



Attorney General's Guidance

Overnight Detention of Children and Youths

- 1) This guidance is issued by the Attorney General for Centeniers, Custody Sergeants and Children's Services. It has been issued after the entry into force of amendments to the Police Procedures and Criminal Evidence (Jersey) Law 2003 ("PPCE") made by the Criminal Procedure (Bail) (Jersey) Law 2017 ("the Bail Law"). The key changes are contained within new Articles 36(7), 36(8) and 36(9) PPCE as amended:
 - (7) *Subject to paragraph (8), where a Centenier authorizes that a child or young person charged with an offence is to be kept in police detention under paragraph (3), the Centenier shall, pending the child's or young person's attendance before the Youth Court or the Magistrate's Court, as the case may be, secure that he or she is transferred to secure accommodation as soon as is practicable.*
 - (8) *If –*
 - (a) *having regard to all of the circumstances, in the Centenier's opinion it is impracticable to transfer the child or young person to secure accommodation; or*
 - (b) *there is no secure accommodation available pending the child's or young person's attendance before the Youth Court,*
the Centenier shall authorize the child's or young person's continued police detention and shall, upon that child's or young person's attendance at the Youth Court, produce a certificate stating the grounds for that detention.
 - (9) *For the purpose of securing the child's or young person's transfer to secure accommodation under paragraph (7), it shall be lawful for any person acting on behalf of the Minister for Health and Social Services to effect the transfer of that child or young person to secure accommodation, and to detain him or her for the purpose of effecting that transfer".*

Introduction

- 2) This guidance applies to children and young people (aged 10 to 17 years) who:
 - (i) are in police detention under arrest before charge and face the prospect of being detained overnight; or
 - (ii) have been charged with offences and refused bail.

- 3) A night in a cell is an intimidating experience. Police custody facilities are principally designed to detain adults suspected of criminal activity and they offer little in the way of comfort or emotional reassurance. For a child or young person, especially one deprived of external support, this environment may be harmful.
- 4) Children and young people brought into custody are in a vulnerable position; not only by virtue of their age, but because the circumstances which brought them into contact with the Police may have left them very distressed.
- 5) The new law recognises that police cells are not a suitable place for children and young people. Article 36(7) of PPCE, as amended by the Bail Law, places upon the Centenier specific duties in respect of young people to ensure that they are transferred to secure accommodation (that is accommodation provided by the Minister for Health and Social Services for the purpose of restricting the young person's liberty) pending attendance at the first available Court.
- 6) The UN Convention on the Rights of the Child ("UNCRC") has been extended to Jersey. Under the UNCRC custody for children is to be used "*only as a measure of last resort*" and for the shortest appropriate period of time.
- 7) Only if it is impracticable to transfer the child or young person to secure accommodation or if there is no secure accommodation available pending their attendance before the Court shall the child's or young person's detention at the police station be authorised.
- 8) The aim of this guidance is to safeguard children and young people through avoiding, so far as is practicable, their detention overnight in police custody, either pending further enquiries before charge, or following charge and the refusal of bail.
- 9) This guidance recognises that the Police and Children's Services must work together, to ensure that children and young people are given the care they deserve and aims to meet obligations under the UNCRC by ensuring that there is minimum restriction of liberty commensurate with the circumstances of the case.

Principles

- 10) The safeguarding and wellbeing of the child or young person is paramount.
- 11) Whenever possible, charged children or young people will be released on bail.
- 12) Conditional bail should be considered in preference to custody if possible.
- 13) If police bail is refused, the Centenier must record the decision and provide a copy to Children's Services.
- 14) If police bail is refused, the child or young person should be transferred to secure accommodation, unless it is impracticable to do so (Article 36(8)(a) PPCE as amended).

