



**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
POLICE SERVICE**

STATEMENTS

Effective Date: September 12, 2005

POLICY

1. Members of the South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) will obtain statements in a lawful manner.
2. A statement made by an accused person to the police, or to other persons in authority, is subject to a “trial within a trial” termed “voire dire”, and the onus is on the Crown to prove the statement was made voluntarily.
3. Except in unusual circumstances, interviews of accused persons, complainants, victims and witnesses will be conducted in person.
4. Statements provided by accused persons, complainants, victims and witnesses will be in writing.
5. Statements obtained by video or audio will be transcribed into written format.

REASON FOR POLICY

6. To provide direction for the appropriate manner for conducting interviews and for the format of subsequently obtained statements.

PROCEDURES

Admissibility

7. When giving evidence regarding statements by accused persons, a Member must not refer to such statement as an “admission” or “confession”; the term “statement” must be used.
8. A statement may be admissible although given orally.

9. Some rules affecting the admissibility of statements are:
1. **force:** there must be no force applied or threatened,
 2. **favour:** there must be no favour given or promised,
 3. **inducement:** there must be no inducement intended,
 4. **warning:** if a statement is made after arrest, it should be preceded by the appropriate warnings,
 5. **cross-examination:** should be kept to a minimum,
 6. **number present:** there should be two Members present for corroboration; any greater number may be adjudged to be a coercive factor,
 7. **identification:** if the statement is made after arrest, the police must identify themselves and warn the accused, and
 8. **charge:** the charge(s) laid must be made known to the accused, and
 9. **interruptions:** the accused and the police should not be interrupted or separated during the interview at which a statement is made.

[See also: OD170 – Police Warnings]

10. Inviting a suspect to the police facility even though a formal arrest is not contemplated may render a statement inadmissible.
11. The Member should be aware that the admissibility of the statement may be impacted by the environment where the statement is taken.

Investigative Stage

12. When a Member is investigating a crime, there is no objection to the Member questioning any person (suspected or not) from whom they think useful information may be obtained:
 1. if the person questioned is not detained in any manner by the police (or other person in authority), and
 2. if the investigating Member has not made up their mind to arrest and/or charge the person.
13. A statement obtained during the investigative stage, even though no warning preceded the statement, may be admissible if the voluntary nature of the statement is proved.
14. Immediately after arrest, on the basis of:
 1. a charge already laid or to be laid,
 2. when a person is in custody or is detained by police (or other persons in authority) in connection with an offence, or
 3. when a person is transported by police to the police facility for questioning as a suspected offender,

the accused must be advised of:

4. ss. 10(a) and 10(b) of the Canadian Charter of Rights and Freedoms, and
5. how to obtain legal aid.

15. A statement, electronically or photographically recorded, by such instruments as a tape or wire recorder or on a moving picture camera and sound recorder, may be admissible in the original recorded form.
16. Written notes of all circumstances during the taking of a statement from an accused by the police will be made by ALL Members present, and they will be made when the statement is taken, or as soon as possible afterwards.

Court

17. The original written statement and/or Police notes will be kept available for presentation in court; the notes will include:
 1. time of commencement,
 2. all conversation and interruptions, and
 3. time of termination.

One Charge Only

18. Although a statement is given on one charge, the accused must be told that a statement need not be given on another charge. If another charge is laid, before it is laid it must be preceded by the appropriate warning.

Other Accused

19. When two or more persons are charged with the same offence, and statements are given separately by those charged, the statements must not be read to the other persons charged. However, each person charged can be given a copy of such statements, without anything being said or done to invite replies.
20. A statement made by one accused is not admissible against another accused; however, an exception is conspiracy cases, when statements made during the conspiracy, but not after its conclusion, may be admissible.

Exception – Spontaneous Statement

21. A statement made before there was time to give an appropriate warning may be admissible, but a warning must be given as soon as possible.

Subsequent Statement

22. When a statement is considered by the police to be inadmissible, and a subsequent statement is taken, the appropriate warning must precede the subsequent statement, and the first statement must not be used as an inducement to obtain a subsequent statement.
23. Possible reasons for inadmissibility include:
 1. illness,
 2. influence of alcohol or drugs, and

3. lack of warning or other cause.

