

Debate Pack

Number CDP 2022/0122
By Jacqueline Beard,
Maria Lalic,
Sally Lipscombe,
Joe Ryan
21 June 2022

Rights of children in police custody

1	Background	2
	Parliamentary Material	5
1.1	Reports	5
1.2	Statements	5
1.3	Debate	5
1.4	Parliamentary Questions	6
2	Media	12
2.1	Press releases	12
2.2	News articles	12
3	Further reading	13
	Government department and agency	13
	Organisation and blog	13
	Report	14

1

Background

Police forces and chief constables are required by [section 11 of the Children Act 2004](#) to ensure they discharge their functions having regard to the need to safeguard and promote the welfare of children.

The [United Nations Convention on the Rights of a Child](#) (PDF) (UNCRC), which the UK has signed and ratified, requires that arrest, detention or imprisonment of children shall be used only as a measure of last resort and for the shortest appropriate period of time.¹ It also states that when any decision is made in respect of a child the best interests of the child shall be a primary consideration.²

The primary legislation on the treatment of suspects in police custody, including children, is [Part IV of the Police and Criminal Evidence Act 1984 \(PACE\)](#). This is supported by the statutory guidance set out in [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#).

PACE requires that anyone who appears to be under 18 is treated as a child in the absence of clear evidence that they are older.³ PACE refers to children as juveniles.

In addition to the rights available to suspects of all ages detained in police custody,⁴ children have certain other rights.

A child is required to have an appropriate adult whose role is to safeguard the child's welfare and rights. The appropriate adult may be a parent or other relative, or a designated professional such as a social worker. An appropriate adult must be present for certain procedures. These include interviews or signing a written statement, searches, taking photographs, DNA or other samples and carrying out anything to do with a witness identification procedure.⁵ An appropriate adult is expected to support, advise and assist the child, to observe whether the police are acting properly and fairly to respect the child's rights, to assist the child in communicating with the police and to help the child understand their rights. The child must be told about the duties of the appropriate adult and told they can consult them privately at any time.⁶

¹ The United Nations Convention on the Rights of the Child, Art 37

² The United Nations Convention on the Rights of the Child, Art 3

³ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#) Para 1.5

⁴ For details see Library briefing 8757, [Police powers: detention and custody](#) and Home Office, [Notice of rights and entitlements](#), 20 August 2019

⁵ Home Office, [Notice of rights and entitlements](#), 20 August 2019

⁶ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Para 3.15

Where a child is arrested and taken into custody the police must inform the child's parent or guardian (or person responsible for their welfare) that they have been arrested, why they have been arrested, and where they are detained. This must be done as soon as practicable.⁷

Children should not be placed in cells with adults. They should not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell or that a cell provides more comfortable accommodation than other secure accommodation in the station.⁸

Children should be checked on more frequently than adults, wherever possible.⁹

[Section 31 of the Children and Young Persons Act 1933](#) requires that arrangements must be made for ensuring that a girl under the age of 18, while detained in a police station, is under the care of a woman. This woman is responsible for making enquiries about the girl's personal needs relating to health, hygiene and welfare and access to menstrual products.¹⁰ Section 31 also requires that arrangements must be made for preventing a child detained in a police station from associating with an adult charged with any offence, unless that adult is a relative or the adult is jointly charged with the same offence as the person under 18.

When a child is charged and the custody officer authorises continued detention, the custody officer must make arrangements for the child to be taken into the care of a local authority unless it is impracticable to do so or in the case of a child 12 or over that no secure accommodation is available.¹¹

Operational guidance for the police on applying these provisions of PACE and Code C to children (and how they interact with various other pieces of legislation and guidance) is set out in the College of Policing Authorised Professional Practice (APP) [Detention and custody: Detainee care – Children and young persons](#) (last updated 1 July 2020).

