



## **Interim Practice Guidance:**

# **Transfer to Local Authority Accommodation from Police Detention**

## **Joint Working Agreement with Social Service for Children, Youth Justice Service, North Wales Police and Emergency Duty Team**

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## **1.0. Purpose**

- 1.1. The purpose of this local protocol is to support the All Wales Guidance for the appropriate management and transfer of children and young people by the Police and Local Authorities (2016) and agree a local protocol across North Wales utilising the above guidance.
- 1.2. Both documents ensure local authority and partner agencies responsibilities under S.38(6) Police and Criminal Evidence Act 1984 to transfer young people to local authority accommodation post charge and Section 77 of the Social Services and Well-being (Wales) Act 2014 for the local authority to 'receive and provide accommodation for children' under the above provision.
- 1.3. Where a young person is transferred to Local Authority accommodation the child or young person will become 'looked after' for the purpose of Part 6 of the Social Services and Well-being (Wales) Act 2014. Where a child is transferred under Section 38 of PACE, the Local Authority assumes the power and accountability for lawfully detaining that child. Where a child is detained under Section 38 of PACE, and is not being provided with accommodation by a local authority or the NHS, any reasonable expenses of accommodating the child are recoverable from the Local Authority in whose area the child is ordinarily resident (Section 77(4) and (5) of the Social Services and Well-being (Wales) Act 2014.
- 1.4. As such the legislation imposes 'an absolute duty on the local authority to provide accommodation' where sought by the police (*R (on the application of M) v Gateshead Council* [2006] EWCA Civ 221). Such requirements are reinforced in Youth Justice Board Case Management Guidance (2014) which states 'If it is necessary to detain a child or young person overnight, they must be transferred to local authority accommodation and the responsibility for their care transfers to the local authority' (YJB 2014; para 1.4, Manage Bail and Remands).

## **2.0. Aim**

- 2.1. It is noted that Police custody can be a distressing time for children and young people, many of whom are vulnerable and may have additional needs.
- 2.2. The aim of this local protocol is to ensure that children and young people between 10-17 years inclusive, spend the least amount of time in Police custody than is required and are, transferred out of Police custody to appropriate local authority accommodation in accordance with All Wales Guidance.
- 2.3. In addition, where it has not been possible to achieve such outcomes, it is the aim of this protocol that all relevant agencies have measures in place to review the decisions made in these instances in order to overcome barriers in future. For the purpose of this guidance, a child or young person in custody is considered to be kept in custody overnight

over 5 hours if they remain in custody from the time period of 00.00-05.00am.

### **3.0. Refusal of Bail and Transfer to Local Authority Accommodation**

- 3.1. People of all ages have the right to bail under the Bail Act 1976 after charge unless certain exceptions apply. There are a number of circumstances in which bail can be refused under Police and Criminal Evidence Act (1984: Section 38(1)) which include; where a person cannot be identified, unable to ascertain name or address, grounds to believe the person will fail to appear in court or answer bail, prevent further offending, prevent injury, prevent interference with justice or investigation, necessary to take a sample and for own safety or is charged with a serious or violent offence listed in Criminal Justice and Public Order Act 1994, when the young person should be referred to the first available court.
- 3.2. If concerns exist, the Custody Officer must seriously consider whether they would be allayed by placing conditions on a child's bail. In making a decision consideration should be given to current guidance, locally agreed assessment tools or consultation with the Custody Nurse. It is good practice for the Custody Officer to contact the Local Authority's Youth Justice Service to discuss concerns and appropriate conditions. Where bail of a child or young person under 18 years of age is refused, they must be transferred to local authority accommodation.
- 3.3. Appropriate Adults should observe the decision making process and should be permitted to challenge Custody Officers. If the Custody Officer decides that the right to bail should be refused they must detail the reasons for this refusal on the Custody Record (under Section 38 (3) PACE 1984). Where the child is taken to Court from either Police Custody or Local Authority accommodation the Court should scrutinise the decision to deny the child of their right to bail.
- 3.4. If the Local Authority states it is unable to place a child, an escalation process has been agreed between North Wales Police and Heads of Children's Services:
  - In Office Hours (Mon-Fri 0900 – 1700) Custody Officer contacts Area PVPU Detective Inspector to discuss/resolve with Children's Social Services;
  - Outside of office hours – Custody Officer escalates to duty CADRE Detective Inspector for discussion/review with EDT Social Worker. EDT Social Worker will have discretion as to whether they contact on-call Silver for the relevant Local Authority;
  - Outside of office hours – duty CADRE Detective Inspector to notify Area PVPU Detective Inspector for follow-up in office hours for discussion with the Children's Social Services;
  - Strategic PVPU to capture how many cases are escalated per month and the outcomes with data reported at the joint

Partnership meeting to jointly monitor regional trends and impact.”

