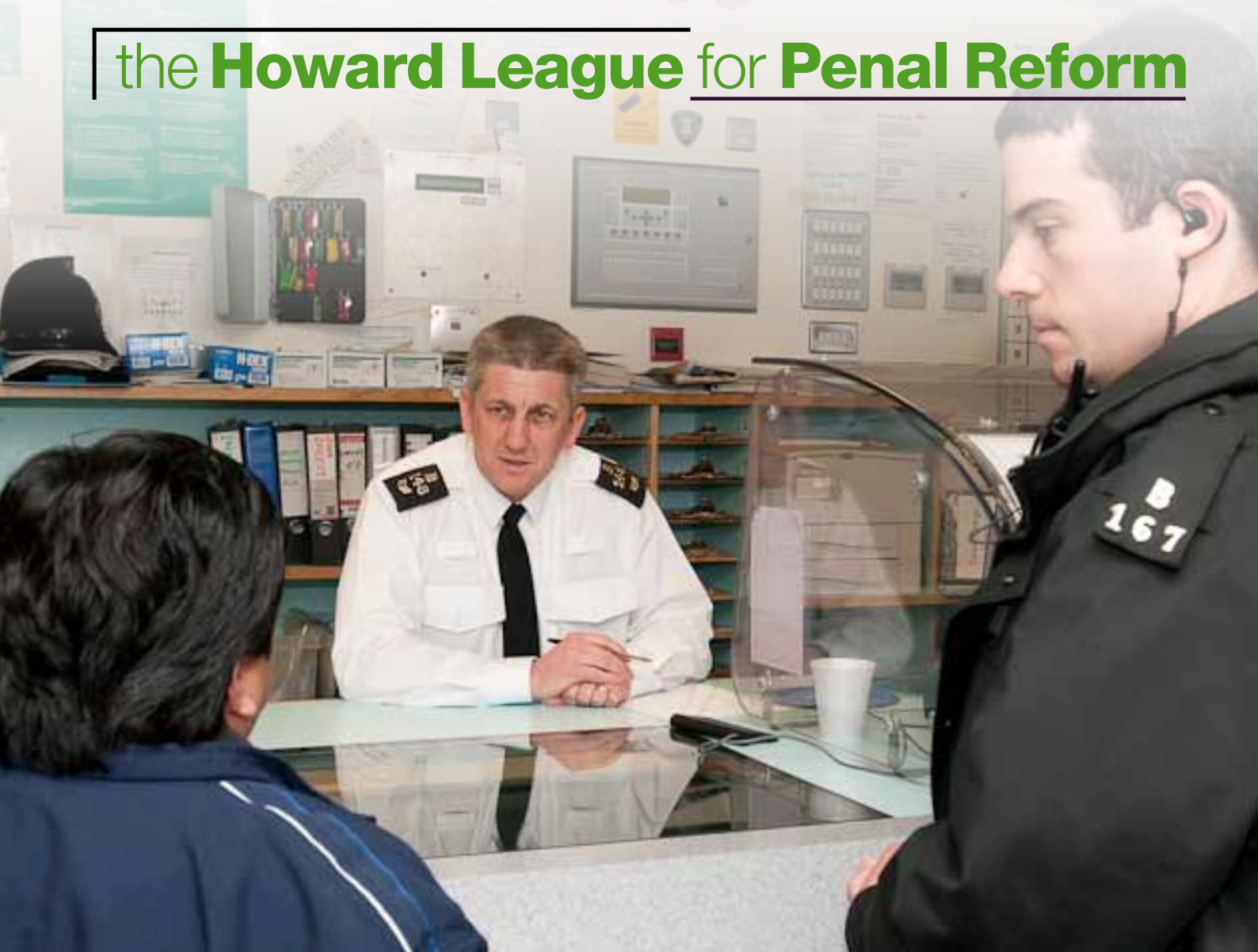


the **Howard League** for **Penal Reform**



Overnight detention of children in police cells

The overnight detention of children in police cells

the **Howard League** for **Penal Reform**

The overnight detention of children in police cells

Contents

Tables	4
Summary	5
Abbreviations	9
1. Introduction	11
Legal definitions of children	
Why overnight detention?	
Aims and data	
2. Safeguarding children in police custody	15
The UNCRC	
PACE provisions for children	
Children and police bail	
Children who are charged and refused police bail	
Police training and policies on dealing with children	
Summary	
3. How many children are detained overnight in police cells?	23
The FOI data	
The LSRC data	
Comparing police service areas	
Summary	
4. Why are children detained overnight in police cells?	29
Social and political drivers	
An increasing flow into police custody	
The alleged offence	
Parents and guardians	
Institutional drivers	
The role of legal advisers and appropriate adults	
The role of local authorities	
The role of the courts, the police and the CPS	
Summary	
5. Conclusion	33
Summary	
6. Recommendations	37
References	39
Appendix 1: Methodological issues with the FOI data on the number of overnight detentions	45
Appendix 2: Appropriate adult (AA) provision according to HMIC/HMIP Inspection reports	46
Acknowledgements	48
About the researcher	48

Tables

Table 2.1 Number of children aged 10-17 years ending a custodial episode, England and Wales

Table 2.2 Police training on dealing with children in police custody

Table 2.3 Policies on children by police service area

Table 3.1 Number of overnight detentions of children under the age of 16 by police service area (FOI data)

Table 3.2 Number of overnight detentions of children under the age of 16 by police service area and age (FOI data)

Table 3.3 Number of overnight detentions of children under the age of 16 by police service area and gender (FOI data)

Table 3.4 Number of overnight detentions of children under the age of 16 by police service area and ethnic origin (FOI data)

Table 3.5 Police detentions by age group in four police services (LSRC data)

Summary

England and Wales is an outlier compared to other European countries in that it has a more punitive approach to children who break the law (Jacobson et al. 2010). The gateway into this comparatively punitive youth justice process is police custody, which is where children are taken on arrest. In police custody, children are defined as those aged 16 years and under, whilst 17 year olds are treated as adults. Children may find themselves detained for up to 24 hours or more in police custody, particularly if they are charged and then refused bail. For some, this may mean spending the night in a police cell, which can be a worrying, frightening and intimidating experience (Quinn and Jackson, 2003: 43-44).

Children have a series of rights in police custody, which are safeguarded by provisions in the United Nations Convention on the Rights of the Child. Article 37 (b) states that:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

Children's rights are also protected by domestic law such as the Police and Criminal Evidence Act 1984 and the associated Codes of Practice and, furthermore, at the local level, through the training and policies of individual police services relating to the detention of children.

Research aims, data and analysis

The main aim of the research was to find out just how many children are held overnight in police cells. Further aims were to examine critically the factors that influenced whether children are held overnight and the nature of training, policies and legal frameworks used to protect them. The research was also commissioned to support the work of the Howard League for Penal Reform to end the practice of detaining children overnight in police cells and to reduce the flow of children into the secure estate.

The question of how many children are detained overnight and how they are protected were largely answered by data from a Freedom of Information (FOI) request made by the Howard League for Penal Reform. All 43 police services in England and Wales were asked to provide information about how many children under the age of 16 years were detained overnight in police cells in 2008 and 2009, as well as about policies and training used to protect these children. Twenty-four police services responded appropriately to this request.¹ Data collected from over 30,000 police custody records by researchers from the Legal Service Research Centre (LSRC) were also included in the study.

The question of why children are detained overnight in police cells was addressed primarily by analysing the 27 inspection reports of police custody facilities, jointly produced by HMIC/HMIP between April 2008 and June 2010, and through a review of the existing literature.

¹ See Appendix 1 for a discussion of the methodological issues with the data on the number of overnight detentions.

How many children are detained overnight?

Overall, the FOI data showed that there were approximately 53,000 overnight detentions of children under the age of 16 years in 2008 and 2009, in 24 police service areas. Of these 53,000 overnight detentions in 2008 and 2009, four were of children under the age of criminal responsibility, which is 10 years in England and Wales; 1,674 were of children aged 10-11 years, which is an age group protected by legal safeguards limiting the likelihood of them being detained overnight;² and 11,540 were of children under the European average age of criminal responsibility of 14 years and 27,804 were in the oldest age groups of 15 or 16 years of age.

There were also variations between police services in terms of how many overnight detentions there were. For example, the FOI data showed that Hertfordshire Police detained a higher proportion of children overnight than Derbyshire Constabulary and that Derbyshire Constabulary detained a similar proportion of children overnight as the four unnamed police services in the LSRC data.

Why are children detained overnight in police cells?

In terms of social and political drivers, a growing number of children are being more rapidly drawn into the youth justice process. In police custody, changes to criminal justice policies and practices (e.g. the end of multiple police sanctions for minor offences) have led to a growing number of children charged and a growing number of children whose bail might then be refused. This is likely to have increased the number of children who are held in police custody and who are therefore at risk of being detained overnight. Another social and political driver is the alleged offence. The LSRC data suggest that overnight detention may be partly being used for those arrested for drunk and disorderly offences on Saturday and Sunday evenings between 8pm and midnight. This finding can be seen in the context of a wider “culture of intoxication” and tough police responses to it (Measham and Brain, 2005).

Whether a child is detained overnight in the police station is also partially influenced by institutional factors and by whether the police and local authority, as well as legal advisers, appropriate adults, the Crown Prosecution Service and the courts can work together. The limited availability of appropriate adults (who are normally parents, guardians, trained volunteers or social workers) in the evenings/late at night may contribute to children’s overnight detention in the police station. A limited presence of legal advisers when decisions are taken about a child’s bail might also be a factor, as there would be no one there to challenge the decision of the custody sergeant. When making such decisions about bail, the police may not be giving due consideration to a child’s welfare. Furthermore, some courts stop hearing cases in the early afternoon and so increase the likelihood of children being detained overnight until the next court session. Finally, social services are also pivotal in ensuring that appropriate accommodation is found, so that if a child cannot be returned home they do not spend the night in the police station. It appears that the provision of appropriate local authority accommodation, which is also near to the police station and the courts, is limited.

Conclusions

The finding that more than 53,000 children were detained overnight in police cells in 2008 and 2009 suggests that this practice is routine. As such, steps should be taken to bring it to an end. This is particularly the case for those under 10 and those aged 10-11 years, for whom there are additional legal safeguards. The fact that children in these age groups were subject to overnight detention suggests that existing legal safeguards are not working effectively. Overnight detention should also end for older children, who are under 14 years, which is the European average age of criminal responsibility, and who make up approximately a fifth of overnight detentions.

