

Mid and West Wales Safeguarding Board – Reducing the Unnecessary Criminalisation of Care Experienced Children and Young Adults: Practice Guidance

2023



Reducing the unnecessary criminalisation of care experienced Children and young adults

Introduction

This Mid and West Wales Safeguarding Board practice guidance has been produced to address the recommendations set out in the Welsh Governments 'All Wales Protocol for reducing the criminalisation of care experienced children and young adults', providing clear operational guidance for residential providers and agencies within the Criminal Justice System. The Welsh Governments protocol, published in March 2022, was aimed at various agencies including Local authorities, Police services, Youth Justice Services (YJS), the Crown Prosecution Service (CPS) and many more who are involved in providing support for children in care.

This Mid and West Wales Safeguarding Board Practice aspires to reduce the unnecessary criminalisation of cared experienced children and young adults in an ethical and proportionate way. The practice guidance builds on recommendations set out in the Prison Reform Trust's Review, authored by Lord Laming, 'In care, out of trouble'. It has been developed with reference to the most recent national guidance and effective practice surrounding diversion. Signatories from all agencies involved are documented at the end of the document.

Since 2008, children entering custody has fallen considerably. The decline has been connected to realistic cost reduction as well as a significant growth in diversionary measures. The number of children that are categorised as looked-after remains significantly high in the youth justice system in comparison to non-looked-after children. In the year 2018, 68% of children in custody and receiving criminal sentences in the UK, had a history of being in care. Therefore, the key motive of this guidance practice is to encourage and provide the framework for these agencies to work collaboratively and create local arrangements to reduce these high records and unnecessary criminalisation. The 2022 Welsh Government protocol sets out what agencies need to do to ensure cared for children and care leavers are deterred from the criminal justice system wherever possible through alternative strategies. It is then the local authority's objective to implement their responses and explain their actions on how it will be achieved operationally.

The local collaborative partnership in Mid and West Wales, acknowledges that children can at times be criminally exploited and their needs may be maintained through a method which seeks to address this, which can involve multiple agencies. An incorrect response to behaviour which is challenging can contribute to the failure of placements and can be related to a drift

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into criminal and exploitative sub-cultures across the region. This negatively impacts not only the prospect of placements remaining secure and achieving positive outcomes, but also the future and long-term ambitions of care leavers who are also over-represented in the criminal justice system.

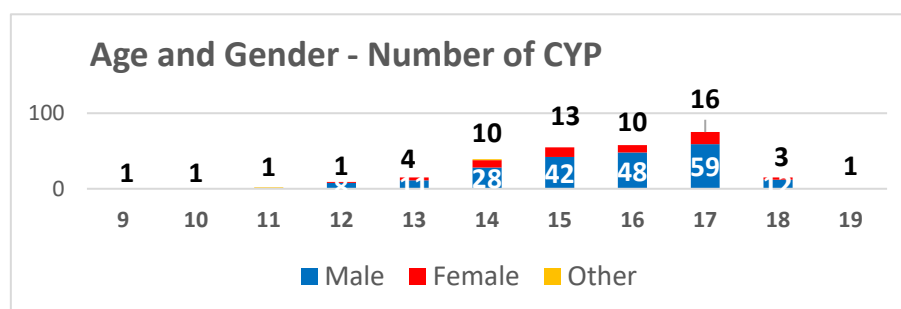
Care leavers have been estimated to make up 27% of the adult prison population and 25% of the homeless population in Wales.

It is important to note that evidence shows that highly punitive sanctions have little impact on recidivism.

During a snapshot of data taken on the 1st February 2021 involving 1287 cases managed by Youth Justice Services in Wales, it was evident that 271 (21%) of those cases had Care Experienced child status, with 208 being male, 61 being female and 2 being identified as other.

Of those 271, (41%) had become criminalised while in care.

The age range of those offending is between 9-19yrs, however it's at its highest between age 15-17. There is a clear disparity between males and females, with males featuring highest across the age range.



Placement Type:

- ❖ 47% Residential Home
- ❖ 23% with family
- ❖ 21% Foster Placement
- ❖ 6% Specialist Placement
- ❖ 3% Secure Placement (4 of the 8 were Criminal Secure)

Analysis of this data showed that:

- YOT Managers identified a strong link in trauma-based behaviours of both Children Looked After and children who offend.
- Quite a broad range of CEC % across YJSs (10% - 41%) and across the Regions (17% - 24%).
- Age ranges from 9yrs to 19yrs.
- Gender issue - high percentage of males.
- Age spikes – peaks at age 17.
- Regional hotspots – Violence highest in South Wales.

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- *Most common Offence Type – Violence in both males and females, but significantly higher in males.
- Highest offending figures recorded in the snapshot were from those who had previously been or are currently in residential care.
- The highest disposal categories are Court and Community Order.
- Community Order disposals peak at the age of 17 and out of court disposals peak at the age of 15.
- The highest figures of Out of court disposal and Community Order are from those within Residential settings.
- 8 looked after children within the count were from outside of the country but were placed in Welsh settings at the time of data collection.

