

# Children and young persons

This page is from APP, the official source of professional practice for policing.

First published 23 October 2013 Updated 16 March 2024

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22 mins read

## Children and young persons

Children and young people are a protected group with specific vulnerabilities. Their treatment in detention is governed not only by domestic legislation but also by the [UN Convention on the Rights of the Child \(UNCRC\)](#) which the UK has signed and ratified. The UNCRC defines a child as a human being below the age of 18, unless the relevant laws recognise an earlier age of majority.

There are specific rules and responsibilities to observe when detaining a child or young person. Where no record of a person's age is available on arrival in custody, for example if they refuse to provide this information or if they have no means of proving age, officers need to make a decision about whether they should treat the individual as a child/young person or as an adult.

For further information, see [Concordat on children in custody](#).

[Police and Criminal Evidence Act 1984 \(PACE\) Code C paragraph 1.5](#) states anyone who appears to be under 18 shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purposes of this Code and any other Code. There may be occasions where a person who appears or is believed to be older claims to be under 18 to benefit from the different treatment that children and young persons receive both in detention and before the youth court if charged. In such cases, the youth offending team (YOT) or a medical professional may be able to assist with determining age. If a doubt remains, however, officers should treat the person as a child/young person while in detention. If the person is charged with an offence, their age will be formally determined in court.

## Arrest and detention of children and young persons

Officers must take into account the age of a child or young person when deciding whether any of the **PACE Code G** statutory grounds for arrest apply. They should pay particular regard to the timing of any necessary arrests of children and young people and ensure that they are detained for no longer than needed in accordance with **PACE Code C, paragraph 1.1**. Officers should avoid holding children overnight in police cells unless absolutely necessary.

For further information see:

- **PACE section 38(6)**
- **PACE transfers**

Reviewing inspectors and custody officers should ensure that the provisions of PACE have been strictly applied to avoid keeping children and young people in police custody any longer than necessary, both pre- and post-charge.

**Section 38(6) of PACE** should be adhered to and provides:

‘(6) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) above, the custody officer shall, unless he certifies—

(a) that, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so; or

(b) in the case of an arrested juvenile who has attained the age of 12 years, that no secure accommodation is available and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him, secure that the arrested juvenile is moved to local authority accommodation.’

## **Assessing vulnerability and risk**

Everyone who works with children has a responsibility for keeping them safe. This means they have a role to play in identifying concerns about a child’s safety and wellbeing, sharing information and taking prompt action when it is needed to protect a child.

For further information, see:

- [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children \(July 2018\)](#)
- Welsh Assembly Government [Safeguarding Children: Working Together Under the Children Act 2004](#)

In carrying out risk assessments in custody, staff need to be aware not only of the general factors which pose greater risks to the safety and wellbeing of all children under police detention or in custody, but also of specific risk factors which may affect individual children. Some examples are set out in the following section. Staff also need to be conscious that information about risk can come from a wide number of sources. Children will frequently be the best identifiers of risks to themselves, but it is also important to remember that a child's own assessment of their safety and wellbeing and ability to cope may not always be accurate. Staff cannot rely on chronological age or physical maturity as an accurate indication of emotional maturity and must carefully assess each young person's ability to engage with the assessment process accordingly.

In undertaking risk assessments, staff also need to be conscious that they might identify a previously unknown or unrecognised risk to a child's safety and wellbeing, and that action may need to be taken to safeguard or protect the child once they leave police custody. This may mean that staff need to make referrals or notifications, in line with local processes for child protection, and statutory safeguarding guidance.

## **Factors which increase risks to the safety and wellbeing of children and young persons**

For further information, see the [APP on Investigating child abuse and safeguarding children](#).