Statistics from the Youth Justice Board (cited in Hansard, 2011) suggest that a small number of children are arrested, charged and convicted of serious offences. These children are those for whom the argument about the need for overnight detention in secure accommodation is at all pertinent. For these children, an important factor affecting whether they are detained overnight in police cells is the break-down in the referral process from police custody to local authority accommodation. This referral process is a vital safeguard for children who are charged and whose bail is refused by the police. This suggests that laws used to safeguard children in police custody may be being overlooked and may be failing to prevent children from being detained overnight in police cells.

There appears to be limited regulation of and accountability for the overnight detention of children in police custody. For example, Youth Offending Teams do not appear to monitor the referral process from police custody to local authority accommodation, nor do appropriate adults, legal advisers, independent custody visitors or the courts necessarily challenge bail decisions or the reasons for a child's overnight detention in the police station. This means that laws used to safeguard children in police custody can be overlooked and fail to prevent children from being detained overnight in police cells.

Recommendations

- The practice of detaining children overnight in police cells should be brought to an end.
- Increase the age of criminal responsibility to the European average of 14 years. This would help reduce the flow of children into police custody and would also mean approximately a fifth fewer children being detained there.
- It is necessary to treat 17 year olds as children as is the case in other parts of the criminal justice system. Like other children in police custody, 17 year olds may not cope with the demands placed on them.
- The presumption of bail should be strictly applied to children. This requires a review of the criteria used to make decisions about police bail to ensure that they are appropriate to the age of the child. Such decisions are currently based on criteria similar to those used for adults. Consideration should also be given to more carefully specifying the criteria, in a child's 'own interests', as this is broad and can be interpreted in a range of ways. Such 'catch-all' criteria may increase not decrease bail refusals and therefore the number of children at risk of being detained overnight.

- Legal advisers and appropriate adults should be promptly available to children in police custody.
- Legal advisers and appropriate adults should receive support and training to enable them to raise concerns about custody sergeants' decisions about children's bail.
- New legal safeguards preventing the under 14 from being detained overnight should be introduced, so that no child of this age is held in a police cell overnight.
- A review should take place of the criteria used to determine whether children aged 12 years and over who are suspected of serious offences can be returned home on police bail. The welfare and rights of children should be central to this review.
- As only a small number of children over 12 years are arrested for serious offences, decisions about these children should also be overseen by an Inspector or above.
- There is also a need for greater regulation of, and accountability for, the overnight detention of children. Appropriate adults, legal advisers and independent custody visitors should raise concerns with the police about bail decisions and enquire whether the police/local authority have sought local authority accommodation for children who are charged and bail refused. Youth Offending Teams might also play a role in monitoring the referral of children from police custody to local authority accommodation.
- Magistrates in youth courts should also be required to ask custody sergeants to provide the certificates explaining why a child was detained overnight and, if no certificate can be provided, question the lawfulness of their detention and/or the evidence presented to them.
- All children detained in police custody should be provided with measures appropriate to their age whilst in police custody (e.g. visits from family members and age-appropriate reading material), along with a designated carer, as should already happen for girls suspected of an offence who are under 18.
- In cases where bail is not given and local authority accommodation is not viable or available, we would suggest the development of a bail fostering system based on the system currently used for remand foster care.³
- Custody sergeants, police constables and civilian detention officers, who regularly work in police custody should be given specific training on dealing with children, including on safeguards which protect children from overnight detention.
- Training on the treatment of children should also be regularly refreshed so that staff are kept abreast of relevant changes in laws and policies.
- There is a need for greater strategic oversight of children detained in police custody. Police services might follow the lead of Lancashire Constabulary and create a policy which is specific to children and which draws together relevant policy, practice and legislation in one place.

Abbreviations

AA	Appropriate Adult
BCU	Basic Command Unit
BME	Black and Minority Ethnic
CDA	Crime and Disorder Act 1998
CPS	Crown Prosecution Service
FOI	Freedom of Information (request)
HMIC	Her Majesty's Inspectorate of Constabularies
HMIP	Her Majesty's Inspectorate of Prisons
ICVs	Independent Custody Visitors
IPCC	Independent Police Complaints Commission
LSRC	Legal Services Research Centre
NACRO	National Association for the Care and Resettlement of Offenders
NCPE	National Centre for Policing Excellence
NPIA	National Policing Improvement Agency
PACE	Police and Criminal Evidence Act 1984
UNCRC	United Nations Convention on the Rights of the Child
YOTs	Youth Offending Teams

1. Introduction

The joint inspection report by Her Majesty's Inspectorate of Constabularies (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP) noted the following of a police custody facility in the Basic Command Unit of Wandsworth, which is part of the Metropolitan Police Service:

We had concerns about the welfare of three children detained at Wandsworth during the inspection, aged 13, 14 and 16. They spent a considerable amount of time waiting outside in the yard before being booked in: up to two hours and 35 minutes after arrival. The children were held in custody overnight and did not speak to their parents until the next morning, pending the completion of a search of their family homes. The mothers of two of the children acted as their AA [appropriate adult] the following day but there were significant delays in calling a volunteer AA in the third case. The 16-year-old was released at midday the following day but the two younger children were interviewed almost 24 hours after their arrest and subsequently refused bail, and were then held for a second night, to be taken to court the following morning. Contact was made with the local authority out-of-hours service, to notify them that these children had been refused bail and therefore been remanded into the care of the local authority. However, no representative from the local authority attended and no accommodation was offered. Custody staff told us that they could not recall an occasion when local authority accommodation had been provided for juveniles in this situation (HMIC/HMIP, 2010c: para 5.13).

Children are detained overnight in police stations. There were similar incidents noted in five other of the 27 inspection reports that had been published to up June 2010.⁴ However, the incident noted above was the most concerning of the six because the children were detained overnight on two consecutive nights. This incident also revealed the complex reasons for children's overnight detention. In this case, they were connected to the police, who did not promptly contact an appropriate adult and to the appropriate adult service which, in this basic command unit, were identified as failing to provide an adequate service.⁵ Furthermore, this case demonstrates that social services were also an important player when it comes to providing children, who are charged and their bail is refused, with appropriate accommodation. While this example from Wandsworth is useful for illustrating some of the circumstances in which children are detained overnight in the police station, it tells us little about how often this happens and whether or not the overnight detention of children is routine.

The overnight detention of children in police cells takes place within the context of a comparatively punitive youth justice system. England and Wales is an outlier compared to other European countries in that it has a more punitive approach to children, who break the law. For instance, the age of criminal responsibility is lower than in other European countries; children are drawn into the youth justice process more rapidly than in other European countries (e.g. following the end of multiple police sanctions for minor offences); and, finally, more children are imprisoned either on remand or under sentence than in other European countries (Jacobson et al. 2010).

⁴ The other five police service areas were Bexley, Cambridgeshire, Dorset, Hertfordshire and Wiltshire.

⁵ Appropriate adults were a safeguard introduced by the Police and Criminal Evidence Act 1984. They may be a parent, guardian, carer, social worker or trained volunteer whose role is to look after the welfare of children in police custody and to ensure that they understand the custody process and questions asked of them in police interviews.

Legal definitions of children

The age of criminal responsibility in England and Wales is 10 years. This means that a child below the age of 10 cannot be arrested or held in the police station. However, as Cape (2006: 11.8) noted, the police do have a few powers for those under 10, the most notable of which, is their power under section 46 of the Children Act 1989 to hold those under the age of 18 in police stations as a place of safety. Questions can be asked, though, about whether this is appropriate.

Whilst it is somewhat difficult to compare jurisdictions,⁶ the age of criminal responsibility is comparatively low in England and Wales, falling below the European average of 14 years.⁷ The age of criminal responsibility in England and Wales has not been regarded as breaching human rights legislation or as differing “disproportionately from the age limit followed by other European states” (Davies et al. 2005: 216). However, the setting of the age of criminal responsibility at 10 years in England and Wales remains contentious and has been criticised by the United Nations Committee on the Rights of the Child which regarded an age of criminal responsibility below the age of 12 as not internationally acceptable (United Nations Committee on the Rights of the Child, 2008: 77(a) and 78(a)). The Howard League for Penal Reform is in favour of raising the age of criminal responsibility from 10 years to the European average of 14 years.

The upper limit for a child in the criminal justice process is 17 years inclusive. This means that for children who are 10-17 years, their case is heard in the youth court and they are given sanctions that are appropriate to their age such as reprimands/final warnings and custodial sentences in the secure estate for children.⁸

Police custody is at odds with this definition of a child. In police custody, a child is defined as someone who is or appears to be under 17 years (i.e. they are or appear to be 16 years or less) (PACE Code C, 2008: 1.5). This means that 17 year olds are not entitled to the additional rights available to other children in police custody. Most notably, they do not have a right to an appropriate adult. Moreover, since 17 year olds are regarded as adults in police custody, the police can lawfully detain them overnight, for example, if they are charged, their bail is refused and they are awaiting the next available court.

However, this treatment of 17 year olds as adults in police custody may change. From April 2010, HMIC/HMIP inspection reports stated that whilst the treatment of 17 year olds “met the current requirements of PACE. In all other parts of the criminal justice system and in international treaty obligations, 17 year olds are treated as children. The UK [Labour] government was committed to bringing PACE into line as soon as a legislative slot becomes available” (e.g. HMIC/HMIP, 2010g: footnote 3, p20).

At the time of writing, 17 year olds continue to be treated as adults in police custody. Therefore, for the purposes of this report a child is defined as anyone who is 16 years or under.

⁶ Even though some countries appear to have a higher age of criminal responsibility than England, children of a much younger age can still appear before a judge who can impose sentences (e.g. in France) (Howard League, 2008: 3).

⁷ Davies et al. (2005: 216); Howard League (2008: 3); NACRO (2002: 4).

⁸ There are some exceptions to this. For example, in serious cases such as homicide or if a defendant is a child and their co-defendants are adults then their case may be heard in an adult court (Davies et al. 2005: 224).

Why overnight detention?

Previous research has explored children's experiences of police custody, including how a child felt and responded to being there and their understanding of the different aspects of it: like the police interview or the police caution/the right to silence; the length of their detention; as well as their access to various rights and entitlements like appropriate adults, legal advisers and the right to silence (Quinn and Jackson, 2003; Quinn and Jackson, 2007). This research showed that these matters take on a special significance in relation to children. Furthermore, Harriet Pierpoint has researched and written about children and legal advisers (Pierpoint and Brookman, 2002; Pierpoint, 1999); children and appropriate adults (Pierpoint, 2008; Pierpoint, 2006; Pierpoint, 2004; Pierpoint 2001; Pierpoint 2000a; Pierpoint, 2000b); and the implications for children following important legislation like the Human Rights Act and treaties like the United National Convention on the Rights of the Child (Pierpoint and Brookman, 2002; Pierpoint, 1999).

