

Section 136 Mental Health Act 1983: Mentally Disordered Persons Found in Public Places

Policy Statement

This joint policy has been produced by an inter-agency group of officers drawn from the following agencies:

- **South Wales Police**

- **Health Boards**
 - Abertawe Bro Morgannwg University Health Board
 - Cardiff and Vale University Health Board
 - Cwm Taf Local Health Board
 - Welsh Ambulance Services Trust

- **Local Authority Councils**
 - City and County of Swansea Council
 - Neath Port Talbot County Borough Council
 - Bridgend County Borough Council
 - Cardiff Council
 - Vale of Glamorgan Council
 - Rhondda Cynon Taff County Borough Council
 - Merthyr Tydfil County Borough Council

It sets out the multi-agency agreement for the operation of Section 135 and 136 of the Mental Health Act 1983 (2007). Its purpose is to ensure compliance with the legal requirements of Sections 135 and 136 and that any person detained under Section 136 is speedily and competently assessed in the least restrictive way possible.

The Policy is produced in response to the Mental Health Act 1983 Code of Practice for Wales. It does not replicate the Code but is consistent with Chapter 7 "Places of Safety and Police Powers" and the associated Good Practice Guide issued by Welsh Ministers under section 118 of the 1983 Act.

The Policy contains guidelines for professionals charged with responsibilities towards those detained under Section 136 of the Mental Health Act. These people are required to have regard to the Code when carrying out their relevant functions under the Act; departures from the Code could give rise to legal challenge.



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1. Police Power of Arrest

Section 136 of the Mental Health Act, 1983 empowers a police officer to remove any person appearing to be suffering from mental disorder and in immediate need of care and control from a public place to a place of safety.

Section 136 of the Mental Health Act, 1983 states:

“If a constable finds, **in a place to which the public have access**, a person who **appears to him to be suffering from mental disorder** and to be **in immediate need of care and control**, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety”.

1.1 Definition of Public Place

Although “in a place to which the public have access” is not defined within the Mental Health **Act**, it has been considered by case law as “a place to which the public have lawful access, whether on payment or otherwise” and will include the following:-

- Places to which the public have access e.g. the public highway
- Places to which members of the public have access if payment is made e.g. a cinema
- Places to which members of the public have access at certain times of day e.g. a public house

It does not cover areas such as private garden where members of the public have access by virtue of being visitors to private premises.

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The Mental Health Act Commission has previously reported that there “have been occasions when police, called to a disturbed individual in an Emergency Department have declined to use S.136 on the grounds that they deemed it is not a public place”.

To clarify, a hospital Emergency Department waiting room is a place where members of the public can without hindrance attend for a particular purpose and therefore it is deemed a public place. However a hospital ward is excluded from this provision because only particular members of the public can attend at the actual or implied request of the patient and with the Hospital Managers’ permission.

1.2 Deciding to use Section 136(1)

Either finding or being directed towards a person in a public place who appears to have a mental disorder is not enough in itself to detain under section 136. The power to remove requires 3 conditions to be fulfilled before police can act.

- The person must appear to the officer to be suffering from mental disorder
- They must appear to the officer to be in immediate need of care or control
- The officer must think they need removing in their own interests or for the protection of others

The clear stance is that the officer must believe the person or someone else may suffer some kind of harm if they do not take action to remove them. Simply behaving in an odd or unusual way does not necessarily mean they should be removed. The power to remove under Section 136 does not expect police officers to attempt to make a diagnosis of someone’s mental state but provides power to officers who believe in good faith that someone is mentally disordered and requires immediate care and control to remove them to a place of safety.

1.3 Voluntary Assessment

Note: An arrest may not be necessary: nothing in the above should discourage an officer from seeking a voluntary mental health assessment at an appropriate hospital for a compliant individual. However, the procedure in respect of using a psychiatric hospital as a place of safety should be followed

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and the individual **should not be left alone at the hospital upon arrival until staff have taken responsibility for them.**

1.4 Section 136 Power of Arrest Requirements

Whilst Section 136 does not use the term arrest, under Section 26 and Schedule 2 of PACE the power to remove to a place of safety under Section 136 of the Mental Health Act is a preserved power of arrest which requires the detainee to be informed of the fact they are detained under the Act.

There is no requirement for the officer to justify the arrest 'necessity criteria'. However officers must record their reasons/rationale for detaining the individual on the Section 136 Monitoring Form/PNB and ensure that any subsequent place of safety is clearly informed of the reasons and what legal power under which the individual has been detained.

Where a crime is suspected or has been committed, the police officer shall detain the person in relation to the criminal offence and take him/her to the police station. In such cases, the person would be detained in relation to a criminal offence and **not under Section 136 of the Mental Health Act**. Consideration will be given to the need for an Appropriate Adult in these circumstances and examination and assessment by the Force Medical Examiner. **If it is a serious criminal offence advice must be sought as to the necessity for referring the case to Major Crime or Public Protection Department.**

1.5 Power of Search Upon Arrest

As there is a power of arrest there is a power to search the detainee: - Persons detained under Section 136 are deemed to be in legal custody and can be searched under Section 32, PACE 1984. The power to search is a continuing one and may be used at any time whilst the person is so detained at the place of safety or before arrival. The officer may seize and retain anything if there are reasonable grounds to believe that the person searched may use the item to cause physical harm to themselves or others or facilitate an escape. All property removed as a result of searching an individual must be recorded on the relevant custody record. If the detainee is not taken to a custody suite, when the detainee is searched, a record of items taken at the location where the detainee is searched must be recorded and handed over to the assessing team staff at the place of safety against countersignature in the officer's pocket note book.

In all cases it is the responsibility of the police to search the detained person before they are taken to the place of safety.

1.6 Officer Safety

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Detainees arrested because of concerns about their mental disorder can be unpredictable and may present a threat to themselves and others as their demeanour can change quickly without warning. In view of this it is important to establish the detainee's identity as soon as possible and conduct a **PNC Check** before placing the detainee into transport.

The detainee **must also always be searched before being placed into transport** and any items that could be used to cause self harm should be removed: the transport vehicle should also be checked for any similar items which should also be removed. The detainee warning signals should be communicated whilst on route to staff at the place of safety to enable them to prepare to receive individuals.

1.7 Use of Force

As with all arrests reasonable force can be used in accordance with Section 117 PACE to effect the arrest and searching of the detainee. Where force of any kind has been used, police officers **MUST** inform the custody officer or nurse in charge if restraint has been used on the detained person.

The nurse in charge will then ensure that the assessing doctor is made aware that restraint has been used before any examination of the detained person commences. This is required so that doctors conducting assessments at places of safety can clarify whether any injuries are the result of self harm or restraint.

1.8 Responsibilities of the Police Officer After Arrest

As soon as the decision has been made to detain a person under Section 136, the police officer(s) will undertake a dynamic risk assessment to determine the most appropriate place of safety (as detailed previously).

Following this the police officer(s) will then:

- a) Conduct a PNC check of detainee to ascertain [warning signals](#).
- b) Search detainee and record/remove any items that could be used to self harm or inflict harm on others.
- c) Transport - Whilst there may be exceptions (such as non-availability of an ambulance), as a general rule the person should be taken to the place of safety by ambulance , unless they are so violent or dangerous that it is necessary to use a police vehicle.

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- d) Where the place of safety is the psychiatric hospital, the detaining Police officer will notify the hospital in advance by telephoning the **shift coordinator/senior nurse on duty** to advise them of their estimated time of arrival.

The officer will then:

- a) Provide information to the shift coordinator/senior nurse on duty of the detainee's identity, the circumstances that led to their and any indication that the person may present a risk of harm to themselves or others.
- b) The officer bringing the individual to the place of safety must ascertain the name and role of the person who will be receiving the person, and how to contact them on arrival.
- c) Having arrived at the place at the place of safety, the officer must ensure a full handover is given of the circumstances of the detention and that Section 136 Monitoring Form is fully completed with a clear record endorsed on the form of the time of arrival at the place of safety.

2. Public and Private Place Powers

2.1 Section 136 Mental Health Act 1983 and the Mental Capacity Act 2005

(see also powers under Section 135 Procedure)

Cases may arise where the power to arrest under Section 136 and the ability to restrain relying upon the Mental Capacity Act 2005 can overlap. For example, where a person is self-harming or attempting/threatening suicide in a public place there may be good indicators that the person is both mentally ill and lacking capacity.

Whenever this arises, officers must always use Section 136 and not rely upon the Mental Capacity Act 2005.

Sections 5 and 6 of the Mental Capacity Act 2005 operate together and may be relied upon where restraint is required in emergency medical situations. This is to ensure that someone who is at risk of serious harm and lacks the mental capacity to make decisions about their own healthcare needs is conveyed to an Emergency Department. It applies to public and private

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locations to persons 16 years and over. This guidance will help officers make these fast-time decisions.

Persons therefore restrained under the Mental Capacity Act can only be taken to an Emergency Department setting for treatment [if the officer reasonably believes the person lacks capacity](#). They are not under arrest and should never be brought to a police station as this is not a power of arrest.

N.B: a person’s mental capacity can fluctuate and a person appearing to lack mental capacity on the street, may quickly regain capacity and appear perfectly rational a short time later following their arrival at the hospital. Where this happens, no further legal authority exists to restrain them and the person would have to be permitted to leave.

Therefore in cases where a person who exhibits behaviour that officers feel raises concern about their mental state, Section 136 should be used as this permits a person to be detained at a place of safety for up to 72 hours to enable an assessment, regardless of how their behaviour has changed since the original detention.

