





# ADHD IN CUSTODY

A guide to custody for ADHDers.









### CONTENTS

### 2 Glossary

#### 3 About ADHD

- What is it?
- Common challenges
- Why does ADHD matter in custody?

#### **10** My Legal Rights

What are they?

#### **11** Appropriate Adults

- What are they?
- Do I need one?
- What do they do?
- Who can be my Appropriate Adult?
- Who cannot be my Appropriate Adult?
- Who is a 'vulnerable person'?
- I'm over 18. How do I get an Appropriate Adult?
- I'm under 18. How do I get an Appropriate Adult?
- I don't want an Appropriate Adult
- I'm waiting for an Appropriate Adult

#### 21 My Needs

- What might be difficult for me?
- What help can I get?

#### 25 The Law

**26** References

## GLOSSARY

**ADHD:** Attention Deficit Hyperactivity Disorder

An ADHDer: a person who has ADHD

**Criminal Justice System:** a collection of groups which deal with crime e.g. Police, courts, prisons.

**Custody:** when you have been arrested and are being held by the police.

**Custody record:** a record of: the reasons for your arrest and detention; police actions taken; any checkups.

**Detention:** the act of lawfully holding you and preventing your freedom.

**Masking:** behaviour which hides or lessens the impact or visibility of ADHD features.

**Neurodivergent:** having different brain 'wiring' compared to most people e.g. ADHD, Autism, Dyscalculia, Dysgraphia, Dyslexia, Dyspraxia/DCD.

**Procedural safeguards:** rules which protect you and your rights.

**Reasonable adjustments:** changes which can be made to help you.









## **ABOUT ADHD**

### What is it?

You might want to tell the police about your ADHD, but find it difficult to explain.



ADHD is present **from birth**, throughout childhood and adulthood, in both **males** and **females**.



ADHD is **neurodevelopmental**. This means it affects how the brain is 'wired' (developed and structured).



ADHD is not always obvious. This can be because some people are very good at **masking** (especially females).



### ADHD brain 'wiring' falls into 3 types:

Mainly Inattentive



Mainly Hyperactive-Impulsive



 Combined inattentive and hyperactive/impulsive



Different brain 'wiring' means ADHDers' brains also work differently.



How ADHD presents depends on the type, and if you are male or female.



ADHD is different for every person. We will list **some** of the **many** possibilities.











## **Common challenges**

Common challenges for **Inattentive** ADHDers include:

- Attention and managing distractions
- Focus
- Concentration

Common challenges for **Hyperactive-Impulsive** ADHDers include:

- Impulse control
- Managing hyperactivity

Common challenges for **Combined**ADHDers include a **mix** of the above.
(There can be small overlaps between Inattentive and Hyperactive-Impulsive without being Combined).





- Being easily distracted and inattentive
- Difficulty focusing and concentrating
- Forgetfulness
- Disorganisation
- Appearing to not be listening
- Difficulty following instructions
- Losing things
- Difficulty with attention to detail
- Boredom



- Being very chatty, enthusiastic or engaged
- Daydreaming and distractibility
- Impulsiveness
- Fidgeting











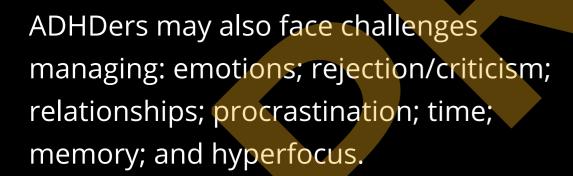




Hyperactive-Impulsive challenges commonly look like:

- Interrupting others
- Taking risks
- Difficulty waiting and taking turns
- Fidgeting, restlessness, repetitive movements
- Difficulty staying quiet and still
- Being on the go all the time
- Being talkative
- Rushing
- Blurting things out

Combined challenges look like a mix of Inattentive and Hyperactive-Impulsive.





## Why does ADHD matter in custody

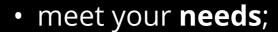
1 in 4 people in the Criminal Justice System are ADHDers.

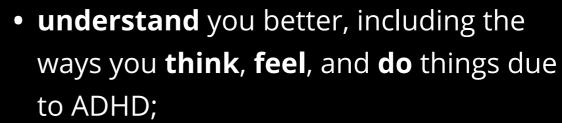


The CJS fails to spot ADHD most of the time. This is a huge barrier to accessing support. [e]



It is **important** that the police know about your ADHD to:







- protect your interests, rights, entitlements, and welfare;
- make sure the custody process is **fair** and does what it should do.

















Understanding you is especially important because ADHDers may be **more likely** to:

- confess to things they did not do;
- go along with what others say or do; [a]
- reply "don't know" in police interviews; [a]
- have other neurodevelopmental [h] differences;
- struggle to get used to being in custody [h] and react disruptively;
- find police interviews difficult practically and emotionally;
- cope with stress in unhelpful ways;
- give vague answers in police interviews, which could be misunderstood as being dishonest, avoidant, or uncooperative.

















