



**Mental Health Alliance**

## **Section 136**

### **House of Lords Committee Stage briefing**

#### **Amendment**

Insert the following new Clause—

#### **"( )Places of Safety Clause XX**

**(1)** Section 136 (Mentally disordered persons found in public places) of the 1983 Act is amended as follows.

**(2)** In subsection (2) leave out “72 hours” and insert “24 hours”.

**(3)** After subsection (2) insert

**(3)** Notwithstanding subsection (1) A police station must not be used for a place of safety under this section unless the circumstances of the case are exceptional.

**(4)** “Where a police station is used as the place of safety the person must be -

**(a)** As a matter of urgency examined by a registered medical practitioner and interviewed by an approved mental health professional and necessary arrangements made for his treatment or care; or

**(b)** transferred to another place of safety for that purpose.

**(4)** After subsection (2) insert-

**(5)** The person may be taken, by, or by a person acting on behalf of, a constable or approved mental health professional, from one place of safety to another but the total period of detention must not exceed 24 hours.”

#### **Purpose of the amendment**

To amend the Mental Health Act to

- reduce the time period for patients detained by the police in a place of safety under section 136 from 72 hours to 24 hours.
- include a requirement that the place of safety for detentions under section 136 must wherever possible not be a police cell and should instead be a therapeutic environment.
- ensure that where a police station is used as a place of safety, the patient must be assessed by mental health professionals or transferred to a psychiatric hospital, within the shortest time possible.
- allow persons who are detained under section 136 to be moved from one place of safety to another.

## Current law

Police officers have a power under section 136 of the Mental Health Act 1983 to take a person, who is in a public place and appears to be suffering from a mental disorder and to be in need of immediate care or control, to a place of safety. The Act defines a place of safety as a police station, hospital, care home or any other suitable place. The person can be held under this power for up to 72 hours – in order that he/she can be assessed by mental health professionals.

## Police stations used as places of safety

The Alliance is concerned about the use of a police station as the place of safety. The person who has been detained on section 136 need not have committed any offence but behaved in a way to give the impression they were mentally ill and a danger to themselves or others. A police cell is not a therapeutic environment for someone experiencing mental health problems and could delay the provision of effective treatment and indeed exacerbate their illness. The use of police cells as a place of safety also has significant resource implications on the police custody facilities and indeed the police have little training and expertise in looking after people with severe mental health problems.

The Royal College of Psychiatrists has reported that police stations are often poorly designed for the reception and observation of those who might not be just restless or over excited as a result of mental disorder, but unpredictably suicidal.<sup>1</sup> Staff in police stations are rarely trained to deal with this situation. There is a widespread feeling among the police, among users and carers' groups, and among social workers, that the use of police stations (with the implication of wrong doing) is inappropriate for the management even of the disturbed mentally ill.

There is some official support for this view; the Home Office Circular 66/90, the memorandum which accompanies the Mental Health Act, and the joint Home Office and Department of Health review of health and social services for mentally-disordered offenders (Final Summary Report, Cm 2088) all suggest that police stations should rarely, if ever, be used for the purpose. The National Service Framework on Mental Health states that hospitals should be used in preference to police stations. The current Mental Health Act Code of Practice states that police cells should not generally be used.

Despite this, in practice they are. It is estimated that police cells are used in about 80% of occasions when section 136 powers are invoked.<sup>2</sup> This is very relevant to African and Caribbean communities. Evidence shows that people from African Caribbean communities experiencing mental health problems are more likely to have contact with the police than those from other backgrounds<sup>3</sup>. Although use of places of safety is very poorly monitored, evidence from two London boroughs shows that rates of the use of section 136 for Black people were four times higher than would be expected (in Islington, 41% of s136 detentions, were for Black people, compared to 12% Black people in the population, and 24.6% of s136 detentions in Camden were for Black people compared with 8.3% Black people in the population).<sup>4</sup> Although in London joint protocols and health-based places of safety are more likely to be used, it is very common throughout the rest of England and Wales for police cells

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<sup>1</sup> CR61. Report of the working group on standards of places of safety under Section 136 of the Mental Health Act 1983 (1997)

<sup>2</sup> In 2004 a Home Office survey of 27 police forces found that 20 routinely used police cells as places of safety because no other accommodation could be found.

<sup>3</sup> Healthcare Commission (2005) Count me in: Results of a national census on inpatients in mental health hospitals and facilities in England and Wales, London, Healthcare Commission

<sup>4</sup> Jones, R. & Sewell, H (2005) The cost of failing service users, Turning the Tide Conference Report, The National Black and Minority Ethnic Mental Health Network., 3-4 October 2005

to be used as places of safety – a practice which the Joint Committee on Human Rights found to be unacceptable and in need of immediate action<sup>5</sup>.

The reasons for the high prevalence of use of Section 136 in relation to people from Black Caribbean backgrounds may relate to their lack of trust in the system leading to failure to seek help early, or an over-estimation by staff of risk presented. However, the use of police cells is due to a number of systemic issues such as poor inter-agency working and a failure of NHS trusts to take responsibility for this issue.

