

# Managing persons required to attend police interview or court

## Chief Psychiatrist's Guideline

### Key message

Persons under the inpatient care of an area mental health service (AMHS) should be assessed before and after interview with police or attendance at court. Persons under the community care of an AMHS should be assessed before and after interview with police and attendance at court, where this is practicable and consistent with the person's treatment status.

### Introduction

Persons who are receiving inpatient treatment or who are managed in the community by a mental health service may be requested by police to participate in an interview or may be required to attend court. These guidelines address the issues that should be considered in these situations.

Factors that should be considered prior to police interview or court attendance include the legal status of the patient, the primary provider of treatment, and how the client will be supervised and supported before, during and after the interview or hearing.

Often, assessment of fitness for interview is undertaken by a forensic medical officer. However, there may be circumstances where the assessment will be performed by a public mental health service.

### Disclaimer

These guidelines are not intended to represent a comprehensive analysis of the law and should not replace the exercise of professional judgement on a case-by-case basis. Nothing in these guidelines should replace the seeking of appropriate legal advice by services where this is considered appropriate.

## Interview by police

Formal interview by police is usually preceded by reasonable suspicion that the person has committed or has knowledge of a criminal offence. The purpose of a police interview is to determine whether there are grounds for charging a person with an offence.

The police may also wish to interview a person because that person may have been a witness to or is an alleged victim of a criminal act.

## Purpose of assessment

Assessment of a mentally ill person with regard to fitness to be interviewed by police has three aims:

- 1) To ensure that the person has the capacity to understand the interview. This will require an assessment of the person's concentration, ability to understand the process of the interview and ability to process information. Such an assessment will minimise the possibility of an involuntary or false confession. This is not intended to ensure that the person will be truthful in interview, but that they will have the ability to consider and make appropriate decisions, including the ability to knowingly consent to interview or to seek legal representation at interview.
- 2) To determine whether the experience of interview would have an unacceptably detrimental effect on the person.
- 3) To identify resources and supports that may be necessary and available to assist the person in coping with the police interview, and to minimise any detrimental effects that may be experienced.

## Relevant legislation

There is no specific legislation that covers the situation of fitness for interview by police. However, fitness for police interview implies the ability:

- to understand the nature of the questioning (i.e. questioning to ascertain involvement in the commission of an offence)
- to be able to follow the course of questioning
- to be able to give instruction to a legal representative(s)
- to be able to understand when the person is cautioned that he or she does not have to say anything, but that anything that they say may be given in evidence.
- to not be in an excessively suggestible state
- to be aware of the surroundings.

## Assessing fitness to attend police interview

Assessment of fitness to attend police interview should take into account the considerations listed above, the likely process and outcome of the interview and the legal status of the patient.

## Who should be assessed?

The following persons should be assessed when an AMHS becomes aware that they are to attend a police interview.

- Current inpatients
- Persons recently discharged from inpatient status
- Persons on a Community Treatment Order
- Persons receiving active treatment in the community
- Persons who appear to be impaired by a mental illness (including substance-related mental illness)

## Assessment procedure

Assessment of a person's suitability for interview should be performed by a medical practitioner, and should include a history of their physical and mental health. This should take into account the following factors:

- The stability of the person's current condition (recent alterations in physical or mental state, recent medication changes, need for PRN medication or other acute interventions).
- A history of any physical and/or substance use issues that may impair the person's ability to be interviewed.
- The results of the mental status examination, which should include:
  - assessment of affect and mood
  - assessment of thought stream, form and content
  - details of any delusional material elicited including passivity phenomena
  - details of any perceptual disorder found
  - assessment of cognitive function including orientation
  - assessment of judgement and insight.
  - assessment of any risk to the person or others.
- The person's vulnerability and suggestibility should be carefully considered. In particular the presence, nature and details of any thoughts of harm to the self or to others should be elicited.
- An assessment of the potential impact on the person's mental state, how stressful the experience will be, and how the person believes they will cope with the stress. This may include obtaining information from the patient about previous experiences they have had with police or courts and their perception of these experiences.
- An assessment of the person's understanding of what the particular police interview would mean in terms of possible consequences.
- An assessment of the level of clinical or other support the person may require in attending the police interview.

## Person found unfit for police interview

Where a person has been found unfit for police interview, in many cases their condition may remit over time or with treatment, and they may be deemed fit at a later assessment. Communication with the relevant authority regarding the outcome of the assessment must be made as soon as possible. There may be documentation required by Victoria Police in support of the person's non-attendance.

## Independent third person and legal representation

A person who has been deemed suitable for police interview should be advised of their right to have an independent third person present at the interview. This requirement, which is contained in Victoria Police operating procedures, applies whether the mentally ill person is being interviewed as a witness, a suspect, or as an alleged victim. The police will organise an independent third person with the Office of the Public Advocate (see '*Protocol between Victoria Police and the Department of Human Services Mental Health Branch 2004*').

Patients should be encouraged to seek their own legal representation. Legal advice may be obtained cost free from the Mental Health Legal Centre or Victoria Legal Aid. In all cases and particularly so if a patient does not wish for legal representation or an independent third person, it would be appropriate for a close relative or friend who is not associated with the police inquiry, to provide support to the patient if he/she agrees that the relative or friend be involved. The decision to decline legal representation should be documented in the client's clinical record.

## Current inpatients

Persons who have recently been admitted to an inpatient unit may require some time for an adequate assessment of their history and mental state, and are likely to have undergone recent alterations to their treatment. If a recently admitted inpatient is required to be interviewed, it may be appropriate to seek deferral of the process until there has been adequate opportunity to assess the person's fitness to attend.

