

# Investigative interviewing suspect guide

This chapter contains these topics:

[Overview](#)

[Interviewing principles](#)

[Planning and preparation](#)

[Engage and explain](#)

[Account](#)

[Closure and evaluation](#)

[Unco-operative suspects](#)

[Co-offenders, multiple offences and gathering intelligence](#)

[Interviewing people in Department of Corrections custody](#)

[Fingerprint and DNA evidence](#)

[Lawyers](#)

[Suspects requiring special consideration](#)

[Deciding what procedures to adopt](#)

[Interviewing special consideration suspects](#)

[Intoxicated suspects](#)

[Linguistic or cultural background or religious beliefs](#)

[Disability, disorder or other impairment](#)

[Family violence](#)

[Children and young people](#)

[The interview record: statements and notes](#)

[The interview record: Court processes](#)

[Legal requirements: frequently asked questions](#)

[Children and young persons: frequently asked questions](#)

## Overview

### Introduction

In the interests of fairness, all suspects should be given an opportunity to be interviewed. They have a right to be made aware of any allegations against them and given a reasonable opportunity to provide an explanation.

Investigators must attempt to gain as much information as possible to establish the truth of the matter under investigation. Interviewing the suspect may provide valuable information not obtained from other sources.

### Purpose

These guidelines:

- outline skills necessary for conducting ethical investigative interviews that encourage suspects to give complete, accurate and reliable information
- detail procedures for:
  - [planning](#), [engaging with suspects and explaining](#), [conducting](#), [closing](#) and [evaluating](#) suspect interviews
  - ensuring suspects are cautioned and receive appropriate advice about their rights under the New Zealand Bill of Rights Act and the [Chief Justice's Practice Note on Police Questioning](#)
  - managing interviews involving [co-offenders and multiple offences](#)
  - introducing [fingerprint and DNA evidence](#) during interviews
- detail the use of the [conversation management](#) interviewing model
- provide guidance on [dealing with lawyers](#) during suspect interviews
- outline special procedures for ensuring fairness when suspects require [special consideration](#), e.g. [children and young people](#), suspects with a disability or impairment, or cultural background
- ensuring compliance with legislative requirements relating to interview records, particularly video records, and their transcription and use in court processes.

### Related information

See also:

- [Investigative Interviewing Witness Guide](#) in the Police Manual
- the Investigative Interviewing Unit's intranet site ([Services>CIB Crime Service Centre>Service Units>Investigative Interviewing](#)) for information including:
  - interview training information
  - interview unit technology, transcription software and interview room set-up information
  - [Investigative Interviewing Doctrine](#).

### Feedback

If you have any feedback please forward any comments to:

[investigative.interviewing.unit@police.govt.nz](mailto:investigative.interviewing.unit@police.govt.nz)

### Acknowledgement

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Other material comes from:

- Milne, R. & Bull, R. (1999). *Investigative Interviewing: Psychology and practice*. Wiley: West Sussex.

- Shepherd, E. (2007). *Investigative Interviewing: The conversation management approach*. Oxford University Press: Oxford.

## Interviewing principles

### Who is a suspect?

The Criminal Investigations (Bodily Samples) Act 1995 [section 2](#) provides a definition of a suspect:

'suspect', in relation to an offence, means any person whom it is believed has or may have committed that offence, whether or not-

- (a) That person has been charged with that offence; or
- (b) There is good cause to suspect that person of having committed that offence.'

Suspects are also witnesses to the offence who can potentially provide a detailed account that could be invaluable to your investigation.

### Ten principles of investigative interviewing

Approach all suspect interviews with these ten principles in mind. (Refer to the [Investigative interviewing doctrine](#) for the detailed principles).

1	Interviewing is at the heart of investigation.
2	The aim of an interview is to discover the truth.
3	Information must be complete, accurate and reliable.
4	Keep an open mind.
5	Act fairly.
6	Questioning can be persistent.
7	Some witnesses require <a href="#">special consideration</a> .
8	Suspects must be interviewed in accordance with the law.
9	Care must be taken to identify suspects who require special consideration.
10	Be sensitive to cultural backgrounds and religious beliefs.

### PEACE interviewing framework

Conduct suspect interviews using the PEACE interviewing framework.

Step	Action
1	<a href="#">Planning and preparation</a> : Review available information and establish interview objectives.
2	<a href="#">Engage and explain</a> : Develop rapport and explain interview processes and procedures.
3	<a href="#">Account, probe and challenge</a> : Using an appropriate interview model gain an account of events, probe for more information and challenge any inconsistencies.
4	<a href="#">Closure</a> : Conclude the interview and address any concerns.
5	<a href="#">Evaluation</a> : Evaluate how the information obtained impacts on the investigation and the performance of the interviewer.

### When to conduct suspect interviews

Where ever possible conduct all other enquiries before interviewing the suspect. This will allow you to plan properly for the suspect interview and effectively challenge the suspect on any inconsistencies with the evidence.

### Advice

For advice on investigative interviewing related matters contact the Investigative Interviewing Unit at Police National Headquarters.

([investigative.interviewing.unit@police.govt.nz](mailto:investigative.interviewing.unit@police.govt.nz))

**Forms**

All investigative interviewing forms are located on 'Police Forms' under 'Investigative Interviewing'.

## Planning and preparation

### Planning and preparation process

Consider these areas in your planning and preparation for interviewing a suspect:

- [Interview objectives](#)
- [Investigatively important topics](#)
- [Suspect profile: identity factors](#)
- [Suspect profile: current state](#)
- [Legal requirements](#)
- [Interview structure](#)
- [Practical arrangements](#)
- [Interviewing people in Department of Corrections custody.](#)

### Interview objectives

- Examine all available evidence - witness statements, scene examination, exhibits and other supporting documents.
- Take relevant extracts from witness statements/reports to assist in your written plan.
- Set the objectives for the interview (include covering identified investigatively important topics, e.g. obtain an account for the suspect's movements between 9am and 12.30pm last night; obtain the suspect's account for blood found on their clothes).
- For complex cases involving multiple witnesses and events you should prepare a timeline to assist with the interview planning.

### Investigatively important topics

- Identify possible offences committed.
- Consider ingredients and probable defences and decide how to cover these during the interview.
- Understand the strength of the evidence and consider how to introduce any physical evidence and statements/descriptions from witnesses.
- Know the established facts and areas needing to be explored.
- Know the geographical area of the offence. It is an advantage to physically examine the scene.
- Establish possible challenges, how and when you will introduce these.
- Decide what allegations to outline to the suspect if they invoke their right to silence.

### Suspect profile: identity factors

Consider:

- Age and maturity.
- Race (if Maori include Iwi and Hapu), culture, religion and first language.
- Gender and sexuality if relevant.
- Any physical, intellectual, psychological or psychiatric impairment? (Be aware of the requirements under s28 & 29 Evidence Act 2006).
- Any welfare issues that may arise or [special needs](#)? For example, is an interpreter required?
- Suspect's relationship to the victim and domestic circumstances.
- Current or previous contact with public services, e.g. previous Police contact, CYFS, health professionals.
- Employment and routines.

Also:

- Conduct a full NIA check including criminal history and records.
- Contact M.O. Section to get details about their *modus operandi* if necessary.

### **Suspect profile: current state**

Speak to other officers who have had contact with the suspect that day and consider:

- the suspect's emotional state, e.g. trauma, distress, shock, depression
- physical state, e.g. injuries, intoxication, tiredness. Delay the interview if appropriate.
- authority to search person/property for potential evidence and if/when a search should be conducted.

### **Legal requirements**

Consider your legal obligations. You must [caution](#) and advise the suspect of their rights if there is sufficient evidence to charge or if you are questioning a person in custody.

### **Interview structure**

- Decide what interview model to use - this will usually be the conversation management model.
- Work out the interview's parameters and produce a [written plan](#) to use during the interview as a guide to your structure.
- Consider your opening question and [investigatively important topics](#) to be covered including possible offences, ingredients and probable defences.
- Consider what exhibits to produce, how and when.
- Establish possible challenges and decide how and when to introduce these.
- Decide what evidence you will seek the suspect's explanation for if they invoke their right to silence.

### **Contingencies for suspect reaction**

Consider contingencies for the suspect's reaction, including what to do if they:

- are fully co-operative
- give you a dishonest account
- change from dishonest to truthful during interview
- refuse to be interviewed.

### **Practical arrangements**

- Decide:
  - whether the suspect requires [special consideration](#) e.g. youths, those vulnerable for other reasons (also be aware of the requirements under s28 & 29 Evidence Act 2006)
  - who should be present during the interview
  - where and when the interview should take place (e.g. is the [suspect in prison?](#))
  - the interview's pace, likely duration and need for breaks.
- Examine the interview room and arrange seating (usually in the ten to two position).
- Check equipment. Make sure the microphone is positioned directly between you and the suspect. Have communication aids ready – including pen and paper for drawing sketch plans.
- Prepare exhibits.
- Decide whether you want the interview monitored and make arrangements accordingly.
- Consider what is likely to happen after the interview (e.g. arrest, medical examination, photographs, fingerprints, DNA specimen requests, returned home).

### **Safety considerations**

Suspects being interviewed may pose a danger to your safety and others in the station, as well as to the security of Police property and information. Ensure that:

- a designated and secure interview room is used wherever available
- a second officer is present or nearby to ensure you can control the suspect

- the suspect is not left unattended and is accompanied to the toilet but allowed to use the facilities in private
- visitors, including legal advisers, are not left unattended while on Police premises, other than when in private consultation with their client.

Take special care when video recording interviews to ensure the suspect is not left unattended near recording equipment.

Note: The more restrictive the security surrounding a suspect while on Police premises, the more likely a court will hold that the person was 'in custody' and therefore, should have been given their caution/rights.

### **Written interview plans**

A written interview plan:

- summarises the interview's objective(s) and provides a framework on which to base questioning
- helps you:
  - keep track of what's been covered and what remains to be dealt with
  - identify areas where the suspect's account conflicts with what is already known or has been suggested in other accounts
  - identify new information while keeping track of the interview's objective
- gives you confidence and flexibility to conduct a professional and effective interview.

Consider including in the plan:

- your opening question
- what is known and what needs to be established
- the [investigatively important topics](#) you plan to cover including possible offences, ingredients and probable defences
- when or if to introduce exhibits
- possible challenges
- what allegations to outline to the suspect should they invoke their right to silence
- any other relevant points.

You may need to change or add to these points during the interview as the suspect introduces new information requiring clarification or challenging.



## Engage and explain

### Attitude

Your attitude to the suspect is a major contributing factor to how they respond. You should:

- treat the suspect with dignity and respect
- keep an open mind
- be patient - it may be frustrating but the end result will make it worthwhile
- empathise with their position
- not be judgemental - your role is to find the truth of the matter under investigation and being judgemental will impede this process.

### When you first meet the suspect

Step	Action
1	<ul style="list-style-type: none"> <li>• Introduce yourself and others present and ask what they prefer to be called.</li> <li>• Establish a professional working relationship with the suspect. Be organised.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Talk to the suspect in a manner and language they understand while remaining professional.</li> <li>• Explain why you want to talk to them and the nature of the allegations. (E.g. <i>"Mike, I am investigating a complaint of assault on John Brown. You have been named as a suspect and I would like to talk to you about this."</i>)</li> </ul>
3	If required, <a href="#">caution</a> the suspect. Explain what the rights mean and <a href="#">ensure the suspect understands</a> .
4	If they are not arrested or detained ask them to accompany you to the police station for interview. Gain informed consent by ensuring they understand <a href="#">they do not have to accompany you and are free to leave at anytime</a> .
5	<p>Keep accurate records of all interactions with the suspect using your <a href="#">notebook</a>. If they make admissions or discuss the allegations, record what is said and get them to expand on that. Get as much detail as possible.</p> <p>If the suspect makes an immediate denial away from the station, acknowledge what they said but do not discuss further until you return to the station. e.g. "Ok Mike, I understand that you are saying you don't even know John Brown. We need to talk about this further at the station."</p> <p>Consider using the denial as a common ground for opening your interview at the station e.g. "Mike, when I spoke to you earlier you said you don't even know John Brown so we need to find out why he's named you as assaulting him."</p>
6	<p>Discuss neutral topics and develop rapport (continue talking to them on the way back to the station). Keep a brief record in your notebook outlining what was spoken about.</p> <p>Ask the suspect about and make your own assessment of any welfare/medical issues. Always consider whether they may require <a href="#">special consideration</a>.</p>

### If suspect elects to speak to a lawyer

As soon as practicable after a suspect indicates they wish to speak to a lawyer, you must provide them with appropriate means to consult and instruct one.