Children who have been detained are more likely than those who do not come into contact with the criminal justice system to exhibit a range of characteristics and/or to have experienced a number of difficult life events which can increase the risks to their safety and wellbeing (from themselves or others) while in custody. Examples which staff should be aware of are that children may:

- experience physical or mental health problems or conditions, particularly attention deficit hyperactivity disorder (ADHD), conduct disorder or depression
- need regular medication
- be parents or expectant parents

- have self-harmed or attempted suicide previously
- have substance misuse problems
- have literacy and numeracy levels below that expected nationally for their age
- have specific difficulties with speech, language and communication
- have difficulty expressing their views and participating in decision making
- have low self-esteem and confidence
- have been found to be in high levels of housing need, for instance they may have been living in inadequate housing or placed in temporary accommodation, bed and breakfast or a hostel
- be an unaccompanied asylum seeker
- have been or are currently subject to child protection plans following emotional abuse, neglect, physical abuse and/or sexual abuse
- be in care or eligible for leaving care services
- be physically or emotionally immature
- have a history of abuse, neglect or trauma
- be currently, or were previously, remanded to local authority accommodation
- be currently, or were previously, subject to a care order
- be a victim of bullying – particularly if they present primarily as the perpetrators of harm towards others

The presence of one or more of these factors will increase the risk to a child's safety and wellbeing in custody and officers should carefully consider these when planning how to support, observe and care for children who are detained and/or in custody. They should consider the possible impact of different risk factors and how likely they are to cause an adverse outcome in custody. This will assist staff in determining what level of support is required and whether onward referrals are required.

## **Risk to others**

A number of indicators could suggest that a child or young person might pose an increased risk to others. These indicators demonstrate increased risk to others and will need to be managed. They also suggest increased risk to the child's own safety and wellbeing. But if they are addressed or managed, the risk posed to others can, in turn, be reduced. Examples are:

- aggressive behaviour

- previous display of aggressive behaviour (Police National Computer warning marker or intelligence)
- gang-related issues
- a history of bullying
- the child or young person is on the sex offenders register
- current or previous sexually inappropriate behaviour

## Rights of children and young persons in police custody

Children in police detention or custody may be less aware of their rights and entitlements than adults and may need this information communicated to them in a way which meets any speech, language or communication needs they have. Ensuring that children and young people are aware of their rights while in custody is one way in which staff can safeguard and protect them. It is particularly important that children and young people are aware of the role of appropriate adults and of their right to legal representation.

Following the recommendations of the [All Party Parliamentary Group for Children](#) the training of custody officers should cover legal representation for children and young people. This training should specifically enable custody officers to understand and ensure that children and young people and their appropriate adult fully comprehend the possible benefits and importance of seeking legal advice.

Children need to be made aware that they have the right to complain if they do not feel that they are being treated fairly or lawfully. If a child makes an allegation relating to their treatment by police officers or staff, the matter should be referred to the local authority designated officer, who has responsibility for investigating the allegation.

## Detention rooms and cells

Newly built facilities are usually built to the Lambeth design, which is unisex and suitable for children and young people. Older suites tend to use detention rooms for young people. Custody management plans should clearly identify the rooms to be used to detain children and young people.

For further information see [buildings and facilities](#) or contact the Ministry of Justice Estates Directorate, Technical Standards, 102 Petty France, London SW1H 9AJ (moj\_ed\_technicalstandards@justice.gov.uk).

Following an inquiry to examine children and young people's relationships with the police, the All-Party Parliamentary Group made a number of recommendations. [Recommendation 16](#) states that:

The Home Office should ensure that all newly built custody facilities include a separate area for children and young people. All police forces should consider allocating areas that can be used as designated facilities for children and young people within existing custody facilities, even for short-term detention.

For further information, see All-Party Parliamentary Group (2014) ["It's all about trust": Building good relationships between children and the police](#)

## Intimate and strip searches of children and young persons

### Intimate search (physical examination of a person's body orifices other than the mouth)

An intimate search of a child or young person may take place only in the presence of an appropriate adult of the same sex, unless the child/young person expressly asks for an appropriate adult of the opposite sex, who is readily available. The search may take place in the absence of the appropriate adult if the juvenile specifically requests this, provided the appropriate adult is present when the request is made and the adult agrees. The decision should be recorded and signed by the appropriate adult.

Prior written consent is required for an intimate search of a child or young person if the search is for a drug-related matter (drug offence search), in accordance with [PACE Code C, Annex A, paragraph 2\(b\)](#)

- If the person has reached the age of 18, the consent of their parent or guardian is not required.
- If the child or young person is aged 14 or over, both the consent of the child or young person and that of their parent or guardian must be obtained.

- If the child is under 14, the parent or guardian's consent alone is sufficient.

Irrespective of the child's age, the seeking and giving of consent must take place in the presence of an appropriate adult.

