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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



Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Introduction

A night in a cell is an intimidating experience. Police custody facilities are designed to detain adults suspected of criminal activity, and they offer little in the way of comfort or emotional reassurance. For a child, especially one deprived of familial support, a prolonged stay in this environment is nothing short of harmful.

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 and 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 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.

The problem

Under the Police and Criminal Evidence Act 1984, the prolonged detention of a child (who has not been arrested on a warrant or for breach of bail) is permissible only where the transfer of a child is impracticable (such as extreme weather conditions) or where the child, having been charged with a serious violent offence, is deemed to pose an imminent risk of death or serious injury to the public *and* no Local Authority secure accommodation is available. The bar to justify detention is therefore extremely high. This conclusion is supported by the findings of various reports in recent years: these include testimonies from inspectors who have witnessed failures first-hand, from police officers who recognise that the law is not being followed and

from children who have been left confused and frightened by unjustified detainment. In 2014, the All Party Parliamentary Group for Children found that the process of police contacting Local Authorities to arrange accommodation for charged children had become a “tick box exercise” which often lacked even the expectation of a positive outcome, and that in many cases “it has become the norm for police custody sergeants to not even place a request with their Local Authority, assuming that no accommodation will be provided”. In 2015, HMIC cited significant shortcomings in custody arrangements for children, including a total lack of data around the police’s efforts to secure Local Authority accommodation for children.

It seems that in many of these cases the failure to comply with the law stems from confusion as to its requirements. Custody officers are often not clear as to whether they should request secure accommodation or not, and sometimes interpret the Police and Criminal Evidence Act’s use of the term ‘impracticable’ as meaning ‘difficult’ or ‘inconvenient’, dramatically lowering the bar for continuing detention in police custody. Local Authority staff are often not aware of their absolute legal duty to provide accommodation and believe that a lack of available space in children’s homes justifies leaving a child in a police cell.

“Local Authority staff need to be aware of the implications and responsibilities for accepting the transfer of a child “in custody” as bail has been denied. Section 77(4) and (5) of the Social Services and Well-being (Wales) Act 2014 (replacing Section 21(3) Children Act 1989) allows the police to recover costs from Local Authorities when a transfer is not carried out. This is a long-standing legislative measure which should incentivise both parties to fulfil their obligations. The level and mechanism of recovery has always been a matter for local determination.

Aims

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 following charge and the denial of bail. Where it has not been possible to achieve this, all relevant agencies should have measures in place to review these instances in order to overcome barriers in future.

This guidance recognises that the police and Local Authorities must work together, to ensure that we are fulfilling our duties and giving children the care they deserve. The guidance aims to assist in meeting obligations under the UNCRC by ensuring that there is minimum restriction of liberty commensurate with the circumstances of the case. It is not a substitute for the legislation from which it is drawn but it sets out, with the full agreement of those involved, the roles that each of us must play to ensure that police forces and Local Authorities across Wales comply with their statutory responsibilities with regard to children in custody.

This guidance applies to children and young people (aged 10 to 17 years) who have been charged with offences and refused bail.

Partner agencies

Home Office

The Home Office is the government department responsible for policing. The Home Secretary has the power to commission Her Majesty's Inspectorate of the Constabulary (HMIC) to carry out thematic inspections of specific issues in police forces and in 2014 commissioned the report into vulnerable people in custody..

Welsh Government

The Welsh Government has devolved responsibility for health, housing education and social services and the Welsh Government is ultimately accountable for compliance with social services legislation and policy, including the Social Services and Well-being (Wales) Act 2014, which came into force in April 2016. It is responsible for drawing up the statutory codes of practice under the Act, including that relating to Part 6 on looked after and accommodated children. The Welsh Government's Care and Social Services Inspectorate Wales (CSSIW) inspects and monitors the performance of Local Authority social services departments, and Hillside Secure Children's Home in Neath.

College of Policing

The College is the professional body for policing. It sets the standards of professional policing in England and Wales and ensures that all police officers and staff have the right knowledge and skills to do their job.

Association of Directors of Social Services Cymru

ADSS Cymru is a representative group of senior managers, including statutory directors of social services and heads of children's services to promote the well-being, protection, support and care of vulnerable adults and children in Wales.

All Wales Heads of Children's Services

The all Wales Heads of Service group informs the vision and priorities and delivers for the Association of Directors of Social Services Cymru Executive Council, in line with statutory requirements.