Step	Action
1	If they do not have a lawyer or their lawyer is unavailable, give them the list of duty lawyers available free of charge. Ask them to select a lawyer.

2	Phone the lawyer and explain the current situation and reason for the interview.
3	Leave the suspect alone to speak to the lawyer in private.

### When you return to the station

Do not conduct interviews off-record

Start video recording the interview as soon as you are prepared and commence speaking with the suspect.

Never engage in pre-interview interviews (engaging the suspect in an interview off-camera in an attempt to gain admissions before video recording the interview). Judges view these interviews as inappropriate and there is a high likelihood of your pre-interview interview and subsequent video recorded interview being ruled inadmissible.

### Procedures for engaging with the suspect

Follow these steps to ensure transparency in the process of engaging with the suspect.

Step	Take these actions with the suspect in the room
1	<ul style="list-style-type: none"> <li>• Enter the interview details in the interview room logbook.</li> <li>• Check recording equipment and commence video recording the interview. A minimum of two VHS tapes or DVDs should be used to record the interview, designated as 'Master' and 'Working' copy. A third may be designated as the 'Lawyers' copy.</li> <li>• Explain that you are recording what is happening to keep an accurate record of what occurs. (Talk to the suspect in a manner and language they understand).</li> <li>• Check everyone is visible in the recording and ask the suspect to speak clearly into the microphone.</li> </ul>
2	<ul style="list-style-type: none"> <li>• Write in your notebook: <ul style="list-style-type: none"> <li>- any events not already recorded that took place before arriving at the station</li> <li>- any rights given and anything said outside of the interview room, especially significant statements relevant to the investigation</li> <li>- if the suspect was arrested or a search warrant executed, note how this happened</li> <li>- if the suspect is there by consent, note how consent was gained and that you explained to them that they are free to go at any time.</li> </ul> </li> <li>• Read your notes to the suspect and ask them to sign your notes as accurate. If they agree to the accuracy but refuse to sign, make a note of this.</li> </ul>
3	<p>Inform suspect you want to video interview them about the incident/offence.</p> <p>If they refuse to have the interview video recorded, explain the advantages including shortened interview length, increased accuracy and fairness. Only if they still refuse a video recorded interview should you give them the option of audio recording or making a written statement.</p>
4	Commence the formal interview.

### Commencing the interview

Follow these steps when the formal interview commences.

Step	Action
1	<p>Continue with the visual recording and:</p> <ul style="list-style-type: none"> <li>• get everyone present to introduce themselves in a conversational manner and explain their role in the interview</li> <li>• state day, date, time and place</li> <li>• show the suspect the microphone and remind them to keep their voice up.</li> </ul>

2	<ul style="list-style-type: none"> <li>• Explain that the interview's purpose is to provide the suspect with an opportunity to give their account and for police to check certain facts.</li> <li>• Use the <a href="#">video interview aide memoir</a> to ensure you cover all the introductions required.</li> <li>• Outline the offence and explain the interview process and routines. Advise the suspect they will be asked for their account and then there will be questions for clarification.</li> <li>• As per your notebook record, outline events that occurred before the interview commenced, e.g. when and where you met the suspect, any conversations that occurred etc</li> <li>• Address any concerns about the interview process.</li> </ul>
3	Practice using open questions. Begin with ' <a href="#">TEDS</a> ' type questions to encourage the suspect to start talking. e.g. "Tell me about your job..."
4	If required, <a href="#">caution/rights</a> the suspect. If you have already done this on a visual recording, there is no need to repeat it now unless circumstances have changed.

### Question types

This table outlines commonly used question types. Refer to the [Investigative interviewing doctrine](#) for more information about appropriate questioning and non-verbal behaviour.

<b>TEDS</b>	<b>5 WH's + How</b>
Tell me Explain Describe Show me	What? Where? When? Who? Why? How?

## Account

Unless the suspect requires [special consideration](#) conversation management is usually the most appropriate suspect interview model.

### Using conversation management model

Interview phase	Action
Free report	<ul style="list-style-type: none"> <li>• Initiate a free report using an open <a href="#">TEDS</a> type question. Ask the suspect to give an account of everything they know about the matter under investigation in as much detail as possible. Allow for pauses and do not interrupt.</li> <li>• Actively listen using minimal prompts not going beyond the suspect's account and reflect back what is said where necessary.</li> <li>• Be flexible, adopt a neutral stance and keep an open mind throughout.</li> <li>• Take notes of areas you wish to obtain more information about.</li> <li>• If the suspect provides a very limited narrative, use TEDS type questions to expand on it and re-emphasise the amount of detail required.</li> <li>• Summarise back what the suspect told you and check the accuracy with the suspect.</li> </ul>
Identify and expand suspect topics	<ul style="list-style-type: none"> <li>• Break down the suspect's account into relevant and manageable topics.</li> <li>• Set the parameters of the interview.</li> <li>• Systematically expand on each topic using probing <a href="#">5Wh's + How</a> questions.</li> <li>• Do not ask leading, multiple or forced choice questions. Avoid undue repetition of questions. Use simple, relevant questions. Avoid using technical/police jargon.</li> <li>• Keep a structure to the interview, using your plan as a guide. Develop topics in a structured and logical way. Keep the suspect to the <a href="#">relevant</a> topics.</li> <li>• Avoid topic hopping as it is confusing to all.</li> <li>• With each topic summarise what the suspect has said using their own words and link to the next topic. Clarify exactly what is meant by the suspect's explanations.</li> <li>• Repeat this process until you have covered all their topics.</li> </ul>
Identify and expand investigatively important topics	<ul style="list-style-type: none"> <li>• Repeat the process for expanding suspect topics and cover all remaining <a href="#">investigatively important topics</a>.</li> <li>• Ensure you have given the suspect an opportunity to provide their account of what happened before revealing the nature of evidence against them. Cover off all possible explanations for the evidence. If they are being deceitful, this will prevent them from twisting their story to fit with the evidence.</li> </ul>

### Breaks during the interview

To ensure continuity in the recording of the interview:

Step	Action
1	Whenever a break is taken, state the time and reason for the break before leaving the interview room.

2	Keep video recording the entire interview even if there is a break in proceedings of up to 30 minutes or so. (Inform the suspect the video is still recording). Where a longer break is required, press the red 'Stop' button.
3	When recommencing the interview: <ul style="list-style-type: none"> <li>state the time and any relevant dialogue or events occurring during the break</li> <li>ask the suspect to confirm your description of what happened during the break</li> </ul> <p><b>Note:</b> If possible, suspects should not be left in the interview room unsupervised.</p>

## Challenge

Regardless of the interview model used always challenge inconsistencies between the suspect's account and other evidence. This maximises the benefit of evidence obtained during the investigation.

Follow these steps to challenge evidence.

Step	Action
1	<ul style="list-style-type: none"> <li>If there are inconsistencies between what the suspect has said and the evidence, you should challenge them by seeking an explanation.</li> <li>Before challenging the suspect consider having a short break in the interview to prepare your challenges. Let the suspect know what you are doing e.g. <i>"I just need to consider what you have said to me and look over the evidence."</i></li> <li>Structure the challenges so each is dealt with individually and generally, present the weaker challenges before the stronger ones, e.g: <ul style="list-style-type: none"> <li>Challenge 1: inconsistencies within the suspect's account</li> <li>Challenge 2: inconsistencies between the suspect's account and witness evidence</li> <li>Challenge 3: inconsistencies between the suspect's account and forensic evidence.</li> </ul> </li> </ul>
2	<p>Before challenging the suspect, let them know that there are inconsistencies between the evidence and their account e.g. <i>"I have gone through what you said to me earlier and there are some things I don't understand..."</i></p> <p>Introduce each challenge by seeking an explanation following this process:</p> <ul style="list-style-type: none"> <li><b>You said...</b> state the suspect's version of what is disputed</li> <li><b>We have...</b> state the evidence that contradicts their version of events</li> <li><b>Explain that...</b> ask them to explain inconsistencies between what they have said and the evidence.</li> </ul> <p>e.g. <i>"You said you know nothing about the burglary at 12 Parrot Street on the 12th of June because you've never been to that address. We found your fingerprints on the window sill at 12 Parrot Street. Explain that..."</i>  e.g. <i>"You said that tonight you never laid a hand on Jane. We've been told by the doctor that Jane has recent bruising to her ribs and eye. Explain that..."</i></p>
3	<ul style="list-style-type: none"> <li>Challenge evidence in a clear and focused way.</li> <li>Present evidence in a way the suspect can understand. Clear up any ambiguities.</li> <li>Do not express opinions, as it is the evidence itself that is important.</li> <li>Avoid putting suggestions to the suspect about what happened.</li> <li>If there is no reply, use silence (pause for a long time) and then move to the next question.</li> </ul>

4	You do not need to accept the first answer given but take care not to misrepresent the strength of the evidence. Avoid repetitive questioning on the same point. However, re-phrasing the question and being robust at times in demanding an explanation is acceptable, especially when the evidence is strong.
5	Ensure you have covered all ingredients, probable defences, mitigating factors and motives. If the interview is being monitored, check with the monitor whether there are any more questions that need to be asked.

### **Remain professional**

Always act professionally when challenging the suspect. Being too overbearing may render the interview inadmissible. What might seem an acceptable risk to take in the heat of the moment may be viewed as unacceptable in the courtroom.

Think of the challenge stage as presenting evidence that is inconsistent with or contradicts what the suspect has said or not said. Do not be frightened to challenge but remember you do not have to call somebody a liar to make them realise you do not believe them.

Never call a suspect a liar or say you don't believe them as this is opinion evidence and prejudicial and may affect the admissibility of your interview.

Put challenges calmly and clearly allowing the suspect every opportunity to understand what is being suggested and to provide an explanation. There is no need for raised voices, offensive language or demeaning behaviour, and such behaviour may result in the interview being ruled inadmissible.

### **Importance of listening**

During the interview you must actively listen to the suspect and consider how their account relates to the evidence. By actively listening you will also increase the stress the suspect experiences if they are attempting to evade issues or lie.

### **Unrelated information**

If a suspect volunteers information unrelated to the offence for which they are being interviewed:

- continue with the interview and advise them their information will be discussed later
- take care not to imply or infer that the information they have given, or may give, could have a bearing on the present interview. There must be no suggestion, implied or otherwise, that any promise or inducement has been held out to the suspect.

Once the original interview has been completed, the suspect is free to give any information they wish. You do not need to video record any conversation about information unrelated to the offence in respect of which they have been interviewed.

### **Allegations of misconduct**

If during the interview, the suspect makes any allegation against you or another Police employee, do not stop the recording. Tell the suspect they will be referred to a senior Police employee when the interview is over so their allegation can be formally recorded and, if necessary, investigated. Continue with the interview and report the allegation to your supervisor **immediately** after the interview has finished.

## Closure and evaluation

### Procedure for closing interviews

Step	Action
1	On camera, at the conclusion of the interview, offer the suspect the opportunity to: <ul style="list-style-type: none"><li>• playback the interview</li><li>• add, alter or correct anything</li><li>• ask any questions and have them answered appropriately.</li></ul>
2	If the interview is conducted immediately or soon after the offence make sure you note their clothing and any injuries. Consider recording these with photographs.
3	Ask the suspect to read your notebook entries, bring to your attention any additional or incorrect information and endorse them as true and correct.
4	Thank the suspect and those present for their time.
5	To conclude the interview: <ul style="list-style-type: none"><li>• explain what will happen next with the video record, i.e. it will be sealed and secured in the exhibit store until court</li><li>• state the end-time of the interview</li><li>• sign, seal and secure the master tape or DVD in the suspect's presence</li><li>• place the master copy in a secure video interview cabinet (usually located in the interview room) with a completed 'Electronic Interview History Report'</li><li>• write the end time for the interview in the logbook</li><li>• retain the working and lawyer's copy of the interview with the file.</li></ul>
6	Explain to the suspect what will happen next. Give them your name and contact telephone number.
7	Prepare for future events, such as arrest, DNA sample, attending court, photographs, medical examination.
8	End the interview in a polite, positive and prospective manner.

### Evaluation

After the interview, complete an interview evaluation using the appropriate form. Do this as soon as practical after the interview, while the information is still fresh in your mind. Consider:

- what information has been obtained
- how the account given fits in with other available evidence
- whether any action needs to be taken
- what further enquiries need to be made.

The time taken to complete the evaluation will depend on the amount and complexity of the information divulged during interview. As a general guideline it should only take around 15 minutes. The evaluation is not intended to be an additional administrative chore, rather it should be used as a tool that provides clarity to the investigative process.

### Self-evaluation

Self-evaluate your own performance:

- what did you do well?
- what could you have done better?
- what areas can you develop?
- how will you acquire these skills?