Other than this, children have been largely missing from research on police custody. The glut of research around the time of the implementation of PACE in the mid-1980s and again around the time of the next major review of the safeguarding of those held in the police station, by the Royal Commission on Criminal Justice (RCCJ) in the early 1990s, touched on but did not focus exclusively on children (e.g. Phillips and Brown, 1998; Bucke and Brown, 1997; Bottomley et al., 1991; Bridges and Sanders 1990; Dixon et al. 1990; Brown, 1989; Sanders et al. 1989; Maguire, 1988). Similarly, more recent research on police custody has only indirectly focused on children, if at all. This includes an evaluation of the impact of Closed Circuit Television on police custody practices (Newburn and Hayman, 2002); my own 2007 study of how different criminal justice practitioners co-operated with each other in police custody areas and how this impacted on access to rights and entitlements (Skinns, 2011a; Skinns, 2011b; Skinns, 2010; Skinns, 2009a; Skinns, 2009b; Skinns, 2008; Pattenden and Skinns, 2010); and recent research by the Legal Services Commission on access to criminal defence services (Pleasence et al. 2011; Kemp and Balmer, 2010; Kemp, 2008). Moreover, there has been no previous research specifically on the issue of the overnight detention of children.

Children's vulnerabilities and the central importance of their welfare to all aspects of the criminal justice process is well documented (Davies et al. 2005: 217). It is therefore difficult to see how the overnight detention of children can be regarded as appropriate and in the interests of their welfare. Research has shown that for adults, it can be intolerable, distressing, boring, scary, unpleasant and uncertain, as well as isolating, disorienting and humiliating (Choongh, 1997: 97; Sanders and Young, 2006: 188), as well as stressful, depressing, isolating and boring (Skinns, 2011a: 101). Given children's vulnerabilities it is likely that the feelings expressed by adults are amplified for children, particularly if they are held overnight. Quinn and Jackson (2003: 43-44) found that children in police custody in Northern Ireland said that it was "boring", while some of the younger children said it was "a bit scary" and that "they felt nervous" when they were there. Others said it was "worrying" and that the police were "cheeky" to them and did not feed them. In their study, appropriate adults and solicitors also said that police custody was an intimidating environment for children due to the uniforms, grilled walls, graffiti on the walls saying "RIP" or "ten years" and a child said that being detained overnight was one of the worst parts of police custody (Quinn and Jackson, 2003: 39).⁹

Aims and data

Aims

The main aim of the present research was to examine the extent to which children are detained overnight in police cells in England and Wales. A secondary aim was to examine safeguards that exist to protect children in police custody and to limit the likelihood that they are detained overnight. Furthermore a third aim of the research was to critically explore the factors that influence whether children are detained overnight in police custody. Finally, based on the findings from the research, the fourth aim of the study was to provide recommendations for the future.⁹

Data

In tackling these aims, this report draws on data from a variety of sources:

- Existing research, particularly in the section on the factors influencing whether a child is detained overnight.
- A Freedom of Information (FOI) request made by the Howard League for Penal Reform to all police services in England and Wales. Twenty-four police services responded appropriately to a request for data on the number of children under 16 years held overnight in police cells in 2008 and 2009 and 25 provided information about staff training and police service policies on the detention of children. A discussion of methodological issues with the data on the number of overnight detentions can be found in Appendix 1.
- Thematic analysis of the reports from 27 HMIC/HMIP inspections conducted between April 2008 and June 2010.¹⁰
- Data collected by researchers from the Legal Services Research Centre (LSRC) from 30,921 custody records, across 44 police stations in four police service areas during the months of March and September 2009.

⁹ Quinn and Jackson (2003: 39) found that 'juvenile detention rooms' were not equipped for sleeping in, meaning that children tended to be put in adult cells overnight.

¹⁰ These were the only reports available up to October 2010 when the analysis was conducted.

2. Safeguarding children in police custody

The UNCRC

The UN Convention of the Rights of the Child was signed on 19 April 1990 and ratified on 16 April 1991, meaning that the convention has to be adhered to under international law. Of most relevance to the present study is article 37 (b) and (c) of the UNCRC, which says that state parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

The implication of part (b) is that if children are detained overnight and if this violates the law, then it would also be in breach of the UNCRC. Part (c) might be used to argue that the overnight detention of children in a police station may not take account of their needs.

In 2008, the Committee on the Rights of the Child also recommended that the Government establish the use of detention as a measure of last resort and for the shortest period of time, as a statutory principle, and that children in conflict with the law be dealt with within the youth justice system (UN Committee on the Rights of the Child, 2008: 78(b) and (c)). The latter recommendation has significance given that 17 year olds are treated as adults in police custody. Also of relevance was the recommendation that every child deprived of their liberty be separated from adults in all places of deprivation of liberty (UN Committee on the Rights of the Child, 2008: 78 (d)). The implication of this recommendation is that the police also need to ensure that children are separated from adults in police custody areas.

PACE provisions for children

The most important frameworks regulating police custody practices are PACE and the Code of Practice C, which relate to the detention, treatment and questioning of people by the police, with additional rights being given to children.¹¹ For children, it is necessary for the person responsible for their welfare (i.e. the parent/guardian/carers at local authority accommodation) to be notified of the reasons for their arrest and where they are detained (Code C, 2008: 3.13). At this point an appropriate adult must also be contacted (Code C, 2008: 3.15). An appropriate adult may be their parent, guardian or carer from the local authority accommodation where they live or a social

¹¹ The Codes of Practice are not a statutory instrument; they provide guidance about what would be best for the police to do, but are not obligatory.

worker or some other responsible adult aged over 18 years who is not employed by the police (Code C, 2008: 1.7). It is a statutory requirement for local Youth Offending Teams (YOTs) to provide an appropriate adult service, which is normally comprised of trained volunteers.

For children, their rights and entitlements must be read in the presence of an appropriate adult. However, it is up to the child not the appropriate adult whether they make use of these rights, such as the right to publicly-funded legal advice (Code C, 2008: 6.5A).¹² On the arrival of the appropriate adult in the custody area, the custody sergeant must also inform the child of the role of the appropriate adult and their right to speak to them in private. For children, the appropriate adult must also be present at other key points in the custody process, including the police interview (Code C, 2008: 11.18); when a child is informed that they will be charged with an offence (Code C, 2008: 16.3); and when the child is strip searched or subject to an intimate search (Code C, 2008: B11(c), A5).

During their time in police custody, children should not be placed in cells with adults and should only be placed in a cell under certain conditions (e.g. if there are no secure waiting rooms available) (Code C, 2008: 8.8). The police must also check on children held in police custody more frequently than adults, with the frequency of these checks being determined by the custody sergeant (Code C, 2008: 9B). For children suspected of an indictable offence, custody sergeants have discretion about whether they are to be detained beyond 24 hours, depending on the child's vulnerability, as well as on representations from their legal adviser and consultation with their appropriate adult on alternatives to police custody (Code C, 2008: 15.2). For girls under the age of 18, there is a further requirement that they must be under the 'care' of a female member of staff (s31 Children and Young Persons Act 1933), meaning that a female member of staff should be allocated to check on their welfare.

Children and police bail

Police custody is brought to an end by the CPS and custody sergeants deciding whether to charge the child. If there is insufficient evidence to charge at that time, a child can be bailed to return to the police station at a specified future date. If the child fails to attend the police station it is a criminal offence. At the time of writing, questions have been asked by the courts about whether it is appropriate for the police to repeatedly require adults to answer for bail at the police station whilst the police complete their investigation.¹³ Such practices may be even less appropriate for children.

Even if there is sufficient evidence to charge, a child can be charged and released on police bail. Generally, there is a presumption that the child will be bailed and without conditions; however the police may set conditions, such as to reside in a certain place or avoid certain places or people. If a child is released on police bail, it is best if an appropriate adult is available to take them into their care, since the police's duty of care extends to the period after release from police custody.¹⁴ It should also be noted that once a decision has been taken to release a child then the police have no power to detain them until a parent comes to collect them.

¹² At the time of writing, there were plans in the Legal Aid, Sentencing and Punishment of Offenders Bill to determine eligibility for publicly-funded legal advice in the police station through means-testing, though it was unclear how these changes might affect children.

¹³ In R (Chief Constable of Greater Manchester Police) and City of Salford Magistrates Court and Paul Hookway, it has been argued that the time spent on pre-charge police bail should count towards the maximum length of time that a suspect can spend in police custody without charge, which is currently 96 hours. The implication of this case is that adult suspects should be released without charge and if necessary re-arrested once the investigation is complete and the police wish to charge them. See Zander (2011) for more details.

¹⁴ For further details see IPCC (2009: 3, 14).

Children who are charged and refused police bail

Statistics from the Youth Justice Board (cited in Hansard, 2011) suggest that there are a small number of children for whom police bail would be refused. As shown in Table 2.1, approximately 5000 children per year were refused court bail and remanded to a youth offending institution in 2008/9 and 2009/10. In theory, a similarly small number would be refused police bail each year.

Table 2.1 Number of children aged 10-17 years ending a custodial episode, England and Wales*

	Remanded	Sentenced	Total
2008-09	5,221	5,491	10,712
2009-10	4,740	4,261	9,001

* Information comes from the YJB's Secure Accommodation Clearin House System (SACHS) database and also includes 17 year olds.

Source: Commons Hansard, written answer, 7/3/11, col 759W

Decisions to refuse a child bail are based on similar criteria as for adults. However, there are a number of specific instances in which children can be denied bail:

- where the child has been charged (or convicted in the past) with specific serious offences (e.g. rape or homicide);
- if a child's name/address cannot be ascertained;
- if there are reasonable grounds for thinking that the child will not attend court;
- that they may commit further offences if granted bail;
- that they may harm persons or property or that they will interfere with the administration of justice or the investigation of the offence; and
- if it is in the 'own interests' of the child (NACRO, 2008; Cape, 2006: 422-4).

This list is extensive and Cape (2006: 422-424) said that the 'own interests' criteria is broad and could be interpreted as including *"situations where the juvenile is homeless, a traveller or living in conditions of which the custody sergeant does not approve and which they believe will be against the juvenile's interests"*.

These *extensive* and *broad* criteria mean that not all children will receive police bail and it is at this point, that is, when they are charged and their bail is refused, that certain requirements are placed on the police and social services through PACE and other legislation about the transfer of the child to local authority accommodation.

