

Joint Lincolnshire Protocol

Police and Criminal Evidence Act (Section 38)

and provision of Local Authority

Accommodation



Future4Me

1.0 Aims

- 1.1 The aim of this protocol is to safeguard children through avoiding, so far as is practicable, their detention overnight in police custody following charge and the denial of bail. It should also be recognised that for the majority of children, entering Police custody for the first time is a traumatic and distressing experience. For these reasons the guidance supports the underlying principle that time spent in Police custody by children should be avoided wherever possible but if necessary kept to an absolute minimum.
- 1.2 It is crucial that in all encounters with the police, those below the age of 18 should be treated as children first. This protocol should be underpinned by the principle that all officers and practitioners must have the highest regard for the safety, welfare and well-being of children as required under S10 and S11 of the Children Act 2004 and the United Nations Convention on the Rights of the Child.
- 1.3 The protocol is also intended to clarify the duties and responsibilities of agencies in the management of arrangements for the transfer to Local Authority Accommodation (LAA) of children and (aged 10 to 17 years) charged and denied police bail.

2.0 Scope

- 2.1 This protocol applies to children (aged 10 to 17 years) who have been charged with criminal offences and then refused bail.
- 2.2 This protocol represents a voluntary agreement between
- Lincolnshire Police
 - Lincolnshire County Council Children Services (Children Services Future 4 Me Team, incorporates Lincolnshire Youth Offending Service)
- 2.3 There will be instances where a child held in a Lincolnshire custody suite, is not a resident of Lincolnshire. The Local Authority in whose area the child resides will be the responsible authority, but, in the first instance the Lincolnshire custody suite where the child is being held will contact Lincolnshire Children Services (LCC), whom will then attempt to liaise with the responsible Local Authority Children Services department regarding the request. If however Lincolnshire Police are unable to make timely contact with LCC and know where the child is from, they will contact the responsible authority directly, to minimise the impact of the child in regards to any potential delay.
- 2.4 The protocol will be subject to review to ensure it is effective in meeting the aims set out above.

3.0 Background

- 3.1 Her Majesty's Inspectorate of Probation (HMIP) reports 'Who's Looking Out for the Children' (2011) identified a number of significant safeguarding concerns relating to the experiences of children whilst in police detention. Local Authority Safeguarding Boards are responsible for overseeing the recommendations within this report. A key concern identified in the report is the overnight detention of children in police cells after police bail is denied, as opposed to transfer to accommodation provided by a Local Authority (LAA).
- 3.2 HMIP reiterated that Section 11 of the Children Act 2004, which "places a duty on key people and bodies to make arrangements to ensure their functions are discharged with regard to the need to

safeguard and promote the welfare of children," applies equally to the police as it does to NHS bodies, local authorities and YOS. *Working Together to Safeguard Children (2013)* outlines how agencies should work together to safeguard and promote the welfare of children. In January 2015 the Home Secretary, Teresa May, and Secretary of State for Education, Nicky Morgan, released a joint paper stating that Police and Children Services will work together with a view to reducing the occurrence of children detained in Police custody. It should be noted the recently published Children's and s Strategy from the National Police Chiefs Council (DCC Olivia Pinkney) further underlines the focus to reduce the number and time children spend in police cells. This protocol sets out how this will be achieved for children processed through police custody.

In conclusion, the HMIP report 'Who's Looking Out for Children' stated that: "...the children who are processed through police custody are potentially the most vulnerable of the vulnerable, and the least able to represent their own best interests, control their behaviour, and communicate their needs."

4.0 Legal Context

4.1 Police Powers to Deny Bail

4.2 Section 38 (1) of the Police and Criminal Evidence Act (1984) (PACE) stipulates that, where the police charge a child with an offence, the custody officer must decide whether to grant or deny bail (with or without conditions).