Dying Declaration

24. When the death of a person is the subject of a criminal charge, the declaration of a person about to die, concerning the cause and circumstances of the death in the charge, are admissible as evidence for or against the accused. If the person who was about to die made the declaration in full consciousness and the belief of approaching death, without hope; no particular form is required, it may not be in writing, and may be received by any person.

YOUNG PERSONS

25. If a young person wishes to make a statement, s.146 of the Youth Criminal Justice Act (YCJA) sets out the guidelines to be followed.
26. No oral or written statement made by a young person, who is less than eighteen years old, to a Member or other person who is, in law, a person in authority, is admissible against the young person unless the statement is voluntary and it is explained, in language appropriate to their age and understanding, that:
 1. there is no obligation to give a statement,
 2. any statement given may be used as evidence in proceeding against them,
 3. the young person has a right to consult counsel and a parent, or an adult relative or any other appropriate adult of their choice (except a co-accused, or person under investigation, for the same offence), in private, and
 4. the young person has a right to have the consulted person present during the making of a statement.
27. Members must give a young person a reasonable opportunity to consult the person chosen and allow a reasonable time period for that person to be present.

[See also: OD180 – Young Persons]

Exception – Waiver of Right

28. A young person may waive the right to counsel or to have an adult person present.
 1. The young person must be aware of the rights they are waiving and the consequences of waiving those rights.
29. Any waiver must:
 1. be in writing, or recorded on audio tape as well as recorded on video tape,
 2. stipulate that the young person has been informed of, and understands, that the right has been waived,
 3. be signed by the young person.

Spontaneous Statement

30. S. 146(1) YCJA allows the admissibility of oral statements where they are made spontaneously by the young person to a peace officer or any other person in authority before that person has had a reasonable opportunity to comply with requirements relating to statements. Under the YCJA it is paramount that young person be given s. 10 warning throughout all proceedings.

STUDENT INTERVIEWS IN SCHOOL

31. In the event a Member must interview a young person at school, the following statement of policy from the Ministry of Education must be strictly adhered to:
1. under normal circumstances, no student should be formally interviewed at school by any law enforcement personnel.
 2. if a young person must be interviewed at school, it should be considered essential that either a parent or guardian be present at the interview.
 3. in no case will a teacher or principal assume a parental role at an interview.
 4. under exceptional circumstances where time constraints involving a serious emergent situation prevent a parent or guardian being present, a young person may be interviewed as long as the young person's legal rights are not compromised and the information obtained is considered essential for immediate resolution of the emergent situation.

SUSPECT/CHARGED WRITTEN STATEMENTS

32. The young person must be aware of the rights they are waiving and the consequences of waiving those rights.
33. The appropriate warnings, right to counsel, and right to Duty Counsel will be read to the suspect/charged person prior to the written statement.
34. The written statement caution must be used when taking a statement from an accused person.
35. The form used for the written statement must contain the caution preamble and must be signed by the accused.
36. The following must be used in the preamble to a written statement:

“I have been advised by (investigating Member) that I am not obliged to say anything but anything I do say may be given in evidence. I understand the meaning of the foregoing and I choose to make the following statement.”

(Signature of the accused)

37. The accused person and the investigating Member must sign at the bottom of each page of the written statement and at the end of the statement.

WITNESS/VICTIM STATEMENTS

38. Written statements will be obtained from witnesses and victims (failure to do so may result in Crown declining to proceed with a charge).
39. A statement made by a witness in the presence of the accused may be admissible if the accused by action, word, or demeanor acknowledges the statement as being true.
40. The above is not intended to preclude Members from obtaining written statements in other incidents or from additional persons where they consider appropriate.

INTERPRETER SERVICES

41. When interviewing victims, accused persons, or vital witnesses who cannot communicate effectively because of a physical impairment or unfamiliarity with the English language, all statements must be obtained in the presence of a qualified interpreter; relatives or friends of the witnesses should not be used as interpreters.
42. Engagement of the services of an interpreter is to be authorized by a Supervisor. Certified interpreters must be obtained from the SCBCTAPS Telephone Directory.
43. The interpreter should verify the accuracy, and sign each page, of the transcription, in the presence of the investigating Member.