## Unco-operative suspects

### Right to silence

While it is only fair to provide the suspect with an opportunity to answer any allegations, all suspects have the right to silence. This means that if they decide not to talk to you, you cannot compel them to be interviewed and any admissions gained after the refusal may be deemed inadmissible.

However, despite any initial refusal, it is your professional responsibility to explain why you want to interview them and outline the allegations against them so they have a fair opportunity to provide an explanation.

### When suspects exercise their right to silence

Follow this procedure when preparing for interview and engaging a suspect who declines to be interviewed.

Step	Action
1	Always plan and prepare for the possibility of a suspect who exercises their right to silence by having a series of no more than three to five allegations, fully supported by evidence attained through your investigation. Be prepared to put each one individually to the suspect with an opening for them to provide some explanation.
2	If they initially exercise their right to silence: <ul style="list-style-type: none"><li>• explain why you want to conduct an interview (i.e. you have received a complaint) and describe the nature of the offence</li><li>• tell them you have spoken to other people but before you make a decision about the investigation's outcome, you want to give them a chance to tell their side of the story so you can establish the truth.</li></ul>
3	If they agree to be interviewed continue with the <a href="#">engage and explain</a> phase as with any other suspect and then progress to the <a href="#">account using the conversation management model</a> .
4	If the suspect still exercises their right to silence: <ul style="list-style-type: none"><li>• inform them you will explain the allegations against them so they have a fair opportunity to provide an explanation but they do not have to respond</li><li>• explain the allegations to them fairly</li><li>• in your notebook record what you have said and any response to the allegations (verbal or non verbal) as this may later be used as rebuttal evidence should they give evidence that is inconsistent with what was said at interview.</li></ul>
5	If the suspect decides to provide an explanation for the allegations, reassert their right not to say anything and confirm that they wish to waive their right to silence. If they wish to proceed, commence an interview using your chosen model.  Ask the suspect to read your notebook entries, bring to your attention any additional or incorrect information and endorse them as true and correct.

### Explaining the allegations to a suspect

Explaining the allegations to a suspect is not an attempt to circumvent the suspect's right to silence. You are pursuing the goal of establishing the truth and showing fairness to them.

State the allegations to the suspect so they have an opportunity to offer an explanation. If they give a genuine explanation, they may be eliminated from the enquiry.



**Example of how to explain the allegations to the suspect**

"From our investigation we've located a witness who knows you and saw you at the rear of the Caltex Service Station on Main St, this morning at 3.00am. *Pause*

After we executed the search warrant at your home this morning a large amount of property which has been identified as being stolen from the Caltex Service Station was located in the vacant section next to your home. You were seen at the rear of the service station at 3.00am and at 8.30am property stolen was located next door to your home."  
*Pause.*

## **Co-offenders, multiple offences and gathering intelligence**

### **Consistent interview structure**

Where there is more than one offender for one offence, consider when planning whether to use a consistent interview structure for all offenders.

If different officers are interviewing different suspects, make sure you compare notes when planning and preparing for the interview. Consistency is especially important with [investigatively important topics](#) and the [challenge phase](#) of the interview.

### **Coordination during interviews**

If interviews are occurring simultaneously, consider using an extra officer (e.g. a supervisor) to co-ordinate what is happening in each interview. Take breaks during the interview to compare what each suspect is saying to determine whether additional investigatively important topics need to be explored.

### **Co-offenders statements**

A suspect may be given the co-offender's statement but should not be questioned on the content. You can record any voluntary statements the suspect makes.

### **Multiple offences**

Multiple offences can be dealt with on one record. In case the offences are heard separately by the courts, deal with each offence separately during the account phase. Pause before introducing the next offence and reaffirm the [caution/rights](#). For interviews relating to serious crime, consider using a new DVD for each offence to simplify the process should severance be granted.

### **Gathering intelligence from suspects**

When gathering intelligence from suspects apply the same procedures as those used for [interviewing witnesses](#).

## Interviewing people in Department of Corrections custody

### Prisoner must consent to interview

You must comply with the requirements of the Corrections Act 2004 and regulations under that Act when interviewing a person in Department of Corrections' custody.

### When is a person in Corrections' custody?

A person is in the Department of Corrections' custody when they are:

- in prison
- in custody at court
- in Police custody under warrant of imprisonment where the police station is acting as a temporary jail
- in Police custody having been remanded in custody and en route to or from a Department of Corrections' prison.

All prisoners are treated as having greater vulnerability than other suspects, therefore additional protocols exist for interviewing suspects in custody. You must comply with [r107](#) of the Corrections Regulations 2005 and follow these steps:

Interview phase	Action
Planning and preparation	<ul style="list-style-type: none"> <li>• You must contact the Prison Manager to gain agreement for an interview with the suspect, and arrange an appropriate time and room</li> <li>• If possible, arrange for portable interviewing equipment so you can video record the interview.</li> </ul>
Engage and explain	<p>On arrival at the prison, in the presence of a prison officer you must:</p> <ul style="list-style-type: none"> <li>• explain to the suspect their caution/rights</li> <li>• fairly inform them of the reason for the interview and request their consent to being interviewed</li> <li>• if the suspect consents to interview, inform them they may choose to have the prison officer remain in sight during interview (if you prefer, you may also request that the prison officer remains in sight during interview)</li> <li>• if neither you nor the suspect wants the prison officer present, arrange for the prison officer to be contactable by both the suspect and you at all times during interview</li> <li>• inform the suspect that they may end the interview at any time.</li> </ul>
Account	<ul style="list-style-type: none"> <li>• Conduct the interview in the usual manner being aware that the rights listed in 'Engage and explain' above continue to apply.</li> </ul>

### Restrictions on removing prisoners

You cannot remove a prisoner from a prison for interview without the authority of the Department of Corrections' Chief Executive or their delegate ([s62](#) Corrections Act 2004).

You need an 'Order to Produce' under the [Summary Proceedings Act 1957](#) to lay additional charges against the prisoner or remove the prisoner for court related proceedings. For more information about this process consult with your supervisor or local court orderly.

## Fingerprint and DNA evidence

### Avoid early reference to fingerprint and DNA evidence

Always remember when interviewing suspects, premature reference to fingerprint or DNA evidence before or during an interview may provide the suspect with an opportunity to fabricate a plausible explanation.

### Procedure when fingerprint and DNA evidence involved

Follow the usual interviewing procedures with these variations, when suspect's fingerprint and DNA evidence is involved.

Interview phase	Action
Planning and preparation	<ul style="list-style-type: none"> <li>• After deciding what <a href="#">investigatively important topics</a> to cover in the interview (e.g. possible offences, ingredients and probable defences), consider any reasonable explanations that may account for the presence of fingerprint or DNA evidence.</li> <li>• Plan when and how you will introduce the fingerprint/DNA evidence.</li> <li>• Establish what challenges you have, and how and when you will introduce these. Fingerprint and/or DNA evidence will be at least one of your prepared challenges.</li> </ul>
Engage and explain	<ul style="list-style-type: none"> <li>• Consider how much information to disclose to the suspect (you must inform them of the crime they are being interviewed for).</li> <li>• If the suspect has been interviewed before and the sole purpose of this interview is to discuss new fingerprint/DNA evidence, ensure you fairly inform them of the interview's purpose, e.g. to discuss new forensic evidence not available at the initial interview.</li> </ul>
Account- suspect and investigatively important topics	<p>Giving the suspect an opportunity to provide a reasonable explanation for the fingerprint/DNA evidence is an investigatively important topic you should cover.</p> <p>The suspect may provide an explanation satisfying you that no criminal suspicion can be attached to the findings, e.g. they had lawful access at the material time or a legitimate reason for touching the object the evidence was found on.</p>
Account - challenge	<p>If the suspect denies being present or touching objects, disclose the fingerprint/DNA evidence to them during the challenge phase and seek an explanation, e.g. 'You told me that you know nothing about the robbery at the Wainui Shell Service Station because you have never been there. We found your fingerprints on the counter of this station. Explain that...'</p> <p><b>Note:</b> Unless special exemptions exist, do not mention previous criminal history when introducing the evidence. Such history is not admissible evidence and may lead to the interview being inadmissible.</p>
Closure	<ul style="list-style-type: none"> <li>• If the suspect has provided a reasonable explanation and you are satisfied they have been eliminated from the investigation, thank them for their time and close the interview as usual.</li> <li>• If they are still a suspect at the end of the interview, follow the procedures for <a href="#">suspects linked to offences by databank</a>.</li> </ul>

### Suspects linked to offences by DNA or fingerprints

It is not uncommon for someone to provide fingerprints or DNA to Police using an alias.

To avoid the possibility that the databank sample was provided by someone other than the suspect, give the suspect an opportunity to provide fingerprints/ DNA suspect sample after the interview. The fingerprints/sample taken at this time will be used later as evidence in court should the matter proceed to prosecution.

### When person is still a suspect at interview end

Follow this table, if the person linked to an offence by a databank hit is still a suspect at the end of the interview.

<b>Fingerprint hits</b>	<b>DNA databank hit</b>
<ul style="list-style-type: none"><li>• If the decision has been made to charge the person, ensure fingerprints are taken as part of the arrest process.</li><li>• If they are <b>not</b> being charged, obtain their consent, if possible, to give fingerprints and take them.</li></ul>	<ul style="list-style-type: none"><li>• Regardless of whether the person is being charged or not, they should be asked for consent to give a suspect DNA sample.</li><li>• Use appropriate forms and if they refuse, record this and give the suspect the opportunity to sign.</li></ul>

## Lawyers

### Right to have lawyer present

It is the suspect's right to request a lawyer and have one present while being interviewed.

### Lawyer's role

Lawyers present at interview are solely there to represent their client and give their client advice. Do not let the lawyer:

- answer questions on behalf of their client
- 'put words in the mouth' of the suspect
- introduce irrelevant matters
- give you instructions or interfere with or obstruct the interview.

Do not be inhibited by the lawyer's presence - this is your interview and you should be in control.

Interview phase	Action				
Planning and preparation	<ul style="list-style-type: none"> <li>• Introduce yourself to defence counsel and explain the offence(s) you wish to interview the suspect about and whether the suspect is currently under arrest.</li> <li>• If they have not yet had an opportunity to do this, allow defence counsel to spend some time with their client and provide them with a room where they can do this in private. This should not be in the interview room on camera.</li> <li>• Set up the interview room so defence counsel is visible on the camera throughout the interview. Remember, you are interviewing the suspect not defence counsel, so arrange the seating to reflect this, e.g. seat the lawyer to the rear of the room rather than at the table itself.</li> </ul>				
Engage and explain	<ul style="list-style-type: none"> <li>• Ask defence counsel to introduce themselves when the video recording has commenced and you are introducing those present.</li> <li>• Ask defence counsel to explain what their role is. If not already volunteered by counsel, clarify that they are:               <ul style="list-style-type: none"> <li>- there to provide advice to their client</li> <li>- not to answer questions on behalf of their client or to suggest answers to their client.</li> </ul> </li> </ul>				
Account	<ul style="list-style-type: none"> <li>• Defence counsel may:               <ul style="list-style-type: none"> <li>- ask to take a break to speak to their client in private anytime during interview</li> <li>- interject if they consider the interview is oppressive or unfair.</li> </ul> </li> <li>• If there is a break in the interview, ask defence counsel to leave the room or stop the recording during the break. Any discussions defence counsel has with their client are privileged and therefore should not be recorded.</li> <li>• Follow these steps if defence counsel behaves inappropriately (e.g. answers questions on behalf of their client) to the extent that you believe their actions are obstructive and detrimental to your ability to gather accurate, reliable and complete information from the suspect.</li> </ul> <table border="1" data-bbox="491 1921 1369 1955"> <thead> <tr> <th>Step</th> <th>Action</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Step	Action		
Step	Action				

	1	Politely refer them back to their role as covered at the beginning of the interview. If appropriate, ask them if they would like to speak to their client in private.
	2	If they continue to behave inappropriately warn them that if they continue you will have to stop the interview and they will be asked to leave.
	3	If inappropriate behaviour continues: <ul style="list-style-type: none"> <li>• stop the interview, remove them from the interview room and inform a supervisor</li> <li>• provide the suspect with an opportunity to engage another lawyer.</li> </ul>
Closure	Provide defence counsel with your card so that they can contact you in the future.	

### **If a lawyer arrives at the station**

If a lawyer arrives at the station requesting to speak to the suspect, let the suspect know of their presence. If the suspect does not want to see the lawyer, get the suspect to sign a note to that effect and give this note to the lawyer.

### **Be aware of entering into agreements with lawyers**

If lawyers advise you not to talk to their client without contacting them first and you agree, then you are obliged to contact the lawyer prior to any further interview of their client.