Under the Bail Act 1976, there is a general presumption that bail will be granted without conditions, but there are exceptions that apply to children and bail can be denied for one of the following reasons:

- 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]
- 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.
- If the custody officer believes that he ought to be detained in his own interests

4.3 When bail is denied, Section 38(6) of PACE places a duty on the police to transfer the arrested child to local authority accommodation, prior to their appearance in court, as an alternative to keeping them in custody overnight, these are referred to as PACE bed and/ or Section 38 bed requests.

If the child has attained 12 years **and** it is necessary to protect the public from serious harm, the Police Custody Officer shall specifically request secure accommodation and ensure that the rationale for that request is clearly communicated to the Local Authority. Police should contact the Local Authority, Lincolnshire County Council. Monday – Friday, 8am-6pm this will be via the Lincolnshire Customer Service Centre (CSC) **01522 78211**. Outside of these hours this be via Emergency Duty Team (EDT), Lincolnshire Emergency Duty Team (**01522 782333**).

If the child is over the age of 10 but under the age of 12 and the threshold for secure accommodation is met, on receiving the request from the Police, the Local Authority would need to escalate this request to

a Senior Children Services manager, as the Local Authority must seek Secretary of State Approval, in accordance with the government guidance. <https://www.gov.uk/guidance/secure-childrens-homes-how-to-place-a-child-aged-under-13>.

Transfers should be arranged, unless one of the following exceptions applies:

- Where the custody officer certifies that it is impracticable to move the child to local authority accommodation. *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.*
- There is no secure accommodation 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. *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 manslaughter; grievous bodily harm; robbery; rape.*

4.4 Secure units ability to respond to and accept requests is reliant on appropriate staffing levels being in place or having the time and capacity to arrange this. Requests for secure accommodation should therefore be made at the earliest opportunity where possible by police and children services

4.5 In order to ensure compliance with PACE, in all cases where a child has been kept in custody overnight, the police must inform the Local Authority of all children detained in these circumstances by calling Customer Service Centre (CSC) on **01522 782111**, or outside of office hours contacting the Emergency Duty Team on **01522 782333**. The police will complete a Detention Certificate, explaining the reasons for the detention, this certificate must be presented to the court before where the child first brought.

Appendix A - Lincolnshire Police Certificate of Detention of an Arrested Juvenile
Appendix B: Process Map – Procedure for Secure Accommodation Requests

5.0 Exceptions - Breach of Bail & Warrants

5.1 PACE legislation places both breach of bail and warrants outside of consideration for transfer to local authority accommodation. In instances in which a child arrested is under a warrant or breach of bail, they will be detained in police custody until they appear at the next available court.

6.0 Local Authority Duty to Accommodate Child on Police Request

6.1 Section 21 of the 1989 Children's Act directs that the Local Authority has a duty to accept the child in response to a request from the police. If secure accommodation is not requested (threshold definition in section 4.3), it is for the Local Authority to determine the type of accommodation provided (family or friends, children's home, foster care).

6.2 When considering the most appropriate placement for a child is (where threshold for secure is not met) the Local Authority should consider:

- The individual needs of the young person and accommodation should be provided which matches the young person's needs.
- The need to transport and facilitate the child's attendance at court on the required date.

When released from police custody, Local Authority receives and accepts the responsibility for that young person. The LA's responsibility will include supporting and facilitating the young person attendance at court. If the young person absconds/ fails to attend court, they will be dealt

accordingly by the police and criminal justice system.

As in all cases where requests are made to accommodate a young person, the Local Authority's first preference should be to return the child to the care of their immediate or extended family when and if this is considered an appropriate and safe option. In considering this option it should be noted that the Local Authority may have available access to additional resources, support or skills which will facilitate the safe return of a young person to the care of a parent following release from custody where this initially was not thought to be a viable option.

If it is not considered safe/appropriate for the young person to return home then consideration may be given by the Local Authority to a range of alternative accommodation/placement options which could include foster placement, a placement in residential children's home, a placement with an extended member of the family and where assessed as being appropriate, a placement in supported 16+ accommodation. In deciding which is the most appropriate placement for the young person the Local Authority will need to be mindful of the need for the young person to appear in court on the required date which will usually be the day after discharge from Police Custody.

