

# #09

# Court bail and remand

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**This guide provides an overview of the law on bail and remand for children in court, and examines the corresponding duties of the local authority.**

The guide gives practical tips on what can be done by practitioners to prevent the pre-conviction detention of child clients.

# Overview and legal framework

There are small but significant differences when it comes to applying for bail on behalf of a child. Useful guidance and decision-making criteria on bail and remands can be found in the Youth Court Bench Book.<sup>1</sup>

Flowcharts that the Youth Court Bench Book recommends for decision-makers to consider with regard to the detention of children are set out below at Appendices 1 and 2. Detention considerations for children are set out in ss98–102 of the Legal Aid, Sentencing and Punishment of

Offenders Act 2012 (LASPO). These provisions were amended on 28th June 2022 with the aim of ensuring that custodial remand is always used as a last resort.<sup>2</sup>

The court must first consider whether to grant bail, with or without conditions. The possible objections to bail are broadly similar to adults, with some important distinctions (see below), but the subsequent remand considerations are different than those for adults.

## Practical advice: police custody

If the child arrives at court in police custody, consider:

- making an immediate application for the child to be released on bail from the cells. Consider a bail condition to remain in the court building until the case is called on
- applying for them to be out of the secure dock and next to their lawyer and parent or supporting adult for the duration of the hearing
- asking the court to express its views about the police bail decision. This can help develop change where the police station applies a blanket policy to children charged with certain types of offences without properly considering their obligations under s38 of the Police and Criminal Evidence Act 1984 (PACE)
- there is strong anecdotal evidence that a child appearing in police custody is more likely to be remanded by the court.

- 1 Youth Court Bench Book, Judicial College, June 2020, [bit.ly/3JrPWdy](https://bit.ly/3JrPWdy)
- 2 Police, Crime, Sentencing and Courts Act 2022, Part 8. The intention behind these changes – including to strengthen the tests the court must apply when deciding to remand a child to custody – is set out in the Ministry of Justice’s Circular No. 2022/03, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1086255/youth-remand-bail-moj-circular.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086255/youth-remand-bail-moj-circular.pdf)

# Bail

## Presumption of bail

For child defendants, there is a presumption of bail<sup>3</sup> – except where the child is charged with or convicted of murder, attempted murder, manslaughter, or certain serious sex offences if the

defendant has certain specified previous convictions.<sup>4</sup> In such cases the court can still grant bail but only if there are exceptional circumstances that justify it.

## Objections to bail for imprisonable and indictable offences

As with adult defendants, the court can only remand the child if there are substantial grounds to believe that one of the statutory objections to bail exist in relation to the child defendant.

General objections to bail:

- failure to surrender to custody
- committing an offence on bail
- interference with witnesses or otherwise obstructing the course of justice
- for their own protection.

There is an additional reason specific to children on which basis bail can be refused:

- for the child's own welfare. This criterion has been found not to breach a child's rights when refused bail at the police station for own their protection.<sup>5</sup>

Bail in relation to children may also be withheld on the following bases:<sup>6</sup>

- the child is already in custody serving a sentence
- there is insufficient information to make a bail decision
- the child has been on bail in these proceedings and is arrested for breach of bail conditions
- it is impracticable to complete enquiries or make a report unless the child is in custody
- was on bail for another matter on the date of the offence.

## Objections to bail for summary only, imprisonable offences<sup>7</sup>

The definition of imprisonable offences is defined by whether or not it is imprisonable for an adult (Schedule 1, Part 3, para 1 Bail Act 1976).

The possible objections to bail are narrower and the court can withhold bail for these offences only if :

- the child has previously failed to surrender to custody, and in view of that failure the court believes that they would fail to surrender;
- the child was on bail for another matter at the time of the instant offence and there are substantial grounds to believe that they would commit further offences on bail
- there are substantial grounds to believe that the child would cause mental or physical injury or fear of mental or physical injury to an associated person.

Or further:

- if it is for the defendant's own protection (or welfare, if a child).
- the child is already in custody serving a sentence
- there is insufficient information to make a bail decision
- the child is arrested for breach of bail in these proceedings and substantial grounds exist for believing they would fail to surrender, commit further offences, interfere with witnesses or obstruct justice.

3 s4 Bail Act 1976

4 s25(2) Criminal Justice and Public Order Act 1994

5 Archer v Commissioner of Police of the Metropolis [2021] EWCA Civ 1662

6 Sch 1 Part I Bail Act 1976

7 Sch 1 Part 1A Bail Act 1976

# Objections to bail for non-imprisonable offences

The statutory grounds for withholding bail for children charged with non-imprisonable offences are not substantially different to those for adults. For children a court need not grant bail in such cases if<sup>8</sup>:

- the child has previously failed to surrender and the court believes in view of that failure that the child will fail to surrender
- it is for the child's own protection or welfare, or
- the child is in custody serving a sentence
- the child has been arrested for breach of bail in these proceedings and there are substantial grounds to believe that the child would fail to surrender, commit further offences, or interfere with witnesses or otherwise obstruct the course of justice

## The court's approach to bail

The court must first decide whether to grant bail.

