HSC legal studies – the criminal investigation process

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## Aim

Legal studies develops students’ knowledge, understanding and critical thinking skills in relation to the legal system and its effectiveness in promoting a just and fair society, with a view to empowering students to participate effectively as responsible citizens at the local, national and international level.

## Principal focus

Through the use of a range of contemporary examples, students investigate criminal law, processes and institutions and the tension between community interests and individual rights and freedoms.

## Themes and challenges

* the role of discretion in the criminal justice system
* issues of compliance and non-compliance in regard to criminal law
* the extent to which law reflects moral and ethical standards
* the role of law reform in the criminal justice system
* the extent to which the law balances the rights of victims, offenders and society
* the effectiveness of legal and non-legal measures in achieving justice.

## Outcomes

A student:

* **H1** identifies and applies legal concepts and terminology
* **H2** describes and explains key features of and the relationship between Australian and international law
* **H3** analyses the operation of domestic and international legal systems
* **H4** evaluates the effectiveness of the legal system in addressing issues
* **H5** explains the role of law in encouraging cooperation and resolving conflict, as well as initiating and responding to change
* **H6** assesses the nature of the interrelationship between the legal system and society
* **H7** evaluates the effectiveness of the law in achieving justice
* **H8** locates, selects, organises, synthesises and analyses legal information from a variety of sources including legislation, cases, media, international instruments and documents
* **H9** communicates legal information using well-structured and logical arguments
* **H10** analyses differing perspectives and interpretations of legal information and issues.

Outcomes referred to in this document are from [Legal Studies Stage 6 Syllabus](https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/hsie/legal-studies) © NSW Education Standards Authority (NESA) for and on behalf of the Crown in right of the State of New South Wales, 2009.

# Learning sequence 2 – the criminal investigation process

|  |  |
| --- | --- |
| **Students learn about:** | **Students learn to:** |
| * police powers * reporting crime * investigating crime: gathering evidence, use of technology, search and seizure, use of warrants * arrest and charge, summons, warrants * bail or remand * detention and interrogation, rights of suspects | * discuss the powers of police in the criminal process * examine the reporting and investigation of crime * assess the effectiveness of the criminal investigation process as a means of achieving justice |

**Teacher note –** the driving question for this criminal investigation topic could come straight from the syllabus, that is, ‘assess the effectiveness of the criminal investigation process as a means of achieving justice’. In order to be able to answer this, students need to explore all elements of the process as detailed in the syllabus and make informed judgements from a variety of perspectives. It is also important that students make links between this topic content and the ‘themes, challenges and principal focus’ of the course.

Criminal cases presented in the following activities should be reviewed and replaced as required to meet the needs of the school context and cohort.

## Police powers

**Teacher note –** as this is a confidential issue, it is important that students are provided with information from a variety of sources and encouraged to critically analyse this and form their own opinion. Suggested resources do contain violence and some swearing. These should be replaced with resources more suitable for the school and context as required.

* Use the [*Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW)](https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-103) (LEPRA) to complete the following:
  + identify 3 examples of legal limits on the use of police power
  + conduct a small group discussion on how this is in the best interests of offenders and the community.
* Use the information gathered from LEPRA and the resources below to complete a [plus-minus-interesting](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/551#.YFuqHiNdp0w.link) chart on the use of police powers in NSW.
* Resources for this task:
  + [NSW Police officer filmed kicking, pinning down Indigenous teen during arrest](https://www.abc.net.au/news/2020-06-02/nsw-police-investigate-officer-over-arrest-of-indigenous-teen/12310758)
  + [NSW police officer who allegedly tasered and struck naked teen boy 19 times charged with assault](https://www.theguardian.com/australia-news/2019/oct/25/nsw-police-officer-who-allegedly-struck-naked-teen-boy-19-times-charged-with-assault)
  + [Roberto Laudisio Curti death: Policeman involved in arrest found guilty of assault, three other officers cleared](https://www.abc.net.au/news/2014-12-16/policeman-guilty-of-assault-curti-death-three-others-cleared/5971136)
  + [Robert Xie murder trial, the evidence that helped collect a killer](https://www.abc.net.au/news/2017-01-16/robert-xie-trial-blood-stains-helped-convict-murderer/8184856)
  + [Kristi Abrahams jailed for at least 16 years for the murder of her daughter Kiesha Wieppart](https://www.abc.net.au/news/2013-07-18/kristi-abrahams-sentenced-over-kiesha27s-murder/4827790)
  + [NSW recorded crime statistics quarterly update September 2020 (BOCSAR)](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2020/mr-NSW-Recorded-Crime-Statistics-Quarterly-Update-Sept-2020.aspx)
* Complete a [4 corners activity](https://www.theteachertoolkit.com/index.php/tool/four-corners) to consider the following statement – ‘NSW Police use their power effectively’:
  + move to a corner of the room depending upon whether you agree, strongly agree, disagree or strongly disagree with the statement
  + once in your corner, discuss your stance with the group for 5 minutes
  + a spokesperson for the group explains the viewpoint of the group to the rest of the class.
* Complete a 1-2 paragraph response to the following question: ‘Assess whether the use of police powers in NSW helps to achieve justice’. Answers should include the following:
  + a clear topic sentence that sets out the stance, for example ‘Overall the use of police powers in NSW helps to achieve justice for most of society’
  + arguments presented for both sides
  + clear judgement
  + links to the question
  + reference to legislation
  + incorporation of at least one case or media reference, for example: “The Guardian 2019 article, ‘[NSW police officer who allegedly tasered and struck naked teen boy 19 times charged with assault,](https://www.theguardian.com/australia-news/2019/oct/25/nsw-police-officer-who-allegedly-struck-naked-teen-boy-19-times-charged-with-assault#:~:text=1%20year%20old-,NSW%20police%20officer%20who%20allegedly%20tasered%20and%20struck%20naked,19%20times%20charged%20with%20assault&text=A%20Byron%20Bay%20police%20officer%20who%20allegedly%20tasered%20a%20teenage,by%20the%20NSW%20police%20watchdog.)’ highlights abuse of police powers of arrest as well as alleged assault and excessive use of force. Conversely, it highlights that where police engage in criminal conduct such as assault that they can be charged and face court for their actions.”
* Use a [2 stars and a wish peer feedback](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/549#.YFuvxK3coZw.link) strategy to review your paragraph. Use the feedback to edit your writing.