7.0 Arrangements for transfer

7.1 If the child is refused bail within normal office hours, Police shall contact the court to establish if it is likely they will appear before 5pm. If the child is not likely to appear in courts before 5pm they will need to appear at the next available court date, which will be the next day at the earliest and therefore the young person will need accommodating overnight. Police must make immediate contact with the Local Authority to discuss the transfer/ accommodation request.

If the Police Custody Sargent foresees a potential for refusing bail during the early part of the child's detention, they should facilitate an early conversation with the Local Authority which will allow them more time to consider or make arrangements for appropriate transfer/ accommodation. Police should contact the Local Authority, Lincolnshire County Council. Monday – Friday, 8am-6pm this will be via the Lincolnshire Customer Service Centre (CSC) **01522 78211**. Outside of these hours this be via Emergency Duty Team (EDT), Lincolnshire Emergency Duty Team (**01522 782333**). Police Custody staff should be active in considering the management of custody time for children and young people to avoid unnecessary delays.

7.3 In transferring a child to the care of the local authority the custody sergeant will always seek the support of the receiving party in respect of any potential bail conditions being considered. This is appropriate to ensure that the compliance with such conditions can be supported and where possible enforced by the local authority. This discussion is vital in ensuring that any proposed conditions do not undermine the ability of the local authority to manage the child or in the appropriate manner or severely limit their accommodation options. Custody Officers should recognise that both duty of care and responsibility for the child passes from the Police, to the Local Authority at the time of transferring from custody.

7.4 Where a child originates from a local authority **outside** of Lincolnshire, the Local Authority or EDT local to the custody suite will be contacted by the Police for the LA to obtain agreement to the transfer from the child's home (responsible) authority.

7.5 If the child requires medical assessment or treatment whilst detained the police will ensure that it is provided, in line with current custody health care arrangements.

7.6 The Local Authority and Lincolnshire Police will work together to ensure the accommodation in which the child is placed, receives sufficient information about the child to ensure they can meet their needs and deal with any presenting risks.

- 7.7 The responsible Local Authority will arrange transport for the child to the accommodation in which they will be placed. The Local Authority will make arrangements, appropriate to the accommodation arrangement put in place, to transport the child to the next available court.
- 7.8 The Police will complete and provide the placement provider with a copy of the form PER Form (Prisoner Escort Record), to provide relevant information to the local authority.
- 7.9 The Police Custody Officer shall make a comprehensive detention log entry detailing to whom they spoke and the outcome. The Local Authority (CSC or EDT) shall record all communication, in detail, on the young person's children services record.

Appendix C: Process Map – Procedure for Dealing with Youths after Charge

8.0 Children who remain in custody overnight are not transferred to Local Authority

- 8.1 The Police must make arrangements to transfer the child to local authority accommodation in **every** case unless:
- It is impracticable (see Section 4.3 for clarity on definition)
 - There is a risk to the public of serious harm from that juvenile **and** no secure accommodation is available (see Section 4.3 for clarity on definition of serious harm).
 - The child/ is under a warrant
 - The child is arrested for breach of bail
- 8.2 There should be no pre-determined final cut off time applied by the Police or Local Authority to determine whether a transfer can be completed. However professional discretion should always be applied and guided by the principles of whether due to time factors, accommodation locations and travelling time, the transfer to Local Authority accommodation is deemed impractical and fundamentally not in the best interests of the child. Any decision making to support such actions must be clearly recorded with the rationale fully explained by Police and the Local Authority.
- 8.3 The Local Authority EDT must notify the Youth Offending Service by email of all cases where the transfer to local authority accommodation did not take place and the rationale given by the Police and Local Authority.
- 8.4 Any decision by the Police custody sergeant to deny a PACE transfer which would subsequently result in a child remaining in police custody overnight must be immediately notified to the Duty Inspector for consideration to ensure the detention decision is in accordance with the protocol. The Duty Inspector who holds responsibility for the custody suite where the child is held shall perform this oversight role for Lincolnshire Police, and may give consideration to further escalate to the Duty Superintendent if deemed appropriate.
- 8.5 The only young people kept in custody overnight in Lincolnshire will be those identified in section 8.1. Any other cases where overnight detention in Police custody is being considered must be the subject of real time escalation and scrutiny by all agencies involved.
- 8.6 Should police make the decision **not** to transfer a child to local authority accommodation, the reasons under the PACE Code of Practice (16.10) **shall** be clearly recorded on the Lincolnshire Police Detention Certificate, which must be sent (fax\secure email) to the local YOS and presented to the court the next morning.