You may decline the lawyer's direction that you not talk to the client without contacting them first providing you can justify why, and then you adhere to your general obligation to inform the suspect of their rights prior to any interview. Then if they wish to have legal representation they can request it.

### **Privacy**

A suspect is entitled to speak with their lawyer in private. You must turn the recording machine off while this occurs and you must not listen on an adjoining monitor.

## **Suspects requiring special consideration**

### **Types of suspects requiring special consideration**

A suspect requires special consideration when their condition, disability, disorder or other characteristic may adversely affect their reliability or make them susceptible to oppression at interview. For example, the elderly, suspects with learning disabilities, or mental health problems may find the criminal justice process especially stressful, or even, traumatic.

Suspects intoxicated by alcohol or drugs and those who speak English as a second language may also require special consideration.

[Children and young persons](#) also require special consideration but are dealt with in a separate section of this guide.

Special procedures may need to be adopted for suspects requiring special consideration to ensure their interview is conducted fairly.

### **Deciding if special consideration is necessary**

Base your decision about whether a suspect requires special consideration on your judgement as to fairness to the suspect. Use the [ten principles](#) of investigative interviewing to guide you and consider what you need to do to get complete, accurate and reliable information from the suspect. If the suspect is disadvantaged in some way, think about what you can do to ensure they are treated as fairly as other suspects.

Under sections [28](#) and [29](#) of the Evidence Act 2006 a defendant's statement may be excluded because of unreliability or oppression. In relevant proceedings, the judge must take into account the suspect's physical, mental or psychological condition when interviewed and their characteristics including mental, intellectual or physical disability, whether apparent or not. These factors are all relevant to deciding whether suspects require special consideration.

### **Recording method**

It is especially important to video record all interviews with suspects requiring special consideration. This makes the interview process transparent to the court by allowing them to see whether the interview was conducted fairly and reasonably without oppression.



## Deciding what procedures to adopt

### Introduction

Take each suspect's unique circumstances into account when determining whether special consideration is required. There is not one formula that can be applied to all. Each suspect has their own individual needs and you should adopt procedures that help to meet those needs and assist you to:

- get complete, accurate and reliable information from the suspect
- minimise the risk of oppression
- provide the best evidence for court proceedings.

Just because a suspect has been interviewed previously does not mean they are less susceptible to oppression.

### Initial action

You may be the first police officer a suspect speaks to about an incident. It is your role to assess whether that suspect needs special consideration. Do this in your [planning and preparation](#) or [engage and explain](#) interview phase.

### Reliability at interview

Before you interview a suspect requiring special consideration do background checks and, if possible, talk to family members or relevant health professionals to find out whether:

- full and fair communication with the suspect is possible, and
- they understand the nature and reason for the interview.

If you believe full and fair communication is **not** possible, discuss this with your supervisor. Adopt appropriate procedures as outlined below.

### Delaying the interview

In some cases (e.g. when the suspect is intoxicated) you may need to delay the interview until the suspect is in a suitable state for interview. If you believe it is unfair to interview the suspect at that time, give them the opportunity to be interviewed later.

Make sure you keep an accurate record in your notebook about their condition and the basis for your decision making in case you are asked about it later in court.

### Explaining rights

It is crucial that suspects requiring special consideration understand the caution/rights. Be aware that some suspects may be suggestible and tend to answer 'yes' when asked closed questions. Ensure they understand by:

- using simple language
- breaking it down into small parts and checking they understand by asking them to explain each part back to you.

You are responsible for ensuring suspects understand their rights. If in doubt try again until you are certain they understand. If they do, continue your interview. If they don't, follow the process below.

### When suspects don't understand their caution/rights

If the suspect still does not understand their caution/rights, arrange for a [support person](#) to be present as their representative. Adopt procedures as you would with a [nominated person](#) by getting the support person to spend time alone with the suspect and explain to them their rights. Remember the support person's role is to support the suspect and ensure they are treated fairly.

If the suspect still does not understand their caution/rights, arrange with the assistance of the support person for the suspect to speak to a lawyer.

### **Interview model**

Make an assessment based on the needs of the individual as to what is the best interviewing model to use. [Free recall](#) is usually the appropriate interview model to use when interviewing suspects requiring special consideration because it minimises the risk of influencing the suspect. At the end of the interview you should still challenge the suspect with any inconsistencies within their account and with other evidence. Make sure that you do this fairly and by seeking an explanation.

If the suspect is difficult or uncooperative, use the [conversation management model](#). If you believe the suspect may be unreliable at interview or easily influenced use the [free recall questioning style](#) as much as possible and minimise summarising.

### **Support person**

Always consider using a support person when the suspect suffers from a disability, disorder or other impairment. Always use a support person if due to their condition you believe the suspect is not [reliable](#).

Having a support person present can have many benefits such as:

- ensuring the suspect's well-being and their understanding of procedures
- aiding your understanding of the suspect's needs
- reducing any suggestion of oppression
- helping you develop a working relationship with the suspect.

### **Appropriate support person**

An appropriate support person is someone who:

- is an adult (of or over the age of 18 years)
- is not a suspect or witness in the matter under investigation
- you believe will not attempt to pervert the course of justice
- is available within a reasonable period of time (be flexible -to get the most out of the suspect it may be preferable to wait for someone they feel supported by).

Appropriate support people include a parent or guardian, carer, whānau or family member, close friend or trained professional such as a mental health worker.

### **Suspect usually chooses whether they want a support person present**

Usually the suspect should be given the choice of whether they want a support person and, if so, who they want to be present. If they decline to have one present, and you believe one is required, discuss with your supervisor about what is fair for the suspect.

### **Procedures when using a support person**

If a support person is used, adopt procedures similar to those you would use for a [nominated person with a youth](#).

# Interviewing special consideration suspects

## Introduction

This section identifies key differences between the procedures for interviewing suspects generally and those requiring special consideration. It also identifies additional factors that need to be taken into account during your interviews for all suspects requiring special consideration.

Further factors relating only to specific categories of special consideration suspects are detailed separately:

- [intoxicated suspects](#)
- suspects with [different linguistic or cultural backgrounds or religious beliefs](#)
- suspects with [disabilities, disorders or impairments](#)
- suspects involved in [family violence incidents](#)
- [children and young people](#).

## Planning and preparation

Plan and prepare your interview as for suspects generally but also take these factors or variations into account.

Topic	Consider ...
Suspect profile: identity factors	<ul style="list-style-type: none"> <li>• If relevant, sexual knowledge and experiences.</li> <li>• Any learning or physical disabilities, specialist health and/or mental health needs.</li> <li>• Effect of disorder or disability on the suspect's cognitive, linguistic and physical behaviour.</li> <li>• Cognitive abilities (e.g. memory, attention, concept of time).</li> <li>• Linguistic abilities (e.g. understanding and use of spoken language), English as a second language, cultural and religious beliefs.</li> <li>• Family members/carers and nature of the relationship. Potential support persons.</li> <li>• Current or previous contact with public services (including previous allegations of abuse, previous experience of an investigative interview).</li> <li>• Employment and routines (particularly important in institutional or community care settings).</li> <li>• Special needs the suspect may have when providing their account and to avoid any suggestion of oppression, e.g. support person or interpreter.</li> </ul>
Suspect profile: current state	<ul style="list-style-type: none"> <li>• Emotional state, e.g. trauma, distress, shock, depression, fear of intimidation/recrimination.</li> <li>• Likely impact of recalling traumatic events on the suspect's behaviour.</li> <li>• Recent significant stress (for the suspect and/or family, e.g. bereavement, sickness, domestic violence, job loss, moving house, divorce).</li> <li>• Whether currently in a safe environment.</li> <li>• Conduct a pre-interview assessment of the suspect to supplement information referred to above in identity profile. Based on this information consider the level of competency of the suspect. If you are unsure consult your supervisor.</li> </ul>
Legal requirements	<ul style="list-style-type: none"> <li>• Should they be given their caution/rights?</li> <li>• Do they need a <a href="#">support person</a>, and if so, any potential complications. e.g. additional practical arrangements may need to be made</li> </ul>

Interview model	<p>Decide what interview model to use depending on the level of the suspect's compliance and their vulnerability.</p> <p>For most special consideration suspects, the <a href="#">free recall</a> model with a challenge phase is ideal because it limits any suggestion of oppression. Use your judgement and be prepared to change the model during the interview.</p>
Contingencies for suspect reaction	<p>Consider:</p> <ul style="list-style-type: none"> <li>• whether the interview needs to be run over more than one session (e.g. when there is lots to be covered, or the suspect loses concentration or tires easily)</li> <li>• potential blocks to communication and methods for approaching them</li> <li>• arrangements that encourage the suspect to move around the room if they find it difficult to sit still for more than a short time.</li> </ul>
Practical arrangements	<ul style="list-style-type: none"> <li>• the suspect's willingness to talk in a formal setting to a police officer, social worker or other trained interviewer, or whether a location outside of the police station is desirable.</li> </ul>

### Engage and explain

Engage with and explain procedures to special consideration suspects as for suspects generally but also take these factors or variations into account.

Topic	Action ...
Preparing the suspect for the interview	<ul style="list-style-type: none"> <li>• Explain that the support person's role is to: <ul style="list-style-type: none"> <li>- support them</li> <li>- ensure they understand their rights.</li> </ul> </li> <li>• Ask the suspect to choose a <a href="#">support person</a> (if the chosen person is inappropriate, ask the suspect to choose another) and contact that person.</li> <li>• Explain to the support person what is happening and ask them to attend the interview.</li> <li>• While waiting for the support person, discuss neutral topics and develop rapport. Keep a record in your notebook of what was spoken about.</li> <li>• Ask the suspect about any welfare/medical concerns.</li> </ul>
Preparing the support person for interview	<p>In the suspect's presence:</p> <ul style="list-style-type: none"> <li>• explain to the support person that their role is to: <ul style="list-style-type: none"> <li>- ensure the suspect understands their caution/rights</li> <li>- support the suspect before and during interview or questioning (if they agree to answer questions)</li> <li>- not answer questions on behalf of the suspect.</li> </ul> </li> <li>• go through the suspect's caution/rights. Answer any questions they have</li> <li>• explain why you want to interview the suspect and the processes involved.</li> </ul> <p>Leave the suspect and support person in private for a reasonable time to allow them to discuss the caution/rights and interview process.</p>

Video recording	<ul style="list-style-type: none"> <li>• In the support person's presence, inform the suspect you want to interview them by video recording and explain what this means. Ensure you cover advantages of video recording.</li> <li>• Only if they refuse a video recorded interview give them the option of audio only and then making a <a href="#">written statement</a>. This should be avoided wherever possible as the video record will capture their condition at the time of interview.</li> </ul>
When the interview starts	<ul style="list-style-type: none"> <li>• Explain the interview process.</li> <li>• Confirm events that have occurred prior to interview including the steps you have taken to ensure the interview is fair.</li> <li>• Start with questions about background information.</li> <li>• Assess the suspect's language and cognitive skills.</li> </ul>

### Account

Select the most appropriate interview model depending on the [suspect's profile - identity factors and current state](#). If you believe the suspect may be unreliable at interview or easily influenced, use the [free recall model](#) and questioning style to ensure you get a true and accurate account from them.

### Free recall questioning style

Do...	Explanation /example
Keep questions short and simple	The younger or more vulnerable the person, the shorter and more simply phrased the questions need to be.
Ask questions in a language and manner the person understands	E.g. open <a href="#">TEDS</a> type questions in simple language.
Move to probing <a href="#">5WH's + How</a> questions when open questions are no longer fruitful and more detail is required. Begin with the least explicit version of the probing question	<ul style="list-style-type: none"> <li>• Avoid the why questions unless absolutely necessary and the question is couched in a very empathetic way - the suspect may think you are blaming them.</li> <li>• The drawback of using specific closed questions is that the suspect might respond with one of the available choices without expanding on their answer or they might be tempted to guess in the absence of a genuine memory.</li> </ul>
Check with any support person wording or phrases you think the suspect may find difficult or for which the suspect may have a different meaning than that commonly held.	<p>Examples:</p> <ul style="list-style-type: none"> <li>• the term 'penis' may not be understood but the term 'dick' may.</li> <li>• 'aunty' means parent's sister to most people but to others it also may include long-term female family friend.</li> </ul>
Avoid topic hopping (rapidly moving from one topic to another and back again)	
Avoid interrupting	Some vulnerable suspects may speak slowly and pause for longer.
Avoid repeating questions	The suspect might infer that their initial response was incorrect.
Avoid developmentally inappropriate questions	E.g. some suspects might find questions relating to matters such as time, date, height, length, weight, age etc difficult

Only use leading questions (one implying the answer or assuming facts that are in dispute) as a last resort	If a suspect responds to a leading question with relevant information that has not been led by the question, revert to open or specific questions.
Avoid asking inappropriate closed questions which require a 'Yes'/'No' answer	The suspect may want to please by saying 'Yes'.