2.2 Powers on Private Premises Explained

Where persons with apparent mental health disorder are found in private premises, operational officers can be presented with difficulties as section 136 can only be used if a person is found in a public place and therefore its use on private premises is unlawful.

Inviting or coercing an individual out of private premises and into a public place in order to arrest for Section 136 is also unlawful, as the person was not “found there” so the power may not be used in this way.

Police officers are fully aware of their of duty of care in order to protect and preserve life: they are also aware of the limited legislative options available to them to remove a person from private premises legally when they are refusing to go. The following guidance is aimed at assisting officers to decide on the appropriate course of action when they are faced with difficult situations in private premises which occur outside of mental health teams’ normal working hours.

This should provide some awareness of the four positive action options that can be taken as opposed to leaving an individual in a private premises:-

(1) Restraint Under the Mental Capacity Act

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Where a person is in private premises and they require immediate care or medical treatment because they are injured or unwell or engaging in self harm, having taken an overdose or intoxicated with alcohol/drugs and the police officer is of the opinion that they lack capacity to make choices themselves then the powers to restrain them under Mental Capacity Act 2005 are available.

N.B: this is a power to compel a person who lacks the capacity to make an informed decision about their own welfare to be taken to the Emergency Department where they can be examined by a doctor or other medical staff to have treatment in their own interests as they do not have the capacity to consent themselves.

Under such circumstances, the individual is being taken to hospital to have urgent medical treatment; they are not under arrest and **cannot** be taken to a police station. If a subsequent assessment shows that the person has regained capacity, they can no longer be held under the Mental Capacity Act.

(2) Entry and Voluntary Assessment Under the Mental Health Act

In circumstances where police officers are on private premises and the person appears to be suffering from a mental disorder and is refusing to accompany the officer voluntarily to a place of safety consideration should be given as to how the individual can be assessed under the Mental Health Act.

Officers should consult with the individual to ascertain how amenable they are to an Approved Mental Health Professional (AMHP) and a doctor attending their premises with their consent to conduct an assessment.

If officers have formed an opinion that the individual recognises they need help and will voluntarily allow an assessment to take place then the local Mental Health Team or Emergency Duty Team should be contacted to attend and conduct their assessment.

Where such an assessment is conducted, it is a decision for the AMHP and the assessing doctor as to what action is deemed appropriate i.e.:

- a) Section 2 or 3 of the Mental Health Act – Compulsory admission for assessment or treatment
- b) Section 4 of the Mental Health Act – Admission to hospital for assessment in cases of emergency. (*See below*)
- c) Any other relevant action deemed appropriate by the AMHP
- d) Individual deemed not to be suffering from mental disorder with no further action required and all parties can resume duties

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N.B; Section 4 of the Mental Health Act, if following entry to the premises it is found that the necessity to detain is **urgent** and there is only one doctor present at the premises with the AMHP at the time, the Mental Health Act provides the power to detain in a hospital for an assessment to be made on the basis of a single medical recommendation (normally two medical recommendations would be required).

This can only occur in very limited circumstances i.e. when:

- the criteria for detention under Section 2 Mental Health Act are met
- the patient's detention is a matter of urgent necessity *and*
- obtaining a second medical recommendation would cause undesirable delay.

To be satisfied that an emergency has arisen, the AMHP (applicant) and the doctor making the supporting recommendation should have evidence that there is:-

- an immediate and significant risk of mental or physical harm to the patient or others
- and/or a danger of serious harm to property
- and/or a need to physically restrain the patient.

The AMHP will make arrangements to convey the person to hospital under such circumstances.

However, careful consideration should be exercised before invoking Section 4 powers. Officers are advised that in these circumstances **the person must not be left alone** whilst these arrangements are being put into place.

(3) Requirement for Warrant Under Section 135 Mental Health Act

In circumstances where officers are already on private premises and the person appears to be suffering from a mental disorder and is refusing to accompany the officer voluntarily to a place of safety, consideration should be given as to how the individual can be assessed under the Mental Health Act.

If officers are of the opinion that the individual is not agreeable and will not consent to allow a Mental Health Act assessment taking place on the premises then the local Mental Health Team or Emergency Duty Team should be contacted.

If officers are already on the premises and they believe that the person will not allow access to a Mental Health Team or Emergency Duty Team, that team should be briefed as to why officers feel that an urgent assessment is required and of their reasons for recommending that a warrant under the provisions of

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Section 135 Mental Health Act should be applied for to make any subsequent entry and assessment lawful.

An application can then be made by an AMHP to a magistrate for issue of a Section 135(1) warrant. This will authorise a police officer to enter locked premises (by force if necessary) on one occasion only and remove the person to a place of safety for assessment for a period not exceeding 72 hours.

The AMHP and doctor should then carry out a preliminary assessment of the person if feasible to do so, to determine whether further assessment for admission under the Act is needed; it may be possible to conduct such an assessment whilst in the premises, alternatively other arrangements for the person's care and treatment may also be considered.

4) Arrest to Prevent a Breach of the Peace

Where appropriate, officers can consider arresting the person for a breach of the peace. Officers must be clear that a breach of the peace is imminent and confident that their arrest in response to the presenting circumstances is legally justified and it is the appropriate power to use e.g. where a person's behaviour indicates they are likely to cause harm to themselves imminently and that such action will endanger others, a breach of the peace will clearly have been made.

(Officers must be mindful of the above as many forces have faced litigation because officers have unlawfully used a breach of the peace arrest as a 'ways and means act' to remove an individual from residential premises when in actual fact, there was no breach of the peace.

The person should be taken to the custody suite where a Mental Health Act assessment should be requested through the custody health care professional. Whilst the assessment is being arranged and carried out, the person remains in custody under the breach of the peace power, not under Section 136.

3. Removal to a Place of Safety

Section 136 of the Mental Health Act, 1983 empowers a police officer to remove any person appearing to be suffering from mental disorder and in immediate need of care and control from a public place to a place of safety.

Section 136 of the Mental Health Act, 2007 states:

3.1 Power to Remove

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‘A person removed to a **place of safety** under this section may be **detained there for a period not exceeding 72 hours** for the purpose of enabling him/her to be examined by a registered medical practitioner and to be interviewed by an approved mental health professional and of making any necessary arrangements for his treatment or care.’

3.2 Legal Definition of Place of Safety

Section 135(6) Mental Health Act defines a place of safety for the purposes of Section 136 as:

- a hospital as defined by this Act (*see overleaf*),
- a police station,
- an independent hospital or care home for mentally disordered persons
- residential accommodation provided by the local social services authority, or
- any other suitable place the occupier of which is willing temporarily to receive the patient.

This to some extent clarifies the order in which the place of Safety should be considered; please note the police station is not the primary place of safety. See ‘**Officers’ Decision as to Appropriate Place of Safety**’ for clarification.

This is highlighted in three of our partnership principles as below:

Our Partnership Principles

- That custody in police cells can aggravate existing mental health conditions;
- IPCC recommends that police stations are **not** used as a place of safety;
- Divert persons with mental health issues out of police custody and criminal justice system at the earliest opportunity.

3.3 Agreed Places of Safety Within South Wales Police Area

Within the South Wales Police area, partnership agencies have jointly agreed that the regional places of safety for the purpose of Section 135 and 136 of the Act will be:

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- a) Royal Glamorgan Hospital Mental Health Unit, nr. Llantrissant
- b) Crisis Suite Prince Charles Hospital, Merthyr Tydfil
- c) Hafan Y Coed, University Hospital Llandough, Penarth
- d) Coity Clinic, Princess of Wales Hospital, Bridgend
- e) Neath Port Talbot Hospital Mental Health Unit, Port Talbot
- f) Cefn Coed Hospital, Swansea

The hospital covering the catchment area in which the incident has occurred should normally be considered the most appropriate.

Or

A **police station** as designated by South Wales Police:-

BUT ONLY:

- a) Where the detainee is under the excessive influence of intoxicants or drugs (due to his or her condition there is likelihood that the assessment will be delayed)

OR

- b) Where the detainee is violent and the degree of violence is such that they cannot be safely detained in a hospital environment

In cases where the person is of no fixed abode, the responsible Authority will be the one for the area in which the person was initially placed on Section 136.

It must be taken into account that the use of the police station can give the impression that a detainee is suspected of having committed a crime which may cause distress and anxiety to the person concerned and may affect their co-operation with the assessment process and its effectiveness.

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3.4 Officers' Decision as to Appropriate Place of Safety

As soon as the decision has been made to detain a person under Section 136, the police officer(s) will undertake a dynamic risk assessment to determine the most appropriate place of safety based on the following criteria:

- a) Is the Detainee to be **solely arrested under the provisions of the Mental Health Act** with no aggravating factors which would necessitate his removal to a place of safety other than a hospital?
Appropriate Place of Safety – Mental Health Unit or Hospital for assessment.
- b) Is the Detainee to be **arrested for a substantive offence** and there are concerns about the mental health of the detainee?
Place of Safety – Police Station.
- c) Is the Detainee **under the influence of Drugs or heavily intoxicated** to the extent they could not be assessed?
Appropriate Place of Safety – Police Station to allow period to become fit for assessment.
- d) Is the Detainee **violent** to such a degree that they cannot be safely detained in a hospital environment?
Appropriate Place of Safety – Police Station to allow period to become fit for assessment.
- e) Is the Detainee **in need of urgent medical attention**?
Place of Safety – Hospital Emergency Department for medical attention.