Appendix A: Lincolnshire Police Certificate of Detention of an Arrested Juvenile

9.0 Escalation

- 9.1 There should be appropriate challenge between Police and the Local Authority to ensure that children are only detained in custody overnight in exceptional circumstances and when it is appropriate to do so in accordance with this protocol.
- 9.2 It is acknowledged that on occasion there may be a disagreement between the Police and the Local Authority how a child or should be dealt with under this protocol. If disagreement exists and matters cannot be adequately resolved the case should be always be escalated for consideration by the Duty Inspector and the on call Senior Manager within Lincolnshire Children's Services.
- 9.3 Both parties shall ensure an accurate and exhaustive record of any escalation is kept.
- 9.4 Where it is not possible to reach an agreement following escalation, matters shall be referred subsequently to the responsible Lincolnshire Safeguarding Children Partnership for review.

10.0 Monitoring and Review

- 10.1 This protocol shall be kept under annual review to ensure that it delivers its key aims, in particular reducing to a minimum the numbers of children and young people detained in police custody.
- 10.2 The Police and Local Authority shall meet quarterly to review the arrangements in regards to children denied bail. These meetings will include the review of any decisions in a child has been detained in custody overnight following charge and denial of bail, reviewing the Police and Local Authority records to ensure decisions have been made in line with the protocol and to review working practices and identify and address any areas of concern or learning.

Appendix D: Terms and Reference, Custody Oversight Meeting

- 10.3 Local Authority Safeguarding Partnerships (LSCP) 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. Information in relation to the number of children who are detained in custody overnight, following charge and denial of bail will be shared with LSCP for this to be monitored and reported.

11.0 Authorisation

- 11.1 This protocol has been authorised by each of the participating agencies as set out below.

Daryl Pearce - Signed on behalf of Lincolnshire Police

Date: 16.6.2020



Signed on behalf of Lincolnshire County Council Children Services

Date 5.6.2020

Appendices

Appendix A: Lincolnshire Police Certificate of Detention of an Arrested Juvenile

Appendix B: Process Map – Procedure for Secure Accommodation Requests

Appendix C: Process Map – Procedure for Dealing with Youths after Charge

Appendix D: Terms and Reference, Custody Oversight Meeting

Appendix A

**CERTIFICATE OF DETENTION OF AN ARRESTED JUVENILE
(Section 38(6) Police & Criminal Evidence Act 1984) as amended by
Section 24 of the Criminal Justice Act and Public Order Act 1994**

1,

Custody No.

Being a custody officer at

Hereby certify that at **(Time/Date)**

a juvenile given the name Age Yrs

of

was charged with an offence of

In accordance with the provision of Section 38(1) of the Police & Criminal Evidence ACT 1984 I have authorised their further detention without bail and:

*That by reason of circumstances as are specified below it is impracticable to move them to local authority accommodation

OR

*Having attained the age of 12 years, that no secure accommodation is available and that keeping them in other local authority accommodation would not be adequate to protect the public from serious harm from them.