Children can be sent to two different kinds of local authority accommodation. First, under s38(6) of PACE and under s21(2) of the Children Act 1989 there is a statutory duty on the police and social services to transfer a child from police

custody to ordinary (i.e. non-secure) local authority accommodation, unless it is impracticable to do so.¹⁵ Secondly, in cases where the alleged offence is serious, the police can request the transfer of a child who is 12 years or more to secure accommodation, though local authorities are not statutorily obliged to provide it. If the police do decide to detain a child overnight in the police station then the custody sergeant must record the reasons for this and a certificate of this decision is supposed to be produced at the child's first court hearing, although whether this happens in practice has been questioned (NACRO, 2008).

Police training and policies on dealing with children

Training

Of the 25 police services from whom FOI data were analysed, nearly all (n=18) stated that custody staff (either sergeants or detention officers) received specialist training on dealing with children as part of their custody training (see Table 2.2 below).

It was reported that this custody training lasted between two and five weeks with one lesson or up to one day spent on training about children and vulnerable detainees. Nine police services mentioned that staff were trained on PACE and the Codes of Practice which encompassed dealing with vulnerable detainees including children. Furthermore, eleven police services said that their training drew on a training package provided by the National Policing Improvements Agency (NPIA, 2007).

Broadly speaking, this NPIA training package covers matters such as appropriate adults, legal advice, "juvenile detention rooms", girls under 17, independent custody visitors (ICVs), searching, case disposal, keeping children in police detention, bail and reprimands/final warnings. Of most relevance in the NPIA document are the sections on "juveniles kept in police detention" and "bail and juveniles"; though, no mention is made of the concept of impracticable which is a central part of the legal reasoning for detaining children overnight. Nonetheless, if staff had received this NPIA training they should be broadly familiar with dealing with children in police custody. A few other police services also mentioned training their staff on provisions for girls in the Children and Young Persons Act 1933. One police service (Cumbria) also mentioned training staff on Every Child Matters in the near future.¹⁶

This picture of training in relation to children in police custody contrasted with concerns expressed in HMIC/HMIP inspection reports about staff lacking specific training on the treatment of children, on child protection issues and the control and restraint of children. In 11 of the 27 reports it was noted that staff lacked specific training on dealing with children and in eight reports no mention was made of training related to children. This suggests that while appropriate training is available (e.g. in NPIA, 2007), not all staff who work in custody areas have received it. Nonetheless, even without specialist training on dealing with children, some staff reportedly continued to show an awareness of the vulnerabilities and needs of children in their care. For example, in the report on Dorset Police it stated that "[s]taff did not receive any specific training on child protection awareness, and some but not all were conversant with the process of reporting child protection issues" (HMIC/HMIP 2009j:4.11).¹⁷

¹⁵ Impracticable can mean that the accommodation is insecure or that it is physically impossible either due to adverse weather conditions or due to repeated failed attempts to contact the local authority or a refusal to provide local authority accommodation (Cape, 2006: 422-424; NACRO, 2008).

¹⁶ This was the title of a 2003 Green Paper which preceded the Children's Act 2004 and which has been subsequently used to refer to the whole of the children's strategy.

¹⁷ See also the report for Ealing (HMIC/HMIP, 2009d: 5.49).

Policies

There is no national guidance on appropriate local policies for dealing with children in police custody. As shown in Table 2.3, 13 police services regarded PACE and the Codes of Practice as a policy which they used which encompassed children. Twelve police services also had their own specific police custody policy or management procedure, which sometimes had a separate section on children, such as in Kent. In these policies, individual police services drew on the 'Guidance on the Safer Handling of Persons in Police Custody' (NCPE, 2006). This document is about police custody generally and refers, on only a few occasions, to children at risk, the treatment of children and referral of children to other agencies. It makes no mention of the need for the police to seek local authority accommodation for children who are charged and bail refused.

Lancashire Constabulary was the only police service to have a specific police custody policy document for children. Of particular interest was the statement that the “[o]ver-riding principle is not to detain children any longer than absolutely necessary. Charging cannot be delayed and bail refused or delayed because the police are waiting for an appropriate adult” (Lancashire Constabulary, 2.2. and 2.3). This approach seems to be in line with article 37b of the UNCRC, which requires children to be detained for the “*shortest appropriate period of time*”.

Summary

Overall, safeguards exist in the UNCRC and in domestic legislation to protect children in police custody and prevent them from being detained overnight. However, some of these provisions, for example, those relating to the transfer of children from police custody to local authority accommodation if they are charged and their bail refused, are complex. It appears that police training on safeguarding children in police custody is limited (e.g. they are not fully trained on how to deal with children who are refused police bail) and not all staff undertake this training. Moreover, children are given little prominence in police policies relating to police custody. These inadequacies may be one reason why legal safeguards fail to protect children from overnight detention.

Table 2.2 Police training on dealing with children in police custody

Police service	Part of existing training for custody sergeants and detention officers	PACE and codes of practice	NPIA training on juveniles or similar	Police service policy on custody	NCPE	Every Child Matters training	Children and Young Persons Act 1933	No information on training
Avon & Somerset								X
City of London			X					
Cleveland	X							
Cumbria	X					X		
Derbyshire	X	X	X					
Devon and Cornwall			X					
Dyfed Powys	X			X				
Gloucestershire	X	X	X					
Greater Manchester	X	X			X			
Hertfordshire	X							
Humberside	X							
Kent	X	X						
Lancashire			X					
Leicestershire	X							
Merseyside	X		X					
Metropolitan Police Service	X	X					X	
Norfolk	X							
North Wales	X		X				X	
North Yorkshire	X	X						
Nottinghamshire	X	X	X					
Staffordshire	X	X	X					
Thames Valley			X					
West Mercia	X		X					
West Midlands								X
West Yorkshire		X			X			

3. How many children are detained overnight in police cells?

The FOI data

Twenty-four police services provided data on the number of children detained overnight in 2008 and 2009. There were approximately 53,000 overnight detentions of children under the age of 16 years.

Of these 53,000 overnight detentions:

- Four were of children aged under the age of criminal responsibility of 10 years;
- 1,674 were of children aged 10-11 years, a group for whom there are legal protections against overnight detention;
- 11,540 were of children under 14 years of age, which is the European average age of criminal responsibility;
- 27,804 were in the oldest age group of 15 or 16 years.

These 53,000 detentions can also be broken down by gender and ethnicity:

- 10,845 were of girls and the remainder were boys;
- 10,050 were of Black and Minority Ethnic children and the remainder were white.

Table 3.1 Number of overnight detentions of children under the age of 16 by police service area (FOI data)

Police Service	No. of detentions in 2008 and 2009
Avon and Somerset	1,398
City of London	22
Cleveland	559
Cumbria	268
Derbyshire*	791
Devon and Cornwall	977
Dyfed Powys	246
Gloucestershire	270
Greater Manchester	16,957
Hertfordshire	388
Humberside	390
Kent	2,764
Lancashire	2,356
Leicestershire	882
Merseyside*	5,142
Norfolk	115
North Wales	1,256
North Yorkshire	826
Nottinghamshire	1,303
Staffordshire	313
Thames Valley	637
West Mercia	577
West Midlands	12,565
West Yorkshire	1,845
Total	52,847

* Data provided for 2009 only

Table 3.2 Number of overnight detentions of children under the age of 16 by police service area and age (FOI data)

Police Service	Age (years)											Total
	8	9	10	11	12	13	14	15	16	16	Total	
Avon and Somerset	0	0	2	15	83	175	429	694	no data	1,398		
City of London	0	0	0	0	0	5	7	10	no data	22		
Cleveland	0	1	1	2	12	68	172	303	no data	559		
Cumbria	0	0	1	3	13	31	38	81	101	268		
Derbyshire*	0	0	0	7	41	111	237	395	no data	791		
Devon and Cornwall	0	0	2	6	21	119	308	521	no data	977		
Dyfed Powys	0	0	0	4	14	36	64	128	no data	246		
Gloucestershire	0	0	0	1	5	23	70	171	no data	270		
Greater Manchester	0	0	218	564	1,316	2,722	4,877	7,260	no data	16,957		
Hertfordshire	0	0	0	1	12	35	103	237	no data	388		
Humberside	0	0	1	3	20	56	116	194	no data	390		
Kent	0	0	12	52	118	338	792	1,452	no data	2,764		
Lancashire	0	0	7	46	93	221	717	1,272	no data	2,356		
Leicestershire	0	1	6	13	44	112	240	466	no data	882		
Merseyside*	0	1	62	178	348	727	1,471	2,355	no data	5,142		
Norfolk	0	0	0	3	3	16	31	62	no data	115		
North Wales	0	0	10	32	79	146	345	644	no data	1,256		
North Yorkshire	0	0	0	1	13	54	124	201	433	826		
Nottinghamshire	0	0	1	3	19	88	231	413	548	1,303		
Staffordshire	0	0	1	3	10	49	97	153	no data	313		
Thames Valley	0	0	0	3	14	58	190	372	no data	637		
West Mercia	1	0	2	2	17	57	177	321	no data	577		
West Midlands	0	0	83	292	656	1,459	2,349	3,518	4,208	12,565		
West Yorkshire	0	0	7	24	61	148	314	532	759	1,845		
Total	1	3	416	1,258	3,012	6,854	13,499	21,755	6,049	52,847		

Table 3.3 Number of overnight detentions of children under the age of 16 by police service area and gender (FOI data)

Police service area	Girls	Boys	Total
Avon and Somerset Constabulary	338	1,060	1,398
City of London Police	0	22	22
Cleveland Police	111	448	559
Cumbria Constabulary	60	208	268
Derbyshire Constabulary *	48	743	791
Devon and Cornwall	288	689	977
Dyfed Powers Police	47	199	246
Gloucestershire Constabulary	54	216	270
Greater Manchester Police	3,979	12,978	16,957
Hertfordshire Constabulary	56	332	388
Humberside Police	86	304	390
Kent Police	702	2,062	2,764
Lancashire	502	1,854	2,356
Leicestershire	179	703	882
Merseyside*	1,111	4,031	5,142
Norfolk	19	96	115
North Wales	360	896	1,256
North Yorkshire	No data	No data	826
Nottinghamshire	183	1,120	1,303
Staffordshire	87	226	313
Thames Valley	103	534	637
West Mercia	No data	No data	577
West Midlands	2,276	10,289	12,565
West Yorkshire	256	1,589	1,845
Total	10,845	40,599	52,847

* Data provided for 2009 only

Table 3.4 Number of overnight detentions of children under the age of 16 by police service area and ethnic origin (FOI data)

Police service area	BME	White	Total
Avon and Somerset Constabulary	344	1054	1,398
City of London Police	16	6	22
Cleveland Police	133	426	559
Cumbria Constabulary	5	263	268
Derbyshire Constabulary *	162	629	791
Devon and Cornwall	131	846	977
Dyfed Powers Police	8	238	246
Gloucestershire Constabulary	51	219	270
Greater Manchester Police	2,892	14,065	16,957
Hertfordshire Constabulary	133	255	388
Humberside Police	11	379	390
Kent Police	602	2,162	2,764
Lancashire	176	2,180	2,356
Leicestershire	No data	No data	882
Merseyside*	458	4,684	5,142
Norfolk	11	104	115
North Wales	26	1,230	1,256
North Yorkshire	78	748	826
Nottinghamshire	312	991	1,303
Staffordshire	20	293	313
Thames Valley	No data	No data	637
West Mercia	66	511	577
West Midlands	4,415	8,150	12,565
West Yorkshire	No data	No data	1,845
Total	10,050	39,433	52,847

* Data provided for 2009 only

The LSRC data

The LSRC collected data over the course of two months in 2009, in four unnamed police services. This revealed there were 4,187 detentions of children (under the age of 17 years) in police custody, of which 968 were overnight detentions. The definition used for overnight was spending at least four hours in police custody between the hours of midnight and 8am.