- The first consideration should be unconditional bail.
- The court must consider whether any of the statutory objections to bail can be met by conditions, and can only impose bail conditions in order to allay those fears, or to ensure the child assists with the writing of reports or attends a meeting with their lawyer (section 3(6) Bail Act 1976). Appropriate conditions can be devised by the Youth Offending Team or Youth Justice Service who can offer bail support and supervision to help allay any bail concerns. The YOT/YJS will need to assess the child and their circumstances to present a suitable package to the court.
- Where the court does not consider standard bail support and supervision to be sufficient, and as an alternative to secure remand, the court will consider conditional bail with intensive support and supervision (ISS).

## Conditional bail

The court may impose conditions on an adult or child defendant's bail for the defendant's own

protection or, additionally, for a child welfare or in their own interests.<sup>9</sup>

## Curfews

Curfews do not need to have electronic monitoring – doorstep curfews do still exist, but for a child to receive credit for time spent on curfew the curfew must be a 'qualifying curfew'. This means it must be for nine hours or more and must be electron-

ically monitored. Each day the child spends on such a curfew means that a half-day must be deducted from any subsequent custodial sentence. The total will be rounded up if necessary.<sup>10</sup>

## Electronic monitoring

Curfews with electronic monitoring can only be imposed on children where the following conditions, as specified under section 3AA Bail Act 1976, are satisfied:

- (a) they have attained the age of 12 years;
- (b) they:
  - i. are charged with or have been convicted of a violent, sexual or terrorism offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or
  - ii. is charged with / convicted of one or more imprisonable offences which, together with any convictions for imprisonable offences, amount to (or would if convicted) to a recent history of repeatedly committing imprisonable offences while remanded on bail or to custodial remand;

<sup>8</sup> Sch 1 Part 2, Bail Act 1976

<sup>9</sup> Sch 1 Part 1 para 8(1) (b) Bail Act 1976

<sup>10</sup> s240A Criminal Justice Act 2003

(c) Electronic monitoring must be available in the area, and

(d) YOT must inform the court that the imposition of the requirement would be suitable.

## Location monitoring

Conditional bail with location monitoring may be imposed on a children where the conditions, as

specified under section 3AA Bail Act 1976, are satisfied (see Electronic monitoring above).

## Conditional bail with intensive support and supervision

ISS<sup>11</sup> is an intensive community-based package offered where standard bail support and supervision is not considered sufficient and is an alternative to secure remand. The YOT/YJS will assess whether a child is suitable for bail ISS, but the decision rests with the court. Conditions are likely to include tagged curfews and voice verification. ISS programmes can, in some cases, be under-utilised by local authorities due to resourcing and financial pressures, but early discussions should be had with the YOT/YJS to determine whether one is

appropriate where there is a high risk of remand due to the nature of the offence.

However, it is very important to ensure that ISS bail is proposed and used only as a last resort, given how intensive and restrictive it is. YJS can and should look to propose more bespoke, tailored and child-focused bail support and supervision alternatives that can allow the court to grant conditional bail. It is often about both the YJS and defence advocating to the court the rationale as to why conditional bail would be more suitable than ISS and would still be 'robust'.

## Practical advice: the bail application

- Ascertain the bail status of any co-accused to either distinguish or assist with asking for conditions for your client.
- Regarding objections:
  - Take note of objections to bail that were raised by the police, the Crown and the court.
  - Tailor the bail application to respond to objections.
- Get input from family members, YOT/YJS, and (where appropriate) children's services. Be creative about possible conditions that could be offered to the court – including, for example, contacting any agencies and voluntary organisations that are or could be working with the child. Outlining agencies' willingness to work with the child on a voluntarily basis may help persuade the court to grant bail.
- Always consider positive and supportive conditions which recognise strengths, not simply punitive or restrictive ones that only see risks.
- Try to get supporting evidence of anything relied upon in your application – for example, school records, mental health diagnoses, etc. You may also wish to highlight the number of hours spent in any form of education, as this can help illustrate how the child's time is currently occupied.
- Regarding the proposed address:
  - When it comes to a proposed address, it is important to anticipate problems. If the address is close to where the incident was alleged to have taken place, or close to where co-accused, the complainant, or other witnesses live, it may prove unworkable. Likewise, if the child is charged with sexual offences, an address where other children reside may prove unworkable.
  - Be aware that proceedings may be delayed by the Crown needing to check the proposed bail address. The address can often be checked by the prosecution or the police on the day of the bail application. However, the more notice the Crown have of the address the better.
  - If the proposed address is out of the area, you will need to ensure coordination between the YOT/YJS to make sure they have spoken to each other and are in agreement. The court will want to know which YOT will have responsibility and how coordination will be handled.<sup>12</sup>

<sup>11</sup> YJB case management guidance: How to manage bail and remands (12 October 2022), 'What the Bail Intensive Supervision and Support package looks like', <https://bit.ly/3tWtxPv>

<sup>12</sup> YJB Case Management Guidance: Case responsibility (12 October 2022), [bit.ly/3Vmkjla](https://bit.ly/3Vmkjla)

