



Overnight detention of children in police custody 2010–2011

Research briefing

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

Key points

- There were at least 86,034 overnight detentions of children aged 17 and under in police custody in 2010 and 2011
- Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Prisons have revealed that custody suite staff do not always receive specific child protection training
- The number of overnight detentions of children in police custody decreased from 45,318 in 2010 to 40,716 in 2011, a decrease of 10 per cent. However, there are variations across England and Wales and in three police service areas the number rose
- Spending a night in police custody can be a worrying, frightening and intimidating experience for a child
- The number of arrests of children fell by 15 per cent between 2010 and 2011 yet the number of overnight detentions only fell by 10 per cent
- Some children may need safe emergency accommodation if they are homeless or their parents are unable or refuse to collect them from the police station. Secure accommodation should only be necessary in a handful of cases a year.

Key statistics

Of the 86,034 overnight detentions of children in police custody in 2010 and 2011:

- 13,005 were girls
- 23,779 were children of black and ethnic minority origin (27 per cent)
- 10 were children under the age of criminal responsibility
- 387 were children aged 10 and 11 years old
- 29,300 were children aged 17 years old.

Introduction

The United Nations Convention on the Rights of the Child article 37 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.

In 2011, the Howard League for Penal Reform published a report, *Overnight detention of children in police cells*, following analysis of data from a Freedom of Information (FOI) request to all 43 police services in England and Wales. The request asked for information about the numbers of children under the age of 16 detained in police cells in 2008 and 2009. Twenty-four police service areas provided data which showed that there had been approximately 53,000 overnight detentions of children.

The Howard League made a second FOI request seeking the same information for 2010 and 2011. This time, data was also requested for 16- and 17-year-olds. Thirty-four police service areas responded and 32 police areas provided a breakdown of the data by age for children aged 17 and under.

The data from 2008 and 2009 was not directly comparable with the data from 2010 and 2011 because it excluded the overnight detention of children aged 16 and 17. However, 17 police service areas provided data which could be directly compared with the data obtained for the overnight detention of children in police custody in 2008 and 2009.

The number of arrests of children fell by a third between 2008 and 2011 (Howard League, 2013). Comparing the data on child arrests with the data on overnight detention revealed that child arrests had fallen by 15 per cent between 2010 and 2011 but the number of overnight detentions had fallen by only 10 per cent in the same period. The fact that the number of overnight detentions fell at a slower rate than the number of child arrests suggests there are inherent problems with police procedure which warrant further investigation.

This research briefing looks at trends in the overnight detention of children in police custody, changes in practice since 2009 and issues of continuing concern.

How many children are detained overnight?

The data obtained by the Howard League shows that there were a total of 86,034 overnight detentions of children in 2010 and 2011. The number of detentions of children in police custody had declined from 45,318 in 2010 to 40,716 in 2011, a reduction of 10 per cent. While there was an overall decline in the numbers of children detained overnight, there were wide variations in practice and in three police service areas the number of overnight detentions had increased.

Age

The number of overnight detentions of children aged 10–13 years in police custody had fallen. There were 2,617 overnight detentions of children aged 10–13 in 2010, compared with 2,292 in 2011, a fall of 12 per cent. Children aged 10–13 accounted for 5 per cent of the total of all overnight detentions of children in 2010 and 2011.

Of the 86,034 overnight detentions, 387 were of children of primary school age.

Gender

Fifteen per cent of the total number of overnight detentions in 2010 and 2011 were of girls. This is a surprisingly high percentage as girls generally represent less than 5 per cent of criminal sentences. The number of overnight detentions of girls had fallen from 6,386 in 2010 to 6,196 in 2011. The percentage fall in the number of overnight detentions of girls and boys was the same at 10 per cent. Evidence given to the All Party Parliamentary Group on Women in the Penal System (2012) by chief constables indicated that police take girls into custody when it is thought they need protection, for example when they are intoxicated; an inappropriate and heavy-handed approach.

Ethnicity

According to the data, 23,779 (27 per cent) of the overnight detentions were of black and ethnic minority children. This included 12,062 overnight detentions in 2010 and 11,717 overnight detentions in 2011. Analysis of the data on ethnicity was problematic, reflecting the findings of the Howard League's research on child arrests (2013) which showed that police service area data on ethnicity was difficult to interpret, as it included a mixture of self-defined and police-assumed ethnicity and a large number of children were classified as unknown ethnicity.