**Challenge**

You can challenge special consideration suspects but remember the reasonableness of your challenge will be determined by the suspect's characteristics and vulnerability.

**Written statements**

Follow the usual processes for suspect written statements but also:

- include the support person's details
- ask both the suspect and support person to:
  - read over the statement (the suspect should also be given the opportunity to make any alterations)
  - endorse the statement as true and correct

If there are any doubts as to the suspect's ability to read, have their support person read the statement to them and endorse the statement as having been read to the suspect.

The suspect should endorse the statement as having been read to them, and as true and correct.

**Closure and evaluation**

Make sure you advise the support person and suspect about what will happen now and give them both your contact details. Close and evaluate the interview in the usual manner.

## Intoxicated suspects

### Procedures when interviewing intoxicated suspects

Follow the [usual interviewing procedures](#) with the variations outlined in this table when interviewing a suspect who has consumed drugs or alcohol.

Interview phase	Action
Planning and preparation	<p>Consider whether the interview should be delayed, taking these factors into account:</p> <ul style="list-style-type: none"> <li>• fairness and reliability- whether the level of intoxication prevents the suspect from appreciating the significance of the questions asked and their replies. If they do not, the interview may be ruled inadmissible as unreliable or influenced by oppression (ss28 &amp; 29 Evidence Act 2006)</li> <li>• whether they understand their caution/rights</li> <li>• their ability to communicate</li> <li>• the practicality of delaying the interview (including the requirement to bring them before the courts as soon as reasonably practicable).</li> </ul> <p>Note: If delaying your interview, it may still be appropriate to conduct a brief interview to capture the condition the suspect was in should this later be required in court, i.e. to establish why the suspect was not interviewed earlier.</p>
Engage and explain	<ul style="list-style-type: none"> <li>• Ask open questions about a neutral topic to encourage the suspect to start talking.</li> <li>• Evaluate their responses and explain the interview process to ensure they understand what is happening.</li> <li>• Reassess whether now is the most appropriate time to conduct the interview.</li> </ul>
Account	<p>Use an <a href="#">appropriate interview model</a>.</p> <p>When addressing the <a href="#">investigatively important topics</a> make sure you cover:</p> <ul style="list-style-type: none"> <li>• what alcohol or drugs they have consumed, the quantity and over what period of time</li> <li>• their level of intoxication now and at the time of the offence</li> <li>• how they are currently feeling.</li> </ul>
Closure	<p>Leave them your card so they can contact you if they wish to speak to you again.</p>
Evaluation	<p>Consider if you should re-interview them when they are sober.</p>

## Linguistic or cultural background or religious beliefs

### Different cultural or religious beliefs

Suspects have different linguistic or cultural backgrounds. English may not be their first language and they may behave differently and have different needs at interview.

Be sensitive to the suspect's needs and consider seeking advice from someone of the same culture or religion, e.g. a Police employee who has the same background or is an expert in that area (e.g. Iwi Liaison Officer or Asian Crime Investigator), an interpreter or other expert.

### Using interpreters

Use a suitably qualified interpreter if the suspect:

- does not have sufficient proficiency in the English language to understand the interview if conducted in English and to convey their answers clearly
- has a communication disability.

Ask the suspect what language they prefer to be interviewed in if you have any concerns about their proficiency in English.

### Hearing impaired witnesses

If the suspect is hearing impaired, contact the New Zealand Deaf Association (they offer a 24 hour interpreter service).

### Procedures when using interpreters at interview

Follow the [usual interviewing procedures](#) with the variations outlined in this table when it is necessary to interview a suspect through an interpreter.

Interview phase	Actions
Planning and preparation	<ul style="list-style-type: none"><li>• Establish whether an interpreter is required. Find out the country they come from and the exact language they speak (e.g. a Chinese person may speak Mandarin or Cantonese).</li><li>• Arrange for an interpreter using the contracted interpreting service or your station's list of interpreters (ideally you should use a professional interpreter rather than a Police employee). Provide the interpreter with an outline of the nature of the incident and the reason for interview e.g. suspect for a family violence incident.</li><li>• Ascertain whether the interpreter is an appropriate person to assist. They must be:<ul style="list-style-type: none"><li>- able to write and speak the language of the suspect fluently</li><li>- impartial and independent, e.g. has no prior knowledge of the suspect or witnesses involved in the investigation.</li></ul></li><li>• If they know any of the parties involved in the investigation (including the suspect), they should only be used in exceptional circumstances, i.e. no one else is available and the interview cannot be delayed. The extent of the connection should also be taken into account when making this decision. If you use an interpreter who knows the parties involved make sure you keep a record of your rationale in your notebook or on a jobsheet.</li><li>• Ask the interpreter for their qualifications and contact details or those of their organisation. Record these in your notebook.</li><li>• Video record the interview if possible. This makes the</li></ul>



	<p>process more efficient and provides an accurate record of what was said if the quality of interpretation later becomes an issue.</p> <ul style="list-style-type: none"> <li>• Prepare for the interview in the usual manner.</li> <li>• When the interpreter arrives: <ul style="list-style-type: none"> <li>- allow the interpreter the opportunity to brief both you and the suspect on their professional role and how they will conduct themselves</li> <li>- if necessary, inform the interpreter their role is to interpret your questions and the suspect's answers back to you</li> <li>- their interpretation should be as direct as possible in 'first person'. They should not enter into general discussion with the suspect.</li> </ul> </li> <li>• Make sure the interpreter understands the caution/rights. Instruct them to clearly explain these to the suspect to ensure the suspect understands.</li> <li>• Answer the interpreter's questions about the interview process.</li> <li>• Consider seeking advice from the interpreter about any communication issues that may arise.</li> <li>• Discuss the aims and objectives of the interview with the interpreter, e.g. to gain a detailed and accurate account from the suspect about what happened at Travers Inn last night.</li> <li>• Discuss the interpreter's needs for breaks during the interview (interpreting may be tiring, especially signing. Quality interpreting means quality information).</li> </ul>
Engage and explain	<ul style="list-style-type: none"> <li>• Using the interpreter, complete the usual <a href="#">engage and explain</a> process as you would for any other suspect. Where appropriate inform the suspect of their caution/rights with the aid of the interpreter.</li> <li>• While video recording the interview: <ul style="list-style-type: none"> <li>- ask the interpreter to introduce themselves, explain their role, experience and qualifications. (They may later be required to give evidence in respect of their knowledge and experience).</li> <li>- explain the interpreter's role as detailed above</li> <li>- ensure the interpreter is clearly visible during the interview.</li> </ul> </li> </ul>
Account	<ul style="list-style-type: none"> <li>• Complete the account phase using an <a href="#">appropriate interview model</a>. Your questions are interpreted to the suspect in their language and their answers interpreted back to you.</li> <li>• For safety and impartiality reasons make sure the interpreter leaves the room with you if you take any interview breaks.</li> </ul>
Closure	<ul style="list-style-type: none"> <li>• Complete the <a href="#">closure</a> processes as usual.</li> <li>• Before the interpreter leaves, ensure you have their full contact details (or that of their agency).</li> </ul>
Evaluation	<ul style="list-style-type: none"> <li>• Conduct an interview <a href="#">evaluation</a> in the usual manner.</li> <li>• Ensure the appropriate forms are completed to initiate payment of the interpreter.</li> </ul>

### Written statements

With written statements ensure:

- the interpreter's name and role is included in the statement
- the statement contains a [complete record of the interview](#) in English and the suspect's language.

**Example for a written statement with an interpreter**

Step	Action
1	You write the question in English.
2	The interpreter writes directly under each question: <ul style="list-style-type: none"> <li>• translation of the question in the suspect's language</li> <li>• suspect's response in their language</li> <li>• the English translation of the suspect's response is recorded directly below.</li> </ul>

At the end, invite:

- the suspect to:
  - read the statement in their own language and make corrections or additions
  - endorse the statement by writing in their own language: *'This statement is true and correct. I have nothing further to add'* and signing the statement
- the interpreter to certify the translation as accurate i.e. *'I have accurately translated this statement to the best of my ability.'*

Endorse the statement as you usually would.

**Transcription**

Any transcript prepared from the interview should include the English questions and the interpreter's English reply. Refer to the video record if there are concerns about the accuracy of the interpretation.

## **Disability, disorder or other impairment**

A number of physical, intellectual, psychological or psychiatric impairments may affect a suspect's ability to make a reliable statement. Impairments can also make the investigation process more difficult or stressful for the suspect.

It is important you identify suspects affected by impairments, give them special consideration and take appropriate steps to ensure:

- their well-being
- they understand what is happening.

### **Impairment examples**

Examples of people with physical, intellectual, psychological or psychiatric impairment include those:

- with a diminished capacity to provide a reliable account because they have a:
  - mental disorder
  - significant impairment of intelligence and social functioning
  - physical disability or are suffering from a physical disorder
  - significant impairment from alcohol or drug abuse
- with learning disabilities
- with Alzheimer's disease or other forms of dementia
- suffering from hearing or speech impairments.

### **Identifying suspects with an impairment**

Use information in the '[Disability, disorder or other impairment](#)' section in the "Investigative Interviewing Witness Guide" to assist you to:

- identify suspects with a disability, disorder or impairment that may impact on the reliability of their statement
- identify factors relating to particular types of disabilities or impairments that may make the suspect vulnerable during interview
- determine appropriate actions to be taken during the interview (e.g. obtain support of carers or other support people) to ensure the suspect understands what is happening and provides admissible evidence.

### **Planning and preparation**

When planning and preparing for the interview, consider these investigatively important topics:

- 'fitness to plead' in the [Criminal Procedure \(Mentally Impaired Persons\) Act 2003](#)
- 'insanity' under section [23](#) Crimes Act 1961.

There is still a requirement to prove your case even where a person may be subsequently found to be suffering from a mental impairment.

### **Interview model**

To minimise the risk of influencing the suspect use the [free recall](#) interview model and [questioning style](#).

## **Family violence**

### **Interview model**

Interviews for suspects in family violence incidents should be conducted using the [conversation management](#) interview model.

### **Investigatively important topics**

Cover the following during the [account](#) interview phase under investigatively important topics:

- history, current status and any future intentions regarding the relationship between the suspect and victim
- relationship with other family members (especially those who might be witnesses)
- suspect's character and motive for committing the offence
- circumstances leading up to the offence
- previous violence or abuse in the relationship
- future residence
- relationship with children and contact agreements if applicable
- what the suspect thinks the victim will be saying to Police.

### **Victim to put allegations to suspect**

As outlined in the [Family violence policy and procedures](#) you should ask the victim to put the allegations to the suspect in your presence.

## Children and young people

### Children and young persons defined

A child is defined by the [Children, Young Persons and Their Families Act 1989](#) as a boy or a girl under the age of 14 years.

A young person is a boy or girl of or over the age of 14 years but under 17 years (not including anyone that is or has been married or in a civil union).

### Entitlement to special protection

Section [208](#) Children, Young Persons and Their Families Act 1989 details a number of youth justice principles to guide courts and people exercising powers under the youth justice parts of the Act. In the context of investigation, principle (h) is important:

'The principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.'

### Strict legal requirements

Because of the strict legal requirements of the Children, Young Persons and Their Families Act 1989, if you are interviewing a child or young person suspect/offender, you should:

- contact Youth Aid section to consider how the offending should be dealt with (e.g. release, arrest, seeking a declaration that the child or young person is in need of care or protection or a custody order in the Family Court, or whether to commence proceedings in the Youth Court). Note that there are limitations on the arrest of children and young persons in section [214](#) CYPF Act
- ensure that before you conduct the interview you are aware of and comply with the requirements of sections [215](#) to [231](#) for a child's or young person's statement to be admissible and:
  - comply with the [Chief Justice Practice Note on Police Questioning](#) requirements
  - inform the child or young person of the reason for the interview
  - before interview, inform their parents or guardian that they are at the station for questioning or interview
  - conduct the interview in the presence of a nominated person and/or if requested, a lawyer.

Children and young people suspected of committing an offence must be dealt with fairly and the courts adopt a strict approach to confessions obtained outside the spirit of the Act.

Nothing in section [221](#) prevents the admissibility of an oral statement spontaneously made before you have had a reasonable opportunity to comply with the rights of the child or young person set out in section 221.

### Other legal requirements

For more information about legal requirements refer to [Children and Young Persons: Frequently asked questions](#) in this guide.