- In serious cases, where there is a real risk of custody, discuss whether the YOT can prepare an ISS package. If this is not available, consider whether they can put together an alternative high-risk bail package with stringent conditions if the child is at risk of custody.
- In submissions, highlight the fact that almost three-quarters (74%) of children remanded to custody did not subsequently receive a custodial sentence.<sup>13</sup>
- Regarding AssetPlus risk assessments:<sup>14</sup>
  - If you are representing a Black, Brown or Racialised child, consider that the AssetPlus assessment tools used by YOTs to measure risk are acknowledged to be racially biased.<sup>15</sup> Black children are assessed as riskier than children of any other ethnicity, a trend that cannot be explained by offence-related or demographic factors.<sup>16</sup> Consider discussing your concerns about an adverse risk assessment with YOT/YJS in the first instance, if necessary you could then raise these concerns with their line manager or the head of service. Although you could call the YOT/YJS to give evidence in court as to the formula used to assess risk, this should be a last resort because ultimately it is important to work collaboratively with the YOT/YJS to benefit the child.
  - Where the child you are representing has been risk assessed adversely on an AssetPlus score in relation to a bail decision, carefully consider those parts of the assessment that contribute to risk – for example, the child’s home environment, the stability of the address, the offence itself and any historical offences. Consider highlighting to the YOT/YJS the protective factors that could reduce the risk – for example, is a parent willing to engage with the YOT/YJS to support the child? or are there positive activities that the child could undertake to occupy their time which would reduce the risk score?

## Practical advice: if bail is refused

- If bail is refused make sure you have been provided with a copy of the reasons<sup>17</sup> and consider renewing your application as soon as is appropriate. Keep in mind that the court is under a duty to have regard to a child’s welfare<sup>18</sup>, and this may in itself require a court to allow repeat bail applications.<sup>19</sup>

13 'Youth Justice Statistics 2020/21', Ministry of Justice and Youth Justice Board, 27 January 2022, [bit.ly/3N2XFRv](https://bit.ly/3N2XFRv)

14 See 'AssetPlus: assessment and planning in the youth justice system', Youth Justice Board, 15 October 2014, [bit.ly/3KVSS2B](https://bit.ly/3KVSS2B)

15 See, for example, Tracy Almond, 'Asset: An assessment tool that safeguards or stigmatizes young offenders?', *Probation Journal*, Vol 59(2), June 2012, p142

16 'Youth Justice Statistics: 2019 to 2020', Youth Justice Board and Ministry of Justice, 2021, [bit.ly/3tn46Hy](https://bit.ly/3tn46Hy); 'Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data', Youth Justice Board, 2021, [bit.ly/3tmeyin](https://bit.ly/3tmeyin)

17 s102(5) LASPO

18 s91(4A) LASPO

19 *R (B) v Brent Youth Court* [2010] EWHC 1893 (Admin); s 91(4A) LASPO

# Remand

## Remand to local authority accommodation

If bail for the child is refused, the court must remand to local authority accommodation (RLAA), unless the 'strict criteria'<sup>20</sup> to remand to youth detention accommodation (RYDA) are met<sup>21</sup> (see below). The court must consult with the local authority, through the YOT/YJS before imposing conditions on the remand.<sup>22</sup> If RLAA conditions are breached, the child can be arrested and brought back to court in the same manner as breach of bail.<sup>23</sup>

It must be stated in open court the designated local authority responsible for a child who is to be on RLAA.<sup>24</sup>

A RLAA can include living at home with parents or guardian (even though bail has been refused) if the local authority assesses this to be the best accommodation option. However, the court

can stipulate that the child must not reside with a named person.<sup>25</sup>

The court may impose conditions in the same way as bail conditions<sup>26</sup> this can include a curfew with electronic monitoring<sup>27</sup> but there is no power to impose electric monitoring for GPS tagging (location monitoring). The court must consult with the designated LA before imposing any conditions.<sup>28</sup> The court may impose requirements on the LA for securing the child's compliance with any conditions.<sup>29</sup>

The LA may apply to the court for conditions to be imposed.<sup>30</sup> The designated LA, or the child, may also apply for any RLAA conditions (or requirements) to be varied or revoked.<sup>31</sup>

The court must explain to the child in ordinary language why it is imposing (or varying) the conditions.<sup>32</sup>

- 20 Youth Court Bench Book, Remand Provisions para 11
- 21 s91(3) LASPO
- 22 s93(4) LASPO
- 23 s97 LASPO
- 24 Youth Court Bench Book, Remand Provisions para 21
- 25 s93(3)(b) LASPO
- 26 s93(1) LASPO
- 27 s94 LASPO
- 28 s93(4) LASPO
- 29 s93(3)(a) LASPO
- 30 s93(5) LASPO
- 31 s93(6) LASPO
- 32 s93(7) LASPO
- 33 Under s22(1) Prosecution of Offences Act 1985 "custody" includes local authority accommodation or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 34 As defined in s102(2) LASPO, namely remand to a secure children's home, a secure college, a secure training centre or other accommodation specified by regulations under s248(1)(f) of the Sentencing Code
- 35 As amended by the Police, Crime, Sentencing and Courts Act 2022, Part 8. For children subject to extradition proceedings, see ss100-101 LASPO
- 36 YJB Case Management Guidance: How to manage bail and remands (12 October 2022), 'How the YJS arranges a secure remand placement for a child', [bit.ly/3AGIoS7](https://bit.ly/3AGIoS7)
- 37 Youth Court Bench Book, Remand Provisions para 31
- 38 Emphasis added

## Practical advice

Custody time limits apply to Remand to Local Authority Accommodation as they do to Remand to Youth Detention Accommodation.<sup>33</sup>

Custody time limits are 56 days in the Magistrates Court and Youth Court; and 182 days in the Crown Court (from the date of sending).

