



Child Protection Holding Order: Power to Detain a Child Under the Age of Six in Hospital Procedure

1. Guiding Principles

Hospitals have legislated power under Part 4, Division 2, Subdivision 4, Section 40 of the [Children and Community Services Act WA 2004](#) (the Act), to detain a child, under the age of six (6) years, in hospital where there is a reasonable belief that the child is at imminent risk of harm. The Act does not confer the same hospital powers for children aged 6 or over and the local process for referral to Department for Child Protection and Family Support (DCPFS) would apply to those children.

The power to detain only applies for two (2) working days until further ongoing arrangements can be pursued by DCPFS.

Situations where a child, under six (6), may be deemed to be at imminent risk include:

- where a parent /guardian wishes to discharge the child against medical advice and the child needs ongoing treatment and/or assessment
- there are safety concerns that the child may suffer from harm if taken from the hospital (including exposure to violence; suspicion of non-accidental injury)
- the custodial parent or guardian is the subject of an apprehension order by DCPFS and they are believed to be a 'flight risk' if they leave hospital with the child.

These situations are often identified when a child attends the Emergency Department or during admission to a Paediatric or Maternity ward.

2. Procedure

A decision to request a holding order for a child must be made by the senior treating medical officer in consultation with the health service social worker (if available) and/ or the most senior nurse / midwife on site (see [Appendix 2](#): Request by a Medical Officer for a Holding Order).

Treating medical staff may seek further advice from the Regional Paediatrician or from the Child Protection Unit at PMH / Perth Children's Hospital. Consultation with the Aboriginal Liaison Officer (if available) and Community Health (in hours) may also provide further information for consideration or support if needed.

The senior medical officer or hospital social worker or senior nurse /midwife must liaise with DCPFS (office hours) or Crisis Care (after hours) in relation to making the decision to detain a child in hospital under the age of 6 (see [Appendix 5](#): DCPFS contact list). The details of the conversation with the named staff member from the DCPFS or Crisis Care should be documented in the medical record.

The decision to invoke a holding order must be confirmed by the Officer In Charge, (the 'officer in charge' in relation to a hospital, means the person for the time being in charge of the hospital), at the time the order is made:

- In hours this would generally be the responsible Director of Nursing / Health Service Manager or Operations Manager
- After hours this may be the hospital nurse manager or sites may need to follow their local escalation process for the executive member on call.

The Officer In Charge may keep the child in hospital for the purpose of observation, assessment or treatment or otherwise to safeguard or promote the wellbeing of the child.

The senior treating medical officer or health service social worker or Officer In Charge must verbally inform the parent(s) / guardian of the decision. The parent (s) / guardian must also be provided with written confirmation of the decision (see [Appendix 3](#)) along with a copy of section 40 of the Act attached (see [Appendix 1](#)). The Aboriginal Liaison Officer may also provide support where appropriate.

A copy of the written confirmation is to be placed in the child's medical record.

The health service social worker or Officer In Charge must notify the relevant office of the DCPFS (office hours) in writing that a Holding Order on the child has been invoked (see [Appendix 4](#): Template to notify DCPFS).

The Officer in Charge, or their delegate, must ensure the relevant hospital staff are notified of the Holding Order and are provided with relevant essential information. This may need to occur prior to the parent/s or guardian/s being informed if hospital staff have any concerns. This information should also be provided during each subsequent shift handover.

The DCPFS will determine safe parent(s) / guardian contact arrangements with the child subject to a Holding Order. Clinical staff must liaise with the health services social worker and check the medical record for details of the Order.

If threats, or attempts, are made to remove the child, the hospital staff may contact security staff, if available, and notify the local police to assist in providing a safe environment for staff and patients. If attempts are made to, or the child is removed from the hospital by a parent or guardian then staff should follow the **Code Black Alpha** procedure.

All staff need to be aware of, and consider, the security risks and potential for violence that may result from invoking a Holding Order. Mitigation strategies should be developed to minimise identified risks in each step of the process.

