



Attending police interviews with an under 18 year old: a guide for youth workers

1 Why do the police want you there?

There are several reasons why the police may ask you to be present while they are interviewing a suspect who is under 18.

1.1 Rights of suspects detained at police station

Police may arrest a person on a suspicion that they have committed an offence, and then detain the suspect at a police station for further investigation. Police must follow certain procedures and accord the suspect certain rights, which are set out in Part 10A of the *Crimes Act 1900 (NSW)* and the *Crimes (Detention After Arrest) Regulation*. [See separate handout on *Police Powers and Your Rights*].

A child is a “vulnerable person” and is entitled to have a support person present at the police station during any investigative procedure (interview, search, etc). **A child cannot waive their right to a support person.**

1.2 Admissions for purposes of *Young Offenders Act*

Instead of taking a child to court, the police may instead caution them or refer them to a Youth Justice Conference under the *Young Offenders Act 1997 (NSW)*. [See separate handout on *The Young Offenders Act*.]

To be eligible for one of these options, **the child must admit their guilt in the presence of an appropriate adult**. This will usually be a parent or guardian, or someone present with the consent of the parent or guardian. A child aged 16 or over may choose who they wish to be present.

It may be in a child’s interest to admit to the offence if a caution or a conference is a real possibility. However, if the child claims to be not guilty, they should not admit to the offence and should not accept a caution or conference.

1.3 Admissibility in court of statements made to police

In court proceedings against a child, police may rely on statements made by the child as evidence of the child’s guilt. Many convictions come from confessions made to the police.

Section 13 of the *Children (Criminal Proceedings) Act 1987 (NSW)* says that **a statement made to police by a person under 18 is not admissible as evidence in court unless an appropriate adult was present when the statement was made**. The categories of adults who may be present are much the same as for the *Young Offenders Act*.

The court has a discretion to allow in a statement made without an adult present if there were very good reasons why police couldn’t get an adult there.

The purpose of the section is to protect children from their own immaturity, not just from police impropriety. Courts have said that the role of the adult is not confined to being a passive observer, but includes actively protecting the rights of the child.

Police can and do interview children without an adult present, often getting the child to make admissions. After such an interview, police sometimes re-interview the child in the presence of an adult, saying “well, you’ve already told us”. A child who doesn’t understand their rights properly may think they have no option but to confirm the admissions they have already made. Be wary of this!

2 Should you go to the police station? What is your role?

In most situations, the child can only be helped by your presence at the police station. Police are more likely to treat the child fairly and respectfully if you are there. **You have an important role to play in ensuring the child understands their rights and is able to assert them.**

2.1 Legal rights and legal advice

One of the most important rights is the right to silence - that is, the right not to participate in an interview. **The child is never obliged to answer questions**, even if you or a lawyer are there or the interview is videotaped. There are a few exceptions such as motor accident matters (where you must give the name and address of the driver if there has been an accident or traffic offence), drug smuggling matters (where you must supply all sorts of information), or situations where police are trying to serve a fine default warrant or think you are a witness to a serious offence (in which case you have to give your name and address).

The young person has a right to obtain legal advice, and you should help them to obtain it. In most cases this will involve ringing the **Legal Aid Hotline for Under 18s on 1800 10 18 10**. The Hotline is staffed by specialist children’s solicitors and is open from 9am to midnight on weekdays and 24 hours on weekends.

Legal advice is important. A lawyer can advise a child about whether it’s a good idea to answer questions in a particular situation. It is usually in the child’s interests to tell the police their correct name and address but often it is not in the child’s interests to answer any other questions. A court is not allowed to draw an adverse inference from silence - meaning the court won’t think the child is guilty just because she or he refused to answer questions. However, as mentioned before, if there is a possibility of a caution or conference under the *Young Offenders Act*, a child who is guilty of an offence may be well advised to admit it.

If you can’t get on to the Hotline or another legal service (such as the Shopfront or the Aboriginal Legal Service), it is appropriate and important to explain to the child their right to silence. If you have a very good understanding of cautions, conferencing and court procedure, you can give them some basic information about the different procedures. **However, don’t try to give the child legal advice - you are not qualified to give it!** In particular, don’t attempt to answer questions from the child like “what sentence will I get if I go to court?”.

2.2 Other roles

Other important roles you may play include:

- alerting police if the child has an intellectual disability or mental health problem
- helping to arrange accommodation for the child (police sometimes won't release a child on bail unless satisfied they have somewhere to go)
- helping to contact a relative or friend (especially if the police require someone to sign the child out on bail)

3 On arrival at the police station

If you can go to the police station, try to get there as quickly as possible. Take a pen and paper with you.

On arrival, ask to see the child in private straight away. **A suspect has a right to talk to their support person in private.** If you don't already know the child, introduce yourself and explain why you are there.

You should ask the police if the child is under arrest and, if so, what for. **The child has a right to know why she or he is under arrest.** If the child is not arrested, you should advise the child that she or he may leave the police station (note, though, that this will often prompt the police to arrest the child).

You should then make sure the **child understands that she or he has the right not to answer any questions.** If possible, advise the child not to answer questions, make a statement or sign anything until he or she has had legal advice.

You should then **help the child to obtain legal advice** if they haven't already done so. Details of the Legal Aid Hotline have already been provided above.

4 How can you assist the young person without going to the police station?

The child has a right to speak to a support person by telephone from the police station, and (if practicable) the police have to provide the facilities for this phone conversation to be conducted in private.

If you can't get to the police station there are still a number of things you can do to assist the young person. These include speaking to the young person on the phone about their rights, helping them obtain legal advice, raising any concerns you have with the police, and helping to find an appropriate support person who can attend the police station.

5 Should you agree to sit in on a police interview?

You should be wary of agreeing to sit in on police interviews, but this does not mean you should never do it!