See Appendix A - Guide to Officers as to Appropriate Place of Safety Under Sec 136 MHA

3.5 How to Contact the Place of Safety to Notify them of Intended Arrival

It is important that following the detention of a person under Section 136, Mental Health Act 1983, that the intended place of safety is informed of the proposed arrival so it can be confirmed that the identified place of safety is willing to accept the person detained under the circumstances.

South Wales Police has a mapping system which can be accessed via Connect and from a force BlackBerry. The map displays Health Board boundaries which, when clicked, shows a list of contact numbers for the relevant places of safety and details of information that, whenever possible

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must be provided to that place of safety. The Section 136 Mental Health Act Policy is also available.

When using a force BlackBerry, the mapping system uses the devices current GPS location and will provide the list of relevant place of safety contact numbers automatically (provided there is a clear GPS signal).

There is no longer any requirement for officers to contact the Public Service Centre (PSC) to identify designated places for safety for people detained under the Mental Health Act. Officers will only ring the PSC in the rare event of BlackBerry failure.

See Appendix C for Place of Safety Map Illustration

3.6 Where a Person Detained Under Section 136 is Believed to be Under the Influence of Alcohol and Drugs

Police officer judgement should be used to gauge if the person is suitable to be taken to a hospital as a first place of safety as opposed to a police station.

If taking the person to the hospital as the first place of safety, police officers need to qualify in their decision making process that, despite the possibility of mental disorder, the consumption of alcohol or drugs has not unduly affected the person's ability to be **coherent, understanding and responsive** i.e. that the person will be fit to be assessed on arrival at hospital.

The person's condition should also be discussed with hospital staff when telephoning ahead. Officers should be mindful that if, on arrival at the hospital, the person is deemed unsuitable for assessment due to the excessive influence of alcohol or drugs, they will have to be removed to an alternative place of safety.

3.7 Transfers between Places of Safety

Section 44 of the Mental Health Act 2007 amended Sections 135 and 136 of the 1983 Act to allow a person to be taken from one place of safety to one or more other places of safety during the maximum overall period of 72 hours. The person may be taken between place of safety by a police officer, an AMHP or someone authorised by either of them.

The maximum period of detention begins from the time of the person's arrival at the **first** place of safety; this cannot be extended if the person is transferred to another place of safety.

If the purpose of the transfer is to move a person from a police station to a health care setting, the benefit of the transfer needs to be weighed against

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any delay it might cause in the person's assessment and any distress that the journey might cause them.

A person may be transferred before their assessment has begun, while it is in progress, or after it is completed and they are waiting for the necessary arrangements for their care or treatment to be put in place.

Unless it is unavoidable, a person should not be moved from one place of safety to another until it has been confirmed that the new place of safety is willing and able to accept them.

4. Where the Psychiatric Hospital is the Place of Safety

4.1 Officers' Responsibilities

As soon as the decision has been made that the local psychiatric hospital is the appropriate place of safety to detain a person under Section 136, the detaining officer must contact the shift coordinator/senior nurse at the hospital, giving advance notice of their intended arrival. The aim is to minimise any delays by enabling an assessing team to be alerted to the possibility that a S.136 assessment will need to be undertaken.

The police will ensure the following actions are carried out:-

(1) When contacting the identified place of safety the escorting officer will contact the **shift coordinator/senior nurse** and inform them of the following:

- a) Any information they have about the person regarding their identity
- b) The circumstances leading to the person's detention under Section 136 or conveyance in any other case
- c) Officers **must** conduct a PNC person check to confirm any known **'warning signals'** and inform the staff of any indication that the person may present a risk of harm to themselves or others.
- d) The anticipated time of arrival at the place of safety.
- e) If there is no information known about the person detained
- f) Confirm that person is fit for assessment and is not too intoxicated or violent .(i.e. they should be compliant at the time).

N.B. Officers must not use the Public Service Centre to communicate this information - they must contact the place of safety directly.

(2) Search the detained person before transporting them to the place of safety to ensure that no prohibited articles are concealed or available i.e. weapons. Where the detainee is searched a record of items taken must be recorded and

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handed over the medical staff at the place of safety against countersignature in the officer's pocket note book.

(3) The police officer will complete the relevant section of the Section 136 monitoring form, hand it to the nursing staff on arrival and record sufficient information to update Niche.

If the detaining/accompanying officer has not completed the Section 136 monitoring form up to the point of arrival at the local psychiatric hospital, they will be given a form and the detained person will be provided with a Section 136 'rights information leaflet'. This does not mean the individual has been accepted into care and officers must remain until such time as the person has been assessed by the shift coordinator/senior nurse as appropriate for a mental health assessment under Section 136 at the hospital.

(4) Police officers **MUST** inform the shift coordinator/senior nurse in charge if restraint has been used on the detained person. Where police officers have used restraint, the nurse in charge will ensure that the assessing doctor is made aware that restraint has been used when they are undertaking the physical examination on the detained person.

On arrival at the place of safety, escorting officers will be informed who the receiving coordinator/senior nurse is. The receiving shift coordinator/senior nurse will ensure that a joint risk assessment of the detained person's immediate physical and mental state is undertaken with the police officer in charge and that a joint plan for the person's management is developed which will include:-

- Assessment before the police officer/ambulance team leave, to check whether the person is in need of any medical assessment or treatment which may necessitate their immediate transfer to another, more appropriate healthcare setting
- Determining if it is necessary for police officer(s) to remain through part or all of the assessment. "Police should only need to stay where in their professional judgement there is a medium to high risk of violence, a breach of the peace occurring or of the individual absconding" (S.135 and 136 of the MHA 1983 guidance).Where there is disagreement about the need for the police officer to remain, identify the point at which it becomes necessary to escalate the matter.

[See Appendix B - Police Requirement to Remain](#)

If the detainee has been **transferred to the hospital from another place of safety** e.g. the police custody suite, the detaining/escorting police officers

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must have recorded the Section 136 details on the Section 136 monitoring form up to the point of arrival at the hospital. The information must include a clear record of:

- the arrival time at the place of safety
- where the individual was transferred from another place of safety
- the time the detention commenced
- as much information as is known about the individual
- a full and comprehensive handover about the circumstances which led to the detention.

4.2 Conclusion of Section 136 Monitoring Form and NICHE Occurrence

The coordinator in charge will require that the police officer has completed the relevant part of the Section 136 monitoring form provided at the mental health facility and also will record the time of the detained person's arrival at the place of safety and the time that Social Services were informed that an assessment is required.

When the person is formally received by the shift coordinator/senior nurse, police officers will complete the Section 136 monitoring form with details of the staff member to whom the care of the person has been transferred and record the time.

The Police NSPIS/NICHE incident/occurrence must be recorded with the receiving staff member's name and the time at which responsibility for the person's care passes under s.136 of MHA 1983 from police to health.

4.3 Shift Coordinator/Senior Nurse In Charge Responsibilities

The **shift coordinator/senior nurse** will assume responsibility for the person once they have been formally received at the hospital and take the following action:-

- a) Obtain the person's details and check against the database for any previous medical records. If the person's history indicates previous violence during assessments, this should be discussed with the relevant police officers
- b) Establish if the detainee is unknown to the hospital staff

N.B. Police officers must recognize that to a Mental Health Service, risk is likely to be perceived as high where there is no available information about the detainee.

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- c) Contact the relevant senior nurse and inform them of the detention and discuss any resource implications; this may include allocating members of nursing staff to remain with the detained person
- d) Contact and coordinate the arrival of the assessing doctor to undertake a physical examination. Where the detained person refuses to be examined the assessing doctor should ensure that this is fully recorded
- e) Contact the AMHP who will then assume responsibility for co-ordinating the Mental Health Act assessment
- f) Advise the police of any potential delays in the process of assessment.

In accordance with the guidance in the Mental Health Act Code of Practice for Wales 2008 (paragraph 7.16), the AMHP and the duty psychiatrist will start the examination within the partnership agencies, agreed target time of **three hours** of the detained person's arrival at the Mental Health facility.

The Royal College of Psychiatrists also recommends that all assessments should begin within three hours of the detainee being brought to the place of safety. For the purpose of this policy, partnership agencies will adhere to this standard wherever possible. The target time will be monitored collaboratively to ensure adherence but with regard to individual health board data protection policies.

The shift coordinator/senior nurse will then make suitable arrangements for the care of the person during their stay at the place of safety including:-

- a) Where practicable, ensure that the detainee understands that they are detained under Section 136, Mental Health Act 1983, what this means and what will happen next. This information should be provided both orally and in writing (S.132, MHA 1983) specific information is contained in Patient Information Leaflet 22 prepared by the Welsh Government
- b) Detainees should be made aware of their entitlement to have another person of their choice informed of what has happened and where they are. Hospital managers must also provide access to legal advice if requested.
- c) Ensuring that the person is made as comfortable as possible and is supervised appropriately;
- d) Arrange for food and drink for the detained person if required;
- e) Arrange for an interpreter to attend if required;
- f) Assist the duty psychiatrist and the AMHP with the assessment;
- g) Constantly review the management of the detained person;

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- h) Consider, with the police officers, the requirement to transfer the detained person to another place of safety if circumstances require.

Where there are multiple uses of Section 136 at the same time in different places, assessments will take place on a first come first served basis unless risk dictates an earlier assessment to expedite treatment. It will be the responsibility of the psychiatric hospital to coordinate multiple assessments as expeditiously as possible.

