

Section 38 Beds

Transfer of children from police stations

Updated September 2016

Introduction

This guide is intended to explain the law in relation to the transfer of children from the police station overnight, Section 38 beds and what should happen when a child is refused bail.

Children should not be kept in the police station overnight after they have been charged with a criminal offence. Children refused bail should be transferred from the police station to local authority accommodation. There are some, limited, exceptions. Unfortunately research shows that children are unlawfully being kept in police cells on a daily basis.¹

Children have a number of rights while in police custody which are protected by both domestic law and international law. Safeguards have been put in place to prevent children being detained at the police station for longer than is necessary.

This guide has been produced by the Youth Justice Legal Centre, a project of Just for Kids Law. For more information on this topic and other issues related to youth justice, visit our website (www.yjlc.uk) or follow us on Twitter @YJLCUK. You can also keep up to date on the most recent developments in youth justice law by subscribing to our fortnightly legal updates [here](#).

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Key Points

Where possible, children should be granted bail.

Children should not be kept in the police station overnight after they have been charged with a criminal offence.

Children refused bail should be transferred from the police station to local authority accommodation.

¹ 1,498 children were detained overnight (4 hours or more between midnight and 8am) post charge by the Metropolitan Police during June 2015 – May 2016 [source: Just for Kids Law].

Police Duties

Bail or Remand at the Police Station?

Where a child is arrested for an offence and subsequently charged, the custody officer will either grant the child bail to attend court or will refuse bail until their first appearance at court. There is always a presumption in favour of bail. Custody sergeants should be reminded of their duty under section 11 Children Act 2004 to safeguard and promote the welfare of all persons under the age of 18 this should be in the forefront of their minds when making bail decisions.

Bail can only be refused for one of the following reasons under section 38(1) PACE:

- They cannot be identified
- To prevent offending (imprisonable offences only)
- Prevent injury, loss or damage
- Prevent interference with justice or the investigation
- For their own safety
- Believe they won't attend court
- Necessary to take a sample under PACE (age 14+ only) [Section 63B PACE 1984]

Or

- The child is charged with a serious violent/sexual offence listed in section 25(2) Criminal Justice and Public Order Act (CJPOA) 1994 and has previously been held in youth detention for any listed offence and there are no exceptional circumstances to justify bail.

Decision to grant bail

- Wherever possible, children should be granted bail
- The custody sergeant should allow the legal representative and the appropriate adult to make representations before a decision about bail is made given that most of the criteria for denying bail under section 38 PACE require the custody sergeant to have reasonable grounds for refusal of bail. The custody sergeant must make a written record of the grounds for the detention [section 38(3) PACE 1984]
- The custody sergeant should always consider conditional bail before making the decision to refuse bail

Refusal of Bail at the Police Station

Section 38(6) Police and Criminal Evidence (PACE) Act 1984 places a **duty on the police** to transfer children who have been refused bail to local authority accommodation rather than keeping them in the police station overnight. These are often referred to as PACE beds or section 38 beds.

There are only 2 exceptions to this:

- Where the custody sergeant certifies that it is **impracticable** to move the child to local authority accommodation; or
- The arrested child has attained the age of 12 and no secure accommodation is available and keeping the child in non-secure local authority accommodation such as emergency foster care, a children's home or staying with family members would not be adequate to **protect the public from serious harm from the child**.

Impracticable

Examples of 'impracticable' were included in the Home Office Circular 78/1992. They include extreme weather and repeated efforts to contact the local authority with no response. Impracticable does not include lack of accommodation or staff. If it is deemed impracticable to transfer a child, the police must present a certificate to the court explaining why the transfer failed [Section 38(6)(a) and (7) PACE 1984]. This is called a **Juvenile Detention Certificate**.

To protect the public from serious harm

This is a high threshold. Serious harm means 'death or serious injury, whether physical or psychological' [Section 38(6A) PACE 1984]. This only relates to children charged with murder or Schedule 15 offences² such as manslaughter; grievous bodily harm; robbery; rape.

