

Date: 27 June 2014

Mental Capacity Bill Consultation
DHSSPS
Room D2.10
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

Dear Sir/Madam

DHSSPS/DOJ CONSULTATION ON A DRAFT MENTAL CAPACITY BILL (NI)

At its meeting on 19 June 2014, the Policing Board's Performance Committee considered the DHSSPS and DOJ joint consultation on a draft Mental Capacity Bill (NI), in particular the section dealing with the extension of the Bill to the criminal justice system.

The DOJ proposes that where a person above the age of 16 has capacity to refuse an intervention in relation to his/her care, treatment, or personal welfare, the Bill will make it a requirement that the decision is respected by all relevant criminal justice organisations. It is evident from the consultation document that this will have a bearing on the medical treatment (physical or mental) of detainees held in police custody. The Committee understands that this will mean that where PSNI officers have identified a detainee has a medical need, they will first have to determine the capacity of the detainee to consent to treatment before taking any further action, such as bringing them to hospital or arranging for them to see a Forensic Medical Officer.

It is important that sufficient resources are in place to ensure that police officers receive adequate support and advice from healthcare practitioners when making such decisions regarding capacity and that they are not required to conduct complex assessments of capacity. The Bill and any accompanying Code of Practice should emphasise the role of healthcare practitioners and the fact that they have a responsibility under the civil provisions of the Bill to consider the capacity of each patient they are presented with and if deemed incapacitous, to ensure the safeguards are complied with. The fact that a police officer may have already considered the capacity of the individual does not release the healthcare practitioner from their obligations.

Will the provision drafted by DHSSPS which states that the Bill does not affect the law relating to murder, manslaughter or assisted suicide require police officers to always take steps to mitigate threats to life, regardless of whether this means making an intervention against the wishes of a capacitous person in doing so? For example, if a detainee is severely bleeding but capacitously refuses to consent to the police taking them to A&E or calling an ambulance, should that decision be ignored and medical assistance sought as otherwise this may give rise to a manslaughter charge? The way in which the Bill interfaces with the PSNI's Article 2 ECHR obligations could be made clearer on the face of the Bill and guidance should also be provided in any Code of Practice.

The Committee notes that outside the custody setting, the DOJ proposes that the police will retain their powers to remove a person (of any age) to a Place of Safety in appropriate

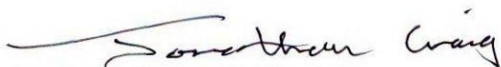
circumstances. The current definition of a Place of Safety, which includes hospitals and police stations, would be preserved with provision that a police station should only be used if no other suitable Place is available. During a Performance Committee meeting with PSNI in April 2014, there was some discussion on the lack of a suitable environment in which to temporarily detain persons on grounds of mental health. This was considered in 2010 by the Criminal Justice Inspection Northern Ireland (CJINI) during its inspection on mental health and the criminal justice system. CJINI reported that PSNI *"is struggling to deal with mentally disordered persons, with often inadequate support from the Health Service. On occasion it finds hospitals uncooperative and having to return people into the community with every expectation that they will be back into the criminal justice system within a short time."* It would appear that 4 years on, this concern remains relevant. As you will be aware there have been developments in England in this regard, for example a new assessment suite based in the mental health unit at Royal Bolton Hospital which will provide a Place of Safety was opened in Greater Manchester earlier this year. The Committee would welcome further consideration of this issue by both the DOJ and DHSSPS.

Finally, the consultation document explains the DHSSPS rationale for choosing to exclude under 16s from the scope of the Bill. The DOJ acknowledges the challenges in applying the age limitations of the Bill to the criminal justice system in that the age of criminal responsibility is 10, the Youth Court can deal with young people up to the age of 17 and the Juvenile Justice Centre has a population that spans above and below age 16. However, the DOJ agrees with the strategic approach being adopted by the DHSSPS and its position would appear to be that the capacity based framework for interventions by the criminal justice system in relation to care/treatment/personal welfare will only apply when dealing with persons aged 16 and over.

The Committee acknowledges that there are challenges for both DHSSPS and DOJ in working through the already complex legislative landscape in order to develop a package that would best meet the needs of children, and we appreciate that this will take some time and require extensive consultation. However the Committee is concerned that in the interim the statutory safeguards to be afforded to persons over the age of 16 will not be applicable for those under 16. The Committee is also concerned that the legislative landscape will become crowded for operational officers working across a mix of legislation. For example, if the police believe it is in the best interests of a young person to make an intervention in relation to his/her care, treatment, or personal welfare, but the young person does not consent to the intervention and in doing so appears to be fully capacitous, what should the police do if they are unsure whether the young person is aged 16 or 17? Such a situation may occur when the police encounter a young person outside the custody environment in circumstances where Place of Safety powers are not applicable but the police nonetheless feel it would be in the best interests of the young person to make some sort of welfare-based intervention.

The Committee would be grateful to be kept updated with regard to any further developments in respect of the proposed Bill. I would be grateful if you would copy any further correspondence in this regard to Peter Gilleece, Director of Policy at the Policing Board.

Yours sincerely



Jonathan Craig MLA

Chair of Performance Committee

cc. ACC Mark Hamilton, Service Improvement Department **Northern Ireland Policing Board**

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