Table 3.5 Police detentions by age group in four police services (LSRC data)

		Not detained overnight	Detained overnight	Total
Adults	Count	18,500	7,266	25,766
	%	71.8	28.2	100
Children	Count	4,187	968	5,155
	%	81.2	18.8	100
Total	Count	22,687	8,234	30,921
	%	73.4	26.6	100

Overnight detentions of children made up 19 per cent of all detentions of children in police custody compared with 28 per cent for adults. Preliminary multi-level modelling of the LSRC data showed that there were significantly more overnight detentions of adults compared to children, even when other factors are taken into account such as gender, offence-type and offence-gravity.¹⁸

Offences such as public order offences resulted in more overnight detentions and the least serious offences also saw the most overnight detentions. In conjunction with analysis discussed below, about the relationship between overnight detentions and the day of the week/time of arrest, this suggests that overnight detentions were used for drunk and disorderly offences.

Comparing police service areas

Tables 3.1, 3.2, 3.3 and 3.4 cannot be read as one police service detaining more children overnight than another, primarily because each police service used a different definition of overnight. See also Appendix 1.

More detailed analysis using a single definition of overnight, however, confirmed that some police services did vary in terms of the proportion of overnight detentions of children. In Hertfordshire, overnight detentions of children made up 42 per cent of detentions of children in police custody. In Derbyshire, this figure was 23 per cent and across the four unnamed police services in the LSRC data this figure was 19 per cent. On average, across these six police services, overnight detentions of children made up 28 per cent of all detentions of children in police custody.

Summary

The FOI data showed that there were approximately 53,000 overnight detentions of children under the age of 16 years in 2008 and 2009, in 24 police service areas. In six police service areas providing more detailed information, overnight detentions of children made up, on average, 28 per cent of all detentions of children in police custody. Taken together these data suggest that the overnight detention of children in police custody is routine.

¹⁸ These preliminary findings are to be discussed in more detail in future publications.

4. Why are children detained overnight in police cells?

Social and political drivers

An increasing flow into police custody

Social and political drivers have facilitated a growing number of children being drawn more rapidly into a more punitive youth justice process (Jacobson et al. 2010). Police custody may be contributing to this process, as changes to the disposals available to the police have created a growing number of children at risk of overnight detention. Young people alleged to have committed minor offences have become less likely to be diverted from prosecution in the last decade, compared to their counterparts of a generation ago (Sharpe, 2011).¹⁹ For example, cautions, as they used to be called, have changed from being something that could, in theory, be used an indefinite number of times to something which now can be used twice: first, as a reprimand; and, secondly, as a final warning. A third new offence now leads to prosecution.

A growing number of children being charged (not diverted from prosecution) means a larger number of children about whom the police must make decisions about bail. If bail is refused, this also places a larger number of children at risk of overnight detention.

The alleged offence

The relationships between policing, law-breaking and the criminalisation of children represent another set of social and political drivers leading to overnight detention in police custody. This study did not look at how children are policed. However, the data show that whether a child is detained overnight may be connected to the alleged offence and when they were arrested for it. In particular, analysis of the LSRC data shows that overnight detention was more likely for those arrested for low-level disorder.²⁰ There was also a significant relationship between overnight detention and the time of arrest, with those being arrested between 20.00-23.59 being the most likely to be detained overnight. There was also a significant relationship between the day of the arrest and whether someone was detained overnight, with those arrested on a Saturday and a Sunday being most likely to be detained overnight.

Together this suggests that being arrested for a drunk and disorderly offence may increase the likelihood of overnight detention. This police practice can also be placed in the context of a “new culture of intoxication”, in which those who do not “police themselves” and who transgress the boundaries of socially prescribed behaviour are subject to tougher policing and punishment (Measham and Brain, 2005: 277). Furthermore, these data about the use of overnight detention for drunk and disorderly offences suggests that the law is not being properly applied. After all, there is a presumption of bail for children in police custody, with the law primarily only permitting children aged 12 years and over to be detained overnight and only then if they are thought to have committed a serious offence.

¹⁹ This was because of growing concern that the caution was being over-used and was eroding the deterrent impact of the law (Sharpe, 2011; Bucke and Brown, 1997: 71).

²⁰ See also the inspection report for Gloucestershire which showed that overnight detention was typically for public order offences (HMIC/HMIP 2008e: 5.85). Furthermore, public order offences were the fourth most likely type of offence for which children received a disposal in 2008/9 (after theft and handling, violence against the person and criminal damage) (MOJ, 2010: 5).

Parents and guardians

The actions of parents and guardians may also influence whether a child is detained overnight.²¹ If a child is to be bailed by the police a parent or guardian must be available to take the child into their care. Otherwise, the child may spend the night in police custody, as was noted to happen in the inspection report for Gloucestershire (HMIC/HMIP 2008e: 585). Yet, Quinn and Jackson (2003: 48, 58) found that some parents (of children who were regularly arrested) refused to attend the police station, meaning that these children spent the night in police cells whilst social workers persuaded the parents to take the child back into the home. For other parents, however, it may be that they are unable rather than unwilling to attend the police station, for example, if they have other children to care for at home. Either way, in order to release a child from police custody, some police services have to take children home.²²

Institutional drivers

The role of legal advisers and appropriate adults

Legal advisers may be able to prevent a child's detention overnight if they are active in challenging police officers' decisions about bail. However, due to changes in the way custodial legal advice is provided, legal advisers may not always be present at the point when a decision about bail is being made or even present in the police station at all (Skinns, 2011b; Skinns, 2009a; Skinns, 2009b).

If a parent or guardian does not attend the police station, then the appropriate adult role should be performed by someone from the appropriate adult service, which is normally made up of trained volunteers or social workers. Whilst, it is a statutory requirement for YOTs to provide an appropriate adult for children, the HMIC/HMIP inspection reports stated that in some areas appropriate adult services were not functioning effectively, particularly outside of office hours and at weekends. As shown in Appendix 2, in 15 of the 22 inspection reports, where relevant information was available, it was reported that there was no appropriate adult service in the evenings/late at night. In eight areas, this lack of provision in the evenings/late at night was noted as leading to lengthy periods of detention if not overnight detention.²³ This seems a likely explanation in view of the finding from the LSRC data that the most common time of arrest for those detained overnight was 20.00-23.59. Moreover, in inspection reports for Cambridgeshire, Hertfordshire and West Yorkshire, a child's late arrival (and in the absence of an appropriate adult) was explicitly cited as a reason why they were detained overnight (HMIC/HMIP 2008f: p34; HMIC/HMIP 2009a: 2.11; HMIC/HMIP 2008c: 213).

Apart from being available to deal with children post-bail, it is also necessary for appropriate adults to be fully cognisant of their role and of the legislation relating to the overnight detention of children. This would enable them to raise concerns about overnight detention and to encourage the police to contact social services to find out if accommodation is available to children who are charged and their bail refused (Pierpoint, 2006).

²¹ Research shows that appropriate adults are criticised for many different things, though not all are borne out by the research (Skinns, 2011a; Pierpoint, 2008; Jacobson, 2008: 31; Pierpoint, 2006; Pierpoint, 2004; Quinn and Jackson, 2003: 47-49; Gudjonsson, Medford and Pearse, 2003). Of course, not all of these criticisms may be entirely justified. For example, the belief that appropriate adults are slow to attend the police station has not been borne out by analysis of custody record data (Skinns, 2010; Quinn and Jackson, 2003: 50).

²² This was noted to be the case in inspection reports for Cambridgeshire (HMIC/HMIP 2008f: p42); Enfield (HMIC/HMIP 2009b: 5.42); Lambeth (HMIC/HMIP 2009c: 5.44) and Wandsworth (HMIC/HMIP 2010c: 5.7).

²³ See the reports for Bexley (HMIC/HMIP 2010g: p35); Cambridgeshire (HMIC/HMIP 2008g: p42); Hillingdon (HMIC/HMIP, 2008d: 5.26); Durham (HMIC/HMIP 2008f: 5.53); North Yorkshire (HMIC/HMIP 2010b: 5.6 5.8); Wandsworth (HMIC/HMIP 2010c: 45); West Yorkshire (HMIC/HMIP 2008c: 2.13); Wiltshire (HMIC/HMIP 2009h: 4.5).

The role of local authorities

Local authorities can influence whether a child is detained overnight. Research by NACRO (2008) found that transfers of children suspected of an offence to local authority accommodation are rare. For example, from 1 July until the end of September 2000 “of the 1,022 juveniles aged 10-16 years who were refused bail by the police, only 15.4 per cent were transferred to local authority accommodation (including less than 2 per cent who were transferred to secure accommodation)” (NACRO, 2008: 6). They argued that it is highly improbable that the 84 per cent or so of children suspected of an offence, who were not transferred to local authority accommodation posed a serious risk of harm or that transfer was impracticable (NACRO, 2008: 6). More research is required to find out whether the police and local authorities are acting in accordance with their statutory duties.

One difficulty with the referral process to secure local authority accommodation may be a lack of local provision. After all, there are only 17 secure local authority homes across England and Wales, though there are none in London or the West Midlands (Secure Accommodation Network, 2011). Transfers to secure local authority accommodation may result in children travelling considerable distances only to be returned again to the area where they were arrested for their court appearance, as was the case in Northern Ireland (Quinn and Jackson, 2003: 39). A forthcoming report by HMIC (2011) also points to the lack of secure local authority accommodation and to the fact that custody sergeants may not be making appropriate enquiries about non-secure local authority accommodation.