4.4 Police Officers Requirement to Stay at Places of Safety (Health)

The shift coordinator/senior nurse in charge will constantly review with the police officers the necessity for them to remain at the place of safety.

Frequent disputes can arise between the staff at places of safety and the police about how long police should remain with the detainee or who has the legal power or responsibility to continue detaining the person whilst awaiting and then carrying out the assessment. The power to remove under Section 136(1) has the word 'constable' in it, but the power to detain the person at the place of safety under section 136(2) does not specify that this applies to a constable.

There is no reason for the police to stay with the person during an assessment when they are in an agreed place of safety at health premises. However, police must stay where there is a risk of violence or a significant risk of a breach of the peace. (6.2 Mental Health Act 1983, Mental Capacity Act 2005). However police officers must not take a person from the Emergency Department to the local psychiatric hospital as the place of safety and leave them there without prior assessment by the receiving shift coordinator/senior nurse at the local psychiatric hospital.

Disputes also arise in relation to refusals to accept a person at the place of safety on the grounds they are full, the person is too violent or is under the influence of alcohol or drugs and cannot be assessed until in a fit condition. In both of these circumstances, officers should refer the matter to the **Bronze Inspector to resolve with the Health Silver on call.**

If the detained person is considered to be of too high a risk to be safely managed in a hospital setting then an agreement will be reached for the detained person to be taken to a police station as the place of safety.

Non Appearance Warrants and Section 136

Where a Police officer detains a person under section 136 of the Mental Health Act 1983 and a PNC check reveals there is a Non Appearance Warrant outstanding for that person, the officer **must** in the circumstances where the place of safety is a psychiatric hospital, remain until the outcome of

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the assessment is determined. Where the person is admitted under section or informally the hospital must contact the bronze Inspector prior to release of the detainee to ensure the criminal justice route is followed.

[**See Appendix B - Police Requirement to Remain**](#)

4.5 Detained Person's Rights in Hospital

The person detained under Section 136 has the following rights under Section 132 of the Mental Health Act 1983 and the Mental Health Act Code of Practice for Wales 2008:

- a) The right to have another person of his/her choice informed of the detention
- b) The right to free and independent legal advice at any time. (Mental Health Act Code of Practice for Wales 2008 paragraph 7.37)
- c) The right to an interpreter if one is required
- d) The right to an appropriate adult particularly where a detained person is felt to lack capacity to consent to particular decisions

These rights are continuous throughout the period of detention and the detained person can change their minds at any time with regard to these rights. Additional care must be taken where a detained person is felt to lack capacity to consent to particular decisions. Not every person taken to a place of safety may have the capacity to retain information or understand written information leaflets. Any concerns regarding a person's capacity or understanding will be recorded and the assessing doctor and AMHP informed of the concerns.

Arrangements may be offered for an advocate to support the individual.

The individual must be told as soon as is practicable the following:-

- As soon as detention under Section 136 at the place of safety ends
- When they are free to leave a place of safety.

4.6 Shift Coordinator/Senior Nurse Responsibility After Assessment

The shift coordinator/senior nurse in charge will assist with the arrangements for the detained person after the assessment has ended.

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The shift coordinator/senior nurse in charge will record the end of the detention under Section 136 on the monitoring form and arrange for a copy to be sent to:

- a) The South Wales Police Force Mental Health Liaison Officer, Public Protection Department, Police Headquarters, Bridgend
- b) The detained person's General Practitioner
- c) The relevant Community Mental Health Team

4.7 Transport of Detainee After Assessment

During the assessment period, a dynamic risk assessment will be conducted jointly to determine the appropriate place of safety at which the detained person will be detained at, if not voluntarily admitted.

If the detained person is to be transferred to another place of safety, under these circumstances the individual is still detained under the Mental Health Act for assessment. Therefore where there is a possibility that the detainee presents a danger to themselves or others, the police have continuing responsibility for arranging transfer.

In circumstances where the person has been arrested under the provisions of Section 136, the police have a duty to assist in the safe return of a detained person to the community, where the assessment **has not** lead to the admission to hospital or other accommodation. (Mental Health Act Code of Practice for Wales 2008, chapter 7.12). If the police were allowed to leave as they were not required during the assessment process, then this responsibility falls to the health service.

In circumstances where the person has voluntarily self referred at the psychiatric hospital, and they are not under arrest or detained under Section 136, a question arises as to a duty of care to return the person to their home address.

The first course of action should be to ascertain if any family members can assist with the patient's travel arrangements to their home. If no family member is available the AMHP/police have a joint responsibility as to whether transport should be provided and who will provide that transport.

5. Where the Police Station is the Place of Safety

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Where a person is arrested under Section 136 Mental Health Act 1983, **a police custody suite should only be considered the primary place of safety where:-**

- a) the detainee is under the excessive influence of intoxicants or drugs (due to his or her condition there is likelihood that the assessment will be delayed)

OR

- b) the detainee is violent and the degree of violence is such that they cannot be safely detained in a hospital environment

OR

- c) the detainee has been arrested for a substantive criminal offence and there are concerns about the mental health of the detainee.

5.1 Arresting Officer Responsibility

On arrival at the custody suite following detention under section 136, the police officer will complete the section 136 monitoring form, parts A and B on NICHE and inform the custody sergeant when completed so the sergeant can complete the relevant custody sections.

At this point the custody sergeant will commence the custody handling procedures.

5.2 Custody Officer Responsibility

The custody sergeant will contact the healthcare professional and the approved mental health professional (AMHP) at the beginning of the period of detention and inform them of the section 136 detention. The time of contact with Social Services must be recorded on the section 136 monitoring form (Mental Health Act Code of Practice for Wales 2008, paragraph 7.43).

The custody sergeant will coordinate their attendance, depending on the detainee's fitness for assessment and provide any information the police have about the detained person regarding their identity, the circumstances leading to their removal under section 136 and any indication that they may present a risk of harm to themselves or to others.

If the police officer or custody sergeant is made aware of any faith or cultural needs, they should bring this to the attention of the section 12 Doctor and AMHP at the earliest opportunity.

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i. Detainee's Rights

The custody sergeant is responsible for ensuring the detained person is kept fully informed of his/her legal rights under the Mental Health Act and Police and Criminal Evidence Act (PACE).

The person detained under Section 136 at a police station has the following rights under PACE:

- a) The right to have another person of his/her choice informed of the detention
- b) The right to free and independent legal advice at any time
- c) The right to an interpreter if one is required
- d) The right to an appropriate adult, particularly where a detained person is felt to lack capacity to consent to particular decisions

N.B. when a person is detained at a police station under section 136 an appropriate adult is only required to attend where an assessment is likely to be delayed for **more than 3 hours**, this period will start from the point when the detainee is fit for assessment and not from initial arrival if heavily intoxicated.

These rights are continuous throughout the period of detention and the detained person can change their minds at any time with regard to these rights.

Not every person taken to a police station as a place of safety may have the capacity to retain information or understand written information leaflets. Any concerns regarding a person's capacity or understanding will be noted in the custody record and the Forensic Medical Examiner (FME) and AMHP informed of the concerns.

ii. Fitness for Assessment

It may be as in most cases, when the detainee is fit and poses no threat to individuals, that they can be transferred to the appropriate place of safety and the need for the FME to attend will not arise, as the assessment can now take place at the appropriate place of safety by a section 12 Doctor provided by the health service.

N.B: This will depend on what is in the best interests of the detainee – where there could be an extended delay in the arrival of the FME or AMHP, if it would be more expeditious and advantageous for the detainee to be transferred then they should be so transferred and the reasons recorded on the custody record.

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Where there is no advantage or time saving or it is not in the interests of the detainee to be transferred due to delay in the assessment process, they should remain at the police station for assessment and again the reasons for doing so recorded on the custody record.

The reason for remaining should outweigh the reason for the detainee to be transferred and should be in the best interests and for the safety of others.

5.3 Explanation of Mental State Assessment Process

Determining a detained person's fitness for detention and interview is the responsibility of the custody sergeant.

N.B: there are three forms of assessment of a person's mental state whilst a person is in the custody environment:

1. Mental State Assessment

This assessment is an initial assessment for fitness for detention or release. It will be conducted for all detainees whether they have been detained under section 136 Mental Health Act 1983 or arrested for other matters such as breach of the peace or for any other substantive offence.

The assessment will be conducted by the nurse or doctor (i.e. the health care professional), who will confirm the person's fitness for detention. It should be noted that the role of the custody mental health nurse is solely to initially assess the person's mental state **not to confirm** fitness to detain, interview or release.

Where a person is arrested other than under section 136, e.g. breach of the peace or a substantive offence, and they are assessed by a registered medical practitioner under this process as not having any mental disorder, they can be interviewed or released as is necessary without any escalation for an assessment under section 136 Mental Health Act 1983.

2. Section 136 Assessment

A formal section 136 Mental Health Act assessment will be conducted for all those persons detained in police custody, whether conducted at the police station or other place of safety.

As with any other detainee, an initial assessment for fitness for detention, interview or release is required and as in 5.3(1) above: the Mental State Assessment. This can be conducted by the duty health care professional, the doctor or the nurse who will confirm the person's fitness for detention.

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This determination will confirm when the detained person under Section 136 is fit for assessment by a section 12 approved doctor and an AMHP.

N.B: it states under Sec 3.16 of PACE ‘ *A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.*’

In such a case the person should be released without a further assessment by an AMHP.