Aims

Signatories to this Mid and West Wales Safeguarding Practice Guidance include the four local authorities and Health boards cover: Carmarthenshire, Pembrokeshire, Ceredigion and Powys, with each being responsible for contracting and ensuring the correct management of residential providers within the region.

Dyfed Powys Police are responsible for supporting agencies and implementing enforcement of the operational guidance associated with this practice guidance. The Wales Crown Prosecution Service act as the prosecuting agency within the region, certifying correct application of legislation and ensuring appropriate outcomes for those young people who are in the youth justice system.

The Youth Justice Service are accountable for delivering a fair and objective service to young people within Dyfed Powys, ensuring preventative measures are in place as well as interventions to deter away from further criminalisation.

All agencies are accountable for delivery of the practice guidance including escalation where necessary. This practice guidance also has support from other key strategic partners, including HM Probation Service, the Children's Commissioner for Wales, the Care inspectorate for Wales and the Dyfed Powys Police and Crime Commissioner.

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The objectives of the practice guidance are to:

- Reduce the unnecessary criminalisation of care experienced children and young adults.
- To encourage and increase the use of restorative justice approaches to managing behaviour within the children’s care homes.
- To underpin and strengthen the multi-agency effort to reducing the criminalisation of care experienced children and young adults.
- To strike a balance between the rights, responsibilities and needs of the young person and the rights, corporate parenting responsibilities, and duties of local authorities and care staff. This also includes decisions around whether Police involvement is the most appropriate course of action.
- To ensure the rights and needs of victims are given due attention in any decision-making process relating to the offending child.

Key Principles

It is the duty of each professional practitioner or manager that works with children to always strive to understand the underlying causes of a young person’s behaviour. Understanding the rationale of the child’s actions, including their needs and perceptions should be at the centre of any incident and subsequent decision-making process. Listening to their voices should be dominant in the response to incidents involving care experienced children and young adults.

Cared for children and young adults often have multiple disadvantages which compound their vulnerability and increase the likelihood of ‘contact’ with the justice system. These children and young adults may not know they have neurodevelopmental difficulties or might mask the challenges they have, displaying them through negative behaviours and actions as their only means of communicating their needs. We are moving to the term neurodiversity to embrace these differences and this practice guidance acknowledges the disadvantages and therefore

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the greater exposure cared for children have within the justice system. Each Local Authority Children's Services department will take advantage of the Pupil Deprivation Grant, which supports them in establishing distinct services dedicated to children in their care, for example, the embedding of Looked After Children Education Co-ordinators.

A key principle of this practice guidance is to ensure criminal justice agencies (and professionals working outside of children's services) will be aware of, and sensitive to, the vulnerability and multi-layered social disadvantages of cared for children. Every child in care has a care plan which sets out how multi-agency professionals will meet their needs.

Every strength should be created to avoid the unnecessary criminalisation of cared for children. It is acknowledged that many cared for children have suffered abuse and trauma, disturbing their emotional and behavioural maturity, theoretically making them particularly susceptible to involvement in the criminal justice system. Often children in care, coming into contact with the criminal justice system is something that is out of their control, as they can often be criminally exploited. Criminalisation can be a barrier to a positive transition to adulthood and future life prospects.

If a crime has taken place, it is a victim's right to have that crime recorded in line with National Crime Recording Standards. All crimes will be acknowledged and recorded correctly by Dyfed Powys Police. To replicate this within a care setting, all incidents should be acknowledged and appropriately recorded.

The causes of offending are often beyond the reach of just one agency. A 'child centred' approach should always be adopted by all professionals, thus providing an integrated, harmonised and pro-active response in order to prevent, address and solve challenging behaviour.

A 'child centred' approach will include each organisation:

- Prioritising the best interests of children, recognising their individual needs, capacities, rights and potential. All decision making will be wholly child-focused, developmentally informed, acknowledging structural barriers and meeting our core responsibility towards children.
- Promoting children's individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.

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- Encouraging children’s active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.
- Promoting a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises stigma from contact with the system.

The principles set out within this practice guidance strive to not only prevent criminalisation but also offer protection to those children and young people already in the justice system.

All professionals have a responsibility to ensure that additional learning needs (including communication and interaction, cognition and learning and social, emotional and mental health difficulties) presented by children in care or those harmed by an incident are identified, acknowledged and addressed in the management of the response to the behaviour.

Agencies must recognise the vital role of early intervention and prevention in reducing criminalisation. The placement of the child must meet their identified needs as this will significantly contribute to this prevention.

Restorative approaches should be present in all responses for incidents which occur in-house and in the wider community.

In-Care Settings

A written behaviour management policy setting out the measures of control, restraint and discipline which may be used, should be referred to as an aide to in-house responses. It is necessary for all incidents within placements to be recorded to ensure there are informed records of the young person, should a situation arise in the future whereby Police are called.

