

Youth justice custodial practice manual

Secure Services

Contacting the police

- The Department has a moral, professional and legal obligation to provide a safe environment for young people and staff.
- Department of Human Services staff must report all allegations and incidents of a criminal nature, including assaults, to management and inform the police.
- Police may visit the precinct to interview or take court-ordered DNA evidence from young people in custody.

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When to use this procedure

- After witnessing or being notified of allegations or incidents of a criminal nature.
- When police visit youth justice precincts to interview or take court-ordered evidence from young people in custody.
- When police have a court order allowing them to undertake fingerprinting of young people in custody.

What else you need to know

Make sure you have read and understood the following procedures:

- [Emergency services](#)
- [Firearms safe](#)
- [Young people's legal entitlements](#)
- [Case notes](#)
- [Client incident reporting](#)

Staff responsibilities

Find your role below to see what your responsibilities are:

- [All staff](#)
- [Unit Manager](#)
- [General Manager](#)
- [Unit Manager or Operations Manager](#)

All staff

If you see or are made aware of an allegation or incident of a criminal nature

- Your first responsibility is to ensure the safety of everyone involved. Assess the situation quickly and take action necessary to ensure the safety of young people, staff and the general public, while attempting to preserve evidence.
- Provide any victims of the incident with first aid or other necessary medical aid as needed. Inform anyone who provides medical assistance (including the health service) that evidence should be preserved.
- Provide any victims with a safe and secure area away from other young people or members of the public, at least until you have consulted senior unit and precinct management.
- After ensuring safety, immediately report the allegation or incident to the Unit Coordinator, Unit Manager or On Call Manager.

If you are made aware of information about an allegation or incident of a criminal nature

- Make sure the matter is discussed in a safe and private area, away from other young people or members of the public.
- Tell the person providing the information that a record of the conversation will be made and that the matter will be reported to unit and precinct management.
- If the information relates to a specific young person, this should be documented in their case notes.
- If the information does not relate specifically to a particular young person, it should be documented in an email to your line manager.

During police interviews

- Young people in custody with an intellectual disability or mental illness must have an independent third person present. The police are responsible for arranging a suitable person for this role. You **must not** act in the role of independent person during a police interview.

- If the young person asks, and the police agree, you can be present during police interviews as a support to the young person.
- Report any concerns about the way the interview was conducted to the General Manager.
- Be aware that you could be called to give evidence about what happened during the interview.

Unit Manager

If you are made aware of information about an allegation or incident of a criminal nature

- Report all allegations or incidents of a criminal nature to the police for investigation.
- Inform the alleged victim that the police will be contacted as per procedures.
- Ensure that Client Incident Reporting procedures are followed.
- Notify the Area Youth Justice Worker, the Child Protection Case Manager (where relevant), and Disability Services staff (where relevant).

General Manager

If a court order has been obtained by police to take fingerprints

- Give approval for police to take fingerprints of the young people in the precinct.

If a court order has been obtained by police to interview young people

- Give approval for police to interview young people in the precinct.

If staff report concerns about the way a police interview was conducted

- Follow up the matter with the officer in charge of the relevant police station.

Unit Manager or Operations Manager

When required

- Coordinate the arrangements for any fingerprinting in the precinct.
- Coordinate the arrangements for police interviews and visits to the precinct.

Precinct reception staff

- **When police attend on a routine matter such as investigating an incident or to take young people's fingerprints or DNA evidence**
- When police arrive onsite, ensure they sign the Visitors Register, and surrender any weapons (for example, guns or capsicum spray) for placement in the approved safes provided before entering the precinct.

The procedure in detail

- [Allegations or incidents of a criminal nature](#)
- [Reporting](#)
- [Preserving evidence](#)
- [Fingerprinting in legal custody](#)
- [Fingerprinting as part of ongoing police investigations](#)
- [Police interviews](#)
- [After police interviews](#)

Allegations or incidents of a criminal nature

You should treat any allegation or incident of a criminal nature with the utmost seriousness.

Allegations must be immediately reported to the Unit Coordinator, Unit Manager or Night Supervisor.

Some of the ways you may become aware of an allegation or incident of a criminal nature may be by:

- witnessing the incident
- observing injuries to a young person, staff or other person
- noting a young person's, staff member's or other person's distress
- receiving information from a young person, staff or other person.

If you witness or are made aware of an allegation or incident of a criminal nature, you should assess the situation quickly and take any action necessary to ensure the safety of young people, other staff and the general public, while attempting to preserve evidence.

If you are discussing the matter, you must do so in a safe and private area, away from other young people or members of the public.

Tell the person providing the information that a record of the conversation will be made and that the matter will be reported to unit and precinct management.

If the information relates to a specific young person, this should be documented in their case notes.

If the information does not relate to a particular young person, it should be documented in an email to your line manager.