## Reporting crime

* Use NSW Police ‘[How can crime be reported’](https://www.police.nsw.gov.au/crime/are_you_a_victim_of_crime/victims_of_crime/reporting_the_crime) and [‘why don’t people report’](https://www.police.nsw.gov.au/crime/hate_crimes/bias_crime_categories/why_people_dont_report)  to make a [concept map](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/577#.YDa-j3uVDf8.link) illustrating 3 sub-concepts:
  + how crime can be reported
  + the reasons why many crimes are not reported.
* Write 1-2 sentences to explain the impact of low reporting rates on justice.

## Investigating crime

### Gathering evidence

* Research the case of [*R v Xie* [2017] NSWSC 63](https://www.caselaw.nsw.gov.au/decision/58a0d8c2e4b058596cba3ea9) using the article, [Robert Xie murder trial, the evidence that helped collect a killer](https://www.abc.net.au/news/2017-01-16/robert-xie-trial-blood-stains-helped-convict-murderer/8184856) to complete the following:
  + identify the types of evidence that were collected to support the conviction of Robert Xie for murder
  + explain why the case could be used as an example of the effective collection of evidence.
* Watch [Trial and Error](https://www.abc.net.au/4corners/trial-and-error/3612532#:~:text=In%202011%2C%20a%20Four%20Corners,than%20three%20years%20behind%20bars.) (duration 45:40) and make notes on the weaknesses of the evidence gathering process and investigation in this case.
* Complete a [T-Chart](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/599#.YC2g-vmIy-M.link) of summary notes on effective and ineffective elements of the evidence gathering process.

### Use of technology

* Conduct media research to locate an example of police using technology to aid in effective criminal investigation. Summarise the big idea into one sentence, for example: ‘The ABC 2019 article, ‘technology is great,’ highlights …’
* Using the resources below, write one paragraph to discuss the use of CCTV footage in criminal investigation:
  + [Does CCTV help police to solve crime?](https://www.aic.gov.au/publications/tandi/tandi576)
  + [Australian Federal Police officers trialled controversial facial recognition tool Clearview AI](https://www.abc.net.au/news/science/2020-04-14/clearview-ai-facial-recognition-tech-australian-federal-police/12146894).

## Search and seizure

**Teacher note –** this is a particularly controversial issue as the balance between police investigating crime and individual privacy, dignity and rights has been questioned. It is important that students are provided with an opportunity to research and reflect on the issue from multiple perspectives and to think critically on this issue.

* Use a [think-pair-share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645#.YFuzEB2KOBY.link) strategy to consider the following 2 questions:
  + predict what would happen if police weren’t allowed to search people and property and seize items as part of an evidence gathering process
  + suggest why people generally do not like having their property or their person searched.
* Use this information to write 1-2 sentences about the importance of balancing the rights of the community with the rights of individuals in relation to search of person and property.
* Complete a [jigsaw activity](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/546#.YH0B8yCYqE8.link) where each team member answers a question about an aspect of search and seizure procedures. After reporting back to the home group, team members summarise effective and ineffective elements of search and seizure into a [t-chart](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/599#.YDMtfVrkeDw.link):
  + **Team member 1**: What is a search warrant? How does it protect rights? When can a warrant be obtained?

