



SCOTTISH POLICE
AUTHORITY
ÙGH DARRAS POILIS NA H-ALBA



POLICE
SCOTLAND
POILEAS ALBA

Children in Custody – A Public Briefing

Briefing No. 11



March 2023



Summary

Whilst the majority of children who come into conflict with the law are dealt with without the need to bring them into a police station it is still occasionally necessary for children to be held in police custody to enable a full and thorough investigation or, for their own safety where there are no alternative places of safety available. Both Police Scotland and the Authority have been clear that they do not consider police custody to be a suitable place of safety for a child. Police Scotland continue to take steps to minimise the number of children that are held in police custody.

The definition of a child in Scotland is a complex one, which varies by legislation. It is important to read about this in the "Definition of a Child" section.

This Briefing Note provides details about the circumstances that may lead to a child being brought into police custody as well as the additional safeguards that exist for a child in custody.

Safeguards and next steps

The number of children who come into police custody is regularly reported to provide transparency and assurance to the public. From 1st April 2021 – 31st March 2022, 4,012 children experienced police custody, representing a reduction from previous years. It is important to recognise that experiencing police custody could range from a child being held for one or two hours to facilitate an interview before being released, or in a small number of cases it could mean a child is held until their appearance at court on the next lawful day.

The SPA and Police Scotland are committed to working with partners to consider a way forward to further minimise the number of children that experience custody, minimising unnecessary trauma and criminalisation.

Introduction

As with adults, children can come into conflict with the law. Many of these children will have other difficult things going on in their lives and may have been victims of crime themselves.

Usually, if someone is arrested, they will be taken to a police station and held in custody. After being held at a police station and interviewed, the person may be released without charge, or charged with a crime. Dependent on the gravity of the crime or offence, and the risk they may pose to themselves or others, some children will be held in custody to appear at court on the next lawful day.

This can be a confusing and stressful experience, both for those arrested and their loved ones.

It is recognised that regardless of the time spent in custody, whether it be for a short time or until appearing at court, police custody can have a significant negative impact on children and young people. Both the Authority and Police Scotland recognise that police custody is not always the most appropriate place for a child or young person.

Police Scotland takes steps to minimise the number of children that experience police custody. However, at times, it remains a necessity for a child to be held in police custody.

This Briefing Note provides details about the circumstances that may lead to a child being brought into police custody as well as the additional safeguards that exist for a child in custody.



Figure 1: Photograph of Police Scotland Custody Facility

Definition of a child

In Scotland there are different definitions of a child depending on the legislation. The generally accepted definition of a child in Scotland is anyone who has not yet turned 18. This definition is also used by the United Nations Convention on the Rights of the Child (UNCRC).

In 2021, Scotland raised the age of criminal responsibility from 8 to 12 years of age. This means that children under the age of 12 can no longer be charged or arrested.

The Criminal Justice (Scotland) Act also includes different provisions for those under the age of 16 and those aged 16 and 17 years of age and subject to a compulsory supervision order (CSO). Whilst 16 and 17 year olds who are not subject to a CSO are not considered to be children under the Act, the information and statistics presented in this Briefing Note include all persons under 18.

What does it mean to be in police custody?

An individual can be brought into police custody because they are suspected of committing a crime.

It is important to highlight that police custody is not punitive, but exists to facilitate the required investigative and judicial processes. This includes the capturing of biometric samples, such as fingerprints, photographs and DNA.

The majority of children who come into conflict with the law do not need to be brought into a police station. Despite this, there is still occasionally a need to bring them into a police station, which can be for both the investigative process and the child's own welfare where there are no alternative places of safety available.

The number of children that have been brought in to custody has reduced over recent years. In 2021-22, 4,012 children were taken into Police Scotland custody.

However, the majority of Police Scotland's custody facilities do not have a separate area for children and young people due to limitations in the current estate.

When a child or young person is held in custody, Police Scotland will often work in partnership with third sector organisations and other public sector partners to stop any further harmful behaviour by supporting them and their family. This can include educational support, health and wellbeing support and signposting to additional services. By responding with care and compassion it is hoped that children can be supported to change their behaviour at an early age.

Partnership working and interventions are key priorities for the Criminal Justice Services Division as part of a changing culture, as detailed in the [5 Year Vision and Direction](#).

There are also additional safeguards in place for children and young people. In the first instance, Police Scotland try to avoid bringing young people into police stations where possible.

When someone under 16 (or 16 and 17 year olds who are subject to a CSO) is in custody, their parent or guardian must be informed of this and attend the police station. This can also be another named adult or a social worker, depending on the circumstances. A young person must also have a parent, guardian or other adult, along with a solicitor, with them when [they are being interviewed](#).

For 16 and 17 year olds not subject to a CSO, an adult can visit them in police custody if the young person agrees to this. If the young person does not want an adult made aware of them being in custody, the young person must take advice from a solicitor. However, the young person can choose to not use a solicitor, but only if the named adult agrees to this.