## **Strip search (search involving the removal of more than outer clothing)**

Unless there is risk of serious harm to the child/young person or another, an appropriate adult must be present for a strip search if it involves exposure of intimate body parts. It can only take place in the absence of the appropriate adult if the child/young person has specifically requested this and the adult agrees. The decision should be recorded and signed by the appropriate adult.

Consideration should be given to the safety and welfare of any child in accordance with [section 11 of the Children Act 2004](#).

Consent is not required to strip search a child or young person.

## **Sharing information and duty to cooperate**

[The Children Act 2004](#) requires local policing bodies and chief officers to cooperate with arrangements to improve the wellbeing of children in the authority's area relating to:

- physical and mental health and emotional well-being
- protection from harm and neglect
- education, training and recreation
- the contribution made by them to society
- social and economic well-being

For further information see:

- [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children \(March 2015\)](#)
- [Welsh Assembly Government Safeguarding Children: Working Together Under the Children Act 2004](#)

## **Responsibilities of the police**

The custody officer must ensure that concerns resulting from the detention of a child or young person are communicated to the appropriate agency. Information sharing is required when a child is to be released from police custody where:

- there are concerns about their welfare as a result of risk assessments or other available information
- there is a risk of harm to the child
- such information may allow agencies to protect the child's welfare

Officers must pass details to the YOT of young persons under the age of 18 who are issued with a youth caution, youth conditional caution or community resolution.

Officers should make referrals to local safeguarding children boards (LSCBs) in accordance with [multi-agency arrangements for safeguarding](#). It is good practice for officers to pass details of ALL detained children and young persons to the YOT to allow for suitable support and interventions where required.

## Youth offending teams

YOTs comprise representatives from the police service and probation service, social services, health, education, drugs and alcohol referral teams, and housing officers. Each YOT has a manager who is responsible for coordinating the work of the youth justice services.

YOTs try to identify the specific causes of a young person's offending and measure the risk they pose to others. This enables the YOT to establish a suitable programme to address the needs of the young person.

## Local Safeguarding Children Partnerships

[Chapter 3](#) of [Working together](#) relates specifically to local safeguarding children partners within the multi-agency safeguarding arrangements (MASAs).

MASAs require effective information sharing systems. The [Children Act 2004](#) encourages agencies to share early concerns about the safety and welfare of children and young persons, and to take preventive action.

## Girls

Girls under the age of 18 must be under the care of a woman while being detained, conveyed to and from court, or waiting to be so conveyed. This is a requirement under [section 31 of the Children and Young Persons Act 1933](#).

## Under the care of a woman

This term refers to a female police officer or female member of police staff. Subject to the risk assessment, the carer need not be physically present and with the detainee at all times, but must be readily available and assigned to the detainee throughout the period of detention. Officers and staff must treat each case individually and should always give consideration to whether a carer needs to be physically present or not. The assigned responsibility can be shared by more than one female carer and may be transferred at shift handover.

The assigned carer should arrange with the custody officer to visit the detainee and check on her welfare needs.

Staff should tell the detainee that she can ask to see the carer at any time.

Forces must implement policies and procedures to ensure that all girls who are detained and in custody are under the care of a woman.

For further information, see [PACE Code C, section 3.20A](#).

## Transporting children and young people

Children and young persons under the age of 18 are not allowed to associate with adult detainees while being detained, conveyed to and from court or waiting to be so conveyed. An exception to this is permitted in accordance with [the Children and Young Persons Act 1933 section 31](#), where the young person is jointly charged with an adult or relative.

Officers should make arrangements to prevent association when the child or young person is:

- detained in a police station
- being conveyed to or from any criminal court
- attending court

Children and young people should not be carried in a vehicle with adult detainees unless the vehicle has been designed and built to carry them separately and simultaneously. Vehicles that are available for this specific purpose are authorised under the 2011 Prisoner Escort and Custody Services' contract arrangements.

## Appropriate adults

Forces should establish policies and protocols to provide access to appropriate adults for young persons in police custody. Local YOTs have a statutory responsibility to ensure that an appropriate adult service is provided for children and young people, whether they provide the service themselves or contract a voluntary or private sector agency to do so on their behalf.