The role of the courts, the police and the CPS

The courts may also have a role to play in the overnight detention of children. In the inspection reports for Dorset, North Yorkshire and Warwickshire, it was noted that court cut-off times were in the early afternoon, meaning the prolonging of children’s (and adults’) detention if they could not be taken to court in time (HMIC/HMIP 2009j: 5; HMIC/HMIP 2010b: p5, 5.9; HMIC/HMIP 2009i: 5.12). However, in Warwickshire staff reported that they negotiated with the courts so that vulnerable detainees were given priority.²⁴

The police have a significant role in making decisions about bail and so are also an important influence on the overnight detention of children. Their decisions are based on extensive and broad criteria, which are similar to those used for adults. Furthermore, HMIC/HMIP inspection reports showed varying use of police bail for children. In Southwark, there was no evidence of care being taken to bail children wherever possible (HMIC/HMIP 2008a: 5.49). Whilst in the reports on Cambridgeshire, Durham, Dorset, Enfield, Lambeth and Merton children were reportedly bailed at the earliest opportunity so as not to prolong their detention. In Cambridgeshire, it was reported that the presence of the CPS in the police station meant they could advise the police about children’s bail and therefore expedite their cases (HMIC/HMIP 2008g: p33). Whilst in Durham and in Enfield, delays with the appropriate adult led to the police simply bailing a child and releasing them from custody, provided that the circumstances of the alleged offence and offending background of the child allowed it (HMIC/HMIP 2008f: 5.13; HMIC/HMIP 2009b: 5.13). Together this raises questions about why more police services do not make better use of bail to prevent the overnight detention of children.

²⁴ Whether the introduction of virtual courts, that is, the video-links between some police stations and magistrates’ courts, would alleviate this remains an empirical question. For children, the impersonal nature of speaking to someone via video-link might be all the more frightening.

Summary

The factors influencing whether a child is detained overnight were connected to social and political drivers like the increasing flow of children into the youth justice process, the alleged offence and the difficulties some parents have in collecting their child from the police station. It is also helpful to see the institutional drivers of whether or not a child is detained overnight as an inter-agency process. The present study suggests that children at risk of overnight detention in the police station are not just at the centre of a complex web of relationships between the police, appropriate adults and legal advisers, as Quinn and Jackson (2007: 235) found, they are also in the midst of pushes and pulls between social services, the CPS and the courts.

5. Conclusion

Children in police custody are defined as those aged 16 years and under, while 17 year olds are regarded as adults, unlike in other parts of the criminal justice process. Research on the overnight detention of children is important as it is a neglected topic about which there are questions relating to its appropriateness in the light of children's vulnerabilities and welfare needs.

What this research shows is that the overnight detention of children is routine. Approximately 53,000 children under the age of 16 were detained overnight in 2008 and 2009, in 24 police service areas in England and Wales. The number of children subject to overnight detention also varied across some police service areas.

There are a number of safeguards in place to protect children detained in police custody and to prevent them being unnecessarily detained overnight. Under s38(6) of PACE and under s21(2) of the Children Act 1989 it is a statutory duty of the police and social services to transfer a child to local authority accommodation, unless it is impracticable to do so. Moreover, those aged 12 years or over can only be detained overnight in police custody if there is a risk of serious harm (which is defined as death or serious personal injury and is connected to the gravity of the likely behaviour whilst on bail) and if there is no secure local authority accommodation available.

Of the 53,000 overnight detentions in 2008 and 2009, four were of children under the age of criminal responsibility, which is 10 years in England and Wales. Those under 10 may have been detained overnight either because the police failed to correctly identify their age or because police decided to use police custody for child protection reasons as a place of safety under section 14 of the Children Act 1989. This low number suggests that few police services regard this as an appropriate safeguard, a finding echoed in the HMIC/HMIP inspection reports; nearly all police services inspected said that they did not hold children in police custody as a place of safety.

For the remaining children, the reasons for their overnight detention in the police station are a complex and inter-connected mixture of social, political, and institutional drivers. The research suggests a number of factors that contribute to children being detained overnight:

- arrests for drunk and disorderly offences (possibly as a consequence of social and political drivers);
- difficulties parents have in attending the police station to collect their child;
- limited prompt availability of representatives from the appropriate adult services;
- limited prompt availability of legal advisers during bail decisions (possibly heightened by resource constraints);

- insufficient use of bail for children, with decisions about bail being based on criteria which are extensive, broad and similar to those used for adults.
- difficulties with the referral process from police custody to local authority accommodation, once bail is refused.

This last explanation may be an important factor if children are refused bail. The research suggests routine break-downs in the referral process between police custody and local authority accommodation. If the quotation from the Wandsworth inspection report at the start of the report is representative of other police service areas, it suggests that it is the norm for local authorities not to provide accommodation. It may be that the police do not make these requests (perhaps believing they will not receive a response from the local authority or misunderstanding that non-secure accommodation is also an option for some children in police custody) or it may be that local authorities are failing to respond appropriately to these requests for accommodation for children suspected of an offence. Either way, this may be regarded as a failure to meet their statutory obligations.

Statistics from the Youth Justice Board (cited in Hansard, 2011) suggest that only a minority of children are arrested for such serious offences that overnight detention in local authority care, not bail to their parent or guardian, is necessary. The present research also shows that the overnight detention of children is routine. Overnight detentions of children made up 28 per cent of all detentions of children in police custody. The practice of routinely detaining children overnight in police cells may be in breach of existing rules and policies. Overnight detention of children in the police station is lawful, but only for a small minority of children.²⁵

These breaches of the rules suggest a lack of regulation of and accountability for the overnight detention of children in police custody. Even though local authorities may be in breach of their statutory obligations there appears to be no independent monitoring or oversight of this process. NACRO (2008) bemoaned the difficulties of finding up-to-date information about precisely how many children were transferred to local authority accommodation. The latest figures they could find related to 2000. NACRO suggested YOTs might play such a role in monitoring and scrutinising this referral process. However, this would also need the drawing up of local protocols between the police and local authorities who would be able to supply the YOT with such information. The roll-out of electronic custody record systems in most police services should lend itself to the extraction and sharing of such data.

The lack of accountability is evident not just in the absence of an overall monitoring system, but also in the day-to-day administration of police custody and the courts. In court, sentencers are able to request the certificate from custody sergeants outlining the reasons for a child's overnight detention. It is unclear whether this happens, in practice. In police stations, appropriate adults and legal advisers, in theory, act as a check and balance on decisions taken by the police about children suspected of an offence. The difficulty in practice, however, is that power differentials between these criminal justice

²⁵ In legal terms, this minority includes suspects who are 12 years and over and arrested for serious offences for whom secure local authority accommodation cannot be found or for other children aged 10-16, where local authority accommodation is impracticable.

practitioners and the police and their presence on 'police territory' may make it difficult for them to challenge things which they feel are unacceptable or unfair, such as decisions about bail (Skinns, 2011a: 192). This is particularly so for appropriate adults, especially parents, who may not be clear of their role or confident enough to assert themselves, in the face of an organisation which represents authority (backed up by the capacity to use force) (Reiner, 2010: 119; Loftus, 2009: 126; Skolnick, 2005: 272-4). The same can be said of volunteers who act as independent custody visitors.

Summary

The research has shown that the overnight detention of children in police cells is routine and that there is a lack of regulation of and accountability for children detained overnight in police custody. This suggests that children's overnight detention is largely inappropriate and that the welfare of the child in the police station has come to be regarded as of less importance than other social, political and institutional considerations.

6. Recommendations

- The practice of detaining children overnight in police cells should be brought to an end.
- Increase the age of criminal responsibility to the European average of 14 years. This would help reduce the flow of children into police custody and would also mean approximately a fifth fewer children being detained there.
- It is necessary to treat 17 year olds as children as is the case in other parts of the criminal justice system.²⁶ Like other children in police custody, 17 year olds may not cope with the demands placed on them.
- The presumption of bail should be strictly applied to children. This requires a review of the criteria used to make decisions about police bail to ensure that they are appropriate to the age of the child. Such decisions are currently based on criteria similar to those used for adults. Consideration should also be given to more carefully specifying the criteria, in a child's 'own interests', as this is broad and can be interpreted in a range of ways. Such 'catch-all' criteria may increase not decrease bail refusals and therefore the number of children at risk of being detained overnight.
- Legal advisers and appropriate adults should be promptly available to children in police custody.
- Legal advisers and appropriate adults should receive support and training to enable them to raise concerns about custody sergeants' decisions about children's bail.
- New legal safeguards preventing the under 14s from being detained overnight should be introduced, so that no child of this age is held in a police cell overnight.
- A review should take place of the criteria used to determine whether children aged 12 years and over who are suspected of serious offences can be returned home on police bail. The welfare and rights of children should be central to this review.
- As only a small number of children over 12 years are arrested for serious offences, decisions about these children should also be overseen by an Inspector or above.
- There is also a need for greater regulation of, and accountability for, the overnight detention of children. Appropriate adults, legal advisers and independent custody visitors should raise concerns with the police about bail decisions and enquire whether the police/local authority have sought local authority accommodation for children who are charged and bail refused. Youth Offending Teams might also play a role in monitoring the referral of children from police custody to local authority accommodation.
- Magistrates in youth courts should also be required to ask custody sergeants to provide the certificates explaining why a child was detained overnight and, if no certificate can be provided, question the lawfulness of their detention and/or the evidence presented to them.
- All children detained in police custody should be provided with measures appropriate to their age whilst in police custody (e.g. visits from family members

²⁶ For example, requests for legal advice generally increase with age, peaking at the age of 16 but dropping-off significantly after that (Pleasence et al., 2011). This may be because, at 17, those suspected of an offence no longer have the benefit of having an appropriate adult with them to help them decide to request legal advice.

and age-appropriate reading material), along with a designated carer, as should already happen for girls suspected of an offence who are under 18.

- In cases where bail is not given and local authority accommodation is not viable or available, we would suggest the development of a bail fostering system based on the system currently used for remand foster care.²⁷
- Custody sergeants, police constables and civilian detention officers, who regularly work in police custody should be given specific training on dealing with children, including on safeguards which protect children from overnight detention.
- Training on the treatment of children should also be regularly refreshed so that staff are kept abreast of relevant changes in laws and policies.
- There is a need for greater strategic oversight of children detained in police custody. Police services might follow the lead of Lancashire Constabulary and create a policy which is specific to children and which draws together relevant policy, practice and legislation in one place.

²⁷ Remand foster care has been found to tackle children's personal and social needs in an individualised and non-stigmatising manner, as well as working within the parameters of bail support schemes and ensuring that children attend court when necessary (Lipscombe, 2003).