The Home Office's [Concordat on Children in Custody](#) (PDF) provides guidance for the police and local authorities aimed at preventing the detention of children in police stations following charge. It states that a prolonged stay in police custody can be harmful for a child. It notes that facilities are designed

⁷ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Para 3.13

⁸ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Para 8.8

⁹ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Note 9B

¹⁰ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Para 3.20A

¹¹ [PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#), Para 16.7

to detain adults and acknowledges that spending a night in a cell is an intimidating experience. Similarly, the National Police Chief's Council's [National Strategy for the Policing of Children & Young People](#) (PDF) recognises that for the majority of children, entering custody for the first time is a traumatic experience.

Campaigners argue that measures to avoid children being held in police custody or to reduce the amount of time spent are not being used as much as they could be. The [Youth Justice Legal Centre](#) says that children are not interviewed under caution outside of a custody suite as often as they could be. Children who are refused bail are not being transferred to local authority accommodation as is required by PACE (unless this is impracticable or there is no secure accommodation available) and are instead being kept in police cells.¹²

The charity Just for Kids Law is [campaigning](#) for an end to the overnight detention of children by police. It has called for a much reduced time limit on how long a child can be detained in police custody to be provided for in legislation.¹³ Currently children are subject to the same time limit as adults.

Dr Miranda Bevan, Lecturer in Law at Goldsmiths, has recently commented that the specific provisions in PACE Code C and the College of Policing's APP giving effect to the particular duties owed to children are quite limited. Dr Bevan states that "the small body of available research identifies that these scant protections tend not to be implemented effectively for children". She argues that "the need for a fundamental review of the framework of support for children in police custody is plain and urgent".¹⁴

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) has standards by which it inspects outcomes for detainees in police custody. Expectation 4.6 is that "Children are kept safe in custody and treated according to their needs. They are held for the minimum time possible and not overnight, except as a last resort."¹⁵ A list of indicators that this expectation is being met is given. HMICFRS conducts inspections relating to child protection, which look at the treatment of children in police custody. General background is on the [National child protection inspections](#) page of the HMICFRS website.

¹² Youth Justice Legal Centre (in conjunction with Doughty Street Chambers and Just for Kids Law), [Legal guides #08: police bail and remand](#) (PDF), December 2021

¹³ Just for Kids law, press release, "[End overnight police detention of children](#)" says children's rights charity, 21 February 2022

¹⁴ Bevan, M, [The pains of police custody for children: a recipe for injustice and exclusion?](#), The British Journal of Criminology, Volume 62, Issue 4, July 2022, Pages 805-821

¹⁵ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, [Expectations for police custody: Criteria for assessing the treatment of and conditions for detainees in police custody](#), 23 December 2021

Parliamentary Material

1.1 Reports

[Deposited Paper DEP2021-0872](#)

Letter dated 10/11/2021 from Baroness Williams to Lord Paddick regarding the Police, Crime, Sentencing and Courts Bill: plain-clothed police officers on patrol and post-charge detention of children, as raised in committee stage debate (fourth day). 2p.

10 Nov 2021 | Deposited papers | House of Lords

Depositing department: Home Office | **Corporate author:** Home Office

1.2 Statements

[Child Protection](#)

Statement on Her Majesty's inspectorate of police, fire and rescue services' thematic report on its national child protection inspection programme.

27 Feb 2020 | Ministerial statements | House of Commons | 672 cc511-520

Lead member: Atkins, Victoria

Department: Home Office

[Metropolitan Police: Strip-search of Schoolgirl](#)

Lords statement on the recent report concerning the Metropolitan *police's* handling of the strip

22 Mar 2022 | Ministerial statements | House of Lords | 820 cc861-4

Lead member: Williams of Trafford, Baroness

Department: Home Office

1.3 Debate

[Police Custody: Rights of Minors](#) – HC Deb 14 Mar 2022 – 710 cc733-9

1.4

Parliamentary Questions

Topical Questions

Asked by: Janet Daby (Lewisham East) (Lab)

We should all be concerned about the length of time and the frequency with which minors are detained in police cells. Cells are made for adults, yet minors are being detained in them for as long as adults and data shows that the average time spent in police custody is increasing. That is despite legislation saying that minors should be detained only for the shortest appropriate period. What are the Government doing and how do they plan to re-address that?

