



Policy Name:	ARRESTS AND CHARGES OF YOUNG PERSONS		
Policy #:	OP 4.51.2	Last Updated:	2022-01-27
Issued By:	COMMUNITY POLICING BUREAU	Approved By:	SURREY POLICE BOARD
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RELATED POLICIES

OP 3.1 *Arrest and Detention*

OP 3.1.1 *Handcuffing*

OP 4.30.2.2. *Young Persons (Suspect Interviewing)*

OP 7.1 *Booking and Fingerprinting of Prisoners*

OP 7.6.3 *Young Persons (Detention)*

1. PURPOSE

1.1. To ensure Surrey Police Service (SPS) Members treat Young Persons in accordance with the *Youth Criminal Justice Act (YCJA)* and *Youth Justice Act (YJA)* and comply with legal requirements.

2. SCOPE

2.1. This policy applies to all SPS Members.

3. POLICY

3.1. This policy provides direction to Members, in accordance with the YCJA, when dealing with Young Persons, who are between 12 to 18 years of age at the time the person is believed to have committed a criminal offence.

3.2. A person who is 18 years of age or older when arrested for an alleged offence that occurred when the person was between 12 and 18 years of age will be treated in accordance with the provisions of the YCJA, except for s. 146 of the YCJA – *Admissibility of Statements*.

3.3. SPS subscribes to the principles of the YCJA that promote responsibility in Young Persons and encourages offender accountability through meaningful consequences and effective rehabilitation and reintegration. Criminal charges against a Young Person should be reserved for serious crimes with the goal of reducing the over-reliance on incarceration for non-violent Young Persons.

3.4. The principles of the YCJA relating to Extrajudicial Measures are:

- i. Extrajudicial Measures are often the most appropriate and effective way to address Young Person crime;
- ii. Extrajudicial Measures allow for effective and timely interventions focused on correcting offending behaviour;
- iii. Extrajudicial Measures are presumed to be adequate to hold a Young Person accountable for their offending behaviour if the Young Person has committed a non-violent offence and has not previously been found guilty of an offence;
- iv. Extrajudicial Measures should be used if they are adequate to hold a Young Person accountable for their offending behaviour and, if the use of Extrajudicial Measures is consistent with the principles set out in the YCJA, nothing in the YCJA precludes their use in respect of a Young Person who:
 - a. has previously been dealt with using Extrajudicial Measures; and
 - b. has previously been found guilty of an offence.

4. PROCEDURE

4.1. The arrest or detention of a Young Person must comply with the *Canadian Charter of Rights and Freedoms*, the law, and SPS policy OP 3.1 *Arrest and Detention*.

4.2. A Member's decision to arrest and recommend criminal charges against a Young Person must consider:

- i. the seriousness of the alleged offence; and
- ii. whether Extrajudicial Measures (as described in s. 4.6 below) may be a more appropriate remedy to hold the Young Person accountable.

4.3. A Member must consider the vulnerability and age of a Young Person under arrest in deciding whether to use handcuffs to restrain the Young Person. The use of handcuffs must be:

- i. objectively reasonable in the circumstances;
- ii. proportionate to the potential risk or harm the Member seeks to prevent; and
- iii. necessary to fulfill a legitimate policing objective (e.g., prevent the escape of the Young Person – see OP 3.1.1 *Handcuffing*).

4.4. The decision and actions of a Member leading to the arrest of a Young Person must be documented in the Member's notebook and articulated thoroughly in a Police Records Information Management Environment (PRIME) report.

Extrajudicial Measures

4.5. The decision as to which extrajudicial measure is appropriate must be applied fairly and be proportionate to the offence. The Member should use the least restrictive measure that will hold the Young Person accountable, ensuring the minimum intervention required to respond to the conduct. The measure should always be less than one a court likely would impose for this conduct, if the Young Person had been tried and found guilty of the offence.

4.6. Within the limits of fair and proportionate accountability, the Extrajudicial Measure should be designed and applied with the following principles and objectives in mind:

- i. emphasize timeliness (ensuring the measure is applied as soon as possible after the conduct, to help the Young Person understand the relationship between action and consequences);
- ii. be an effective intervention;
- iii. promote the rehabilitation of the Young Person;
- iv. offer meaningful consequences to the Young Person;
- v. encourage the Young Person to acknowledge harm they may have caused;
- vi. encourage the Young Person to repair harm they may have caused;
- vii. involve the family of the Young Person; and
- viii. respect the Young Person's rights, and especially any special protections or guarantees of rights applying to Young Person.

Minor Case - No Further Action – YCJA section 6

4.7. For many minor offences, a decision by the Member to take no further action may be the most appropriate course of action. For example, the Parents of the Young Person, the victim, or others may have already taken sufficient steps to hold the Young Person accountable.

4.8. In incidents where a Member takes No Further Action the Member will submit a PRIME report and link the Young Person as "Suspect Chargeable" and conclude the file "Departmental Discretion" for Supervisor review.

Minor Case – Informal Warning – YCJA section 6

4.9. Informal Warnings by Members under s. 6 of the YCJA are an example of a traditional exercise of police discretion. In many minor cases, an Informal Warning by a Member is a sufficient response from the justice system.

4.10. When a Member Warns a Young Person the Member will submit a PRIME report and link the Young Person as "Suspect Chargeable" and conclude the file "Departmental Discretion" for Supervisor review.

