



IP20

STATEMENTS

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POLICY

- 1. Members of the Delta Police Department (Department) 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 and in compliance with the requirements of the Canadian Charter of Rights and Freedoms.
3. Except in the most unusual circumstances, interviews of accused persons, complainants, victims and witnesses shall be conducted in person.

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4. Statements can be provided by accused persons, complainants, victims and witnesses in writing for less serious offences.
5. Statements obtained by digital audio or digital audio and video recordings shall be transcribed into a written format and form part of the police disclosure.
6. A proofed and edited copy of the transcription shall be forwarded to Crown Counsel for disclosure. As a result of R v. Jordan, in most instances, Crown will not approve charges without first receiving proofed transcripts as part of the Crown disclosure.

REASON FOR POLICY

7. To provide direction for the appropriate manner for conducting interviews and the desired format to ensure admissibility of the statement in court.

RELATED POLICIES

- IC30 – Detention, Arrest & Post-Arrest Processing
- IC60 – Young Persons
- IR20 – Notetaking & Notes Management
- IM10 – Criminal Investigations

PROCEDURES

Voluntary Statements

8. Any statements from accused adults should meet the requirements of section 10(a) & (b) of the Charter and must be given voluntarily.
9. The current rule relevant to voluntary statement states:

"Any statement, incriminating or not, made by a person charged with any offence, federal, provincial, or municipal, made to anyone whom the accused believes to be a person in authority, must be proved to be voluntarily given before it will be allowed in as evidence."
10. 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.
11. An oral statement may be admissible although not digitally recorded.



12. Some rules affecting the admissibility of statements are:
- a) force - there must be no force applied or threatened;
 - b) favour - there must be no favour given or promised;
 - c) inducement - there must be no inducement;
 - d) plainclothes members and uniformed members must clearly identify themselves and provide the appropriate warning to the accused, if any statement is taken, after an arrest; and
 - e) reason for arrest/jeopardy or proposed charges – the reason for arrest and jeopardy of the accused must be clearly explained.
13. Inviting a suspect to the police station even though a formal arrest is not contemplated, may render a statement inadmissible. Appropriate warnings and explanations will be required to make such a statement court defensible.

Person in Authority

14. The voluntary rule of admissibility applies only when the statement is provided to a person in authority. Of paramount importance in understanding the term 'person in authority' is that the accused must know, or believe, that the person they are speaking with is in a position to fulfill any promise or threat directed at them. The accused's belief is the critical issue, even if the accused's beliefs are unfounded.

Investigative Stage

15. When a member is investigating a crime, they may question any person (suspected or not) from whom they think useful information may be obtained:
- a) if the person questioned is not detained in any manner by the police (or other person in authority); and
 - b) if the investigating member has not made up their mind to arrest and/or charge the person.
16. 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.



17. Immediately after arrest, or upon detention, on the basis of:
- a) a charge already laid or to be laid;
 - b) when a person is in custody or is detained by police (or other persons in authority) in connection with an offence; or
 - c) when a person is transported by police to the police station for questioning as a suspected offender,
- the accused must be advised of:
- d) the Official police warning “you are not obliged to say anything, but anything you do say may be given in evidence”;
 - e) section 10(a) and 10(b) of the Canadian Charter of Rights and Freedoms; and
 - f) how to obtain legal aid. The member shall assist the accused in exercising these privileges.
18. For serious criminal charges the member shall ensure the accused’s request to duty counsel goes to the duty counsel supervisor in order to comply with requirements arising from Regina v. Osmond 2007 BCCA.
19. Written notes of all circumstances during the taking of a statement from an accused by the police must be made by ALL Members present, and they must be made when the statement is taken, or as soon as possible afterwards.

Court

20. The original statement and/or Police notes must be kept available for presentation in court; the notes must include:
- a) members present;
 - b) time of commencement;
 - c) all conversations with the accused and interruptions; and
 - d) time of termination.



Co-Accused

21. The statement of one accused is not admissible against a co-accused unless they are tried separately. Statements of one accused can only be used as an investigative aid in an interview. Members should consult with a supervisor prior to employing this practice.
22. A statement made by one accused is not admissible against another accused; however, an exception is in conspiracy cases, when statements made during the conspiracy, but not after its conclusion, may be admissible.

