



Handout: Statements to the Police

Questioning suspects is a critical aspect of police investigation. When police are investigating a crime, they usually hope to get statements from the suspect that will further their investigation and help prove guilt at trial.

Everyone has the right to remain silent when questioned by the police, whether they are an adult or young person. The right to remain silent is a principle of fundamental justice and is protected under section 7 of the *Canadian Charter of Rights and Freedoms*. If a statement is to be used against someone in court, it must be shown that it was made voluntarily. Statements made because a person is afraid or intimidated by threats or because they were promised some advantage are not truly voluntary.

Because young people might be more easily intimidated by adults generally, and police and other authority figures in particular, the YCJA provides special protection to young persons regarding statements made to persons in authority. Statements made by young persons cannot be used as evidence against them unless:

- the statement is voluntary
- the police explain, in a way that the young person can understand, that:
 - the young person is under no obligation to say anything
 - any statements made can be used against the young person in proceedings against them
 - the young person has a right to talk to a parent or other adult and a lawyer before saying anything
 - the young person has the right to have a parent or other adult and a lawyer present when any statements are made
 - the young person has a reasonable opportunity to talk to a parent or other adult and a lawyer before making the statement
 - the young person has a reasonable opportunity to make the statement in the presence of the persons consulted

It is important to remember that while young persons have the right to remain silent, police have the right to ask questions. It is up to the young person to exercise their right to remain silent.

The right to remain silent does not include a right to lie. If a young person decides to lie rather than remain silent, they could face a separate criminal charge. As well, if a young person lies to the police about their age, leading the police to believe that the youth is 18 years of age or older, the police do not have to comply with all the special safeguards intended to protect young people.

If a youth wants to give up the right to remain silent or their right to talk to a parent and lawyer, or to have a parent and lawyer present, they must “waive” the right. A waiver must usually be in writing, or audiotaped or videotaped, and indicate that the young person has been informed of their rights and understands them and is making the statement voluntarily.

The special safeguards related to young persons and statements to police or persons in authority do not apply where a young person makes a spontaneous outburst before the police have a reasonable chance to follow the requirements set out above. For example, if the police encounter a couple of young persons with a stolen bike and one youth blurts out, “I did it – I stole the bike! I’m sorry!” the statement could be used against the youth even though the police didn’t have a chance to comply with the requirements under the YCJA.

