

“It’s horrible when they keep you in there at night”

Ending the overnight detention of children in police custody

Introduction

Children in contact with the youth justice system are some of the most vulnerable children in society, often have the most complex needs, having also had previous contact with the social care system, and require additional support from statutory services. Although there have been some recent positive developments, for example, the overall decrease in the number of first-time entrants to the youth justice system and in the number of children who receive a caution or sentence,¹ significant reform is still required to achieve a rights-based approach to youth justice. There continues to be no appetite to increase the very low age of criminal responsibility in England and Wales and the current system often fails to address the root causes of a child’s criminal behaviour and at the same time causes harm.

Children have told us that a night in a police cell is an intimidating and frightening experience. Police custody facilities are designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance. For a child – especially one deprived of familial support – a prolonged stay in this environment can be harmful. Children brought into police custody are in a particularly vulnerable position; not only by virtue of their age, but also because of the circumstances which brought them into contact with the police.

This briefing sets out the latest data and developments on this issue and sets out recommendations for change – in relation to both policy and practical action – to ensure that children no longer experience the harmful practice of being held in police cells overnight.

Legal framework and guidance

The law already recognises that police cells are not a suitable place for children. The UN Convention on the Rights of the Child (UNCRC)² defines a child as anyone aged 17 years and younger. It is clear that the best interests of the child must be a primary consideration in all actions concerning children,³ and that the detention of a child shall be used only as a measure of last resort and for the shortest possible time.⁴ The Children Act 2004 places a statutory duty on police and local authorities to have regard to the safety, welfare and well-being of children.⁵ A rights-based ‘child first’ approach in

every encounter with the police is also enshrined in the National Police Chief’s Council’s (NPCC) National Strategy for the Policing of Children and Young People.⁶

The Police and Criminal Evidence Act 1984 (PACE)⁷ requires that detention is only authorised when strictly ‘necessary’. It stipulates that children who are refused bail after charge shall be transferred to more appropriate local authority accommodation,⁸ with a corresponding ‘absolute duty’ in the Children Act 1989 on the local authority to accommodate a child if

non-secure accommodation is required under section 38(6) of PACE. There is an additional duty to have a reasonable system in place if secure accommodation is requested.⁹ Additional guidance is provided in the PACE Codes of Practice, which requires that all persons in custody be dealt with expeditiously and released as soon as the need for detention no longer applies.¹⁰

The College of Policing's Authorised Professional Practice (APP) also requires officers to take into account the age of a child when deciding whether any of the statutory grounds for arrest apply,¹¹ pay particular regard to the timing of any necessary arrests of children, ensure that they are detained for no longer than necessary, and avoid holding them overnight in police cells unless absolutely necessary.¹² Custody officers and staff should prioritise and triage vulnerable detainees, including children, as part of the booking-in process.¹³

Scale and impact

Despite the law and guidance on this issue, in many cases, it is not being followed and children are not receiving the support to which the law entitles them. Our research shows that, despite national efforts to reduce the overnight detention of children in police custody, every year, thousands of children in England and Wales are held in police cells overnight and, consistent with the rest of the youth justice system, children from Black and minority ethnic groups are disproportionately represented. Many of these children are not being diverted away from police custody and those who are refused bail after charge are unlawfully being kept in police cells on a daily basis.

Back in 2014, the All Party Parliamentary Group (APPG) for Children found that police and local authorities often misunderstood their statutory obligations under PACE for the transfer of children who are refused bail after charge from police custody to more appropriate local authority accommodation.¹⁴ Following the APPG's report, the Home Office Concordat on Children in Custody was produced to address this issue by clearly setting out each party's duties and key actions to tackle the overnight detention of children in police custody. It is disappointing, therefore, that by February 2022, nearly five years since it was published, only 88 of all 333 local authorities and 27 of 39 police forces in England, have signed the Concordat.¹⁵

A recent study reviewing the police custody process in England and Wales from the perspective of a child has revealed the distress experienced by children in police custody and the lack of a child rights centred approach in decision-making at the police station. Custody officers described rarely observing children being prioritised for processing, delays in Appropriate Adults (AA) attendance deliberately orchestrated to coincide with interview or the needs of the investigation, information on rights and entitlements being delivered to children and AA formulaically, and the punitive use of overnight detention. Independent Custody Visitors (ICV) reported the detention of children in cells in similar conditions to adult cells and failure to make adjustments to support children's emotional welfare. Worryingly, young participants described hunger and being held in dirty and cold conditions.¹⁶ These findings resonate with what we see in our direct legal practice.

