



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Legal Fact Sheet Police Powers – *Identifying Particulars: Juveniles*



When do the police have the authority to require a juvenile to provide '*identifying particulars*'?

This fact sheet explains:

- Juveniles not in custody.
- Required Police Procedure
- Court Procedure.
- Support Person – admissibility.
- Destruction of Identifying Particulars taken under Court Order
- How to obtain legal advice?

ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.

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1800 012 255

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1. Police Powers – Identifying Particulars – Juveniles

The police are entitled to take identifying particulars of a juvenile who is **in custody** for an “identifying particulars offence”. Please see our Facts Sheet entitled “Police Powers – Identifying Particulars – Adults” as to what kind of identifying particulars can be taken and for what type of offences. Whilst the same rules apply to both adults and juveniles who are in police custody – there are some very specific requirements in relation to juveniles who are charged without actually being in custody (e.g. given a Notice to Appear).

2. Juveniles not in custody?

If a juvenile has been charged, **without being arrested**, with an **indictable offence** or an offence against the *Criminal Code*; the *Drugs Misuse Act*; the *Regulatory Offences Act*; the *Summary Offences Act*; or the *Weapons Act* (that is, nearly all offences) – then a police officer wishing to seek identifying particulars from that child is required to apply to the **Children’s Magistrates Court**.

3. Required Police Procedure

The police officer must give **Notice of the Application** to:

- The child in question;
- A parent of the child (unless a parent cannot be found after reasonable enquiry); and
- The Chief Executive (of the Department of Families).

4. Court Procedure

- The Court may consider an Application in the absence of one of the above if the magistrate is satisfied that the above has been complied with.
- The police and anyone mentioned above is entitled to be heard and provide evidence.
- The Court may act upon statements of information and belief (e.g. hearsay evidence).
- The Court may order that identifying particulars be taken if it is satisfied **on the balance of probabilities** of **all** of the following facts:
 - someone has committed the offence;
 - there is evidence of identifying particulars of the offender that are of the same type as the identifying particulars the police seek to have taken from the child;
 - the child is reasonably suspected of being the offender; and
 - the order is necessary for the proper conduct of the investigation of the case.
- The order (if granted) must state the investigation for which the order is made.
- If the child will not be in custody when the particulars are taken – the order must require the child to report to a nominated police station within 7 days in order to allow the taking of identifying particulars.
- It is an offence to contravene the order.

5. Support Person – admissibility

The above procedures are subject to the following:

- In the proceedings for an offence, a court **must not allow into evidence** against a defendant any identifying particulars taken pursuant to the court order unless the court is satisfied that a **support person** chosen by the child was present when the identifying particulars were taken.

However, this proviso does not apply if the prosecution satisfies the court that there was a proper and sufficient reason for the absence of a support person when the particulars were taken; and the court considers that, in the particular circumstances, the particulars should be admitted into evidence.

6. Destruction of Identifying Particulars taken under Court Order

Such must be destroyed if the investigation for which the order was made does not result in a sentence order being made. The destruction (which should automatically be followed through on by the applicant police officer) must occur within 7 days of the ending of proceedings.

Note: the satisfactory completion of a **conferecing agreement** also constitutes the ending of a proceeding.

7. Obtaining Legal Advice?

ATSILS provides innovative, professional and culturally competent legal service for Aboriginal and Torres Strait Islander people across Queensland.

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We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 25 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

This Factsheet is not intended to provide legal advice and has been provided for the purpose of providing information only. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.