Number of overnight detentions of children by police service area

Police Service	2008 and 2009 (15 years and under)	2010 (17 years and under)	2011 (17 years and under)
Avon and Somerset	1398	*	*
Bedfordshire	*	22	9
Cambridgeshire	*	349	291
Cheshire	*	1230	894
City of London	22	78	55
Cleveland	559	*	*
Cumbria	268	482	443
Derbyshire	791	1481	1271
Devon and Cornwall	978	393	285
Dorset	246	**	**
Durham	*	950	972
Dyfed Powys	*	476	409
Essex	*	*	*
Gloucestershire	270	66	62
Greater Manchester	16957	*	*
Gwent Police	*	108	92
Hampshire	*	*	*
Hertfordshire Constabulary	388	849	631
Humberside Police	390	1670	1628
Kent Police	2764	2088	2005
Lancashire Constabulary	2356	2696	2314
Leicestershire Constabulary	882	590	546
Lincolnshire Police	*	16	19
Merseyside Police	5142	1617	1522
Metropolitan	*	14370	13860
Norfolk Constabulary	122	338	352
North Wales Police	1253	904	694
North Yorkshire Police	823	688	579
Northamptonshire Police	*	123	85
Northumbria	*	*	*
Nottinghamshire Police	1303	1432	1225
South Wales Police	*	917	798
South Yorkshire Police	*	1270	1044
Staffordshire Police	313	*	*
Suffolk Constabulary	*	357	274
Surrey Police	*	43	46
Sussex Police	*	1720	1564
Thames Valley Police	637	2183	1976
Warwickshire Police	*	235	206
West Mercia Constabulary	577	566	465
West Midlands Police	12565	*	*
West Yorkshire Police	1845	4469	3729
Wiltshire Constabulary	*	542	371
Total	52,849	45,318	40,716

* No data was provided

** Dorset could only provide data on children held for five hours or more, not specifically overnight
Data from 2008/09 includes children aged 15 and under. Data from 2010/11 includes children aged 17 and under.

Trends since 2008 and 2009

Seventeen police service areas provided data which was directly comparable to the FOI data obtained by the Howard League on the overnight detention of children aged 15 and under in police custody in 2008 and 2009. Overall, in these areas, there were 2,361 fewer overnight detentions of children, a decline of 16 per cent. However, there were large variations in practice:

- Devon and Cornwall Police Service had 77 per cent fewer overnight detentions of children in police custody
- In West Mercia, the number of overnight detentions of children in police custody had halved
- In Cumbria, the number of overnight detentions of children had risen by 18 per cent
- In Humberside the number of overnight detentions of children in police custody had increased by 340 per cent.

While it is not known why there are such variations in practice in police service areas, it is probable that local factors impact on the number of overnight detentions. This might include a lack of both staff training and awareness of safeguarding and child protection issues.

Safeguarding children in police custody

Quinn and Jackson (2003) found that spending a night in police custody could be a worrying, frightening and intimidating experience for children. Research by the Howard League (2011) highlighted that police training on safeguarding children in police custody was limited and not all staff had undertaken this training. Evidence from joint inspection reports of police custody suites conducted by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP) (2011, 2012a, 2012b, 2012c) showed that there continued to be a lack of awareness among some staff of the specific needs of children and of legal safeguards to protect children.

The provision of local authority accommodation

The high number of child arrests in England and Wales is contributing to the high number of unnecessary overnight detentions of children. The Howard League (2013) found that in 2010 and 2011 there were 443,252 arrests of children. Children arrested between 8pm and 12am were more likely to be detained overnight. Overnight detention was also more likely for those arrested for low-level disorder (Howard League, 2011).

Very few children arrested will pose a risk of serious harm to the public. Most could be returned home immediately and asked to attend the police station the following morning if necessary. The Howard League (2011) found that some children were being detained overnight because their parent or guardian had refused to attend the police station or were unable to pick up their child, sometimes because they had other children to care for at home.

Some police areas failed to make reasonable attempts to contact parents or guardians or ensure they were able to come to the police station to take their child home. The Criminal Justice Joint Inspection (2011) found that in one case a 15-year-old boy had been detained overnight in police custody and there was no evidence that his mother had been notified.

There is confusion about the Police and Criminal Evidence Act 1984 (PACE) code of practice and restrictions on interviewing children. The Criminal Justice Joint Inspection (2011) found that children arrested late at night were routinely put in cells to sleep until the morning, when staff would deal with them. While this might comply with PACE legislation for an eight hour rest period, it is not in the best interests of the child. Detaining children unnecessarily is inappropriate, and they should be sent home as soon as possible.

