**New Section 136 Process as of 08/05/2017 *** to be read by all operational officers***

The Policing and Crime Act 2017 (PACA) received Royal Assent on 31 January 2017. The legislation, which is expected to be enacted in July, will fundamentally change how we use our powers under the Mental Health Act. Several key details in relation to the amendments have yet to be clarified - and further comprehensive communications will be circulated as soon as we are able, however the following operational changes will come into effect ahead of this new legislation, taking effect from the 8th May:

1. Requirement to obtain advice from a mental health professional where practicable prior to any detention under S136.
2. New guidance on when custody can be used as a Place of Safety (POS) for anyone detained under S135 or S136.
3. New guidance on how to identify where to take someone when you have detained them under S136.
4. Clarity on The use of A&E Departments when there is no capacity at a Health Based Place of Safety (HBPOS).
5. A revision to the A287 form.
6. Further information concerning the justification to arrest for a criminal offence versus a detention under S136.

---

**1. Requirement to obtain advice from a mental health professional where practicable prior to any detention under S136:**

As of Monday 8th May, and in line with the forthcoming legislation, officers are not to use S136 without first contacting a Mental Health Professional (MHP) for advice, if its practicable (safe) to do so and one is available to give advice within a reasonable timeframe. To be clear though, if someone needs to be detained to stop them hurting themselves or others before that advice can be sought, they can still be detained. **Also even though advice must be obtained you are not bound to follow that advice.** Please note once detained, unless unlawful (i.e. the person was in their home address) unlike with criminal offences you cannot reconsider the detention and release them, they require a Mental Health Act Assessment which Street Triage cannot do. You can obtain advice:

**Between 10:00 – 02:00 hours:** Request Street Triage via FCR to attend incident or provide telephone advice, for both adults and children.

**Between 02:00 – 10:00 hours Adult:** officer phones Mental Health Trust Central Management Hub on (01268) 739172 to get telephone advice from the nearest inpatient unit.

**Between 02:00 – 10:00 hours anyone under 18:** Officer phones Emotional Wellbeing and Mental Health Service (EWMHS new version of
CAMHS) on 0300 555 1201 for advice.

If telephone advice is sought, the recommended questions to ask of any mental health professional is as follows:

I’m at an incident with a person who seems to have mental health problems and I want to consult, as per the S136 requirement because of the potential that I may detain him. You outline the circumstances and ask - I’d like to know:

(a) Any information you have relating to risks to either them or me, including whether or not you have information that they may possess items which could be used to harm themselves or me.

(b) Whether they are prescribed psychiatric medication and whether you have any grounds to believe they are not taking it; and

(c) What mental health condition you believe they have.

(d) From the information I have relayed and the information you hold on them, is there any opinion you can offer about whether a detention under S136 might be appropriate or any other information which you believe is relevant?

It must be recognised that if telephone advice is sought it may be hard for someone to give an opinion as compared to the Street Triage direct engagement model.

(2) **New guidance on when custody can be used as a Place of Safety (POS) for anyone detained under S136 or S136:**

In line with the forthcoming legislation, a decision has been made by Chief Officers to restrict when custody can be used.

As of Monday 8th May anyone detained under Section 136 or following a warrant under Section 135, can only be taken into custody if it’s believed they present such an exceptional and unmanageably high risk they cannot be safely held at a Health Based Place of Safety (HBPOS). No one under 18 detained under S136 may be brought into custody regardless of the risk they pose. If there is no capacity in any of the HBPOS then the nearest available A&E department will be used as the default alternative.

These exceptional cases are subjective - but it is suggested that they will primarily relate to individuals who are extremely violent.

(3) **New guidance on how to identify where to take someone when you have detained them under S136:**

If someone requires medical treatment an ambulance is to be requested to take them to an A&E department as normal. The nearest available HBPOS in Essex
can be identified by contacting the Mental Health Trust Central Management Hub on (1205) 739174 from the 8th May. This will be done by the officer at the scene unless the circumstances require assistance from FCR.

If there is a HBPOS available in Essex the Hub will:

- Tell you the nearest available HBPOS in Essex relevant to your location.
- Put the caller through to that HBPOS so the circumstances can be relayed and advise them that the detainee is on route to them.

If there is no HBPOS available in Essex the hub will:

- Advise how long until one is available.
- Identify any A&E department which isn’t available due to them being on divert for all patients or where they already have a S136 detainee there.
- The caller will then advise the hub the nearest available A&E department they intend to use.
- Put the caller through to that A&E department priority phone line (red phone) so the circumstances can be relayed and advise them that the detainee is on route to them.