"It's horrible when they keep you in there at night. You don't know what's going on, you don't know what's going to happen or what to do with yourself. It's just horrible."

15-year-old boy, Looked After Child, held overnight in police custody on multiple occasions

“They just put me there and left me there. I didn’t know how long I was going to be there for. I didn’t know what to do. My grandma started talking to me. I thought I was going crazy, so I started banging my head against the door. That’s when the police came to check on me.”

17-year-old boy, Looked After Child, diagnosed as manifesting a complex form of Post-Traumatic Stress Disorder with reported episodes of psychosis. Arrested and detained overnight in police custody following an incident in his care home and later charged with criminal damage and common assault. Case was discontinued following court proceedings and written representation by JfKL.

“I didn’t know they could do that to you... It was awful and I wasn’t sure I was going to be ok.”

12-year-old boy, following his first experience being held in police custody overnight

It is well documented that, one of the unintended consequences of delays associated with the obligation to secure the attendance of an AA, is the increase of the duration of the detention of children in police custody.¹⁷ Long delays in AA provision, was accounted for by Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) as a key factor for lengthy periods of police detention. In many cases, there was no evidence of referrals being made to children’s social care for those with complex needs. One child spent 34 hours in custody, including 10 hours post-charge, with an appropriate adult only arriving after 16.5 hours of detention, no referral being made to children’s social care, or a detention certificate being issued for the court to consider. HMICFRS concluded: *“children are still held in police stations when they shouldn’t be. This is not in their best interests. It simply isn’t changing quickly enough.”*¹⁸ More positively, HMICFRS did find that *“police forces now know they shouldn’t hold children in police stations. They ask for accommodation from local authorities more frequently and found some evidence of forces using alternatives such as bail more effectively”*. However, it concluded *“in most*

*cases where appropriate accommodation isn’t available, children are still detained until they go to court. This is often for a long time.”*¹⁹

HMICFRS recommended that the Home Office and Department for Education undertake a review of the unnecessary detention of children and carry out an assessment of the effectiveness of the Concordat, use of bail by the police, alternative accommodation and AA provision.²⁰

The fact that children held in police detention are often not made aware of their right to specialist free legal representation at the police station or why it is important is a further issue that needs to be addressed. Legal representatives, particularly those with expertise of working with children, can play a key role in tackling the issue of overnight detention of children in police custody and ensuring that the rights and interests of children are duly protected. They will make legal representations at the earliest possible opportunity for the child to be diverted away from custody, scrutinise and challenge a request for secure accommodation, and ensure the local authority is complying with its legal duties where local authority accommodation has been requested. Yet a perceived delay of securing a legal representative was the most frequent reason provided by a group of young participants in a study for waiving legal advice, even where this may only amount to a 45-minute delay.²¹ It is crucial that that the importance of expert legal representation is fully explained to children. While there has been some progress made in this area, more is needed.²²

We believe that national efforts to reduce the number of children who continue to be detained overnight each year, both pre- and post-charge, are undermined by a number of factors:

- Lack of specific provisions in PACE to ensure that detention of children is used only as a measure of last resort and for the shortest period and to prevent children from being held overnight in police cells unless ‘absolutely necessary’,²³ and provision of a duty to transfer children who are refused bail after charge to all children,²⁴ including those who have been arrested on a warrant or for breach of bail²⁵

- Lack of detailed and practical guidance on the College of Policing APP, including examples, on how to promote a rights-based approach and ensure children are detained for no longer than necessary and avoid holding them overnight in police cells unless absolutely necessary²⁶
- Inconsistent monitoring of the effective implementation of the Concordat
- Inadequate fully disaggregated data to enable adequate scrutiny and accountability, including by age, ethnicity and length of detention
- Lack of expert legal representation for all children in police custody.

