

# Reducing the Use of Police Custody for Children in Dorset

## A Multi-Agency Protocol

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*Office of the Police and Crime Commissioner*

*Bournemouth Borough Council*

*Borough of Poole*

*Dorset County Council*

*NHS Dorset Clinical Commissioning Group*





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## **1. Introduction**

- 1.1. Police custody facilities are designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance.
- 1.2. Children brought into 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. They may be under the influence of drugs or alcohol, recovering from a recent trauma or coming to terms with events that may have a lasting impact on their lives. They will not be in a strong position to cope with the stressful and demanding nature of a night in custody.
- 1.3. The law recognises that police cells are not a suitable place for children. The Police and Criminal Evidence Act 1984 requires the transfer of children who have been charged and denied bail to more appropriate local authority accommodation, with a related duty in the Children Act 1989 for local authorities to accept these transfers. In 1991 the UK ratified the UN Convention on the Rights of the Child, agreeing that custody be used “only as a measure of last resort and for the shortest appropriate period of time”.
- 1.4. A diverse group of agencies has contributed to this document, reflecting the fact that a variety of professionals with different duties have responsibilities for ensuring that justice is done and that children are treated humanely and safely. This protocol sets out – clearly and with the agreement of those involved – the role that each agency should play to ensure that this responsibility is met.

## **2. Aims**

- 2.1. The aim of this protocol is to reduce the time spent by young people in police custody in Dorset, to improve their experience when they do spend time in police custody and to ensure that legal duties are met.
- 2.2. This protocol will support Dorset Police and the relevant local authorities to comply with their legal responsibilities with regard to children in custody. The protocol will summarise each party’s statutory duties in a way that is clear, accessible and unlikely to result in ambiguity or confusion. By setting out a series of clear principles and providing guidance as to how these can be achieved in practice, it will help front-line staff to understand what compliance looks like and what it means for their day to day work. It will also help police and local authorities to adhere to best practice. The protocol will assist the two Local Safeguarding Children Boards to hold local agencies to account for the delivery of their statutory responsibilities for the transfer of children from police custody.
- 2.3. The protocol will be successful when we can show a reduction in the number of children held overnight and when external bodies can scrutinise the case of any child held in police custody and have no doubt that the child is being held in full accordance with the law.

## **3. Purpose and Scope**

- 3.1. This protocol draws on the national Concordat on Children in Custody (Home Office 2016) and builds on work being undertaken locally to reduce time spent by young people in police custody. The national Concordat addresses the treatment of young people who have been charged with an offence. This protocol also addresses the treatment of young people before they have been charged with an offence.

## **4. Before Charge**

- 4.1. In 2015 a multi-agency pan-Dorset group began work to address the issue of time spent in police custody by young people. Two studies were undertaken of young people detained during a specified period, and a number of factors were identified which could lengthen the time spent by a young person in police custody. These factors included: the young person not being fit for interview, e.g.

due to intoxication; time taken for the collection of evidence and preparation for interview; delays in availability of an appropriate adult; and concerns about interviewing a young person late at night.

- 4.2. All agencies agree that young people should be kept in police custody for the minimum time possible, and that a multi-agency approach is often required to resolve such situations.

## **5. After Charge**

- 5.1. Under the Police and Criminal Evidence Act 1984, the prolonged detention of a child (who has not been arrested on a warrant or for breach of bail) is permissible only where exceptional circumstances prevent movement (such as extreme weather conditions) or where the child is deemed to pose a risk of death or serious injury to the public between being charged and appearing at court and no local authority secure accommodation is available. The bar to justify detention in a police cell is therefore very high.

## **6. Principles and Practice**

### **6.1. Offences by children will be investigated using 'voluntary attendance' when possible**

- 6.1.1. Most offences committed by children do not require detention in police custody. Instead Dorset Police will use 'voluntary attendance' when possible while carrying out their investigation. The use of voluntary attendance is still subject to necessary legal safeguards, in that free and independent legal advice is available and an Appropriate Adult will always be present. Should a child not cooperate with the process they can still be arrested and taken to a custody facility.

### **6.2. The decision to detain a child in police custody will be evidenced/approved?**

- 6.2.1. When a child is arrested they will be taken before a Custody Officer in a discrete booking-in room at a custody facility. The custody officer will hear the basic facts of the case and the arresting officer's reasons why it is necessary to detain the child in order to investigate the case. These reasons are defined in Code G of PACE 1984 and are called the 'necessity criteria'. It is expected that the custody officer will fully examine these criteria and apply them strictly. If the custody officer feels that the child is cooperative and the investigative needs can be suitably met using the Voluntary Attendance process then the child will be diverted away from the custody facility.
- 6.2.2. A review of detention is carried out periodically by an Inspector to ensure the investigation is being progressed diligently and expeditiously. Should the necessity for continued detention end at any point the child will be released with or without bail.

### **6.3. Children will be detained in police custody for as little time as possible before being charged**

- 6.3.1. All parties recognise that children are vulnerable and that children entering police custody may well have experienced events and treatment which increase their vulnerability. All agencies are therefore committed to minimising the time spent by children in police custody.
- 6.3.2. If evidence needs to be gathered prior to interview, Dorset Police will assess whether the young person needs to remain in custody for that period.
- 6.3.3. When a young person is not fit to be interviewed, for reasons such as intoxication, tiredness or emotional/mental health problems, Dorset Police will assess whether the young person needs to remain in custody until they are fit for interview. In such instances, bail will always be considered if appropriate accommodation can be found, but the child's safety and well-being will be paramount.

6.3.4. An Appropriate Adult must be present when a person under 18 is interviewed by the police. All parties agree that children's detention in custody should not be prolonged by delays in Appropriate Adult provision.

6.3.5. Children's detention in police custody should not be prolonged by a lack of suitable accommodation. Dorset Police will initially make efforts to return the child to family or friends, with the support of Children's Social Care or the Out of Hours Service to check the suitability of proposed addresses. If a suitable address is not available, Dorset Police will contact Children's Social Care or the Out of Hours Service for them to find suitable accommodation for the child.

6.4. When children need to be detained in police custody, their treatment will reflect their vulnerability in order to reduce the harm caused to them

6.4.1. On arrival, a child will be taken to a discrete booking-in room where the custody officer will hear the facts. When detention is authorised the child will be taken to a special child cell, separate or annexed from the cells where adults are detained. Every detained child will be screened by the Criminal Justice Liaison and Diversion (CJLD) team for mental health, substance use, learning disability and speech, language and communication needs. The CJLD team will advise the custody staff on appropriate adjustments required as a result of any identified health or disability issues. A general ethos of child-appropriate care will be employed where possible. The aim is to reduce a child's exposure to adult detainees and limit the time of their detention.

6.4.2. Children and their Appropriate Adults will be made aware of their right to legal representation. The 3 local authorities take the view that children in care should always have a legal adviser present during a police interview.

6.5. Whenever possible, charged children will be released on bail

6.5.1. After a child has been charged there is a presumption that they will be granted bail (people of all age groups have a right to bail under the Bail Act 1976). A full list of possible reasons for refusing bail can be found in section 38 (1) of the Police and Criminal Evidence Act 1984. These reasons include concerns that the person may fail to attend court or commit further offences; or where bail should be refused for the person's own protection, to prevent harm to others, to prevent interference with justice or, for someone under 18, if the custody officer believes that the young person should be detained in their own interests. It is important to note that concerns which might lead to the refusal or restriction of bail must relate exclusively to the period of time between the child's release and their appearance at court.

6.6. When concerns about release on bail are identified, conditions of bail should be considered

6.6.1. If concerns do exist around granting the child their right to bail, the custody officer must seriously consider whether these specific concerns would be suitably allayed by placing conditions on the child's bail. Conditions of bail may involve restrictions relating to residence or exclusion zones, imposing a curfew, the requirement to sign on at a police station or a requirement to attend educational training. The custody officer may wish to contact the Youth Offending Service to discuss the concerns and appropriate conditions which the Youth Offending Service may be able to help enforce.

