
Children in Custody

Children below the age of 18 shall only be placed in police custody as a measure of last resort.¹ Since 2018, there has been an increase in the reported numbers of children placed in police custody in Norway. This was the backdrop for the NPM visit to Oslo Police District in the spring of 2021. During this visit we examined how children's rights are ensured and adhered to, during arrest and placement in custody. We also collected national data on minors in custody from all police districts in Norway.

Children's Rights and their Special Vulnerability

Being placed in police custody is a highly invasive measure. This is especially the case for children.

Both physically and mentally, children are in a vulnerable developmental phase and are therefore more prone to harm due to deprivation of liberty compared to adults. The brain is not fully developed until the early twenties² and normal development is contingent on relational security, social interaction and activities.³ When isolated from the world, this development is hampered. Children and adolescents who are left on their own in a difficult situation find themselves in a critical situation. The UN Convention on the Rights of the Child states

that every human being below the age of 18 shall be considered a child.⁴

As such, children who are placed in police custody are more vulnerable than others to being subjected to human rights abuses and are therefore entitled to special protection measures..⁵

Children are unable to evaluate time in the same manner as adults and they have not fully developed their ability to handle the stress, anxiety and uncertainty that isolation can cause.⁶ Children and adolescents who are arrested and placed in police custody may be in crisis, shock or intoxicated. Placement in a holding cell can cause trauma, and

1 In this article we have used the term "custody" for police custody, ie. when children are placed in custody by police as result of being *arrested* on suspicion of having committed a criminal offence or as a result of being *apprehended* under the Norwegian Police Act.

2 Lee, J. (2016). Lonely Too Long – Redefining and Reforming Juvenile Solitary Confinement. *Fordham Law Review*, 85, 846–870.

3 See e.g., Tetzchner, S.v. (2012). *Utviklingspsykologi [Developmental Psychology]*. Oslo: Gyldendal akademisk.

4 UN Convention on the Rights of the Child, Article 1. Children may be accountable within delimited areas before reaching the age of majority. For instance, children who have turned 15 years of age may be held criminally responsible, cf. Section 20, first paragraph of the Norwegian Penal Code. However, young offenders under 18 years of age enjoy protection as children pursuant to the UN Convention on the Rights of the Child.

5 UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 Mars 2015, A/HRC/28/68 (hereinafter UN Special Rapporteur on Torture, 2015), paragraphs 16–18.

6 Broberg, A. Almqvist, K. & Tjus, T. (2007) *Klinisk barnepsykologi. Utvikling på avveie [Clinical child psychology: Development gone astray]*. Fagbokforlaget 2007.



A police car with an integrated cell. Photo: NPM

for children this may be particularly harmful because it impacts the developmental process and may contribute to abnormal development and cause permanent damage.⁷

This is the reason why the UN Convention on the Rights of the Child expressly states that children should only be deprived of their liberty as a measure of last resort and for the shortest appropriate period of time.⁸

The NPM's Examination of the Conditions for Children in Custody

Under its mandate, the NPM has visited several places where children and adolescents are or may

be deprived of their liberty. These visits have resulted in several recommendations regarding the role of the police and the use of police assistance at institutions.⁹ We have also conducted visits to police custody facilities and issued some recommendations regarding the police's handling of minors.¹⁰ However, during the previous visits to police custody facilities, our focus has not been to examine the conditions for children in particular.

Following a period of decline, we noted that since 2018 there has again been a clear rise in the number of children placed in police custody in Norway.¹¹ Several actors have expressed concerns

7 Balaban, V. (2009). Assessment of Children. I E. Foa, T. Keane, M. Friedman & J. Cohen, *Effective Treatments for PTSD: Practice Guidelines from the International Society for Traumatic Stress Studies* (p. 62). New York/London: The Guildford Press. Tine Jensen, Specialist in child and adolescent psychology, PhD/Researcher (2016/2021). Barn og traumer [Children and trauma]. The Norwegian Psychological Association's website: <https://www.psykologforeningen.no/publikum/informasjonsvideoer/videoer-om-psykiske-lidelser/barn-og-traumer>.