If an assault has been witnessed or alleged, the alleged victim should be provided with a safe and secure area away from other young people or members of the public, at least until you have consulted senior unit and precinct management.

Give the alleged victim first aid or other necessary medical aid. Inform anyone providing medical assistance to alleged victims that there is a need to preserve evidence.

Arrange for medical treatment and counselling to be provided to the alleged victim, according to advice from forensic health services and the police.

Reporting

You must adhere to all reporting requirements that apply to allegations and incidents of a criminal nature that occur within youth justice precincts, or when staff are on duty supervising young people in the community.

Report all allegations and incidents of a criminal nature to the relevant Manager or On Call Manager.

For allegations of physical or sexual assault, refer to the policy **Reporting allegations of physical or sexual assault to the police** (Department of Human Services 2005).

Consent to reporting

You must report allegations of criminal matters regardless of whether the alleged victim has consented to the matter being reported.

The alleged victim may choose not to participate in the police investigation.

Both the *Information Privacy Act 2000* and the *Health Records Act 2001* contain provisions for the disclosure of information relating to unlawful activity.

Reporting to police

The relevant manager must report all allegations or incidents of a criminal nature to the police for investigation.

The alleged victim should be told that the police will be contacted.

If an immediate response is required, call '000'.

The phone call will result in the allocation of the appropriate police unit, which may be a Sexual Offences and Child Abuse Investigation Team (SOCIT) for the area or a general duties police unit.

At the time of contact it is important that police are advised if the young person has an intellectual disability or a mental health condition that requires the support of an independent third person during interview or when a statement is being taken.

Other departmental reporting

The relevant manager should ensure that Client Incident Reporting Procedures are followed.

The Unit Manager or their delegate must notify the Area Youth Justice Worker, the Child Protection Case Manager (where relevant), and Disability Services staff (where relevant).

Child Protection Mandatory Reporting

Awareness or disclosures of assault concerning young people under 18 years require a notification to Child Protection.

A decision to notify Child Protection should be made by precinct management, based on the circumstances of the incident or allegation.

Centre Against Sexual Assault (CASA)

In instances of alleged sexual assault, the local CASA should be contacted at the same time the police are informed of the allegation.

CASA provides support and post-trauma counselling. Contact with CASA should be discussed with the victim of the sexual assault to seek their permission.

If the allegation involves sexual assault and a young person or staff member is examined by a forensic physician, they must be offered the assistance and support of a counsellor from CASA.

Preserving evidence

Every effort should be made to preserve evidence.

However, the preservation of life outweighs anything else at the scene of a crime or incident, so evidence should only be preserved if it is safe to do so.

The area where the incident / alleged incident took place is a crime scene and should be isolated and preferably locked.

If there is more than one crime scene, they should all be locked or contained where possible.

Do not touch anything, such as weapons, blood stains or clothing, and leave everything in the original state for photographing.

Avoid contamination of evidence by preventing access by unauthorised people, including other young people and staff.

Fingerprinting in legal custody

We assume that police have already fingerprinted young people on arrest and when charged, so we do not routinely take fingerprints.

If police ask for fingerprints, staff must ensure a court order has been obtained and a copy must be provided prior to the taking of any fingerprints.

If a young person refuses to be fingerprinted, police are authorised to use force to take fingerprints.

Police have the power to take the fingerprints of people suspected of, or who have been charged with, committing an offence.

In these cases, the following legislative provisions apply for young persons in youth justice precincts.

For young people 15 and above

Police must give information to the young person about why they are being fingerprinted.

This, and the young person's responses, must be recorded (for an indictable offence), or recorded in writing and signed by the young person.

A copy of the audio recording or written record should be given to the young person.

The police can use reasonable force to obtain fingerprints if a young person refuses to give them voluntarily, but only if reasonable force is authorised by an officer in charge of a police station or a police officer of at least the rank of Sergeant.

For people aged 15 or 16, a parent or guardian or independent person must be present when fingerprints are requested, and during fingerprinting.

For young people 14 or under

Police must give information to the young person and their parent or guardian about why they are being fingerprinted.

Police must seek the young person's and their parent's or guardian's consent.

This, and the young person's and their parent's or guardian's responses, must be recorded (for an indictable offence), or recorded in writing and signed by the young person and their parent or guardian.

A copy of the audio recording or written record should be provided to the young person.

If the young person or their parent or guardian does not consent to fingerprinting, or the parent or guardian cannot be located, the police can apply to the Children's Court for an order directing the young person to be fingerprinted.

The Children's Court can order the precinct to arrange for fingerprinting, and deliver the fingerprints within the time specified.

If the young person refuses to be fingerprinted, the police can use reasonable force to perform the procedure.

In these circumstances, a person of the same sex as the person to be fingerprinted should take the fingerprints, if practicable.

A parent, guardian or an independent person must be present during fingerprinting of a person 14 years or younger.