Police Caution – YCJA section 7

- 4.11. Police Cautions are more formal warnings administered by Members. The Police Caution will be in the form of a letter from SPS to the Young Person and their Parent or Guardian.
- 4.12. Members may administer a Police Caution to Young Person by requesting the Young Person and their Parent or Guardian attend SPS police station and speak with a Supervisor familiar with the file about the alleged offence.
- 4.13. A Police Caution is intended to make clear to the Young Person the seriousness of the alleged offence and to provide a police response that is between an Informal Warning and a charge.
- 4.14. As with all Extrajudicial Measures, Members must only use a Police Caution when the Member has reasonable grounds to arrest the Young Person for an offence.
- 4.15. A Police Caution should not be used in cases where taking No Further Action or an informal warning is sufficient.
- 4.16. When a Police Caution is administered, the Member will submit a PRIME report and link the Young Person as “Suspect Chargeable” and conclude the file “Departmental Discretion” for Supervisor review.

Right to Counsel Upon Arrest or Detention

- 4.17. When a Young Person is arrested or detained, the arresting Member must advise the Young Person without delay of the Young Person’s right to retain and instruct counsel. The Young Person must also be given a reasonable opportunity to obtain and consult counsel. In addition, the Member must:
- i. notify as soon as practicable the Parents as to the nature of the arrest and the status of the Young Person; or
 - ii. if no Parent or Guardian is available, give a notice to an adult relative or other adult known to the Young Person (Responsible Adult) who is likely to provide assistance; or
 - iii. if no Responsible Adult, Parent or Guardian can be located, the Young Person must be turned over to the Ministry of Children and Family Development.

Summons

- 4.18. When an investigating Member believes it is appropriate to request a summons rather than arrest a Young Person, the Member will:
- i. make notation of the request in the PRIME file;
 - ii. link the Young Person as “Charged or Charges Recommended”; and
 - iii. forward the file after Supervisor review to Crown Counsel.

Appearance Notice or Undertaking – Young Person

- 4.19. Members are to use the same Appearance Notice and Undertaking forms for Young Persons as for adults, however Members must denote that the form is being used for a Young Person by checking the box “A Young Person within the meaning of the Young Person Criminal Justice Act” at the top of the form.
- 4.20. When a Member completes an Undertaking, the Young Person include a report to Probation Officer condition on their Undertaking. Members must enter on the Undertaking: “You must report to a Young Person Worker in the Province of British Columbia on the next business day before 1600 hours and afterwards as required.”
- 4.21. Members must include on the Undertaking the applicable Probation Office telephone number for the District in which the offence occurred:
- i. Surrey North Community Corrections at 604-586-4255 (92nd to Fraser River);
 - ii. Surrey South Community Corrections at 604-502-5330 (Newton/South Surrey); or
 - iii. Surrey East Community Corrections at 604-501-3115 (Fleetwood/Guildford).
- 4.22. Under s. 28.1 of the YCJA, Members must not detain a Young Person in custody or impose a condition in respect of a Young Person’s release by including it in an Undertaking or release order as a substitute for appropriate child protection, mental health treatment or other social measures.

Court Appearance – Location and Time

- 4.23. When Young Persons are released on an Undertaking or Appearance Notice, Members must set the court locations and times as below:
- i. Provincial and Federal matters, the court time and location will be 9:30 am on Wednesdays in Courtroom 312, 14340 - 57th Avenue, Surrey; and
 - ii. the court date will be chosen based on the requirements of the investigation and to meet administrative needs. Members will allow a minimum of six (6) calendar weeks, but no longer than three (3) months for a more complex investigation.

Failure to Comply with Conditions – Young Person

- 4.24. The *Criminal Code* authorizes Members to arrest without warrant, a person whom they have reasonable grounds to believe has failed to comply with or is about to fail to comply with a summons, Appearance Notice, Undertaking, release order or fails to attend court as required. However, s. 4.1 of the YCJA notes that Extrajudicial Measures are presumed to be adequate to hold a Young Person accountable for failures to comply unless:
- i. the Young Person has a history of repetitive failures to comply; and
 - ii. the Young Person’s failure to comply caused harm or risk of harm, to the safety of the public.

4.25. Despite s. 4.24 above, a Member must arrest a person who fails to comply with conditions that are related to individuals having no contact with victim(s) or witness(es) regarding intimate partner violence and serious offences.

Fingerprints and Photographs – Young Persons

4.26. See policy OP 7.1 *Booking and Fingerprinting of Prisoners*.

Jail Procedures – Young Persons

4.27. See policy OP 7.6.3 *Young Persons* regarding the detention and jail procedures for Young Persons held in custody.

APPENDIX A: DEFINITIONS

“Extrajudicial Measure” means measures other than judicial proceedings under the *Youth Criminal Justice Act* used to deal with a young person alleged to have committed an offence.

“Guardian” means a person to whom guardianship or custody of a Child has been granted by a court of competent jurisdiction or by an agreement; a person with whom a Child resides and who stands in place of the Child's parent; or guardian but does not include a caregiver, prospective adoptive parent, or director.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“Parent” means the biological mother or father; adoptive mother or father; individual(s) with legal custody; or individual(s) with legal guardianship.

“PRIME” means the Police Records Information Management Environment, the provincial police records management system.

“Responsible Adult” means an adult relative or other adult known to the Young Person who is likely to provide assistance to the Young Person (e.g., Indigenous youth's Elder).

“SPS” means the Surrey Police Service.

“Young Person” means a person who is between 12 and 18 years of age at the time the Young Person is believed to have committed a criminal offence.

APPENDIX B: REFERENCES

British Columbia Provincial Policing Standards

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46

Youth Criminal Justice Act, S.C. 2002, c. 1

Youth Justice Act, S.B.C. 2003, c. 85