It is the responsibility of the appropriate adult provider to work with the local force to develop policies and protocols to ensure there is effective provision of appropriate adult services in line with [Youth Justice Board \(2014\) case management guidance](#). This guidance makes it clear that the appropriate adult service should operate out of hours as well as during standard working hours.

All appropriate adults, custody managers, custody officers and staff must be aware of their role as defined by [PACE](#), and also of any agreed local policies, protocols or service level agreements for providing appropriate adults. For further information, see PACE and [section 38 of the Crime and Disorder Act 1998](#).

Also see the [Youth Justice Board's \(YJB\) National Standards for Youth Justice Services](#).

For further information about standards and training for all schemes see the [National Appropriate Adult Network](#).

## When should an appropriate adult be contacted?

Detention can be very stressful so it is important that an appropriate adult attends as soon as is practicable to minimise the amount of time the child or young person spends in detention. [Youth Justice Board \(2014\) case management guidance](#) requires attendance within two hours of the initial request being placed. To use time and resources to best effect, YOTs should consider the location and travelling time of the appropriate adult requested, as well as the availability and arrival time of the solicitor and arrangements for those jointly arrested.

Officers should record and monitor the time when the appropriate adult is notified of the arrival of a child in custody and their arrival at the station to ensure children and young people in custody are dealt with as quickly as possible.

## Providing appropriate adult support for children and young people with mental ill health or learning disabilities

Officers and staff should give particular consideration to ensuring that children and young people who are identified as having mental ill health or learning disabilities/difficulties are appropriately supported. **PACE Code C Notes for Guidance 1D** state that: 'In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person, their wishes should, if practicable, be respected.'

Officers and staff should be aware that:

- the presence of an appropriate adult is not an adequate substitute for legal advice
- a mentally vulnerable detainee may require extra time and help in understanding the legal process
- a suspect with mental ill health or learning disabilities may be more unlikely to ask for a solicitor

## Who can be an appropriate adult?

**PACE Code C section 1.7(a)** defines an appropriate adult for a child or young person.

Appropriate adults must be able to provide effective support. A parent or guardian should be considered in the first instance. Parents/guardians may need reassurance or practical assistance to attend the police station and to understand the nature of the role of an appropriate adult. Every person acting as an appropriate adult should be given a copy of the **Home Office (2011) Guide for Appropriate Adults** and allowed time to read it. Officers should inform the person that the custody officer will be available to answer questions about the document and the appropriate adult role. Trained appropriate adults attending on behalf of a formal scheme may already be familiar with the document but officers should still offer it to them.

Increasingly, organised groups of trained volunteers carry out this role. Forces should use an independent, trained appropriate adult from the local appropriate adult service where available.

For further information, see [National Appropriate Adult Network \(2018\) A quick guide for appropriate adults](#).

## Points to consider when appointing an appropriate adult

It is useful for the appropriate adult to have knowledge of the young person's circumstances and background. To facilitate this, YOTs need to identify whether or not the young person is known to the YOT or social services and in what capacity. Officers should contact a supervising officer or allocated social worker, if one has been appointed, to ascertain what relevant information is available about the young person.

## Alternative arrangements when a parent or guardian cannot act as the appropriate adult

Forces should make alternative arrangements when:

- reasonable efforts have been made to contact the parents without success
- the parents have refused or are unable to attend.

[PACE Code C Guidance Note 1B](#) states that a person, including a parent or guardian, should not be an appropriate adult if:

- they are suspected of involvement in the offence
- they are the victim
- they are a witness
- they are involved in the investigation
- they have received admissions prior to acting as an appropriate adult
- the young person is estranged from their parents and expressly and specifically objects to their presence

In other circumstances, the objection of a child or young person to an appropriate adult does not, in itself, exclude the use of that adult. The choice of adult is a decision for the custody officer, taking all the circumstances into account, which includes the child or young person's views. Officers must be mindful that an appropriate adult must be able to communicate with and on behalf of the child or young person and this is likely to be difficult or ineffective if they object to the individual's appointment.

Where a child or young person has admitted an offence to, or in the presence of, a social worker or member of the YOT at a time when that person was not acting as an appropriate adult, that person should not be chosen to act as appropriate adult in the interests of fairness.

For further information, see [PACE Code C Notes for Guidance 1C](#).