3. Formal Mental Health Act Assessment

As with any other detainee, an initial assessment for fitness for detention, interview or release is required (as outlined in 5.3(1) the Mental State Assessment above). This can be conducted by the duty health care professional, the doctor or nurse who will confirm the person’s fitness for detention. This determination will confirm when the detained person is fit for a formal Mental Health Act assessment undertaken by an AMHP and 2 doctors one of which should be section 12 approved.

A formal Mental Health Act assessment is conducted for those persons detained in custody for a substantive offence where there are concerns that the detainee may also be suffering from a mental disorder.

The formal Mental Health Act assessment process will determine whether the detainee can be formally admitted into care under the Mental Health Act.

A formal mental health act assessment regardless of the outcome, does not in itself preclude the criminal justice process.

Informal and Formal admission

Following the assessment of the detainee, the section 12 approved doctor must make a clinical decision as to whether the detainee should be informally admitted or compulsorily admitted into care.

It is vitally important that custody sergeants confirm whether the assessing doctor’s decision is to formally admit the detainee or not.

In cases where the assessing doctor has deemed that the detainee may be informally admitted to hospital, it should be noted that there is no legal power to detain the person on leaving custody: they will also be free to leave the hospital at any time.

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In view of this, the custody sergeant should clarify the assessing doctor's rationale for informal admission, particularly in cases where it is felt the detainee presents a danger of self harm or suicide or poses a risk of harm to others. The custody sergeant should therefore outline their concerns about the potential ramifications following release if the detainee subsequently changes their mind: does not volunteer to attend for assessment and then goes on to commit suicide or harm others.

The custody sergeant must ensure that the assessing doctor's referral decision and rationale are recorded on the custody record, either by the doctor themselves or on their behalf, in either case against countersignature of the doctor.

Where the assessing doctor refuses to countersign the custody record, the refusal itself to sign must be recorded.

5.4 Role of the Criminal Justice Assessment and Liaison Mental Health Team

South Wales Police in conjunction with a number of Health Boards across the force area have worked in partnership to provide custody mental health nurses in Swansea, Bridgend, Merthyr and Cardiff Bay custody suites.

Where a custody mental health nurse is available, the custody sergeant may request an initial screening assessment with the consent of the detainee. Where detainees cannot give their consent e.g. a person suffering from psychosis, the nurse would still be able to assess the individual and may request a Mental Health Act assessment if appropriate to do so.

The custody mental health nurse will accept referrals from the custody sergeant or health care professionals. The nurse will then undertake a mental health and social care assessment of the detained person's needs and formulate a plan.

On completion of this assessment the nurse is in a position to give advice on fitness for detention, interview and release from custody on the basis of their mental health. This assessment includes an assessment of risk and when completed the assessment is recorded onto locally held mental health data bases (where applicable) alongside with any additional liaison that is required.

5.5 Transfers from a Police Station to an Appropriate Place of Safety

As already stated, since April 30th 2008, section 44 Mental Health Act 1983 was amended and now provides for a person detained at a place of safety to be transferred to one or more other places of safety within the overall time limit for detention of 72 hours. The person may be taken to a different place of safety by a police officer, an AMHP or someone authorised by either of them.

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If the purpose of the transfer is to move a person from a police station to a healthcare setting, the benefit of the transfer needs to be weighed against any delay it might cause in the person's assessment and any distress that the journey might cause them.

The only reasons a detainee would be held in the police station are:-

- a) where the detainee is under the excessive influence of intoxicants or drugs (due to his or her condition there is likelihood that the assessment will be delayed)

OR

- b) the detainee is violent and the degree of violence is such that they cannot be safely detained in a hospital environment

As soon as these conditions no longer exist, the detainee should be transferred to the primary recognised place of safety i.e. a mental health hospital from the approved list. The transfer must be conducted in consultation with the healthcare provider and unless unavoidable, the person should not be moved from one place of safety to another until it has been confirmed that the new place of safety is willing and able to accept them.

A person may be transferred before their assessment has begun, while it is in progress, or after it is completed and the detainee is waiting for the necessary arrangements for their care or treatment to be put in place.

The custody officer will ensure that the detainee is transferred in the company of officers who have been briefed about any risks the detainee presents to themselves or others and will provide a completed Prisoner Escort Form (PER Form) identifying all risks, together with a copy of the custody record and Section 136 monitoring form printout from Niche. The records must fully state what medication or assessment the detainee has received whilst in police custody.

Note: A person cannot be safely assessed or managed whilst under the influence of alcohol or drugs. Until the person has been assessed by a suitably qualified doctor, and deemed to be in need of hospital admission, nursing staff have no lawful authority to medicate a violent patient pending a mental health assessment. The person should also be deemed as medically fit to be transferred.

5.6 Recording of Outcome

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The custody sergeant will record the outcome of the detention under Section 136 on the monitoring form on Niche and forward an electronic copy as appropriate to:

- Abertawe Bro Morgannwg University Health Board Mental Health Team
mentalhealth.team@abmucymru.cjism.net
- Cardiff and Vale University Health Board
cav.mentalhealthact@cvsafeguarding.cjism.net
- Cwm Taf Local Health Board
ctuhb.mhaa@ngram.cjism.net

Where the detainee is transferred to another place of safety, the custody sergeant will print off a copy of the monitoring form and attach it to the PER form and hand it to the escorting officers for transport with the detainee.

6. Where a Hospital Emergency Department is used under Section 136

6.1 Procedure where Urgent Physical or Medical Intervention is Required at the Emergency Department

A person detained under Section 136 will **only** be taken to an Emergency Department if they are in need of urgent physical/medical intervention, or if they are being transferred from another place of safety to receive physical/medical intervention.

The Emergency Department is utilised for the treatment of the person and will not become the place of safety under this provision.

Evidence of an overdose or an obvious injury does not necessarily invoke the use of Section 136. Any person may be conveyed voluntarily to an Emergency Department for treatment.

Transport/Reception Arrangements

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Where a person detained under Section 136 or voluntarily willing to be treated at a hospital because they are in need of urgent medical intervention the following actions must be carried out:

Emergency Department Senior Nurse Informed of Detainee Details

Following the dynamic risk assessment and decision to detain under Section 136, the police officer removing the person under section 136 will contact the senior nurse at the Emergency Department to notify them that an individual subject to section 136 requires immediate physical or medical intervention before being transferred to a place of safety for assessment. The same action is required if the individual agrees to be taken to the Emergency Department.

Ambulance Service Informed of Detainee Details

The officers will also contact the ambulance service via their BlackBerry to request their attendance if the person is in need of urgent physical or medical intervention or treatment. Where no ambulance is available, or it is inappropriate to wait for one because the person is in need of urgent physical or medical intervention or treatment, police transport will be used to convey the person detained under Section 136 to an Emergency Department

Transport Vehicle Choice

A joint risk assessment will determine whether conveyance should be in an ambulance or not. Where a detained person is to be transferred to hospital, and admitted either informally or formally, agreement will be reached between the Ambulance Service and police as to the most appropriate form of transport. This may either be by ambulance or police vehicle.

An ambulance (defined simply as a vehicle provided by the ambulance service) is the preferred form of transport to and between places of safety in most cases. Where it is deemed that an ambulance is the most appropriate means of transport, this should be provided by the Ambulance Service as per the guidance in the Mental Health Act Code of Practice paragraph 9.25.

A police officer may be requested to travel with the individual in the ambulance if appropriate for which provision should be made.

A police vehicle should only be used where there is concern that the detained person is likely to be violent or dangerous to the extent an ambulance is not appropriate even with a police officer on board. If a detainee's behaviour poses such a risk that waiting for an ambulance to arrive would endanger either the patient or a member of the public, a police vehicle should be used.

Reception Procedure

In order that Emergency Department staff can confirm that the detainee is subject to section 136 detention, on arrival at the Emergency Department, the triage nurse or nurse in charge will sight that a section 136

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monitoring form has been completed comprehensively and legibly by the detaining/accompanying officer with the following relevant information.

- The patient's name, address and date of birth
- The location of the public place from where the person was removed
- Any warning signals or issues of which the officers should make Emergency Department staff aware
- The fact that the person is actually subject to Section 136 detention.

This is to enable Emergency Department staff to confirm that the detainee is subject to a Section 136 Detention.

The nurse in charge will check with the police officer that the Section 136 coordinator/senior nurse at the psychiatric hospital has been informed of the person in need of an assessment under Section 136.

In order to reduce unnecessary delays, minimise clinical risk and ensure a swift transfer to the place of safety, the Emergency Department wherever possible, will prioritise triage and assessment of any medical needs the detainee might have.

If there is a handover or shift change whereby another police officer takes over the section 135/136 procedure from the detaining officer, the section 136 monitoring form completed up to that point must be handed over and the procedure continued as above.

Police Requirement to Remain

The police officer(s) **will remain** with the detained person whilst they are in the Emergency Department to receive physical/medical intervention, at the guidance of Emergency Department staff and until hospital staff are satisfied that treatment has been completed or the detained person is voluntarily admitted to hospital.

If it becomes apparent that a mental health assessment of the detained person is **urgently** required whilst they are in the Emergency Department, police will assist the Emergency Department staff in making the necessary arrangements for the attendance of an appropriate doctor and an AMHP to undertake a joint assessment via the contact details on the officer's BlackBerry. If this is the case, Police officers will be required to remain with the detained person throughout the physical and mental health assessment.

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If the detained person is considered to be of too high a risk to be safely managed in a hospital setting then agreement will be reached for the detained person to be taken to a police station as the place of safety.