Dyfed Powys Police data identifies the most common causes for Police call outs include violence by a young person and criminal damage.

When addressing **all** incidents, the below should apply:

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- Staff within the care setting need to consider all factors relevant at the time when considering action.
- Consideration should be made to training and in-house behaviour management policies.
- A consultation should take place with other on duty staff and management when deciding on actions. It should be considered that the situation can be managed via the Care Plan for the young person concerned and liaising should take place with their Social Worker regarding this.
- The question should always be considered of whether Police attendance is the most effective or proportionate response. In the situation whereby there is a significant loss of control then Police attendance may be required. If the Police do attend and discuss the incident with the young person, it must not be assumed or expected that this will automatically result in the arrest of the young person. Assurance is given that if a crime has been reported then this will, without fail, be recorded as such in line with the National Crime Recording Standards.
- Consequences for the actions of the young person should be agreed, this should be decided following consultation with colleagues and where appropriate the victim and other agencies; such as Children Social Care, Police and YJS.
- The victims' right to involve the Police is to be respected and supported.

All efforts, if appropriate, must be made to ensure that the child is kept within their 'home' to ensure they are able to benefit from local services provided to them.

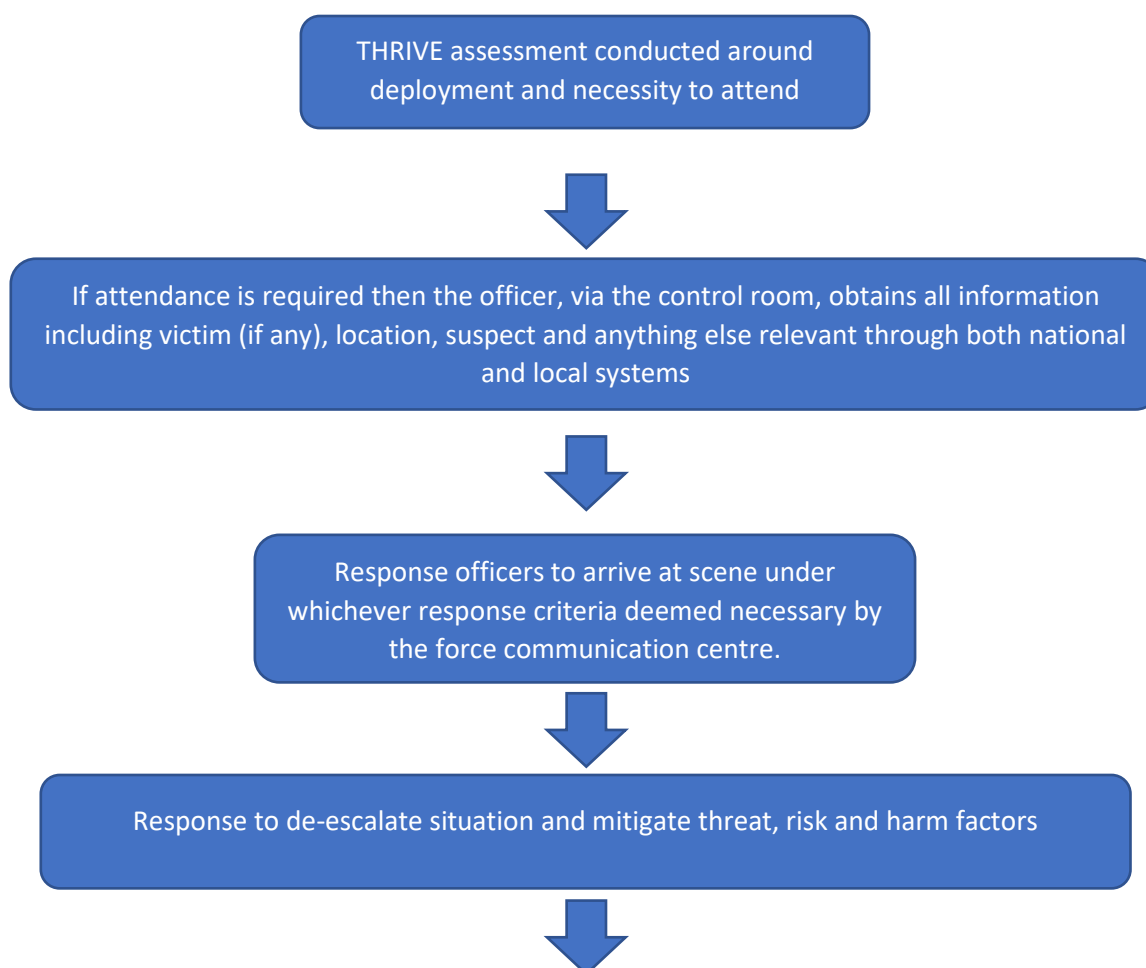
Police involvement

As part of this practice guidance, the agencies signed up will commit to de-escalating incidents and internal management of each situation, until the threshold has been reached for Police involvement – i.e there is an unacceptable and unmanageable level of risk to personal safety.

