Section 136 Mental Health Act Procedure

Policy

Surrey and Boarders Partnership S135 and 136 Policy

Procedure

1.1 Surrey Police will comply with the Mental Health Act 1983 (MHA) and any subsequent amendments, this includes the Mental Health Act 1983 Places of Safety Regulations 2017. Surrey Police will also work in accordance with, College of Policing Approved Professional Practice for Mental Health and the Surrey Multi-Agency S135 and Section 136 Procedure when using the power of S136 of the MHA. The below should be read in conjunction with these documents.

s136 is an emergency power which allows a constable to remove a person to a place of safety (or keep him/her/they at a place of safety), if the person appears to a police officer to be suffering from mental disorder and to be in immediate need of care or control, if the police officer believes it necessary in the interests of that person, or for the protection of others. The person should then receive a mental health assessment, and any necessary arrangements should be made for their on-going care.

1.2 Before deciding to remove a person to a place of safety under s136 MHA, the officer must (if it is practicable to do so) consult an approved Mental Health Professional (AMHP). If an AMHP is not accessible or available then officers must consult with a registered nurse, a registered paramedic, a registered nurse, or a registered occupational therapist.

1.3 S136 MHA can be exercised where the mentally disordered person is at any place other than a house, flat or room where that person or any other person is living. This also excludes any yard, garden, garage, or outhouse connected with the house, flat or room, unless it is a communal area (used by more than one house, flat or room). Officers can enter any place where this power can be used, by force if necessary.

It is not lawful to encourage a person outside of a dwelling in order to use section 136 powers. Officers should use alternative powers under section 135 of the MHA, rather than their common law power of arrest for breach of the peace, when the

person appears to be suffering from mental disorder which makes it necessary for them to be taken to a place of safety. Arrest for breach of the peace should only be used if the officer intends to place that person in front of a court. Illegal use of s136 powers makes any further detention illegal also and opens the opportunity for the detained person or their family to legally challenge both Surrey Police and the Mental Health trust.

If a person leaves private premises, s136 can be used by officers if they have re-assessed the situation and satisfied themselves that the individual still, or now meets the s136 MHA criteria. If this is the case, the officer must clearly record the circumstances around how that person came to leave the private dwelling and how they fit the s136 criteria at that point.

A person cannot be removed from private premises using provisions of the Mental Capacity Act for the purpose of a mental health assessment. The MCA can only be used to help a person access treatment for physical and not mental health conditions. See the MCA section on the mental health guide and the case of Sessay v SLAM & Met for further information - R (Sessay) v South London and Maudsley NHS Foundation Trust

2. Decisions to use s136

2.1 The power to remove a person to a place of safety under s136 requires the following conditions to be fulfilled before police act:

- The person must appear to the officer to be suffering from a mental disorder
- They must appear to the officer to be in immediate need of care or control
- The officer must believe it necessary to remove the person to a place of safety (PoS) in their own interests or for the protection of others.
- Unless impractical, the officer must consult with one of the medical professionals listed in 1.2 above.
- These conditions must be justified and documented on the MH form on an MDT.

2.2 **Where possible the least restrictive option should be used, and officers should consider whether there are any other options available to them that may be more appropriate than using powers under ~~s~~136 of the MHA.** For example, if the person is in agreement they can go to a Safe Haven or A&E to voluntarily access support for their mental health.

3. Consultation

3.1 A police officer is required by s136 (1C) of the MHA to consult a healthcare professional prior to using their powers under s136 MHA, where it is practicable to do so.

3.2 Before deciding to remove a person to a place of safety under s136 MHA, the officer must (if it is practicable to do so) consult an approved Mental Health Professional (AMHP). If an AMHP is not accessible or available then officers must consult with a registered nurse, a registered paramedic, a registered nurse, or a registered occupational therapist.

3.3 In Surrey, there is 24/7 access to an Approved Mental Health Professional (AMHP) who can assist the officer to make an informed decision based on the persons current medical records. Officers can also access support via the Surrey Mental Health Crisis Help Line.

