



## Parents Role At Police Station When Their Child Is Brought In For Questioning By Police

This fact sheet is for adults who are looking after a young person (under 18) who is accused of a crime and in police custody.

A Responsible Adult in relation to a young person (under 18) means a parent, guardian or other person who has the responsibility for the day to day care of the young person.

Young people (under 18) have additional rights when arrested in custody that adults do not have, as outlined below and in our fact sheet 'Police powers: "Arrest"' also our fact sheet "Police Questioning About a Crime".

### Police To Notify The Responsible Adult When They Apprehend A Young Person

If a young person has been arrested and taken into custody the Police should notify the young person's Responsible Adult as soon as practicable and keep them informed as to the whereabouts of the young person.

The degree of responsibility required of the Responsible Adult will depend on the independence and maturity of the young person such as whether they are employed or living independently and how close in age they are to 18.

### Police To Notify The Responsible Adult Of Their Intention To Question A Young Person

If Police want to ask a young person who has been arrested questions about an offence, the Police must ensure that a Responsible Adult has received notice of the intention to question the young person. (This does not apply to any questions that the Police are required to ask by written law, e.g. whether they were the driver of a motor vehicle or the young person's name, address and date of birth.)

### Police To Notify The Responsible Adult Of Their Intention To Charge A Young Person

If the Police charge a young person with an offence the Police must give the Responsible Adult notice of the intention to lay the charge as soon as reasonably practicable.

The notice given to the Responsible Adult will usually be by telephone or in person but can be by mail sent to the address of the Responsible Adult. If the Responsible Adult cannot be located or it would be inappropriate to give the Responsible Adult notice then the Police do not have to give notice.



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## Responsible Adult To Attend The Police Station

The Police should request that the Responsible Adult attend the Police Station if they intend to interview the young person about the offence. If they are unable to locate a Responsible Adult, they should find another person who can take on the role of the Responsible Adult (called an Independent Witness) when the young person is questioned by Police.

## Why Should A Responsible Adult Attend The Police Station?

Young people are vulnerable and experience particular disadvantage when in Police custody. Having a parent, guardian or Independent Witness present when being questioned by Police about their alleged involvement in criminal conduct goes some way to protect the interests of the young person.

There is no law in Western Australia that provides that Police must not question a person under the age of 18 unless there is also present a parent, guardian or Independent Witness, unlike legislation existing in other states (Victoria, NSW, Queensland, ACT and NT) but the Commissioner of Police has made rules or orders contained in "Commissioner's Orders & Procedures Manual" (COPS Manual), which states that a young person should have a Responsible Adult or Independent Witness present when a young person is interviewed.

Unless a Responsible Adult is present, any statement or confession given to the Police by a young person may be held inadmissible in court.

## Who Can Be An "Independent Witness" When There Is No Responsible Adult?

- A person responsible for the young person (parent, guardian, Department for Child Protection case worker).
- An adult other than a member of the Police who is present with the consent of the person responsible for the young person (if the responsible person cannot be found).
- In the case of a young person of or over age 16, an adult who is present with the consent of the young person (e.g. youth worker, older brother, uncle).
- A lawyer of the young person's own choosing (if 16 or over).
- A person who has not been concerned in the investigation of the offence and has no interest in the outcome of the investigation.
- A Justice of the Peace (as a last resort).
- Where practicable, persons of the same sex and similar ethnic, cultural and/or religious background to the young person.



## What Is The Responsible Adult/Independent Witness' Role?

There is no legislation, but case law has held:

The role of the Responsible Adult/Independent Witness attending the Police Station and the Police interview is an active one not a passive one and includes:

- Acting as a check and protesting against any perceived unfairness or oppressive behaviour.
- Advising the child of his or her rights, which could include a reminder of the right to silence or an admonition against further participation in the interview in the absence of legal advice.
- Within appropriate limits, assisting a timid or inarticulate child to frame his or her answers to the allegation.

The Role of Responsible Adult/Independent Witness cannot be fulfilled:

- If prior to or during the interview the Responsible Adult/Independent Witness appears to have adopted a substantially judgmental and admonitory position with respect to the alleged offending with the young person; or
- If there is a lack of understanding of the role as a result of not having it explained to him or her nor provided with a form called "Protocols For The Use Of A Responsible Adult" by the Police.
- If the Responsible Adult/Independent Witness does not speak or understand English well and has no interpreter (it is not sufficient if their child speaks fluent English).

## Does The Young Person Have To Do A Police Interview?

No – he or she can say they do not wish to be interviewed.

Alternatively, the young person can appear in the interview and, apart from giving his or her name, address and date of birth, say "no comment" to any other questions put to them.