The detention of children in police custody overnight is a 'national challenge'²⁷ which requires urgent attention and legislative reform, yet many more opportunities also exist for policy and practice reform at a local and scrutiny level.

Key findings

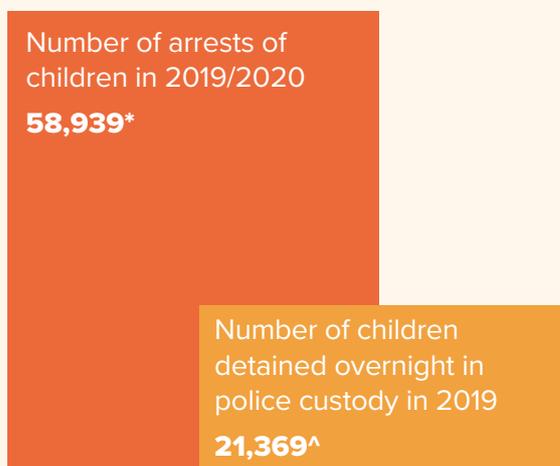
There is no available national published data on the number of occasions in which children are detained in police custody each year, including overnight detention. Despite the large number of children who continue to be detained each year, and the racial disparities that exist in the overnight detention of children, this information has not been incorporated in the Ministry of Justice and Youth Justice Board annual youth justice statistics. This makes scrutiny of the issue more challenging and relies on organisations like Just for Kids Law submitting Freedom of Information (FOI) Act requests to the 43 police forces in England and Wales, which is resource intensive. The lack of regularly published data needs to be urgently addressed as a key step forward in addressing this issue.

While there has been a decrease in the number of children detained in police custody overnight in recent years consistent with decreases in child arrests and numbers of first-time entrants to the youth justice system,²⁸ which is welcome, further analysis reveals some concerning findings hidden within the overall headline figure of a reduction in the numbers of children being held in police cells overnight. We also need to be mindful that due to the Coronavirus pandemic there has been fewer responses to our FOI requests meaning there is limited data available for 2020 and 2021. Our most comprehensive set of data is for 2019.

In 2019, responses to our FOI requests revealed that at least 21,369 children were detained overnight in police custody either pre- or post-

charge. This is still a significant underestimate because it only includes responses from 34 police forces. We were also very concerned to find that very young children are also being held in police custody overnight, with 6,779 children aged 15 years and under. 32 police forces gave us data further disaggregated by age group which revealed that 244 children aged 12 and under were held overnight and 9 children held overnight were just 10 years of age. As only a minority of forces gave us data for the youngest children the actual figure is likely to be higher.

Graph 1: Number of children detained overnight in police custody in 2019 and number of arrests of children in 2019/2020.



* Data source, Youth Justice Statistics 2019/2020 (April 2019 to March 2020)

^ Data source, JfKL 2019 FOI responses (January 2019 to December 2019), responses from 34 out of 43 police forces

Graph 2: Breakdown by age for 2019.



Data source, JfKL 2019 FOI responses (January 2019 to December 2019)

