingerprinting and photographing, among other identification processes. Some amendments are structural or technical, but of note, Bill S-4 clarifies that the processes under section 2 are available for both indictable and hybrid offences, regardless of the Crown’s election.

Thank you for your attention to this matter.

Sincerely,

Original signed by

Beverly Leonard
Assistant Deputy Attorney General
Court Services Division

Original signed by

Randy Schwartz
Assistant Deputy Attorney General
Criminal Law Division