

## Sections 135 and 136 Place of Safety Policy

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## Version Control Summary

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2.3	20 <sup>th</sup> January 2016	Guy Davis	Final	Updated references to the MHA Code of Practice Mental Health Partnership Board for London standards added.
2.4	11 <sup>th</sup> December 2017	Guy Davis	Final	Changes introduced by the Policing & Crime Act 2017
2.5	15 <sup>th</sup> June 2021	Guy Davis		Para 5.8 – added “in the physical presence of” for examination by doctor. Added documents to be submitted to MHL office electronically.

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## **Executive Summary**

An overarching policy that sets out the legal requirements, statutory guidance and policy of the Trust in respect of required standards for local procedures in managing people who are brought to a place of safety by the police, under sections 135 and 136 of the Mental Health Act 1983.

The policy includes the amendments made to the Mental Health Act 1983 by the Policing and Crime Act 2017.

### **1.0 Introduction**

- 1.1 A person may be brought to a place of safety in the custody of the police:
- a) under section 135(1) if a justice of the peace has issued a warrant to the police to remove the person to a place of safety, with a view to the making of an application in under Part II of the Act, or of other arrangements for treatment or care.
  - b) under section 136 if it appears to the police that the person is suffering from a mental disorder and is in immediate need of care or control and it is in the interests of that person or for the protection of other persons.
- 1.2 'Place of Safety' is defined in section 135(6) of the Mental Health Act 1983 as:
- a) residential accommodation provided by a local social services authority under Part III of the National Assistance Act 1948; or
  - b) any health service hospital within the meaning of the National Health Service Act 2006; or
  - c) a police station (not for people under the age of eighteen and otherwise only in exceptional circumstances); or
  - d) an independent hospital or care home for mentally disordered persons; or
  - e) any other suitable place.
- 1.3 If the premises specified in the warrant are a place of safety, the police executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises.
- 1.4 A house, flat or room where a person is living may not be regarded as a suitable place unless—
- a) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
  - b) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;
  - c) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;
- 1.5 A place other than one mentioned above may not be regarded as a suitable place unless a person who appears to the police exercising powers under

sections 135 or 136, to be responsible for the management of the place agrees to its use as a place of safety.

- 1.5 The Mental Health Act Code of Practice at 16.44 states that where the place of safety is a hospital, the police should make immediate contact with both the hospital and the Local Social Services Authority (or the people arranging local AMHP services) and this contact should take place prior to the person's arrival at the place of safety. Local protocols should be clear and jointly agreed with the police and local social services authorities.
- 1.6 A police station can only be used as a place of safety for adults in the following circumstances:
  - (i) the behaviour of the person poses an imminent risk of serious injury or death to themselves or another person;
  - (ii) because of that risk, no other place of safety in the relevant police area can reasonably be expected to detain them, and
  - (iii) so far as reasonably practicable, a healthcare professional will be present at the police station and available to them
- 1.7 The case of *Sessay v South London and Maudsley NHS Foundation Trust*<sup>1</sup> has established that sections 5 and 6 of the Mental Capacity Act do not confer authority on police officers to remove persons to places of safety for the purposes set out in sections 135(1) or 136 of the Mental Health Act. In other words, should the police find themselves in a situation whereby they cannot rely on sections 135(1) or 136 but they believe that the person needs to go to hospital, they may need to alert the relevant practitioners for the purpose of instigating an assessment for detention under sections 2 or 3. In cases of urgent necessity the use of section 4 might be appropriate.

## **2.0 Purpose**

- 2.1 This overarching policy sets out the legal requirements, statutory guidance and policy of the Trust in respect of required standards for local procedures in dealing with people who are brought to a place of safety by the police.
- 2.2 The Code of Practice at 16.31 states that jointly agreed local policies should be in place to govern all aspects of the use of sections 135(1) and 136. The Mental Health Partnership Board for London established standards (Appendix 2) agreed between NHS Trusts, Police and Ambulance services, as to the use of places of safety under the Mental Health Act. Along with the substantive points in this policy, these standards can be used as a basis for the implementation of local procedures.
- 2.3 This policy clarifies:
  - a) the legal status of a person brought to a place of safety;
  - b) the roles, responsibilities and powers of Trust staff caring for such a person; and
  - c) the systems for monitoring the use of compulsory powers in respect of places of safety.