## What Can The Responsible Adult/Independent Witness Do During The Interview?

The Responsible Adult will be told:

1. Their role is there to ensure that the young person is treated fairly and to assist him/her in understanding the proceedings, rights, charge/s, and any questions asked by the police and privacy if required.
2. If at any time during the interview you as Responsible Adult feel the interview is unfair to bring this to the interviewing officer's attention. However, you are not here to ask your own questions or answer questions on behalf of the young person.
3. During this interview, you should not attempt to influence any response from the young person.
4. The young person does not have to speak with Police if they do not want to. The young person must give their name, current address and answer any questions they must be law and be searched.

The Responsible Person should ensure as the interview proceeds that the young person continues to agree to be interviewed so that the interview remains voluntary.



Apart from introducing themselves initially in the interview room, the Responsible Adult must not get involved in answering the questions for the young person nor adopt a disapproving stance against the young person (e.g. eye rolling, sighing). The young person must be made to feel that the Responsible Adult is a support person for them.

**The Responsible Adult can talk during the interview.** They can explain anything or ask for clarification of anything that they believe the young person does not understand. What they cannot say is things like “Go on tell them the truth, it will go better for you”.

The Responsible Adult can ask for the interview to stop at any time if they become concerned about the young person.

The Responsible Adult can terminate the interview and speak to the young person to find out if they want to continue. They can ask for a break if they feel the young person needs it, they can ask for the interview to stop if they feel the young person has had enough or it is not in their best interest to continue.

## Can The Responsible Adult Speak To The Young Person In Private Before The Interview?

Yes. Before the interview the Police “COPS Manual” and case law suggest that the Police must allow the young person to communicate with the Responsible Adult/Independent Witness in private before the commencement of questioning where conversation will not be overheard.

*Exception:* If the communication would result in the escape or destruction of evidence, the safety of persons would be at risk or the questioning is so urgent that it should not be delayed.

## What Sort Of Information Should The Responsible Adult/Independent Witness Try To Obtain From The Young Person If Speaking To Them In Private?

1. Whether the young person is intoxicated or has taken any drugs or is sleep deprived (if under the influence of anything then what he or she says in the interview may not be accurate).
2. What level of English the young person has and whether an interpreter is needed.
3. Whether the young person has any injuries or is sick. (If the young person is sick or injured then he or she has the right to any necessary medical treatment. This will usually mean the Police take him or her to Emergency at the Hospital to be seen rather than a Doctor coming to the Police Station).
4. Whether the young person can read and write or has any mental impairment such as an intellectual disability or mental illness. If this is the case, the young person may not say. The Responsible Adult/Independent Witness will have to determine this themselves.
5. Whether the young person wants to speak to the Police and tell them what he or she knows, or whether the young person wants to remain silent.
6. The Responsible Adult/Independent Witness cannot tell the young person whether to speak to the Police – this must be the young person’s decision. If unsure, the young person should be allowed to exercise their right to communicate with a Lawyer. If pressure is put on the young person to “Tell the truth and they will go easy on you” then the interview may not be admissible.
7. The Responsible Adult/Independent Witness is not in a position to tell the young person that they will get bail if they co-operate with Police, nor give any legal advice (unless the Independent Witness is a lawyer).
8. The Responsible Adult/Independent Witness is not there to “save” the young person. They are there as a support person only.



9. If the Responsible Adult/Independent Witness knows the young person is adamant that they do not wish to speak to Police, then they should advise the Police of this.
10. The Responsible Adult/Independent Witness is not there to speak in detail about what the young person has done and should not tell the young person what they should tell or not tell the Police.
11. Be aware of an Arrested Suspect's Rights in Custody, one of which is the Right to Communicate with a Lawyer. Young people will often waive this right because they just want to get it over and done with.

There may be problems communicating with a lawyer if the young person does not know any. The young person can contact Youth Legal Service, or Legal Aid WA during office hours.

If the young person is an Aboriginal Australian, the Police must contact the Aboriginal Legal Service, Custody Notification Service to let them know they are in custody and allow them to speak with a Lawyer. The Custody Notification Service operates 24 hours a day 7 days a week.

The young person can always ask to be interviewed after they have spoken with a lawyer.

## Will The Responsible Adult/Independent Witness Have To Attend Court?

The Responsible Adult will have to attend court if the young person is charged if they have signed the bail as the Responsible Adult.

An Independent Witness will not necessarily have to attend court. They may be called if there is a dispute about whether the interview was conducted voluntarily.

It is recommended that after the interview, the Responsible Adult/Independent Witness make notes about everything that occurred (as a memory refresher) in case they are called as a witness.

**Please note:** Laws are subject to change. Last updated July 2020.

**Important:** The information provided in this infosheet is for information only.

It should not be relied on as legal advice.

Please seek legal advice about your particular circumstances.