Resource: [Part 5, Div 2 of the *Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW)](https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-2002-103#pt.5-div.2)

* + **Team member 2:** What are the circumstances where police can search a person or their property without a warrant?

Resource: the [*Law Enforcement (Powers and Responsibilities) Act* 2002 s21](http://www5.austlii.edu.au/au/legis/nsw/consol_act/leara2002451/s21.html)

* + **Team member 3**: How do judges define ‘reasonable suspicion?’ Why are there concerns over police having the discretion to search people without a warrant based on this ‘reasonable suspicion’ (hint: the definition is complex, confusing and very subjective)?

Resource: paragraphs **s53(a) and (b)** of [*R v Rondo* [2001] NSW CCA 540](https://www.caselaw.nsw.gov.au/decision/549fa1543004262463b33df8)

* + **Team member 4**: What are the legal protections for those subjected to a personal or strip search?

Resource: [Division 4 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2002-103#pt.4-div.4)

* + **Team member 5**: research and summarise a media example or [Law Enforcement Conduct Commission report](https://www.lecc.nsw.gov.au/investigations/past-investigations/investigation-reports-from-2020) detailing an incident where a strip searches has infringed on the rights of an individual.
* Use the T-Chart to complete a one paragraph response to the following question: “How effectively does the search and seizure process balance community interests with individual rights and freedoms?”
* Use a [2 stars and a wish peer feedback](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/549#.YDMuzNcFTDc.link) strategy to collect ideas on how to improve the paragraph. Feedback should be based on whether the paragraph:
  + presents a logical and cohesive argument
  + includes a topic sentence with supporting arguments and evidence
  + integrates relevant legislation, cases and media
  + demonstrates substantial knowledge of search and seizure
  + makes clear judgement(s).

## Arrest and charge, summons, warrants

* Complete a [quick, write](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/548?clearCache=235494cb-1330-b436-f8e4-3cf5941e7892) using one of the following sentence starters: A society where police are not allowed to arrest anyone would be the best because
* A society where police can arrest people in any way and for any reason they like would be better because
* Use this activity to write 1-2 sentences about the importance of balancing the needs of the community with the rights of the individual in the area of arrest and charge.
* Define the terms arrest, charge, summons and warrant.
* Use the resources below to complete a summary of the legal protections for citizens under arrest. Questions to consider include:
  + when and how can the police arrest a person
  + when the police can use force
  + when a person is required to answer questions
  + what extra protections are provided for young offenders. Resources:
  + [*ICCPR,* Article 9](https://humanrights.gov.au/our-work/rights-and-freedoms/right-security-person-and-freedom-arbitrary-detention#:~:text=ICCPR%20Article%209%20states%3A,to%20arbitrary%20arrest%20or%20detention.&text=Anyone%20who%20is%20arrested%20shall,of%20any%20charges%20against%20him.)
  + [*Law Enforcement (Powers and Responsibilities)*Act 2002 (NSW) s 99](http://classic.austlii.edu.au/au/legis/nsw/consol_act/leara2002451/s99.html) – power of police officers to arrest without a warrant
  + Law Society, ‘[When can the police arrest you](https://www.lawsociety.com.au/public/know-your-rights/being-under-arrest/when-can-police-arrest-you)?
  + [*Young offenders* *Act* 1997 (NSW)](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1997-054)
  + Legal aid NSW.
* Research the case of  *DPP v Carr* (2002) NSWSC, using the Austlii article [Arrest as a method of oppression](http://www5.austlii.edu.au/au/journals/AltLawJl/2004/53.html) and complete the following:
  + make a cartoon or [story board](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/559?clearCache=497bc125-14c6-ad0e-4417-e21a87a91e0#.YH0CpGfBW7E.link) of the sequence of events in this case
  + explain why many consider that arrest was not a suitable action by police in this case.
* Write a one paragraph response to the following question:

“How effectively does the process of arrest and charge reflect the morals and ethics of society?”

## Bail or remand

**Teacher note –** students should be provided with a copy of the PDF [Bail Laws in NSW – 2018 (Rule of Law)](https://www.ruleoflaw.org.au/wp-content/uploads/2018/09/2018-09-20-Bail-Laws-in-NSW-FINAL.pdf)  to complete this activity. If possible, the handout should be printed in A3 size.