## Remand to youth detention accommodation

RYDA<sup>34</sup> is only lawful when bail has been refused and when certain conditions are met. The two ways a child can be detained are set out in ss98 and 99 of LASPO.<sup>35</sup> Unlike the other bail and remand provisions, the court does not specify where the child will be detained – this is a matter for the local authority and the YJB.<sup>36</sup> The court

Sections 98 and 99 of LASPO (as amended on 28th June 2022) state<sup>36</sup>:

### 98 First set of conditions for a remand to youth detention accommodation

...

- (2) The age condition is that the child has reached the age of twelve.

must designate which local authority is responsible for the child, which includes responsibility for accommodation costs and travel costs. At this point the child becomes a 'looked after child', which imposes additional duties and safeguards on the local authority for that child<sup>37</sup> (see below for more detail.)

- (2A) The sentencing condition is that it appears to the court very likely that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.

- (3) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences–
  - (a) is a violent, sexual or terrorism offence, or
  - (b) is an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate–
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences and that the risks posed by the child cannot be managed safely in the community.

[See Appendix 1 – flowchart for YDA under s98 LASPO Necessity criteria, below.]

**99 Second set of conditions for a remand to youth detention accommodation**

...

- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it is very likely that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.
- (4) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that–
  - (a) the child has a recent and significant history of absconding while subject to a custodial remand, and it appears to the court that the history is relevant in all the circumstances of the case, and
  - (b) the offence mentioned in section 91(1), or one or more of those offences, is alleged to be or has been found to have been committed while the child was remanded to local authority accommodation or youth detention accommodation.
- (6) The second history condition is that the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent and significant history of committing imprisonable offences while on bail or subject to a custodial remand, and this appears to the court relevant in all the circumstances of the case.
- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate–
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences and the risks posed by the child cannot be managed safely in the community.<sup>39</sup>

[See Appendix 2 – flowchart for YDA under s99 LASPO History criteria, below.]

When considering the sentencing condition and whether it is very likely that the child will be sentenced to custody, the Youth Court Bench Book states that the court ‘must consult the Overarching principles – sentencing children and young people’.<sup>40</sup> The Bench Book further states: ‘The court must be very mindful that the minimum custodial sentence in the youth court is a DTO of four months. If there is no real prospect<sup>41</sup> of such a sentence, then a remand to youth detention accommodation under this section is not permitted.’<sup>42</sup>

Before deciding whether to remand a child to youth detention accommodation, the court must consider the interests and welfare of the child.<sup>43</sup>

Where it makes a decision to remand a child to youth detention accommodation, it must state in open court its reasons<sup>44</sup> and in particular (a) that it has considered the interests and welfare of the child and (b) explain why it is of the opinion that the necessity condition is met. This recent amendment is designed to reinforce the existing presumption of non-custodial remand by ensuring courts consider remand to local authority accommodation as a first step.<sup>45</sup>

If the conditions of s98 or s99 LASPO are not met, the court cannot remand the child to YDA.

39 ss98 and 99 LASPO

40 Youth Court Bench Book, Remand Provisions para 35; ‘Overarching Principles – Sentencing Children and Young People’, Sentencing Council, 1 June 2017, [bit.ly/3JqmDs3](http://bit.ly/3JqmDs3)

41 This was the test prior to the amendments made by the PCSCA 2022

42 Youth Court Bench Book, Remand Provisions para 35

43 s102(4) LASPO

44 The reasons for the custodial remand must also be given in writing to the child, the child’s legal representative and the child’s Youth Offending Team: s102(5) LASPO

45 Ministry of Justice’s Circular No. 2022/03, para. 10 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1086255/youth-remand-bail-moj-circular.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086255/youth-remand-bail-moj-circular.pdf)



# Calculating time spent on remand

Where a child is sentenced to a DTO any time spent on remand (section 240ZA CJA 2003) or time spent on a qualifying curfew (section 240A CJA 2003) will count towards their DTO in the same manner as adults. This was changed by the PCSCA 2022 and comes into force immediately in that it applies to all sentencing hearings that

take place on or after the bill came into force (28th June 2022). It only applies to custodial remands and therefore will not allow for credit to be given for those remanded to local authority accommodation, in such cases it will be a matter for the judge to take that into account when passing sentence.<sup>46</sup>

<sup>46</sup> R v A [2019] EWCA Crim 106

# Further bail applications and Appeals

Where a child has been refused bail and has been remanded into YDA, they may make a second bail application advancing any argument, including previous arguments.