### Nominated persons

A child or young person can consult with before interview, and have present during interview, a lawyer and nominated person of their choice. The nominated person must be:

- the child or young person's parent or guardian, or
- an adult member of the child or young person's family, whanau or family group, or
- any other adult (of or over 20 years) selected by the child or young person.

([s221\(1\)](#)) and [s222](#) Children, Young Persons and Their Families Act 1989).

You may only refuse to use the chosen nominated person if you believe on reasonable grounds that:

- if they are permitted to consult with the child or young person they would attempt or be likely to attempt, to pervert the course of justice, or
- they cannot with reasonable diligence be located, or will not be available within a period of time that is reasonable in the circumstances. (Courts have held waits in excess of an hour are not unreasonable and you must be able to demonstrate reasonable and diligent enquiries were made).

If either of these grounds exist, ask the child or young person to nominate another person.

### **Refusal or failure to nominate a person**

If the child or young person refuses or fails to nominate a person, ask them to nominate someone from the schedule of nominated persons held at the station. If they are unable or unwilling to do that, select the person yourself from the schedule.

### **Potential witnesses**

If the nominated person selected by the child or young person is also a potential witness:

- interview them **before** interviewing the child or young person
- assess their response to determine whether there are reasonable grounds to believe they would, or are likely to, attempt to pervert the course of justice. For example, if a person states that their son was at home and you have contrary evidence, determine whether this is a genuine belief or whether they are deliberately misleading you.

### **Informing parents or guardians**

If a child or young person is at a Police station for questioning you must inform one of the following persons that they are there for questioning or arrest: the parents or guardians, adult member of family/whanau or nominated person ([s229](#) and [s231](#) Children, Young Persons and their Families Act 1989). If the nominated person is not the parent, guardian or caregiver, or the child or young person does not nominate a person, then the parent, guardian or caregiver must also be informed unless impractical to do so ([s229\(1\)](#)).

### **Use a checklist to ensure legal requirements are met**

Complete a 'Youth Checklist' (located in police forms, which briefly sets out your legal requirements) when interviewing children or young people as suspects so you have an accurate record of events. Attach the original to the file or tape it in your notebook at the time of interview (to avoid defence counsel alleging it was completed at a later time). If a checklist is not available, make a detailed record of events in your notebook. A 'Youth Rights Aide Memoir' can also help to ensure you have met all legal requirements.

The checklist:

- can be referred to in court as your notes made at the time
- is usually the first document defence counsel and prosecutors examine when determining whether a suspect's confession may be ruled inadmissible.

### **Procedures when interviewing children and young people**

Follow the [usual procedures for interviewing suspects](#) when interviewing children and young people, but with these variations.

## Planning and preparation

Interview phase	Variations or actions to take
Investigatively important topics	Consider ingredients and probable defences. e.g. for an offender under 14, that they knew the act or omission constituting the offence was wrong or contrary to law.
Suspect profile: identity factors	<ul style="list-style-type: none"> <li>Any physical, intellectual, psychological or psychiatric impairment, specialist health and/or mental health needs.</li> <li>Cognitive abilities (e.g. memory, attention, concept of time).</li> <li>Linguistic abilities (e.g. understanding and using spoken language).</li> <li>Family members/carers and nature of relationships. Potential <a href="#">nominated persons</a>.</li> <li>Routines (e.g. school, courses, work).</li> <li>After conducting a full NIA check, contact Youth Aid Section to see if they have any additional records. If so, examine their file and contact the Youth Aid Officer who has dealt with them.</li> <li>Current or previous contact with public services (including previous allegations of abuse, concerns about parenting, experience of an investigative interview).</li> <li>Consider any welfare issues that may arise.</li> </ul>
Suspect profile: current state	<ul style="list-style-type: none"> <li>Any significant stress recently experienced by the child and/or the family (e.g. bereavement, sickness, domestic violence, racism, job loss, moving house, divorce and so on).</li> <li>Whether currently in a safe environment.</li> </ul>
Legal requirements	<ul style="list-style-type: none"> <li>Do you need to give them their rights: <ul style="list-style-type: none"> <li>are there reasonable grounds to suspect they have committed an offence?</li> <li>are you asking questions intended to obtain an admission?</li> </ul> </li> <li>Is there a need for a <a href="#">nominated adult</a> and are there any potential complications (e.g. if they are a witness)?</li> </ul>
Interview structure	<a href="#">Decide what interview model to use</a> - in most cases this will be the conversation management model.
Practical arrangements	<ul style="list-style-type: none"> <li>Consider the suspect's willingness to talk in a formal setting to a police officer. i.e. what is the best location for the interview</li> <li>What documents do you need to assist the process - <a href="#">youth checklist</a>, guidance for nominated persons, interview plan, note taker.</li> </ul>

## Engage and explain

Take these additional steps when engaging with and explaining proceedings to the suspect and/or nominated persons.

Step	Action
1	Keep an accurate record of all interactions with the suspect using the youth checklist and your notebook.
2	<p>If required, give them the <a href="#">caution/rights</a> under section 215 of the Act. Ensure they understand by:</p> <ul style="list-style-type: none"> <li>explaining in an appropriate language and manner e.g. using simple language</li> <li>breaking it down into small parts and checking they understand by asking them to explain each part back to you.</li> </ul>

	Remember they can consult with before interview, and have present during interview, a lawyer and nominated person of their choice. Arrange a lawyer if requested.
3	<p>Explain the role of the <a href="#">nominated person</a> (i.e. to support them and ensure they understand their rights) and ask them to choose one. Contact the nominated person, explain what is happening and request that they attend the interview.</p> <p>If the <a href="#">nominated person is inappropriate</a> (according to section <a href="#">222(2)</a> of the Act) ask the suspect to choose another person.</p> <p>If the child or young person refuses or fails to nominate a person, ask them to nominate someone from the schedule of nominated persons held at the station. If they are unable or unwilling to do that, select the person yourself from the schedule.</p>
4	Contact the suspect's parent, guardian or other person having care of the suspect (unless they have been chosen as the nominated person) and inform them the suspect is at the Police station for questioning or arrest.
5	<p>While waiting for the nominated person, discuss neutral topics and develop rapport. Record in your notebook what was spoken about.</p> <p>Ask about any welfare/medical concerns.</p>
6	<p>When the nominated person arrives:</p> <ul style="list-style-type: none"> <li>• introduce them to the child or young person and explain why you want to interview the child or young person</li> <li>• explain (in the child or young person's presence) that their role is to: <ul style="list-style-type: none"> <li>- take reasonable steps to ensure the child or young person understands their rights</li> <li>- support the child or young person before and during interview or questioning (if they agree to answer questions). Make sure they understand they cannot answer questions on behalf of the suspect.</li> </ul> </li> <li>• give the nominated person a copy of the 'Guidance for Nominated Persons' POL 388A and go through each point with them</li> <li>• explain the child or young person's rights and ask them to go through these with the child or young person to ensure they understand</li> <li>• leave them alone together for a reasonable time to discuss the rights and when you return, ask the nominated person to sign a copy of the 'Guidance for Nominated Persons' leaflet POL 388A to certify that they have explained the contents to the suspect.</li> </ul>
7	<p>If the <a href="#">suspect elects to speak to a lawyer</a>, you must provide them with the appropriate means to do so. Involve a parent or nominated person in any decision making about this matter.</p> <p>Leave the suspect and, if the lawyer agrees, the nominated person, alone to speak to the lawyer in private.</p>
8	<p>In the nominated person's presence:</p> <ul style="list-style-type: none"> <li>• inform the suspect you will interview them by video recording and explain what this means</li> <li>• if they refuse to be video recorded, explain the advantages including shortened interview length, increased accuracy and fairness</li> </ul> <p>Only if they still refuse a video recorded interview give them the option of audio recording, and then, if they still refuse, provide the option of making a written statement.</p>
9	<p><a href="#">Commence the interview.</a></p> <p>Be aware that any conversations between the youth and their nominated</p>



	person may be privileged. Stop the video recording if breaks are taken during the interview and the nominated person decides to remain in the interview room alone with the youth.
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**Account**

<b>Interview phase</b>	<b>Actions</b>
Interview model	Generally you should use the <a href="#">conversation management</a> model. However, if the suspect is particularly young or immature use the <a href="#">free recall model</a> with a challenge phase because it will limit any suggestion of oppression or compulsion.  Always use the conversation management model with 'streetwise' suspects.
Identifying and expanding suspect and investigatively important topics	<ul style="list-style-type: none"> <li>• Keep questions short and simple - the younger the person, the shorter and more simply phrased the questions must be.</li> <li>• Open TEDS type questions are the best questions to use. ('Show me...' type questions might be even more appropriate for the less mature suspect).</li> <li>• Avoid developmentally inappropriate questions (e.g. young people might find questions relating to time, date, height, length, weight, age etc. difficult).</li> <li>• Only use leading questions as a last resort. If the suspect responds to a leading question with relevant information not led by the question, revert to open or specific questions.</li> <li>• Avoid asking closed questions which require a 'Yes'/'No' answer as children have a tendency to want to please by saying 'Yes'.</li> </ul>
Challenge	<p>Challenge the child's or young person's evidence in the same way as for other suspects.</p> <p>However, remember the fairness and reasonableness of the challenges will be determined subjectively based on the suspect's characteristics. This means a mature or 'streetwise' offender may be challenged to a greater degree than someone who is young and 'naïve'.</p> <p>You have to be very careful in this area that you are not oppressive. Heavy questioning that amounts to cross-examination will not be acceptable to the Court, particularly if it may have impacted on the reliability of the answer given. This is especially so in respect of children or young persons.</p>

**Written statements**

Adopt the usual process when taking a written statement. Include:

- youth rights in detail and in the language used
- nominated person details
- events that occurred prior to the interview's commencement.

Both the suspect and nominated person should read over the statement and the suspect should:

- make and initial any alterations
- endorse that the statement is true and correct and that they have nothing further to add.

If there are any doubts as to the suspect's ability to read, their nominated person should read the statement to them and endorse the statement accordingly. The suspect should endorse the statement as having been read to them, and that is true and correct.

**Closure**

Explain to suspect, their parent/guardian and the nominated person what action will now be taken and what this process involves.

Provide the suspect and nominated person with your name and contact telephone number.

## The interview record: statements and notes

### Introduction

As an exception to the hearsay rule, the record of any **admissions** made by a suspect may be admissible as evidence during judicial proceedings.

Treat all records of suspect interviews as exhibits. The original copy of the interview record must be presented to the court for scrutiny during judicial proceedings. With a written statement, this means that the interviewer will read the statement to the court and the judge and/or jury may examine the statement itself.

### When to write a statement

Video recording the interview is the best method. Only make a written statement when:

- it is impractical to video or audio record the interview, **or**
- the suspect refuses to go on video or audio but consents to a written statement.

### Procedure for preparing written statements

Step	Action
1	<ul style="list-style-type: none"><li>• Handwrite or type the statement. Only record it in your notebook if these methods are impractical.</li><li>• Use one side of the page only. Leave space at the top of each page for the file pin.</li></ul>
2	<p>Put the date, time and location at the top of the front page.</p> <p>e.g. '27/02/2020 2.35pm Christchurch Police Station'</p> <p>(Statements made by prisoners should not state the place of detention. The city, town or area is sufficient).</p>
3	<p>At the top of each page:</p> <ul style="list-style-type: none"><li>• write the person's name followed by 'states:' (e.g. 'Joe Donald Bloggs states')</li><li>• in the top right hand corner, record the page number and total number of pages used (add this at the end). For example: '<i>page 2/6</i>' (page 2 of a 6 page statement).</li></ul>
4	<p>Using the conversation management model record the statement as you go in paragraphs as appropriate using 'Q and A' format by writing the question and putting it to the suspect and noting the reply.</p> <p>e.g. 'Q. <i>What were you wearing yesterday?</i> A. <i>I dunno.</i>'</p> <ul style="list-style-type: none"><li>• Record every word using the person's own words, phrases and expressions</li><li>• Do not include inadmissible matters in the content such as references to:<ul style="list-style-type: none"><li>- previous convictions</li><li>- prison, if the suspect is in custody</li><li>- matters not relevant to the enquiry (this includes other unrelated offences - a separate interview should be conducted for these).</li></ul></li><li>• Avoid correcting the person's grammar or vocabulary.</li><li>• If they use slang or colloquialisms, ask them to clarify the meaning. Write their explanation in the statement, so the intended meaning can be clearly understood.</li></ul>

1st paragraph	<p>State the person's:</p> <ul style="list-style-type: none"> <li>• name</li> <li>• age and date of birth</li> <li>• residential address, telephone numbers, email address and social network address (e.g. Bebo, Facebook)</li> <li>• occupation and business address, telephone numbers, email address</li> <li>• include domestic circumstances if appropriate</li> </ul> <p>e.g. <i>My full name is Joe Donald Bloggs. I am 21 years old and was born on 30 March 1990. I live at 3 White Place, Invercargill. My home phone number is 03 123 4567 and mobile number is 021 123 4567. My email address is JBloggs@email.com. I am not working at the moment.'</i></p>
2nd paragraph	<p>Include your own name and give the reason for the making of the statement.</p> <p>e.g. <i>'I am making this statement to Constable White about a fight outside the hotel in Main Street.'</i></p>
3rd paragraph	<p>If a suspect has been informed of the caution/rights include exactly what was said in the statement.</p> <p>e.g. <i>'I have been told by Constable White that I have the right to remain silent. I do not have to make any statement. Anything I say will be recorded and may be given in evidence in court. I have the right to speak with a lawyer without delay and in private before deciding whether to answer any questions. Police have a list of lawyers I may speak to for free.</i></p> <p><i>Q. Do you understand these rights? A. Yeah.'</i></p> <p>If an admission is made during interview and the suspect has not been given their caution/rights:</p> <ul style="list-style-type: none"> <li>• caution/rights them as appropriate</li> <li>• record this in full in the statement at the corresponding place.</li> </ul>

### Endorsing the statement

Once you have recorded everything take these steps to endorse the statement.