3. Roles and Responsibilities

Medical, midwifery or nursing staff who recognise the child at risk are to follow the appropriate procedures documented at [section 2](#).

4. Compliance

It is a requirement of the WA Health [Code of Conduct](#) that employees "comply with all applicable WA Health policy frameworks."

A breach of the Code may result in Improvement Action or Disciplinary Action in accordance with the WA Health [Misconduct Policy](#) or Breach of Discipline under Part 5 of the *Public Sector Management Act*.

WACHS staff are reminded that compliance with all policies is mandatory.

5. Evaluation

All incidents relating to detaining a child at risk are to be reviewed by the relevant unit manager.

6. Standards

National Safety and Quality Health Care Standards

Standard 1 – Governance for Safety and Quality in Health Service Organisation

- 1.5.2 Actions are taken to minimise risks to patient safety and quality of care.
- 1.8.1 Mechanisms are in place to identify patients at increased risk of harm.
- 1.8.2 Early action is taken to reduce the risks for at-risk patients.
- 1.9.1 Accurate, integrated and readily accessible patient clinical records are available to the clinical workforce at the point of care.

7. Legislation

Children and Community Services Act WA 2004 - Part 4, Division 2, S 40, 'Power to keep child under 6 years of age in hospital'.

8. References

Local Agreed Protocol - South West February 2016

Department of Child Protection Mandatory Reporting of Sexual Abuse of Children under 18 years

9. Related WA Health Policies

Memorandum of Understanding – Information Sharing between agencies with responsibility for preventing and responding to family and domestic violence in Western Australia

Bilateral Schedule: Interagency Collaborative Processes When an Unborn or Newborn Baby Is Identified as at Risk of Abuse and/or Neglect

Guidelines for Protecting Children 2015

10. WA Health Policy Framework

Clinical Services Planning and Programs Policy Framework

11. Appendices

[Appendix 1](#) - Copy of the *Children and Community Service Act 2004*
Part 4 – Protection and care of children
Division 2 – Measures to safeguard or promote child’s wellbeing
Subdivision 4 – Other powers
40. Power to Keep a Child Under 6 in Hospital

[Appendix 2](#) – Request by a Medical Officer to Secure a Holding Order under the *Children’s and Community Services Act 2004*

[Appendix 3](#) – Letter to the parent / guardian template

[Appendix 4](#) - Written notification to DCPFS template

[Appendix 5](#) – DCPFS contact details

12. Acknowledgements

Fiona Stanley Hospital Child Protection – Holding Orders Procedure

Armadale Hospital Holding Orders Policy

**This document can be made available in alternative formats
on request for a person with a disability**

Contact:	WACHS Coordinator of Midwifery (K.Reynolds)		
Directorate:	Nursing and Midwifery Services	TRIM Record #	ED-CO-XX-XXX
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Copy of the *Children and Community Service Act 2004*
Part 4 – Protection and care of children
Division 2 – Measures to safeguard or promote child’s wellbeing
Subdivision 4 – Other powers
Section 40. Power to Keep a Child Under 6 in Hospital

- (1) In this section —
officer in charge, in relation to a hospital, means the person for the time being in charge of the hospital.
- (2) If —
 - (a) a child under 6 years of age is brought to a hospital for observation, assessment or treatment or is admitted to a hospital; and
 - (b) the officer in charge believes on reasonable grounds that the child is in need of protection
 - the officer in charge may keep the child in the hospital for the purpose of observation, assessment or treatment or otherwise to safeguard or promote the wellbeing of the child.
- (3) A child may be kept in a hospital under subsection (2) whether or not a parent of the child consents to that action.
- (4) If a child is kept in a hospital under subsection (2), the officer in charge must notify the CEO of that action as soon as practicable.
- (5) Notification under subsection (4) may be given orally or in writing, but if given orally must be confirmed in writing as soon as practicable after it is given.
- (6) The officer in charge may give to the CEO any information relating to the child that the officer in charge reasonably believes is necessary to safeguard or promote the wellbeing of the child.
- (7) A child must not be kept in a hospital under subsection (2) for more than 2 working days.
- (8) A person must not take a child who is being kept in a hospital under subsection (2) from the hospital except with the consent of the CEO or the officer in charge.
Penalty: a fine of \$12 000 and imprisonment for one year.
- (9) The officer in charge must consult with the CEO before giving consent for the purposes of subsection (8).
- (10) It is a defence in proceedings for an offence under subsection (8) to prove that the person charged did not know, and could not reasonably have known, that the child was being kept in the hospital under subsection (2).
[Section 40 amended by No. 49 of 2010 s. 85.]