- Surrey AMHP service - 01483 518979
- EDT (Monday to Friday 1700-0900, weekends, and bank holidays 24/7) - **01483 517898**
- Surrey Mental Health Crisis Professionals Help Line - **0300 222 5794**

3.4 Consultation with a medical professional enables officers to make informed decision based on clinical advice. This advice may include an opinion on whether the person's presentation is due to mental health, drug and/or alcohol use, or a physical illness; whether the person is known to MH services and has a crisis or response plan, whether s136 is an appropriate course of action.

3.5 All attempts to consult with a healthcare professional, both successful and unsuccessful, should be recorded on the Mental Health form via the officers MDT. The healthcare professional's name, role, and the advice provided should all be documented, along with the officer's rationale for following the advice or not. Reasons why it has not been possible to seek advice prior to using s136 should also be documented.

4. Actions following s136 detention

4.1 Following all detentions, contact will be made with Farnham Road Hospital on **01483 443531** to identify a suitable PoS for the individual. An ambulance should also be called to conduct both a medical screening of the individual and transport the s136 detainee to a PoS (see below section on transport.)
4.2 In the majority of cases, officers will be directed to one of four s136 assessment suites (section 5), however there may be occasions when these are full (section 8); when the person requires medical treatment (section 9) or when custody is deemed to be the most suitable option (section 11).

4.3 On those occasions when a detained person does not go directly to a designated place of safety, the police officers retain responsibility. The mental health trust will attempt to free up space in the assessment suites so the person can be transferred to the health-based place of safety for the mental health act assessment to take place.

5. Designated Places of Safety (PoS)

5.1 If the person is **over 18 years of age** officers will be directed to ~~one of~~ the following health based PoS:

- Farnham Road Hospital (4 assessment suites available.)

5.2 Anyone **under** 18 **years of age** will be accepted into ~~either~~ Farnham Road Hospital even if all assessment suites are full at the time.

6. Arrival at the health based PoS

6.1 On arrival at the designated PoS, officers should complete the MH form on their MDT and send this electronically to the agreed secure email address. Officers will generally only be required to remain at the site for the purposes of the completion of an initial risk assessment and a handover of paperwork and any other known risk/information. In the majority of cases this will be no longer than 30 minutes, however there may be occasions when officers will be required to remain longer e.g., where the individual's behavior is violent or dangerous and would pose an unmanageably high risk to others. In these circumstances it will be agreed between a police officer and PoS supervisor as to how long officers will remain and what their role is (see section 11.4).

7. Refusals to accept at a health based PoS

7.1 **Any refusals to accept an individual at a PoS should be clearly detailed on the s136 monitoring form and custody log (if applicable), including the reason and the details of the person refusing.**

7.2 **Previous violence and/or intoxication is not a reason to exclude someone from a PoS.** Supervisors can agree for officers to remain longer at the PoS if necessary if this is a risk/concern.

8. No Assessment Suites

8.1 Where possible, the assessment will take place at the assessment suites, however on occasion there may be no 136 assessment suites available on contact with Farnham Road Hospital. Officers should request that the situation is escalated, and an assessment suite is found or an alternative PoS is arranged (see below).

8.2 The escalation process (see below for details) should be instigated so that Surrey Police and SABP are aware of the situation. An email should **also** be sent to the mailbox !Mental Health Issues with the reference number and reason why the person was refused at a SABP assessment suite, and by whom – this detail should also be included on the s136 form as part of the additional investigation comments.

8.3 **The lack of available assessment suites is not a valid reason for custody to be used as a place of safety.** If an assessment suite is not available or staff cannot

direct to an alternative PoS within a reasonable period of time these individuals should be taken to the nearest A&E and Farnham Road Hospital contacted to notify them of the individual's location.

8.4 Officers should call A&E to inform the shift leader of the situation and advise that they are en route. They should also contact the relevant AMHP team/EDT to notify them of the person's location and time of arrival at A&E. The 24-hour detention period for s136 will begin when the individual arrives at A&E. Officers remain responsible for the detained person and will need to remain at A&E with the individuals in these circumstances.

8.5 The team at FRH will notify officers when an assessment suite becomes available and officers should make arrangements for the detained person to be transported to the place of safety, via ambulance.