Step	Action
1	<p>Ask the suspect to:</p> <ul style="list-style-type: none"> <li>• read the statement (if this is not possible, follow procedure for <a href="#">suspects not able to read</a>)</li> <li>• make and initial any corrections or additions and sign at the end of each page</li> <li>• write at the end of the statement: <ul style="list-style-type: none"> <li>- <i>'I have read this statement. It is true and correct. I have nothing further to add'</i></li> </ul> </li> <li>• sign the statement with their full signature (if they refuse to sign, note this on the statement).</li> </ul>
2	<p>You endorse the statement by:</p> <ul style="list-style-type: none"> <li>• signing the bottom of each page and any corrections or additions made</li> <li>• writing at the end of the statement: <ul style="list-style-type: none"> <li>- <i>'Statement taken and witnessed by:'</i></li> </ul> </li> <li>• adding your full signature, full name, rank, QID and finish time.</li> </ul>

## Suspects not able to read and write

If you are unsure about a suspect's ability to read and write follow this procedure to complete a statement.

Step	Action
1	Ask the suspect to read out the first sentence or two to you. If they have difficulty, offer to read it to them or get a colleague to read it so there can be no allegation of distortion.
2	Sit beside the suspect so they can see where you are reading from.
3	When they are endorsing the statement, ask them to write "this statement has been read to me. It is true and correct". Make a note about their reading ability in your notebook so you have a record if you are questioned in court.
4	The person reading the statement endorses the statement: 'I have read this statement to SUSPECT'S NAME. I have asked them if they wish to make any alterations which I have made and initialled with READER'S NAME.' The reader signs off the statement and writes the time.

## Notebooks

Your notebook is a record of your duties, what you did, who you spoke to, your observations, sketch plans or diagrams, initial interview notes and, if absolutely necessary, statements from interviewees.

### Notebook statements

You should only take statements in your notebook in exceptional circumstances. For example, when it is impractical to conduct a formal interview or when the offence is minor in nature.

In these circumstances record the entries as you would a written statement. There is no need to include an opening paragraph that outlines the suspects contact details, rather, these should be recorded in full in notebook format before the statement commences.

### Notebook entries about the interview

You may later be required to satisfy the court of the fairness of the interview. For this reason you should also record the following details in your notebook near the time at which you conduct the interview:

- time and exact words used when the caution/rights was given
- times the:
  - interview started and finished
  - refreshments were supplied
  - interview was suspended with reasons
  - if applicable, the suspect was arrested
  - if applicable, the suspect requested a solicitor
- people present
- details of any conversation prior to and after interview
- time and exact words of any admissions made by the suspect prior to and after the interview
- physical description of the suspect
- description of the suspect's behaviour.

### Endorsement by the suspect

To increase the weight attached to the accuracy of your notes, invite the suspect to:

- read your notes - if this is not possible, read them to the person
- make and initial any corrections or additions
- initial each page
- write at the end of the notebook: '*I have read these notes. They are true and correct.*'

- sign the notes with their full signature.

If they refuse to read the notes, read them to the person and ask them if they agree they are true and correct. Record this and their response in your notebook.

## **The interview record: Court processes**

### **Responsibilities**

- O/C stations have a responsibility to ensure the general security of the video recording equipment.
- Working copies are the responsibility of the interviewing officers while in their possession.
- Once stored in property and exhibits stores, the interview record will be logged and stored in the same way as any other exhibit.

### **Disclosure**

Video interviews should be disclosed as per any other police document.

### **Defence requests for transcripts**

If a transcript has already been prepared for prosecution purposes, it should be disclosed after being checked for accuracy. If a transcript has not been prepared, there is no requirement to create one for the purpose of disclosure.

Where the prosecution does not require a transcript, but defence counsel wishes to have one, counsel are free to make their own arrangements for transcription from their copy of the interview.

### **Transcription**

#### **District Court defended hearings**

Generally a transcript of a video recorded interview should not be made. In the absence of a transcript the interviewing officer must prepare an evaluation of the interview.

#### **District/High Court jury trials**

A transcript will be prepared when there is a definite indication that the case will proceed to trial. This will normally be after the call-over hearing. Interviews must then be submitted promptly for transcribing.

#### **Authorisation of transcripts**

The O/C case completes Part A of the 'Request for Transcription' form and forwards it to a supervisor of or above the position level of Inspector to be authorised.

After the officer authorising the transcription signs Part B of the form, the interview is delivered, along with the written authority, to the head typist.

When the transcript is complete, the typist will complete Part C and forward it to the O/C case.

It is the responsibility of the O/C case to ensure the transcription is accurate by checking the transcript closely against a copy of the interview.

#### **Other requests for transcripts**

A request for a transcript will also be considered in the following circumstances:

- when the O/C case in a serious crime investigation requires a file to be forwarded out of district for enquiries to be made, or
- when the Crown Solicitor makes a specific request, or a judge orders one to be made, or
- when the serious nature of the charge, or the complexity of the matter investigated or the length, or particular circumstances indicate a transcript is necessary.

## **Presentation of the video interview in court**

### **Master copy**

The master copy is produced by the interviewing officer as an exhibit for committal and at not guilty hearings.

### **Brief of evidence/formal written statement**

The interviewing officer's brief of evidence or formal written statement should include the following points:

- any relevant conversation not video recorded
- at a certain time, date and place, an interview with the suspect was recorded by means of two/three simultaneously recorded video dvds/tapes
- at the conclusion of the interview, one of the two copies was designated the master copy
- the master copy was labelled, sealed and deposited into a security cabinet inside the interview room, in the presence of the suspect.

The interviewing officer will then identify and produce the master copy as an exhibit. There is no requirement for the interviewing officer to give evidence as to any of the recorded conversation.

### **Availability of working copy**

The O/C case should have the working copy available during court proceedings for reference if required.

### **Chain of evidence**

Current procedures trace the movement of both the master copy and the working copy. It will generally be unnecessary to describe any evidential chain, except where a dispute arises as to the integrity of the copy.

### **Editing**

The master copy will always remain in its original state and will be produced unaltered at committal and defended hearings.

Where an application under section [344A](#) of the Crimes Act 1961 results in an order that a video interview is edited prior to or during trial, the Police will be guided and directed by the Crown Solicitor in charge of the case. Since the master copy will already be an exhibit of the court at this point, any editing will be from the working copy.



## Legal requirements: frequently asked questions

### Introduction

When interviewing suspects a number of provisions must be complied with to ensure that any information obtained is admissible in subsequent legal proceedings. It is essential that you are familiar with and act within the terms of the:

- [Chief Justice's Practice Note on Police Questioning \('the Practice Note'\)](#)
- [New Zealand Bill of Rights Act 1990](#)
- [section 316 Crimes Act 1961](#)
- [Evidence Act 2006](#).

### What are the Chief Justice's guidelines?

Pursuant to section 30(6) of the Evidence Act 2006 a judge must consider the [Chief Justice's Practice Note on Police Questioning \('the Practice Note'\)](#) in determining whether a defendant's statement was obtained fairly. The Practice Note provides 5 guidelines on matters of fairness for police when dealing with suspects. While the guidelines in the Practice Note are not strict rules of law, they have some force in law and must be complied with.

### Who can I question?

Guideline 1 of the Practice Note states:

'A member of the police investigating an offence may ask questions of any person from whom it is thought useful information may be obtained, whether or not that person is a suspect, but must not suggest that it is compulsory for the person questioned to answer.'

You:

- may ask questions of any person to assist with inquiries
- cannot compel a person to answer questions if they refuse or imply that they must answer your questions. The principle is absolute even if you are requesting a name and address. The only exception is when statute specifies an authority to do so (e.g. name, address and date of birth must be provided under section 113 of the Land Transport Act 1998 or a person can be arrested for failing to provide their name and address under section 39 Summary Offences Act 1981).

### When do I give the caution/rights?

Guideline 2 of the Practice Note states:

'Whenever a member of the police has sufficient evidence to charge a person with an offence or whenever a member of the police seeks to question a person in custody, the person must be given the caution/rights before being invited to make a statement or answer questions.'

### What does sufficient evidence to charge mean?

There is sufficient evidence to charge a person when Police have "sufficient evidence which, objectively considered would support a prima-facie case against the suspect" [R v Goodwin (1992) 9 CRNZ1]

When deciding whether to caution/rights someone, ask yourself:

- Do I have enough evidence to support this case? Does the evidence (if accepted) justify taking this matter to court?
- Would an objective independent member of the public agree?

### When is a person in custody?

A person is in custody when they have been arrested or detained. A person is in custody whether the arrest or detention is lawful or arbitrary. Arrest means a communication by

Police of an intention to apprehend and hold the person in the exercise of authority to do so. An arrest will generally involve Police:

- advising the person that they are under arrest, making it plain that they have "been deprived of the liberty to go where he pleases", and
- the words of arrest are accompanied by a physical touching or submission by the person being arrested.

Lawful detention is when the person is detained under an enactment.

**Note:** Police have a duty of care for the safety of any person arrested or detained.

### **What is arbitrary arrest or detention?**

Section [22](#) of the Bill of Rights Act 1990 states:

'Everyone has the right not to be arbitrarily arrested or detained.'

'Arbitrary' means not lawful, or without lawful authority, or based on random choice or whim. (Unless an arrest or detention is made pursuant to an authority or enactment, it is unlawful and 'arbitrary').

Arbitrary detention can occur if the suspect believes on reasonable grounds that they are not free to leave based on Police conduct (detention can occur anywhere and is not limited to a police station).

If the person has not been arrested or detained under an enactment they must be informed they are free to go. Any admissions gained while the suspect believes they are not free to go are likely to be ruled inadmissible.

### **What must I explain to the suspect about the reason for interview?**

During the 'engage and explain' phase of the interview you must fairly inform the suspect what they are being interviewed about and the type of charge they may face (i.e. the degree of jeopardy they are under). This means you cannot minimise the seriousness of the charges they may face.

### **What is the caution/rights for adults?**

Advice that should be given to an adult suspect (this originated from Guideline 2 but has been amended due to case law):

- 'I am arresting you for / I am speaking to you about... (give reason)
- You have the right to remain silent.
- You do not have to make any statement.
- Anything you say will be recorded and may be given in evidence in court.
- You have the right to speak with a lawyer without delay and in private before deciding whether to answer any questions.
- Police have a list of lawyers you may speak to for free.
- Do you understand these rights?'

### **How do I make sure they understand?**

In the interests of fairness ensure the suspect understands their rights by:

- using simple language
- breaking it down into small parts and checking they understand each part.

### **When should I repeat the caution/rights?**

Repeat the caution/rights in these situations:

- if the advice was given before the suspect was arrested or detained, it must be repeated when the suspect is arrested or detained
- after a lengthy break in interview

- when interviewing them about an unrelated offence or the circumstances of the offence change.

### **Do I need to record everything suspect tells me under caution/rights?**

Guideline 2(c) requires anything said by the suspect or person arrested or detained that is relevant to the offence be recorded. If it is not recorded, and Police seek to give evidence of what was said, particularly if it is inculpatory, then that evidence may be held to be inadmissible or given very little evidential weight.

### **Discussing other topics**

Idle chat need not be recorded, but anything relevant to the offence needs to be recorded in some way.