On the one hand, your presence may allow the police to use a child's statement against them in court. However, if you refuse to participate, the police may call in an adult who has no experience or interest in protecting the rights of children. Or, if police make reasonable efforts but are unable to get an adult to attend, the magistrate may decide to allow the child's statement to be used in court anyway.

Also, if a caution or conference is a real possibility, it may be in a child's interests to admit to the offence in the presence of an adult.

The police are also more likely to conduct the interview fairly, and in a way that is less intimidating for the child, if there is an adult present.

It is important to note that the child has a right to silence and does not have to participate in an interview! Sometimes your role will include telling the police that the child does not wish to be interviewed. Police will sometimes tell the child that they must go on audio and video tape saying they do not wish to answer any questions. The person does not have to do this, but usually there is no harm in doing so, as long as police don't use it as an opportunity to slip in a few inappropriate questions.

6 The interview

If the child takes part in an interview, or any conversation with police about the alleged offence, you should take notes of what is said. If there is any dispute about what was said (inside or outside the interview room) you may be called upon to give evidence about it at a later stage.

Where appropriate, you should feel free to intervene in the interview, for example, if you think the child does not understand a question or is being pressured to answer questions which he or she does not wish to answer. Some police officers will try to stop you from talking at all - this is inappropriate and you should be prepared to stand up for yourself and the child if this happens. Note, though, you are not allowed to answer questions for the child or interfere unreasonably, so take care in intervening.

The child has the right to terminate the interview at any time. If you sense that the child no longer wishes to answer questions, you may need to ask them if they want to continue with the interview. If the answer is "no" or "not really" then you should ask the police politely but firmly to terminate the interview.

At the end of an electronically recorded interview, a senior officer at the station who is not connected to the investigation will ask the child some questions. These are to ensure that the interview was properly conducted. If you feel the police have made a threat, promise or inducement to influence the child to answer questions, it is important to speak now and to have your answer recorded.

7 After the interview

If the interview is electronically-recorded, the child will be given a copy of the tape at the end of the interview. If the child is likely to lose the tape, you might offer to take it for safe keeping. The police must also make the video available for viewing by the child or their lawyer on request.

Sometimes, instead of tape-recording an interview, police will type up an interview or write it in their notebook and ask the child to sign the record of interview. The child does not have to sign the record of interview, and should not do so unless it is accurate! If the child wants to sign the record of interview, make sure that the child **reads the record of interview carefully (or, if literacy is a problem, read it to the child) before signing it.**

You should also read the record of interview and make sure it agrees with your notes and recollection. You should only sign the record of interview yourself if you are certain it is

accurate, the child agrees it's accurate, and you are satisfied that the answers were given without threat, promise or inducement.

You should ensure the child gets a copy of the record of interview and ask for a copy for yourself.

8 What next?

If the child is to be dealt with under the *Young Offenders Act*, he or she will be released and told to come back on a certain date for a caution, or to wait to be contacted by a conference administrator.

If the child has to go to court, police may give the child a **court attendance notice**, tell the child that he or she will be getting a **summons** (this will usually arrive a few weeks later), or charge the child.

If charged, the child will be taken to the charge room, and you probably won't be allowed to accompany the child there.

If charged, the child will probably be released on bail from the police station. If not, they will be taken to a Children's Court the same day or the next day to apply for bail. Beware of arresting or investigating police who tell you there will be no problem with bail. The decision is not made by them but by a senior officer, who may well disagree with them. [See separate handout on *Bail*.]

9 If the child is harassed or mistreated

If the child is harassed or mistreated, keep a record of the police officers' names and police identification.

If the child is assaulted and has sustained injuries, ask the police to take the child to hospital, or, if the injuries don't need urgent treatment, take the child to see a doctor after release from the police station. Have photos taken as soon as possible.

You should then be prepared to assist the child to lodge a complaint, or to seek legal advice about doing so.

10 Legal representation

If the child has to go to court, you should help her or him get legal assistance. The Legal Aid Children's Legal Service provides duty solicitors at Children's Courts all over the state. These are either Legal Aid employees or private solicitors on a roster.

It's often a good idea for the child to get legal advice before their court date, especially if they have never been to court before and don't know what to expect. Legal advice is also a good idea for a child who has been referred to a caution or conference.

The following services provide specialist legal advice and representation for children:

- Legal Aid Children's Legal Service - Hotline 1800 10 18 10.
- Aboriginal Legal Service (Redfern) - (02) 9318 2122
- Marrickville Legal Centre - (02) 9559 2899
- Inner City Legal Centre (Darlinghurst) - (02) 9332 1966
- Shopfront Youth Legal Centre (Darlinghurst) - (02) 9360 1847

11 What about people who are 18 or over?

Much of the above information is also relevant to adults who are detained at the police station.

Unlike children, adults do not have an automatic right to have a support person present at the police station, and there is no requirement for someone to sit in on the police interview. However, please note the following:

- Adults who are indigenous, of non-English speaking background, or have a mental illness or disability, are classed as “vulnerable persons” and are entitled to have a support person present.
- Anyone who is detained by police for the purpose of investigation has the right to contact a friend or relative (unless police believe this would result in the destruction of evidence, etc), and a lawyer of their choice. These people may attend the police station and speak to the suspect in private.
- You can and should help an adult client to get legal advice. Unfortunately there is no Legal Aid Hotline for over 18s, but Legal Aid may be able to assist, especially if the matter is serious. Otherwise, a service like the Aboriginal Legal Service or the Shopfront may be able to give telephone advice and/or attend the police station.
- Even though there is no requirement for you to be present during an interview, police may allow you to sit in.

Shopfront Youth Legal Centre Updated August 2002

The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army.

This document was last updated in August 2002 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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