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<sup>1</sup> *R. (Sessay) v South London and Maudsley NHS Foundation Trust* (2011) EWHC 2617 (QB)

- 2.4 To assist the police, local policies should identify units that are deemed to be a place of safety to which people can be conveyed. In deciding on the most appropriate place of safety, the police should give consideration to the impact that the proposed place and the journey may have on the person. A person in the custody of the police should not be refused entry to the place of safety merely because their address is outside the area covered by the Trust.
- 2.5 Jointly agreed local policies should outline the factors to be considered when deciding on the most appropriate place of safety (i.e. current mental health services, GP registration, residence, where the person is picked up), applying the guidance in chapter 16 of the Mental Health Act Code of Practice.

### **3.0 Statutory framework - sections 135(1) and 136 of the Mental Health Act**

- 3.1 Section 135(1) allows for a justice of the peace (a magistrate) to issue a warrant authorising a police officer to enter any premises specified in the warrant in which that person is believed to be and, if thought fit, to remove that person to or keep them at, a place of safety with a view to the making of an application under sections 2 or 3 of the Act, or to allow for other care or treatment arrangements to be made.
- 3.2 The warrant may be issued if it appears to the magistrate, on information on oath laid by an Approved Mental Health Professional, that there is reasonable cause to suspect that the person is suffering from a mental disorder and:
- a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the magistrate; or
  - b) is living alone in any such place and unable to care for him/herself.
- 3.3 Once the person arrives at the place of safety, s/he may be detained there for no longer than 24 hours, but this period can be extended for up to 12 hours if the doctor who is responsible for carrying out the examination is of the opinion, that because the condition of the person detained is such that it would not be practicable for the assessment of the person for the purpose of section 135 or (as the case may be) section 136, to be carried out before the end of the period of 24 hours (or, if the assessment began within that period, for it to be completed before the end). Extensions of detention should be recorded by the doctor using the form in appendix 1.
- 3.4 Section 136 allows a police officer to take a person to a place of safety having removed that person from any place, other than:
- (a) any house, flat or room where that person, or any other person, is living, or
  - (b) any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.
- 3.5 The police officer can exercise this power if it appears to him/her that the person is suffering from mental disorder and:
- a) is in need of immediate care or control; and
  - b) it is necessary to do so in the interests of that person or for the protection of others.

- 3.6 The person may be detained at the place of safety for up to 24 hours (but see also 3.3 above) for the purpose of enabling them to be examined by a registered doctor and interviewed by an Approved Mental Health Professional and for making any necessary arrangements for their treatment or care.
- 3.7 Section 23 does not apply to sections 135(1) or 136 and there is no other mechanism in the Mental Health Act for anyone to discharge liability to be detained under those sections. However, if the person is not further detained under sections 2 or 3 and the assessment process set out below in 5.0 onwards has been completed, authority to detain automatically lapses and the person must be released immediately.

#### **4.0 Movements between places of safety**

- 4.1 Both sections 135 and 136 allow for a police officer, an Approved Mental Health Professional or another person authorised by them, to take the person to another place of safety within the 24-hour period, but that period will still end 24 hours from the time that the person was originally detained.
- 4.2 According to the Code of Practice at 16.56, a transfer to another place of safety should be determined in individual circumstances that reflect the person's needs and the level of risk. For instance, finding out that the person lives in another area would not on its own be sufficient reason to transfer the person. Practitioners should consider the benefits of the move against the possible delays to assessment and the distress to the person caused by the move.
- 4.3 The Code of Practice further states at 16.58 that unless it is unavoidable, a person should never be moved from one place of safety to another unless it has been confirmed that the new place of safety is willing and able to accept them.

#### **5.0 Legal status of the person brought in under sections 135(1) or 136 and associated professional responsibilities.**

- 5.1 In addition to the powers of search under the Police and Criminal Evidence Act 1984, the police have powers under section 136C of the Mental Health Act as follows:

The power to search may be exercised—

(a) in a case where a warrant is issued under section 135(1), at any time during the period beginning with the time when the police enter the premises specified in the warrant and ending when the person ceases to be detained under section 135;

(b) in a case where a warrant is issued under section 135(2), at any time while the person is being removed under the authority of the warrant.

Where a person is detained under section 136, the police may search the person, at any time while the person is so detained, if the police have reasonable grounds for believing that the person—

(a) may present a danger to himself or herself or to others, and

(b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.

The power to search is only a power to the extent that is reasonably required for the purpose of discovering the item that the police believe the person to be concealing; it does not authorise a constable to require a person to remove any of his or her clothing other than an outer coat, jacket or gloves, but it does authorise a search of a person's mouth.

In the exercise of the power to search, the police may seize and retain anything found, if there are reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others.

Trust practitioners should also have regard to the Trust's 'Policy for Searching Visitors, Service Users and their Property'.