The court has a duty at every hearing to consider whether a child ought to be granted bail, but further applications should be based on new considerations not previously before the court – note that the ‘passage of time itself may be consid-

ered to be a change of circumstance in particular cases’.<sup>47</sup> The duty of the court to have regard to the child’s welfare may also be a reason to allow repeat bail applications<sup>48</sup> and therefore it may be appropriate for the court to hear a further bail application for a child even if the defence cannot show that there are new facts or arguments for the court to consider.

## Application to the Crown Court

If a child is denied bail by the youth court or adult magistrates’ court, or wishes to apply to vary the conditions, the child can apply to the Crown Court to reconsider an application for bail.<sup>49</sup> An application to the Crown Court must be made as soon

as practicable and served on the Crown Court, the youth court or adult magistrates’ court; the prosecutor; and any surety.<sup>50</sup> It must include the copy of the certificate of full argument made in the lower court.<sup>51</sup>

## Appeal by the prosecution to the Crown Court

The prosecutor may appeal to the Crown Court against the grant of bail if the child is charged with an offence punishable by imprisonment.<sup>52</sup> The prosecutor must inform the court and the child’s representative of the intention to appeal at the end of the hearing and before the child is released from court,<sup>53</sup> and then serve a notice to appeal on both the court and the child’s representative

within two hours of having informed them of the intention to appeal.<sup>54</sup> Failure to serve the notice in time will result in the defendant being released from custody.<sup>55</sup>

If notice is served, the child will have to remain in custody until the appeal is heard,<sup>56</sup> which should be as soon as practicable and no later than the second business day.<sup>57</sup>

- 47 Youth Court Bench Book, Remand Provisions para 35
- 48 R (B) v Brent Youth Court [2010] EWHC 1893 (Admin)
- 49 s81 Senior Courts Act 1981
- 50 Criminal Procedure Rules (CrimPR) 14.8(2)
- 51 CrimPR 14.8(3)(e) and 14.4(4)
- 52 CrimPR 14.9(1)(a); s1(1) Bail (Amendment) Act 1993
- 53 CrimPR 14.9(2); s1(4) and (5) Bail (Amendment) Act 1993
- 54 CrimPR 14.9(4); s1(5) Bail (Amendment) Act 1993
- 55 CrimPR 14.9(10)
- 56 CrimPR 14.9(3)
- 57 CrimPR 14.9(8)

# Murder

If a child is charged with murder, but not attempted murder, they must be remanded at the youth court or magistrates' court to appear before the Crown Court.<sup>58</sup> However the court must still consider whether to remand the child to Youth Detention Accommodation or Local Authority Accommodation using the criteria in LASPO as set out above.<sup>59</sup> A Crown Court judge can grant bail, RLAA or to YDA, and the same criteria set out above must be considered. The Crown Court

judge must consider bail by the second business day after the first hearing in the youth or magistrates' court (CrimPR 14.10).

There is no right to bail, and the Crown Court judge may only grant bail if the court is satisfied that there is no significant risk that, if released on bail, the child would commit an offence that would be likely to cause physical or mental injury to another person.<sup>60</sup>

58 s115 Criminal Justice Act 2009

59 (R(A) v Lewisham Youth Court [2011] EWHC 1193 (Admin))

60 Schedule 1, Part 1, para 6ZA Bail Act 1976

# Breach

## Breach of bail

Breach of bail is not a separate criminal offence, but the police can arrest a child if the police have reasonable grounds to believe that the child has breached the conditions of their bail or will breach the conditions of their bail or fail to surrender to court. If a child is arrested for breach of bail, the child must be brought before the court as soon as is practicable within 24 hours of the arrest.<sup>61</sup> (If the child is charged with murder, they must be brought before a Crown Court judge.)

The court must determine whether the breach took place. The court must release the child on the same bail conditions as before unless it is of the opinion either that the child:

- is likely to fail to surrender to custody; or
- has breached or is likely to breach any condition of bail.<sup>62</sup>

If the court finds that the child did breach or was likely to breach their bail conditions or likely to fail to surrender then the court can reconsider bail and the considerations are as set out above. The child can be released on the same conditions or different conditions, or if an objection is made out remanded to LAA or YDA where those criteria are met.

When a child breaches conditions related to their support package with a YOT/YJS, it is a matter for the YOT whether to bring the matter back before the court.

## Breach of remand to local authority accommodation

A child can be arrested if the police have reasonable grounds for suspecting that the child has broken any of the conditions in respect of a RLAA.<sup>63</sup> As with bail breaches, the child must be brought before the court within 24 hours of the arrest.<sup>64</sup>

If the court finds that the child has breached one of the conditions of the RLAA, the court can revisit the decision and the conditions.<sup>65</sup>

## Failure to surrender to custody

When a person is granted bail, they are under a duty to surrender to custody,<sup>66</sup> and it is an additional criminal offence not to turn up to court at the time and place given without reasonable excuse.

If a child does not appear, without reasonable excuse, the court can issue a warrant. That warrant can be backed for bail or not backed for bail.

If the warrant is not backed for bail, the child will be arrested by the police and brought before the court. If there is no court sitting at the time of arrest – for example, if the child is arrested in the evening – the child will be held overnight in police cells to be brought to court the next morning.