The specific grounds for not transferring them are as follows: FREETEXT

OR

*They were moved to local authority accommodation, and it shall be lawful for any person acting on behalf of the authority to detain them that they shall be produced to the court

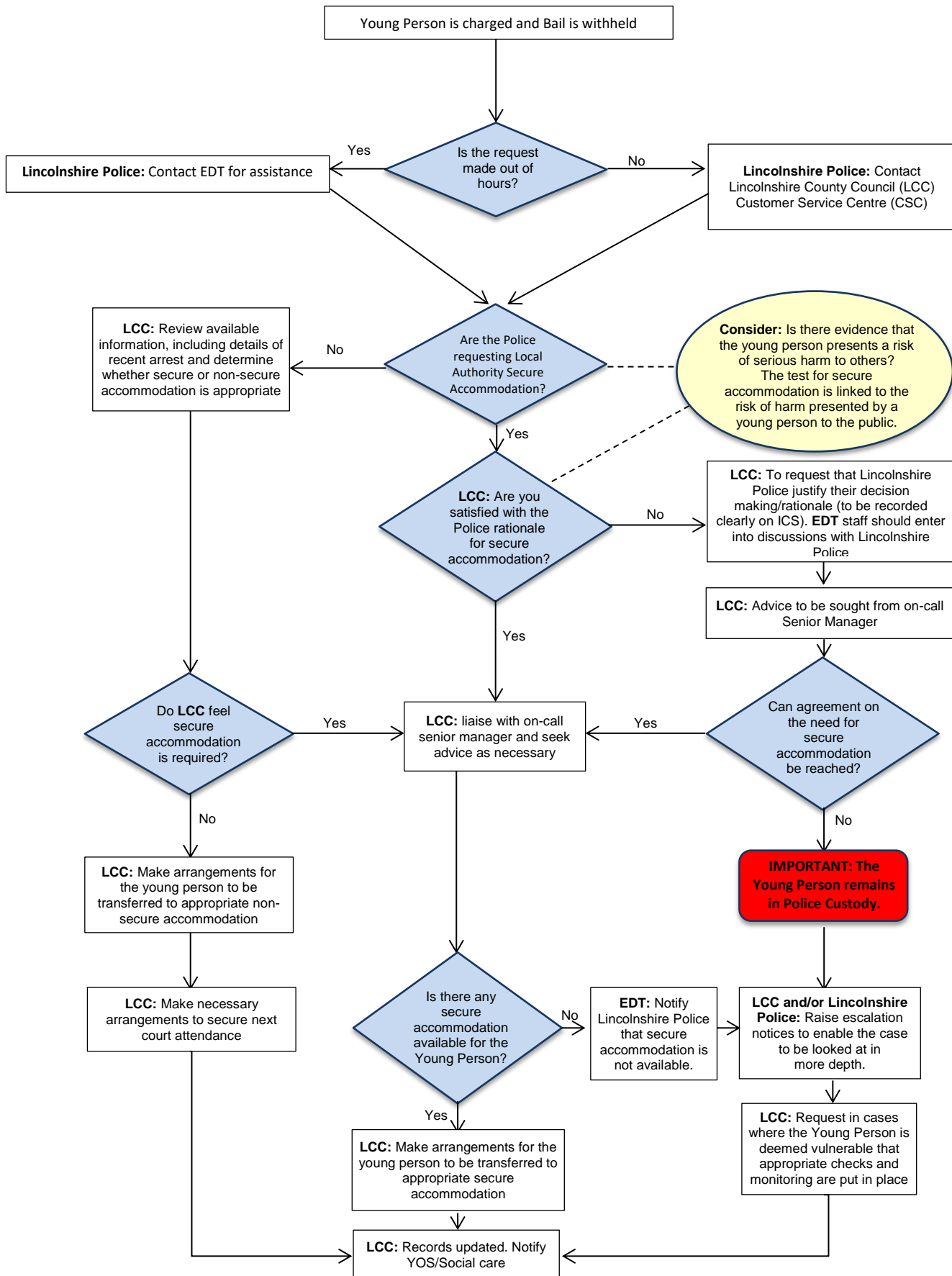
Signed Date

NB A copy of this form must accompany each juvenile so transferred

Any decision to require secure accommodation should be cleared by the Duty Inspector

