**Personal Information**

The processes set out in these briefing papers entail the collection, collation and disclosure of personal information.

Personal information about health or wellbeing, or criminal activity or propensity to crime, is sensitive and confidential.

It can only be recorded or shared with the explicit informed consent of the individual it is about, or someone with parental responsibility for them. If the individual lacks capacity under the Mental Capacity Act 2005, information can be recorded and shared when that is assessed to be in their best interests applying the Act and its Code of Practice.

However, confidential information can be recorded and shared in the public interest to help a child or young person who is or may be at risk of harm, or anyone who is or may be at risk of offending or of suffering harm or loss from offending. It can also be recorded and shared in the public interest of preventing or investigating a crime.

The information recorded or shared should be in proportion to the risk and there should be a pressing need to record or share it. Each case must be assessed on its own facts.

**Equalities and health inequalities**

The reduction of inequalities in access and outcomes is central to the L&D work programme. Local commissioners and practitioners are reminded that they should make explicit how they have taken into account the duties placed on them under the Equality Act 2010 and with regard to reducing health inequalities, duties under the Health and Social Care Act 2012. Service design and communications should be appropriate and accessible to meet the needs of diverse communities.
This particular resource paper focuses on police and courts. This briefing:

- explains the justice pathway
- identifies the key legislation that informs practice at each point of intervention on the justice pathway
- identifies the key professionals that L&D services should interact with at each point of intervention

WHY POLICE AND COURTS MATTER

L&D services act as a resource for the youth and criminal justice systems. They provide information to and facilitate disposals for the police and courts to ensure appropriate and effective outcomes. For L&D services to achieve their aim of reducing health inequalities and enabling people to access care and treatment, they need to work closely with police and courts.

PATHWAYS

L&D services need to be accessible as soon as possible after an individual is suspected of having committed a criminal offence, and be available at the point of need and at the following locations (the list below does not cover all possible settings):

- community settings, including schools and restorative justice settings, where police engage with children and young people
- magistrates’ courts
- police custody suites

WHO WE ARE


The Offender Health Collaborative (OHC) is a partnership between specialist organisations which has been set up to develop an operating model to meet the needs of all those who are in contact with the criminal justice system with mental health problems and/or a learning disability. It advances and promotes better thinking, practice and outcomes in offender health and criminal justice.
• police stations (or other prosecuting authorities) where voluntary attendance (VA) occurs
• probation to assist with the production of pre-sentence reports (PSR)
• the Crown Court
• youth courts and referral order panels
• youth offending teams (YOTs)

L&D services should ensure they are accessible at all stages of the criminal justice system which are shown in the diagram below.

**Key stages in the criminal justice process**

- Incident occurs
- Suspect identified/ Voluntary attendance or arrest
- Suspect interviewed
- Suspect charged
- Suspect bailed?
  - YES
    - First court hearing (plea)
    - Subsequent court hearings
    - Sentencing
    - Custodial sentence?
      - YES
        - Prison service support
      - NO
        - Probation/ OMU support
    - NO
      - Remanded in custody

*Key*

- Police
- HM Courts
- CRC
- HM Prisons

(includes any other sanctions including Community Resolutions and Cautions)

(includes youth and CPN courts)
Trying to intervene with children and young people is significantly different from intervening with adults. Most decisions about children and young people will take place at the pre-police custody stage. Nevertheless, some young people do enter custody and a smaller number do progress to court and there are opportunities to divert at both these points (for more details see the resource paper in this series on developing an all-age response).

### DIFFERENT STAGES OF THE CRIMINAL JUSTICE PATHWAY

<table>
<thead>
<tr>
<th>Young People</th>
<th>Adults</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-custody</td>
<td>Most decisions about young people will occur at the pre-custody/caution stage.</td>
</tr>
<tr>
<td>Voluntary attendance</td>
<td></td>
</tr>
<tr>
<td>Police custody</td>
<td>Some young people will come into police custody, including before caution.</td>
</tr>
<tr>
<td>Courts</td>
<td>A small number of young people will progress into court with opportunities to divert emerging at this later stage.</td>
</tr>
</tbody>
</table>

### POLICE

Traditionally, L&D services have operated in conjunction with the police at the custody stage of the criminal justice process. However, changes in practice now mean that police will intervene earlier in community settings, particularly when dealing with children and young people and when dealing with people who have voluntarily attended the police station for interview.