8 UN Convention on the Rights of the Child, Article 37 (b). See also the UN Committee on the Rights of the Child, General Comment no. 10: Children's Rights in Juvenile Justice.

9 The Child Welfare Service's emergency institution for adolescents (2016), Akershus Youth and Family Centre, Sole Department (2016), Hedmark Youth and Family Centre, Vien Department (2017), Alta Youth Centre (2017), Alta Aleris (2017), Agder Institution for Adolescents, Furuly Department (2018), Humana East, Jessheim and Hol gård Department (2019) and Stavanger Health Trust, Department of Child and Adolescent Mental Health Care (2019).

10 Tønsberg Police Custody Facility (2014), Drammen Police Custody Facility (2014), Lillestrøm Police Custody Facility (2015) and Bergen Police Custody Facility (2016).

11 A decline was recorded in 2020. According to the Norwegian National Police Directorate's *Årsrapport om arrestforhold 2020* [Annual Report on conditions in police custody 2020], it is presumed that this decline is related to the COVID-19 pandemic and infection control measures imposed in this connection (restrictions on the serving of alcohol, ban on the serving of alcohol, reduced mobility etc.).

regarding this trend.¹² As a result, we conducted a study on how children's rights are safeguarded when children are arrested by the police and placed in custody. The study comprised of a two-day visit to Oslo Police District on 11–12 May 2021. In addition, we gathered information from the 11 other national police districts. Information was also obtained from the Norwegian National Police Directorate, the Norwegian Bureau for the Investigation of Police Affairs, Oslo Municipality's section for outreach in Oslo City Centre (*Uteseksjonen*), the Norwegian Ombudsperson for Children, the Defence Lawyers Group at the Norwegian Bar Association and the Norwegian National Human Rights Institution's (NIM).

When can Children be Placed in Custody?

Oslo Police District is the largest police district in the country measured in terms of population and it is the district where the highest number of children are remanded in custody. In 2020, children were remanded in custody in Oslo a total of 204 times. This represented approximately 30 per cent of the total number of cases where minors were placed in police custody in Norway.¹³

Minors may be placed in custody as result of being *arrested* on suspicion of having committed a criminal offence and as a result of being *apprehended* under the Norwegian *Police Act*. We obtained documentation regarding all minors who had been arrested or apprehended and placed in a cell during the period 1 January to 12 May 2021. This amounted to 35 individuals. 34 of them had been arrested and one apprehended. Based on the low number of persons apprehended under the *Police Act* during this period, we chose to exclusively examine arrests.

The threshold for arresting children should be high. The Norwegian *Criminal Procedure Act* states that minors shall not be arrested unless it is "especially necessary".¹⁴ Interviews indicated that both officers in the patrol units and police prosecutors at the Police Prosecuting Authority were aware that there should be a high threshold for arresting children. A review of criminal case documents also revealed that adolescents who are remanded in custody during the period we examined, had been arrested for serious incidents. However, there was a lack of documentation regarding what assessments were made to ensure that the special criteria applicable to arresting a child was fulfilled in each individual case. This criteria is strict and we expect that the police document the assessments made prior to arrest.

The Use of Holding Cells for Children – Inadequate Statistical Basis

For a minor to be placed in a cell or another locked room, it has to be "absolutely necessary".¹⁵ This applies irrespective of whether the minor has been arrested or apprehended. If placement in a cell is not absolutely necessary, the minor shall be detained in a less intrusive location.¹⁶ Alternatives to cell placement should be considered and attempted and the assessment and conclusion should be documented in the custody record. If the minor is placed in a cell, the duration of the stay should be as brief as possible.

