



<b>Policy Name:</b>	<b>STATEMENTS – ADULT SUSPECTS</b>		
<b>Policy #:</b>	OP 4.30.3.1	<b>Last Updated:</b>	2022-07-13
<b>Issued By:</b>	INVESTIGATIVE SERVICES BUREAU	<b>Approved By:</b>	
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**RELATED POLICIES**

OP 3.1 *Arrest and Detention*

OP 4.30.3.2 *Statements – Youth Suspects*

**1. PURPOSE**

- 1.1. To provide guidance to Surrey Police Service (SPS) Members on custodial and noncustodial interviews of adult suspects.
- 1.2. To develop and standardize suspect interview procedures.
- 1.3. To ensure suspect interviews are conducted in accordance with the *Canadian Charter of Rights and Freedoms (Charter)* and relevant case law.
- 1.4. To ensure Members are conducting suspect interviews when appropriate as part of professional and diligent investigations.

**2. SCOPE**

- 2.1. This policy applies to all Members.

**3. POLICY**

- 3.1. 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.

- 3.2. Providing the suspect an opportunity to make 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.
- 3.3. 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.
- 3.4. 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.
- 3.5. A thorough suspect interview may help to focus an investigation to directions that had not been previously realized or considered.
- 3.6. 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 tell the suspect they are free to leave at any time and 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.
- 3.7. If Crown Counsel has approved a charge, statements obtained by digital audio or digital audio and video recordings must be transcribed into a written format and form part of the police disclosure.

#### **4. PROCEDURE**

- 4.1. When preparing to conduct an adult suspect interview, Members must consider the following:
  - i. all suspect interviews must be audio and video recorded, where practicable;
  - ii. 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, cigarette 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; and

- iv. suspects must be advised of their rights under section 10(a) and 10(b) of the *Charter* and the Official Warning in language appropriate to their age and understanding.
- 4.2. When a Member tells a suspect of their rights under section 10(a) and 10(b) of the *Charter* and police warnings, the Member must:
- i. document in notes or their report the suspect's responses to the reading of their *Charter* rights using the suspect's own words whenever possible;
  - ii. document steps taken to ensure that the suspect understands their rights and warning;
  - iii. document any spontaneous utterances made by the suspect while in the presence of police;
  - iv. provide the suspect access to counsel in private without delay (unless the suspect has waived their right to counsel);
  - v. make all efforts to provide the suspect with access to legal counsel of choice (unless the suspect waives their right to counsel);
  - vi. for serious criminal charges, ensure the legal counsel advising the suspect is qualified to give legal advice in British Columbia; and
  - vii. document all efforts to contact legal counsel and note how long the accused spent on the telephone with their lawyer.
- 4.3. If a suspect, upon arrest, waives their right to 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.
- 4.4. 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 (*Regina v. Oickle*, 2000 SCC 38 (Supreme Court of Canada)).
- 4.5. A voluntary statement must be given by a person with a free and operating mind (*Regina v. Oickle*, 2000 SCC 38 (Supreme Court of Canada)).
- 4.6. Trickery and exaggeration techniques may be acceptable or permissible in obtaining statements, but the fabrication of evidence is not permitted. The courts will closely examine such techniques.
- 4.7. Statements that are perceived to be obtained by harassment, persistent demands, or failure to provide for human needs (washroom breaks, food, hydration, sleep) are likely to be inadmissible.
- 4.8. If the suspect has met other police officers or other people in positions of authority concerning the same investigation, Members must provide a Secondary Warning addressing any real or perceived threats or inducements.

- 4.9. Members must be careful regarding statements to the suspect about plea bargaining as that authority lies with the Crown Counsel, and not with police.
- 4.10. Members must not offer opinions about decisions which a judge might make regarding bail or sentencing or any other court process.
- 4.11. If a change in jeopardy occurs, where the suspect is now being investigated for different unrelated or more serious offences, Members must tell the suspect of the new offence(s) which are being investigated and must re-advise the suspect of their rights under section 10 (a) and 10(b) of the *Charter* and police warnings for the new offences.
- 4.12. Members may consider conducting a re-enactment as a tactic during an interview. Re-enactments must be audio and video recorded.
- 4.13. When investigating allegations such as sexual offences against children, child pornography, homicide, or any other emotionally charged crimes, Members must mitigate the risk of the suspect committing suicide or self harm following police interviews or interactions:
- i. Members must directly address any concerns surrounding the subject's frame of mind before the conclusion of a custodial or non-custodial interview;
  - ii. In the case of a custodial interview, if Members form the opinion that the suspect is suicidal, have the suspect placed on Suicide Watch in the Cellblock or apprehended under s. 28 of the *Mental Health Act* and take the person to a physician;
  - iii. in the case of a non-custodial interview, if Members form the opinion that the suspect is suicidal, Members must apprehend the person under section 28 of the *Mental Health Act* and take the person to a physician;
  - iv. if appropriate, Members may alternatively consider releasing a suspect into the care of a family member, close friend, advocate, or other support person, and obtaining the suspect's permission to discuss any safety concerns with them;
  - v. Members may also consider seizing any firearms or weapons in the subject's possession under the *Criminal Code*; and
  - vi. Members must, as applicable, inform the courts, sheriffs, bail supervisor, and pre-trial facilities regarding any safety concerns for the suspect while in custody.
- 4.14. Statements or waivers obtained from suspects under the influence of drugs or alcohol may not be admissible in court (*Regina v. Clarkson*, [1986] 1 S.C.R. 383 (Supreme Court of Canada)). A suspect's mental and physical state at the time a statement is provided will be subject to the same considerations.
- 4.15. Where a person is intoxicated, Members should delay interviewing the suspect until the suspect is sufficiently sober to properly understand and exercise or waive their rights to retain and instruct legal counsel.

4.16. If Members use any exhibits or props during an interview they must be retained and form part of the Report to Crown Counsel disclosure package.

## **APPENDIX A: DEFINITIONS**

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

“*SCC*” means the Supreme Court of Canada.

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

“*SPS*” means Surrey Police Service.

## **APPENDIX B: REFERENCES**

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

*Mental Health Act, R.S.B.C. 1996, c. 288*

*Regina v. Clarkson, [1986] 1 S.C.R. 383*

*Regina v. Oickle, 2000 SCC 38*