61 S7(4) Bail Act 1976

62 s7(5) Bail Act 1976

63 s97(1)(c) LASPO

64 s97(2) LASPO

65 s97(5) and (6) LASPO

66 s3(1) Bail Act 1976

# Role of the Local Authority

## The role of the YOT/YJS

The YOT has a statutory duty to provide support for children on bail or RLAA.<sup>67</sup> Information from the YOT is a statutory requirement before certain decisions concerning bail and remand are made – for example, curfew. It is therefore crucial for a practitioner representing a child defendant to con-

tact the YOT immediately. The YOT will prepare either a bail supervision and support package, or an ISS bail package. Practitioners should be ready to suggest certain conditions – for example, residence at a proposed address; curfew; no contact provisions; and geographic exclusions.

## If the YOT/YJS do not support bail

It is a matter for the court whether to grant bail, and the court may grant bail even where the YOT/YJS do not support it.

The YOT/YJS will carry out a risk assessment which determines whether they support bail for the child. Their central concerns will be around potential reoffending, harm to the public and safeguarding the child.

If the YOT/YJS take the position that they cannot support bail, it is important to find out why and to do everything possible to address their concerns or to find alternative arrangements or conditions that might suffice.

This can sometimes be done by offering an address out of the area. In some cases, the concern stems from the seriousness of the offence. This can sometimes be addressed by pointing out that a co-accused charged with the same offence has been given bail, or by highlighting weaknesses in the Crown's case.

However, if the YOT/YJS maintain the position that they cannot support bail, it is vital to ask that their report clarify their reasons – for example, that this is solely due to the seriousness and is not a reflection of concerns about the child's engagement or compliance.

## The role of the children's services

There are cases where children's services have a direct role to play. This can be complicated because often, unless a child is already 'looked after', children's services are not represented in court and you are reliant on communication between the YOT/YJS and children's services.

There may be cases where it is impossible or inappropriate for the bail address to be that of a family member. This should not increase the child's chances of being remanded to YDA. The

local authority are required to provide accommodation to any child in need (under 18) if they have no-one to look after them or they have been lost or abandoned or where the person who has been caring for them is unable or prevented from providing suitable accommodation or care.<sup>68</sup> In certain circumstances, it may be appropriate to write to the director of children's services. The contact details, including email addresses, for all directors of children's services can be found online.<sup>69</sup>

## Placements out of area

Children's services can and do find specialist places out of the area for children. It may be appropriate to see what is available and how far they are willing to mitigate any risk the court deems that the child poses. However, children's services

should try to accommodate children in the most appropriate placement for the child.<sup>70</sup> This is especially important given government recognition that there is meaningful scope to improve practice in this area to reduce custodial remands.<sup>71</sup>

67 s38(4)(c) Crime and Disorder Act 1998

68 ss17 and 20 Children Act 1989; R (G) v Southwark LB [2009] UKHL 26

69 See [bit.ly/3wzWraX](https://bit.ly/3wzWraX)

70 s22C Children Act 1989

71 'Review of custodial remand for children', Ministry of Justice, published 26 January 2022, updated 16 February 2022, [bit.ly/3Ji8jBL](https://bit.ly/3Ji8jBL)

## Practical tip

Always try to highlight where there might be an accommodation issue and potential need to accommodate the child out of area as early as possible with the YJS court duty officer. It can take time for children's services to identify and find out of area placements, especially if the child is not already 'looked after'.

However, it is also important to recognise that it is often not in a child's best interests to be accommodated a long way from their home area and support network, and this should be a last resort and considered sparingly.

Consider proposing to the court that the child is bailed with a condition to live and sleep as directed by the local authority.

In addition, s44(1) of the Children and Young Persons Act 1933 states:

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case

take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

## Local authority provision of accommodation under RLAA

Local authorities have a legal duty to provide accommodation for all children remanded to local authority accommodation.<sup>72</sup> Once a child is remanded to the local authority, it is for the local authority to decide where they are placed. This can mean placement in non-secure local authority accommodation; in a foster home; in a children's home; or, where appropriate, in the home of a family member or friend. It can even mean returning to the child's home address. However, if the court is concerned about this, they can specify that the child is not to reside with a named person or at a named address.<sup>73</sup>

The local authority can apply to the court to place the child in a secure placement (a secure children's home), where the child:

- (i) has a history of absconding and is likely to abscond from any other description of accommodation; and if the child absconds, is likely to suffer significant harm; or
- (ii) if kept in any other description of accommodation, is likely to injure himself or other persons.<sup>74</sup>

## 'Looked after child' status

Every child remanded to YDA is to be treated as a 'looked after' child.<sup>75</sup> As a result, the designated local authority has certain responsibilities and the child has certain entitlements.<sup>76</sup>

Once a child is 'looked after', the local authority has a duty to safeguard and promote that child's welfare,<sup>77</sup> and to make services available to the child as a parent would consider reasonable.<sup>78</sup> This includes plans for the child's health, care and educational needs. There is statutory guidance for local authorities about the care planning and placement of such children.<sup>79</sup> Additionally, for children remanded to YDA, the local author-

ity is required to prepare a detention placement plan (DPP) setting out how it will meet the child's needs.<sup>80</sup> This should include how the child will be supported after their period on remand comes to an end.

