

HANDCUFF POLICY

Final Version, Ref No: OCDC8

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1. Purpose of Policy

The purpose of this policy is to clearly outline when it is appropriate to use handcuffs on young people in Oberstown.

2. Scope of Policy

This policy is applicable to court escorts and permitted absences including medical appointments. This policy should be read in conjunction with the handcuff procedure.

3. Policy Statement

Handcuffs should only be used in certain circumstances – those set out in the scope of this policy. In other exceptional circumstances, approval for the use of handcuffs is required from the Director or his nominee.

In all cases, handcuffs should only be used when absolutely necessary and their use must be proportionate to the risk posed by the young person. Only staff trained in the use of handcuffs should apply handcuffs to young people. Handcuffs must **never** be used as punishment and their use must adhere strictly to procedural guidelines.

4. Legal Framework

It is the principal aim of Oberstown Children Detention Campus under s 158 of the Children Act 2001 to provide appropriate educational and training programmes for children referred to the Campus by a court and to promote their reintegration into society as persons who are capable of making a positive and productive contribution to society. This must be secured by having regard to young people's health, safety, welfare, interests; providing them with proper care, guidance and supervision; preserving and developing young people's relationships with their families; exercising proper moral and disciplinary influences on young people and recognising their personal, cultural and linguistic identity.

According to s 180 of the Act, young people in Oberstown are in the lawful custody of the Director who is 'to do what is reasonable...in all the circumstances for the purpose of safeguarding or promoting the child's... health, development or welfare'.

These obligations are fulfilled, among other means, through the implementation by staff of Oberstown's policies and procedures.

Furthermore, S. 211 of the *Children Act, 2001*, states that: "A child taken from a children detention school under this section shall, while outside the school, be kept in such custody as the Director may determine and while in that custody shall be deemed to be in lawful custody."

These provisions allow for the use of handcuffs when young people are being moved off Campus. The use of handcuffs must be in line with the provisions of the scope of this policy.

The authority to use handcuffs must be balanced with the Director's responsibility to do what is reasonable to safeguard or promote the child's education, health, development or welfare.¹ As per s. 158 of the Act, the principal aims of Oberstown are to have regard for the 'health, safety, welfare and

¹See section 180 of the *Children Act, 2001*.

interests' of the young people detained, including their 'physical, psychological and emotional wellbeing,' and to provide 'proper care, guidance and supervision' and to exercise 'proper moral and disciplinary influences on them'.

4.1 Human rights standards

The United Nations Convention on the Rights of the Child (UNCRC), to which Ireland is a party, sets out the rights to which all children, including children in detention, are entitled. The Convention requires that all children are entitled to enjoy their rights without discrimination, they must have their best interests taken into account in all matters concerning children and have their views taken into account in all matters affecting them in line with their age and maturity. Under Article 40 of the Convention, every young person in conflict with the law has the right to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces the respect for the human rights and fundamental freedoms of others and which takes into account the young person's age and the desirability of promoting reintegration and assuming a constructive role in society. Regard should also be had to the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) and the European Guidelines on Child-friendly Justice (2010).

Although staff at Oberstown have the legal authority to use handcuffs in certain limited circumstances, they must also carry out their functions in accordance with the European Convention on Human Rights.²

Article 3 of the ECHR prohibits torture or inhuman or degrading treatment or punishment. The use of handcuffs has the potential to breach Article 3, for example if the use of handcuffs is considered disproportionate to risk, or considered to be inhumane in certain circumstances.

Regard should also be had to the European Convention for the Prevention of Torture and inhuman and degrading treatment and punishment (CPT). The CPT frequently criticises State actors for the use of handcuffs in certain circumstances.

5. Related documentation

Other documents that should be considered in conjunction with this policy include:

- IYJS, Standards & Criteria for Children Detention Schools.³
- Our Duty to Care.⁴
- IYJS notifiable incidents policy.
- Guidelines for good practice in Children Detention Schools.⁵

² Under the European Convention on Human Rights Act, 2003, Oberstown is an 'organ of the state' required to act in a manner consistent with obligations under the European Convention on Human Rights.

³ IYJS, Standards & Criteria for Children Detention Schools, 2008. Available at: https://www.hiqa.ie/system/files/Standards_and_Criteria_for_Children_Detention_Schools_2008%20.pdf

⁴ Department of Health and Children, Our Duty to Care, 2002.

⁵ Irish Youth Justice Service, Guidelines for good practice in Children Detention Schools, 2010.