Whenever the police come into contact with an individual, they are governed by the Police and Criminal Evidence Act 1984 (PACE) and its codes of practice. For people with mental health concerns, a learning disability or other vulnerability Code C, Annex E (Home Office, 2014) is particularly relevant.

When a person is taken into police custody, the key professional is the custody sergeant who is responsible for their detention and has a range of options at their disposal. In particular, they protect the rights of the individual by being:
- independent of the investigation
- a guardian of welfare and rights

A custody record will be opened and this will be used to document details of all decisions, interviews, assessments etc. The arresting officer will be asked about the circumstances of the arrest which may include any concerns they have from their initial contact with the person. The arrested person will be read and given a copy of their rights under PACE.
The arrested person will be asked a series of questions to ascertain whether there are any concerns that should be addressed by an L&D or other practitioner working in the custody suite. If the custody sergeant has concerns about a person's mental health, suspected learning disability or other vulnerability identified in the L&D operational model, they should refer to L&D services for screening and possible assessment (see the resource paper in this series on case identification, screening and assessment). The L&D practitioner will record and share information.

When someone is in custody for an offence their detention is subject to the ‘PACE clock’ which determines how long a person can be held without charge and who needs to approve longer periods of detention (Home Office, 2014). L&D practitioners will need to be mindful of this ‘clock’ when they are screening an individual or making arrangements for a further and fuller assessment.

Other key professionals operating in police custody include:

- **Detention officers** who work as part of a team of custody staff and assist with receiving and processing detainees, taking fingerprints, photographs and DNA samples, updating systems and records and ensuring the welfare of detainees.

- **Custody healthcare staff** are qualified nurses who are responsible for the health, safety and welfare of detainees. They will assess whether someone is fit to be detained, interviewed, transferred or released. Other responsibilities include gaining consent for healthcare interventions, conducting forensic examinations, looking after minor injuries and administering medications. Although custody healthcare staff are primarily responsible for a person's physical health they will also identify whether a person has other concerns and where necessary make a referral to L&D services. In some cases L&D will carry out a joint assessment with custody healthcare staff.

- **Forensic medical examiners (FMEs)** (also known as forensic physicians and, formerly, police surgeons) offer medical care and, when required, forensic assessment of detainees, victims of crime and police officers injured while on duty. They will assess whether someone is fit to be detained, interviewed, transferred or released and where necessary will refer individuals to L&D services.

- **An appropriate adult** can be an independent volunteer or a family member, guardian or someone responsible for the person's care and treatment. Where the custody sergeant suspects or is told that someone who has been arrested has a mental health problem, a learning disability or is otherwise vulnerable (this includes young people) they are required under PACE to ensure that an appropriate adult is present during a subsequent interview. L&D services may sometimes need to refer individuals to an appropriate adult. For more information go to [www.appropriateadult.org.uk](http://www.appropriateadult.org.uk).

- **Drug workers** work alongside custody staff to screen everyone taken into custody, and identify and work with those who may need help. Options for those who need support include one-to-one interventions with a trained custody referral worker, harm reduction advice (e.g. information about substances, staying healthy and coping with challenging situations), signposting and referral to local support services and drug testing. In the case of
dual diagnosis (mental health problem and substance misuse problem), a joint-assessment should take place with the L&D practitioner and drug worker.

In some, but not all police stations, detainees may be subject to drug testing (Section 63B of PACE 1984 as amended by Section 7 of the Drugs Act 2005) with the legal requirement to attend an assessment of their drug misuse (Part 3 of the Drugs Act 2005) if they have tested positive. It is the role of the drug worker to conduct any required assessment and, where appropriate, to inform the police where an individual has failed to attend and remain at the assessment.

In determining any outcome – including decisions about whether or not to charge, release on bail or remand in custody – the police need to balance the safety of the public, the wishes of the victim(s), and the needs of the individual. The role of L&D services is to assist with these decisions by:

- providing information on the person’s mental health, learning disability or other vulnerability
- assessing the risk that the person poses to themselves and/or others
- providing information on referral options
- facilitating access to services

Information from L&D services should be provided to the police in writing to be included in the custody record and in the case papers if the person is charged.

CROWN PROSECUTION SERVICES (CPS)

The Code for Crown Prosecutors (Crown Prosecution Service, 2013) sets out both the evidential test and the public interest test that need to be met for any charge to be made. When deciding whether a prosecution is required for the public interest, prosecutors need to consider “if a prosecution is likely to have an adverse effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence”. Prosecutors should also “have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required”.