[See Appendix B - Police Requirement to Remain](#)

6.2 Transfer after Treatment

Whilst the person is receiving Emergency Department treatment, the police officer will contact the Section 136 coordinator/senior nurse at the health board to discuss what is likely to be the most appropriate place of safety to which the person will be transferred when discharged from the Emergency Department.

A dynamic risk assessment will be conducted jointly to determine the appropriate place of safety to which the detained person will be transferred if they are not admitted to the hospital for medical treatment. Under these circumstances the individual is still detained under the Mental Health Act for assessment. Therefore the police have continuing responsibility for arranging transfer to a place of safety for the assessment to be carried out.

If the police officer in conjunction with section 136 shift coordinator/senior nurse, determines that the preferred place of safety under the circumstances is the police custody suite, the police officer will ensure that the partially completed section 136 monitoring form is available for the assessing team at the police custody suite to enable them to complete their record of the assessment.

If when discharged as fit by the Emergency Department, the person is to be taken to the local psychiatric hospital as the place of safety, the completed section 136 monitoring form must be handed directly to the shift coordinator/senior nurse who will verify:

- that the person has been lawfully arrested under section 135/136 *and*
- confirm that the person is suitable for a MHA assessment at the local psychiatric hospital *or*
- whether they should be transferred to the police custody suite

If the patient is assessed by the shift coordinator/senior nurse as being unsuitable for a MHA assessment at the local psychiatric hospital and is subsequently transferred (*MHA 1983(2007)*) under section 135/136 to the police custody suite, the police officer will ensure that the partially completed section 136 monitoring form is available for the assessing team at the police custody suite to enable them to complete their record of the assessment.

If at either place of safety, the local psychiatric hospital or police custody suite, the doctor sees the person first and concludes that the person has a

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mental disorder and that while compulsory admission to hospital is not necessary, 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 patient's treatment or care. The section 136 monitoring form will need to be completed.

In any of the above situations, the AMHP from the assessing team will forward the completed section 136 monitoring form to the Mental Health Act Office at the local psychiatric hospital for monitoring purposes whether an application for detention has been made or not.

6.3 Return of Persons Subject to Assessment to the Community

In circumstances where a person has been arrested under the provisions of section 136, the police have a duty to assist in the safe return of that person to the community, -where the assessment **has not** led to admission to hospital or other accommodation either under the Act or informally (Mental Health Act Code of Practice for Wales 2008, chapter 7.12). If the police were allowed to leave as they were not required during the assessment process, then this responsibility falls to the health service if the person has **not** been admitted.

In circumstances where the person has voluntarily attended themselves at the Emergency Department, and if the person is not under arrest or detained under section 136, then there is a question as to a duty of care to return the person to their home address.

The first course of action should be to ascertain if any family members can assist in the patient's travel home. If no family member is available the AMHP/police have a joint responsibility to determine whether transport should be provided and who will provide that transport.

7. Roles & Responsibilities

7.1 Responsibilities of the Section 12 Doctor

The Mental Health Act 1983 Code of Practice for Wales 7.25 gives guidance that the wording of "local policies" should ensure the doctor undertaking the examination is, **wherever possible approved under section 12 (2) of the Act**. If the examination has to be carried out by a doctor who is not section 12 approved then this fact should be recorded.

The examination must include:

- A direct personal examination of the patient and their mental state

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and

- Consideration of all relevant clinical information, including that in the possession of others, professional and non-professionals

Following the psychiatric assessment, the section 12 doctor, in consultation with the AMHP will decide the outcome: the detainee may:-

- be released from the section 136
- be transferred to another place of safety
- be admitted to hospital on an informal basis
- or require further assessment for consideration of formal admission under the Mental Health Act 1983. (Such assessment will be arranged by the AMHP)

If the person is to be released, transferred or admitted informally to hospital, the section 12 doctor, or other member of the psychiatric team, should record their findings on the section 136 monitoring form.

Should an assessment conclude that formal admission under the Mental Health Act 1983 is necessary, the section 136 monitoring form should be completed accordingly. The AMHP will make the necessary arrangements for a second opinion. If the examining doctor is not section 12 approved, then arrangements will be made for consideration of a second recommendation by a section 12 approved doctor.

7.2 Responsibilities of the Health Care Professional

Where a person detained under section 136 is believed to be under the influence of alcohol and/or drugs, or is violent, he/she should be taken to the police station as a place of safety.

If requested by the custody sergeant, the Health Care Professional (HCP) on call, either the nurse or doctor, will carry out an initial examination to determine whether the patient is fit to detain, interview and release as appropriate.

If any form of restraint has been used, it is essential that the HCP performs a physical examination when it is safe to do so. The HCP will document and treat any injuries and will also record their findings on the section 136 monitoring form.

Once the detainee is sober and calm, the determination for fitness for psychiatric assessment should be made by the custody sergeant. Further assessment may be undertaken by the HCP should the custody sergeant require it.

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The responsibility for arranging the psychiatric assessment falls to the custody sergeant.

If the detainee is to be transferred to another place of safety for the section 136 assessment the custody sergeant may ask the HCP to assess the detainee regarding fitness for transfer.

In accordance with PACE Code C 3.16, if following a mental state assessment by a registered medical practitioner the person is not considered to have a mental disorder, the authority to further detain the person under section 136 and PACE immediately ceases and the detainee should be released. The decision that the person does not have a mental disorder should where possible be taken by a section 12 approved doctor.

If the person is considered to be suffering from a mental disorder of a nature or degree which might warrant further detention, the section 136 power to detain can last up to 72 hours, allowing for all necessary further assessments to take place.

7.3 Responsibilities of the AMHP

The AMHP, who is usually a social worker, but could be a mental health or learning disability nurse, occupational therapist or clinical psychologist who has undertaken the appropriate training and has subsequently been approved, is responsible for initially obtaining all relevant information/ details about the person and the circumstances of the detention under section 136 in order to inform the assessment.

The AMHP must also ensure that a joint assessment takes place as soon as possible after the person's arrival at the place of safety or as soon as the person is fit for the assessment to take place. Part of this planning for assessment should include ascertaining whether the person can be transferred from a police station to a hospital place of safety if a police station has been used in the first instance, considering the person's communication needs and whether an interpreter should be arranged (this will be a police responsibility if the assessment takes place in a police station and the hospital's responsibility if the assessment takes place in a hospital). The AMHP will also decide whether a second doctor should be obtained.

The AMHP will explain their role and the purpose of the assessment to the detainee. The AMHP will also ensure that the doctor explains their role in the assessment, and that the person is interviewed in a suitable manner, including giving them the opportunity to speak with the AMHP alone if it is safe to do so. The AMHP will carry out a joint assessment with the examining doctor(s), contact any relevant carers, relatives, friends or professionals involved with the person (the AMHP does not formally identify the nearest relative for the purposes of

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assessment under section 136, though this will be required if further detention is necessary).

During the interview and, in discussion with the doctor(s), the AMHP will explore any alternatives to hospital admission or if admission is necessary, will decide whether the person can be admitted without further detention under the Mental Health Act 1983. If an application under section 2 or section 3 of the Mental Health Act 1983 is necessary, the AMHP will obtain a second medical examiner if only one medical recommendation has been made. Once the outcome of the assessment has been decided, the AMHP has a responsibility to assist in making arrangements for the person's transfer to hospital, consulting with the doctor and making necessary arrangements for support and/or treatment for the person. If admission is not required, but other community-based services are needed, the AMHP will agree with police officers present and the doctor how the person will be returned to the community.

Once all arrangements have been finalised, the AMHP will record the outcome of the assessment on the section 136 monitoring form and making a detailed record of the assessment using the agreed local system.

7.4 Responsibilities of the Welsh Ambulance Services Trust

This is not effective at the present time. Police officers will be advised of the effective date after the 2013 summer leave period.

8. Requirement for the Support of an Appropriate Adult

PACE Code C, Para 1.4, states:

"If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this code.

Where the custody officer has any doubt as to the mental state or capacity of a person detained, they should be treated as mentally vulnerable and an **appropriate adult** called".

8.1 Detainees Arrested for Substantive Offences

Where a detainee has been arrested for a substantive offence and there are concerns about the mental health of the detainee, an appropriate adult should be called if the detainee is to be interviewed; an interview should only take place in the presence of an appropriate adult.

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Detainees arrested solely under the Mental Health Act Section 136

Consideration should be given to the attendance of an appropriate adult when a person is detained under section 136 at a police station but only in circumstances where an assessment is considerably delayed for **more than the agreed target time of 3 hours**. This period will start from the point when the detainee is fit for assessment and not from initial arrival if heavily intoxicated.

8.2 Who Can Act as an Appropriate Adult for Mental Health Detainees?

The Police and Criminal Evidence Act 1984, Code C1.7 defines an 'appropriate adult' in the case of a detained person who is mentally disordered or mentally vulnerable.

'The appropriate adult' means, in the case of a:

Person who is mentally disordered or mentally vulnerable:

- i. a relative, guardian or other person responsible for their care or custody
- ii. someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police
- iii. failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

This Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136, as a last resort.

Note 1D of Section 1 PACE 1984 states that:

In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.

The appropriate adult can provide support, advice and assistance to the detainee and be present at any criminal investigation interview conducted by the police. This individual can be the detainee's carer or relative, social worker or other independent person. The presence of an appropriate adult is not a substitute for legal advice.

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N.B.: The appropriate adult has no role in the assessment process under the Mental Health Act and their presence is not required.

All custody officers are familiar with the availability of, and means of contacting local appropriate adult schemes.

