

Care experienced children in police custody: Information for practitioners

Fiona Dyer, CYCJ

To ensure children (under age 18) know their rights when in police custody, and practitioners are aware of these too, this Info Sheet has been designed for practitioners (including social workers, residential care staff and foster carers) so you can offer the support and advice children need.

When we refer to care experienced children we want to include as many children as possible. This includes any child who has been or is currently in care or from a looked after background at any stage of their life, no matter how long. It includes, but is not limited to, foster care; a residential house or school; or within a secure care setting. They can be looked after with friends or relatives (in a kinship placement) or looked after at home if they are subject to a Compulsory Supervision Order through the Children's Hearings System. They might be looked after on a voluntary basis (with their parent's agreement); via an Order made through the Children's Hearings System; or certain types of Court Order.

There is evidence to suggest that even when children have been involved in the justice system previously, they may still be unaware of their rights. If they are lawfully detained then they have the right to:

1. Request a solicitor
2. To request not to have a solicitor
3. Have an appropriate person with them
4. Have their parent or legal guardian contacted to advise they are in police custody
5. Have access to water, food every four hours, breaks during interviews, sanitary products, medical professional
6. Warm clothing/additional blankets
7. Not be detained with adults
8. Not to be discriminated against
9. To have their best interests and views taken into account in all decision making on interventions by the Police
10. Complain

What you should know

- Children need to ask for a solicitor. They are not automatically allocated one
- If a child does not want a solicitor, that is their right. As a result of refusing a solicitor, they cannot be interviewed by the police
- If anyone has parental responsibilities and rights for the child, they must be informed of the arrest or detention of a child in police custody unless there is a legal order to the contrary or the child is at risk of significant harm if that information is shared. If the child is currently being looked after at a children's house or secure unit, before the child is taken to the police station find out and advocate for the matter to be dealt with at the home/unit without the child needing to go to the police station. If the child wishes for a certain worker not to be present at the interview, it is their right.

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- If a child is currently looked after and accommodated, and must attend a police station or court, someone should go with and support them. The child should be asked who they want to support them and this request should be met wherever possible. Social workers should be advised of any arrests at the earliest opportunity.
 - Children have the right not to be deprived of their liberty, other than in exceptional circumstances; there no other means will protect them from significant harm and it is proportionate and necessary to ensure their safety and for the shortest period of time possible.
 - Police custody must be the last option for any child and be used for the shortest period of time possible. Social Work has a duty to find alternative care for the child
 - Check that children are aware of their rights and advocate on their behalf where necessary to ensure that rights are respected and needs are met. Approximately 60% of children in the justice system have speech, language or communication needs. If you are aware that the child has any additional needs where they may require support, please advise the police and their solicitor.
 - If you have any additional information regarding the child that is relevant; for example physical health, mental health, addiction, accommodation that might impact on their fitness to be interviewed - ensure this is passed on to their solicitor.
 - When you can speak to the child, question their understanding of processes and if they are unsure ask on their behalf to support their understanding/involvement in the process
 - Do not underestimate the impact/re-trauma/re-traumatisation being in police custody can cause
 - Being strip searched can be especially traumatising for a child, especially those with additional support needs and for girls or transgender children. It should not be carried out other than in the most exceptional and serious circumstances. Only Senior Police Officers can authorise a strip search and they must justify why this is necessary and why they believe the exceptional circumstances are being met.
 - If you believe/suspect the child might have been criminally/sexually exploited you must treat the matter as a child protection concern and follow child protection procedures. This may include advocating that the child is interviewed as a vulnerable witness. You must also pass this information on to the child's solicitor.
 - If you can or are offering the child additional support/services to meet their needs, please ensure this is passed on to their solicitor as it may prevent them remaining at the police station unnecessarily.
 - Speak to the child's solicitor to advise of any additional support should they be needed if the child has to appear at Court; especially if bail is opposed to reduce the risk of the child being remanded in custody. **The Promise has highlighted that care experienced children are over-represented in the justice system and within custody, which is a failing of the systems designed to protect them and a breach of human rights**
 - If there is an option for the child's case to be remitted to the Children's Hearing System, put a strong argument and plan in place to make this possible. We need to retain more children within our childcare system; and keep them out of the adult justice system where outcomes for these children are poor.
 - Children from diverse backgrounds face particular needs, vulnerabilities and prejudices associated with their identities; which may include membership of more than one group. Professionals need to be mindful of these when supporting children from these groups.
 - Every child has a right to robust risks and needs assessment, and to holistic GIRFEC assessment of wellbeing needs, and should have a Child's Plan
 - Consider and discuss with the child whether they should have a civil law solicitor assist them as well, such a solicitor working in the Children's Hearing System and solicitor dealing with child protection matters. Check if the child's criminal law solicitor also works in those fields and can offer further representation. This can ensure continuity for the child.
 - Children accused of offending behaviour often experienced adversity, victimisation and trauma, presenting with a range of needs, vulnerabilities and complexities and lacking positive support and role models. It is critical that all additional support they need is offered, both within and separately to the criminal matter if outcomes for children are to be improved and repeated contact with the criminal justice system is to be avoided.

A flyer has been co-produced with young people for care experienced children in police custody which can be printed out and given to any child you are working with. [Access it here](#). #KeepThePromise