



**EAST AYRSHIRE CHILD PROTECTION COMMITTEE: 3 JUNE 2011**

**CHILDREN TAKEN INTO POLICE CUSTODY**

**1. PURPOSE OF THE REPORT**

- 1.1 To provide the East Ayrshire Child Protection Committee (EACPC) members with an understanding of Police Standard Operating Procedures in respect of children taken into Police custody.

**2. DEFINITION OF 'CHILD'**

- 2.1 Section 1(2) of the Children (Scotland) Act 1995 defines a child as 'a person under the age of 16 years'. Further provisions are contained within this Act whereby a child over the age of 16 years can be made subject of a supervision requirement. In effect, persons under 16 years of age and persons aged 16 and 17 years who are subject to a supervision requirement, in terms of the Children (Scotland) Act 1995, are to be treated and reported in accordance with the guidance contained within the Police Standard Operating Procedure. Persons within this category will hereafter be referred to as a 'child', unless otherwise stated.

**3. ARREST OR DETENTION UNDER SECTION 14 CRIMINAL PROCEDURE (SCOTLAND) ACT 1995**

- 3.1 Under the Criminal Procedure (Scotland) Act 1995 you may only detain if you suspect the person has committed an offence punishable by imprisonment.

Section 15 of the Criminal Procedure (Scotland) Act 1995 provides that it is a statutory right for a detainee under 16 years to have their parent or guardian informed of their detention, even if the child does not wish this to be done. This should be done without undue delay.

Under normal circumstances, a parent/guardian must be permitted access to the detainee. However, if it is suspected that they may be involved in the alleged offence, or there are reasonable grounds to suspect that they may hinder the investigation, access can be denied. Access can also be denied if it is felt that contact with the child may result in assault, or have a serious emotional or psychological effect.

#### **4. SEARCH**

4.1 In relation to an arrested or detained person, irrespective of age, the Police have the power (without warrant and without the prisoner's consent), for the purpose of securing or preserving evidence to:-

- search the person of the prisoner;
- take fingerprints and other impressions from the prisoner;
- photograph the prisoner;
- seize the prisoner's clothing, footwear etc as productions; and
- take DNA if applicable.

#### **5. SUSPECT INTERVIEW/CAUTION AND CHARGE**

5.1 As a general rule, Officers are to make every effort to involve the parent or guardian of child offenders at the earliest possible stage of an enquiry and preferably prior to any interview or the caution and charge being administered to the child, unless their involvement would compromise the investigation or the wellbeing of the child.

If circumstances dictate that a child has to be detained or arrested, then efforts must be made to have a parent or guardian attend at the Police Office prior to the interview or the caution and charge being administered. However, undue delay should not be caused and the interview/caution and charge may be administered in the presence of a Supervisory Officer, not directly involved in the case.

As a general rule, children should only be interviewed under tape recorded conditions in relation to offences which are listed in the Lord Advocates Guidelines to Chief Constables on the reporting of offences.

#### **6. LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES REPORTING TO PROCURATORS FISCAL OF OFFENCES ALLEGED TO HAVE BEEN COMMITTED BY CHILDREN REVISED CATEGORIES OF OFFENCES**

##### **6.1 Category 1**

Offences which require by law to be prosecuted on indictment or which are so serious as normally to give rise to solemn proceedings on the instructions of the Lord Advocate in the public interest.

##### **Category 2**

Offences alleged to have been committed by children aged 15 years or over which in the event of conviction oblige or permit a court to order disqualification from driving.

##### **Category 3**

Breaches of antisocial behaviour orders allegedly committed by children aged 12-15 years.

## **7. CHILD OFFENDERS – ARRESTED**

- 7.1 In the vast majority of cases, where children are brought into Police custody, they will be liberated within a very short period of time and reported as appropriate.

Prior to any decision to detain a child in custody, the first aspect to be considered is: has the child committed an offence reportable to the Procurator Fiscal within criteria outlined in Lord Advocate's Guidelines to Chief Constables – Reporting to Procurators Fiscal of Offences Alleged to have been committed by Children.

Children will be liberated in all cases, unless the following requirements are considered, in consultation with an officer of at least the rank of Inspector, to have been met.

(1) a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a sheriff, a Police Officer of the rank of Inspector or above or the Officer in charge of the Police Station to which he is brought, shall inquire into the case, and, subject to subsection (3) below, may liberate him on a written undertaking being entered into by him or his parent or guardian that he will attend at the hearing of the charge.

(2) An undertaking mentioned in subsection (1) above shall be signed by the child or, as the case may be, the parent or guardian and shall be certified by the Officer mentioned in that subsection.

(3) A person shall not be liberated under subsection (1) where:-

(a) the charge is one of homicide or other grave crime;

(b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or

(c) the Officer has reason to believe that his liberation would defeat the ends of justice (possible examples would include: threats to harm witnesses upon release, intimidation of witnesses, refusing to provide personal details which cannot be ascertained or confirmed by other sources etc.) These examples are not intended to provide an exhaustive list of what might be considered as likely to defeat the ends of justice.

A child who is apprehended, and not subject to liberation, will be kept in a 'place of safety' other than a Police Station until he or she can be brought before a Sheriff unless an officer of Inspector rank or above certifies that at least one of the following pertains:-

- That the child is so unruly a character that he or she cannot safely be so detained;

- That by reason of his or her state of health, or mental or bodily condition, it is inadvisable so to detain the child.

- It is impracticable to do so;

The initial decision not to liberate a child from Police custody must be done, either by or where this is not possible in consultation with, an officer of Inspector rank or above. The Officer in Charge of the station or the officer of at least Inspector rank should then record the details that gave rise to the child's detention on the Child Detention Certificate.

## **8. ACTION TO BE TAKEN WHEN A PARENT/GUARDIAN REFUSES OR IS UNABLE TO UPLIFT A CHILD FROM CUSTODY**

8.1 When, after enquiry, it is decided that the arrested child will be liberated, arrangements should be made with the appropriate parent/guardian to uplift the child.

If, after full enquiry, the parent/guardian fails/declines to attend to uplift the child then it is imperative that this matter is dealt with as a child protection issue. The assistance of the Social Work Department or out of hours Standby Service should be sought, as it is their responsibility to provide appropriate care for the child.

## **9. RELEASING CHILDREN FROM POLICE CUSTODY**

9.1 Children released from police custody should be released into the care of their parent/guardian. Social Work Services might in some instances act as the child's guardian. Where a child is to be released to the care of another individual at the request of the parent/guardian, Custody officers should make efforts to ensure that the nominated individual is an appropriate person to take care of the child.

9.2 For period 01 January 2011 to 05 May 2011 inclusive there have been 53 children under the age of 16 years brought into custody at Kilmarnock Police Office. The majority of those have been male and the offences include theft, disorder and assaults. The majority were not held in custody, having been released for Report or an Undertaking to appear at Court on an arranged date. The Prisoner Processing System does not allow for those aged 16 or 17 years of age and under supervision to be counted.

## **10. RECOMMENDATIONS**

10.1 It is recommended that the East Ayrshire Child Protection Committee:

i) note the content of the report.

**Susan Taylor**  
**Chair of East Ayrshire Child Protection Committee**  
**31 May 2011**

**Report prepared by David Summerhill Detective Inspector, Strathclyde Police**