Request by a Medical Officer to Secure a Holding Order under the *Children’s and Community Services Act 2004*

Rationale

- To be used only when the hospital has serious concerns for the child’s immediate safety and no other means of achieving safety are possible.
- Applies only to children under six (6) years old.
- Only valid for two (2) working days (excludes weekends and public holidays) from date and time of application.

Steps involved in applying a Holding Order

- The most senior treating doctor or senior nurse /midwife in charge, in liaison with the social worker if available, is to contact the Officer in Charge of the Hospital.
- After hours Crisis Care must be informed (telephone: 1800 199 008).
- The senior doctor, or social worker, or Officer in Charge of the Hospital is to inform the parent / caregiver of the decision to invoke the order as soon as possible.
- A signed, dated and timed copy of the order is to be placed in the child’s medical record and given to the parent / guardian.

Child’s Name:

UMRN:

Date of Birth:

Doctor applying for Holding Order:
(Name and signature)

.....

Date and time:



< Insert name of hospital >
< Insert postal address details of hospital >
< Insert town and postcode of hospital >

Dear < Insert name of parent / guardian >

Re: < **Insert name of child** >
Date of Birth: < **Insert date of birth** >
UMRN: < **Insert medical record number** >

As we have previously discussed with you, this letter is to confirm that the Officer in Charge of < **Insert name of hospital** > has used the authority under Section 40 of the *Children and Community Services Act 2004* to keep your child in hospital for further observation, assessment and treatment.

This means that your child is required to remain in hospital for at least two working days for observation, treatment and assessment. We are required to notify the Department for Child Protection and Family Support of this action. The Department for Child Protection and Family Support will conduct further investigations.

If you should remove your child from the hospital during this period, the Department for Child Protection and Family Support and the West Australian Police Department will be informed and will arrange for your child to be returned to the hospital.

You are required by law to comply with this request. If you remove your child from the hospital without consent, and you are charged, you may receive a penalty of a \$12,000 fine and imprisonment for up to one year.

A copy of the section 40 is attached. If you have any questions please speak with the hospital social worker or senior medical officer on duty.

Yours sincerely,

< Insert the name of the doctor applying for the Order >
< **Insert name of hospital** >
< Insert date >

< Insert name of hospital >
< Insert postal address details of hospital >
< Insert town and postcode of hospital >

The Duty Officer / Team Leader
Department for Child Protection and Family Support
< Insert post address of DCPFS office >
< Insert town and postcode of DCPFS office >

Dear Sir / Madam

Re: Holding Order placed Section 40 of the *Children and Community Services Act 2004*

Name: < Insert name of child >
Date of Birth: < Insert date of birth >

The above named child has been detained in our hospital on < Insert date >
for the following reasons:

< Insert reason one >
< Insert reason two >
< Insert reason three or more or delete if required >

The parent (s) / guardian (s) have been advised that their child needs to remain in hospital and
that a Section 40 power to keep the child in hospital has been invoked

< Insert name of parent / guardian >
< Insert address of parent / guardian >

Yours sincerely,

< Insert the name of the Officer in Charge >
< Insert contact details >
< Insert date >