Secure accommodation should be requested only for those children who pose a 'risk to the public of significant harm' but the review found that this condition was not always applied, and staff found the relevant legislation unclear and confusing:

Custody officers normally only requested secure accommodation, without evidencing 'serious harm'; Local Authority staff failed to challenge the need for secure accommodation; non-secure accommodation was routinely unavailable; and therefore children and young people were not being transferred to Local Authority accommodation after charge. In nearly two-thirds (33) of our case reviews no Local Authority accommodation was sought. Of these, we assessed that 67% would have been suitable for transfer to non-secure Local Authority accommodation but instead continued to be detained in police cells. In all areas non-secure accommodation was available (albeit to varying degrees). (Criminal Justice Joint Inspection p. 8–9)

The overnight detention of a child in police custody should be rare yet it appears to be happening on a weekly basis in the majority of police service areas. The majority of children charged with an offence do not require continued detention in local authority care, and could be taken home immediately. Only on rare occasions, if children are vulnerable or have no home to return to, should they be placed in the care of the local authority. Children should not be detained because of delays in procedures, staffing issues or to fit the routine of the custody suite. Children should only be transferred to local authority care if they have been charged with a serious violent or sexual offence and pose a continuing risk to the public, and this is likely to be only a handful of cases.

Access to appropriate adults

PACE and the Code of Practice C require that an appropriate adult (AA) must be present before unaccompanied children aged 16 and under, or vulnerable adults, can be interviewed by the police. The AA is normally a parent or guardian but if they are unwilling or unable to attend, the local authority must provide an AA. There is a statutory requirement for the local youth offending team to provide an AA service for children aged 16 and under in the relatively unusual case of a parent being unable or unwilling to assist.

There were 29,300 overnight detentions of children aged 17 in 2010 and 2011. Seventeen-year-olds are excluded from the definition of 'juveniles' under PACE legislation, meaning that parents or guardians do not have to be informed or be present if their child is interviewed by the police. In a recent court case in which the Howard League intervened (*R (on the application of HC) v. Secretary of State for the Home Department and Commissioner of Police for the Metropolis* [CO Ref 7772/2012]), the current provisions within PACE were found to be unlawful and the Secretary of State's failure to amend Code C was found to be in breach of her obligations under the Human Rights Act 1998. Formal amendments to PACE will be considered and progressed through the continuation of these proceedings, but in the interim and to ensure that police staff act lawfully, all custody staff must now make certain that any 17-year-old who is detained at a police station is treated as a child. All provisions within PACE that relate to the treatment of children, and specifically in relation to the provision of appropriate adults, must now be read to include 17-year-olds and therefore, 17-year-olds should now have access to a parent, guardian or appropriate adult without exception.

Recognising the specific needs of children

A joint inspection report by HMIC and HMIP on Staffordshire (2012a) stated,

Custody sergeants at Stoke told us that juveniles were mainly located on E wing. However, on one day during the inspection a 13-year-old was taken to a cell on B wing because the custody sergeant who had booked him in was responsible for that wing and wished to continue to oversee the juvenile while he was in custody. The juvenile refused to go into the cell on B wing and was finally located in a holding room in front of the custody desk. When we spoke to him, he told us he was afraid of being left in a cell on his own and preferred to be in the holding room in view of staff. We were concerned that the custody sergeants did not take this action in the first instance, given the detainee's age and reluctance to be placed in a cell. (HMIC and HMIP, 2012, p. 15)

The Howard League (2011) recommended that custody sergeants, police constables and civilian detention officers should be given specific training on dealing with children, including the relevant legislation. Safeguards for children must be in place 24 hours a day, not just between the hours of 9am and 5pm.

Conclusions

The overall decline in the numbers of children held overnight in police custody from 2010 to 2011 is to be welcomed. However, there continue to be concerning variations in practice.

Police are detaining children overnight for minor misdemeanours which could be resolved without the use of criminal sanctions. Police services should not be acting as child protection agents; this is unnecessary and inappropriate.

Children are being needlessly detained in police custody suites overnight in order to fit in with police process, rather than because they pose a risk or are likely to abscond. Very few of the children held overnight need to be detained at all. Most could be sent home immediately and their case dealt with the following morning, if further action is indeed needed.

Some police custody suite staff do not fully understand the legislation regarding requirements for secure and non-secure accommodation for children, which should in any case be used rarely. Local authorities have a duty under the Children Act 1989 to receive children transferred by the Police under PACE yet they are failing to question the need for secure accommodation and failing to offer non-secure accommodation.

Key recommendations

- The practice of detaining children overnight in police cells should be brought to an end
- Police services should work more closely with children's services to provide safe and appropriate care for children who come to their attention
- The presumption of bail should be strictly applied to children
- Police must receive training on safeguarding and child protection and must be aware of current legislation regarding the detention of children
- Following the court judgment that PACE should be amended to make child protection processes consistent for 17-year-olds, new guidelines must be issued to police services.

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About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

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