#### **4.0. Exceptions to Transfer**

- 4.1. There are exceptions to when transfer to local authority accommodation is deemed appropriate;

A transfer to local authority accommodation should not be considered when a young person has been arrested for breaching bail with no new charge (S.7 Bail Act 1976) or when a Warrant not backed with bail has been issued (S.13 Magistrates Court Act).

In the event that the police certify that the young person does genuinely represent a risk of serious harm and where such accommodation is unavailable, the young person may be detained at the police station pending his or her court appearance. (Section 38 (6) (b) of PACE 1984).

When a transfer is ‘impracticable’ to do so. Where the Custody Officer decides the transfer is impractical they must make a detailed written record of the reasons behind the decision (Section 38 (7) PACE 1984) The definition of ‘impractical’ has a narrow definition and under PACE Codes of Practice C.16.10 that;

*‘neither a juvenile's behaviour nor the nature of the offence provides grounds for the custody officer to decide it is impracticable to arrange the juvenile's transfer to local authority care. Impracticability concerns the transport and travel requirements and the lack of secure accommodation which is provided for the purposes of restricting liberty does not make it impracticable to transfer the juvenile. The availability of secure accommodation is only a factor in relation to a juvenile aged 12 or over when other local authority accommodation would not be adequate to protect the public from serious harm from them. The obligation to transfer a juvenile to local authority accommodation applies as much to a juvenile charged during the daytime as to a juvenile to be held overnight, subject to a requirement to bring the juvenile before a court under PACE’.*

#### **5.0. Secure and Non-Secure Accommodation**

- 5.1. The availability of local authority accommodation must not preclude the transfer of a young person from a police station, as stated above, the local authority maintains an absolute duty to provide non-secure accommodation (Section 77 Social Services and Well-being (Wales) Act 2014).
- 5.2. There is also no statutory provision that precludes the returning of a young person to the parental home but the local authority should have regard to the fact that bail has been refused from the police station. However, the police in limited circumstances may request a transfer to secure local authority accommodation. Such requests for secure accommodation should only be made when a young person aged 12-

17 has been charged with a murder or under Criminal Justice Act 2003 Schedule 15 Part 1 (violent offending) or Part 2 (sexual offending) **AND** the Custody Officer certifies that non-secure accommodation would 'not be adequate to protect the public from serious harm' (Section 38 (6) (b) Police and Criminal Evidence Act 1984). Serious harm is defined as;

*'A reference to protecting members of the public from death of serious personal injury, whether physical or psychological'* (Section 38 (6A) Police and Criminal Evidence Act 1984)

5.3. If the police are satisfied that such a risk exists they should request the local authority provide secure accommodation. There is no absolute duty for the local authority to provide secure accommodation. Where secure accommodation is not available the young person should be detained in the police station pending his or her court appearance. Any such failures to provide accommodation should be noted in the custody record and referred to the local authority Monitoring and Review Panel (Appendix A).

5.4. When a transfer to secure / non-secure accommodation is requested the Custody Officer should provide the Local Authority with the following information;

- The child's personal information, including details of any risks or vulnerabilities;
- The nature of the offence;
- Reasons for the refusal of bail and why conditions of bail would not allay these concerns
- An explanation of why the child poses a risk of death or serious injury to the public (where a request is made for secure accommodation).

5.5. Section 119 of Social Services and Well-being (Wales) Act 2014 and 25 (1) of the Children Act 1989 permits the Local Authority to place children in secure accommodation in Wales, even if this was not the Custody Officer's request. Welsh Local Authorities may also place a child in a secure children's home in England under Section 25 of Children Act 1989. The Children (Secure Accommodation) (Wales) Regulations 2015 apply a modified test which a Local Authority must use if it is considering placing a 12-17-year-old child, detained under Section 38(6) of PACE, in secure accommodation (regulation 15). The modification removes the need to show that the child has a history of absconding. If the child is under 13 years old, the Local Authority must seek the approval of the Welsh Ministers before placing the child in secure accommodation.

