

<b>Policy Name:</b>	<b>STATEMENTS – YOUTH SUSPECTS</b>		
<b>Policy #:</b>	OP 4.30.3.2	<b>Last Updated:</b>	2022-06-08
<b>Issued By:</b>	INVESTIGATIVE SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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**RELATED POLICIES**

OP 3.1 *Arrest and Detention*

OP 4.30.3.1 *Statements – Adult Suspects*

OP 4.51.2 *Arrests and Charges of a Young Person*

**1. PURPOSE**

- 1.1 To provide guidance to Surrey Police Service (SPS) Members on custodial and non-custodial interviews and statements from suspects who are Young Persons.
- 1.2 To standardize Young Person suspect interview procedures.
- 1.3 To ensure suspect interviews and statements obtained from Young Persons are conducted in accordance with the *Canadian Charter of Rights and Freedoms (Charter)*, the *Youth Criminal Justice Act (YCJA)* and relevant case law.

**2. SCOPE**

- 2.1 This policy applies to all Members.

**3. POLICY**

- 3.1 All procedures and considerations which are applicable to adult suspect interviews apply to interviews of Young Persons (see OP 4.30.3.1 *Statements – Adult Suspects*).

- 3.2 Suspect interviews are an important part of any investigation and can lead to statements, admissions, or confessions. On some occasions suspect interviews may provide a credible defence, explanation or alibi.
- 3.3 Providing the suspect an opportunity to provide a statement is an integral part of a full, fair, and professional investigation and will seldom be the only piece of evidence upon which an investigation is based.
- 3.4 A suspect interview may not be required for an “administrative offence” such as breach of conditions where the evidence is obvious at the time of arrest (e.g., a “no-go” or curfew breach, etc.) and the value of an admission is minimal. The same applies for minor offences where police find the suspect committing the offence, e.g., mischief, minor thefts, etc.
- 3.5 Where the offence is significant, (e.g., assault, break and enter, robbery, weapons, possession of stolen property, etc.) then a statement, admission, or confession will always benefit the investigation. Without a statement from the suspect, it is often difficult to prove certain offences, such as weapons possession, and possession of stolen property. Finally, suspects must be given an opportunity to respond to allegations and to provide an alibi, explanation, or their side of the story.
- 3.6 A thorough suspect interview may help to focus an investigation to directions that had not been previously realized or considered.
- 3.7 Prior to commencing a suspect interview, it is important for Members to establish whether the suspect is free to leave or is detained (a “non-custodial” versus a “custodial” interview). In every investigation, the suspect needs to understand their legal jeopardy, for example:
- i. if the suspect is free to leave and not participate in an interview, Members must consider the various police warnings and cautions that are appropriate, especially the Official Warning; however,
  - ii. if the suspect is detained, Members must carry out their duties as required by Section 10(a) and 10(b) of the *Charter* and the Official Warning.
- 3.8 Statements obtained by digital audio or digital and video recordings must be transcribed into written format and form part of the police disclosure.

#### **SPECIAL CONSIDERATIONS FOR YOUTH SUSPECTS**

- 3.9 In addition to the legal requirements for interviewing an adult, special considerations must be provided to Young Persons who are suspects as required by the YCJA:

- i. In an interview of a Young Person who is a suspect, informed consent and understanding is key. Police must carefully document efforts to ensure the suspect understands all warnings and cautions provided;
- ii. Members must use Form AD-43032 *Statement of a Young Person* arrest script during the arrest, *Charter*, access to legal counsel, parent or other adult, and interview of a Young Person;
- iii. **Note to Members:** Assess understanding – the Young Person must understand all warnings, cautions and rights in the *Statement of a Young Person* arrest script. Members must be prepared to show the court that the Young Person understood what police said to them. Asking the Young Person questions such as “Could you explain what I have just said in your own words?” or “What does this mean to you?” can help assess understanding if necessary;
- iv. Members must warn the Young Person if the Crown Prosecutor intends to seek an adult sentence if the Young Person was 14 to 17 years of age at the time of the alleged commission of an offence for which an adult is liable to imprisonment for a term of more than two years;
- v. The YCJA states that no oral or written statement given by a Young Person to a police officer or other person who is, in law, a person in authority, is admissible against the Young Person unless the requirements in section 3.9.v.a to e are met. **Note:** these requirements do not apply to a Young Person who is alleged to have committed an offence while less than eighteen years of age but who is 18 years of age or older at the time of the police interview (YCJA, section 146(2)):
  - a. the statement is made voluntarily;
  - b. the person to whom the statement was given has, before the statement was made, clearly explained to the Young Person, in language appropriate to their age and understanding that:
    - i. the Young Person is under no obligation to give a statement;
    - ii. statements given by the Young Person may be used in evidence;
    - iii. the Young Person has the right to consult with counsel and or a parent or, in their absence, an adult relative or, in their absence or, any other appropriate adult chosen by the Young Person, except a co-accused, or any person under investigation for the same offence; and
    - iv. persons consulted are not persons in authority unless proven otherwise, and statements made under duress to a person not in authority are not admissible;
  - c. the person to whom the statement is to be made must caution the Young Person that any statement they make must be made in the presence of legal counsel, a parent or other appropriate adult, unless the Young Person desires otherwise;
  - d. any adult whom the Young Person has consulted is legally required to be present if the Young Person wishes to make a statement, unless the Young Person chooses to formally waive the requirement. **Note:** this requirement must be communicated to the Young Person regardless of whether they wish to speak to an adult; and
  - e. the Young Person must be given a reasonable opportunity to consult with legal counsel, a parent or other appropriate adult;