In the Proposition to the Norwegian Parliament (*Storting*) *Barn og straff [Children and Punishment]* (2010–2011), measures were announced for the follow-up of minors in police custody. One such measure was the facilitation of "enhanced data quality in the registration of minors in police custody".¹⁷ Since then, there have been some

12 The Defence Lawyers Group in the Norwegian Bar Association, the Norwegian Ombudsman for Children and NIM have been in dialogue with Oslo Police District regarding children in police custody in 2020/2021.

13 Norwegian National Police Directorate (2020). *Annual Report on conditions in police custody 2020*. Chapter 2, part 2.1 Complete overview distributed according to police district, page 9.

14 Norwegian Criminal Procedure Act, Section 174 and the Norwegian Prosecution Instructions, Section 9-2, first paragraph, first sentence. See also the basic requirement of necessity and proportionality in Section 170a of the Norwegian Criminal Procedure Act.

15 Norwegian Instructions relating to the use of police custody cells, Chapter 5, Specifically regarding minors.

16 Guide to the Norwegian Instructions relating to the use of police custody cells, Chapter 5, Specifically regarding minors, page 16.

17 Prop. 135 (Bill) (2010–2011), Chapter 4.2.4, pages 29–30.

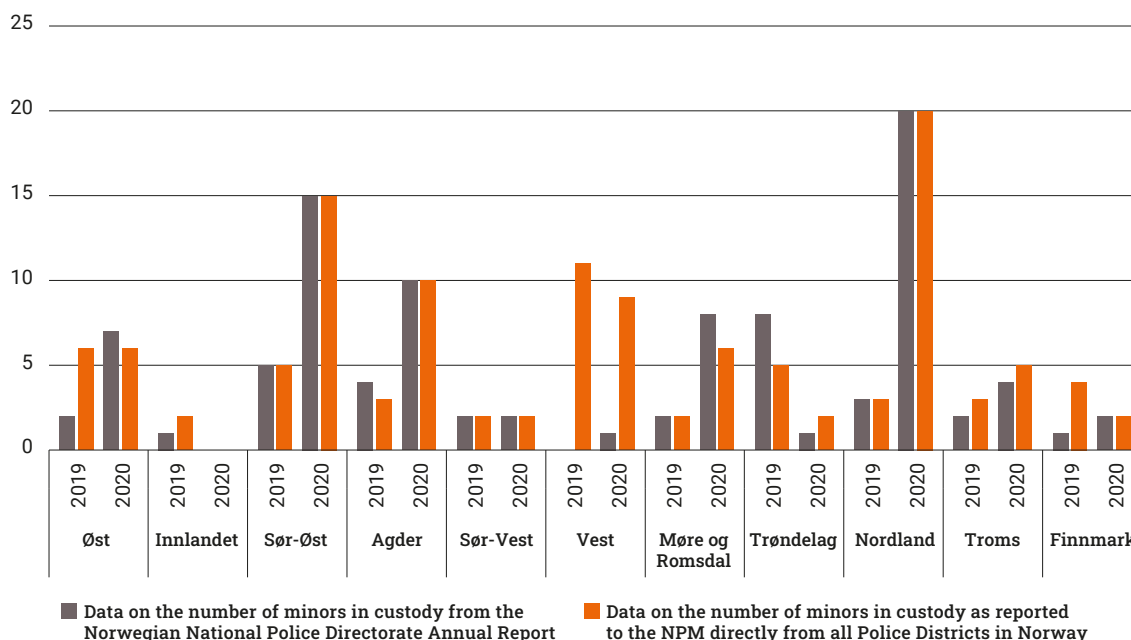


Figure 1: Differences in figures from the Norwegian National Police Directorate's annual report and figures reported directly to the NPM from the Police Districts 2019 and 2020 – children placed in cells, (does not include Oslo)

gradual improvements on the statistics regarding minors in custody, including in the Norwegian National Police Directorate's annual reports on conditions in police custody.

The NPM's study revealed nevertheless that figures regarding arrests of children in Norway remain uncertain.¹⁸ The figures in the Norwegian National Police Directorate's annual report did in many cases not correspond with the figures that the police districts reported directly to the NPM.