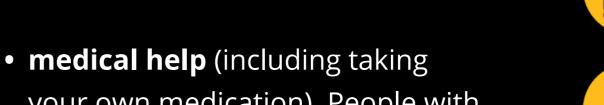
# MY LEGAL RIGHTS What are they?

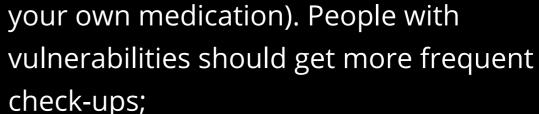
If you are arrested and taken into custody the **law** gives you **the right to**:

- free independent legal advice;
- have someone informed of your arrest and detention;



• see the rules that police must follow;







• see your custody record.



C









### **APPROPRIATE ADULTS**

### What are they?

Appropriate Adults are adults who support, and protect the interests, rights, welfare, and entitlements of a child or vulnerable person who has been arrested and detained, or is being questioned by police.



### Do I need one?

**Under 18s** are **required** to have an Appropriate Adult by law.

Adults (18+) are only required by law to have an Appropriate Adult if the police have a reason to suspect they are vulnerable.



## What do they do?

• **Support**, **advise** and **assist** you if you are under 18 or a vulnerable adult;



- Observe whether the police are:
  - acting appropriately and fairly;
  - respecting your rights and entitlements; and



- inform an Inspector (or more senior
  officer) if the police are not doing so.
- Help with communication between you and the police;



Help you to understand your rights
 and entitlements, and ensure they are
 protected and respected; and



• Seek legal advice on your behalf.









# Who can be my Appropriate Adult?

- For under 18s: a parent, guardian, caretaker or social worker;
- For adults: a relative, guardian, or person responsible for your care or custody;
- A vulnerability experienced adult, but not:
  - a police officer;
  - a person employed by the police; or
  - a person controlled by the police.
- Another **responsible adult**.
- A **solicitor can** be an Appropriate Adult if:
  - the police cannot get another
     Appropriate Adult to attend; and
  - they are not acting as a solicitor when attending.



Any person (including parents and guardians) who:

- is **suspected** of being involved in the offence;
- is the **victim**;
- is a witness;
- is involved in **investigating** the offence;
- has received an admission or denial of guilt before they attended as the Appropriate Adult;
- you are **estranged** from (no longer have a relationship with);
- is **under 18** years old.























# Who is a 'Vulnerable Person'?

The law says 'vulnerable people' are **adults** who may be **more likely** to:

- **be convinced**, **confused**, or **go along** with what **others** do or say;
- give unreliable, misleading or incriminating information without knowing or meaning to;
- have difficulty understanding and communicating about the implications of police procedures and processes;
- not understand the importance of what they are told, questions they are asked, and their replies;
- not understand or be able to exercise their rights and entitlements.











There are a wide range of reasons an adult may be considered 'vulnerable' - it depends on the **individual**. Examples include:

- Age
- Hearing differences
- Sight differences
- Speech and language differences
- Learning disabilities
- Drug/alcohol dependence
- Mental health conditions
- Menopause
- Being neurodivergent (including learning difficulties, ADHD, Autism).



























### I'm over 18. How do I get

### If you think you are vulnerable:

You arrive at the Custody Suite.



You immediately tell the Police or Custody Officer about what makes you vulnerable. (A diagnosis is not required).



The Custody Officer decides if you are vulnerable and tells you why.



If you are vulnerable, the Custody Officer will arrange an Appropriate Adult.



The **Custody Officer** will:

- **Identify** a suitable person;
- Inform them; and
- Ask them to come to the Police Station.

## an Appropriate Adult?

### If the Police think you are vulnerable:

You arrive at the Custody Suite.



The police **immediately tell** (or have already told) the **Custody Officer** that they think you are **vulnerable**. (A diagnosis is not required).





The Custody Officer **decides if** you are vulnerable and tells you why.





If you are vulnerable, the Custody Officer will arrange an Appropriate Adult.





- **Identify** a suitable person;
- **Inform** them; and
- Ask them to come to the Police Station.















# I'm under 18. How do I get an Appropriate Adult?

**All** under 18s **must** have an Appropriate Adult.



The Custody Officer **identifies** anyone who **appears** to be **under 18**.



The Custody Officer **must** then:

- **tell you** you need an Appropriate Adult;
- contact an Appropriate Adult as soon as possible;





## I don't want an Appropriate Adult

**Under 18s** and **vulnerable** adults **must** have an Appropriate Adult and **cannot refuse**.



# I'm waiting for an Appropriate Adult

You (or your legal representative) can **ask** the Custody Officer if an Appropriate Adult has been **contacted**.



Usually, without an Appropriate Adult present, the police must not:



- interview you;
- ask you to give or sign a written statement under caution;
- ask you to sign a record of interview;



**Without** an Appropriate Adult **present**, the police can **only** do those things in order to **avoid** the **likely risk** of:

- interference with or harm to a person or to evidence;
- serious loss of or damage to property;
- alerting suspects who have not been arrested yet;
- making it harder to recover property.

