- vi. Exception – Waiver of Rights:
  - a. A Young Person may waive the right to consult or have an adult person present. Any such waiver must be audio and video recorded or be in writing and must contain a statement, signed by the Young Person, that they have been informed of and understand the right that is being waived;
  - b. Statements taken from a Young Person without having legal counsel or adult present, must be audio and video recorded or in the case of a written statement signed by the Young Person, documenting that they are aware of the requirement to have an adult whom they consult present and waive that requirement. This applies regardless of whether the Young Person actually has contacted anyone.
- vii. Exception – Spontaneous Statement:
  - a. The YCJA allows the admissibility of oral statements where they are made spontaneously by the Young Person to a police officer or any other person in authority before the person has had a reasonable opportunity to comply with requirements relating to statements;
  - b. Under the YCJA, Young Persons must be given their Section 10 *Charter* Warning throughout all proceedings.

#### 4. PROCEDURE

4.1 When preparing to conduct a suspect interview of a Young Person, Members must consider the following:

- i. All suspect interviews must be audio and video recorded, where practicable.
- ii. Best practice: interactions with the suspect before, during, and after the interview should be recorded with (at a minimum) a digital audio recording device. This includes reading of *Charter* rights, arranging access to legal counsel, trips to the bathroom, food, smoke break, etc.
- iii. Having a backup recording device such as a digital audio recorder will safeguard against recording devices failing while Members are interacting with the suspect.
- iv. All suspects must be advised of their Section 10(a) and 10(b) *Charter* rights and the Official Warning in language appropriate to their age and understanding.
- v. Members must:
  - a. document the suspect's responses to the reading of their *Charter* rights using the suspect's own words whenever possible;
  - b. document steps taken to ensure that the suspect understands their rights and warnings;
  - c. document all spontaneous statements made by the suspect while in the presence of police;
  - d. provide the suspect access to legal counsel in private without delay (unless the suspect has waived their right to counsel);
  - e. make all efforts to provide the suspect with access to their lawyer of choice (unless the suspect waives their right to counsel);

- f. for serious criminal charges the Member must ensure the legal counsel advising the suspect is qualified to give legal advice in British Columbia;
  - g. document all efforts to contact legal counsel and note how long the accused spent on the telephone with their lawyer; and
  - h. if the suspect waives the right to legal counsel, ensure that the suspect has also waived the right to or consult or have a parent or, in their absence, an adult relative or, in their absence or, any other appropriate adult present during the interview.
- 4.2 If a suspect, upon arrest, waives their right to legal counsel after being given appropriate warnings, then an immediate field interview may be appropriate. In serious incidents it may be advisable to delay the interview until an audio and video recorded interview can be conducted.
- 4.3 Members must be cautious about confessions. If the suspect makes a confession, the confession will be closely examined by the courts. At issue will be the voluntariness of the statement and whether the statement was made freely. A confession by a suspect must be made free of threats, promises, or inducements by police or other persons in positions of authority.
- 4.4 Statements or waivers obtained by the police from suspects under the influence of alcohol or drugs may not be admissible in court.

## **APPENDIX A: DEFINITIONS**

“Charter” means the *Canadian Charter of Rights and Freedoms*.

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

“SPS” means Surrey Police Service.

“YCJA” means the *Youth Criminal Justice Act*.

“Youth” or “Young Person” means a person who is, or in the absence of evidence to the contrary, appears to be twelve years old or older, but less than eighteen years old.

**APPENDIX B: REFERENCES**

*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*

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