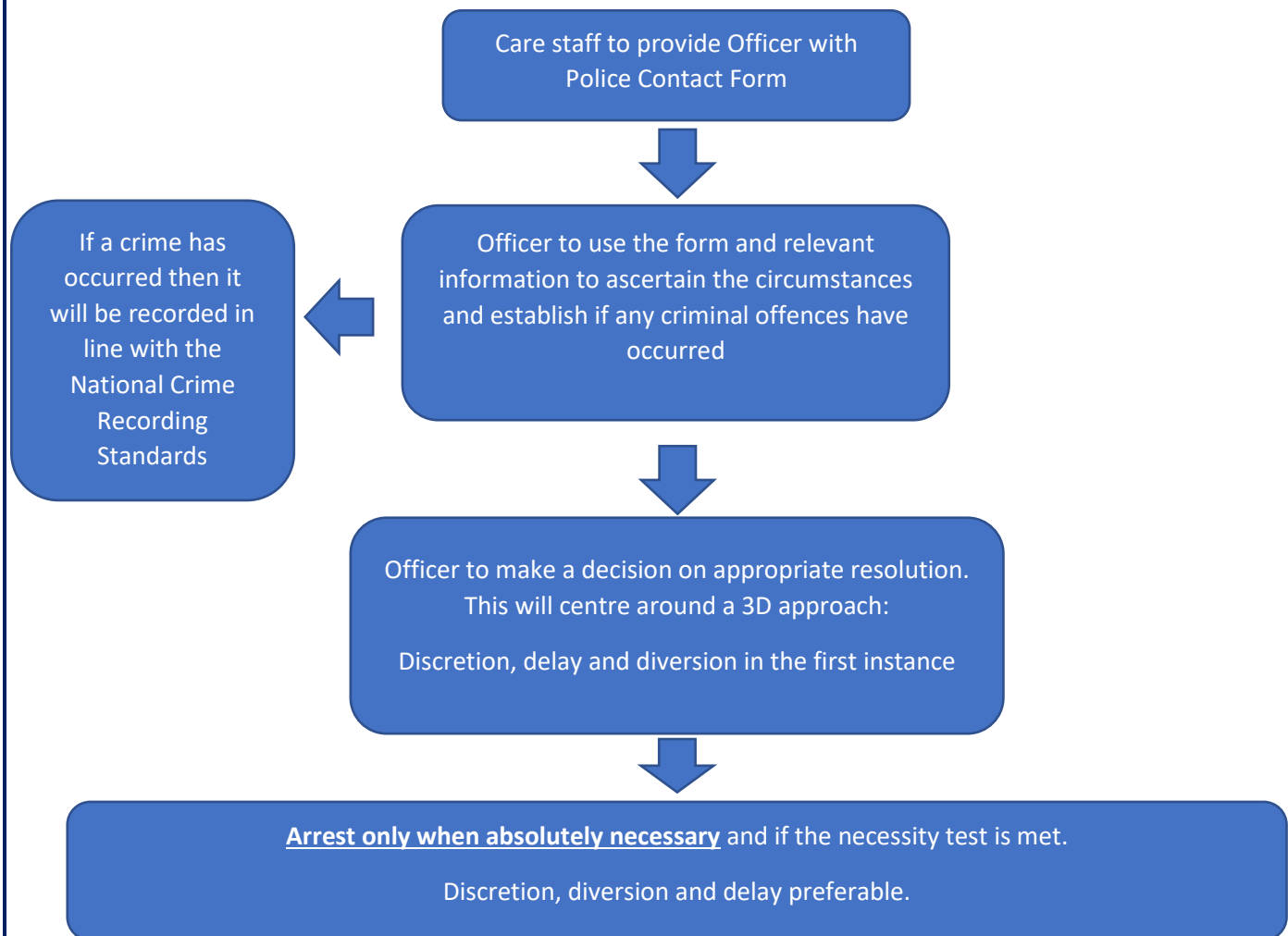
Police involvement should be a last resort when dealing with incidents involving looked after children. Wherever appropriate, other professionals should be approached to deal with challenging behaviours by means of discretion and diversion such as informal education, the use of permitted sanctions and restorative justice.

Where there are incidents which can have grave consequences such as a potential for serious injury, serious harm or serious financial loss; it is recognised that such events will require a Police response.