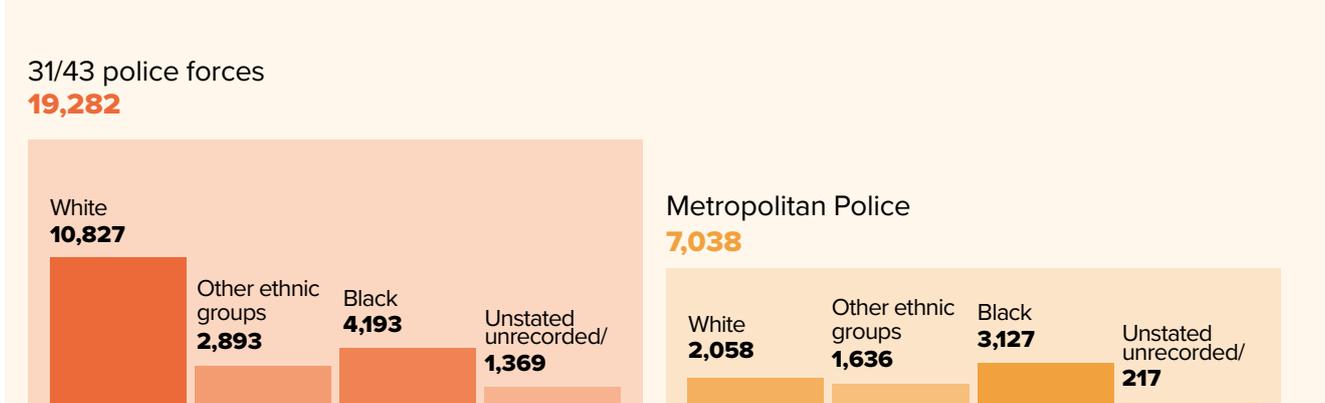
Racial disparity

Our analysis also found that children from Black and minority ethnic backgrounds are disproportionality represented amongst those who are held in police custody overnight. As racial disproportionality is an issue across the whole of the youth justice system this is not surprising, but it is none the less something that urgently needs addressing. Nationally, of the 31 FOI responses provided for 2019, where ethnicity was recorded, the proportion of Black children detained in police custody overnight was 21.7% (4,193), with a total of 15% (2,893) from other ethnic groups. In the Metropolitan Police, 44.4% (3,127) of those detained overnight in police custody were Black children, with a total of 23.2% (1,636) from other ethnic groups. These figures are likely to be an underestimate of the total figure, given that they only include data from 31 police forces who provided full ethnicity breakdown to our FOI

requests. There were 1369 occasions in which ethnicity data was not recorded, 7% of the total number of occasions of overnight detention for which ethnicity breakdown was provided.

Even though Gypsy, Roma and Traveller (GRT) children have been recognised to be amongst the most vulnerable children within the youth justice system, and are overrepresented,²⁹ requested data has not been provided according to the self-defined ethnicity 18+1 standard which introduced a new code for Gypsy or Irish Traveller in March 2018. It has therefore not been possible to analyse the extent to which GRT children are overrepresented amongst those children who are detained overnight in police custody. The lack of publicly available data disaggregated by age and ethnicity, including data on GRT children, must urgently be addressed.

Graph 3: Breakdown by ethnicity for 2019.



Data source, JfKL 2019 FOI responses (January 2019 to December 2019)

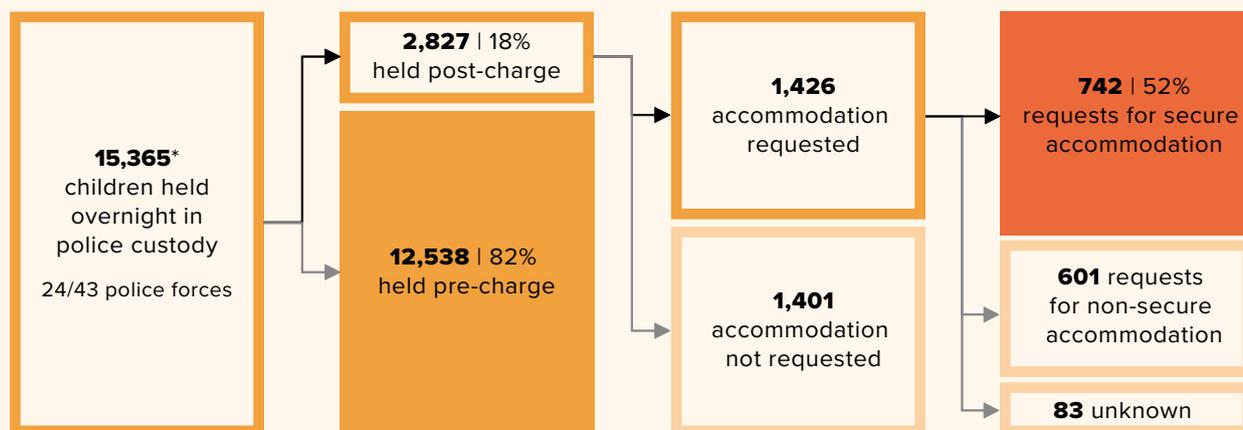
Secure and non-secure accommodation requests

Due to the limited data available which disaggregates the number of children who are held overnight in police custody pre- and post-charge, it has not been possible to undertake a full analysis, but the data we have obtained indicates that the number of those held pre-charge is far greater than those held post-charge. This is an issue, therefore, that needs to be tackled urgently through greater emphasis on diverting children away from custody through effective use of bail, voluntary interview and diversion.