References

- Bottomley, K., Coleman, C., Dixon, D., Gill, M. and Wall, D. (1991) 'The detention of suspects in police custody: The impact of the Police and Criminal Evidence Act 1984', *British Journal of Criminology* 31(4): 347-364.
- Bridges, L. and Sanders, A. (1990) 'Access to legal advice and police malpractice', *Criminal Law Review*, July, 494-509.
- Brown, D. (1989) Detention at the police station under the Police and Criminal Evidence Act 1984, Home Office Research Study no. 104, London: HMSO.
- Bucke, T. and Brown, D. (1997) In police custody: police powers and suspects' rights under the revised PACE Codes of Practice. Home Office Research Study 174. London: Home Office.
- Cape, E. (2006) *Defending Suspects at Police Stations: The Practitioner's Guide to Advice and Representation*. London: LAG Education and Service Trust Ltd.
- Choong, S. (1997) *Policing as social discipline*. Oxford: Clarendon.
- Davies, M, Croall, H. and Tyrer, J. (2005) *Criminal justice: an introduction to the criminal justice system in England and Wales*, Essex: Pearson Education Ltd.
- Dixon, D., Bottomley, K., Coleman, C., Gill, M. and Wall, D. (1990) 'Safeguarding the rights of suspects in police custody', *Policing and Society* 1: 115.
- Gelsthorpe, L. and Padfield, N. (2003) 'Introduction', in L. Gelsthorpe and N. Padfield (eds.) *Exercising Discretion: Decision-making in the Criminal Justice System and Beyond*, Cullompton, Devon: Willan.
- Gudjonsson, G., Medford, S. and Pearse, J. (2003) The efficacy of the appropriate adult safeguard during police interviewing, *Legal and Criminological Psychology*, 8 (2): 253-266.
- Hansard (2011), written answer to question from Sadiq Khan on Youth Justice, 7/3/11, col 759W
- HMIC (forthcoming in 2011) *Joint Thematic Inspection of appropriate adult provision and the availability of suitable local authority accommodation for persons under 17 in police custody*. London: HMIC.
- HMIC/HMIP (2008a) *Report on an inspection visit to police custody suites in Southwark Operational Command Unit, 21-22 April 2008*, London: HMIC/HMIP.
- HMIC/HMIP (2008b) *Report on an inspection visit to police custody suites in Islington Operational Command Unit, 19-23 May 2008*, London: HMIC/HMIP.
- HMIC/HMIP (2008c) *Report on an inspection visit to police custody suites in West Yorkshire 27-29 May 2008*, London: HMIC/HMIP.
- HMIC/HMIP (2008d) *Report on an inspection visit to police custody suites in Hillingdon Operational Command Unit, 23-25 June 2008*, London: HMIC/HMIP.
- HMIC/HMIP (2008e) *Report on an inspection visit to police custody suites in*

Gloucestershire, 21-22 July 2008, London: HMIC/HMIP.

HMIC/HMIP (2008f) Report on an inspection visit to police custody suites in Durham, 21-23 September 2008, London: HMIC/HMIP.

HMIC/HMIP (2008g) Report on an inspection visit to police custody suites in Cambridgeshire, 24-26 November 2008, London: HMIC/HMIP.

HMIC/HMIP (2009a) Report on an inspection visit to police custody suites in Hertfordshire, 26-28 January 2009, London: HMIC/HMIP.

HMIC/HMIP (2009b) Report on an inspection visit to police custody suites in Enfield Operational Command Unit, 18-19 May 2009, London: HMIC/HMIP.

HMIC/HMIP (2009c) Report on an inspection visit to police custody suites in Lambeth Operational Command Unit, 15-17 June 2009, London: HMIC/HMIP.

HMIC/HMIP (2009d) Report on an inspection visit to police custody suites in Ealing Operational Command Unit, 6-8 July 2009, London: HMIC/HMIP.

HMIC/HMIP (2009d) Report on an inspection visit to police custody suites in Ealing Operational Command Unit, 6-8 July 2009, London: HMIC/HMIP.

HMIC/HMIP (2009e) Report on an inspection visit to police custody suites in Tower Hamlets Operational Command Unit, 27-29 July, London: HMIC/HMIP.

HMIC/HMIP (2009f) Report on an inspection visit to police custody suites in Leicestershire, 24-26 August 2009, London: HMIC/HMIP.

HMIC/HMIP (2009g) Report on an inspection visit to police custody suites in Cumbria, 14-18 2009, London: HMIC/HMIP.

HMIC/HMIP (2009h) Report on an inspection visit to police custody suites in Wiltshire, 28-30 September 2009, London: HMIC/HMIP.

HMIC/HMIP (2009i) Report on an inspection visit to police custody suites in Warwickshire, 12-15 October 2009, London: HMIC/HMIP.

HMIC/HMIP (2009j) Report on an inspection visit to police custody suites in Dorset, 9-13 November 2009, London: HMIC/HMIP.

HMIC/HMIP (2009k) Report on an inspection visit to police custody suites in West Mercia, 7-11 December 2009, London: HMIC/HMIP.

HMIC/HMIP (2010a) Report on an inspection visit to police custody suites in Hackney Operational Command Unit, 8-13 January 2010, London: HMIC/HMIP.

HMIC/HMIP (2010b) Report on an inspection visit to police custody suites in North Yorkshire, 15-19 February 2010, London: HMIC/HMIP.

HMIC/HMIP (2010c) Report on an inspection visit to police custody suites in Wandsworth Operational Command Unit, 15-18 March 2010, London: HMIC/HMIP.

HMIC/HMIP (2010d) Report on an inspection visit to police custody suites in Merton Operational Command Unit, 6-8 April 2010, London: HMIC/HMIP.

HMIC/HMIP (2010e) Report on an inspection visit to police custody suites in Kingston Operational Command Unit, 7-9 April 2010, London: HMIC/HMIP.

HMIC/HMIP (2010f) Report on an inspection visit to police custody suites in

Greenwich Operational Command Unit, 26-29 April 2010, London: HMIC/HMIP.

HMIC/HMIP (2010g) Report on an inspection visit to police custody suites in Bexley Operational Command Unit, 26-28 April 2010, London: HMIC/HMIP.

HMIC/HMIP (2010h) Report on an inspection visit to police custody suites in Brent Operational Command Unit, 18-20 May 2010, London: HMIC/HMIP.

HMIC/HMIP (2010i) Report on an inspection visit to police custody suites in Kensington and Chelsea Operational Command Unit, 14-16 June 2010, London: HMIC/HMIP.

IPCC (2009) Deaths during or following police contact: statistics for England and Wales 2008/9. London: IPCC.

Howard League for Penal Reform (2008) Punishing children: A survey of criminal responsibility approaches across Europe. London: Howard League for Penal Reform.

Jacobson, J. (2008) Police responses to suspects with learning disabilities and learning difficulties: A review of policy and practice, London, Prison Reform Trust.

Jacobson, J., Bhardwa, B., Gyateng, T., Hunter, G. and Hough, M. (2010) Punishing Disadvantage: A profile of children in custody. London: Prison Reform Trust.

Kemp, V. and Balmer, N. (2008) Criminal Defence Services: User's Perspectives Research Paper No. 21. London: Legal Services Research Centre.

Kemp, V. (2010) Transforming legal aid: access to criminal defence services, London: Legal Services Research Centre.

Lancashire Constabulary (2010) Young Persons in Police Detention Procedures. Lancashire: Lancashire Constabulary.

Lipscombe, J. (2003) 'Another side of life: Foster care for children on remand', *Youth Justice*, 36 (3).

Loftus, B. (2009). *Police culture in a changing world*. Oxford, Oxford University Press.

Maguire, M. (1988). 'Effects of the PACE provisions on detention and questioning: some preliminary findings', *British Journal of Criminology* 28, 19-43.

Measham, F. and Brain, K. (2005) "'Binge" drinking, British alcohol policy and the new culture of intoxication', *Crime, Media and Culture*, 1, 3, 262-283.

MOJ (2010) Youth Justice Annual Workload Data 2008/9 England and Wales. London: Youth Justice Board/Ministry of Justice. Available online at: <http://www.justice.gov.uk/publications/docs/yjb-workload-data-2008-09.pdf>

NACRO (2008). *Police bail, detention after charge and the duty to transfer to local authority accommodation*. London: NACRO and the Howard League for Penal Reform.

- NCPE (2006) Guidance on the safer handling of person in police custody. Wyboston: National Centre for Policing Excellence.
- Newburn, T. and Hayman, S. (2002) Policing, surveillance and social control: CCTV and police monitoring of suspects, Cullompton: Willan.
- NPIA (2007) Safer Detention Learning Programme: Juveniles. London: NPIA
- Office of the United Nations High Commissioner for Human Rights online (2010a) The Convention on the Rights of the Child, online at: <http://www2.ohchr.org/english/bodies/crc/> [accessed 20 October, 2010]
- Office of the United Nations High Commissioner for Human Rights online (2010b) United Nations Treaty Collection, online at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en [accessed 20 October 2010]
- Pattenden, R. and Skinns, L. (2010) Choice, privacy and publicly funded legal advice at the police station, *Modern Law Review*, 73 (3), 349-70.
- Phillips, C. and Brown, D. (1998) Entry into the criminal justice system: a survey of police arrests and their outcomes. London: HMSO.
- Pierpoint, H. (1999) 'Appropriate Practice? Young Suspects' Rights under UNCRC', *Childright*, 162, pp. 8-10.
- Pierpoint, H. (2000a) 'How Appropriate are Volunteers as 'Appropriate Adults' for Young Suspects?', *Journal of Social Welfare and Family Law*, 22(4), pp. 383-400.
- Pierpoint, H. (2000b) 'Taking the Protection of Vulnerable Suspects Seriously: Putting 'Appropriate Adults' through their PACES', *Practice*, 12(3), pp. 49-60.
- Pierpoint, H. (2001) 'The Performance of Volunteer Appropriate Adults: A Survey of Call Outs', *Howard Journal of Criminal Justice*, 40(3), pp. 255-271.
- Pierpoint, H. (2004) 'A Survey on Volunteer Appropriate Adult Services', *Youth Justice*, 4(1), pp. 32-45.
- Pierpoint, H. (2006) 'Reconstructing the Role of the Appropriate Adult in England and Wales', *Criminology and Criminal Justice: The International Journal*, 6(2), pp. 219-238.
- Pierpoint, H. (2008) 'Quickening the PACE: The Use of Volunteers as Appropriate Adults', *Policing and Society: An International Journal*, 18, (4), pp. 397-410.
- Pierpoint, H. and Brookman, F. (2002) 'The Implications of the Human Rights Act 1998 for Young Suspects and Remand Prisoners in England and Wales', *Journal of the Institute of Justice and International Studies*, 1, pp. 45-68.
- Pierpoint, H. and Brookman, F. (2003) 'Access to Legal Advice for Young Suspects and Remand Prisoners', *Howard Journal of Criminal Justice*, 42(5), pp. 452-470.
- Pleasence, P., Kemp, V. and Balmer, N. (2011) 'The Justice Lottery? Police Station Advice 25 Years on From PACE', *Criminal Law Review*, forthcoming in January.
- Quinn, K. and Jackson, J. (2003) The detention and questioning of young persons by the police in Northern Ireland. Belfast: Northern Ireland Statistics and Research Agency.
- Quinn, K. and Jackson, J. (2007) 'Of Rights and Roles: Police interviews with Young Suspects in Northern Ireland' *British Journal of Criminology* 47(2): 234-255.