The below flow chart explains the process followed by Police once a call has been received:



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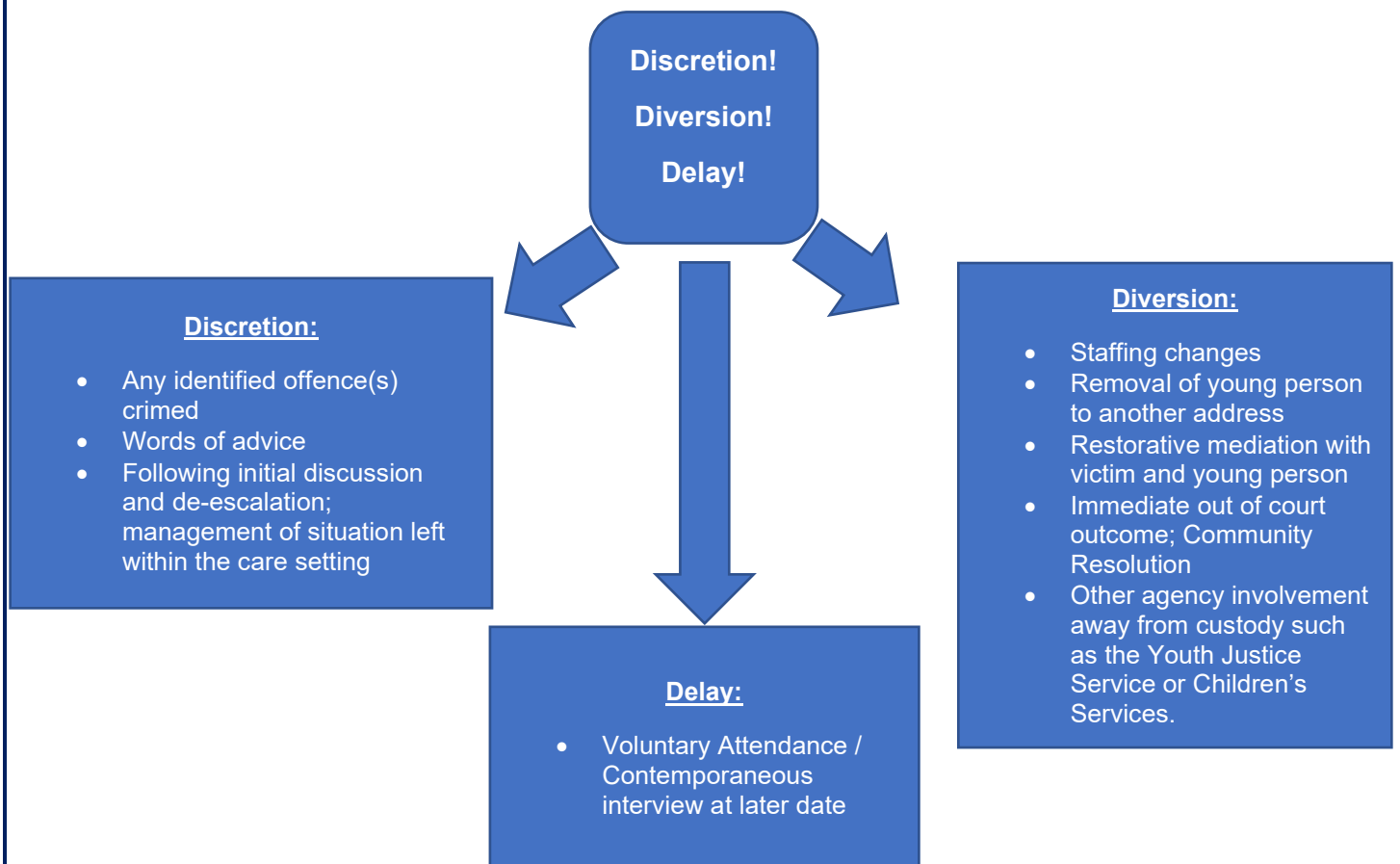
To aid decision making, the officer should be presented with a completed Police Contact Form (Appendix 1). Good practice allows for a cooling off period, for decisions to be reached slow time and informed by a host of professionals.

The Police Contact Form should be presented to the Custody Sgt if a decision to arrest is made and uploaded to the case file along with the CPS 10 point checklist (Appendix 2).

3D approach

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Before any arrest of a child or young person, consideration **must** be made for discretion, diversion or delay as detailed in the below illustration:



Transfers and Detentions

Children brought into custody are in a particularly 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 highly distressed. They may be under the influence of drugs or alcohol, recovering from a recent trauma or coming to terms with events that have damaged valuable relationships which will have a lasting impact on their lives. Judged even against the reduced capability of a child, they will not be in a strong position to cope with the stressful and demanding nature of time spent in custody. The law already recognises that police cells are not a suitable place for children. The Police and Criminal Evidence Act 1984 (PACE) requires that where police bail is refused, the young person must be brought before the first available court. In some

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instances, this could be on the same day, but more usually the court appearance will be the following day.