If the remand lasts for 13 weeks or longer, as with other looked after children, the child or young person becomes eligible for 'leaving care services'.<sup>81</sup> This means that the child should get advice and support for particular needs, including accommodation and financial assistance (including for higher education) by the responsible local authority.

- 72 s21 Children Act 1989, and in Wales, the Social Services and Wellbeing Act 2014; also 'How to manage bail and remands: section 3 case management guidance', Youth Justice Board, 1 May 2019, part 3 'Remand', [bit.ly/3tnLLtZ](https://bit.ly/3tnLLtZ)
- 73 s93(3)(b) LASPO
- 74 s25(1) Children Act 1989
- 75 s104 LASPO
- 76 s22 Children Act 1989
- 77 s22(3)(a) Children Act 1989
- 78 s22(3)(b) Children Act 1989
- 79 'The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review', Department for Education, July 2021, [bit.ly/3udUez7](https://bit.ly/3udUez7)
- 80 The Children Act 1989 Guidance and Regulations: Volume 2: Care Planning, Placement and Case Review [Supplement] - Looked after children and youth justice
- 81 The 13 weeks criteria for leaving care would include any time the child has spent looked after between the age of 14 and 17 with at least one day over the age of 16. Schedule 2, Paragraph 19B Children Act 1989.

# Useful resources

s44(1) Children and Young Persons Act 1933: Every court dealing with a child or young person must have regard to the welfare of that child or young person.

UN Convention on the Rights of the Child (UNCRC) Article 3 provides that: 'In all actions concerning children ... the best interests of the child shall be a primary consideration.'

UNCRC Article 37(b) provides that the 'detention ... of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time'.

'What's wrong with remanding children to prison?', Howard League for Penal Reform, September 2021.<sup>82</sup> This guide provides statistics and data about the over-use of remand for children.

'Supporting children from custody into the community: A step by step guide', Howard League for Penal Reform, December 2019.<sup>83</sup> This guide provides a detailed overview of support to which children are entitled, and helps adults to support children's positive reintegration into the community.

The Police, Crime, Sentencing and Courts Bill<sup>84</sup> includes provisions which would tighten the tests for remanding children. It could be argued that this is a response to the increasing rate of youth remand which is 'the highest level seen on record and means many children in custody today are there unnecessarily and experiencing the trauma and stigma that brings. This is damaging to children, their relationships, their opportunities and identity, which does not improve public safety'.<sup>85</sup>

Equal Treatment Bench Book, Judicial College, February 2021<sup>86</sup>

Youth Court Bench Book, Judicial College, June 2020<sup>87</sup>

Youth Defendants in the Crown Court, Judicial College, March 2022

82 [bit.ly/34TUhHv](https://bit.ly/34TUhHv)

83 [bit.ly/3N6aSJl](https://bit.ly/3N6aSJl)

84 [bit.ly/3CRrTT7](https://bit.ly/3CRrTT7)