South Wales Police Appropriate Adult Provision

The current provider for appropriate adult provision for vulnerable adults for South Wales Police is Hafal, a registered charity appropriate adult service which took over provision for South Wales Police following removal of this service by local authority social departments which are now only legally required to provide appropriate adult provision for juveniles.

Hafal delivers an appropriate adult scheme to vulnerable adults across the South Wales Police area who have been taken to designated custody suites at Cardiff Bay, Pontypridd, Ton Pentre, Merthyr, Bridgend, Neath, Swansea, Aberdare and Port Talbot.

Hafal Appropriate Adults are trained to have an understanding of how the Mental Health Act may impact upon their role within the custody suite, and includes the roles and responsibilities of the AMHP, section 12 Doctor, FME and procedures around section 135 & section 136 Mental Health Act 1983.

8.3 Who will Hafal Attend for?

Hafal's appropriate adults will attend for any vulnerable adult (aged 17+) detained in custody, covering:-

- Mental disorder
- Learning disabilities
- ADHD
- Autism
- Dementia
- Anything temporary or permanent which makes that person vulnerable.

In accordance with PACE, family members or persons known to the detainee such as their social worker should be contacted to act as an appropriate adult in the first instance. Failure to arrange either of the above will result in the Hafal service being contacted to act as appropriate adult.

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8.4 Custody Exit and Aftercare Strategies

South Wales Police, with its partner agencies, have developed an exit and aftercare strategy for vulnerable people released from custody. It includes an assessment of a particular individual's vulnerability and potential mental health or social care needs and referral to appropriate services.

This will allow intervention to be provided to those who cannot or are not supported to find it for themselves. As well as being positive for the individual concerned, this referral will impact on the possible offending stimulus for that individual and thus reduce crime and future demand on the police.

9. Children and Young People Under the Age of 18

The legal framework governing the admission to hospital and treatment of children is complex. Children of any age may be detained using section 136 of the Mental Health Act (MHA), and any person under 18 may be taken into police protection using section 46 of the Children Act 1989. Information about the application of MHA powers to children and young people under the age of 18 is provided in Chapter 33 of the MHA Code of Practice for Wales.

This suggests that where the child appears to an officer to be mentally disordered, section 136 would be the preferred option, but where he or she is likely to suffer significant harm, taking the child into police protection may be more appropriate. In practice, police officers may not be able (nor should be expected) to differentiate between mental disorder and exercising the powers under the Children Act. However, chapter 33 of the Mental Health Act Code of Practice for Wales 2008 gives guidance about the application of powers under the Mental Health Act 1983 to children and young people. Paragraph 33.24 advises professionals to “select the option that reflects the predominant needs of the child at the time” – whether to provide mental healthcare and treatment or to achieve safety and protection – (either way they should seek the least restrictive option, consistent with the care and treatment objectives for the child).

Where officers have the option to use both statutes, the preferred option for consideration is to use police protection powers under the Children Act 1989, as this is more likely to ensure that the child is not unnecessarily institutionalised or over-stigmatised by the process. The over-riding

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consideration is the welfare of the child, ensuring protection from harm and access to assessment where appropriate.

Section 46 of the Children Act 1989 allows powers of Police Protection to be used where there is a reason to believe that a child is at risk of immediate significant harm. In this instance, a social worker from children's services is called automatically.

Police Protection Powers

Section 46(1) of the Children Act 1989 empowers a police officer who has reasonable cause to believe that a child would otherwise be likely to suffer significant harm to:

- a) remove the child to suitable accommodation and keep him/her there; or
- b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he/she is being accommodated is prevented.

Under section 31(9) of the Children Act 1989:

- 'harm' means ill-treatment or the impairment of health or development;
- 'development' means physical, intellectual, emotional, social or behavioural development;
- 'health' means physical or mental health; and
- 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical.

The child is considered to be in police protection when these powers have been exercised by the police. Police protection lasts for a maximum of 72 hours.

In the case of detention under section 136 of a person under the age of 18, the assessment is carried out by a doctor from the Child and Adolescent Mental Health Service (CAMHS), and an Approved Mental Health Professional (AMHP) preferably with special experience in children and young people.

The place of safety in each area for children and young people are the same as those identified in this document under agreed Places of Safety within the South Wales Police area.

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On Monday to Friday 9-5pm, if a person under the age of 18 is to be received at the place of safety, the receiving staff will contact the local CAMH Service:

Cardiff – 02920 536730

Vale of Glamorgan – 02920 715593

Merthyr and RCT – 01443 443008

Bridgend – 01656 752800

Neath Port Talbot – 01639 862744

Swansea – 01792 582139

Outside working hours, including weekends and Bank Holidays, the receiving staff will contact the CAMHS First-On-Call. The rota for CAMHS On-Call is maintained at the Switchboard, University Hospital of Wales (02920 747747).

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10. People with Learning Disability

It should be noted that someone with a diagnosis of learning disability should not be excluded from accessing generic mental health services if they appear to be suffering from a mental disorder. If it becomes apparent that their learning disability is a significant factor which merits the involvement of the learning disability services then a specialist Section 12 learning disability psychiatrist and an AMHP preferably with experience in learning disability should make a joint assessment.

This assessment should take place in the designated places of safety as specified in this document regardless of the person's disability. However if an individual is already an inpatient (voluntary or informal) of a specialist learning disability NHS facility and they appear to be suffering from a mental disorder - and in immediate need of care and control, it would be appropriate for them to be returned there as a place of safety for a full assessment.

The Learning Disability Directorate of ABMU Health Board currently provides three Acute Assessment and Treatment units covering the three health boards and 7 local authorities. These are based in Cardiff, Swansea and Pontyclun. If a person requires admission to one of these units following assessment it will be allocated based on bed availability and may mean travelling some distance to the unit. The allocation of these beds will be made by the on call manager for learning disabilities.

11. Performance Monitoring

Monitoring the use of Section 135 and Section 136

Monitoring the use of sections 135 and 136 needs to take place at a local and national level to ensure:

- the resolution of individual issues and concerns *and*
- the identification of local and national trends *and*
- that lessons are learnt

The Welsh Government supports a multi-agency partnership approach to monitoring and review and for the purpose of this policy, representation will be drawn from:

- the three health boards' mental health services, emergency departments, liaison psychiatry and ambulance services

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- local social services authorities including emergency duty teams, out of hours teams and AMHP managers
- third sector organisations
- police forces, including mental health/vulnerable adults leads, custody officers and police officers who initiate section 136.

Healthcare Inspectorate Wales

Healthcare Inspectorate Wales highlights in its report “Monitoring the Use of the Mental Health Act in 2010-2011” that the only data available regarding occasions when these sections are used comes from hospitals which have been the first or subsequent place of safety, and that the experiences of individuals taken to other forms of places of safety and subsequently released have not necessarily been systematically recorded.

The experiences and perceptions of individuals who have been detained under sections 135 or 136 will be considered in the monitoring processes to improve the detention process and the subsequent help that people receive.

The standardisation of section 136 records and routine data collection will enable Healthcare Inspectorate Wales, on behalf of the Welsh Government to monitor the operation and use of sections 135 and 136 in far more detail. This will allow them to work with the police and health services to ensure that the power is used only when appropriate and that designated places of safety are adequate and appropriate.

Monitoring Demographic Data

It is essential that partnership agencies monitor the demographic details of detainees to help understand whether the powers are used appropriately and consistently.

Monitoring and analysis of information will be used to inform training and identify changes needed in local procedures and service delivery.

Partnership agencies will collate and compare the following information:

- date of detention,
- date of birth,
- gender,
- ethnicity,
- health board area in which detained,
- time of arrival at place of safety
- time assessment commences
- time of transfer to an alternative place of safety (or for medical treatment where the healthcare facility is not an agreed place of safety)

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- time assessment was completed
- presenting behaviours and diagnoses
- status after assessment (under the Mental Health Act [1983]),
- discharge address
- any other outcome.

In addition to the above, visits to the detainee whilst in the place of safety **must also** be recorded i.e.:

- name/s of visitor/s
- purpose of the visit
- any interventions necessary
- any requests made by that person.

Standardization and Quality of information

The Welsh Government has issued a specific form for recording purposes.

This form must be used in every case including whether the place of safety is a healthcare or custody facility.

Nominated individuals from each organization will have responsibility for monitoring the use of the powers.

The three health Boards will provide a report to Healthcare Inspectorate Wales based on the collated information however, reports will not include detainees'/patients' names or other patient identifiable information.

12. Police Liaison Meetings

Inter-agency work is central to delivering effective services that meet the needs of service users/mentally disordered offenders. Police liaison meetings are held monthly in each of the four Basic Command Units and are chaired by the local Public Protection Detective Inspector. Membership consists of partner agencies such as Health, Social Services and Welsh Ambulance Service Trust across the force area.

The purpose of the group is as follows:

- Develop a vision for improving multi-agency response to people with a mental health coming into contact with police health and social care
- Develop a strategy and implementation plan for persons arrested under section 136 Mental Health Act which are inappropriate
- Deal with the issues relating to mentally disordered offenders, those people with mental health problems and learning disabilities who have

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offended or are at risk of offending or those at high risk by gathering and disseminating information and guidance

- Identify gaps in service provision
- Ensure the rights of individuals are protected.

Persons arrested on section 136 on 3 or more occasions in 14 day period will be referred to the forum for a professionals' meeting. Similarly persons regularly coming into contact of the services where their contact is inappropriate will also be subject of a professionals meeting.

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13. Training

The Royal College of Psychiatrists CR159 Report dated July 2011 on the 'Standards on the use of section 136 of the Mental Health Act 1983 (England and Wales)' provides guidance on training for police and health care professionals. It is recommended that some elements of the training be multidisciplinary.

It is important that police officers should have training in the identification of mental disorder and, in particular, in the issues relating to drug and alcohol intoxication which can complicate the assessment. They need to have training in medical problems which may present with disturbed behaviour. Police will need basic skills in risk assessment and management, use of physical intervention and basic first aid, including life support.

Healthcare staff who work in section 136 suites should be trained in risk assessment and management, observational skills, use of the Mental Health Act, use of physical intervention and resuscitation equipment. They need expertise in the assessment and management of substance misuse, including withdrawal syndromes and physical healthcare issues. They must be familiar with the rapid tranquillisation procedure in case this needs to be carried out.

The police training department provides police recruits and custody officers with guidance on the powers available under sections 135 and 136 of the Mental Health Act 1983 and the Mental Capacity Act 2005.

Police recruits are placed on a two day placement with the Crisis team at Whitchurch Hospital, Cardiff and Hafal, a charity dealing in the recovery of mental health provide training which includes, mental health awareness, voice hearing and the Mental Capacity Act 2005.

Local health boards provide training across the force area for, police, health care professionals and approved mental health professionals which includes, mental health awareness, basic mental health law on sections 135 and 136, "powers of a constable" and risk assessment.

South Wales Police also participates in the 'Applied Suicide Intervention Skills Training' (ASIST) provided to police officers and police staff by Mind Cymru. The training allows staff to learn how to:

- Recognise invitations for help
- Reach out and offer support
- Review the risk of suicide
- Apply a suicide intervention model

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- Link people with community resources

This training allows front line staff to help a person at risk, stay safe and seek further help as needed.

14. The Use of Alcoholmeters:

The Welsh Government guidance on the use of sections 135 and 136 calls for the use of alcoholmeter devices in order to ascertain a person’s eligibility for assessment with a caveat that “It is not appropriate to base the decision to accept a person into a place of safety solely on the basis of the findings of an alcoholmeter.”

The partnership agencies within the South Wales area have agreed that this practice is not to be conducted as there is no legal framework within which to request a breath-test and even where an individual volunteers, there is a question mark over their capacity to volunteer at that time due to their mental state.

Therefore, this practice will cease as any detention in various police custody centres based on an alcoholmeter reading could be a breach of Human Rights and be deemed an unlawful detention.

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Appendix A

Guide to officers as to Appropriate Place of Safety Under Sec 136 MHA

Grading	Criteria	Place
Emergency Cases	Serious physical injury requiring urgent treatment including: <ul style="list-style-type: none"> • Suspected head injury • Suspected overdose • ABD/ Excited Delirium • Extreme intoxication 	Emergency Dept
Non-Emergency Cases	<ul style="list-style-type: none"> • Minor cuts/scrapes • Moderate intoxication (able to engage) • Pose a manageable risk of aggression/escape 	Local Agreed Psychiatric Hospital
Exceptional Use	Medically 'fit' for detention in custody including: <ul style="list-style-type: none"> • Minor cuts/scrapes • Intoxication • Unmanageable risk of violence / escape 	Police Station Transfer when 'fit' or manageable risk S.136(3)

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Appendix B

Guide to officers Risk Assessment for Police to Remain at the Place of Safety

Risk Factor	Behaviour of Individual	Action of Officer
Low	<p>No behavioural indicators (other than very mild substance use) are presented</p> <p style="text-align: center;">and</p> <p>No recent criminal/medical indicators that the individual is violent or poses an escape risk or is a threat to their own or others safety.</p>	<p>No need to remain with the patient if at the Local Agreed Psychiatric Hospital</p> <p>If at the Emergency Department we should remain if it is our intention to transfer the Patient to the Local Agreed Psychiatric Hospital</p> <p>If the assessment is to take place at Emergency Department then we may only leave with the agreement of medical staff.</p>
Medium	<p>Some behavioural indicators (including substance use) are presented</p> <p style="text-align: center;">and</p> <p>Some recent criminal/medical indicators that the individual is violent or poses an escape risk or is a threat to their own/others safety.</p>	<p>Subject to a joint risk assessment there may be a need to remain with the patient until the assessment is completed.</p> <p>If at the Emergency Department we should remain with the patient.</p>
High	<p>Behavioural indicators (including substance misuse) are causing significant concern</p> <p style="text-align: center;">and</p> <p>Significant recent indicators that the individual is violent or poses an escape risk or is a threat to self/ others.</p>	<p>Police officers MUST remain at the Emergency Department and/or Local Agreed Psychiatric Hospital in sufficient numbers and until the patient is assessed and secured.</p>

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Appendix C

Place Of Safety Location Map

Introduction of Mapping System for Place of Safety Contact details

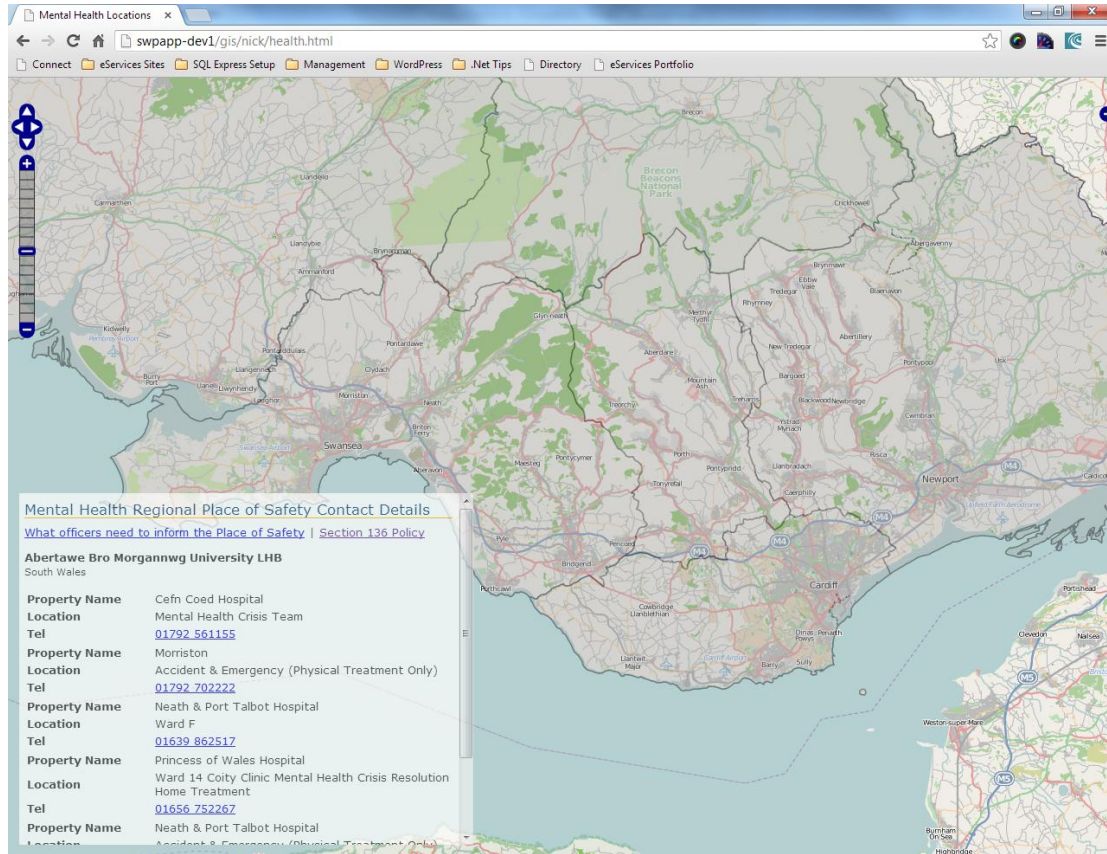
To support frontline officers dealing with persons detained under the Mental Health Act, the Force has developed a Mapping System which can be accessed via Connect and from a force BlackBerry.

The map displays health board boundaries which, when clicked will show the following:-

- A list of contact numbers for the relevant Places of Safety, including local Psychiatric hospitals and Emergency Departments.
- Details of information you will need to provide to the Place of Safety
- Hyperlink to the Section 136 Mental Health Act Policy

When using a force BlackBerry, the mapping system uses the devices current GPS location and will provide the list of relevant Place of Safety contact numbers automatically (provided there is a clear GPS signal at your present location).

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The Map screenshot shown above indicates the contact details for the recognised place of safety for the Cardiff and Vale Local Health Board.

The numbers across the force will vary. The number here for Cardiff is a switchboard dedicated for section 136 arrests and will transfer you to the relevant place of safety supervisor. Other areas may vary in that the contact numbers provided will put you through directly to the relevant psychiatric hospital directly.

Please note the numbers for the relevant Emergency Departments are attached. If the person detained under Section 136 has injuries that require hospital attention the Emergency Department staff must be informed that the person is detained under the Mental Health Act 1983.

You will see under the heading **Mental Health Regional Place of Safety Contact Details**, the headings **“What we must inform Place of Safety and Section 136 Policy”**.

‘What we must inform Place of Safety’ informs officers of the actions i.e. Conduct PNC checks and the information they will be required to pass on to the place of safety supervisor.

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The **Section 136 Policy** link is a hyperlink to the full section 136 policy so officers can access it via their BlackBerry at scene if required.