If a child aged 10–17 is charged with an offence and denied bail, the police are legally required (except under specific conditions) to make arrangements for the young person to be transferred to Local Authority accommodation. The statutory duty is a reciprocal one and the Local Authority is required by the Social Services and Well-being (Wales) Act 2014 to ‘receive and provide accommodation for children’ under this provision. In 1991 the UK ratified the UN Convention on the Rights of the Child (UNCRC) agreeing that custody be used “only as a measure of last resort and for the shortest appropriate period of time”. This was further strengthened in Wales with the Rights of Children and Young Persons (Wales) Measure 2011 which imposes a duty to ensure due regard to the rights and obligations in the UNCRC.

Following the detention of a young person at any Police Custody Suite in Wales, the below Welsh Government Guidance should always be considered at every juncture:

All Wales Guidance for the appropriate management and transfer of Children and Young People by the Police and Local Authorities.

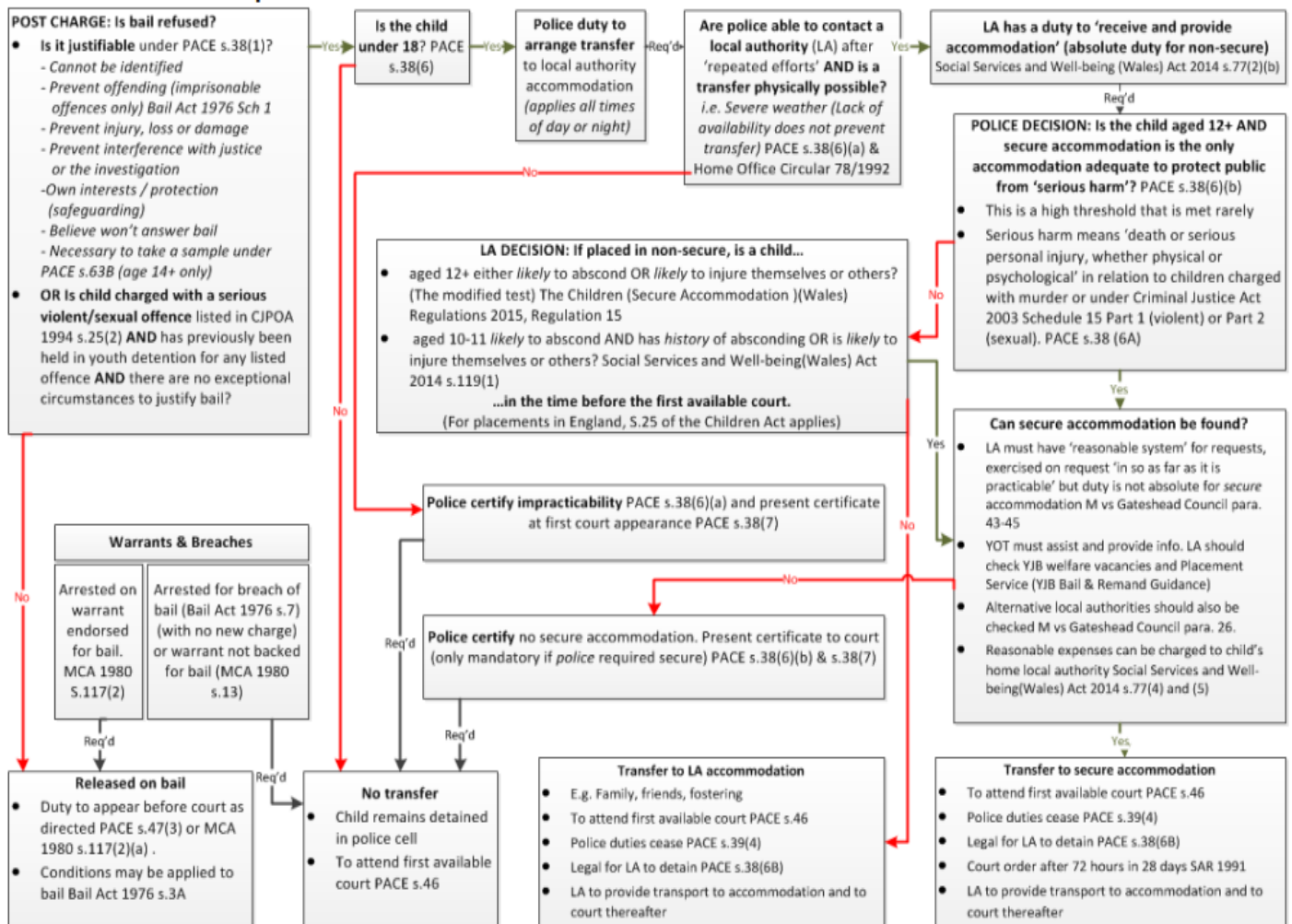


transfer-of-children-a
nd-young-people-by-

The below diagram highlights the processes for both Police and Local Authorities around the transfer of children from Police custody:

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Process Map for the transfer of children and young people by the police and local authorities.