### MY NEEDS

# What might be difficult for me?

Being in custody can be stressful for anyone. Some ADHDers find certain parts harder e.g.:

- Not knowing what is going to happen;
- Keeping track of time;
- Absorbing and remembering important information;
- Making important decisions;
- Concentration, focus, attention, distractibility;
- Managing boredom or hyperactivity;
- Waiting around;
- Not having your usual coping mechanisms;
- Sitting still and not fidgeting;

- Managing how you feel e.g. stressed, overwhelmed, anxious, frustrated;
- Being away from your support network e.g. family and friends;
- Making sure you can get and take your medication (if you take medication usually);
- Change in routine;
- Following instructions and processes;
- Not being able to 'switch off' or relax;
- Sound, smell, sight, touch, taste;
- e.g. it is too noisy, lights are too bright, it is too cold, overwhelming smells, clothing feels scratchy etc.
- Being in a busy and unpredictable place;
- Ignoring other people's behaviour;
- Managing impulsiveness;
- Stress making ADHD challenges more pronounced and harder to manage.









## What help can I get?

You have a **right** to **reasonable adjustments** if you have a **mental** or **physical disability** or an **impairment**. What is 'reasonable' depends on the individual circumstances.

Some examples which may be useful include:

- Regular breaks;
- Reminding the police how ADHD affects you (e.g. communication, memory, focus);
- Communicating to you clearly, concisely, and slowly;
- Giving information verbally and in writing;
- Accommodating taking medication;
- Prioritising giving/requesting information at times of day when concentration, memory, hyperactivity etc is better;

- Step-by-step explanation of what will happen in custody, and reminding you throughout;
  - e.g. you will be booked in by the Custody Sergeant who will ask you questions and do a risk assessment, you will be taken to a cell, you will be interviewed.
- Checking your understanding of information before giving you new information;
- Providing accessible/alternative formats e.g. large print, pictures/diagrams;
- Quiet cells/custody areas;
- Sensory stimulation e.g. fidget spinner, stress ball, tangle;
- Distractions e.g. books, puzzles, games;
- Avoid long waits;
- Consistency same point of contact throughout, regular updates, routines;
- Respecting personal space.









### The Law

A list of some of the most relevant guidance.

# The Police and Criminal Evidence Act 1984 (PACE) Code C

- **1.0** (reference to the Equality Act 2010)
- **1.4** (treating as vulnerable)
- **1.5** (appearing under 18)
- 1.7 (defines the role of Appropriate Adults)
- 1.13(d) (defines vulnerable)
- **3.1** and **3.2** (rights in custody)
- **3.5** and **3.15** (police obligations regarding Appropriate Adults)
- **11.1** (exceptions to not interviewing without Appropriate Adult)
- 11.15 (restrictions without Appropriate Adult)

Crime and Disorder Act 1998 section 38(4)

(Appropriate Adult for under 18s)

The Equality Act 2010 section 149 (public sector duty not to discriminate)

### References

- [a] Gudjonsson G.H., Sigurdsson J.F., Bragason O.O., Newton A.K., Einarsson E. (2008) "Interrogative suggestibility, compliance and false confessions among prisoners and their relationship with attention deficit hyperactivity disorder (ADHD) symptoms." Psychol Med. 2008 Jul;38(7):1037-44.
- **[b] Gudjonsson, G.H. (2010)** "Psychological vulnerabilities during police interviews. Why are they important?" Legal and Criminological Psychology, 15: 161-175.
- [c] Gudjonsson, G.H., Gonzalez, R.A., Young, S. (2021) "The Risk of Making False Confessions: The Role of Developmental Disorders, Conduct Disorder, Psychiatric Symptoms, and Compliance." J Atten Disord. 2021 Mar;25(5):715-723.
- [d] Kirby, A. (2022) "Why talk about females with ADHD?" [Online]. Available at: https://www.adhdfoundation.org.uk/2022/03/22/whytalk-about-females-and-adhd/ (Accessed 20 March 2023).
- [e] Young, S., Goodwin, E.J., Sedgwick, O., Gudjonsson, G.H., (2013) "The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder." BMC Med. 2013 Nov 21;11:248.
- [f] Young, S., Moss, D., Sedgwick, O., Fridman, M., Hodgkins, P. (2015) "A meta-Analysis of the prevalence of attention deficit hyperactivity disorder in incarcerated populations." Psychol Med.;45:247–58.
- **[g] Young, S., Adamo, N., Ásgeirsdóttir, B.B. et al (2020)** "Females with ADHD: An expert consensus statement taking a lifespan approach providing guidance for the identification and treatment of attention-deficit/ hyperactivity disorder in girls and women." BMC Psychiatry 20(1): 404
- [h] Young, S., Cocallis, K. (2021) "ADHD and offending." J Neural Transm 128, 1009–1019 (2021).

## **Endorsed by**Sir Robert Buckland KBE KC MP





June 2023 edition

Produced by
ADHD Alliance
Neurodiversity in Law

Law reviewed by

Sohail Bashir Kim Cresswell Mary Prior KC Mark Robinson Keith Simmonett