Youth Justice Board

The Youth Justice Board for England and Wales ensures that custody arrangements for young people are safe, secure and appropriate. It makes sure that children and young people are dealt with by the justice system effectively and fairly.

YOT Managers Cymru

Youth Offender Team (YOT) Managers Cymru represents Youth Offending Team managers and practitioners in Wales, providing expert knowledge and advice on the operation of community youth justice services.

National Appropriate Adults Network

Appropriate Adults safeguard the rights and welfare of children and vulnerable adults detained or interviewed by police. They ensure that custody officers respect the legal entitlements specific to those groups.

Independent Custody Visitors Association

Independent Custody Visitors make unannounced visits to police custody facilities in England and Wales to ensure that the fair treatment and well-being of detainees remains high on police forces' agenda.

Safeguarding Children Boards and Safeguarding Adults Boards

Police, Community Rehabilitation Company (Wales), NOMS, local health boards, NHS trusts and local authorities are all statutory partners on Safeguarding Boards. Boards have shared responsibility to protect and prevent children and adults from experiencing abuse, neglect or other forms of harm.

Children's Commissioner for Wales

The Children's Commissioner has a statutory duty to safeguard and promote the rights and welfare of children and young people in Wales.

Principles

All agencies involved in the detention of children and young people under the age of 18 should abide by the following principles:

1. The safeguarding and wellbeing of the child is paramount
2. Whenever possible, charged children will be released on bail
3. Conditional bail should be considered if there are concerns
4. If bail is refused the custody officer must record the reason

5. If bail is refused the child should be transferred to the Local Authority, unless it is impracticable to do so
6. Secure accommodation will be requested only when necessary
7. If secure accommodation is requested, the Local Authority should do everything possible to provide secure accommodation
8. Failure to provide secure accommodation must be recorded and reported to the relevant monitoring and review panel
9. If secure accommodation is not requested, Local Authorities must provide the child with appropriate accommodation
10. Failure to provide appropriate accommodation must be recorded and reported to the relevant monitoring and review panel
11. The child will become 'looked after' if accommodated by the local authority for a continuous period of 24 hours or more.
12. The power to detain, and the responsibility and accountability that goes with it, transfers to the Local Authority when a child is transferred to Local Authority
13. Police and Local Authorities must be aware of the responsibility to make sure the child attends court.

Legal responsibilities

Police

- Consider the use of bail or conditional bail (as appropriate) in accordance with the Bail Act 1976 and Section 38 (1) of the Police and Criminal Evidence Act 1984 (PACE);
- Make a written record of a refusal to bail in accordance with Section 38(3) of PACE;
- Secure the transfer of the child to Local Authority accommodation in accordance with Section 38(6) PACE unless it is impracticable to do so;
- Assess if the young person is a 'risk of serious harm' and if a secure Local Authority placement is required;
- If transfer is impracticable, the relevant court certificate must be completed in accordance with Section 38 (7) PACE;
- Where a transfer has been deemed 'impracticable' or secure accommodation is unavailable the police should complete the relevant certificates to court

required under PACE Sections 38(6) (a), 38(6) (b) and S.38(7) and produce the young person at the next available court under Section 46.

Local Authority

- Must receive and provide accommodation for children whom it is requested to receive under section 38 (6) of PACE (section 77 of the Social Services and Well-being (Wales) Act 2014);
- Where a young person is transferred to Local Authority accommodation the child or young person will become 'looked after' for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014;
- Where a child is transferred under Section 38 of PACE, the Local Authority assumes the power and accountability for lawfully detaining that child;
- Provide for Appropriate Adults to support children and young people detained by the police, in accordance with PACE and the Crime and Disorder Act 1998;
- Where a child is detained under section 38 of PACE, and is not being provided with accommodation by a local authority or the NHS, any reasonable expenses of accommodating the child are recoverable from the Local Authority in whose area the child is ordinarily resident (section 77(4) and (5) of the Social Services and Well-being (Wales) Act 2014).

Practice guidance

The following sections expand on the core principles and provide practical guidance and information for practitioners. The intention is to provide clarity on the practice required of all partners involved; their roles and responsibilities; and the statutory duties in relation to children in police custody. By following the principles, and providing detail as to how these can be achieved in practice, it is intended to help front-line staff to understand what compliance looks like and what it means for their day-to-day work.

In parallel with this protocol, police forces across Wales are developing a standardised data collection process. This will enable the consistent collection of information which may form an evidence base for future policy and will help track the effectiveness of this protocol.