For example, according to the Norwegian National Police Directorate's annual reports, no minors had been placed in cells in the Western Police District in 2019 and only one child had been placed in a cell in 2020. The figures we obtained directly from the Western Police District indicated that 11 minors had been placed in cells in 2019 and nine in 2020.

We have not examined the reasons for these discrepancies but it appears clear that statistics on

arrests of children in Norway remain inadequate. This is censurable and was one of the matters the NPM addressed with the Norwegian Ministry of Justice and Public Security following the visit (see below).

170 of the total 204 minors who were remanded in custody in Oslo Police District in 2020 were placed in a cell in the police custody facility. Available figures from 2021 indicates that the threshold for placing minors in cells was lower in Oslo than in the rest of the country¹⁹ However, it was not possible to confirm this due to discrepancies in the reporting by the districts to the Norwegian National Police Directorate.

Inadequate Alternatives to Holding Cells for Children in Custody

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommends that authorities avoid the placement of minors in ordinary police

¹⁸ See also specific findings following the visit to Oslo Police Custody Facility, Chapter 5.1, page 20 of the report.

¹⁹ See e.g., Norwegian National Police Directorate (2019) Annual Report on conditions in police custody 2019, table 3, page 9.



Custody cells in Oslo Police District. To the left (red wall): ordinary cell. To the right (blue wall): a cell for minors with a TV behind the window. Photo to the left: Ivan Brodey for LMR arkitektur. Photo to the right: NPM

cells but rather hold them in a child-friendly location.²⁰ The UN Special Rapporteur on Torture has also stressed that children who are arrested must be placed in child-friendly locations.²¹

The need to facilitate and adapt conditions for children is also the background for the strict condition that placing a minor in a cell or another locked room must be “absolutely necessary”.

Nevertheless, the information obtained from all national police districts revealed that, in practice, there are few actual alternatives to holding cells when children are placed in police custody. No police districts reported to the NPM that they have adapted rooms as an alternative to cells for

arrested or apprehended minors who are detained for somewhat longer periods.

There is a clear risk that there is no real assessment regarding the condition of “absolutely necessary” when, in practice, there are no alternatives to cells for minors. This was also reflected in the written documentation we obtained. In the majority of the record entries we reviewed from all national police districts, standardised phrases such as “seriousness of the case” or “other circumstances” were used, or it was stated that other placement had been “considered but not found to be appropriate” as justification for the placement of a minor in a cell. In some cases, no considerations for alternatives to cells were recorded.

20 CPT (2015), point 99: “Further, every effort should be made to avoid placing juveniles in ordinary police cells but rather to hold them in a juvenile-friendly environment”.

21 UN Special Rapporteur on Torture (2015), paragraph 84 k), recommends: “Not to detain children in law enforcement establishments for more than 24 hours, and only in child-friendly environments”.

Children in Cells

In Norway, there are no special requirements for the design of cells or other rooms for children and adolescents who are placed in custody. Norwegian police cells are designed as holding cells, entirely devoid of furniture, made of concrete and almost always without the possibility to look outdoors. Irrespective of age, many experience a stay in such a holding cell as distressing.

The NPM finds a need for regulations in this area in order to ensure safe and child-friendly locations for children who are arrested or apprehended in police custody, in accordance with the recommendations of the European Committee for the Prevention of Torture (CPT).

The visit to the Oslo Police Custody Facility, collection of data from all national police districts and previous NPM visits to police custody facilities, reveal that very few police districts have made alterations to adapt cells for minors. In the very few cases where this has been done, the adaptations are very limited and the cells continue to resemble the characteristics of traditional holding cells.²²

Considering the risk of harm by using holding cells, especially for children, this is censurable. Holding cells are not child-friendly and do not generate the requisite safety. Therefore, children should not be placed in such cells.