Power to Detain a Child Under the Age of Six in Hospital Procedure

District Office	Address	Telephone	Facsimile
Albany	25 Duke Street Albany WA 6330	(08) 9841 0777	(08) 9842 1356
Broome	19 Coghlan St Broome WA 6725	(08) 9193 8400	(08) 91921541
Bunbury	80 Spencer St Bunbury WA 6230	(08) 9722 5000	(08) 9721 9457
Busselton	Unit 7 / 8-10 Prince St Busselton WA 6280	(08) 9752 5600	(08) 9752 1519
Carnarvon	6 Robinson Street Carnarvon WA 6701	(08) 9941 7222	(08) 9941 1905
Collie	68 Wittenoom Street Collie WA 6225	(08) 9734 1699	(08) 9734 4266
Derby	17 Neville Street Derby WA 6728	(08) 9193 3700	(08) 9191 1655
Esperance	86B Windich Street Esperance WA 6450	(08) 9083 2566	(08) 9071 3925
Fitzroy Crossing	Cnr Flynn Drive and Fallon Road Fitzroy Crossing WA 6765	(08) 9163 9800	(08) 9191 5113
Geraldton	45 Cathedral Avenue Geraldton WA 6530	(08) 9965 9500	(08) 9921 7421
Halls Creek	71 Thomas Street Halls Creek WA 6770	(08) 9168 9999	(08) 9168 6180
Kalgoorlie	Cnr Boulder Rd and Cheetham St Kalgoorlie WA 6430	(08) 9022 0700	(08) 9021 6917
Karratha	Cnr Welcome and Searipple Rds Karratha WA 6714	(08) 9185 0200	(08) 9185 0222
Katanning	Reidy House, 25 Amherst Street Katanning WA 6317	(08) 9821 6500	(08) 9821 2614
Kununurra	Cnr Konkerberry Dr & Messmate Way Kununurra WA 6743	(08) 9168 0333	(08) 9168 3607
Laverton	Laver Place Laverton WA 6440	(08) 9088 2900	(08) 9031 1306
Leonora	Lot 40 Cnr Tower and Rajah Sts Leonora WA 6438	(08) 9037 2300	(08) 9037 6369
Mandurah	Cnr Tuckey and Sutton Sts Mandurah WA 6210	(08) 9583 6688	(08) 9581 1126
Manjimup	Lot 432 South West Highway Manjimup WA 6258	(08) 9771 6000	(08) 9771 2944
Meekatharra	Lot 83 Main Street Meekatharra WA 6642	(08) 9981 0300	(08) 9981 1298

Continued...

Power to Detain a Child Under the Age of Six in Hospital Procedure

District Office	Address	Telephone	Facsimile
Merredin	113 Great Eastern Highway Merredin WA 6415	(08) 9041 6900	(08) 9041 2572
Moora	49 Dandaragan Street Moora WA 6510	(08) 9653 0100	(08) 9651 1666
Mullewa	12 Main Street, Cnr Burgess Street Mullewa WA 6630	(08) 9961 1004	(08) 9961 1208
Narrogin	Government Buildings, Park Street Narrogin WA 6312	(08) 9881 0123	(08) 9881 2040
Newman	Cnr Newman Drive / Abydos Way Newman WA 6753	(08) 9175 4600	(08) 9175 1935
Norseman	80 Princep Street Norseman WA 6443	(08) 9039 1129	(08) 9039 1539
Northam	Cnr Fitzgerald and Gairdner Sts Northam WA 6401	(08) 9621 0400	(08) 9622 3779
Onslow	Third Avenue Onslow WA 6710	(08) 9184 3900	(08) 9184 6137
Roebourne	Lot 37 Sholl Street Roebourne WA 6718	(08) 9182 0500	(08) 9182 1375
South Hedland	Cnr Brand and Tonkin Sts South Hedland WA 6722	(08) 9160 2400	(08) 9172 3351
Tom Price	Lot 247 Poinciana Street Tom Price WA 6751	(08) 9188 0100	(08) 9189 2311
Wyndham	Lot 994 Great Northern Highway Wyndham WA 6740	(08) 9161 3500	(08) 9161 1049