1. Charging

When the police decide they have 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 is to be charged, **custody officers** should be aware that when dealing with a child who is potentially going to be charged that the transfer arrangements will be much more challenging outside of daytime and early evening and should attempt, if possible to conclude the charging phase at a time which will maximise the opportunity to successfully transfer the child to the Local Authority (accepting that investigation procedures cannot always fit in with this. It is good practice to notify the relevant Youth Offending Team/Emergency Duty Team before a final decision is made.

2. Bail

Presumption that bail will be granted

People of all age groups have a right to bail under the Bail Act 1976 unless certain exceptions apply (see the box below). After a child has been charged, the **custody officer** must consider granting bail; and if granting bail whether conditions are necessary and sufficient to address any concerns.

Conditional bail

Sometimes releasing a child on bail may raise concerns that it would prevent justice being done, lead to further crimes or compromise the young person's safety.

Possible reasons for denying bail under Section 38 (1) of the Police and Criminal Evidence Act 1984

- unable to ascertain name or address or have concerns about the veracity of the information given
- grounds to believe the person will fail to appear in court at an appointed date and time*
- prevent further offending
- to prevent the YP from causing physical injury or another person or loss/damage to property
- prevent interference with justice or investigation of an offence
- detention is necessary for the young person's safety and is in their best interests
- YP is charged with a serious or violent offence listed in Criminal Justice and Public Order Act 1994

**If a child breaches bail and/or there is a warrant for arrest then there is no requirement to transfer to Local Authority accommodation. But if there are only concerns that bail may be breached then the child should be transferred to the Local Authority (unless that is impractical).*

If concerns exist, the **custody officer** must seriously consider whether they would be allayed by placing conditions on the child's bail.

Conditional bail was introduced to ensure that detainees are released on bail whenever possible, even if their release from custody raises some concerns. It may include examples like restrictions related to residence or exclusion zones, imposing a curfew, the requirement to sign on at a police station or the requirement to attend educational training.

It is often good practice for the **custody officer** to contact the Local Authority's **Youth Offending Team/Emergency Duty Team** to discuss concerns and appropriate conditions; especially if there is a concern that bail may be breached if granted.

Appropriate Adults should observe this decision making process carefully. Clear processes should be in place to enable them to contact the police if bail is to be denied. They should be permitted to challenge custody officers if they think the criteria for denying the right to bail (or conditional bail) has not been met.

If the **custody officer** 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 as soon as possible on the custody record of the child. This is a requirement under section 38 (3) of the Police and Criminal Evidence Act 1984. If the child is subsequently not transferred to Local Authority accommodation the reason should also be recorded on the children and young people custody spreadsheet. When the child is taken to court from either police custody or Local Authority accommodation, the **court** should scrutinise the decision to deny the child of their right to bail.

3. Transfer to the Local Authority

If a child is refused bail, **custody officers** have a duty under Section 38 (6) of the Police and Criminal Evidence Act to secure the transfer of the arrested child to Local Authority accommodation. However, the Act allows police to retain a child in custody in circumstances where a transfer is *impracticable*.

‘Impracticable’

In the context of the Act, the term ‘impracticable’ does **not**:

- a) relate to the availability of Local Authority accommodation or transport;
- b) relate to the child’s behaviour or the nature of the offence, or;
- c) mean ‘difficult’ or ‘inconvenient’.

‘Impracticable’ should be taken to mean that **exceptional circumstances render movement of the child impossible** e.g. extreme weather conditions.

If a **custody officer** decides that transfer is impracticable, s/he must make a detailed written record of the reasons behind this decision. This is a requirement under section 38 (7) of the Police and Criminal Evidence Act 1984. It must be presented to the court before which the child appears.

Section 38 (6) (b) of PACE permits the detention of a child of 12 years of age or over in certain circumstances. Namely where there is no local authority secure accommodation available and other forms

of local authority accommodation would not be suitable to protect the public from serious harm. The custody officer must believe that this child poses a risk of serious harm to the public between being charged and appearing at court. This is a very high bar for a child to meet; to say that a child poses a risk of serious harm means that they are likely to cause death or serious injury (whether physical or psychological) to member of the public.

A custody officer must consider this carefully and be willing to discuss their judgement with Appropriate Adults. Appropriate Adults should try to understand the custody officer’s concerns; however, if they are not convinced that the child genuinely poses this high and threatening level of risk, they should make representations for the request of non-secure accommodation instead. It should be remembered that a request for non-secure accommodation will be accompanied by a

full explanation of the police's concerns, which will inform the Local Authority's choice of accommodation and ensure that all risks are considered.