Risk of Isolation

The serious harmful effects of isolation are well-known,²³ and it is a requirement that measures are put in place to prevent isolation and remedy the

consequences of placement in police custody.²⁴ Based on children's special needs for follow-up and protection, the requirements for minors are even stricter. Children are to be kept separate from adult detainees and social interaction must be ensured by staff members. Therefore, it is a requirement that minors in police custody shall "at all times" have the possibility to access staff from the police custody facility or persons working in the health and care services or child welfare service, and who are located on the premises.²⁵

A review of records for all minors placed in custody during the period January–May 2021 revealed that none of the minors placed in a cell in Oslo Police Custody Facility had the option of accessing adults to the extent required by the regulations.²⁶ Furthermore, there was no documentation of such access being offered.

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It was bad being there, I never want to go back. Being locked up, alone. It was very, very bad. Sitting in the cell, being locked in a room, was very bad. It makes me want to cry.

Quote, adolescent
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22 Under its prevention mandate, the Parliamentary Ombud has since the start-up in 2014 visited six police custody facilities: Tønsberg Police Custody Facility (2014), Drammen Police Custody Facility (2014), Lillestrøm Police Custody Facility (2015), Bergen Police Custody Facility (2016) and Oslo Police Custody Facility (2021).

23 Special report to the Norwegian Parliament (*Storting*) on isolation and lack of human contact in Norwegian prisons, Document 4:3 (2018/19). See https://www.sivilombudsmannen.no/wp-content/uploads/2019/06/SOM_S%C3%A6rskilt-melding_WEB.pdf

24 Norwegian Instructions relating to the use of police custody cells, Chapter 12. By Oslo District Court's judgement of 2 June 2014 (*A v the State*, represented by the Norwegian Ministry of Justice and Public Security), the Norwegian Government was found to have contravened Article 8 of the European Convention on Human Rights (ECHR) for *de facto* isolation in police custody. Following the judgement, the Norwegian Director of Public Prosecutions issued interim guidelines regarding the use of police custody to prevent unlawful isolation in Norwegian police custody facilities. The guidelines were followed up in the Norwegian Instructions relating to the use of police custody cells, which state that measures shall be implemented to prevent isolation and remedy the consequences of stays in police custody.

25 Norwegian Instructions relating to the use of police custody cells, Chapter 5, Specifically regarding minors. See also chapters 9, 10 and 11, regarding follow-up of all detainees.

26 Documentation was collected for all minors placed in a cell during the period 1 January 2021 until 12 May 2021 (date of the visit).



A corridor at Oslo Police Custody Facility. Photo: NPM

During the same period, the average time spent in cells for minors in Oslo Police Custody Facility was 14 hours. With few exceptions, those who were detained in the evening had to spend the night in police custody. For many children, it will be especially distressing to spend the night in custody. Few interrogations were conducted in the evening and this appeared to contribute to minors remaining in custody until the following day. When children are deprived of their liberty, this shall be for the shortest appropriate period of time. In the NPM's assessment, the time of placement for several of the minors indicated that it is possible to reduce the average time spent in custody by conducting multiple interrogations in the evening.

Lack of Adaptations for Children in Custody

Adequate information is important for anyone who finds themselves in a distressing and difficult situation. Children and adolescents who are

deprived of their liberty are entitled to age appropriate and tailored information from the moment they are detained by the police and until they are released or transferred to a prison or other location. The risk of abuse is considerable during the initial hours of deprivation of liberty and the UN Convention on the Rights of the Child requires that children who are suspected of a criminal offence be informed immediately and directly of the suspicions against them and of the right to legal assistance in the case.²⁷ Such information must be age-appropriate and should be provided both in writing and orally.²⁸ It is crucial that the information is provided in a simple, non-technical manner, using a language that the minor comprehends, using an interpreter, if necessary.²⁹

This is important, both in order to reduce the distress tied to the incarceration as well as to promote a sense of safety during interrogations.