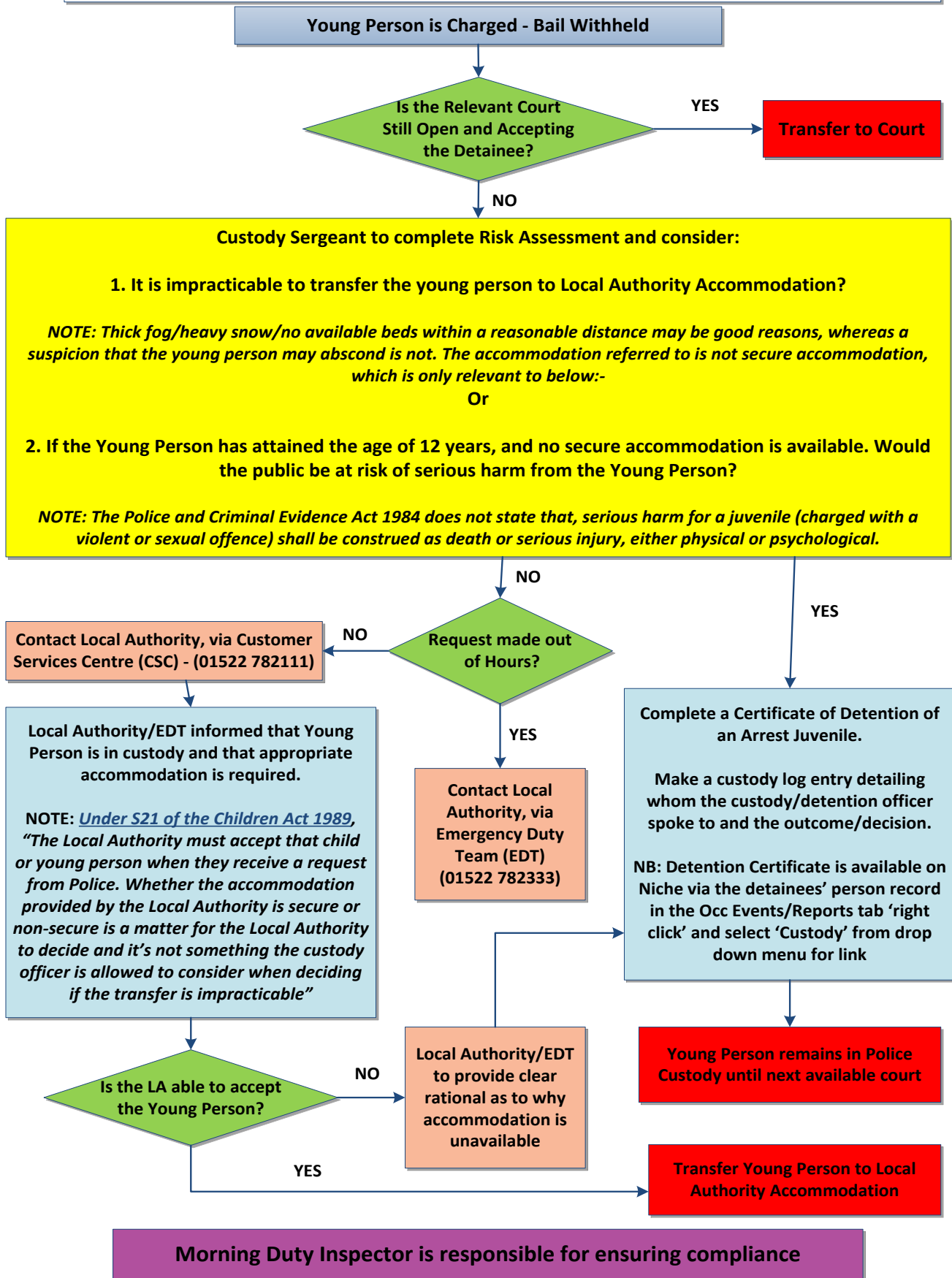
- **Delete those not applicable**

Process Map, Procedure for Secure Accommodation Requests



Appendix C

Process Map - Procedure for Dealing with Youths after Charge: (To Comply with [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)) (LASPO)



Appendix 4



Lincolnshire
Police



Terms of Reference

Children in Police Custody - Oversight Meeting

Introduction

Children brought into police custody are in a particularly vulnerable position; not only by virtue of their age, but also because of the circumstances which brought them into contact with the police. They may be under the influence of drugs or alcohol, recovering from a recent trauma or coming to terms with events that may have a lasting impact on their lives.