In cases where the child is not transferred, the **police** should record the reasons why (see the section on failure to transfer below) scrutinise and challenge, in co-ordination with the **local authority**, the reasons for not moving the child out of police custody.

The law does not specify who is responsible for conveying the child between police and Local Authority accommodation. It is the shared responsibility of the **police** and **Local Authority** to work together in deciding how to transport the child, making an appropriate risk assessment and taking into account the best interests of the child. Factors to consider would be age, distance from home, maturity, difficulty of travel, seriousness of the offence, vulnerability and the means to get home.

4. Non-secure accommodation

Non-secure Local Authority accommodation is appropriate for most charged children including those:

- children under 12 years of age;
- children who do **not** pose a risk of serious harm (death or serious injury, whether physical or psychological) to the public.

If the child does not meet the criteria for secure accommodation and the **custody officer** decides non-secure accommodation is appropriate they must contact the Local Authority **Youth Offending Team** in normal office hours or the **Emergency Duty Team (EDT)** at any other time to request accommodation.

Local Authorities have a duty to accommodate the child under section 77 of the Social Services and Well-being (Wales) Act 2014. The **Local Authority** should make sure it understands the reasons for the refusal of bail and why conditional bail is not possible.

When transfer is agreed, the **custody officer** should provide Local Authority staff with the following information:

- The child's personal information, including details of any vulnerabilities;
- The nature of the offence;
- An explanation of why the child has been denied the right of bail, and why conditions would not be sufficient to allay these concerns.

The **Local Authority** must decide where to accommodate the child and must always consider the best interests of the child when making placement decisions. Options include returning the child to the care of family or friends (where appropriate), placement with a foster family or placement in a children's home.

While the responsibility to decide where to accommodate the child lies with the **Local Authority** the **police** have a key role to play in sharing information about the child which can inform the risk assessment for the placement. It is therefore good practice for Local Authorities to involve the police in the decision on where to accommodate the child.

5. Secure accommodation

The Police and Criminal Evidence Act sets out the criteria for secure accommodation:

1. the **custody officer** must believe that this child poses a risk of serious harm to the public.

Once a **custody officer** decided the child must be transferred to secure accommodation s/he must contact the Local Authority **Youth Offending Team** in normal office hours or the **Emergency Duty Team** at any other time (a contact list is available on gov.uk via [this link](#)) and request secure accommodation for the child.

The **custody officer** should give the following information:

1. The child's personal information, including details of any vulnerabilities;
2. The nature of the offence;
3. An explanation of why the child poses a risk of death or serious injury to the public.

The **Local Authority** will therefore be apprised of the reasons, based on the PACE criteria, why secure accommodation is required.

The **Local Authority** must make all reasonable efforts to find secure accommodation for the child. Information on secure children's homes can be found at www.securechildrenshomes.org.uk and details on bed availability can be obtained from the **National Bed Bank** (run by the **Youth Justice Board**): its out-of-hours phone number is 0845 3633 6383.

If the **Local Authority** fails to find any secure placements for the child then it should investigate potentially suitable alternatives, discussing their suitability with the **custody officer**. If no suitable alternatives are identified then **custody officers** will have no choice but to retain the child in police custody for the protection of the public.

Sections 119 of the Social Services and Well-being (Wales) Act 2014 and 25(1) of the Children Act 1989 permits **Local Authorities** to place children in secure accommodation in Wales, even if this was not the custody officer's request. Welsh Local Authorities may also place a child in a secure children's home in England under section 25 of the Children Act 1989. The Children (Secure Accommodation) (Wales) Regulations 2015 apply a modified test which a Local Authority must use if it is considering placing a 12-17 year old child, detained under section 38(6) of PACE, in secure accommodation (regulation 15). The modification removes the need to

show that the child has a history of absconding. If the child is under 13 years old, the Local Authority must seek the approval of the Welsh Ministers before placing the child in secure accommodation (Regulation 13).

6. The power to detain

When a **police officer** hands a child over to **Local Authority** staff, they also transfer the power to lawfully detain that child. This applies to every case where a child has been charged and denied bail.

Police and Criminal Evidence Act 1984 section 38(6B) states: “Where an arrested juvenile is moved to Local Authority accommodation under subsection (6) above, it shall be lawful for any person acting on behalf of the authority to detain him.” Simultaneously, section 39(4) emphasises that, at the point of transfer to the Local Authority, **police custody officers’** responsibility for the child ceases entirely. **Local Authority** staff must be aware of the level of responsibility that this transfer of power places upon them.

