



## Police interviews involving children

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When police wish to interview a child in relation to a suspected offence, special rules apply. Parents and those with the care of a child who the police want to question should seek urgent legal advice from the outset **before** any interview takes place.

This article examines the issues that arise for consideration when a child is to be questioned by police in relation to an alleged [criminal offence](#).

### The rights of a child being interviewed by police

In a number of ways, a police interview of a child involves similar processes to that of an adult interview. Like adults, children have a right to silence, and are therefore generally under no obligation to answer questions from the police. The process and procedure involved in police interviews is explained in our earlier article, ["Your rights during a police interview in Queensland"](#).

A child has additional rights however, in that special safeguards apply even before they are interviewed.

If a child is not legally represented, they have the right to speak to a "support person", and police must not question them unless a support person is present. Those who can fill the role of a support person include:

- a parent;
- a guardian;
- a lawyer;
- an adult relative or friend; or
- a justice of the peace.

Statements made by a child to police in an interview are unlikely to be admissible in court if a support person was not present at the time they were questioned.

## Should a child participate in a police interview?

This question raises complex legal issues which requires expert legal advice. That is because, in some instances it is in the child's interest to proceed through an interview, and at other times it may be the worst thing they can do. For that reason, the question of whether a child should participate in a police interview must be expertly assessed on a case-by-case basis.

If police are seeking to interview your child or a child in your care, you can contact us 24/7 for advice and assistance prior to participating in the police interview.

[Get help from a criminal lawyer: 07 3361 0222 \(available 24/7\)](#)

There are various risks associated with participating in a police interview – risks that apply to both adults and children. For example, if a child makes any admission concerning an offence during a 'regular' police interview (with a support person present), that admission can be used by the police to support a prosecution case against them.

Children, in particular, face heightened dangers when participating in a police interview because:

- they may be more likely to misinterpret or misunderstand questions asked by the police;
- the imbalance of power associated with police interviews, given the differences in age and maturity, can be overwhelming;
- the subject matter of police interviews is often personal and sensitive, and a child may feel especially uncomfortable talking to an adult about such matters.

Despite those potential negatives, sometimes participating in an interview can be very beneficial for a child. If a child participates in an interview and admits guilt to certain offending, there may be an option for the matter to be "diverted" prior to court proceedings even commencing. In this way, a child can avoid being charged altogether.

You can read more about this option in our earlier article, ["Diversionary options for young offenders in Queensland."](#)

Other options available if the young person admits guilt to an offence are:

- for the police to take no further action; or
- for police to administer a formal caution; or
- to have the matter proceed via [restorative justice conferencing](#) or [drug diversion](#) (even if the young person did not participate in a protected admissions interview).

## Protected admissions interviews

A 'protected admission interview' (PAI) is a type of interview that may be available to a child under investigation by police if the child is willing to admit to an offence. PAIs should be conducted with a lawyer and a support person.

The protected admissions scheme allows a police officer and a child to come to an agreement about diverting criminal charges outside of the court system. This type of interview can sometimes be offered by a police officer to the young person in the presence of a parent and/or support persons. The interview allows for the child to make admissions to the offence and then be diverted, rather than charged, at the conclusion of the interview. For example, a child could be referred to a restorative justice conference or be cautioned by the police officers.

PAIs are not appropriate for every matter, and police are not always willing to offer this type of interview to a young person. A lawyer can speak to the police officer/s investigating the matter to determine whether a PAI is an appropriate resolution that they would be agreeable to.

If police determine a PAI is not an appropriate resolution to their investigation, police will offer the young person an opportunity to participate in a regular police interview which may have adverse consequences. A young person should seek urgent legal advice prior to participating in either a PAI or regular police interview.

## The difference between a regular police interview and a protected admissions interview

The key distinction between a regular police interview and a PAI is that any admissions made in a PAI concerning an offence are not admissible against the child in any subsequent court proceedings and cannot be relied upon by the police to prove any fact.

A common risk posed in participating in a police interview is the possible disclosure of further offending. Often, people being interviewed by police don't even realise that their answers amount to an admission of other offences. In a PAI, if a child admits to further offending (in addition to the offence/s police are already investigating), they may still be diverted from court proceedings for the other offending disclosed during the interview.

Although findings in a PAI cannot be used as evidence against a young person in court, the interview may be used to 'guide' a police investigation. In other words, police can consider the information provided during a PAI when deciding what further investigations to conduct.

## When to seek advice from a criminal lawyer

Where a child is being investigated for a criminal offence, it is vital to obtain legal advice at an early stage and before any interview, as there may be options available that could result in the matter being diverted away from the court system altogether.

The decisions involved are not straightforward, and it is easy to make a bad situation worse if the wrong decision is taken at the outset.

The lawyers at Gilshenan & Luton have significant expertise in this specialised and complex area of the law and can provide representation for your child at any stage of a criminal matter.

## Contacting Gilshenan &Luton Criminal Defence Lawyers

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*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*