Answered by: The Minister for Crime and Policing (Kit Malthouse) |

Department: Home Department

In the past few years, we have been working closely with the police across the whole of the UK to drive down the number of minors held in custody and the duration of that. As the hon. Lady will know, the appropriate adult scheme is in place to make sure that minors who are detained are accompanied by adults who, as I say, are appropriate. If she has specific cases she wants to raise with me, I would be more than happy to look at them, but thus far the trend has been improving.

20 Jun 2022 | Topical questions - 1st Supplementary | Answered | House of Commons | 716 c547

Date answered: 20 Jun 2022

Topical Questions

Asked by: Marsha De Cordova (Battersea) (Lab)

A total of 5,279 children were strip searched by the Metropolitan police between 2019 and 2021, 75% of whom were from a black, Asian and minority ethnic background. This data covers only children who were strip searched after an arrest, which means that the number of children strip searched among those not arrested will be even higher, such as in the case of Child Q who was never actually arrested. The Home Office will require police forces to provide this data on strip searches only on a voluntary basis. Can the Home Secretary say why she will not commit to making it mandatory for police forces to produce this data?

Answered by: Kit Malthouse | **Department:** Home Department

Although the case of Child Q was deeply regrettable and the Metropolitan police have offered their apologies in that case, I am sure that the hon. Lady will accept that, sadly, there are circumstances where these kind of searches of all manner of people are warranted. She raises a good point about transparency, and I know that all police chiefs across the country have it at the forefront of their minds that their legitimacy is built on public confidence about what they do and I will certainly explore the idea that she suggests.

20 Jun 2022 | Topical questions - Supplementary | Answered | House of Commons | 716 c550

Date answered: 20 Jun 2022

[Youth Custody: Mental Illness](#)

Asked by: Maskell, Rachael

To ask the Secretary of State for Education, for what reason children and young people who present as causing serious risk to themselves or others are placed in police cells.

Answering member: Mr Robin Walker | **Department:** Department for Education

Children may be placed in police cells for several reasons, on which we do not hold data. However, the police, children's social care, legal advisers, Crown Prosecution Service, and the youth justice system should work together to ensure that the time a child spends in police cells is reduced to the minimum.

Police custody is governed by the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice, which makes it clear that children and young people are a protected group with specific vulnerabilities. The local authority has a duty (discharged by its youth justice services) to provide all under 18-year-olds with an appropriate adult. In addition to protection under domestic law, their treatment in detention is governed by the United Nations Convention on the Rights of Child, which the UK has signed and ratified.

The department's statutory guidance, Working Together to Safeguard Children (2018) sets out a framework for the three local safeguarding partners (including the police) to work together to safeguard and promote the welfare of children and meet their needs. This guidance is clear that children who are offenders (or alleged offenders) are entitled to the same safeguarding as other children and due regard should be always given to their welfare. The full guidance can be accessed here: <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

The fact that a child has been taken into police custody may indicate a wider safeguarding risk in their life which requires input from other agencies. The police's Vulnerability Knowledge and Practice Programme, funded by the Home Office, identifies, and shares best practice across forces in responding to incidents involving vulnerable children.

The ideal situation is to prevent children coming into the justice system. Turnaround is a new £60m youth early intervention programme led by the Ministry of Justice. Building on the success of the Government's Supporting Families programme, Turnaround will provide funding for youth justice teams to intervene earlier, working with children to address their needs and build on their strengths and help them access support to turn their lives around.

Where accommodating a child or young person in a specialist unit is appropriate, this should be actioned as soon as possible. Legislation introduced in 2017 banned the use of police cells as a place of safety for children in mental health crisis under the Mental Health Act 1983.

25 May 2022 | Written questions | Answered | House of Commons | 3675

Date tabled: 17 May 2022 | **Date for answer:** 19 May 2022 | **Date answered:** 25 May 2022

[Youth Custody](#)

Asked by: De Cordova, Marsha

To ask the Secretary of State for the Home Department, what (a) steps she is taking to safeguard children who are in custody and (b) procedures her Department has put in place to ensure police protect the welfare of children.