## PACE transfers

When a child or young person is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must make arrangements for the child to be taken into the care of a local authority to be detained pending appearance in court. Exceptions to this apply if the custody officer certifies in accordance with [PACE section 38\(6\)](#) that:

(a) for any juvenile, it is impracticable to do so

(b) in the case of a juvenile of at least 12 years old, no secure accommodation is available and other accommodation would not be adequate to protect the public from serious harm from that juvenile

[Section 38 of PACE](#) determines both the maximum age limit for transfer to local authority accommodation (anyone who appears to be under 18) and the power of the local authority to detain the person transferred and take over responsibility for that person from the police. For this reason, the following paragraphs and [PACE Code C Note 16D](#) do not apply to detainees who appear to have attained the age of 18 – [see PACE Code C, paragraph 1.5](#).

For further information, see [Concordat on children in custody](#).

The test is high for exception (a) and relates to those cases where it is impractical to transfer the child. [PACE Code C Note 16D](#) states:

*Impracticability concerns the transport and travel requirements and the lack of secure accommodation which is provided for the purpose of restricting liberty does not make it impracticable to transfer the child or young person. The availability of secure accommodation is only a factor in relation to a child or young person aged 12 or over when other local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a child/young person to local*

*authority accommodation applies as much to a child or young person charged during the daytime as to a child or young person to be held overnight, subject to a requirement to bring the child/young person before a court under [section 46 of PACE](#).*

Local authorities have an absolute duty to provide accommodation for children and young persons to be transferred out of custody under [section 21\(2\)\(b\)](#) of the Children Act 1989. This accommodation may be secure or non-secure. The determination for such accommodation occurs in a two-stage process.

The only determination a custody officer has to make in respect of secure accommodation is if it is required to protect the public from serious harm. Again, this is an extremely high threshold.

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[PACE section 38\(6A\)](#) defines serious harm as 'death or serious personal injury, whether physical or psychological' in relation to children or young persons charged with murder or under [Criminal Justice Act 2003 Schedule 15](#), Part 1 (violent offending), Part 2 (sexual offending) or Part 3 (terrorism).

A judgement made on the likelihood of the child or young person absconding should not form the basis of requests for secure accommodation.

When the police threshold test has not been met, it is the decision of the local authority to determine the appropriate placement of children and young people.

Local authorities have their own test to determine how to place a child, which centres on the welfare of the child. For instance, a child aged over 12 must be either likely to abscond or injure themselves or others (Children (Secure Accommodation) Regulations 1991 [regulation 6\(1\)\(a\)](#) modifying [Children Act 1989 section 25\(1\)](#)). Children aged 10 or 11 must, in addition to the above, have a history of absconding.

Custody officers have a crucial role to play in providing information that will help local authorities to make a decision. They should give the precise reasons for refusing bail and the rationale behind this. The police should also provide all information relating to risk of absconding, offending history, mental health, familial circumstances and any other information which would help the local authority

to determine the appropriate placement for the child/young person. A person escort record (PER) form should accompany all children and young persons transferred out of police custody.

The law is clear that it is the responsibility of the local authority to determine the type of accommodation the child requires, not the police.

If the police have decided it is impractical to transfer the child/young person, or either agency has decided under their separate criteria that secure accommodation is required but not available, and hence the child/young person has stayed in police cells then the custody officer must produce a certificate to the court ([PACE section 38\(7\)](#)).

The law does not recognise or allow a situation in which secure accommodation is not required and yet a child/young person remains in police cells. The local authority has an absolute duty to provide accommodation and, if such a situation arises, a senior officer must be contacted.

Where a child has been detained under section 38 PACE and is not being provided with accommodation by a local authority ‘...any reasonable expenses of accommodating them shall be recoverable from the local authority in whose area he is ordinarily resident’ ([Children Act 1989 section 21\(3\)](#)).

Children and young persons, of any age, arrested for breach of bail ([Bail Act 1976, section 7](#)) or on a warrant not backed for bail ([Magistrates’ Court Act 1980, section 13](#)) cannot be transferred as described above and must be kept in police cells. 18-year-olds cannot be transferred under [PACE section 38\(6\)](#).

Forces should ensure that they have strategic agreements with local authorities which ensure these provisions can be met.

## Tags

Detention and custody