## **6.0. Power to Detain**

6.1. When a Police Officer hands a child over to the Local Authority staff, they transfer the power to lawfully detain that child. **This applies to every case where a child has been charged and denied bail.**

- 6.2 Police and Criminal Evidence Act 1984 section 38(6B) states: “Where an arrested juvenile is moved to Local Authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.” Simultaneously, section 39(4) emphasises that, at the point of transfer to the Local Authority, police custody officers’ responsibility for the child ceases entirely. Local Authority staff must be aware of the level of responsibility that this transfer of power places upon them.
- 6.3. The child must be held in lawful custody until their appearance at court. Following the transfer, Local Authority staff are accountable for ensuring that this lawful custody is upheld. They become the custodians, with the same legal responsibility toward the child as a police custody officer has toward a detainee in a police Detention Room.
- 6.4. When transferred from police custody to Local Authority accommodation (especially non-secure accommodation), the opportunities for a child to abscond are likely to increase. It may also appear to the child that the nature of their detention has become less serious and that absconding from Local Authority accommodation is different from escaping from a police Detention Room. Legally, this is not the case. If the child absconds they are committing the serious offence of escaping lawful custody. **In these circumstances the Local Authority should immediately reported such an offence to the Police.**
- 6.5. It is important that the child is made to understand this in order to prevent genuine misunderstandings leading the child into more difficulties; and to ensure that any subsequent charge of escaping lawful custody is justifiable. As the child is transferred from the police to the Local Authority, the police officer must (in the presence of Local Authority staff) inform the child of the following:
- “You have been charged with [offence] and you have to appear at court on [date]. You have been refused bail, which means that you have to stay in custody until your court date. If you were an adult, you would stay in the police cells until then, but because you are under 18 years of age, the Local Authority is going to look after you until your court appearance. The Local Authority will decide where you will stay until then.*
- It is very important that you understand that you are still in custody: this means that you must stay where you are told to go by the Local Authority and can only go out with their permission. If you do leave without permission, the Local Authority will tell the police and you will get into more trouble, just as if you had run away from the police station. Do you understand?”*
- 6.6. The police officer and the Local Authority staff should be satisfied that the child has understood these points, offering further explanation if

necessary. The child and Appropriate Adult should sign the custody record to state they have understood the above.

- 6.7. If an Appropriate Adult is aware that a child is due to be transferred to Local Authority accommodation, they may also be able to help explain the situation and prepare the child for the handover.

## **7.0. Transport and Transfer**

- 7.1. The provision and logistics of transport from Police Custody should be agreed between the Police and Local Authority on a case by case basis and should have consideration current to risk assessments and the best interests of the child. Factors to consider would be age, distance from home, maturity, difficulty of travel, seriousness of the offence and vulnerability.

- 7.2. When a child is charged and detained the responsibility for ensuring they attend Court rests with;

- The Police if the child has not been transferred to Local Authority accommodation
- The Local Authority if the child has been transferred to either secure or non-secure accommodation.

- 7.3. Where a child has been transferred to Local Authority Accommodation out of hours it is essential the Local Authority out of hours' service or EDT inform the Youth Justice Service so they are aware of the detention and the required attendance at Court.

## **8.0. Looked After Status**

- 8.1. Where a young person is transferred to Local Authority accommodation the child or young person will become 'looked after' for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 if accommodated for a continuous period exceeding 24 hours.

## **9.0. Escalation and Disagreements**

- 9.1. Where there may be disagreement between Local Authority staff and Police Custody staff on how a child should be dealt with under the working agreement, matters should be elevated to Senior Managers in Children's Services and/or Police Duty Custody Inspectors.

## **10.0. Failures to Place in Secure / Non-Secure Accommodation**

- 10.1. In cases where the police have made requests for secure or non-secure accommodation and the local authority have not been able to comply with this request, the Custody Officer should record such failures on the Custody record for the young person. The custody officer should escalate the case to the Duty Inspector at the time and notify the custody policy inspector by e-mail. Such cases will be

reported to the Detective Superintendent in PVPU and be discussed at the Heads of Children Services meetings.