6.7. Scrutiny of the decision to refuse bail

6.7.1. Appropriate adults and legal advisers should be satisfied that the proper decision-making process has been followed. They should make representations to custody officers in any circumstance where they think the criteria for denying the right to bail have not been met, or where the concerns can be alleviated by bail conditions.

6.7.2. If the custody officer reaches the decision that the right to bail – even with conditions – must be refused and the child must be retained in custody, s/he must make a written record of the reasons for this refusal as soon as possible. This is a requirement under section 38 (3) of the Police and Criminal Evidence Act 1984. When the child appears in court, the court should scrutinise and challenge the decision to deny the child their right to bail.

#### 6.8. Children denied bail will be transferred whenever practicable

6.8.1. After a child is charged with an offence, custody officers have a duty under the Police and Criminal Evidence Act (PACE) to secure the transfer of the child to local authority accommodation; local authorities have a duty to accommodate the child under the Children Act 1989. However, one of the circumstances where PACE allows police to retain a child in custody is where transfer is impracticable.

6.8.2. In this context the term ‘impracticable’ has a very specific meaning, which is often misunderstood. It does **not**:

- a) Relate to the availability of local authority accommodation or transport
- b) Relate to the nature of the accommodation offered by the local authority
- c) Relate to the child’s behaviour or the nature of the offence
- d) Mean ‘difficult’ or ‘inconvenient’.

6.8.3. ‘Impracticable’ should be taken to mean that exceptional circumstances render movement of the child impossible. A decision of no transfer due to impracticality should be cleared by a duty inspector.

6.8.4. If the decision is made that transfer is impracticable, the custody officer must carefully record the reasons for this decision on the PACE 38 (7) certificate, as required by section 38 (7) of the Police and Criminal Evidence Act 1984. The certificate must be presented to the court at which the child appears. Courts have a duty under PACE to receive and review this certificate and are now able to flag any failures to the responsible police force.

#### 6.9. Secure accommodation will be requested only when necessary

6.9.1. If a custody officer decides that transfer is practicable, their next step is to determine whether secure or non-secure accommodation is required.

6.9.2. The Police and Criminal Evidence Act is very clear about the criteria required for the police to justify secure accommodation: the child must be 12 years or older and the custody officer must believe that this child poses a risk of serious harm to the public between being charged and appearing at court. To say that a child poses a risk of serious harm means that they are likely to cause death or serious injury (whether physical or psychological) to members of the public.

6.9.3. The custody officer should be willing to discuss their judgement with the Appropriate Adult. If the Appropriate Adult is not convinced that the child poses such a high level of risk they should make representations for the request of non-secure accommodation instead. It should be remembered that a request for non-secure accommodation will still be accompanied by a full explanation of the police’s concerns, to inform the local authority’s choice of accommodation and ensure that all risks are considered.

6.9.4. Once a custody officer is confident that secure accommodation is required, this decision should be cleared by the duty inspector.

6.9.5. The custody officer should then contact the local authority for the child, or the Out of Hours Service, to request secure accommodation. During the daytime, the police can liaise with Youth Offending Service for advice about which local authority to contact.

6.9.6. The custody officer should give the local authority the following information:

- a) The child's personal information, including details of any particular vulnerabilities
- b) The nature of the offence
- c) An explanation as to why the child poses a risk of death or serious injury to the public

#### 6.10. Which Local Authority

6.10.1. According to the ruling in *M v Gateshead Council* (2006), a police force can contact any local authority it chooses with a request for secure or non-secure accommodation, and it is then that authority which is bound to provide accommodation under the Children Act 1989. The decision as to which local authority to contact will be taken by the custody officer, with advice available from the Dorset Combined Youth Offending Service or the Out of Hours Service. The starting point will be to contact the authority in which the child is normally resident.

6.10.2. The three local authorities in Dorset agree that each will take responsibility for children normally resident in their area.

#### 6.11. Local Authorities and Secure Accommodation

6.11.1. Under section 25 of the Children Act 1989, local authorities have minimum criteria to satisfy before a child can be placed in secure accommodation. The local authority must believe that a child is likely to abscond and in doing so is likely to suffer significant harm; or that if the child is kept in non-secure accommodation they are likely to injure themselves or other persons. Although the tests employed by the police and by the local authority vary slightly, a child who meets the police criteria is also likely to meet the local authority criteria, due to the risk of causing harm (during the period between being charged and appearing at court).