27 UN Convention on the Rights of the Child, Article 40 2 (b) (iv) and the UN Committee on the Rights of the Child, General Comment no. 10, paragraphs 58–60. See also the ECHR, Article 5 (2) and the UN Covenant on Civil and Political Rights, Article 9 (2) and A/HRC/RES/31/31, paragraph 6; A/HRC/46/15, paragraph 4. Correspondingly, see CPT(2015), paragraph 98.

28 See also CPT (2015), point 98: "(...) a specific information sheet setting out the above-mentioned safeguards should be given to all juveniles taken into custody immediately upon their arrival at a law enforcement establishment. The information sheet must be child-friendly, written in simple and clear language and available in a variety of languages. Special care should be taken to ensure that juveniles fully understand the information". See also the UN Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules), rules 24 and 25.

29 See *Khlaifia and Others v. Italy* [Grand Chamber], 15 December 2016, application no. 16483/12, paragraph 115 and the UN Convention on the Rights of the Child, Article 40 2 (b) (iv). cf. the UN Committee on the Rights of the Child, General Comment no. 24, paragraphs 48 and 64.

During our visit, we found that children in custody in Oslo often do not receive adequate information regarding their rights. The written information distributed to children in custody is the same as that given to adults. The information was designed in a formal, inaccessible language and lacked information regarding the special rights of children, e.g., the right to have access to an adult throughout the stay.³⁰ This is not in accordance with the recommendations by the European Committee for the Prevention of Torture (CPT), which emphasises that information must be adapted according to the age and maturity of the child and be provided both in writing and orally.

It is also important that oral information is given in a good and comprehensible manner. During the visit, we found considerable variation in the manner in which minors were given information orally throughout the arrest procedure. Interviews and reviews of documentation and audio recordings of interviews revealed that some officers were good at communicating the relevant information and that they made an effort to ascertain whether or not the minor had understood them. Others would provide an outline of the child's rights quickly and routinely, without checking whether the information had been understood.

The Need for National Measures

The examination of the conditions for children in police custody revealed a clear need for national measures to ensure the safeguarding of these children. In a situation where the use of police custody for children is increasing, this is especially important. As such, the NPM followed-up several of its findings with the Norwegian Ministry of Justice and Public Security. In a letter to the Ministry, we requested clarification as to how the following challenges will be addressed:

› *Quality assurance of national figures*

There is a need for a reliable national overview that enables both local and national authorities to follow up the use of police custody in relation to minors. The Ministry was asked to provide the Ombud with a briefing on how this will be ensured.

› *Safe and child-friendly locations when children are placed in police custody*

We requested that the Ministry account for how national authorities can ensure safe and child-friendly locations for children who are arrested or apprehended in police custody. The police should have police custody facilities with suitable alternatives to placement in a holding cell and adapted rooms that safeguard children's need for safety in compliance with human rights standards.

› *Information adapted according to age and maturity*

Furthermore, we emphasised that minors who are arrested and placed in police custody should receive information that is easy to comprehend and adapted to their age and maturity. The findings revealed that there is a need to put in place standardised information material that is adapted to children and in accordance with human rights standards, and we asked the Ministry to clarify how this will be ensured.

› *Regulations adapted to the needs and best interests of the child*

The Norwegian *Criminal Procedure Act* and accompanying regulations should be interpreted and applied in the context of Article 104 of the Norwegian Constitution and the UN Convention on the Rights of the Child.³¹ The NPM's examination highlighted that the framework of legislation and instructions fails to reflect the basic rights of the child in certain important areas. Therefore, there is a need for the Ministry to more carefully examine how the regulatory framework can safeguard children's right to be heard, children's right to be appointed a public defence counsel and children's right to special protection against invasive coercive measures.

The Norwegian Ministry of Justice and Public Security has been requested to respond on these matters during the spring of 2022 and we will follow up these and other matters in our dialogue with the Ministry.

30 Norwegian Instructions relating to the use of police custody cells, Chapter 5, Specifically regarding minors, fourth paragraph.

31 The Norwegian Human Rights Act, sections 2 and 3.