(4) Clarity on The use of A&E Departments when there is no capacity at a Health Based Place of Safety (HBPOS):

From the 8th May, if no HBPOS is available the detainee is to be conveyed via ambulance to the nearest A&E department. Attached is a process flowchart which outlines the process to be followed (which is also in the A287 form).

Key points to note are:

- On arrival make contact with the nurse or doctor in charge of A&E, who will direct you to a designated room for the person to be held.
- The central management hub will advise you how long until a HBPOS will become available.
- If the wait for a HBPOS will be over 3 hours and A&E staff advise a Mental Health Assessment team will not be able to attend within that time, it should be reviewed whether the person is safe to handover to A&E staff. For someone to be suitable they must be low risk and there is no indication that restraint will be required or they may attempt to abscond. It must be remembered that A&E is not a secure environment and staff are not trained in restraint like staff in working within a Mental Health Trust.
- If police believe they are suitable to be handed over, the A287 joint risk assessment form is to be completed. If there is disagreement between police and A&E staff there is guidance contained within the A287 form - including an escalation process. **Even if you disagree with staff refusal to accept someone you cannot leave until that person is accepted.**
- If police believe they are not suitable to be handed over, officers will have to remain until a HBPOS becomes available or the Mental Health Act Assessment can be completed in A&E.
• This is a new process for both police and staff at A&E so they will undoubtedly be emerging or unforeseen problems. Please be patient with staff and if there is any disagreement refer to the escalation process.

(5) A revision to the A287 form:
Attached is the new revised A287 form for use from the 8th May on which date it will be uploaded to Force Forms. It combines the Home Office Monitoring Form and the Joint Risk Assessment Form previously used. It is for use for any detention under Section 135 or Section 136. On first glance it does seem like a long form but this is because it is part aide memoire to support you and staff in health through the joint risk assessment process. It will also soon be replaced by an electronic form which is currently being developed.

The administration process for the A287 form is to:
• Have a copy made at the POS.
• Create an Athena Investigation for Section 136 (or Section 135)
• Upload the copy of the A287 form to the Athena record and e-mail a copy to the Mental Health Monitoring Inbox

(6) Further information concerning the justification to arrest for a criminal offence versus a detention under S136:
It has been identified that in some cases where a criminal offence has been committed but S136 used, the criminal offence is not recorded on Athena or investigated. If a crime is committed regardless of any detention under S136 a separate Athena record for that offence must be created and investigated accordingly. The Mental Health Trust can be contacted to find out the result of the persons assessment to ascertain if the detainee was:

• Detained under Section 2, so they are held for 28 days for assessment and you would need to await the result of the Section 2 assessment.
• Detained under Section 3, so they are held for treatment. A detention under Section 3 would indicate the person did not have capacity, so only serious or offences with significant risk attached to them would still be investigated.
• Released or informally admitted. This will mean the person had capacity and a prosecution could be commenced as normal.

If a crime has been committed and there is the justification to arrest, the starting point should be arrest (subject to necessity) for the criminal offence and seek a Mental Health Act assessment in custody unless:
• The offence is trivial, especially if it is victimless and there is no risk identified to anyone.
• The victim reporting the incident is not seeking a response through the criminal justice system but is seeking help for someone they know to be suffering from mental ill-health AND not arresting for the criminal offence will not potentially place the victim or any other person at greater risk or create safeguarding issues.
• That in the circumstances, the conduct is more likely than not attributable to mental health problems which should in the circumstances be prioritised.

Professional judgement will have to be applied in making this decision, especially in respect of not arresting someone because the victim just wants help for the person. In such a case it must be assessed regardless of the victims' views what risk does the suspect pose to the victim, themselves or others. Advice from Street Triage or other MHP can help inform any such decisions, especially with accessing any Mental Health records the persons may have. Key information could be have they been detained under S136 before, if so how recently and what was the outcome i.e. were they detained recently and found not to have a mental disorder and released which would potentially indicate arresting for the criminal offence was the more appropriate option.

Further support and help

I appreciate this is a long e-mail with a significant amount of detail in it. Should you be unsure about anything, advice on the forthcoming changes can be sought through your supervisor who can contact DS Alan Wright (C&PP) on behalf of your team

Sent on behalf of:
A/Superintendent
Tom Simons
Crime and Public Protection Command