* Use the [BOCSAR Glossary](https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/custody_glossary.aspx) and Attorney General, ‘[Presumption of innocence’](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/presumption-innocence) to complete definitions for: bail, remand, justice and the presumption of innocence
* Use the printed handout [Bail Laws in NSW – 2018 (Rule of Law)](https://www.ruleoflaw.org.au/wp-content/uploads/2018/09/2018-09-20-Bail-Laws-in-NSW-FINAL.pdf) to complete the following:
  + summarise the types of ‘conditions’ that might apply to bail
  + briefly explain the three tests for bail set out in the Bail Act 2013 (NSW)
  + choose one of the cases in the handout and assess whether justice was achieved for both the accused person and the community.
* Locate one positive and one negative media article about the current bail laws. Summarise the big ideas of each article into the table below:
  + Resources for this task: [Tough new laws now operating](https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2015/New-bail-laws.aspx); ‘[NSW bail laws means well but, we are landing homeless kids in prison](https://theconversation.com/nsw-bail-laws-mean-well-but-are-landing-homeless-kids-in-prison-68490).

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| **Media (title, source, date)** | **Positive elements of the bail process** | **Negative elements of the bail process** |
|  |  |  |

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## Detention and interrogation, rights of suspects

**Teacher note** – law reform update: The standard period that NSW Police have to ask questions and gather evidence before they are required to either charge the suspect of release them is now 6 hours – [Law Enforcement (Powers and Responsibilities) Amendment Act 2014 No 31](https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2014-031).

* Read the following scenario:

A child has been kidnapped and is being held and tortured. Police arrest a person who they believe to be an accomplice.

* Use a [circle of viewpoints](http://www.pz.harvard.edu/resources/circle-of-viewpoints) strategy to consider 3 different perspectives on whether it is acceptable to use any means at all to get the truth out of this person to save the life of the child. Viewpoints could include the child’s parents, the suspect’s family, the police, or the community. For each viewpoint, complete a brief written response to each of the following:
  + I am thinking of whether it is acceptable to use any means at all to get the truth out of this person from the point of view of
  + I think
  + A question I have from this viewpoint is

### Rights when arrested and interviewed

**Teacher note** – This activity finishes with students collaboratively writing a one-page response to a question. This can be done on paper or whiteboards on in online collaboration tools like Google Docs

* Using a [think-pair-share](https://app.education.nsw.gov.au/digital-learning-selector/LearningActivity/Card/645#.YFuzEB2KOBY.link) strategy, complete the following:
  + using [*Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW) Division 3, s 122-131](https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-2002-103#pt.9-div.3), identify 3 significant rights that citizens have after they are arrested
  + using [*Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW) s115](https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-2002-103#sec.115), identify how long police can hold suspects before they have to be charged or released
  + on paper or software like [Google Slides](https://app.education.nsw.gov.au/digital-learning-selector/LearningTool/Card/70#.YH0Fuj-LuLk.link), collaboratively write a one paragraph response to the following question: ‘Evaluate the effectiveness of LEPRA in protecting the rights of citizens under arrest.’

### Rights for suspected terrorists when arrested and interviewed

* In small groups complete the following:
  + compare the length of the detention period allowed under LEPRA with the time a suspected terrorist can be detained without charge under the [*Terrorism (Police Powers) Act* 2002 (NSW) s26K](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/tpa2002291/s26k.html)
  + use this comparison as a basis for discussing the tension between community interests and individual rights
  + read the [ABC article: ‘The colleague, the girl, the police: student framed and imprisoned over terror offences tells the whole story for the first time](https://www.abc.net.au/triplej/programs/hack/mohamed-kamer-nizamdeen-framed-and-imprisoned-tells-whole-story/12169728)’ and complete a flowchart to summarise the facts of the case.
* Complete a [circle of viewpoints](https://pz.harvard.edu/resources/circle-of-viewpoints) thinking routine where the perspectives of the community and the suspected terrorist are considered. For each viewpoint, complete a brief written response to each of the following:
  + I am thinking of whether it is acceptable to use any means keep the community safe from terrorism
  + I think
  + A question I have from this viewpoint is
* Conduct a class debate where teams prepare arguments for their assigned ‘side’ in the following question: ‘How effectively does the process of arrest and interrogation balance the rights of the individual with the need to protect the community?’
* Using notes and ideas from the debate, complete a one paragraph response addressing the following question:

‘To what extent does the process of arrest and interrogation balance the rights of the individual with the need to protect the community?’

* Use a [C-3-B4-Me](https://schoolsnsw.sharepoint.com/:p:/s/DLS/EazJuJz8dlZBvL6hH22RtPkBN3Z5ByuePJshRDvs9JtYew?rtime=lbcQdbDW2Eg) feedback strategy to gain advice on how to improve the paragraph. Feedback should be based on whether the paragraph:
  + presents a logical and cohesive argument
  + includes a topic sentence with supporting arguments and evidence
  + integrates relevant legislation, cases and media
  + demonstrates extensive knowledge of arrest and interrogation
  + makes clear judgement(s).

**Teacher note –** on completion of this topic, students could write an essay on the following question: ‘Assess the effectiveness of the criminal investigation process as a means of achieving justice.’