8.6 If the legal period of detention (24 hours) is likely to expire consideration of next steps must be conducted at the soonest opportunity. These may include –

- Consideration of extending the s136 period for a further 12 hours. This must be authorized by an appropriate doctor and used in situations where the person detained requires physical health treatment or is presenting with physical health needs preventing a MHA assessment from taking place at the time.
- Undertaking a fast time professionals meeting to discuss next steps. This must include representation from SABP as the mental health trust and the AMHP service.
- Consider leaving the person in the care of the acute hospital once the s136 detention has expired. This requires agreement of the acute hospital and the provision of suitable care and support while that person is under the care of the hospital. The hospital should also consider the powers available to them under the MHA.
- If the criteria for using s136 continues to be met the use of s136 powers could be considered however it should be noted that the Mental Health Codes of practice and MHA are clear that repeated use of s136 has a negative impact on the person, should be avoided and constitutes poor practice.
  Repeated use of s136 may be required in exceptional circumstances if there are specific risk factors and/or safeguarding concerns relating to the detained person.

Police Officers should not remain as their legal powers have ended however if a decision is made that officers will remain with the person in an acute hospital setting this should utilize powers under common law and any decision making or rationale must be recorded and authorized at a senior level (gold).

8.7 If the person is assessed under the MHA whilst within an acute hospital setting and it is recommended that the person should be admitted under s2 MHA the following applies –

- The section is only applied when a bed is provided, and the person is admitted to the HBPoS.
- During this time the person is 'liable' for s2.
- The s136 is ended.

If no bed is available, then a decision should be made around the persons care whilst waiting for admission. In these circumstances the acute hospital should take the lead and provide suitable care for the person until a bed can be provided.

Police Officers should not remain as their legal powers have ended however if a decision is made that officers will remain with the person in an acute hospital setting this should utilize powers under common law and any decision making or rationale must be recorded and authorized at a senior level (gold).

8.8 Decisions should be made based on

- NDM
- The best outcomes for the person and their human rights/dignity
- Least restrictive practice
- The safety of the person and others
- Article 5 of the Human Rights Act - "unless prescribed by law".

9. A&E

9.1 If the individual has physical injuries, they are severely intoxicated, or there is evidence to suggest they have taken an overdose they should be taken to A&E en route to the designated PoS. Officers should call the A&E and advise that they are on the way so they can ensure appropriate care can be given. It is also recommended that officers contact the AMHP team (see contact details in above section) to make them aware of the s136 detention and the time of arrival at A&E. They, along with A&E staff, can then discuss the strategy for the patient receiving both treatment for their physical concerns and also their mental health assessment and where this should take place. Officers will be required to remain with that individual until they have been medically discharged unless they are admitted into a ward for continuing treatment or observations (see below).

9.2 If the location of the designated PoS is not known at the end of the detaining officer's shift (i.e., the person is still receiving medical treatment without being admitted onto a ward) then during the handover between officers, the detaining officer's MDT report should be made invalid and the officer taking over should complete a new s136 form on their MDT using the information provided by the detaining officer. Ensure that all details of the incident and risks are shared between officers.

9.3 If an individual is then taken to a further PoS following medical treatment, discharge papers should be sought and handed to the staff at the PoS. A person cannot be forced to receive medical treatment when detained under s136. It will be the responsibility of

medical professionals to establish whether they can provide any treatment without consent in these circumstances.

9.4 An ambulance must be called to transport the individual from A&E to the designated PoS. The 24-hour detention period for s136 begins at the first PoS (this includes A&E.) If the person is subsequently moved onto a ward, including the Medical Assessment Unit/Acute Medical Unit/Clinical Decision Unit, **a full handover of all identified risks and s136 responsibilities must be given to the Nurse in charge/other medical professional who is willing and able to accept the individual** in addition to completing and handing over the MH form on the MDT. In these circumstances, the patient will be classed as an inpatient. At this point, if there are no ongoing risks associated with violence, officers will no longer be required to remain with the individual and the hospital takes on responsibility for arranging the Mental Health Act assessment.

9.5 Patients receiving treatment/observations in the EDOU (Emergency Department Observation Unit) are outpatients and have not been admitted onto a ward. Officers will generally have to remain with patients unless medical staff agree to accept s136 responsibilities from officers.

