



The overnight detention of children in police cells

Summary

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

KEY POINTS

- 53,000 children aged under 16 were detained overnight in police cells in 2008 and 2009. 17 year olds are treated as adults in police custody despite being regarded as children in other parts of the criminal justice system.
- Police training on the overnight detention of children is limited, police policies relating to children in custody are inadequate and laws designed to safeguard children are ineffective.
- There appears to be a break-down in the referral process between police custody and local authority accommodation, meaning that children whose bail is refused are detained overnight in police cells.

KEY STATISTICS

Of the 53,000 children detained overnight in 2008 and 2009:

- 10,845 were girls (21%).
- 10,050 were black and minority ethnic children (20%).
- Four children were under the age of 10, the age of criminal responsibility.
- 1,674 were aged 10 and 11 years.

Introduction

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 twenty-seven 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.

Safeguarding children in police custody

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.

The most important frameworks regulating police custody practices are the Police and Criminal Evidence Act 1984 and the Code of Practice C, which relates to the detention, treatment and questioning of people by the police, with additional rights being given to children.² 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 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.

¹ Each of the 24 police services interpreted overnight in different ways, which makes it difficult to compare them. Therefore, the data provided by the police on the number of overnight detentions should be cautiously interpreted. A discussion of methodological issues with the FOI data on the number of overnight detentions can be found in Appendix 1 in the full report.

² The Codes of Practice are not a statutory instrument; they provide guidance about what it would be best for the police to do, but are not obligatory.

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).

Children and police bail

Police custody is brought to an end by the CPS and custody sergeants' decisions about 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. Even if there is sufficient evidence to charge, a child can be released on police bail. Generally, there is a presumption that the child will be bailed 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, an appropriate adult must be available to look after them, since the police's duty of care extends to the period after release from police custody.³ Once a decision has been taken to release a child the police have no power to detain them until a parent comes to collect them.

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. Approximately 5000 children per year were refused court bail and remanded to custody in 2008/9 and 2009/10. One third of whom were found not guilty.

Police training and policies on dealing with children

It appears that police training on safeguarding children in police custody is limited and not all staff undertake this training. Of the 24 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. Further examination revealed that this represented one session or up to one days training about children and vulnerable detainees out of two-five weeks custody training. Nine police services mentioned that staff were trained on PACE and the Codes of Practice which encompassed dealing with vulnerable detainees including children.

Children are given little prominence in police policies relating to police custody. There is no national guidance on appropriate local policies for dealing with children in police custody. Thirteen 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 custody policy or management procedures, which sometimes had a separate section on children, such as in Kent. Lancashire Constabulary was the only service to have a specific custody policy document for children.

These inadequacies may be one reason why legal safeguards fail to protect children from overnight detention.

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, 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;⁴ and 11,540 were of children under the European average age of criminal responsibility of 14 years; and 27,804 were in the age groups of 15 or 16 years of age.

These 53,000 detentions can also be broken down by gender and ethnicity: with 10,845 detentions of girls overnight; and 10,051 Black and Minority Ethnic children being held overnight in police cells.

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

⁴ To prevent overnight detention, local authority accommodation should be sought for all children and can only be denied if this is impracticable. For children aged 12 years and over arrested for more serious forms of alleged law-breaking, they can only be held in a police cell overnight if there is no secure accommodation or if any other accommodation may not offer sufficient public protection from serious harm (e.g. death or serious personal injury).

Number of overnight detentions of children under the age of 16 by police service area (FOI data)⁵

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	978
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	122
North Wales	1,253
North Yorkshire	823
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

In addition to the FOI data, data from the Legal Services Research Centre (LSRC) were included in the study. These data related to two months in 2009, in four unnamed police services. It 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.

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

⁵ Each of the 24 police services interpreted overnight in different ways, which makes it difficult to compare them and, therefore, this table should not be read simply as one police service detaining more children overnight than another.

into account such as gender, offence-type and offence-gravity.⁶ Offences such as public order offences resulted in more overnight detentions and the least serious offences also saw the most overnight detentions.

Why are children detained overnight in police cells?

The following was noted of a police custody facility in Wandsworth:

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 [appropriate adult] 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, 2010: para 5.13).

This incident points to some of the complex reasons for children's overnight detention, which were examined in more detail in the research.

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) led to an increased number of children charged and 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. 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

⁶ These preliminary findings are to be discussed in more detail in future publications

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 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 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 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. Finally, social services are 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. Steps should be taken bring it to an end. This is particularly the case for those under 14 for whom there should be 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.

Statistics from the Youth Justice Board (cited in Hansard 2011) suggest that only a very small number of children are arrested, charged and convicted of 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 breakdown 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. Yet requests by the police for local authority accommodation do not appear to be made or met.

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.

Key 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 to reduce the flow of children into police custody. This would mean approximately a fifth fewer children being held in police custody.
- 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 must be promptly available to children in police custody.

- 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.
- 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 current use of remand foster carers.⁷
- Custody officers, 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.

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⁷ 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).

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