The fingerprinting procedure must be video recorded, or audio recorded if video is not practicable.

Fingerprinting as part of ongoing police investigations

With the authorisation of the General Manager, police can attend the precinct with the relevant court order and interview a young person about fingerprinting.

This interview must be audio recorded, and a copy of the recording given to the young person within seven days.

If the young person consents, the police will attend the precinct and fingerprint the young person. However if a young person does not consent to be fingerprinted, the police can use reasonable force to take the fingerprints.

The precinct must provide an area that is safe, secure and private for all parties involved. If reasonable force is used, the police must video record the procedure, or otherwise audio record it.

For people under 18 years, the police must adhere to the following procedures:

- For 15, 16 and 17 year olds, authorisation to use reasonable force must be obtained from an officer in charge of a police station, or a police officer of at least the rank of Sergeant.
- Police must arrange for a parent, guardian or independent person to be present when fingerprints are requested of the young person, as well as during fingerprinting.
- For 10 to 14 year olds, the young person's parent or guardian must be present when police interview the young person about fingerprinting.
- If the parent, guardian or young person does not give consent, or the parent or guardian cannot be located, police must obtain an order from the Children's Court directing the young person to be fingerprinted.
- The General Manager must arrange for fingerprinting or, if the young person refuses, for the police to use reasonable force to take fingerprints.
- The staff member greeting the police fingerprinting the young person must ensure they sign the Visitors Register, and surrender any weapons (for example, guns or capsicum spray) for placement in the firearms safe before entering the precinct.
- The police must arrange for a parent, guardian or independent person to be present during fingerprinting.
- If practicable, a person of the same sex as the person to be fingerprinted must undertake the procedure.
- If an independent person is required during fingerprinting, the police are responsible for arranging a suitable person.
- Youth justice staff must not act as an independent person because their independence could be questioned in any dispute concerning the legality of the circumstances of the fingerprinting.
- Youth justice staff should not help police in using reasonable force during fingerprinting.

Police interviews

Police require a court order to interview a young person in a youth justice precinct in relation to indictable and summary offences.

Police must apply for a court order to interview a young person suspected of having committed an offence other than those for which they are being held in custody.

These provisions apply to all types of offences committed by persons above the age of 10 years.

Police applications to interview young people

Staff must ensure that young people can communicate confidentially with a legal representative before attending court for the hearing of a police application for an order to interview the young person.

The young person should also be allowed to communicate with a legal practitioner before the police interview.

The young person must be brought to court or participate in a video link to hear the police application. They are entitled to legal representation in relation to the court application.

During police interviews

Interviews should be conducted at the precinct, unless otherwise specified in the court order. Precincts should provide a room. Police will bring video recording equipment to document the interview.

A prohibited items request must be submitted for this equipment to enter the precinct.

A young person who is not a citizen or permanent resident of Australia has a right to communicate with the consular office of their country of citizenship before being interviewed by police.

The police must arrange for an interpreter to be present before interviewing a young person who does not understand English well enough to participate in the interview.

The staff member or contracted security provider greeting the police interviewing the young person must ensure the police sign the visitors register, and surrender any weapons (for example, guns or capsicum spray) for placement in the safes provided before entering the precinct.

Young people must be given the opportunity to communicate with a legal practitioner before the police interview.

This should occur somewhere the communication will not be overheard, as far as practical.

Young people under 18 years must have a parent, guardian or independent person present during a police interview.

Those with an intellectual disability or a mental health condition may require the support of an independent third person.

The police are responsible for arranging a suitable person for this role. Youth justice precinct staff must not act in the role of an independent person during a police interview.

If the young person requests, and the police agree, staff can be present during police interviews as a support to the young person.

If you are given this role, you:

- should ensure that the young person (particularly those with an intellectual disability) understands the process and procedures
- should not take an active role in the interview – this includes re-phrasing questions, unless specifically requested to do so by the police
- must not encourage or discourage the young person in relation to cooperating
- must not make comments that could be seen as encouraging the young person to incriminate themselves, such as, 'It might be better for you tell the truth'.

On completion of the interview, you should record the following details in the young person's file:

- time and date of interview
- names of those present
- offences investigated
- likely charges (if known).

After police interviews

You can be called to give evidence about what happened during the interview.

If you have concerns about the way the interview was conducted, you should report this to the General Manager.

The General Manager should follow up the matter with the officer in charge of the relevant police station.

The exchange of information, and the young person's responses, as well as the police interview, must be video recorded.

A copy of the video recording must be provided to the young person or their legal representative within seven days.

At the young person's request, the relevant Unit Coordinator is responsible for ensuring the recording is forwarded to the young person's legal representative, and for providing confidential facilities for the young person to review it.

The copy of the video recording of the police interview that the police give to the young person should be placed with their personal property.

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Authorised by: Ian Lanyon, Director Secure Services