10. Alternative Place of Safety

10.1 A place of safety has been further defined by the Policing and Crime Act 2017 as any suitable place where the owner or manager agrees to its use as a place of safety. This can include the house, flat or room where the person resides, **IF**

- They are the sole occupier and agree to its use.
- They are not the sole occupier, but they and another occupier agree.
- The occupier of the property agrees to its use as a place of safety.

10.2 These locations can be used as a PoS on a temporary basis whilst other arrangements are made, however it is recommended that private premises are used only as a last resort and following consultation with a healthcare professional.

10.3 Prior to using a private premises as a place of safety, officers must be confident that this is in the best interests of the person; that it is safe to do so taking into account the risks in the physical environment and the behaviour of the person; that it would not be detrimental to the detainee's welfare; and that the detainee has capacity to give consent. This decision making and the consent must be recorded.

10.4 Other areas of a hospital/mental health establishment can also be used as a PoS if all assessment suites are full, and it is safe and appropriate to do so. In the majority of scenarios this option is safer and more suitable that using a private premises.

10.5 If an alternative place of safety is used due to the lack of availability of assessment suites, Farnham Road Hospital and the AMHP teams must be made aware so that arrangements for the assessment and ongoing care can be made.

10.6 The detention period begins when a person arrives at the place of safety, and the clock continues to run throughout any transfers.

11. Custody as a PoS

11.1 The Policing and Crime Act 2017 stipulates that a child (under 18) must not be removed to, kept at, or taken to a police station as a place of safety.

11.2 An Adult (18 and over) may be taken to a police station under s136 only in circumstances specified in the Mental Health Act 1983 (Place of Safety) Regulations 2017.

11.3 The three conditions which must be met for custody to be used as a place of safety are:

- **The behavior of the person poses an imminent risk of serious injury or death to that person or another.**

- **Due to the level of risk posed, no other place of safety in the area can be reasonably expected to detain the person.**

- **A healthcare professional should be present and available to the detainee throughout their period of detention.**

11.4 The Duty Inspector must be consulted to confirm the above criteria are met for taking a person to Police custody. Where the person's behavior is so extreme that it would put themselves or others at risk of serious injury or death, the Duty Inspector should liaise with the PoS to make a joint decision on the most suitable location to safely manage the patient. Where possible, it is recommended that the detained person is managed in a health-based place of safety with officers in attendance to provide support. If police custody is decided to be the safest place a member of SABP staff should be requested to attend to provide support.

11.5 If police custody is agreed to be the most suitable place of safety, the detained person must be checked by a healthcare professional at least once every thirty minutes, and so far, as is reasonably practicable, a healthcare professional should be present and available throughout the person detention. If either of these conditions cannot be met, the person cannot be managed in police custody.

11.6 If authority is given to use custody as a place of safety, on arrival, officers should notify the relevant AMHP team and Farnham Road Hospital of the individual's arrival.

11.7 The custody Sergeant must review the behaviour of the detainee at least hourly, to be confident that the conditions that require detention in a police station still exist. Where reasonably practicable, this assessment must be in consultation with the healthcare professional conducting the half-hourly checks. If the conditions no longer

exist, the person should be transferred to a health-based place of safety as soon as possible (unless this would cause an unnecessary delay to the MH assessment).

11.8 The 24-hour period of detention will begin when the person arrives at custody. A Registered Medical Practitioner can, prior to the end of the 24-hour period, authorise an extension of detention for a further consecutive 12 hours, but this must also be approved by a Superintendent or above.

11.9 An extension of detention can only be requested because the presentation of the patient is such that it has not been possible to start or complete the assessment within 24 hours. An extension cannot be requested due to lack of availability of in-patient beds for the person to be discharged to.

11.10 A mental health form must also be completed on an MDT along with a SCARF. As well as answering all mandatory questions on the form, additional information about any known risk should be handed over to custody staff. The MDT and custody log should detail why custody is being used as a PoS and include the name of who refused acceptance at an SABP PoS, if this is relevant to why they are in custody.

11.11 If there are delays in getting the individual assessed or transferred, then custody staff must ensure that they regularly contact the professionals involved and escalate where necessary (see escalation process for more information). The custody log should be amended to reflect this.