Section 38(6) of PACE places a duty on custody officers to arrange for a child to be transferred to local authority accommodation if the child is to be detained after charge unless it is impracticable to do,³⁰ and, if so, the police must produce a

certificate of impracticability to the court,³¹ or secure accommodation is lawfully requested because the custody officer believes that the child poses a risk of serious harm (death or serious personal injury, whether physical or psychological) to the public between being charged and appearing at court, and secure accommodation is not available.³² Despite the high threshold for secure accommodation to be required, our research found that a vast majority of requests for local authority accommodation by the police are for secure accommodation rather than for non-secure accommodation. Due to the lack of available secure accommodation provision combined with the very high number of requests for it, many children who likely could have been transferred to local authority non-secure accommodation are unlawfully detained overnight in police custody for extensive periods.

Graph 4: Breakdown by type of accommodation required following charge for 2019.



* Data source, JfKL 2019 FOI responses (January 2019 to December 2019)

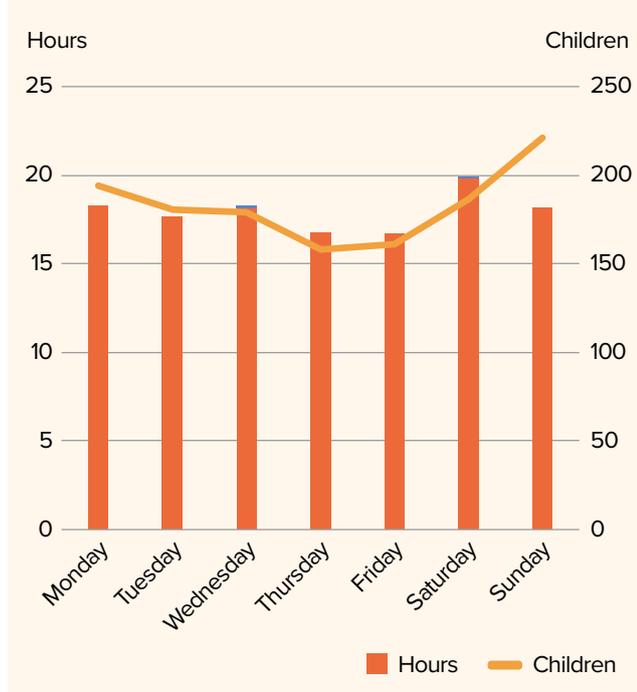
Lengthy detention periods

Given limited data availability it has not been possible to ascertain the average length of time children are held in police cells across all police forces. However, the FOI responses we do have indicate that children are often held for long periods of time. Shockingly, data obtained from one police force for 2019, revealed that one 16-year-old girl was detained for nearly five days (4 days and 10 hours) post-charge and a 10-year-old child was detained for 23 hours, from 7pm on Wednesday to 6pm on Thursday. Our FOI analysis

found that for this particular force there was an average detention period of 18 hours for the 1,293 occasions in which a child was detained overnight in police custody, and 163 occasions (12%) of overnight detention for a period exceeding 24 hours. Data for 2021, for the same force, revealed that a 16-year-old boy was detained for 5 days (5 days and 17 hours) following a warrant being issued for his arrest. The response to our FOI request suggests that the child was arrested on Wednesday and was not taken to court until the following Monday. In 2021, there were 151

occasions at the same force in which a child was detained overnight for a period exceeding 24 hours (11.7%) with an average detention period of 17 hours for the 1,281 occasions of overnight detention. While this may not be representative of all forces, it does demonstrate that there are many cases where children are being held for long periods of time. Again, significant improvement to publicly available data is needed to enable proper scrutiny.