² Schedule 15 Criminal Justice Act 2003 (Parts 1 and 2)

Local Authority Duty

Section 21(2)(b) Children Act 1989 places a **corresponding duty** on local authorities to provide accommodation when they are requested to under section 38(6) PACE 1984.

When secure accommodation is requested, whilst there is not an absolute duty on authorities to accommodate every child, there is a duty to have in place a **reasonable system** to enable them to respond to requests under section 38(6) for secure accommodation [[R \(on the application of M\) v Gateshead Council \[2006\] EWCA Civ 221](#), paragraph 43].

Transfer to secure Local Authority Accommodation can be to a secure children's home.

When non-secure accommodation is requested, there is an absolute duty on local authorities to provide accommodation [[R \(on the application of M\) v Gateshead Council \[2006\] EWCA Civ 221](#), paragraph 41]. Once a local authority has received a request for non-secure accommodation they can decide where to place the child and whether it is a secure or non-secure bed (in accordance with section 25 Children Act 1989).

Transfer to non secure Local Authority Accommodation can be to a foster home, a children's home or sometimes with a family member or friend.

If bail is refused

- This decision can be challenged by judicially reviewing the police refusal of bail and/or the local authority's refusal to accommodate. Make an out of hours emergency application to a High Court judge. Public Law Project has produced guides on [judicial review](#) and [legal aid funding](#).
- Ask the police whether they have fulfilled their section 38 duties by contacting the children's services Emergency Duty Team (EDT).
- Find out if the police have requested non-secure or secure accommodation.
- Contact the children's services Emergency Duty Team (EDT) to confirm the request has been received and processed.
- Ask for a copy of the child's custody record, the custody sergeant should record the outcome of all calls made to children's services on the detention log.

At court

If a child is brought to court from police custody having been held overnight post-charge, the police must produce a Juvenile Detention Certificate [Section 38(6)(a) and (7) PACE 1984].

At court

- Always request the Juvenile Detention Certificate.
- Ask the magistrates or district judge to interrogate the refusal of bail and the reasons given on the Juvenile Detention Certificate. If appropriate invite the court to make a pronouncement on the appropriateness of the police actions.

Key Reading

Legislation & case law

Section 38(6) Police and Criminal Evidence Act 1984

Section 21(2)(b) Children Act 1989

Section 12 Children Act 2004

Code C, Police and Criminal Evidence Act 1984

[R \(on the application of M\) v Gateshead Council \[2006\] EWCA Civ 221](#)

Non-Statutory Guidance

[Home Office Circular 78/1992](#)

[Post-charge framework for transfers of children to local authority accommodation \(flowchart\), National Appropriate Adult Network \(NAAN\), 2015](#)

[Joint Letter from the Home Office and the Department for Education on the transfer of children from police custody to Local Authority Accommodation under section 38\(6\) of the Police and Criminal Evidence Act 1984, 20 January 2015](#)

Other useful information

[National Strategy for the Policing of Children and Young People, National Police Chiefs' Council, published August 2015](#)

[An Introduction to Judicial Review, Public Law Project, 2013](#)

[How to Apply For Legal Aid Funding for Judicial Review, Public Law Project, 2016](#)

JARGON BUSTER

Custody sergeant	The police officer responsible for people in custody at a police station
Officer in the case	The police officer overseeing the police investigation who may express an opinion on whether to grant bail
Section 38 Beds, PACE Beds	Secure or non-secure accommodation provided for children who were being detained at a police station post-charge
Section 38	The rule that children should not be kept in a police cell if they don't get bail and should be moved to a bed organised by the local authority
Section 21	The rule in PACE 1984 that says the local authority has an absolute duty to accommodate a child
Juvenile Detention Certificate	Certificate for the court which explains why the child was kept in a police cell