¹ The legal duty for a local authority to provide accommodation under Section 21 of the Children Act 1989 has been replaced by Section 77 of the Social Services and Well-being (Wales) Act 2014

Dyfed Powys Local Authorities and Dyfed Powys Police have also agreed to comply with the 'All Wales guidance for the appropriate management and transfer of children and young people by the Police and Local Authorities Under the Police and Criminal Evidence Act 1984' (see attachment for full guidance).

The guidance requires Local Authority and Police to agree local arrangements in the review of cases where appropriate accommodation for children was not found.

With particular reference to Sections 8, 9 and 10 of the above guidance.

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In all four regions there is a Local Operational Group (LOG) which all report to the regional safeguarding group. In these meetings there will be Senior representatives from a range of partners including, Police, Social Services, Health, Education and Third Sector.

In cases where the Police and the Local Authority have not been able to reach agreement, resulting in the child not being provided with accommodation, the matter can be raised and discussed at these meetings. The sole aim of working together is to ensure children are not left overnight in the police station whenever possible.

During the meeting representatives will review the case based on the referral information submitted and any other relevant information obtained from partner agency records. Any discussions or outcomes from this meeting will be recorded in the minutes and any learning or actions will be documented and disseminated to the relevant agencies.

In addition to this Dyfed Powys Police will provide data to CYSUR on a quarterly basis reporting any emerging themes across the region.

Dyfed Powys referral process to Local Operational Group for children left overnight in a police station

No agreement is reached between the Custody Officer and the Social Worker about bail and subsequent need for secure or non-secure accommodation.

The matter to be escalated to a Senior Police Officer and Senior Children's Service Manager (this also applies to Out of Hours)

If the matter is still not resolved and the child is required to spend the night in a police station. Both the Police and Social Services should record their reasons on the LOG Referral Form and email to the relevant authority.

It is important both the Police and Social Services complete the Local Operating Group referral form and email the form to:

Powys 01874 612054 safeguarding.unit@powy.gov.uk

Pembrokeshire 01437 776444 ccat@pembrokeshire.gov.uk

Ceredigion 01545 574000 dds.log.coordination@cereddigion@govuk

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The incident will be heard at the Local Operational Group and the referrer(s) will need to present the case. Any learning will be disseminated to all relevant partners.

Dyfed Powys Police will provide quarterly data to the regional Safeguarding group highlighting any emerging themes.

Decision to Prosecute

The following principles apply:

- For those children and young people for whom formal diversion is not an option, it is still important to ensure that a prosecution is only brought in circumstances where this is a proper and proportionate response.
- Informal disposals such as restorative justice conferencing, reparation, acceptable behaviour contracts and disciplinary measures by the home should always be considered first, especially from the age of 10 years and upwards, given this is the legal age of criminal responsibility. Behaviour contracts will be a written contract between a young person and their carer, which outlines the child's behavioural obligations in meeting the terms of the contract, as well as the carers obligations once the young person has met their agreement.

Further guidance on out of court disposals can be found here:



OOCD guide.pdf

- A Youth Offender Specialist will undertake the major reviews of files involving children and young people and take all major decisions in relation to those files.
- It is essential in all decisions to prosecute that, having considered the evidence, prosecutors identify and determine the relevant public interest factors tending for and against prosecution. If there is sufficient evidence to establish a realistic prospect of

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conviction a prosecution will usually follow unless the prosecutor is satisfied that there are public interest factors tending against prosecution, which outweigh those tending in favour.

- It is important, in appropriate cases, to obtain sufficient information about the child's home circumstances and background from sources such as the Police, Youth Offending Service, and Children's services, before making the decision whether to prosecute. This should be obtained via the completion and inclusion of the 10-point plan with the case file.

The evidencing of some other intervention or disposal that has addressed the key issues could potentially satisfy the public interest test, in favour of a formal disposal/prosecution. In theory it is still possible if there has already been more than one informal disposal **BUT** the continued use of informal disposals suggests that the risk of future offending is not being reduced which may in fact be cited as a reason why the public interest test would now be met by a more formal disposal/prosecution.

Bail Conditions for cared for children and care leavers

The court may attach conditions to bail in order to meet certain statutory objectives, tailored to the individual case: to prevent offending, ensure attendance at the next court appearance, prevent interference with the course of justice and to ensure completion of reports for court.

All parties signed up to this guidance practice should seek to ensure by any representations made to the court in relation to bail conditions that cared for children and care leavers are not adversely affected purely by their status as such. The court should be asked, on each occasion that bail conditions are imposed upon a cared for child and care leavers, to fully explain the extent and limits of the condition. This is particularly important when a condition to comply with the rules and regulations of a care home, a condition to reside as directed by the Local Authority or a condition to live and sleep as directed is imposed.

Dyfed Powys Bureau

Vision

Dyfed Powys will ensure that children and young people are able to fulfil their potential and make a positive contribution to society.

Mission statement

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Dyfed Powys Bureau will work with children, young people and their victims to prevent reoffending and to divert children and young people from the criminal justice system.