Children and young people are a protected group with specific vulnerabilities. Lincolnshire Police and Children Services recognise that any time spent in police custody should be kept at a minimum. It is also imperative that any period of detention is lawful and appropriate and in accordance with all legal frameworks related to the safeguarding of children and young people.

The legislation recognises that wherever possible children should not remain in police cells overnight. Where children are refused bail after having been charged, there is a statutory requirement that, other than in exceptional circumstances, they are transferred to local authority accommodation pending their court appearance, rather than detained at the police station.

Background

The Police and Criminal Evidence Act 1984 requires the transfer of children who have been charged and denied bail to more appropriate Local Authority accommodation, with a related duty in the Children Act 1989 for Local Authorities to accept these transfers. Section 11 of the Children Act 2004 requires both police and Local Authorities to have regard to the welfare and protection of children welfare of children, and in 1991 the UK ratified the UN Convention on the Rights of the Child, agreeing that custody be used “only as a measure of last resort and for the shortest appropriate period of time”.

PACE Section 38(6) 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 known as a PACE, or Section 38 beds. There are two exceptions to this:

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

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.

Meeting Purpose:

For Lincolnshire Police and Children Services to fulfil their statutory obligations and meet the needs of children in police custody, effective and closely monitored local arrangements need to be in place. This will require the interest and active input not only of frontline staff, but of Chief Constables, Directors of Children's Services, Police and Crime Commissioners and Local Safeguarding Children Boards.

Lincolnshire Police and Children Services will work together to ensure that children/young people are only held in custody for the minimum time possible and only in accordance with current legislation. Everyone who works with children has a responsibility for keeping them safe. This means they have a role to play in identifying concerns about a child's safety and wellbeing, sharing information and taking prompt action when it is needed to protect a child.

Objectives:

The key purpose of the meeting is to review decision making around children in custody to ensure this reflects and conforms to current statutory guidance.

The meeting will also seek to identify any areas of good practice, improvement and/ or learning. The meeting will ensure that all relevant agencies fulfil their duties in the management of children in custody.

Where good practice is identified, the meeting will ensure this is shared and also make relevant proposals to senior management to drive improvement and improve communication.

Process:

The meeting will provide oversight and scrutiny of children and young people held in Police custody. This will predominantly focus around the compliance with PACE (Section 38) but will also provide the opportunity to raise other custody related matters within the agenda.

The basis of the meeting will be report provided by Lincolnshire Police of the Juveniles charged and held in custody overnight for the last quarter,

The custody data will be supplied to all attendees a minimum of 1 week prior to the meeting to enable review.

Attendees will collate information from their records (child view, mosaic, custody records) in advance of the meeting. The meeting will provide an opportunity to review the information and explore decision making and outcomes, in regards to the child/young person.

Reports and relevant learning regarding children in custody will be shared with senior management and relevant boards to provide assurance around agencies practice.

Meetings and Attendance Custody Oversight Meeting will be held quarterly, in Lincolnshire County Council Offices, Lincoln. The meetings will be chaired by a Service Manager from Children Services.

The meetings will require the attendance of at least one representative of Lincolnshire Police and Lincolnshire Children Services.

Membership

- Chair : Andy Cook - Future4Me, Service Manager, Lincolnshire Children's Services
- Vice Chair : Daryl Pearce, Chief Inspector, Custody, Lincolnshire Police
- Hannah Fassler, Team Manager, Emergency Duty Team, Lincolnshire Children's Services
- Andy Morris, Corporate Parenting Manager, Lincolnshire Children Services
- Michelle Westby, Future4ME Practice Supervisor, Lincolnshire Children Services
- David Edwards - Lincolnshire Police, Custody Inspector