- 5.2 The person detained under sections 135(1) or 136 can be given medical treatment as defined in section 145, for instance; nursing care and any other specialist mental health care.
- 5.3 However, when it comes to medication for mental disorder, the person is in the same position as someone who not detained under the Mental Health Act, in that such medication cannot be administered unless valid consent is given by the patient or authority can be found under the Mental Capacity Act where the person lacks capacity to decide and it is in their best interests that they receive such treatment.
- 5.4 The person cannot be granted leave under section 17 of the Mental Health Act and cannot appeal to the Hospital Managers or the First Tier Tribunal (Mental Health) to be released.
- 5.5 If the person escapes from or during conveyance to a place of safety, s/he can be retaken into custody in accordance with section 138 within 24 hours of escape prior to arrival at the place of safety or within the 24-hour detention period following arrival at the place of safety (or within the already extended period referred to in 3.3 above).
- 5.6 Section 132 imposes a duty on the Trust to provide information to the person who is detained in hospital under sections 135(1) or 136 and to take such steps as are practicable to ensure that the person understands the effect of their detention. Relevant information leaflets can be found on the Trust's Intranet/website and each Place of Safety should ensure that leaflets are readily available.
- 5.7 According to the Code of Practice at 16.46, the examining doctor "should, wherever possible be approved under section 12 of the Act. If the examination has to be conducted by a doctor who is not approved under section 12, the doctor concerned should record the reasons for that." For this reason, in this Trust, if the examining doctor is not section 12 approved, that doctor must refer to a senior doctor who is section 12 approved before making a decision, such as making a medical recommendation for detention or allowing the person to be released.
- 5.8 The Code of Practice at 16.47 states that the assessment by the doctor and Approved Mental Health Professional should begin as soon as possible after the arrival of the individual at the place of safety and where possible, the assessment should be undertaken jointly by the doctor and the Approved Mental Health Professional.

This Trust's policy directs that where practicable, the patient should be seen (meaning in the physical presence of) by a doctor within 1 hour and if the



Approved Mental Health Professional has not already been contacted by the police prior to the patient's arrival, a member of the clinical team should contact the Approved Mental Health Professional as soon as possible after the patient arrives.

- 5.9 The Code of Practice at 16.50 advises that the authority to detain under sections 135(1) or 136 ends "as soon as *the assessment has been completed and suitable arrangements have been made. This may include detention under Part II of the Act, informal admission, an offer of community treatment or other arrangements necessary for a safe discharge including necessary social arrangements.*"
- 5.10 Para 16.50 goes on to say that if a doctor assesses the person and concludes that the person is not suffering from a mental disorder, then the person must be discharged, even if not seen by an AMHP.
- 5.11 However, at 16.51, the Code states that: "*If the doctor sees the person first and concludes that they have a mental disorder and that compulsory admission to hospital is not necessary, but that they may still need treatment or care (whether in or out of hospital), the person should still be seen by an AMHP. The AMHP should consult the doctor about any arrangements that might need to be made for the person's treatment or care.*"
- 5.12 The court in the *Sessay* case described above, ruled that the question of whether there has been an unlawful detention can only be decided on the facts of each individual case, but should the police bring a person to a place of safety but not under the authority of sections 135(1) or 136, it is essential that an assessment by a doctor is carried out as soon as possible to determine what further arrangements need to be made and to minimise the risk of a challenge of unlawful detention.
- 5.13 A person who has been brought to a Place of Safety is not an in-patient for the purposes of section 5 of the Mental Health Act.

## **6.0 Patients already subject to the Mental Health Act**

- 6.1 If the person brought in to the Place of Safety is discovered to be subject to a Community Treatment Order under section 17A, attempts should be made to contact the patient's Responsible Clinician to give consideration to the patient being recalled to hospital in accordance with section 17E. If in exceptional circumstances recall under section 17E is not possible, a fresh application under Part II of the Mental Health Act may need to be considered.
- 6.2 If the person brought in to the Place of Safety is discovered to be liable to be detained but had been granted leave under section 17, consideration should be given to contacting the Responsible Clinician with a view to revoking the leave and recalling the person to hospital in accordance with section 17(4).
- 6.3 If the person brought in to the Place of Safety is discovered to be Absent Without Leave (AWOL), the Responsible Clinician and the place from which the person is absent from (including hospitals outside of ELFT) should be contacted to determine next steps.
- 6.4 If the person brought in to the Place of Safety is discovered to be conditionally discharged from a Restriction Order under Part III of the Act, contact must be made with the Supervising Clinician with a view to contacting the Ministry of Justice so that the Justice Minister can give consideration to recalling the patient back to hospital, for detention under sections 37 and 41. The social supervisor should also be informed at the earliest opportunity. In the

meantime, consideration could be given to making an application for detention under Part II of the Mental Health Act.