- 15) If secure accommodation is requested, Children's Services should do everything possible to provide secure accommodation.
- 16) Failure to provide secure accommodation must be recorded in writing and the Centenier must state the grounds for the child's or young person's detention (Article 36(8) PPCE as amended).
- 17) The power to detain, and the responsibility and accountability that goes with it, transfers to Children's Services when a child or young person is transferred to secure accommodation (Article 36(9) PPCE as amended).
- 18) The Police and Children's Services must ensure the child or young person attends Court.

Children and young people in police detention under arrest before charge facing the prospect of being detained overnight

- 19) The child or young person must be bailed to return to the police station (with or without conditions) in order to avoid their detention in the police station overnight, unless the Custody Officer is satisfied of one or more of the following:
 - (i) the integrity of the investigation would be compromised if the child or young person were released on bail, (for example, witness interference, disposal of potential evidence or collusion with co-accused);
 - (ii) the child or young person would fail to return to the police station;
 - (iii) the child or young person would commit further imprisonable offences;
 - (iv) continued detention is in the best interests of the child or young person's welfare;and that conditions upon bail would not address the Custody Officer's concerns.

Charging

- 20) When the Centenier decides s/he has sufficient evidence to charge a child or young person with an offence, they have a number of options (depending on the circumstances). If a child or young person is to be charged, Custody Officers and Centeniers should be aware that secure accommodation (if appropriate) will be more difficult to arrange outside daytime and early evening and should attempt to conclude charging accordingly.

Bail

- 21) Sometimes releasing a child or young person on bail may raise concerns that it would prevent justice being done, lead to further crimes or compromise the young person's safety.
- 22) If concerns exist, the Centenier must consider whether they would be allayed by placing conditions on the child's or young person's bail.
- 23) It is good practice for the Custody Officer or Centenier to contact Children's Services to discuss concerns and appropriate conditions; especially if there is a concern that bail may be breached.
- 24) Appropriate Adults should observe this decision making process carefully. They should be permitted to challenge Centeniers if they think the criteria for refusing the right to bail (or conditional bail) has not been met.
- 25) If the Centenier decides that the right to bail – even with conditions – must be refused s/he must make a detailed written record of the reasons for this refusal. If the child or young person is subsequently not transferred to secure accommodation the reason should also be recorded.

Transfer to secure accommodation

- 26) If a child or young person is refused bail, Centeniers have a duty under the new Article 36(7) PPCE (as amended) to transfer the child or young person to secure accommodation as soon as is practicable. However, the law allows the Centenier to retain a child or young person in police custody in circumstances where a transfer is *impracticable* or there is no secure accommodation available.
- 27) If a Centenier decides that transfer is impracticable, s/he must make a detailed written record of the reasons behind this decision. It must be presented to the Court before which the child or young person appears. A copy must be provided to Children's Services.
- 28) If there is no secure accommodation available pending the child's or young person's attendance before the Court, the Centenier shall produce a certificate stating the grounds for that detention to the Court. A copy must be provided to Children's Services.
- 29) The law does not specify who is responsible for conveying the child or young person between police custody and secure accommodation. It is the shared responsibility of the Police and Children's Services to work together in deciding how to transport the child or young person, making an appropriate risk assessment and taking into account the best interests of the child or young person. Factors to consider would be age, distance, maturity, difficulty of travel, seriousness of the offence and vulnerability.

The power to detain

- 30) When a Police Officer hands a child or young person over to Children's Services' staff, they also transfer the power to lawfully detain that child or young person. (Article 36(9)).
- 31) The child or young person must be held in lawful custody until their appearance at Court. Following the transfer, Children's Services' staff are accountable for ensuring that this custody is lawful. They become the custodians, with the same legal responsibility toward the child or young person that a police Custody Officer has toward a detainee in a police cell.

Ensuring attendance at Court

- 32) When a child or young person is charged and detained the responsibility for ensuring they attend Court rests with:
 - (i) the Police, if the child or young person has not been transferred to secure accommodation; or
 - (ii) Children's Services, if the child or young person has been transferred to secure accommodation, **assisted by the Police as required**.

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