You should record the fact that other topics were discussed with a suspect, and invite the suspect to sign a record of that fact (e.g. in your notebook). If the suspect refuses to sign that record, you should as soon as possible, briefly record the general topics discussed.

If a video interview is conducted, record the fact that other topics were discussed as part of the introduction to that interview, i.e. prior events.

### **When do I have to inform someone of their Bill of Rights?**

For practical purposes, given that the advice requirements of the New Zealand Bill of Rights Act are brought into the new caution/rights, the advice in Guideline 2 should be provided to people who are arrested or detained, or where Police seek to question someone where there is sufficient evidence to charge that person with an offence.

Even where you caution/advise a suspect of their rights prior to arrest or detention, you must still repeat the advice upon arrest or detention under section [23](#) Bill of Rights Act 1990.

Are there restrictions on interviewing someone arrested for an offence?

Guideline 3 states:

'Questions of a person in custody or in respect of whom there is sufficient evidence to lay a charge must not amount to cross-examination'

Questioning a suspect is not restricted by arrest. The interview process is the same regardless of whether a suspect has been arrested and/or charged. The only difference is that once arrested they must be brought before the court as soon as possible (s[23](#) NZ Bill of Rights Act 1990).

Whether or not there is sufficient to charge, questioning should never be overbearing or unfair. If it is, the interview may be excluded under section [28](#), [29](#) or [30](#) Evidence Act 2006.

Excessive or oppressive cross-examination may lead to exclusion of the interview.

### **How does persistent questioning differ to cross-examination?**

Persistent questioning aims at establishing further facts from answers already given. A suspect can be challenged if their account is not consistent with facts obtained during the course of the enquiry. Persistent questioning, however, must not be oppressive or overbearing. It is permissible to refuse to accept a suspect's explanation or denials, particularly when they are inconsistent with the evidence.

### **How long can I interview someone for after arrest?**

You can interview someone under arrest at length as long as:

- the rights of the suspect are met
- the suspect is treated fairly and ethically.

Be mindful of the requirement to bring them before a court as soon as possible ([s23](#) Bill of Rights Act 1990).

### **Can I lock a person (who is not arrested or detained) in the interview room?**

Good practice dictates you should not lock anyone in an interview room. Locking a suspect who is not arrested or detained in a room is very likely to render the interview inadmissible as the suspect is not free to leave despite the fact that they have not been arrested or detained under any enactment.

If exceptional circumstances exist and for safety reasons you need to lock a person (who is not arrested or detained under any enactment) in an interview room, you must:

- gain their informed consent (you have explained why you are locking the door, and they accept your explanation and understand that they may choose to leave the interview at any time)
- leave for only a short period of time
- provide them with the opportunity to leave, e.g. knock on the door (and respond to a knock as quickly as possible)
- record in your notebook when you left and returned to the room.

You must also consider what may occur if the interviewee is left alone in a locked interview room as you:

- have a duty of care for the interviewee (as with any person under your custodial management) and must consider their overall safety
- must be aware of their ability to dispose of evidence.

### **How do I question the suspect about a statement made by a witness?**

Guideline 4 of the Practice Note states:

'Whenever a person is questioned about statements made by others or about other evidence, the substance of the statements or the nature of the evidence must be fairly explained.'

When a suspect is questioned about statements made by others, explain the substance of the evidence obtained from those others to the suspect. It will not be sufficient to refer to general evidence (e.g. "You said that you have never been to the Portal petrol station. We have witnesses who identify you at the scene. Explain that."). Instead the substance of that part of the statement should be put (e.g. "You said that you have never been to the Portal petrol station. We have a witness who describes seeing a pākehā male with a tattoo on his face wearing a black hoodie and blue jeans at the Portal petrol station on the night of the burglary. This matches your description. Explain that.").

You must not deceive suspects by trickery or by misrepresenting the truth. To avoid misrepresentation:

- read relevant extracts from the statement to the suspect, or
- accurately summarise the statement.

## How should I record the interview?

Guideline 5 states:

'Any statement made by a person in custody or in respect of whom there is sufficient evidence to charge should preferably be recorded by video recording unless that is impractical or unless the person declines to be recorded by video. Where the statement is not recorded by video, it must be recorded permanently on audio tape or in writing. The person making the statement must be given an opportunity to review the tape or written statement or to have the written statement read over, and must be given an opportunity to correct any errors or add anything further. Where the statement is recorded in writing, the person must be asked if he or she wishes to confirm the written record as correct by signing it.'

Good practice is to video record all suspect interviews unless:

- the suspect does not consent
- it is impractical to do so.

If the suspect does not consent to video, the next best method is to cover the camera of the video recording equipment and record the interview on audio only.

## When is a suspect's 'statement'/interview admissible as evidence?

"Statement" is defined in section [4](#) Evidence Act 2006 and means:

- (a) a spoken or written assertion by a person of any matter; or
- (b) non-verbal conduct of a person that is intended by that person as an assertion of any matter.

This definition can include:

- direct and deliberate oral or written statements made by the defendant stating they committed the crime (or an element of the crime)
- lies told by the defendant about relevant matters
- the defendant's response to statements made in their presence
- private conversations the defendant is involved in that are overheard (e.g. between husband and wife, the defendant talking to themselves, or prisoners talking in cells).

As your interviews are 'statements', you must understand the criteria the court will use to determine whether a suspect's 'statement' is admissible.

A defendant's statement can be produced by the prosecution as evidence but is only admissible against the defendant, not a co-defendant ([s27](#) Evidence Act 2006).

Grounds a judge must consider when determining the admissibility of a statement are outlined in section [28](#), [29](#) and [30](#) Evidence Act.

## When is an interview record excluded because of unreliability or oppression?

Under sections [28](#) and [29](#) Evidence Act 2006, a judge must exclude a statement in certain circumstances. In determining whether a statement is unreliable or influenced by oppression and whether the relevant section requires its exclusion the judge must take into account:

- any pertinent physical, mental, or psychological condition of the defendant when the statement was made (whether apparent or not)
- any pertinent characteristics of the defendant including any mental, intellectual, or physical disability to which the defendant is subject (whether apparent or not)
- the nature of any questions put to the defendant and the manner and circumstances in which they were put

- the nature of any threat, promise, or representation made to the defendant or any other person.

The judge may also take other factors into account. Following the [ten principles of investigative interviewing](#) and procedures in this guide will increase the likelihood that your interview is admissible and limit opportunities for defence counsel to challenge admissibility.

Record the circumstances in which any statement is obtained in case they should later become an issue in court (with interviews, the most reliable method of recording this information is by video recording). Also record your observations of the defendant (e.g. intoxication, mental disability and physical condition). Accurate records will assist you if you need to give evidence about the way in which the interview was conducted in the event that the admissibility of the statement is challenged.

A defendant's statement may not be excluded if it is offered only as evidence of the defendant's physical, mental and psychological condition at the time it was made, or of the fact the statement was made.

### **Don't enter into agreements with defendants**

Do not enter into agreements or 'deals' with a defendant or any other person (e.g. a spouse) under which they will confess in return for Police not charging a co-defendant or any friend, or any other favour. This is likely to be considered a promise or representation and the confession ruled inadmissible in evidence under sections 28, 29 and 30 because of the way the confession was obtained.

Examples of possible threats, promises or representations are:

- "Tell me where the things are and I will be favourable to you."
- "If you don't tell me, you may get yourself into trouble and it will be worse for you."
- "If you tell me what you did, your girlfriend won't be charged."
- "If you admit to this, I will promise that you will get bail."

### **When else may evidence be ruled inadmissible?**

Section [30](#) applies to evidence and not just to statements and provides a process for determining the admissibility of improperly obtained evidence. Evidence is improperly obtained when it is obtained unfairly or in consequence of:

- a breach of any enactment or rule of law by a person to whom section [3](#) of the New Zealand Bill of Rights Act applies, or
- a statement made by a defendant that is or would be inadmissible if it were offered in evidence by the prosecution (s[30](#)(5)).

If a judge finds that evidence has been improperly obtained and its exclusion is proportionate to the impropriety, then the judge must exclude the evidence.

### **Are 'off the record conversations' with suspects admissible?**

A statement made by a suspect under the premise that what they say will not be used as evidence is likely to be ruled inadmissible.

## **Children and young persons: frequently asked questions**

### **When do I have to caution/rights a CYP?**

When interviewing a child or young person you must inform them of their rights as specified by section [215](#) of the Act:

- if there are reasonable grounds to suspect they have committed an offence, or
- before asking questions intended to obtain an admissions, or
- before continuing questioning if at anytime during the interview you form the view that there are reasonable grounds to suspect they have committed an offence.

Rights under s215(1)(c)-(f) must also be explained to a youth on arrest (refer to section [217](#)). The introduction of the [Chief Justice Practice Note on Police Questioning](#) changes the wording and content around what needs to be explained.

### **What is the caution/rights for a CYP?**

Give these rights under section [215](#) as amended by the Chief Justice's Practice Note on Police Questioning:

- 'I want to talk to you about...
- You are not obliged to accompany me and if you decide to accompany me you can withdraw your consent at any time.
- You have the right to remain silent.
- You do not have to make any statement or answer any questions.
- If you agree to make a statement and/or answer any questions you can change your mind and stop at any time.
- Anything you say will be recorded and may be given in evidence in court– this means if you are taken to court for [offence] what you say to me may be retold to the judge or jury.
- You have the right to speak with a lawyer and/or any person nominated by you without delay and in private before deciding whether to make any statement or answer any questions.
- You have the right to have your lawyer and/or nominated person with you while you make any statement or answer any questions.
- Police have a list of lawyers you may speak to for free.'

### **How do I ensure they understand the caution/rights?**

You must inform children and young people of their rights in a manner and language appropriate for their age and level of understanding ([s218](#)). Make sure they understand their rights by:

- using simple language
- breaking it down into small parts and checking they understand each part by asking them to explain back to you what it means.

**Note:** Be aware that children and young persons have a tendency to answer 'yes' when asked closed questions. It is your responsibility to ensure they understand their rights. If you are in any doubt try again until you are certain they understand.

### **What if they refuse to give their name and address?**

Subject to section [215](#) of the Act, if the circumstances are such that you have power to arrest the child or young person without warrant, you may do so if, by refusing to give their name and address to you, the child or young person cannot be served with a summons.

This provision only applies to a child or youth refusing to provide their name and address when you have sufficient to charge them. It simply allows the child or young person to

be fairly informed that if they do not provide their name and address, you cannot summons them, and therefore they may be arrested. For example:

'You can be arrested if you do not give me your name and address. Do you understand what that means?'

Warn them that they will be arrested, if you have reasonable grounds to believe the name and/or address given is false.

As specified by section 215(2) of the Act, this subsection does not apply if the youth is already under arrest.

### **Who should be used as a nominated person?**

A child or young person can consult with before interview, and have present during interview, a lawyer and nominated person (section [221](#)(2)(b)). They have the right to select and be supported by a nominated person **of their choice** provided they are:

- the parent or guardian of the child or young person, or
- adult member of the family or whanau or family group, or
- any other adult (of or over 20 years).

It is only when they refuse or fail to nominate a person that you may nominate someone from the schedule of nominated persons located in most police stations (refer to section [222](#)(1)(d)). You should ask the child or young person to choose someone from the list. If they are unable or unwilling to do so then you should pick the person.

### **When can I refuse to use the person nominated?**

Under section [222](#) of the Act you may only refuse to use the nominated person if you believe on reasonable grounds that:

- if they are permitted to consult with the child or young person they would attempt, or be likely to attempt, to pervert the course of justice, or
- they cannot with reasonable diligence be located, or will not be available within a period of time that is reasonable in the circumstances.

If either of these grounds exist, ask the child or young person to nominate another person.

### **Reasonable diligence?**

Courts have held that a wait in excess of an hour is not unreasonable. You have to show the court that reasonable and diligent enquiries were made. (The effort to locate the nominated person can be time consuming but the efforts can be well rewarded by a person the child or young person is comfortable with).

### **What if the nominated person is a witness?**

If the child or young person's parent/s or other nominated person is also a potential witness you should:

- interview the potential nominated person/s **before** interviewing the child or young person
- assess their response to determine whether there are reasonable grounds to believe that they would or are likely to attempt to pervert the course of justice. For example, if they state their son/daughter was at home and you have contrary evidence, determine whether this is a genuine belief or whether they are deliberately misleading you.



**What do I have to tell the CYP's parents?**

If a child or young person is at a police station for questioning you must (unless impracticable to do so) inform the parents, guardians or other persons caring for the child or young person that they are at the police station for questioning or arrest.

If the child or young person has chosen their parent or guardian as their nominated person, there is no need to contact anyone else.