The child must be held in lawful custody until their appearance at court. Following the transfer, **Local Authority** staff are accountable for ensuring that this lawful custody is upheld. They become the custodians, with the same legal responsibility toward the child as a police custody officer has toward a detainee in a police cell.

When transferred from police custody to Local Authority accommodation (especially non-secure accommodation), the opportunities for a child to abscond are likely to increase. It may also appear to the child that the nature of their detention has become less serious and that absconding from Local Authority accommodation is different from escaping from a police cell. Legally, this is not the case. If the child absconds they are committing the serious offence of escaping lawful custody.

It is important that the child is made to understand this in order to prevent genuine misunderstandings leading the child into more difficulties; and to ensure that any subsequent charge of escaping lawful custody is justifiable. As the child is transferred from the police to the Local Authority, the **police officer** must (in the presence of Local Authority staff) inform the child of the following:

“You have been charged with [offence] and you have to appear at court on [date]. You have been refused bail, which means that you have to stay in custody until your court date. If you were an adult, you would stay in the police cells until then, but because you are under 18 years of age, the Local Authority is going to look after you until your court appearance. The Local Authority will decide where you will stay until then.

It is very important that you understand that you are still in custody: this means that you must stay where you are told to go by the Local Authority and can only go out with their permission. If you do leave without permission, the Local Authority will tell the police and you will get into more trouble, just as if you had run away from the police station. Do you understand?”

The **police officer** and the **Local Authority** staff should be satisfied that the child has understood these points, offering further explanation if necessary.

If an **Appropriate adult** is aware that a child is due to be transferred to Local Authority accommodation, they may also be able to help explain the situation and prepare the child for the handover.

7. Looked after status

Where a young person is transferred to Local Authority accommodation the child or young person will become 'looked after' for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 if accommodated for a continuous period exceeding 24 hours.

8. Difficulty agreeing transfer and escalation

On occasion there might be a disagreement between Local Authority staff and police custody staff on how a child or young person should be dealt with under the protocol. If matters cannot be resolved it is recommended that matters are escalated for review by **police** and **Local Authority** senior staff to prevent either the police or the Local Authority failing to meet legal requirements. It will be for local partners to agree their own escalation processes.

9. Failure to transfer to Local Authority accommodation

In cases where transfer has not been possible (for any reason) the **custody officer** must enter the details of the case and reasons for the decision not to transfer the child into the custody record and the children and young people custody spreadsheet. It is good practice for such cases to be reviewed by a joint monitoring and review panel that includes representatives from both the **police** and **Local Authority**.

10. Monitoring and review

Local monitoring and review panels have a key role to play in monitoring the numbers of children and young people denied bail and the effectiveness of this protocol in meeting their needs. Representatives from Police, the relevant Local Authority Social Services Department for Children, Youth Offending Service and the Emergency Duty Team should meet regularly to review failures in the process in order to remove future barriers.

The police will provide regular data reports on the numbers of children and young people detained by police; those denied bail and those for whom accommodation is requested from the Local Authority to aid the reviews.

11. Ensuring attendance at Court

When a child is charged and detained the responsibility for ensuring they attend court rests with:

- The **police** if the child has not been transferred to Local Authority accommodation
- The **Local Authority** if the child has been transferred to either secure or non-secure accommodation

When a child has been transferred to Local Authority accommodation out of hours it is essential the Local Authority out of hours service or EDT inform the Youth Offending Team so they are aware of the detention and the required attendance at court.

Annex A: Glossary of terms

Pace Remand (Police remanding children and young people in custody)

If a child or young person has committed a crime and it is not safe to release them because they pose a serious risk of harm to the public, then the police can remand them into custody under s38(6) of the Police and Criminal Evidence Act. This enables the child or young person to be detained pending the next available court appearance.

Non-secure accommodation

The Local Authority has a duty to receive and provide accommodation to any child or young person who has been remanded by the police under section 46(3) (f) of PACE (section 77 of the Social Services and Well-being (Wales) Act 2014. Non-secure accommodation can be placement with family or friends (where appropriate), a foster placement, or placement in a children's home (other than a secure children's home).

Secure accommodation

Secure accommodation refers to accommodation in secure children's homes. There are 15 of these in England and Wales, including one in Wales at Hillside in Neath. Details may be found at www.securechildrenshomes.org.uk.