Graph 5: 2021 detailed analysis for one police force – length of detention period and number of children detained per weekday



Data source, JfKL 2021 FOI response

Our FOI data indicates that children who are detained overnight for the longest period are those who are arrested over the weekend and outside of working hours, and those who are arrested on a warrant or for breach of bail. The statutory obligation under PACE³³ for the transfer of a child who is refused bail after charge, from police custody to more appropriate local authority accommodation, does not apply to a child arrested on a warrant³⁴ or for breach of bail.³⁵ These children will generally remain in police custody until they are taken to court at the first available court sitting.³⁶ However, if the child has also been charged with another offence the statutory obligation under PACE will apply.³⁷

Other factors that contribute to lengthy periods of detentions include custody staff delays in notifying, seeking information and requesting accommodation from the local authority, and failure to review and challenge wrongful requests for secure accommodation.

Conclusion

Our research has found that despite some positive progress in reducing the number of children held overnight in police detention, significant action is still required to fully address this concerning issue, not least because of the racial disparities that exist for Black and minority ethnic children, particularly Black children. Worrying figures showing the very young age of those who are detained overnight, and the lengthy time periods that children are being held for, warrant for urgent intervention at a local and national level. Below our key recommendations for urgent policy and practice reform.

Recommendations

1. Recommendations to Government

- ▶ Bring about the significant reform required to achieve a rights-based approach to youth justice, as set out in the in the UNCRC and associated General Comments. This would include raising the age of criminal responsibility, setting a much-reduced time limit in legislation to how long a child can be

detained in police custody to ensure it is only used as a “measure of last resort” and for the “shortest possible time”, and ensuring that the protection afforded by section 38(6) of PACE applies to all children including those who have been arrested on a warrant or for breach of bail.

- ▶ Review the collection, collation and publication of data relating to the overnight detention of children in police custody, both pre and post charge, to ensure adequate oversight and scrutiny, for example, on the intersectionality between protected characteristics such as age and ethnicity, which also includes data on Gypsy, Roma and Traveller children. National data on the overnight detention of children in police custody should be published as part of the youth justice annual statistics.
- ▶ Proactively encourage local authorities and police forces to sign up to the [Home Office Concordat on Children in Custody](#) and implement recommendation in Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services' National Child Protection Inspections 2019 thematic report *"that the Home Office and Department for Education undertakes a review of the unnecessary detention of children... [which includes] an assessment of the effectiveness of the 2017 National Custody Concordat, the provision of alternative accommodation, the provision of appropriate adult services and the use of bail by the police."*
- ▶ Ensure funds are available for adequate provision of secure accommodation and non-secure local authority accommodation, across the country to enable local authorities to meet their duties under both section 38(6) of PACE and 21(2)(b) of the Children Act 1989.

2. Recommendations to Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services

- ▶ Assess and report on the effectiveness and efficiency of custody staff efforts to reduce the number of children, including those from Black, Gypsy, Roma and Traveller and other minority ethnic backgrounds, who are detained in police custody overnight. This would include assessing the implementation of the [Home Office Concordat on Children in Custody](#), the use of bail by the police, measures to monitor and address wrongful requests for secure accommodation, arrangements for escalating and reviewing

cases where the local authority fails to provide accommodation and the production of section 38(7) of PACE certificates of impracticability, which should outline to a court the reason why a transfer to local authority accommodation was impracticable.

- ▶ Carry out a thematic review looking at the overnight detention of children in police custody with a focus on race and ethnic disproportionality.

3. Recommendations to National Police Chief's Council and Chief Inspectors

- ▶ Establish an independent review to scrutinise and explore the causes and consequences of racial disparities in the overnight detention of children in police custody. This should inform a national strategy, which builds upon the NPCC National Strategy for Police Custody and the National Strategy for the Policing of Children and Young People, which focusses specifically on ensuring that police detention is only used as a matter of last resort and for the shortest possible time for all children, including those from Black, GRT and other minority ethnic backgrounds.
- ▶ Take immediate practical steps at force level to ensure all children, including those from Black, Gypsy, Roma and Traveller children and other minority ethnic backgrounds, are only held in police custody as a matter of last resort and for the shortest possible time, for example, by ensuring that children are not arrested outside of working hours (between 17:00 and 09:00 and on weekends) wherever possible, monitoring and reviewing arrest times, wrongful requests for secure accommodation, decisions to authorise police detention and continued detention, decisions to refuse post-charge bail under s38 of PACE, and prolonged detention periods. This would also include taking forward HMICFRS recommendations following from inspection and post-inspection reviews under the National Child Protection Inspections programme.