Exception – Spontaneous Statement

23. 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.

Secondary Warning

24. Members should provide a secondary warning where the accused has had contact with additional police officers or persons in authority.

Dying Declaration

25. 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 Offenders

26. Section 146 of the Youth Criminal Justice Act sets out the guidelines to be followed.
27. No oral or written statement given to a Member or other person who is, in law, a person in authority is admissible against the young person unless it is explained, in language appropriate to their age and understanding, that:
 - a) there is no obligation to give a statement;
 - b) any statement given may be used as evidence in proceeding against them;



- c) the young person has a right to consult counsel, or a parent, or an adult relative or any other appropriate adult of their choice, in private; and
 - d) the young person has a right to have the consulted person present during the making of a statement.
28. 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.

Exception – Waiver of Right

29. A young person may waive the right to counsel or to have an adult person present. The young person must be aware of the rights they are waiving and the consequences of waiving those rights.
30. Any waiver shall:
- a) be in writing, or electronically recorded;
 - b) stipulate that the young person has been told of, and understands, the right has been waived; and
 - c) be signed by the young person.

Spontaneous Statement

31. Section 146 (1) allows the admissibility of oral statements where they are made spontaneously by the young person to a Member or any other person in authority before the person has had reasonable opportunity to comply with requirements relating to statements. Under the Youth Criminal Justice Act it is paramount that young person be given Section 10 warning throughout all proceedings.

Student Interviews in School

32. In the event a member must interview a young person at school, the following statement of policy from the Ministry of Education shall be strictly adhered to:
- a) under normal circumstances, no student should be formally interviewed at school by any law enforcement personnel;



- b) 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;
- c) in no case shall a teacher or principal assume a parental role at an interview; and
- d) 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

- 33. The young person must be aware of the rights they are waiving and the consequences of waiving those rights.
- 34. The appropriate warnings, right to counsel, and right to Duty Counsel will be read to the suspect/charged person prior to the written statement.
- 35. The written statement caution must be used when taking a statement from an accused person.
- 36. The form used for the written statement must contain the caution preamble and must be signed by the accused.
- 37. 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)

- 38. 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.

Statement of Accused Person Impaired by Drugs or Alcohol

- 39. Statements obtained by the police from suspects under the influence of drugs or alcohol may not be admissible in court. R. V. Clarkson, Supreme Court, 1986 requires the investigator to bear the following in mind:



- a) the degree of the suspect's drunkenness must be low enough that they are capable of appreciating the consequences of giving a statement. The person must understand that what they say will be used as evidence in proceedings against them. The Clarkson case defines this rule so narrowly, however, that whenever possible it is considered best to interview only sober suspects. Should circumstances dictate the immediate taking of a statement from an intoxicated person, very careful observations of the physical and psychological state must be made for a subsequent scrutiny by the court. If possible, but only upon consent, a breathalyzer analysis should be performed to serve as additional illustration of the suspect's mental condition;
 - b) if an intoxicated suspect waives their charter right to legal counsel before giving a statement, the test of validity of such waiver will be the strict 'awareness of consequences' test. It will have to be shown clearly and unequivocally that the suspect was waiving the procedural safeguards and was doing so with full knowledge of the rights the procedure was enacted to protect and of the effect the waiver will have on these rights and processes; and
 - c) finally, any doubt in the judge's mind about either of the above tests will most likely, pursuant to Section 24(2) of the Charter, result in the statement being ruled inadmissible.
40. The effects of drugs and mental and physical illness on a statement will likely be subject to the same considerations.

Witness/Victim Statements

- 41. Written or digitally audio or digitally audio and video recorded statements will be obtained from witnesses and victims (failure to do so may result in Crown declining to proceed with a charge).
- 42. 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.
- 43. 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

44. 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 or a qualified police officer. Relatives or friends of the witnesses should not be used as interpreters.
45. Engagement of the services of an interpreter is to be authorized by a Supervisor. Certified interpreters must be obtained from the Service Directory.
46. The most qualified person should verify the accuracy, of the statement upon receipt from the transcription unit.

*Revised Dates:
15 October 2012
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