In both these cases L&D services can play an important role. This support can either be provided through the report completed by the L&D practitioner, which will be included in the case papers and will provide context and background for the CPS, or L&D services can undertake an assessment on behalf of the CPS prior to any court case.

COURTS

An L&D service needs to have a presence in the youth courts, the magistrates’ courts and the Crown Court. The Criminal Procedure Rules (CrimPR) govern the practice and procedure of the criminal courts. The role of L&D services is to assist the judiciary and magistrates to make appropriate and effective decisions in relation to sentence, bail and case management by:
• providing information on the person’s mental health, learning disability, or other vulnerability
• assessing the risk that the person poses to themselves and/or others
• providing information on referral options and
• facilitating access to services

All cases are initially seen at a magistrates’ court and 90% of all cases are dealt with entirely by magistrates. These include summary and some ‘either way’ cases. Summary offences include most motoring offences, minor criminal damage, being drunk and disorderly. Magistrates’ courts can also deal with some of the more serious offences, such as burglary and drugs offences, and these are called ‘either way’ offences and can be heard either in a magistrates’ court or the Crown Court. Magistrates’ courts always pass the most serious crimes such as murder, rape and robbery, known as indictable offences, to the Crown Court.

Sentences or disposals that magistrates’ courts can administer include up to six months in prison (or up to 12 months for more than one offence), fines of up to £5,000, community sentences or a combination of these. If the magistrates’ court decides the sentence should be for longer than six months, it can pass the case to the Crown Court.

Youth courts are special types of magistrates’ courts for people aged between 10 and 17. For serious crimes, like murder or rape, the case starts in a youth court but will be passed to the Crown Court.

Key professionals based in courts include:

• **Sentencers** including judges, district judges, and magistrates

• **Justices legal advisers** are professional legal advisers to non-stipendiary (unpaid) magistrates/justices of the peace. Justices legal advisers are qualified lawyers but they do not take part in the decision making within the court.

• **Ushers** who make sure that everyone involved with a court case is present and knows what they have to do during the hearing.

• **Prosecutors** who present the CPS case in court

• **Defence solicitors** who advocate on behalf of the defendant

• **National Probation Service staff** who prepare PSRs to help the courts select the most appropriate sentence

• **YOTs** which operate at youth courts, supporting the young person and their family and providing information for the court. YOTs also work with young people and families in the community.

• **Intermediaries** who assist vulnerable defendants and defendants with learning disabilities or communication difficulties to understand and participate in cases.
All of the above, as well as family members, carers and the persons themselves should be able to refer to L&D services. The service should have a range of informative materials available for different professionals and service users which explain the role of L&D services and how to make a referral.

Information should be provided to the court in writing using the national court reporting template.

**VOLUNTARY ATTENDANCE**

Voluntary attendance (VA) is the term used for those individuals who have voluntarily agreed to be interviewed by the police but have not been arrested and taken to police custody. Changes to the PACE codes of practice in November 2012 mean that the power of arrest is only exercisable if a police officer has reasonable grounds for believing that it is necessary to arrest the person (Home Office, 2012). This has meant that more people voluntarily attend the police station for interview following an incident than was the case previously. The safeguards outlined in PACE which apply to an arrest and detention in police custody also apply to VA.

In applying the ‘necessity criteria’, the police officer must “take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigating process” (2.8, Code G). Examples of ‘necessity’ include:

- police can’t ascertain the individual’s name and address
- prevent injuries to the individual or others
- protect a child or other vulnerable person
- prompt and effective investigation of the offence
- preserving evidence
- to conduct a drug test

Every individual interviewed through VA is entitled to receive the same service from L&D as those who have been arrested and taken to a police custody suite. To ensure that this happens the service will need to develop processes that fit in with and complement the local VA process operated by the police. The following outlines how the processes should work.

1. The police should use an appropriate case identification tool (see the resource paper in this series on case identification, screening and assessment) when there are concerns that an individual has mental health issues, a learning disability or other vulnerability. This should be used either at the initial investigation of an incident, at the interview following VA or when the case is being reviewed by a supervising officer.