4. Recommendations to the Association of Directors of Children Services

- ▶ Put in place adequate monitoring systems to ensure that individual local authority teams are complying with their absolute duty under section 21(2)(b) of the Children Act 1989 to accommodate a child if non-secure accommodation is required and the duty to have a reasonable system in place if secure accommodation is required, as set out in the case of *Gateshead*^a.

5. Recommendation to the College of Policing

- ▶ Review the Authorised Professional Practice on arrest and detention of children and young persons and related training, with input from key stakeholders, on how effective it is in ensuring that officers understand that children should only be detained as a matter of last resort and for the shortest possible time. It should also expand on practical steps that can be taken to reduce the number of children who are detained in police custody, for example, the correct application of section 38(1) of PACE refusal of post-charge bail, the correct application of section 38(6) of PACE high legal threshold for secure accommodation to be required and how to interpret the ruling in *Gateshead*^b when requesting local authority accommodation, as well as actively encourage police officers to use bail, escalate cases where a local authority fails to provide accommodation and produce a detailed section 38(7) of PACE certificate of impracticability.

- ▶ Provide specific guidance to the police about their duties under section 11 of the Children Act 2004 and how that duty interacts with the decisions on arrest and detention of a child at the police station.

6. Recommendations to police forces and local authorities

- ▶ Sign up to and fully implement the [Home Office Concordat on Children in Custody](#) and clearly set out how they will work together,

- ▶ and with local partners and any other relevant agencies, to reduce the number of children who are detained overnight in police custody each year, as well as make this information available as part of their yearly reporting, with the proposed timescale for implementation, in line with [Working Together to Safeguard Children](#) guidance.
- ▶ Provide regular disaggregated data, including by age and ethnicity, on the numbers of children detained overnight in police custody both pre and post charge, those arrested on a warrant or for breach of bail, those denied bail and those for whom accommodation is requested from the local authority. This data should support safeguarding partners to monitor the effectiveness of any arrangements put in place to reduce the number of children who are detained overnight in police custody each year.
- ▶ Provide joint training to police and local authority staff, to encourage effective cross-departmental communication, good information sharing and sound decision-making, ensure they are familiar with procedures for requesting that matters are escalated for review by senior officers from both organisations, and empowered to do so, and foster an organisational culture where children are always diverted away from police custody unless absolutely necessary.

7. Recommendations to the Magistrates Association and the Judicial College

- ▶ Ensure trainings delivered to magistrates and judges dealing with children in the magistrates' court, include information on the overnight detention of children in police custody, for example, what information to look out for in a section 38(7) of PACE certificate of impracticability and how to report instances where police or local authorities appear to have failed to meet statutory requirements, including via the [Online Flagging Mechanism](#).

a [R\(M\) v Gateshead Council \[2006\] EWCA Civ 221](#)

b *Ibid.*

8. Recommendations to magistrates and judges

- ▶ When issuing a warrant for the arrest of a child this should always be backed for bail, wherever possible, in order to prevent the unnecessary detention of children in police custody overnight.
- ▶ Whenever a certificate of impracticability is produced by the police to the court, as required by section 38(7) of PACE, this should be scrutinised and any apparent or suspected failures, on the part of the police force or the local authority, flagged to the responsible police force via the [Online Flagging Mechanism](#).

9. Recommendation to the Independent Custody Visiting Association.

- ▶ Assess and report on the effectiveness of custody staff efforts to reduce the number of children who are detained in police custody overnight, including treatment and condition of those children, as well as make recommendations for improving their welfare.

10. Recommendation to the Independent Office for Police Conduct.

- ▶ Publish a 'Learning the Lessons' on the overnight detention of children in police custody.
- ▶ Carry out a thematic review of cases concerning detention of children in police custody with a focus on race and disproportionality.

