



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

POLICE WARNINGS

Effective Date: May 9, 2005
Revised: September 8, 2009

POLICY

1. All persons must be advised of their Charter rights promptly upon arrest or detention.
2. All arrested or detained persons must be cautioned by means of the appropriate police warning.

REASON FOR POLICY

3. To ensure that police warnings are given compliant with all legal requirements, including the Canadian Charter of Rights and Freedoms.

PROCEDURES

Charges, Warnings and Statements

4. When a South Coast British Columbia Transportation Authority Police Service (SCBCTAPS) Member is investigating a crime, it is appropriate to question any person (suspected or not) from whom the Member thinks useful information may be obtained.
5. If the person questioned is not under arrest or detention, then a statement obtained during the investigative stage, if the voluntary circumstances are proved, may be admissible, although no warning preceded the statement.
6. In circumstances other than these, Members must use the required Police Warnings where appropriate.

Charter of Rights

7. A person must be advised according to Section 10(a) and 10(b) of the Canadian Charter of Rights and Freedoms promptly upon arrest or detention.

Section 10(a)

"I am arresting/detaining you for: _____ (State reason for arrest/detention, including the offence and provide known information about the offence, including date and place.)"

Section 10(b)

"It is my duty to inform you that you have the right to retain and instruct Counsel in private, without delay. You may call any lawyer you want.

There is a 24 hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the Legal Aid Plan to you.

If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number.

Do you understand?

Do you want to call a lawyer?"

Supplementary Charter Warning

8. If an arrested or detained person initially indicated that he or she wished to contact legal counsel and then subsequently indicates that he or she no longer wishes to exercise the right to counsel, read the following additional charter warning.

"You have the right to a reasonable opportunity to contact counsel. I am obliged not to take a statement from you or ask you to participate in any process which could provide incriminating evidence until you are certain about whether or not you want to exercise this right. Do you understand? What do you wish to do?"

Member's Notes

9. For completeness and to assist accurate recollection, Members should include the following information in their notes and in all Reports To Crown Counsel on the matter:
1. which Member read the rights to the person under arrest or detention,
 2. where the rights were read to the person under arrest or detention,
 3. at what time the rights were read to the person under arrest or detention,
 4. identification of all Members present when the rights were read to the person under arrest or detention, and
 5. all responses verbal or non-verbal of the person under arrest or detention.
10. Precise and detailed notes must be taken in the issue notebook, as they may be crucial at a later date to justifying the actions of the Member.
11. A statement, electronically recorded, may be admissible in the initially recorded form.

Official Warning

12. The purpose of giving official warning is to help establish that a statement was given voluntarily.
13. The following must be used as the official warning:

"You are not obliged to say anything, but anything you do say may be given in evidence."

Secondary Warning

14. The purpose of giving a secondary warning is to remove any prior inducement that may have been made by a police officer. This warning should be used anytime an accused has contact with a police officer from arrest to interview.

"(Name), you are detained with respect to: (reason for detainment). If you have spoken to any police officer (including myself) with respect to this matter, who has offered you any hope of advantage or suggested any fear of prejudice should you speak or refuse to speak with me (us) at this time, it is my duty to warn you that no such offer or suggestion can be of any effect and must not influence you or make you feel compelled to say anything to me (us) for any reason, but anything you do say may be used in evidence."

Written Statement Caution

15. To be used when taking a written statement from the accused. The written statement caution should be included in the conversation leading up to the accused making a written statement. The following written statement caution should be used:

"I have been advised by: (Investigator) 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."

NOTE: *The accused and the investigating Members should sign at the bottom of each page of the statement and at the end of the statement.*

Stolen Property

16. In the absence of a reasonable explanation, the person should be arrested and then told he/she will be charged in connection with the Possession of Stolen Property and given the "official" warning.

"I am a police officer. I believe this/these (identify property) is/are stolen. I am asking you for an explanation of how it/they came into your possession."

NOTE: *Whenever person(s) are arrested for Possession of Stolen Property Under \$5000, consideration must be given to the Bail Reform Act requirements under Section 497 CCC regarding release on an appearance notice.*

Housebreaking Instruments

17. In the absence of a reasonable explanation, the suspect should be arrested, told he/she will be charged with possession of housebreaking instruments and given the "official" warning.

"I am a police officer. You have in your possession instruments which may be used for (housebreaking, vault breaking, breaking into a coin operated device, etc.) I am asking you for an explanation."

Explosives

18. In the absence of a reasonable explanation, the suspect should be arrested, told he/she will be charged with possession of explosives and given the "official" warning.

"I am a police officer. You have in your possession an explosive substance. I am asking you for an explanation."