11.12 A transfer form must be completed and handed to the nurse in charge at the PoS along with the s136 form from the MDT when the individual is transferred.

12. Transport

12.1 The Ambulance Service maintains primary responsibility for transporting patients detained under the Mental Health Act. For Surrey Police, this service is provided by South East Coast Ambulance Service (SECAmb). It is the responsibility of the police to arrange transportation in relation to s136 detentions. The police officer at the scene must make direct contact with SECAmb.

12.2 The police officer requesting transportation from SECAmb must provide information about the patient’s age, any obvious physical disability, and any obvious need for urgent clinical care and any use of police restraint. The officer must specifically request conveyance under s136 to ensure that SECAmb apply the correct pathway response.

12.3 SECAmb will respond under Category 2 of the Ambulance Response Programme (ARP, which is an 18-minute mean response time, 90% of which must be within 40 minutes) to the location given, where a clinical assessment will be completed to identify any underlying medical/life or limb threatening conditions. For efficiency, this may be a

single-crewed response vehicle which can complete the initial assessment but cannot transport the patient due to their needs.

12.4 If a person is seriously injured but declining medical assistance, it may be more appropriate to take action using the Mental Capacity Act (2005) rather than utilize s136.

12.5 The individual may need further medical treatment at A&E on route to a POS. An ambulance should always be used to transport them to the nearest A&E.

12.6 An ambulance must always be used to transport patients to a POS to preserve their medical well-being and dignity, unless a risk assessment identifies that an ambulance is not the most appropriate means of transport. If an individual is initially taken to A&E as a result of physical medical requirements, when they are deemed physically fit, the A&E department must arrange transport to the POS.

12.7 If an individual is identified as under the influence of drugs and/or alcohol and police consider them to be incapable of looking after themselves or at risk of harm, mental health problems cannot be assessed. In these circumstances the use of s136 would not be appropriate and an ambulance may be required for treatment and/or conveyance to A&E.

12.8 It is expected that conveyance from custody to a hospital POS or for an admission to A&E will be by conducted by SECAmb, providing that the presenting risk allows for the safe conveyance of the patient in a non-secure vehicle.

12.9 If the patient is subject to s136, police must remain with the patient during conveyance in an ambulance as it is they who have the power to detain the person and take them to the POS.

12.10 Transport that is not provided by SECAmb (e.g. a private ambulance, police vehicle) will only be used where a risk assessment has identified that an ambulance is not the most appropriate means of transport. The decision should be in the best interests of the person and should take into consideration (Mental Health Act Code of Practice 2015):

- The confirmed ambulance availability or response time
- The location and distance to the nearest health-based place of safety
- The wishes and views of the person
- Any risks to the health and safety of the person or others.

Any use of police vehicles to convey a person must be authorised by an authorising officer (Inspector or above) following a robust risk assessment using the above criteria.

12.11 If as a result of the risk assessment, a police van is used and ambulance staff are in attendance, a member of ambulance staff must accompany the patient within the van (not the cage) and must as a minimum be in possession of a primary response bag and a defibrillator. If an ambulance is in attendance and transportation is conducted in

a police vehicle, the ambulance must follow on behind to provide any additional medical resource as required.

12.12 If a patient has been sedated (to any degree) they should NEVER be conveyed in a police vehicle.

13. Disputes and escalation

13.1 Any disputes arising during this procedure should be escalated and dealt with at the time using the force MH pathways and escalation document/protocol.

13.2 Escalation should be conducted through the force mental health lead and the relevant Critical Incident Manager.

13.3 An email outlining the circumstances of the dispute and the reference number should also be sent to the !Mental Health Issue mailbox after the event. The force mental health strategic lead and the force mental health advisor should also be notified.

14. Recording

14.1 The following should be completed/recorded for every s136 detention:

- mental health (s136) form on an MDT
- a full handover to colleagues and other professionals of any known risk and relevant information
- transfer form (if being transferred from custody to another PoS)

14.2 The completion of the mental health form (s136) automatically triggers the creation of a Niche occurrence. It is essential that the information provided by officers when completing this document is as accurate as possible. Force wide data regarding the use of the Mental Health Act is extracted from the information recorded on these documents and used to provide data analysis to the Home Office and HMICFRS.