Nick Hardwick, co-chair of the Independent Police Complaints Commission, estimates that 50% of deaths in police custody have involved people with mental health problems: and has stated that: *‘Whatever a police cell is, it is not a place of safety for people with mental illness’*.

The IPCC stated in its evidence on the 2004 Bill

*“The Commission recognises that, on some occasions, hospital or other premises are simply not available and a police station must, as a last resort, be used for the purposes of temporary detention. However, the ...legislation makes no attempt to limit the circumstances in which this happens only to wholly exceptional occasions. ...If the Committee considers it necessary to retain a police station under the bill for use on rare occasions as a last resort then, at least, the Commission considers .... That there should be a positive duty placed under the bill upon the relevant health authority to assess need and provide/procure adequate such facilities (for example, registered care provision) to act as intermediate care prior to assessment and a decision on residential detention, in a similar manner to which other intermediate care facilities are provided for other patients in need of healthcare... That a period of detention of 72 hours in police station is wholly inappropriate for the purposes of the assessment needed. An assessment when a police station is used should be completed within a maximum period of 12 hours.”*

The Police Federation of England and Wales supports the removal of police stations from the legal definition of a place of safety.<sup>6</sup>

The Mental Health Act Commission has repeatedly stated in its biennial reports, as many other stakeholders have mentioned, that police stations should not be regarded as places of safety.<sup>7</sup>

We believe that the Mental Health Act should include a requirement that the place of safety must, wherever possible, be a psychiatric hospital or other therapeutic environment.

### **Transfer to a hospital**

Where a police station is used we believe there must be a clear requirement on the face of the legislation to arrange an assessment and/or transfer the person to hospital within the shortest time possible. At the moment the Mental Health Act does not allow patients to be moved from one place of safety to another - to ensure that where a police station is used as a place of safety the patient can be moved to a more suitable therapeutic environment and where a proper assessment by mental health professionals.

This loophole means that vulnerable people experiencing mental distress are often left waiting in a police cell for hours - while the police locate two doctors and an Approved Social Worker to undertake a Mental Health Act assessment - even if a hospital bed is available for

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<sup>5</sup> Joint Committee on Human Rights (2004) Third Report – Inquiry into Deaths in Custody

<sup>6</sup> Police Federation letter to Dr John Reid 17 August 2006

<sup>7</sup> For example page 285 Eleventh Biennial report 2003-2005

them. We believe that the Mental Health Act should allow patients originally taken to the police station to be moved, if appropriate, to another, more suitable, setting.

There also appears to be some confusion about the legality of transferring patients between places of safety. Even though it is generally accepted that there is no power under section 136 to transfer the person - a recent study<sup>8</sup> found uncertainty among some clinicians on this point. This was due to the perceived ambiguity in the legality of transferring people from one place of safety to another, even if the second place of safety is deemed to be more appropriate. We therefore recommend that the law must be clear on this point – and clearly set out the legality of a transfer from a place of safety (e.g. a police station) to another, more appropriate, place of safety (e.g. a hospital) of people found in public places who may have mental disorder.

The Government in their 2001 White Paper stated that where a police cell is used as the place of safety there will be a duty on the local Trust to arrange a preliminary examination within 6 hours or to transfer the person to hospital for examination during that period. This was a welcome limit but this has been dropped.

In 2002 the Joint Parliamentary Committee on Human Rights stated:

*'People requiring detention under the Mental Health Act should not be held in police cells. Police custody suites, however well resourced and staffed they may be, will not be suitable or safe for this purpose, and their use for this purpose may lead to breaches of Convention rights. In our view, there should be a statutory obligation on healthcare trusts to provide places of safety, accompanied by provision of sufficient resources for this by the Government.'*

*Ensuring the safety of people detained by the police is not a single agency problem that can be addressed by the police alone. It also involves the responsibilities of health authorities, and requires good co-ordination between health authorities and the police. Transfers from police cells to hospital must operate more effectively. We recommend that a statutory duty be placed on healthcare trusts to take responsibility for people detained under section 136 of the Mental Health Act."*

While the Alliance welcomes additional investment in more appropriate 'places of safety', we believe that the 1983 Act should include statutory obligations that:

- The place of safety must be a therapeutic environment wherever possible
- 72 hours is too long for a person with mental health problems to be detained by the police and this should be reduced to 24 hours
- Police cells should only be used in exceptional circumstances and people should be transferred to a therapeutic environment or assessed within the shortest time possible.
- There should be a duty on the NHS and local authority to provide places of safety,
- There should be a duty on healthcare trusts and local authorities to take responsibility for people detained under section 136 of the Mental Health Act.

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<sup>8</sup> Ambiguity in Section 136 of the Mental Health Act 1983 A survey of Section 12(2) approved doctors in the West Midlands *Psychiatric Bulletin* (2001) 25: 388-390