Obstruction

19. The following warning should be given and, if the person continues to obstruct, he/she should be arrested and charged with obstructing a peace officer:

"I am a police officer. I am (explain duty). If you continue to obstruct me, I will arrest you and charge you with obstructing a police officer."

Controlled Substances

20. The investigating member should show all controlled substance exhibits to all the accused involved in the case, remembering to keep them at a discrete distance, and then give this warning:

"I suspect this article contains (type of drug) and it will be held for analysis. You are going to be charged with (offence). You are not obliged to say anything, but anything you do say may be given in evidence."

Approved Screening Device (ASD) Demand

21. The following warning should be given:

"In accordance with the provisions of the Criminal Code, I hereby demand that you provide a sample of your breath, forthwith, suitable for analysis using an approved screening device."

**12 Hour Licence Suspension
- Motor Vehicle Act Section 90.3**

22. The following warning should be given:

“I have reasonable and probable grounds to believe

(1) you have alcohol in your body (or)

(2) you have failed or refused to comply with the demand to provide a sample of your breath that is necessary to enable a proper analysis of your breath to be made by means of an approved screening device.

I therefore direct you to surrender your driver’s licence. Your licence to drive is now suspended for a period of 12 hours from this time and date.”

**24 Hour Roadside Prohibition
- Motor Vehicle Act Section 215**

23. The following warning should be given:

"I have reasonable and probable grounds to believe that your ability to drive a motor vehicle is affected by alcohol (or by drug), and I therefore direct you to surrender your driver's licence.

You are now prohibited from a driving a motor vehicle for a period of 24 hours from this time and date.

(For alcohol, if breath test not already administered)

However, if you do not accept this prohibition, you have a right to forthwith request a blood alcohol test to determine your blood alcohol level. In the event the test indicates that your blood alcohol level does not exceed 50 milligrams of alcohol in 100 millilitres of blood, this prohibition from driving is terminated.

(For drug)

However, if you do not accept this prohibition, you have a right to attempt to satisfy a peace officer having charge of this matter that your ability to drive a motor vehicle is not affected by a drug other than alcohol, and if the peace officer is so satisfied this prohibition from driving is terminated.”

Compulsory Samples or Tests

24. There must be a clear request to the driver when demanding breath, blood or urine samples, or physical coordination tests. The investigating member shall use the following when giving the demand:

Breath Demand

"I have reasonable and probable grounds to believe that you are committing, or within the preceding three hours have, as a result of the consumption of alcohol, committed an offence under Section 253 of the Criminal Code, and I hereby demand that you provide now, or as soon as practicable, such samples of your breath as are necessary to enable a proper analysis to be made to determine the concentration, if any, of alcohol in your blood and to accompany me for the purpose of enabling such samples to be taken."

Blood Demand

"I have reasonable and probable grounds to believe that you are committing, or within the preceding three hours have, as a result of the consumption of alcohol, committed an offence under Section 253 of the Criminal Code, and I hereby demand that you provide now, or as soon as practicable, such samples of your blood as are necessary to enable a proper analysis to be made to determine the concentration, if any, of alcohol in your blood. Samples of your blood will be taken by, or under the direction of a qualified medical practitioner who is satisfied that the taking of those samples will not endanger you or your health."

Standard Field Sobriety Tests (SFST) Demand **Section 254(2) CCC**

"In accordance with the provisions of the Criminal Code, I demand that you perform forthwith physical coordination tests and to accompany me for the purpose of performing such tests. Do you understand?"

Drug Recognition Expert (DRE) Demand **Section 254(3.1) CCC**

"I demand that you submit as soon as practicable, to an evaluation conducted by an evaluation officer to determine whether your ability to operate a motor vehicle is impaired by drug or by a combination of drug and alcohol, and that you accompany me for this purpose. Do you understand?"

Evaluator Demands**Section 254(3.4) CCC/ Bodily Substances****(1) (Urine or oral fluid – Section 3.4(a))**

“I demand that you provide as soon as practicable, a sample of your urine (OR oral fluid) that will enable a proper analysis to be made to determine whether you have a drug in your body. Do you understand?”

(2) (Blood – Section 245(3.4)(b))

“I demand that you provide as soon as practicable, such samples of your blood that will enable a proper analysis to be made to determine whether you have a drug in your body. Blood samples will only be taken by or under the direction of a qualified medical practitioner and if the qualified medical practitioner is satisfied that the taking of the samples will not endanger your life or health. Do you understand?”

Drug Recognition Expert – Approved Instrument Demand**Section 245(3.3) CCC**

“As an evaluating officer, I demand that you provide as soon as practicable, a sample of your breath that, in my opinion, will enable proper analysis to be made by means of an approved instrument. Do you understand?”