Answering member: Rachel Maclean | **Department:** Home Office

Nobody should be subject to any use of police powers because of their race or ethnicity and extensive safeguards exist to ensure this does not happen. Her Majesty's inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspect police forces' compliance with the legislation and College of Police guidance through their programme of national thematic inspections. In addition, the Home Office fund the Independent Custody Visiting Association who co-ordinate independent custody visitors in making unannounced visits to police custody to check on the rights and wellbeing of detainees.

Any use of strip search should be carried out in accordance with the law and with full regard for the dignity and welfare of the individual being searched – particularly if the individual being searched is a child. If police judge it operationally necessary to strip search a child, they must do so in the presence of the child's appropriate adult (unless both the child and

appropriate adult consent to it being done in the absence of the appropriate adult) and in line with safeguarding procedures.

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. 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.

It is essential that the police and frontline professionals recognise vulnerability in children and young people, regardless of the circumstances around any interaction. To support this the Home Office have funded the National Police Chiefs' Council's Vulnerability Knowledge and Practice programme, which shares the very best practice across forces. We also fund the College of Policing's Public Protection and Safeguarding Leadership programme which ensures senior leaders in policing have a strong understanding of vulnerability.

18 May 2022 | Written questions | Answered | House of Commons | 1543

[Children: Body Searches](#)

Asked by: Abbott, Ms Diane

To ask the Secretary of State for the Home Department, what steps her Department is taking to ensure that children are not strip-searched without a parent, guardian or appropriate adult present.

Answering member: Kit Malthouse | **Department:** Home Office

Strip search is one of the most intrusive powers available to the police and its use should not be a routine occurrence. The Police and Criminal Evidence Act Codes of Practice govern how the police should deploy this power. If the police judge it operationally necessary, then any strip search conducted on a child must be carried out by officers of the same sex, in private and with an appropriate adult present unless both the child and the appropriate adult agree otherwise and in line with safeguarding procedures.

Nobody should be stopped and searched because of their race or ethnicity and safeguards exist to ensure that this does not happen, including statutory codes of practice, use of body worn video to increase accountability and extensive data collection. It is critical that we maintain public confidence in policing and as part of this we will be looking carefully at strengthening the system of local community scrutiny and the value of body-worn video, because transparency is vital.

The MoJ are supporting a project with the National Police Chief's Council with the aim of addressing the difference in experience of ethnic minority children and adults in police custody. A wide range of agencies and independent advisors have contributed to this work, which engages a number of police forces across the country and builds on existing initiatives in the workplace, including a dedicated Independent Strip Search Scrutiny Panel (ISSSP) in Norfolk & Suffolk Police.

From December 2022 we will be including more detailed custody data in the annual Police Powers and Procedures statistical bulletin which will include data on whether an appropriate adult was called out for a detained child and the number of strip searches & Intimate searches carried out, broken down by age, gender, ethnicity, and offence type.

Further work is underway for the collection of data during stop & searches on the use of strip search. Currently, the Independent Office for Police Conduct is investigating this incident and it is vital we await their findings. However, we will consider all recommendations made for the Home Office as a result of these investigations very carefully.

21 Apr 2022 | Written questions | Answered | House of Commons | 154537

Date tabled: 14 Apr 2022 | Date for answer: 21 Apr 2022 | Date answered: 21 Apr 2022

[Police Custody: Legal Opinion](#)

Asked by: Cunningham, Alex

To ask the Secretary of State for Justice, what recent steps his Department has taken to ensure legal defence practitioners are able to provide in-person attendance to all suspects in police custody.

Answering member: Alex Chalk | **Department:** Ministry of Justice

In April 2020 the National Police Chiefs' Council (NPCC), Crown Prosecution Service, The Law Society, Criminal Law Solicitors' Association and London Criminal Courts Solicitors Association agreed a joint protocol to facilitate the provision of remote legal advice for suspects being interviewed under caution in police stations during the pandemic. As a contingency measure, the Legal Aid Agency (LAA) agreed temporarily to pay for remote police station work as if it were provided in person.