6.11.2. If a situation arises where a local authority disagrees with the police assessment of risk, and therefore the local authority believes it cannot lawfully meet the criteria for secure accommodation under the Children Act, the matter should be escalated as quickly as possible, using the pan-Dorset Children's Safeguarding Inter-Agency procedures.

6.11.3. There may also be circumstances where the police request non-secure accommodation but the local authority judges that secure accommodation is required. The local authority has discretion to decide what sort of accommodation is most appropriate. The law does not, however, recognise a situation where the police request non-secure accommodation but the local authority refuses to provide any accommodation because they believe secure accommodation is more appropriate. Police requests for non-secure accommodation must always be accepted, regardless of the type of accommodation the local authority then decides to place the child in.

6.11.4. Local authorities receiving a request for secure accommodation should seek to understand the custody officer's assessment that the child poses a risk of serious harm to the public between transfer and court appearance. The local authority can challenge the request but it is ultimately the custody officer's decision as to what type of accommodation they request; disagreement with police judgement is not a lawful reason for a local authority to refuse a transfer request.

6.11.5. Following a request for secure accommodation the local authority must do everything within its power to find secure accommodation for the child in question. If the local authority fails to



find any secure placements, or reach agreement with the police as to any suitable alternative, then custody officers will have no choice but to retain the child in police custody for the protection of the public.

6.11.6. When secure accommodation is found, the local authority will make appropriate transport arrangements for the child to be taken to the accommodation.

6.12. Local authorities will always accept requests for non-secure accommodation

6.12.1. A police request for non-secure local authority accommodation is appropriate for the vast majority of cases and is required for children under 12 years of age, or children who do not pose a risk of serious harm.

6.12.2. When the custody officer has decided to deny the child their right to bail and has determined that non-secure accommodation is appropriate, s/he must contact the relevant local authority (with advice, if necessary, from the Dorset Combined Youth Offending Service or the Out of Hours Service). The custody officer should make the request for accommodation and should give the local authority the following information:

- a) The child's personal information, including details of any particular vulnerabilities
- b) The nature of the offence
- c) An explanation as to why the child has been denied their right to bail and why conditions would not be sufficient to allay these concerns.

6.12.3. The starting point for the local authority will be to confirm understanding of why bail has been refused and why conditional bail is not possible, in order to make an informed decision as to what type of accommodation is suitable.

6.12.4. It is up to the local authority to determine the most appropriate type of non-secure accommodation for the child, and it has considerable freedoms in the options open to it, including returning the child to the care of family and friends, subject to safeguarding and risk management concerns.

6.12.5. Local authorities may also decide to place a child in secure accommodation even if this was not the custody officer's request. The circumstances in which a placement in secure accommodation is permissible are outlined in section 25 (1) of the Children Act 1989. The local authority still has a statutory duty to accept a request for non-secure accommodation, even if it then opts to place the child in secure accommodation.

6.12.6. If a local authority refuses to accept a custody officer's request for non-secure accommodation, the custody officer should contact the duty inspector immediately. The duty inspector should seek a resolution which prevents a failure to secure accommodation, escalating the matter further if required.

6.13. The power to detain will be transferred to the local authority

6.13.1. When a police officer hands a child over to local authority staff, they also transfer the power to lawfully detain that child:

6.13.2. 'Where an arrested juvenile is moved to local authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the local authority to detain him', PACE 1984, section 38 (6B).

6.13.3. Simultaneously, section 39 (4) emphasises that, at the point of transfer to the local authority, police custody officers' responsibility for the child ceases entirely.