Endnotes

- 1 Youth Justice Board/Ministry of Justice (2022) *Youth Justice Statistics 2020-2021*, England and Wales
- 2 Ratified by the UK, and entered into force September 1990
- 3 Art 3, UNCRC. In its recent List of Issues Prior to Reporting, the UN Committee on the Rights of the Child asked the UK to provide statistical information and disaggregated data for children held in police custody
- 4 UNCRC, art 37(b). See also Committee on the Rights of the Child (2019) *General Comment No.24 children's rights in the child justice system (CRC/C/GC/24)*
- 5 Children Act 2004, s10 & 11
- 6 National Police Chiefs' Council (NPCC), *National Strategy for the Policing of Children and Young People*
- 7 Police and Criminal Evidence Act 1984 (PACE), s37(3)
- 8 PACE, s38(6)
- 9 *R (M) v Gateshead Council* [2006] EWCA Civ 221, para 41
- 10 Home Office (2019) *PACE Code C (Revised) Code of Practice for the detention, treatment and questioning of persons by police officers*, para 1.1
- 11 Home Office (2012) *PACE Code G (Revised) Code of Practice for the statutory power of arrest by police officers*
- 12 College of Policing, Authorised Professional Practice (APP), Detention and custody: Children and young person, 'Arrest and detention of children and young persons' 2
- 13 APP, Detention and custody: Response, arrest and detention, 'Vulnerable detainees' 2.2
- 14 All Party Parliamentary Group for Children (2014) *'It's All About Trust': Building Good Relationships Between Children and the Police. Report of the Inquiry Held by the All Party Parliamentary Group for Children*
- 15 <https://www.gov.uk/government/publications/concordat-on-children-in-custody>
- 16 Dr Bevan, M. (2021) *The pains of police custody for children: a recipe for injustice and exclusion?*
- 17 Her Majesty's Inspectorate of Constabulary (2015) *The welfare of vulnerable people in police custody*; The Children's Commissioner for England (2017) *A Night in the Cells: Children in police custody and the provision of nonfamilial appropriate adults*
- 18 Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2019) *National Child Protection Inspections 2019 thematic report*
- 19 Ibid, p10
- 20 Ibid, p49
- 21 Dr Bevan, M. (2021) *The pains of police custody for children: a recipe for injustice and exclusion?*
- 22 For example, the 'opt-out' system which is being put in place across different police forces, and recent recommendation by the Justice Committee that the Government implement the recommendations of the Taylor Review of Youth Justice "to introduce a presumption that children should receive free legal representation at the police station." See House of Commons Justice Committee (2021) *The Future of Legal Aid: Third Report of Session 2021-22*, p31
- 23 PACE, s37(3)
- 24 PACE, s38(6)
- 25 Section 38 PACE does not apply to children arrested for breach of bail under s7 Bail Act 1976 or on a warrant under s13 Magistrates' Court Act 1980. However, it does apply if the child has been charged with another offence and is not solely in custody for breach of bail.
- 26 APP, Detention and custody: Children and young person, 'Arrest and detention of children and young persons' 2, Detention and custody: Children and young person, 'Arrest and detention of children and young persons' 2
- 27 *R (AR) v London Borough of Waltham Forest* [2021] EWCA Civ 118, para 81
- 28 Youth Justice Board/Ministry of Justice (2022) *Youth Justice Statistics 2020-2021*, England and Wales
- 29 The Traveller Movement (2016) *Overlooked and Overrepresented: Gypsy, Traveller and Roma children in the youth justice system*
- 30 Home Office Circular No 78/1992; PACE Code C, Note for Guidance 16D; Home Office (2017) *Concordat on Children in Custody*, p27. The concordat also stresses that the term 'impracticable' in the legislation is often misunderstood and does not: relate to the availability of local authority accommodation or transport; relate to the nature of accommodation offered by the local authority; relate to the child's behaviour or the nature of the offence, or; mean 'difficult' or 'inconvenient'.
- 31 PACE, s38(7)
- 32 PACE, s38(6A)
- 33 PACE, s38(6)
- 34 Magistrates' Court Act 1980, s13
- 35 Bail Act 1976, s7
- 36 PACE, s43
- 37 PACE, s38

About us

Founded in 2006 **Just for Kids Law (JfKL)** works with, and for, children and young people to hold those with power to account, and to fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

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