From 17 May 2021 children under 18 and vulnerable adults were removed from the scope of the protocol and receive in-person advice.

The protocol is expected to be modified further shortly, at which point legal advice will be provided in person at a police station and in interview other

than in rare and extraordinary circumstances (as defined in a revised protocol).

16 Sep 2021 | Written questions | Answered | House of Commons | 48219

Date tabled: 13 Sep 2021 | Date for answer: 16 Sep 2021 | Date answered: 16 Sep 2021

2 Media

2.1 Press releases

[Court of Appeal rules the lack of secure accommodation for children in London is unlawful](#) – Just for Kids Law – 30 July 2021

2.2 News articles

[Gwent Police has strip-searched at least 78 children since 2018](#) – The National – 10 June 2022

[Around 50 children strip searched by the police every week – and most are black](#) – Justice Gap – 25 May 2022

[Northamptonshire Police hopes to cut reoffending in child detainees](#) – BBC News – 07 April 2022

[Northamptonshire Police introduce ‘Trauma-Informed Custody’ for detained children](#) – Northamptonshire Police – 05 April 2022

[Children as young as 10 detained in police cells overnight, charity warns](#) – Children & Young People Now – 03 March 2022

[Arrested children in London ‘will continue to be held in police cells’ despite court ruling](#) – Community Care – 13 August 2021

3

Further reading

Government department and agency

[Trauma-informed custody scheme introduced for detained children](#) – College of Policing – 17 May 2022

[National child protection inspections](#) – HMICFRS – last updated: 7 April 2022

[Expectations for police custody: Criteria for assessing the treatment of and conditions for detainees in police custody](#) – HMICFRS – 23 December 2021

[PACE Code of Practice C for the Detention, Treatment and Questioning of Persons by Police Officers](#) – Home Office – 04 November 2020

[Detention and custody: Detainee care – Children and young persons](#) – College of Policing – 23 October 2013 (last updated 1 July 2020)

[Concordat on children in custody](#) – Home Office – 30 October 2017 (last updated 16 January 2020)

[Guidance: Notice of rights and entitlements: English \(accessible version\)](#) – Home Office – 20 August 2019

[The welfare of vulnerable people in police custody](#) – HMIC – March 2015

Organisation and blog

[“End overnight police detention of children” says children’s rights charity](#) – Just for Kids Law – 21 February 2022

[Police bail and remand](#) – Youth Justice Legal Centre – December 2021

[Children in police custody: How far have we really come since Confait?](#) – BSC Policing Network – 14 October 2021

[Children and Young People in Custody – The Law](#) – Independent Custody Visiting Association (ICVA) – 13 September 2021

[Project: Examining the impact of PACE on the detention and questioning of young suspects](#) – Nuffield Foundation – Accessed: 23 June 2022

[United Nations Convention on the Rights of a Child](#) – UNICEF – Accessed: 23 June 2022

[Children and Young People](#) – National Appropriate Adult Network – Accessed: 23 June 2022

[What to do if your teen gets arrested](#) – Family Lives – Last updated: June 2022

[National Strategy for the Policing of Children & Young People](#) – NPCC – April 2015

Report

Miranda Bevan, The pains of police custody for children: a recipe for injustice and exclusion?, *The British Journal of Criminology*, Volume 62, Issue 4, July 2022, Pages 805–821, <https://doi.org/10.1093/bjc/azab107>

Gamble, J. and McCallum, R., [Local Child Safeguarding Practice Review Child Q.](#) The City & Hackney Safeguarding Children Partnership, March 2022

[“It’s horrible when they keep you in there at night” Ending the overnight detention of children in police custody](#) – Just for Kids Law – 21 February 2022

[All our children: The work of the Howard League to make the rights of children in trouble a reality in England and Wales](#), – Howard League for Penal Reform – 2019

Gibbs, P. and Ratcliffe, F., [A report on the use of custodial remand for children: Path of little resistance: is pre-trial detention of children really a last resort?](#) – Youth Justice Legal Centre – December 2018 (Accessed: 23 June 2022)

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing '[Legal help: where to go and how to pay](#)' for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)