# ONLINE SUPPLEMENT DS2

## Mentally Vulnerable Offenders

### Police Service request for Information from the Health Service

In order to make a full assessment of whether an individual accused of offending should be arrested, charged or diverted from the criminal justice system, the following information is sought by the Police, where it is available, from the NHS:

*(Investigating / Custody Officers should delete, if inappropriate to the investigation.)*

1. what is the patient's legal status under the Mental Health Act 1983 (including SCT patients);
2. a headline of the psychiatric condition, if known;
3. what is the RMO's / RC's opinion on prosecution? Are they any clinical barriers to it?
4. an outline of the NHS management plan, should a prosecution not occur;
5. any known previously unreported offending, relevant to the current investigation;
6. any previous history of absconding from psychiatric care;
7. any known failure to return following s17 MHA leave;
8. any known relevant failure to comply with careplans, including any medication programme;
9. is there any information concerning any intended criminal offending;
10. is there any information concerning any continued threats to staff health and safety.

This information is requested in furtherance of a criminal investigation into an offence of ..... *(please state)*. This information is directly relevant to whether or not criminal charges are brought and / or whether bail is appropriate; decisions required of the police by the Police and Criminal Evidence Act 1984.

*(any additionally relevant information, including as to WHY disclosure is necessary now)*

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This information is sought in accordance with the Data Protection Act 1998 *(s29 and sch 3, para 3, 6, 7 & 10)*, which permits the disclosure of sensitive personal information:

*(Investigating / Custody Officers should delete, if inappropriate to the investigation.)*

1. for the exercise of any functions conferred on any person by or under an enactment;
2. in connection with any legal proceedings (including prospective legal proceedings);
3. for the administration of justice;
4. to protect the vital interests of the data subject or another person;
5. for medical purposes;
6. for the exercise of any functions conferred on a constable by any rule of law.

No presumptions are made about whether it is the public interest to prosecute offenders where evidence exists. Each case is considered on its merits, in light of the evidence and information available at the time, to support a criminal charge.

**Reference No** (Custody / Crime) ..... **Officer's Signature:** .....
**Further Notes in support of the request (investigating / custody officer):**

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**Reference No** (Custody / Crime) ..... **Officer's Signature:** .....

**Notes in response to the above request:**

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**Signature:** ..... **Time / Date:** .....

**Name:** ..... **Professional Position:** .....

**continuation:**

**Signature:** ..... **Time / Date:** .....

**Name:** ..... **Professional Position:** .....

**Explanatory notes for medical staff:**

These notes outline why the police are seeking to establish answers to the questions listed on page 1 and how this information is potentially relevant to the consideration of whether to arrest and / or prosecute a mentally vulnerable offender:

1. Knowing the offenders legal status is important, including a SCT patient's status. If someone is already subject to a s37/41 hospital order, further prosecution to obtain that outcome is potentially futile. If a patient is currently detained under s2 MHA or not detained at all, then it is easier to comprehend a prosecution where seeking to secure a s37/41 order would be a proportionate response, both in terms of clinical management and public risk.

2. Whether or not a formal diagnosis has been reached is of relevance to determining whether or not a prosecution occurs. If the CPS lawyer knows that a formal diagnosis has been reached, which may satisfy the criteria for various sections of Part III of the Mental Health Act 1983 (MHA), then they may consider those Part III outcomes in considering the benefits of a prosecution. This would not necessarily be possible, if the diagnosis was unclear.

3. The opinion of the Responsible Clinician is vital, not only because legal decisions to prosecute should include consideration of the impact of the prosecution on the offender's mental health, but also because it may be relevant to consider the RC's opinion on a range of related issues:

    - the context of the offence;
    - impact upon the ward / hospital;
    - impact upon other patients;
    - relevance of previous non-prosecution-based attempts to manage behaviour;
    - relevance of any previous similar incidents;
    - whether or not the RC views the offending as related to the mental disorder or co-incidental to it;
    - the presence of any clinical barriers to criminal prosecution; e.g., medication.

    Any clinical barriers to prosecution are matters for the relevant psychiatrist to comment upon (ie, high levels of medication which would affect the ability to foresee consequences to actions or particularly acute, psychotic states which would also affect the ability to prove *mens rea*.)

4. A prosecution decision is the careful balancing of many potentially complex factors. This must, by law, include consideration of whether it is in the public interest to prosecute. The public interest test is affected by realistic management plans for that offender and alternatives to prosecution which may be available.

5. Information that an offender being investigated now for assaulting staff, where they have done so previously (whether or not that offending was reported / prosecuted), is *directly* relevant to the prosecution decision. If for example, it has occurred before, it is easier to demonstrate that a prosecution is required to prevent further offending and risk to staff and patients in the future.

6. Whether or not a patient is attempting to comply with their management plan and co-operating with professionals is relevant. If they are absenting themselves (repeatedly) from hospital, the confidence with which a non-formal sanction would be sought is diminished.

7. If someone is currently allowed periods of leave under s17 MHA and if that offender is returning on time, managing to look out for their own welfare whilst on leave, it gives a clear indication that they have the relevant wherewithal to look after themselves sufficiently to be able to think about the consequences of actions and to assume a level of responsibility, albeit for small periods and / or under supervision. This increases the likelihood that *mens rea* can be proved.

8. Information about care-plan compliance is relevant to risk assessment decisions around prosecution and / or whether to grant bail or impose conditions on bail, if charged. There is less benefit in diversionary management of offending, if it is unlikely to be unsuccessful.

9. An ability to demonstrate the likelihood of further offending is relevant to risk assessment and bail decisions and would influence the likelihood of a prosecution. If threats were made an offence, the police custody officer may use that to deny bail and achieve an earlier prosecution.

10. An ability to demonstrate that the staff and / or other patients within a psychiatric or other health facility are at risk without a prosecution would influence charge decisions, as for point 9.