## **7.0 People with Learning Disabilities, Children & Young People, Older People**

7.1 Jointly agreed local policies should specifically include addressing the needs of people under the age of 18, older people and people who appear to have a learning disability, especially when it comes to the preferred place of safety; albeit that each case should be judged according to its own circumstances.

## **8.0 Record Keeping and Monitoring**

8.1 For patients brought to a place of safety, the police should complete their relevant form and give/send a copy to staff at the place of safety, who in turn should record the person's time of arrival, details of assessments carried out and care given, outcomes and the time that detention under sections 135(1) or 136 ended. The police form should be sent electronically to the local Mental Health Law office.

8.2 The locally agreed procedures should include arrangements for monitoring the effectiveness of those procedures, which should include regular joint meetings of relevant Trust staff, police and Approved Mental Health Professional representatives. Identified issues should be raised at the relevant Trust forum.

## **9.0 References**

9.1 The following can be found on the Trust Intranet:

- Mental Health Act 1983
- Mental Health Act Code of Practice
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Consent to Treatment Policy
- Policy for Searching Visitors, Service Users and their Property

9.2 The Police and Criminal Evidence Act 1984 can be found here:  
<http://www.legislation.gov.uk/ukpga/1984/60/contents>

Extension of Section 135 or Section 136

I am (*PRINT full name*)

and I am the registered medical practitioner who is responsible for the examination of  
(*PRINT full name of patient*)

currently detained under section 135 / 136 at

(*PRINT full address of place of safety*)

which is a:-

- (a) Health Based Place of Safety
  - (b) Police station and it is intended for the assessment to take place at the police station
  - (c) Private Dwelling
- (*delete as appropriate*)

It appears to me that the assessment cannot be completed within 24 hours due to the following reason(s):-

*(The full reason(s) why the patient's physical or mental condition prevents an assessment must be given. A delay in attendance by an Approved Mental Health Professional or medical practitioner is not a valid reason for extending detention)*

Name of patient:.....

The detention under S135/6 began at

: [ ]

on

[ / / ]

(Date and time of the initial admission to a Place of Safety)

I authorise the extension for a period of [ ] hours (maximum extension 12 hours)

[ ]

hours (maximum extension 12 hours)

The extension period will expire at

: [ ]

[ / / ]

Signed: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Registered Medical Practitioner

The following **MUST** also be completed if the patient is detained at a police station and an extension is required:

I am (PRINT full name)

[ ]

and I am a police officer of the rank of superintendent or higher and I approve this extension.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Police Officer (if applicable)

**IF RESPONSIBILITY OF CARE IS TRANSFERRED BETWEEN AGENCIES DURING THE PERIOD OF DETENTION A COPY OF THIS FORM MUST BE "HANDED OVER" WITH THE PATIENT**

**A COPY OF THIS FORM SHOULD BE SENT TO THE RELEVANT TRUST MENTAL HEALTH LAW OFFICE**

**Mental Health Partnership Board for London (subsequently the London Mental Health Delivery Group) Summary of Standards for Patients Brought to a Place of Safety under the Mental Health Act**

1. There should be the function of a 'Section 135/136 co-coordinator' in each place of safety.
2. Each Section 135/136 co-coordinator must be fully briefed about their role.
3. Procedures should be in place that permits newly arriving Section 136 patients to be admitted to wards to free up space in situations where the place of safety is already in use.
4. Posters of the pan-London standards are displayed in every place of safety.
5. Where applicable, every place of safety should review their contracts with security staff so that security staff will use the powers contained in Section 136(2) to prevent patients from walking out.
6. Every senior on-call manager working in places of safety and psychiatric hospitals within their Trust has received 24/7 contact details of the Chief Inspector function with their local Metropolitan Police Grip and PACE centre (or equivalent function in the British Transport Police or City Police), rapid escalation purposes.
7. Every senior on-call manager working in places of safety within their Trust has received a full briefing about the operation of the rapid escalation procedure.
8. All staff working in places of safety have been fully briefed about how to invoke the rapid escalation procedure.
9. Rapid tranquilisation facilities are available in every place of safety and all appropriate clinical staff are trained and confident in its use.
10. 90% of AMHPs who perform the duty within their Trust area should become registered users of the National Section 12 Doctor database.
11. The Trust has adopted a Section 136 training programme for junior doctors.
12. Monitoring arrangements required by the Mental Health Partnership Board, are in place within the Trust.