- 6.13.4. It is important that local authority staff remain conscious of the level of responsibility that this transfer of power places upon them. A custody officer has taken the decision that this child must be held in lawful custody until their appearance at court; following the transfer, local authority staff are accountable for ensuring that this lawful custody is upheld. They become the custodians, with the same lawful responsibility towards the child as a police custody officer has towards a detainee in a police cell. This includes the duty to transport the child to court.
- 6.13.5. When transferred from police custody to local authority accommodation, the opportunities for a child to abscond are likely to increase. It may also appear to the child that the nature of their detention has become less serious, and that absconding would not be as serious as escaping from a police cell.
- 6.13.6. Legally, this is not the case. If a child absconds they are committing the serious offence of escaping from lawful custody.
- 6.13.7. It is important that the child is made to understand this: firstly, in order to prevent genuine misunderstandings, leading the child into more difficulties; and secondly, to ensure that any subsequent charge of escaping lawful custody is justifiable, as it will likely rely on evidence that the child understood the terms and nature of their detainment.
- 6.13.8. It is therefore essential that the nature of the detainment is clearly emphasised and explained to the child when the handover from the police to the local authority takes place. At the point of transfer, the police officer should – in the presence of local authority staff – inform the child of the following:

*You have been charged with [offence] and you have to appear at court on [date]. You have been refused bail, which means you have to stay in custody until your court date. If you were an adult you would stay in the police cells until then but because you are under 18 years of age, the local authority is going to look after you until your court appearance. The local authority will decide where you will stay until then.*

*It is very important that you understand that you are still in custody: this means that you must stay where you are told to go by the local authority and can only go out with their permission. If you do leave without permission, the local authority will tell the police and you will get into more trouble, just as if you had run away from a police station.*

- 6.13.9. The police officer and the local authority staff should be satisfied that the child has understood these points, offering further explanation if necessary. If an Appropriate Adult is aware that a child is due to be transferred to local authority accommodation, they may also be able to explain the situation and prepare the child for handover.

6.14. Where a local authority fails to provide accommodation it will reimburse the police

- 6.14.1. The police are not funded to accommodate under-18 year olds in custody. It is therefore important that Dorset Police is reimbursed when a transfer to local authority care does not take place, for whatever reason.

- 6.14.2. Section 21 (3) of the Children Act 1989 states that:

*Where a child has been...detained under section 28 of the Police and Criminal Evidence Act 1984, and he is not being provided with accommodation by a local authority...any reasonable expenses of accommodating him shall be recoverable from the local authority in whose area he is normally resident.*

- 6.14.3. The level of expense for overnight detention must be determined by the police force, and be based upon the costs of cell use, staffing, healthcare and any other provision required for a

detainee. Mechanisms for the recovery of these costs must be determined at a local level and will vary depending on any existing reimbursement arrangements between police forces and local authorities.

6.15. Dorset Police will collect data on transfers

6.15.1. Clear data on the success rate of transfer requests will assist in the identification and resolution of any systematic problems. It provides an evidence base for discussions between the various partners who need to work together to ensure that transfers always happen as they should.

6.16. Dorset Police should collect data on:

1. The number of under 18s detained in police custody for 6 hours or more, entering custody before midnight and leaving custody after midnight
2. The number of under 18s who are charged and detained in police custody overnight with no request for any accommodation made by police to the local authority
3. The number of requests made for secure accommodation
4. The number of transfers to secure accommodation as a result of the requests made in (2)
5. The number of requests made for non-secure accommodation
6. The number of transfers to local authority non-secure accommodation as a result of the requests in (4).

6.16.1. Dorset Police will also collect qualitative data, such as the reasons for refusing bail, the reasons for not requesting accommodation from the local authority and the reasons given by the local authority for refusing transfer requests.

6.16.2. Partners agree to undertake periodic multi-agency case sample audits to monitor adherence to the protocol, to identify reasons for the protocol not being followed and to recommend appropriate remedial actions.

6.16.3. Dorset Police will share this data with the Dorset Combined YOS Partnership Board and the two Local Safeguarding Children's Boards to enable them to hold relevant local agencies for account for complying with their statutory duties.

## 7. Governance

7.1 The use of police custody for children, and adherence to this protocol, will be overseen by the Dorset Combined Youth Offending Service Management Board. Data and performance reports will also be submitted to the two Local Safeguarding Children's Boards for the Dorset area.

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