Police Scotland and the Authority's stance on children in custody

The Scottish Parliament and Government have committed to incorporate the [United Nations Convention on the Rights of the Child](#) (UNCRC) into law. UNCRC puts children's rights into the heart of what public bodies do and ensures that children's rights are protected and upheld.

Although UNCRC has not yet been incorporated into law, Police Scotland have [committed to upholding](#) the principles of the UNCRC:

"We will uphold the rights of children and young people as set out in the UNCRC by embedding it within all policies and procedures".

Both the Authority and Police Scotland recognise that police custody is not always the most appropriate place for a child or young person. Whilst a child may be physically safe in police custody, the experience of being in custody may lead to lasting trauma. However, there is often not an alternative place of safety available.

*"Holding our children in police custody cells is not an appropriate setting and not in the interest of the child. What is lacking is suitable and available alternatives" –
Martyn Evans, SPA Chair*



Police Scotland work closely with partners to identify and secure alternative places of safety for children when they come into conflict with the law. However, as it stands the law requires children, who need criminal justice samples taken, or who need to be interviewed for a serious offence, to be taken to a police station for that purpose. As such there is little the police can do in these circumstances.

However, it is often the case that even when the police have completed their investigative processes and no longer need to hold the child in custody, there are no alternative places of safety available. This places a requirement on the police to hold the child in police cells for longer than is absolutely necessary to protect them from causing harm to themselves or others. We do not think this is acceptable in today's society.

The Authority and Police Scotland are committed to enhancing the partnership approach, further reducing the number of children that experience police custody.

To highlight their concerns and encourage solution focussed discussion the Authority and Police Scotland jointly hosted the 'Places of Safety for Children in Conflict with the Law Event' in November 2022. This brought together partners from social work, the Children and Young People's Centre for Justice, the Children and Young People's Commissioner, Scottish Government representatives and civil society organisations.

The key objectives for the event were to:

- Build awareness of the issue with key stakeholders through positive, solutions- focussed discussion.
- Promote the policing position that the police custody setting is not an appropriate environment for children and should be viewed by all stakeholders as a last resort.
- Generate discussion and debate about the 'right thing to do' for the child.
- Identify and agree the challenges and constraints currently preventing the 'right thing' from happening.
- Consider next steps to move this discussion forward.

This event led to the development of several recommendations that will support enhancement of local partnerships and protect children from unnecessary trauma and criminalisation.

Oversight and Assurance

All necessary steps are taken to reduce the number of children that experience police custody, however in the rare circumstance that there is no suitable alternative then several checks and balances are in place.

Where it is necessary to hold a child as defined by the Criminal Justice (Scotland) Act (i.e. under 16 or a 16 or 17 year old who is subject to a CSO) then this can only be improved by an officer of Chief Inspector or above.

The Authority regularly seeks assurance on the number, and treatment, of children in police custody. These discussions are held in public and reports can be accessed in the [SPA website](#).

In addition, the Authority runs the *Independent Custody Visiting Scotland (ICVS)* scheme. This scheme is made possible by the dedicated work of Independent Custody Visitors, who are volunteers that work across Scotland. Visitors make unannounced visits to police custody facilities to monitor the welfare of people in custody

Visitors note whether the detainees in custody are adults or children. The visits conducted by visitors provide oversight and assurance of the treatment of any child or young person in Police Scotland custody. Should a visitor have any concerns about the welfare or treatment of a child in police custody this will be immediately escalated.

ICVS publish an [Annual Review](#), which specifically reports the number of children brought into police custody in that year.

Looking forward

Following on from the event in November, the Authority and Police Scotland plan to continue to discuss the issue of children in custody with partners to establish improvements that can be made.

Further reading

A summary of the Places of Safety for Children in Conflict with the Law event, written by the SPA Chair Martyn Evans – [available here](#) on the SPA website.

Keeping up to date

To keep up to date with our work, please keep an eye on the Scottish Police Authority's [website](#) where you can find papers and watch livestream committee discussions, and follow us on Twitter:

@ScotPolAuth @policescotland

Date published: March 2023

Purpose of these Briefing Notes

The Strategic Police Plan commits to the provision of Policing for a safe, protected and resilient Scotland. This requires designing and maintaining services which meet rising and evolving demands in a constantly changing environment. To meet these demands, now and in the future, Scotland's police service must adapt and proportionately adopt the necessary technologies which will enable them to protect the safety and wellbeing of our communities (as outlined in the Policing Principles - Section 32 of Police and Fire Reform Act 2012).

This series of public focused and user-friendly Briefing Notes has been developed to provide an overview of the benefits of emerging technology and upcoming developments within policing, the policies that will govern them, and the ethical, privacy and human rights implications.