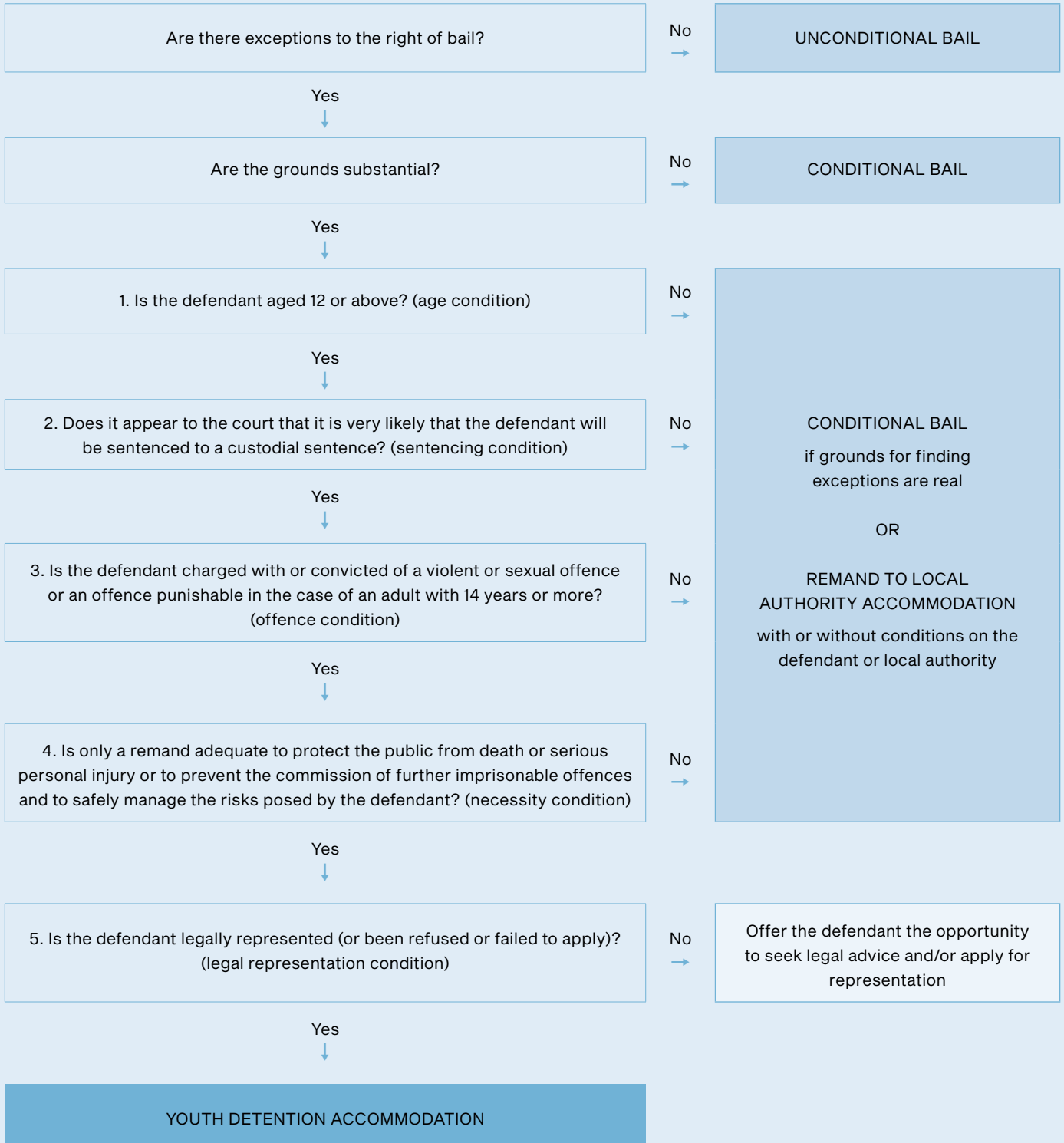
85 'Annual statistics: a youth justice system failing Black children', Keith Fraser, YJB Chair and Board Champion for Over-Represented Children, 27 January 2022, [bit.ly/3uco0UG](https://bit.ly/3uco0UG) (quoting 'Youth Justice Statistics 2020/21', Ministry of Justice and Youth Justice Board, 27 January 2022, [bit.ly/3N2XFRv](https://bit.ly/3N2XFRv)). See also 'Review of custodial remand for children', Ministry of Justice, published 26 January 2022, updated 16 February 2022, [bit.ly/3Ji8jBL](https://bit.ly/3Ji8jBL)

86 [bit.ly/2Q9yUu2](https://bit.ly/2Q9yUu2)

87 [bit.ly/3JrPWdy](https://bit.ly/3JrPWdy)

# Appendix 1

## Route to youth detention accommodation – necessity criteria



(Source: Youth Court Bench Book, Judicial College, June 2020, p36 (as amended to reflect the amendments to LASPO by the PCSCA 2022))



# Appendix 2

## Route to youth detention accommodation – history criteria

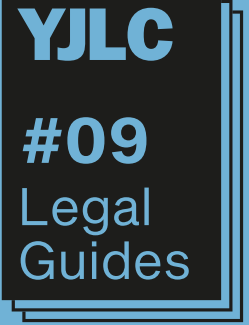


(Source: Youth Court Bench Book, Judicial College, June 2020, p37, (as amended to reflect the amendments to LASPO by the PCSCA 2022))

#09

Court bail and remand

Written by Shauneen Lambe and Susan Wright (Garden Court Chambers) in collaboration with Katya Moran and Laura Cooper at the Youth Justice Legal Centre. With thanks to Amos Waldman (Doughty Street Chambers) and Mike Blower. Thanks also to Kate Aubrey-Johnson (Garden Court Chambers) and Jen Twite (Garden Court Chambers) for their updates to the guide.



#01  
Turning 18

#02  
Intermediaries for  
child defendants

#03  
Child Criminal  
Exploitation

#04  
Criminal  
Behaviour Orders

#05  
Trauma Informed  
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Police bail  
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#09  
Court Bail  
and remand

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Anonymity

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Sexual allegations

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Diversion

#### Youth Justice Legal Centre yjlc.uk

The Youth Justice Legal Centre (YJLC) has been set up by the charity Just for Kids Law to provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Free specialist legal advice for children, their families, youth offending teams, the judiciary and lawyers.

#### Doughty Street Chambers doughtystreet.co.uk

Doughty Street Chambers offers extensive expertise across numerous child rights-related areas and has wide-ranging experience in bringing ground-breaking litigation for and concerning children in public law, extradition, immigration, mental health, community care, prison law, trafficking, education, criminal justice, clinical negligence and inquests. Many of our members specialise in complex and developing areas concerning the rights of children, including female genital cutting (FGC) and children, abortion rights for vulnerable teenagers, unaccompanied minors' rights, the education rights of children in custody, inclusive education for disabled children, children's effective participation in criminal trials, and the rights of LGBTQI children.

#### Just for Kids Law justforkidslaw.org

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

#### The Dawes Trust

The Dawes Trust is a charity set up from funds of the estate of the late Christopher Dawes. The Trust's object is to fight crime, including organised crime, by the protection of people and property, the preservation of public order and the prevention and detection of crime for the public benefit.

The Trust provides funding to various organisations and projects in furtherance of its object.