- Reiner, R. (2010) *The politics of the police*. Oxford, Oxford University Press.
- Sanders, A., and Young, R. (2006) *Criminal Justice*, 3rd, Oxford University Press
- Sanders, A., Bridges, L., Mulvane, A. and Crosier, G. (1989), *Advice and assistance at Police Stations and the 24-hour duty solicitor scheme*, London, Lord Chancellor's Department.
- Secure Accommodation Network (2011) 'Directory of Homes', accessed online at <http://www.secureaccommodation.org.uk> [accessed on 9 August 2011].
- Sharpe, G. (forthcoming in 2011) *Offending girls: Young women and youth justice*. Cullompton: Willan.
- Skinns, L. (2008) 'A prominent participant? The role of the state in police partnerships', *Policing and Society*, 18 (3): 311-321.
- Skinns, L. (2009a) "'Lets' get it over with": early findings on the factors affecting detainees' access to custodial legal advice', *Policing and Society*, 19 (1): 58-78.
- Skinns, L. (2009b) 'I'm a detainee get me out of here': predictors of access to custodial legal advice in public and privatized police custody areas, *British Journal of Criminology*, 49 (3): 399-417.
- Skinns, L. (2010) "'Stop the clock": predictors of detention without charge in police custody areas', *Criminology and Criminal Justice*.
- Skinns, L. (2011a) *Police custody: governance, legitimacy and reform in the criminal justice process*, Cullompton: Willan .
- Skinns, L. (2011b) 'The right to legal advice in the police station: past, present and future', *Criminal Law Review*, Issue 1, 2011.
- Skolnick, J (2005) 'A sketch of the policeman's "working personality"', in T. Newburn (ed.) *Policing: key readings*. Cullompton: Willan.
- Travis, A. (2010) 'Police to regain power to charge', *Guardian Online* at <http://www.guardian.co.uk/uk/2010/may/19/police-power-to-charge-restored> [accessed 6 November 2010].
- United Nations Committee on the Rights of the Child (2008) *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 49th Session, 20 October, 2008. Online at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> [accessed, 20 October, 2010]
- Waddington, P.A.J. ((1999) *Policing Citizens*, London: UCL Press.
- Zander, M. (2011) 'The Detention Clock – An unhelpful decision, which is surely wrong?' *Criminal Law and Justice Weekly*, 175, 18 June 2011. Online at: criminallawandjustice.co.uk [accessed 11 July 2011].

Appendix 1: Methodological issues with the FOI data on the number of overnight detentions

Only 24 of the 43 police services responded appropriately to the FOI request for data: some police services simply provided arrest figures or the numbers of children detained in police custody or time periods for which children were detained. These police services were excluded from the research. The Metropolitan Police Service, the largest police service in England and Wales, was one of the police services excluded from the research.

Each of the 24 police services interpreted overnight in different ways, which makes it difficult to compare them.²⁸ Therefore, Tables 3.1, 3.2, 3.3 and 3.4 should not be read as one police service detaining more children overnight than another.

The Howard League requested data on overnight detentions for children under the age of 16 years. Children are defined as those who are under 17 years in police custody. This request also elicited different interpretations of this cut-off age; five police services did include 16 year olds whilst the majority did not.

Furthermore, the data provided were in different formats and of different types; mostly they were aggregate data, but Hertfordshire and Derbyshire provided de-personalised individualised data. Sometimes the data related only to 2008 or to 2009 or to 2008 and 2009 combined or only partial information for 2009 was included.

Consequently, the data from the FOI request provides only a partial picture.

Despite these methodological issues the present research shows that at least 53,000 children were detained in police custody overnight in just over half of the police service areas in England and Wales in 2008 and 2009. It is the Howard League for Penal Reform's view that no child should experience more time in the police station than is necessary, and that it is particularly inappropriate in the night time hours.

²⁸ For example, there were disparities in two police forces with similar levels of recorded crime. Gloucestershire Constabulary detained 270 children overnight, whilst Kent Police detained 2764 children overnight. Gloucestershire Constabulary defined overnight as when a custody record was opened at any time and when someone was still in police custody after 6am. Kent Police said they followed the definition provided to them by the Howard League of an under 16 being detained in police cells overnight. This definition could mean many things.

Appendix 2: Appropriate adult (AA) provision according to HMIC/HMIP Inspection reports

Police service	AAs available to 17 year olds?	AA service provider - day time	AA service provider- night time	AAs available in office hours?	AAs readily available in evenings/ late at night?	AA present in police interviews?	AA allowed to sit in juvenile detention room or custody area?	Visits to young persons permitted (if detained overnight)?
Bexley	No	No info	No info	No info	No info	Unclear	No info	No info
Brent	No info	Social workers	Social workers	Yes	No	No info	No info	No info
Cambridge-shire	No info	YOS	Duty social workers	Yes	No	No info	No	No
Cumbria	No	No info	No info	Yes	Less so	No info	No info	No info
Dorset	No	No info	No info	No	No	No info	No info	No info
Durham	No info	YOS	Duty social workers	No info	No info	Yes	Yes	No info
Ealing	No info	Social workers	Social workers	No info	No info	Unclear - attendance not routinely noted on custody record	Yes	No info
Enfield	No	AA service - 24 hours	AA service - 24 hours	Yes	Yes	Yes	Sometimes - down to officer discretion	No info
Gloucester-shire	No	No info	No info	Mostly	Some delays	No info	Yes - subject to risk assessment	No info
Greenwich	No	Third sector	Social workers	Yes	Yes	Yes	Yes	No info
Hackney	No	Mind	No	Yes	No	Yes	No info	No info
Hertford-shire	No info	No info	No info	Mostly	No	Yes	Yes	No info
Hillingdon	No info	No info	Extra sessional social workers employed in one site	Yes	Yes, but only in one site	Yes	No	No info
Islington	No info	No info	No info	Some de-lays	Some delays	No info	No info	No info

Overnight detention of children in police cells

Police service	AAs available to 17 year olds?	AA service provider - day time	AA service provider- night time	AAs available in office hours?	AAs readily available in evenings/ late at night?	AA present in police interviews?	AA allowed to sit in juvenile detention room or custody area?	Visits to young persons permitted (if detained overnight)?
Kensington and Chelsea	No info	No info	No info	Reasonable	No	No info	No info	No info
Kingston	No	Kingston Advocacy Service	No info	Yes	No	No info	No info	No info
Lambeth	No info	YOS - 24 hours	YOS - 24 hours	Yes	Yes	No	Sometimes - down to officer discretion	No info
Leicestershire	No	No info	No info	Yes	No	Yes	No info	No info
Merton	No	No info	No info	No info	No info	Unclear	No info	No info
North Yorkshire	No	No info	No info	Yes	No	Yes	No info	No info
Southwark	No info	No info	No info	No info	No info	Yes	No info	No info
Tower Hamlets	No	Social workers	Social workers	Considerable delay	Considerable delay	No info	No info	No info
Wandsworth	No	No formal provision. Relied on volunteers from the Salvation Army, who were untrained.	No formal provision. Relied on volunteers from the Salvation Army, who were untrained.	No	No	No info		No info
Warwickshire	No	No info	No info	Yes	No	Yes	No info	No info
West Mercia	No not as routine	No info	No info	Yes	No	Yes	No info	No info
West Yorkshire	No	No info	No info	Yes	Some delays	No info	No	Yes
Wiltshire	No	YOT	No info	Yes	No	No info	Sometimes	No info

Acknowledgements

I am grateful to Victoria Brown who co-ordinated the data collected through the Freedom of Information request. Thanks are also due to Anita Dockley, the Research Director at the Howard League for Penal Reform. Furthermore, my sincerest thanks go to my colleague, Professor Stephen Farrall from the University of Sheffield who provided a ‘sounding board’ for the research, as did Dr Gilly Sharpe who also provided helpful comments on an early draft. Professor Mike Hough from ICPR, Birkbeck University also provided thoughtful comments and advice for which I am exceedingly grateful. Thanks are also due to the anonymous reviewers of the report. Special recognition, however, goes to researchers from the Legal Services Research Centre, who were able to provide additional data for the report. Of particular note is Vicky Kemp who negotiated access to what has turned out to be the most comprehensive set of data yet on those held in police stations, as well as Pascoe Pleasence who dealt with my analysis request and furnished the report with some additional and illuminating results from this set of data.

About the researcher

Dr Layla Skinns is a Lecturer in Criminology at the Centre for Criminological Research, School of Law, University of Sheffield and formerly the Adrian Socio-Legal Research Fellow, Darwin College and Teaching Associate at the Institute of Criminology, University of Cambridge. After completing her PhD in Cambridge she also worked at the Institute for Criminal Policy Research, King’s College London.

She has conducted a wide array of research on subjects such as crime prevention, multi-agency criminal justice partnerships, drug users and the criminal justice system, restorative justice and policing. Of most relevance to the research commissioned by the Howard League are her two recent studies on the much neglected topic of the police custody process:

1. An exploration of police custody in England, examining how different practitioners cooperated with each other and suspect access to their due process rights. This was supported by a research grant from the ESRC (RES-000-22-1719).
2. Comparative research on police custody in common-law jurisdictions in America, Australia and Ireland, examining due process rights in theory and practice. This was supported by a research grant from the British Academy (RG54278).

Layla has also authored a number of scholarly publications, as well as policy reports aimed at a wider audience of criminal justice practitioners and policy-makers. These include, ‘Police custody: Governance, legitimacy and reform in the criminal justice process’ (Willan, 2010). Further details about this book can be found at: www.routledge.com/books/details/9781843928133/

Further details about Layla Skinns, including a full list of her publications can be found here: www.shef.ac.uk/law/staff/academic/lskinns/

the **Howard League** for **Penal Reform**

1 Ardleigh Road
London
N1 4HS

t
f
e
w

020 7249 7373
020 7249 7788
info@howardleague.org
www.howardleague.org

Registered charity
No. 251926
Company limited by
guarantee No. 898514

ISBN 978-1-905994-39-7



ISBN 978-1-905994-39-7

£10
2011