#### **11.0. Role of North Wales Police**

- The Police should make contact with Children's Service or Emergency Duty Team (if out of hours) at the earliest opportunity where it is likely a young person will be refused bail following charge to enable a swift identification of a potential placement. North Wales Police should furnish the local authority with available information and known details about the young person in order to identify an appropriate placement.
- Police are required to assess if the young person is a 'risk of serious harm' and if a secure local authority placement is required.
- Where there is a possibility that a young person may be refused bail, wherever possible attempts should be made to liaise with the Youth Justice Service to ascertain if objections to bail could be overcome through suggested possible bail conditions / bail support rather than seeking non-secure or secure accommodation
- Local authority accommodation will not be sought if the young person has been arrested for breach of bail (Bail Act, s.7) or a warrant without not backed with bail (Magistrates Court Act 1980, s.13). The police will notify the Youth Justice Service Duty Officer (during office hours) or via secure email outside of office hours to enable the Youth Justice Service to prepare for Court and liaise with Children's Services.
- Where the police have been unable to contact the local authority after 'repeated efforts', a transfer has been deemed 'impractical', or secure accommodation is unavailable the police should complete the relevant certificates to court and produce the young person at the next available court (Police and Criminal Evidence Act 1984, S. 38(6) (a), S. 38(6) (b), S.38(7).
- Where transfer is agreed the Police and Children's Services should agree how the child or young person will be transported to a secure / non-secure placement.
- The Police will inform the young person in the presence of the Local Authority of the power to detain (see above).

#### **Role of Youth Justice & Appropriate Adult Service**

- The Youth Justice Service are responsible for providing Appropriate Adult Services for children and young people at all Police Stations across their local area. Provisions will also be in place with the local Youth Justice Services to cover out of hours' provision.
- Following an Appropriate Adult request the Youth Justice Service or relevant provider will enquire with the Custody Officer if there is a likelihood of bail. Where there is either no indication or a likelihood of



refusal of bail is given the Youth Justice Service or relevant provider should immediately liaise with Children's Services or the Emergency Duty Team in order to allow for the identification of possible placements.

- Where contact is made by North Wales Police to the Youth Justice Service and there is an indication that a young person may be refused bail, wherever possible attempts should be made by the Youth Justice Service (through liaisons with Children's Services) to ascertain if objections to bail could be overcome and suggest possible bail conditions rather than seeking non-secure or secure accommodation.
- Where bail is refused during office hours, the Youth Justice Service should send any available assessments and documents held by the service to Children's Services via secure email to enable the identification of placements.
- Where a young person is to be produced before the next court, the Youth Justice Service will liaise with Children's Services Duty and Assessment Team and provide the relevant information to enable the identification of placements. Where the young person appears before the court on a Saturday or Bank Holiday the Youth Justice Service will liaise with the Emergency Duty Team. The Youth Justice Service will attend court on behalf of the local authority and will liaise with Children's Services / Emergency Duty Team regarding further bail and or remand to Local Authority Accommodation / Youth Detention.
- Where a young person appears before the court the Youth Justice Service will assist the court in completing Bail Assessments and make recommendations regarding the suitability of bail and or remand in conjunction / liaison with Children's Services and Emergency Duty Team

### **Role of Children's Services & Emergency Duty Team**

- Where contact is made to request non-secure or secure local authority accommodation Children's Services or Emergency Duty Team will identify an appropriate placement.
- Children's Services or Emergency Duty Team will access Youth Justice Service Case Management System and Children's Services database and undertake relevant checks to see if the young person is known to local services. Assessments will be accessed and reviewed in order to assist in identifying appropriate placements.
- During office hours Children's Services will liaise with the Youth Justice Service to explore if objections to refusal of bail could be overcome.
- Children's Services or Emergency Duty Team will liaise and assist the Youth Justice Service with court activities in order for the Youth Justice Service to complete bail assessments and present recommendations to court.

- Where a young person is transferred to local authority accommodation the child or young person will become 'looked after' for the purposes of the Social Services and Well-being (Wales) Act 2014 where the transfer is for a period more than 24 hours and the local authority will assume such responsibilities.
- Where a young person is transferred to local authority accommodation out of hours the Emergency Duty Team will notify Children's Services and Youth Justice Service via secure email.
- Children's Service or Emergency Duty Team should ensure that arrangements have been made for the young person to attend court with an Appropriate Adult.
- Where transfer is agreed the Police and Children's Services should agree how the child or young person will be transported to a secure / non-secure placement.

Key:

