

The use of section 136 to detain people in police custody

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Introduction²

Under section 136(1) of the *Mental Health Act 1983* ('the Act') if a police officer encounters an individual in a public place "*who appears to him to be suffering from mental disorder and to be in immediate need of care or 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...*". A place of safety is defined under section 135(6) of the Act as being "*residential accommodation provided by a local social services authority...a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons, or any other suitable place the occupier of which is willing temporarily to receive the patient*".

Once taken to a place of safety the individual "*may be detained there for a period not exceeding 72 hours for the purpose of enabling him 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*" (s.136(2)). Section 44 of the *Mental Health Act 2007* has amended the section to allow transfer between places of safety where appropriate³.

Following the mental health assessment, it may be decided that the person has no mental disorder and can be released; that the person needs further treatment but that this can be provided in the community, or they may need to be detained in a hospital for further treatment either on a voluntary or compulsory basis.

As early as 1990, official guidance has been that "*wherever possible, the place of safety in which the person might be detained should be a hospital and not a police station*"⁴. The Code of Practice to accompany the Act published in 1999 stated that "*it is preferable for a person...to be detained in a hospital rather than a police*

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2 The research study which is the subject of this article was conducted by the author and research colleagues Kerry Grace and Tom Bucke for the Independent Police Complaints Commission (IPCC) and has been published as an IPCC research report: Docking, M., Grace, K. and

Bucke. T. (2008) *Police Custody as a "Place of Safety": Examining the Use of Section 136 of the Mental Health Act 1983*

3 Home Office (2008) *The Use of Police Stations as Places of Safety Under Section 136 of the Mental Health Act 1983*. Circular 07/2008. Home Office: London.

4 Home Office (1990) *Provision for Mentally Disordered Offenders*. Circular 66/90. Home Office: London, page 2.

station⁵". This has been strengthened in the recently revised Code of Practice, which states that "a police station should be used as a place of safety only on an exceptional basis".⁶

It is therefore widely accepted that police cells are not a suitable place to hold people who are mentally disordered; it can exacerbate their symptoms by heightening their levels of stress and anxiety. The most tragic outcome can be a death in police custody, with around 50% of deaths in police custody involving someone with mental health needs⁷. Taking someone with mental health needs into custody also has the effect of criminalising and stigmatising their behaviour.

Despite the consensus of opinion against using police custody as a place of safety, unless there are exceptional circumstances, there are no routinely collected data on the use of section 136 in police cells. The Department of Health publish annual figures on section 136 detentions involving an assessment in hospital⁸, but the Mental Health Act Commission have noted that this "is of questionable value because of its incompleteness, and because of marked regional variations in practice which make generalisation difficult"⁹. In a recent report the Royal College of Psychiatrists noted that section 136 is the only civil detention under the Act which does not require a statutory form¹⁰ and recommended that one be adopted for section 136 detentions in hospital and in police custody so that the total number of detentions can be accurately monitored.

There has been some research into the police use of section 136, the profile of those detained, and the outcome of the assessment across different types of places of safety, but these studies have tended to focus on London¹¹. The aim of the study, which is the subject of this article, was to therefore provide a picture of section 136 usage across England and Wales to detain people in police custody. It sought to identify the demographics of those detained, the length and outcome of the detention and the reasons for variation in the use of police custody across different police force areas.

Methodology

The study collected data from all 43 police forces in England and Wales by sending a standard Excel spreadsheet designed for this purpose to force analysts to complete. The data they provided was obtained from police force custody IT systems and as such are reliant on the quality of the data entered onto the systems and the functionality of the search mechanisms. However, as there is currently no standardised

5 Department of Health (1999) *Code of Practice Mental Health Act 1983*, Department of Health: London, Para. 10.5

6 Department of Health (2008) *Code of Practice Mental Health Act 1983*. Department of Health: London, Para. 10.21

7 Police Complaints Authority (2003) *Memorandum of Police Complaints Authority's Evidence to Joint Committee on Human Rights into Human Rights and Deaths in Custody*. Police Complaints Authority: London

8 Department of Health (2007) *In-patients formally detained in hospitals under the Mental Health Act 1983 and other legislation, NHS Trusts, Care Trusts, Primary Care Trusts and Independent Hospitals, England; 1995–96 to 2005–06*. Office for National Statistics: London

9 Mental Health Act Commission (2006) *The Mental Health Act Commission In Place of Fear? Eleventh*

Biennial Report. Mental Health Act Commission: London, page 281.

10 Royal College of Psychiatrists (2008) *Standards on the Use of Section 136 of the Mental Health Act 1983* (2007). CR149. Royal College of Psychiatrists: London, page 5.

11 See for example: Rogers, A. and Faulkner, A. (1987) *A Place of Safety*. MIND's research into police referrals to the psychiatric services. MIND: London. Weller, M.PI (1988) "The Local Use of Section 136". *Bulletin of the Royal College of Psychiatrists*, Vol. 12, June 1988, pages 235–236. Dunn, J. and Fahy A. (1990) "Police Admissions to a psychiatric hospital. Demographics and Clinical Differences between Ethnic Groups". *British Journal of Psychiatry* 154, pages 373 – 378. Simmons, P. and Hoar, A. (2001) "Section 136 use in the London Borough of Haringey". *Medicine, Science and the Law*, 41, pages 342–348

way of recording and collating the data nationally it was felt that this would be the most appropriate way to gather the data. Forces were asked to provide the total number of section 136 detentions for 2005/06, the demographics of those detained, the length of detention, the outcome of the detention, and some forces were able to provide additional reasons for arrest. They were also asked to provide the figure for their total custody population for 2005/06 to enable a rate of section 136 detainees per 10,000 people in custody to be calculated.

A pilot exercise was completed with seven police forces to collect data for 2004/05 to assess the standard of the data and any potential problems in cleaning, formatting and analysing the data, prior to data being collected from all police forces for 2005/06. Despite the use of one standard spreadsheet to collect the data, inevitably the data was received in a variety of formats and different acronyms and police force codes were used. There was therefore a substantial period of clarification and cleaning of the data before the data was placed into SPSS and any analysis could begin.

The rate of section 136 detainees was used to group police forces into high, medium and low rate forces. These rates were then used to select a smaller number of police forces to participate in the second phase of the research. In addition, to ensure that a spread of police forces with different types of populations and policing environments, Her Majesty's Inspectorate of Constabulary force family data¹² was used to help identify forces. Six case study forces were chosen to give two low rate, two medium rate and two high rate police forces. Then a further 12 police forces were identified by choosing two 'most similar forces' for each of the six case study sites. This gave a total of 18 police forces (including the six case study sites) for initial telephone interviews – six forces with low rates of section 136 detentions; six forces with high rates; and six forces with medium rates.

Telephone interviews were conducted with the force custody lead or the force mental health liaison officer in these 18 police forces. The interviewees were asked a range of questions about possible explanations for different rates of section 136 detentions, training for front line officers and custody staff, multi-agency working and funding. The interviews were recorded and notes were made. The recording and the notes were then typed onto a simple proforma for each interview, which was then coded and added to a larger thematic matrix and analysed.

Face-to-face interviews were conducted at six police forces chosen to be case study sites. The relevant custody leads in the six police forces were asked to assist in the identification both of individuals in their forces and health and social care representatives for interview. Two custody sergeants and two health and social care representatives in each force were asked to participate in the interviews. In each area one health and social care representative was operationally focused and the other had a more strategic role. Where available, the mental health liaison officer in each force was also interviewed. Some force contacts arranged additional interviews with police and health and social care contacts that they felt would be useful to the study. A total of 33 interviews across the six sites were therefore conducted.

The case study interviews built on the themes of the telephone interviews, but sought to gain more in-depth knowledge and examine practice on the ground and relationships between practitioners. The interviews were recorded and sent for professional transcription and were then analysed using a coding framework and a thematic matrix.

¹² Her Majesty's Inspectorate of Constabulary produces data on 'force families' and 'most similar forces' as a means of grouping and comparing police forces. The data they use take into account factors such as population size and demographics, deprivation and unemployment levels, the type of environment etc. this data is unpublished.

Research findings – nature and extent of section 136 detentions

Prevalence of section 136 detentions in police custody

The data received from forces showed that 11,517 were detained under section 136 and held in police custody as a place of safety between 1 April 2005 and 31 March 2006. Department of Health data for the same period show that there were 5,900 people detained in hospital who required an assessment under section 136¹³. This therefore means that approximately two-thirds of the 17,417 people detained under section 136 in 2005/06 were held in police custody rather than in hospital. The number of people held in police custody may be an underestimate, as some forces stated that if an individual had committed a minor offence this may be put as the primary reason for arrest on the custody system rather than the section 136 detention. As stated above, the Mental Health Act Commission has also cast some aspersions over the reliability of the Department of Health data¹⁴. Whilst acknowledging these potential problems with the data it is probably safe to conclude that despite the consensus against detaining people in police cells under this power, it remains the primary place of safety across England and Wales.

When comparing levels of detention across different police forces there were wide variations in the extent to which section 136 was used. The rates ranged from one section 136 detainee to 277 per 10,000 people held in police custody. The rate for all 43 forces was 55 section 136 detainees per 10,000 people held in police custody.

Demographics of those detained

Forty-one of the 43 forces were able to provide data on the demographics of those detained (10,736 detainees). Of these detainees, 34% were female, 61% were male, and the gender of 6% was unknown. The average age of the detainees was 36 years old, and the ages ranged from 12 to 89 years old. Figure 1 shows that 30% percent of the people were aged between 35 to 44 years, 26% were 25 to 34 years old and 17% were aged between 18 to 24 years old. Four per cent (420 people) of detainees were aged 17 years and under.

Forces were asked to provide data on whether the detainee had a fixed abode as this is an important factor in highlighting the potential vulnerability of detainees. However this data was missing in 43% of cases, thus limiting analysis. In terms of ethnicity, 78% were White, 4% were Black, 3% Asian, 1% Chinese/Other and 1% of Mixed ethnicity. Data on ethnicity was unknown/not stated in 14% of cases.

Previous research has shown disproportionality in the ethnicity of those admitted and detained under the Act¹⁵. This is particularly the case with Black people who were six times more likely to be detained than White people under Part II of the Act¹⁶ and three times more likely than White people to be an inpatient in any mental health service in England and Wales¹⁷. Using data on the estimated population of England

13 Department of Health (2007) *op. cit*

14 Mental Health Act Commission (2006) *op. cit*.

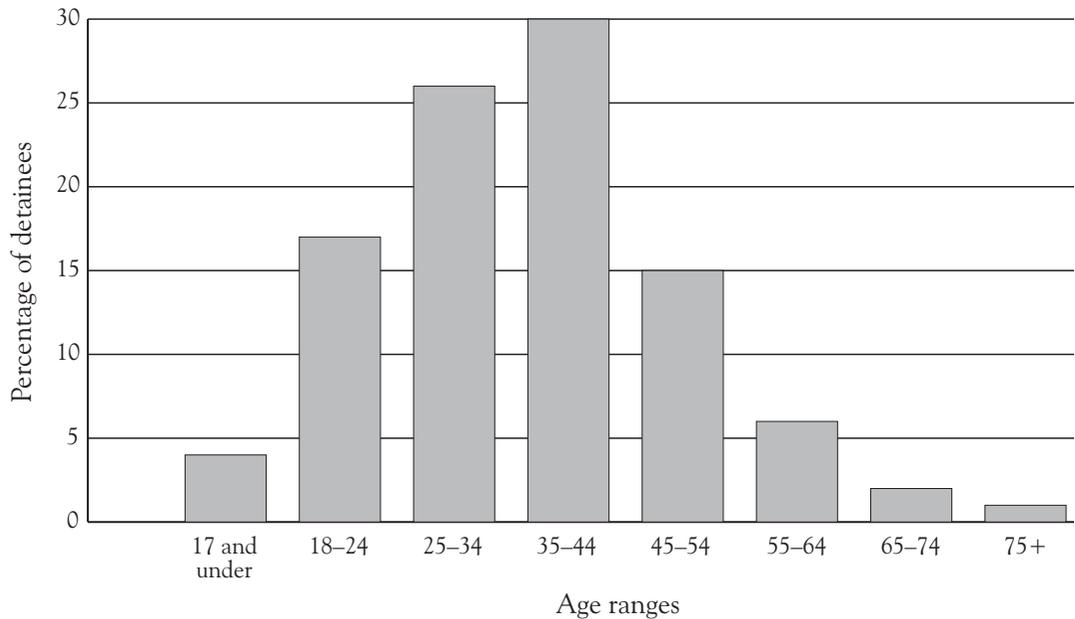
15 See: Churchill, R., Wall, S., Hotopf, M., Wessely, S. and Buchanan, A. (1999) *A Systematic Review of Research relating to the Mental Health Act (1983)*. Department of Health: London. Audini, B. and Lelliott, P. (2002) 'Age, gender and ethnicity of those detained under Part II of the Mental Health Act 1983'. *British Journal of Psychiatry*, 180: 222–26. Sashidharab, S. P. (2003) *Inside Out*:

Improving mental Health Services for Black and Minority Ethnic Communities in England. Department of Health, London. Healthcare Commission (2007): *Count me in 2007. Results of the 2007 national census of inpatients in mental health and learning disability services in England and Wales*. Commission for Healthcare Audit and Inspection: London

16 Audini, B. and Lelliott, P. (2002) *op.cit*.

17 Healthcare Commission (2007): *op.cit*.

Figure 1: Percentage of section 136 detainees' age ranges



NB: The age of 758 detainees was unknown (7% of total sample) these have been removed from this sample so the percentages are based on those for whom age was known.

and Wales over ten years old by ethnic group and police force area¹⁸ it was possible to calculate a rate of section 136 detentions per 10,000 people in the population by ethnic group and police force. Table 1 shows that across England and Wales, Black people were almost twice as likely as White people (1.7 times) to be detained and held in police custody under section 136 of the Act. People listed as being from 'Other' ethnic groups were 1.5 times more likely to be detained than White people. In comparison, there was little difference in the rates of detention for White and Asian people.

Police forces in more rural locations tended to have the largest potential disproportionate rates, particularly for Black detainees (not of all detainees), such as Avon and Somerset, Cambridgeshire, Cleveland and Warwickshire. This may be linked to these forces having generally high rates of section 136 detentions in police custody. Data on section 136 detentions in hospitals is only available at a national level and does not provide the ethnicity of those detained. It is therefore not possible to compare rates of detentions by ethnic group in hospitals across the areas to assess whether this disproportionality is replicated and follows the same pattern across the various police force areas.

¹⁸ Ministry of Justice (2007) *Statistics on Race and the Criminal Justice System – 2006*. A Ministry of Justice Publication under Section 95 of the Criminal Justice Act 1991. October 2007. Ministry of Justice: London, page 118

Table 1: Section 136 detainees rate per 10,000 people in population by ethnic group¹⁹

| Police force | White | Black | Asian | Other | Total rate |
|--------------------|-------|-------|-------|-------|------------|
| Avon and Somerset | 5.0 | 21.2 | 7.3 | 5.7 | 5.4 |
| Bedfordshire | 0.6 | 1.5 | 0.0 | 0.0 | 0.6 |
| Cambridgeshire | 4.4 | 21.0 | 6.3 | 11.5 | 4.9 |
| Cheshire | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Cleveland | 5.2 | 22.2 | 10.4 | 15.1 | 5.5 |
| Cumbria | 1.5 | 0.0 | 0.0 | 0.0 | 1.5 |
| Derbyshire | N/A | N/A | N/A | N/A | 2.1 |
| Devon and Cornwall | 6.0 | 16.7 | 8.5 | 4.7 | 6.1 |
| Dorset | 1.2 | 0.0 | 2.4 | 4.3 | 1.3 |
| Durham | 2.6 | 0.0 | 0.0 | 9.6 | 2.6 |
| Dyfed-Powys | 3.8 | 0.0 | 0.0 | 0.0 | 3.7 |
| Essex | N/A | N/A | N/A | N/A | 0.4 |
| Gloucestershire | 3.8 | 7.6 | 4.9 | 16.4 | 4.0 |
| Greater Manchester | 0.6 | 1.9 | 0.5 | 0.0 | 0.6 |
| Gwent | N/A | N/A | N/A | N/A | 7.8 |
| Hertfordshire | 0.1 | 0 | 0 | 0 | 0.1 |
| Humberside | 0.5 | 0.0 | 2.7 | 5.6 | 0.5 |
| Kent | 0.3 | 1.0 | 0.0 | 0.0 | 0.3 |
| Lancashire | 0.7 | 1.6 | 0.4 | 0.0 | 0.7 |
| Leicestershire | 1.4 | 6.2 | 1.2 | 1.4 | 1.5 |
| Lincolnshire | 2.5 | 8.4 | 0.0 | 7.9 | 2.6 |
| Merseyside | 0.1 | 0.8 | 1.0 | 0.0 | 0.1 |
| Metropolitan | 0.1 | 0.2 | 0.1 | 0.2 | 0.1 |
| Norfolk | 0.4 | 0.0 | 0.0 | 0.0 | 0.4 |
| North Wales | 1.1 | 7.2 | 4.0 | 0.0 | 1.1 |
| North Yorkshire | 3.9 | 9.6 | 14.9 | 6.0 | 4.0 |

¹⁹ When calculating rates for each force and across England and Wales, detainees with 'Unknown/not stated' ethnicity were included. Forces with N/A were unable to provide the ethnicity of their detainees. Forces with zero rates had few, if any detainees, within the ethnic group. City of London and Hampshire Police are not included in this table as they were unable to provide any demographic info on their detainees.

| | | | | | |
|-----------------------------|-----|------|-----|------|------|
| Northamptonshire | 1.4 | 2.9 | 3.9 | 0.0 | 1.7 |
| Northumbria | 0.7 | 2.2 | 1.0 | 0.0 | 0.7 |
| Nottinghamshire | 3.0 | 14.0 | 8.7 | 3.9 | 3.4 |
| South Wales | 1.6 | 5.5 | 0.0 | 1.2 | 1.6 |
| South Yorkshire | 0.5 | 2.0 | 0.3 | 1.3 | 0.5 |
| Staffordshire | 2.5 | 4.5 | 0.0 | 0.0 | 2.7 |
| Suffolk | 0.8 | 2.8 | 0.0 | 0.0 | 1.2 |
| Surrey | 0.7 | 1.2 | 0.8 | 0.7 | 0.7 |
| Sussex | 6.9 | 16.1 | 3.5 | 45.4 | 10.3 |
| Thames Valley | 2.2 | 5.2 | 1.5 | 3.6 | 2.3 |
| Warwickshire | 2.6 | 21.9 | 1.4 | 7.5 | 2.8 |
| West Mercia | 4.5 | 14.6 | 4.8 | 0.0 | 4.6 |
| West Midlands | 3.8 | 14.1 | 3.8 | 7.9 | 4.4 |
| West Yorkshire | 7.0 | 18.9 | 4.8 | 10.2 | 8.1 |
| Wiltshire | 0.9 | 2.4 | 1.6 | 0.0 | 2.9 |
| Total for England and Wales | 1.9 | 3.3 | 1.6 | 2.8 | 2.3 |

Research findings – exploring different rates of detention

Identifying mental disorder

Previous research evidence has shown that the police tend to be quite accurate in identifying individuals with more serious mental disorders which require hospital admission²⁰. However, there are likely to be other individuals who are more difficult for the police to identify, such as those who require dual diagnosis for drug and/or alcohol use as well as their mental disorder. This will mean that some people are not detained under section 136 when they should be, and individuals who are not mentally disordered may be detained under section 136 when not necessary. It is important that officers are adequately trained in mental health awareness so that they feel able to recognise mental health needs and learning disabilities²¹. Initiatives in some low rate forces had also tried to address this problem by providing officers on the street with access to more information or resources. Examples included officers being able to (a) call named contacts at a local hospital for advice, (b) call an approved social worker to ask about particularly difficult individuals, or (c) having an aide memoire with key questions to ask the individual and information on local places of safety.

²⁰ *Dunn, J. and Fahy A. (1990) op. cit.*

²¹ *NACRO (2007) Effective Mental Healthcare for Offenders: the Need for a Fresh Approach. NACRO: London, page 8.*

Detaining in a ‘public place’

Evidence from interviewees touched on the issue raised in the case of *Seal v Chief Constable South Wales Police*²² about what constitutes a ‘public place’, and where it is lawful for the police to detain people. The Mental Health Act Commission has also highlighted their concerns about people being detained under section 136 who have been asked, or obliged to, step outside their home²³. Respondents, particularly, in high and medium rate forces, mentioned examples of individuals being detained in their homes or ‘enticed’ outside to be detained. Respondents suggested that this was done out of concern for the welfare of the individual; however it still remains unlawful. The Mental Health Act Commission has suggested that a possible solution could be for officers to have a dedicated telephone number to contact approved social workers (now, Approved Mental Health Professionals) to trigger an assessment²⁴.

Table 2: Length of time detained in custody²⁵

| | N | Percentage |
|---------------|--------------|------------|
| Up to 6 hours | 3,601 | 39 |
| 6:01 – 12:00 | 2,876 | 31 |
| 12:01 – 18:00 | 1,700 | 18 |
| 18:01 – 24:00 | 686 | 7 |
| 24:01 – 30:00 | 158 | 2 |
| 30:01 – 36:00 | 75 | 1 |
| 36:01 – 42:00 | 47 | 1 |
| 42:01 – 48:00 | 20 | 0 |
| 48:01 – 54:00 | 13 | 0 |
| 54:01 – 60:00 | 8 | 0 |
| 60:01 – 66:00 | 4 | 0 |
| 66:01 – 72:00 | 4 | 0 |
| 72:01 – 78:00 | 2 | 0 |
| 78:01 – 84:00 | 3 | 0 |
| 84:01 – 90:00 | 3 | 0 |
| 90:01 – 99:00 | 2 | 0 |
| Total | 9,202 | 100 |

NB: the length of time spent in custody was not known for 1,534 cases. These have been removed from the sample.

22 [2007] UKHL31

23 Mental Health Act Commission (2008) *Risks, Rights, Recovery. Twelfth Biennial Report 2005–2007*. The Stationary Office: London, page 167.

24 *Ibid.*

25 There were 46 cases where the individual was detained for longer than 99 hours. However, it was confirmed with the relevant police forces that this is due to the way in which the release time is recoded on their system and does not reflect the length of time in custody. These cases were therefore excluded from the analysis.

Time detained and length of detention

Sixty-five per cent of the detainees arrived at the police station between 6pm and 9am. This may be because there are a lack of alternatives or a lack of suitably qualified health and social care staff on duty, outside of regular office hours. It was possible to calculate the length of time spent in custody by section 136 detainees for 34 of the 43 police forces. Table 2 below shows that the majority of detainees are dealt within 72 hours. Seventy per cent spent 12 hours or less in police custody, with just over half of these people being detained for six hours or less.

The average length of time spent in custody for section 136 detainees was nine hours and 36 minutes. This is a relatively long period of time for someone who is likely to be distressed and anxious to spend in a police cell. Delays in the assessment process were associated with (a) a shortage of doctors approved under section 12 of the Act, (b) the availability of force forensic medical examiners and approved social workers, particularly outside regular office hours when fewer staff were available, and (c) the need for intoxicated detainees to become sober before they could be assessed. There were also delays in finding an available bed for individuals who needed further detention in a psychiatric unit.

These issues appeared to be less problematic in low rate forces as they had changed their protocols and agreements to improve working practices. They had set target times (the shortest of any of the forces) for attendance at the place of safety²⁶; approved social workers (rather than custody officers) arranged for the section 12 doctor to attend which improved the response; and it may be that greater numbers of their force forensic medical examiners were section 12 approved. Two forces had access to psychiatric nurses either based in custody or providing outreach to custody which improved the timeliness of the assessment. Where emergency departments were used as places of safety, long delays were sometimes reported in waiting for an assessment due to other pressures on the staff.

Outcome of detentions

Forces were asked to provide data on the outcome of the detentions; for example whether someone had been further detained in hospital or if they were released back into the community. However, it became apparent when analysing the data and querying some of the issues that arose with police forces that the data was unreliable. Many forces would list the outcome as 'no further action' if the detainee had not been charged with a criminal offence; regardless if they had gone onto receive treatment for their mental disorder. Some police forces also used an 'other' option to include all those people who were detained under the provisions of Part 2 of the Act but combined this with other options, which made it impossible to differentiate between the different outcomes. It was therefore not possible to present any data on the outcome of these detentions. This raises major issues as it is not clear what percentage of section 136 detainees are released into the community or taken to hospital. If this data was available it would provide an insight into how appropriately the power is used and how this varies by police force.

Geographical factors in higher rates of section 136 detentions

Forces with high rates had some specific geographical factors which could lead to higher numbers of people needing to be detained under section 136. This included having well known suicide spots by cliff tops; being at the end of a train line; having transient populations on holiday, which were linked to a high intake of alcohol and drugs; and having high levels of deprivation. Deprivation and alcohol and drug use

²⁶ While it was acknowledged that the targets were not always met, they seemed to have contributed to the timeliness of the relevant practitioners and were generally met during normal office hours.

were also problems in low rate forces, but it was felt that health and social care organisations were more proactive and took preventative action to deal with some people facing problems before they needed to be detained under section 136 (for example, asking GPs to identify and refer people for treatment services at an earlier stage and fully utilising the local Crisis Resolution teams).

Availability of alternative places of safety

The availability of non-police custody places of safety is the strongest factor in the differing rates of section 136 detentions between police forces. This also varied the most between the different rate forces. Alternative places of safety to police custody were more readily available and more commonly used in the medium and low rate forces than in the high rate forces. Of the 18 forces who took part in telephone interviews²⁷:

- All six low-rate forces stated that they use emergency departments and psychiatric units as places of safety unless the individual was violent. Two forces also had diversion schemes in their areas.
- Of the six medium-rate forces;
 - Two used hospitals unless the detainee was violent *or* drunk.
 - One stated that they used hospitals but that this could sometimes involve travelling long distances, so custody was also used.
 - Two stated that they used both hospital and custody depending on how busy they were and the resources it would involve.
 - One stated that at the time the data was collected they were using police custody but that they were now using a hospital emergency department as an interim measure while building a dedicated place of safety.
- Of the six high-rate forces, five stated that custody was the only place of safety available at the time of our data collection, but three were in the process of developing alternatives. One stated that they had some alternative places of safety, but only in some areas of the force.

This strong association between the rates of section 136 detentions in police custody and the availability of alternative places of safety appeared to be linked to having good multi-agency relationships and agreements.

Use of alternative places of safety

Where alternatives to police custody were available, there were still additional factors which influence where an individual is detained. Generally it was agreed that if an individual was violent or attempting to self-harm they would be taken to custody where they could be restrained and not pose a risk to other patients. Intoxication was more complicated, with some respondents suggesting that people who were intoxicated needed to be taken to custody where they could sober up before being assessed. Whereas others felt that it was a health matter and the detainees should be taken to hospital. Willingness to accept individuals into hospital in different states of intoxication varied across the areas. At the most extreme, respondents in one area stated that their local psychiatric units would 'breathalyse' a detainee before they were willing to take them.

²⁷ Some caution should be exercised in these findings as it was not always clear whether the places of safety were available in 2005/06 when the data was collected.

Provision and funding of alternative places of safety

Emergency departments are not ideal places of safety due to their very busy nature and the possible delays associated with this, along with the rather basic facilities for section 136 detainees at some hospitals. However, most respondents still felt it was a better environment than police custody for section 136 detainees. Respondents generally felt that psychiatric units were the most appropriate place for section 136 detainees, although as with emergency departments some units lacked suitable facilities for the assessment. In 2006 the Department of Health allocated £130 million for improving inpatient facilities, including places of safety²⁸. NHS Commissioners of services in England could bid for this money to build places of safety. However, the funding only applied to the capital costs and no further funding has been made available for staffing the facilities.

In one case study area the local trust had successfully bid for the funding, built the place of safety and managed to staff it from existing resources for a pilot period of nine months. However, at the end of the pilot the staffing was no longer available and the facility has remained unused. In two other areas which had received the funding and were in the process of developing the new places of safety, concerns were also raised about how staffing resources would be found. The Royal College of Psychiatrists has recently highlighted their concerns about the staffing of section 136 suites²⁹.

Multi-agency working

Since the Morgan Report³⁰, the central proposal of which was enacted by the *Crime and Disorder Act 1998*, there has been an emphasis on joint working between the police and local authorities (and other relevant agencies) to prevent crime and ensure community safety. Whilst the main focus of multi-agency working has been on crime prevention it has also been applied to other areas and is important in ensuring that the police and health and social care organisations work together so that section 136 detainees are assessed as quickly as possible and receive the care they need. As stated above, the availability of alternative places of safety outside of police custody appears to be inherently linked to strong multi-agency working.

Examples of multi-agency working at both strategic and operational levels were seen in the various case study sites. However, it was more embedded and seemed to work more effectively in force areas with lower rates of section 136 detentions. The support of senior personnel both within the police and health and social care organisations was fundamental to prioritising section 136 and improving operational practice, including identifying and creating alternative places of safety. Information sharing and communication between the various organisations was often felt to be problematic and if addressed could help to improve relationships on a more general level.

Conclusions

This research sought firstly to identify the extent to which police custody is used as a place of safety, secondly to identify the make-up of those detained, and thirdly to examine reasons for variations in use across different police force areas. Whilst acknowledging the limitations of the data from forces, it is the first time there has been a picture of section 136 detentions in custody across England and Wales. The

28 Department of Health (2006) *Capital allocation process: £130 million for adult mental health services*. Retrieved 23rd March 2006: <http://www.dh.gov.uk/assetRoot/04/13/10/58/04131058.pdf>

29 Royal College of Psychiatrists (2008) *op. cit.*

30 Standing Conference on Crime Prevention (1991) *Safer Communities: The Local Delivery of Crime Prevention through the Partnership Approach (Morgan Report)*. Home Office: London.

data shows that despite the rhetoric of official guidance and policy, police cells remain the most widely used place of safety under section 136 of the Act.

The data raises questions about the ethnicity of those detained and the reasons for the potential disproportionality of Black people detained under section 136. There is some evidence to suggest that Black patients may be more likely to experience 'adverse pathways' into the criminal justice system and have higher rates of detention under other parts of the Act³¹. Further insight into the data would be gleaned if comparable ethnicity data was available for detentions in hospitals under section 136 at a local level.

The quality of the data also meant that it was not possible to determine what happened to the individuals detained under section 136 once they had been assessed under the Act. This is a substantial gap in the evidence around the appropriateness and effectiveness of section use. Given that the use of section 136 deprives individuals of liberty and, when held in police custody, effectively criminalises their behaviour, it is vital that this is subject to accurate recording to enable any inappropriate or unjustified detentions to be identified. It could also help focus resources on those geographical areas that need them to minimise the use of police custody as a place of safety. Having one national form for detentions in hospital and police custody, and ensuring the data is collected and analysed centrally by the Healthcare Commission, and its successor the Care Quality Commission, would create more robust data which could be accurately and regularly monitored³².

The development of alternative places of safety outside of police custody is crucial to minimising the use of police cells. This requires the leadership and support of senior personnel across the agencies, as this is imperative to enact change. This multi-agency approach can also help to address problems with the timeliness of assessments and provide more effective operational working practices. Funding for the staffing of dedicated places of safety is problematic and should be carefully considered by trusts when developing new facilities.

There are also issues around training of frontline officers and custody officers and staff. It is vital that police officers and staff have the knowledge and skills they require to conduct their roles effectively and confidently. They can not be expected to have the same level of expertise as mental health professionals but they should have a good awareness of mental health, understand how their powers can be used and be able to identify mental disorder. Joint training between the police and health and social care organisations will help improve knowledge and understanding and build more positive relationships between the agencies. It should also assist in willingness to share information on patients when appropriate. The provisions of the *Mental Health Act 2007* which took effect in November 2008 mean that any training will be timely.

The new Code of Practice³³ encourages the development of joint policies and protocols as a way of improving the use of section 136 at a local level. This study has shown that a wide variety of practice exists with custody rarely being used as a place of safety in some police force areas and always being used in others. It is unacceptable that such inequality should exist and that in many areas people who have committed no crime can be held for a substantial period of time in an environment which exacerbates their mental condition whilst criminalising their behaviour. It is a situation which should not be allowed to continue, and local trusts and other NHS providers or services should look at ways to address the situation as a matter of urgency.

31 Sashidharan (2003) *op. cit.*; Audini, B. and Lelliott, P. (2002) *op. cit.* and Healthcare Commission (2007) *op. cit.*

32 The Royal College of Psychiatrists (2008) *op. cit.* page 9 also recommend this.

33 Department of Health (2008) *op. cit.* para 10.16