## Persons under involuntary status

Persons under involuntary status are judged to be unable to make decisions about their need for mental health treatment. This does not necessarily mean that the person is unfit to be interviewed. However, it is probable that a person under involuntary status will also have impairments sufficient to render them unfit for interview. Assessment should be conducted with regard to the particulars of the case and the person concerned.

## Support following police interview

Debriefing or a supportive interview after the police interview should be organised for the patient by the area mental health service. This should carefully assess the person's mental state with particular attention to issues of safety. An understanding should be sought of how the person has been affected by the interview, and whether there are clinical implications arising from this.

## Court appearances

A patient may be required to attend court for a number of reasons, such as a civil dispute, family law matter or a criminal matter. This circular is mainly concerned with attendance at court in relation to criminal matters but similar principles should be considered if a patient is required to attend court for another reason.

The intended outcome of a criminal court hearing is to determine whether the person charged with an offence has committed that offence and, if so, whether that person should be punished in any way.

If the patient was mentally ill at the time of the offence, or is seriously mentally ill at the time he or she has to plead to the offence, then the court may consider whether the patient is fit to plead and fit to stand trial. These are matters for the court to decide under the *Crimes, Mental Impairment and Unfitness to be Tried) Act 1997*. This circular does not address this issue.

## Who should be assessed?

The persons who should be assessed prior to appearance in court are:

- current inpatients
- persons recently discharged from inpatient status
- persons on a Community Treatment Order
- persons receiving active treatment in the community
- persons who appear to be impaired by a mental illness (including substance-related mental illness)
- persons for whom assessment of their mental state is requested by the court.

## Assessment procedure

The assessment procedure outlined above in relation to patients required to attend a police interview should be followed in relation to a person who is required to attend court.

The mental health service should liaise with the person's legal representatives, with the court and with forensic psychiatric liaison nurses where appropriate, to determine whether the person is competent to attend court and whether appropriate management can be provided, where indicated, after the court appearance.

If the area mental health service determines that the patient is not fit to attend court, then this should be set out in a report, which addresses all the factors outlined above in the 'Assessment procedure'. The report should also set out when the person is likely to be fit to attend court. This will be considered by the court when it determines if and when the matter should be adjourned.

The report should be provided to the patient's legal representative who will provide a copy to the court. If the patient is not legally represented, then the report should be sent to the court. However, in such a case, it is preferable that the patient be advised to obtain legal representation.

It is important to note that a person charged with a criminal offence is normally expected to appear before the court for the hearing. This is particularly important when the person is on bail. In such a case, where the authorised psychiatrist or delegate determines that the patient is not fit to attend court, then the patient's legal representative should be provided with an appropriate report prior to the hearing to explain this.

## Court liaison and support

A number of courts have mental health clinicians attached who are able to provide additional support to a person with a mental illness. Court liaison nurses are available at Broadmeadows, Melbourne, Ringwood and Dandenong Magistrates Courts. Most rural area mental health services also have court liaison staff available to provide a service to the local Magistrates Courts.

Information regarding the type of role and support that can be offered by these staff can be obtained by contacting Forensicare's Community Forensic Mental Health Service.

There may also be alternate options available for current inpatients, such as the use of telecourt (video conferencing). This can be facilitated through the patient's legal representative and the relevant court registrar.

## Self-assessment tool

The following indicators are provided to assist services in designing and implementing policies and procedures to identify persons unfit for interview or court appearance and to facilitate assessment of these persons.

## Inpatient services

Inpatient services have written policies and procedures where:

- Staff are aware of the need for assessment of fitness for police interview or court appearance.
- All subpoenas of patients, or police requests for interview of patients, are reported to the treating psychiatrist.
- The medical practitioner undertaking the assessment has policies and procedures available to assist with identifying persons who would be unfit for interview or court appearance.
- Services assist those persons deemed fit for police interview or court appearance to obtain legal representation.
- Services assist persons deemed fit for interview or court appearance in seeking the presence of a familiar support person at the proceedings.
- Persons who have been interviewed by police or who have attended court and return to the unit are assessed upon return to the unit. This includes review prior to leave arrangements being made.

## About Chief Psychiatrist's Guidelines


The information provided in this guideline is intended as general information and not as legal advice. If mental health staff have queries about individual cases or their obligations under the *Mental Health Act 1986*, service providers should obtain independent legal advice.

## Community Services

- Case managers are informed of the need to identify persons who are unfit for interview and court appearance, and procedures for arranging assessment for these persons.
- The medical practitioner undertaking the assessment has policies and procedures available to assist with identifying persons who would be unfit for interview or court appearance.
- Services encourage case managers to provide support for persons who have been found fit to attend interview or court.
- Persons who have been interviewed by police or who have attended court are clinically reviewed as soon as practicable and clinical supports are put into place as required.

For further information regarding this guideline contact:

The Office of the Chief Psychiatrist  
Phone: 9096 7571



Associate Professor Amgad Tanaghow  
Chief Psychiatrist

## Acknowledgements

Published by the Mental Health Branch,  
Metropolitan Health and Aged Care Services Division  
Victorian Department of Human Services  
Also published on  
[www.health.vic.gov.au/mentalhealth/cpg](http://www.health.vic.gov.au/mentalhealth/cpg)  
Document number: CPG05011

## Document review cycle

**Guideline issued:** January 2005

**Scheduled for review/rewrite:** 2008