Key principles

1. Young people should be treated as children and young people first and offenders second, meaning that all responses to (re)offending should be proportionate and where appropriate avoid criminalisation.
2. Ensure that young people are treated as individuals, in a system that does not take a one size fits all approach and ensures the voice of the child/young person is at the heart of any dealings with them.
3. Appropriate and early intervention is used to reduce the offending and reoffending of young people across Dyfed Powys. Every interaction with young people should be seen as an opportunity for intervention and to safeguard their well-being.
4. Public protection and public confidence are considered in decision making and where appropriate, the voice of the victim is heard.
5. There is joint decision making between partners to ensure the best outcomes for children, young people and victims. All partners will take collective responsibility for providing agreed interventions and for seeking to ensure that children/young people are (re)integrated into local services and their communities.
6. Take a consistent and balanced approach to achieving good outcomes for children and young people across the region, which gives them every opportunity to desist from offending, while maintaining the integrity of the youth justice system.

Decision to Divert from Court

If the question of suitability for diversion is raised at court and it is considered appropriate by the Prosecutor, the case should be adjourned for a short period of time for an assessment by the local Youth Justice Service. The agreed timescale for this purpose is 21 days. In those minority of cases whereby the young person fails to engage with YJS, the matter would be returned to court to consider a prosecution – therefore, there is clearly a significant incentive for the child to engage.

Ultimately, the YJS and CPS will discuss considerations for discontinuing proceedings with the final decision made by the CPS.

Where the decision to prosecute has been taken by a Youth Offender Specialist and the public interest has been determined in favour of prosecution it would not normally be considered appropriate to adjourn the case for further consideration of diversion unless there has been a significant change in circumstances or significant information not known to the Youth Offender Specialist has become known.

The Youth Justice Board guidance states that ‘there are occasions when a young person has been charged, but a prosecutor decides that the case should be adjourned for consideration of an out of court disposal. An admission of guilt is essential before a Youth Caution or Youth Conditional Caution can be given and it will only be in **exceptional circumstances** that a young person who has been correctly charged will receive such a disposal.’

This highlights the importance of the decision-making processes that take place prior to cared for children and care leavers being charged to court.

Compliance

It is expected for all signatories to comply with the requirements set out within this practice guidance.

In the event of Police attendance, the Police Contact Form is to be completed by the residential provider, Officers will not leave the address without the relevant paperwork.

This guidance practice will be reviewed every two years, to ensure it remains current and relevant to all agencies concerned.

Appendices

Appendix 1: Police Contact Form

Where possible and safe to do so, all incidents should be discussed with a Manager. All non-serious incidents should be dealt with without the need for Police involvement.

In the event that the Police are called, this form should be completed in ALL cases.



Police Contact Form.pdf

- **Care Homes must ensure that there are enough of these forms available to be completed and handed to Police Officers ON arrival. If this is not appropriate at the time, then as soon as is practicable thereafter.**
- **Foster carers must also provide Police with the contact form and copies of this form and guidance should be provided to the carer by the appointed social worker for the child.**
- **Police Officers must ensure that Form is collected upon attendance at an incident in a Care Home.**

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To be completed by Children’s Home			
Name of young person:			
Date of Birth:		Age:	
Address:			
Social Worker:			
Is the Young Person open to Youth Offending Teams?	Yes	No	
Date of Incident:		Time of Incident:	
Summary of Incident			
Method of de-escalation prior to Police attendance			
Police response deemed necessary?	Yes	No	
Reason for contact with Police			
Prior to contacting the Police (999/101) was advice and guidance sought from any other professional involved:			
Youth Offending Team	Social Worker	Neighbourhood Policing team	Other – please state

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Comments by Senior Officer / Manager of Children’s home:			
Name:		Date:	
Signature			
To be completed by Police Officer			
Name of attending officer:			
Discussion between care home staff and attending Police Officer?	Yes	No	
Please state outcome	Arrest	Informal Action	
Were the Police and care home staff in agreement about the decision?	Yes	No	
If not, please provide details:			
Proposed Plan if informal action agreed:			
Date:			

Authorisation of Delegated Corporate Parent

I agree / disagree that formal police action in respect of the above offence is necessary

Name: <i>(Care Home Manager)</i>			
Signature:		Date:	

Appendix 2: CPS 10 Point Plan

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10%20Point%20Checklist.doc

To be completed and submitted on file for every cases involved a cared for child.

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10 POINT CHECKLIST FOR OFFENCES IN CHILDREN'S HOMES

HAVE YOU CONSIDERED?

1	Disciplinary Policy of Children's Home?	
2	Why have the police been involved and is it as agreed in the policy?	
3	Any informal action /disciplinary action already taken	
4	Any apology/reparation	
5	Victims Views	
6	Social Worker Views	
7	Care Plan for Looked After Child (If necessary and lac agrees)	
8	Recent behaviour/incidents re looked after child	
9	Information about incident from looked after child (interview or other)	
10	Aggravating and Mitigating Features	