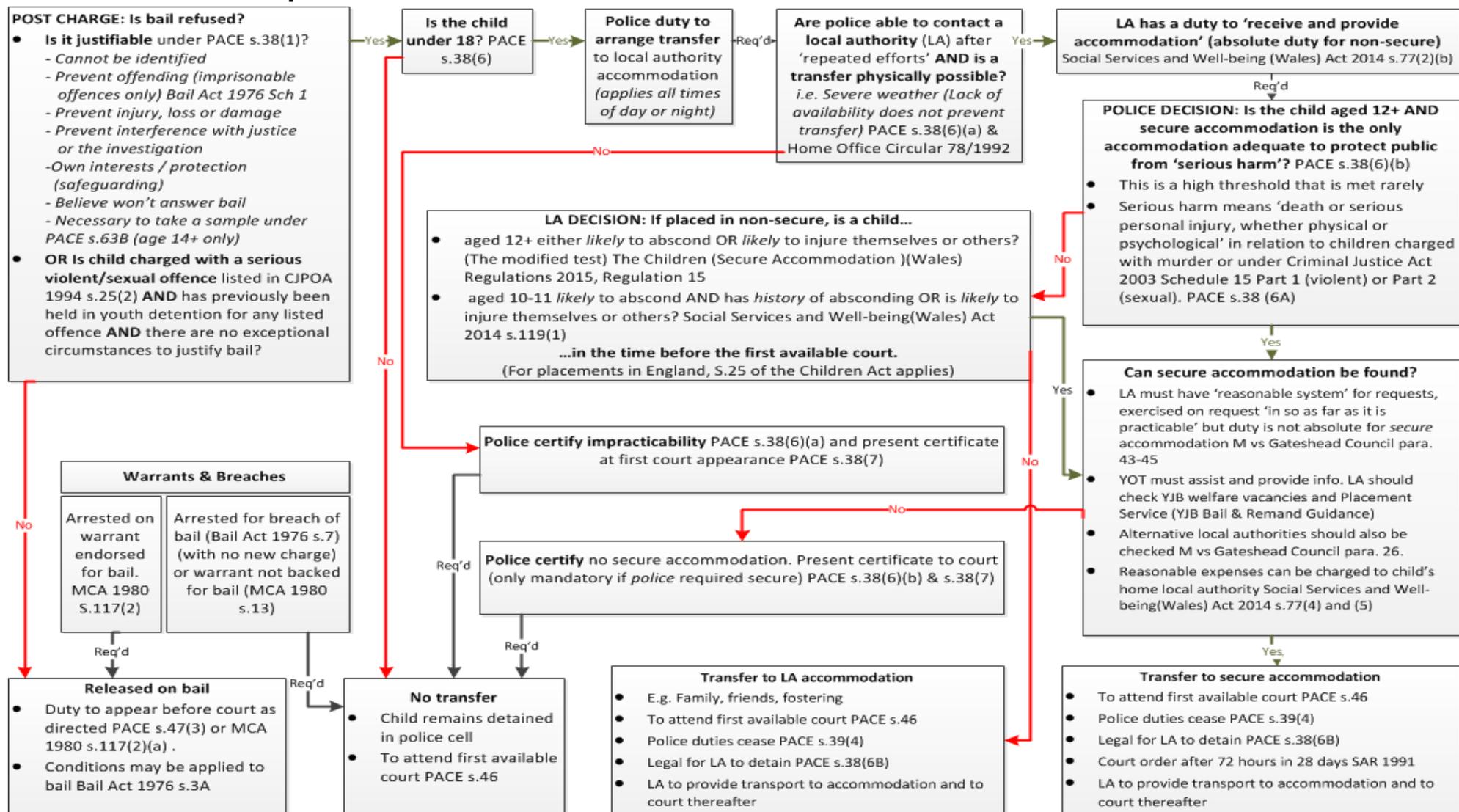
Secure accommodation in the context of PACE enables the child or young person to be detained in an environment (in a locked door provision) other than police custody. Children detained under Section 38 (6) PACE will not have been convicted at court, but will have been charged with murder or under Criminal Justice Act 2003 Schedule 15 Part 1 (violent offending) or Part 2 (sexual offending) and pose a significant risk to themselves or others.

The only secure accommodation for children and young people in Wales is Hillside secure centre.

Overnight

For the purposes of this guidance, and for reporting purposes, a child or young person in custody is considered to be kept in custody overnight if they are to remain in custody from the time period of 11.59pm – 5am. This definition is not set out in PACE.

Annex B: Process Map¹



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