2. If the concerns are confirmed and provided the voluntary attender consents to their information being shared, the police should contact L&D services. There should be a single point of contact within the L&D service where referrals can be made.
3. The L&D service should be provided with the name, date of birth and address, if known, of the individual concerned. The police should also state the reason for the referral. Where possible, the L&D service should gather information on the individual; L&D staff may want to discuss the case with the referring police officer as part of this process.

4. If an immediate concern is identified L&D should make every effort to see the person ASAP.

5. If a concern is identified but immediate action is not needed, L&D should invite the individual – either by phone or by letter – to attend a screening and/or assessment at a mutually agreed location. Appointments should be ‘opt out’ (i.e. your appointment is on [insert time and date] unless you ring and cancel) rather than ‘opt in’ (i.e. ring the L&D service to arrange an appointment).

6. Following the screening and/or assessment and assuming consent is given, information which is relevant to the individual’s involvement in the criminal justice system should be passed back to the referring police officer and a written record should be attached to any case file. This information should assist the police in their decision-making or ensure that safeguards and reasonable adjustments are made – e.g., ensuring that an appropriate adult is present at subsequent interviews.

Individuals may be seen in a variety of criminal justice and community settings (including their own home) depending on any risk that may be identified. Wherever possible and practical, children and young people should not be seen in criminal justice settings. Rather, these should take place in health, community and educational settings and in their own homes with their parents present.
The voluntary attendance process

1. Incident
2. Interview
3. Review of case

- Concern identified by police?
  - YES
    - Case identification tool administered
      - Concern confirmed?
        - YES
          - L&D contacted
            - L&D gathers information
              - Immediate concern identified?
                - YES
                  - L&D arranges to see individual as soon as possible
                    - Relevant information shared with police
                - NO
                  - L&D books an appointment to see the person
                    - Relevant information shared with police
        - NO
          - Deal with on criminal justice merits
    - NO
      - Deal with on criminal justice merits
  - NO
    - Deal with on criminal justice merits

- Deal with on criminal justice merits
**INFORMATION FLOW**

L&D services should assist criminal justice agencies and decision makers to ensure appropriate and effective outcomes for people with mental health problems, learning disabilities or other vulnerabilities. This includes decisions about charging, bail, disposal and sentencing.

Information provided by L&D services to the police and courts should include details of:

- the reasons for the referral
- the mental health concerns, learning disabilities or other vulnerabilities – it is not advised to include a diagnosis unless relevant to the case
- current or previous contact with health and care services including details of the individual's care coordinator and other relevant professionals
- any treatment or ongoing care plan where relevant to the case and disposal in question
- social circumstances
- the risk assessment including information about the risk that the person poses to themselves and/or others
- health and care options
- the individual's ability to engage with criminal justice processes including the need for any reasonable adjustments

**INFORMATION SHOULD ALWAYS BE PROVIDED IN WRITING**

To maximise the potential of referral pathways it may be necessary in some cases to support individuals to access other services. Some people require a little more support than just a referral. This might take the form of ‘assertive handholding’ - professionals might need to accompany their client to appointments to support engagement and act as an advocate.

Information should flow along the criminal justice pathway from one point of intervention to another to assist decision makers and to ensure continuity of care. The responsibility for the transfer of information is the responsibility of criminal justice agencies. However, the L&D service should ensure there is an added safeguard by setting up their own system to ensure that information flows from L&D practitioners at the pre-police custody or police custody stage to L&D practitioners at court and then, depending upon the outcome, to healthcare in prisons, the National Probation Service and/or Community Rehabilitation Companies (CRCs).

**HOURS OF OPERATION**

A key finding from the narrative review of L&D completed by Professor Eddie Kane for OHC was that services should be accessible as and when people need them and not constrained by established staff working patterns. To achieve this, L&D should offer a 24/7 service consisting of a mixture of core operating times and out-of-hours arrangements.
Core hours of operation, i.e. when the core team is available and able to accept referrals, should be based on local demand, the needs of key partners (in particular, police and courts), and subject to the views of local commissioners and other stakeholders. Outside these core hours, there needs to be agreed out-of-hours arrangements that can provide information, book in appointments, and, where necessary and urgent, undertake assessments.

The core hours of operation for L&D should be arrived at by analysing, with police colleagues, custody suite data to identify and agree the peak hours of demand. A profile of the demand for each custody suite should be produced so that the L&D team resource can be appropriately directed (see the resource paper in this series on intelligence gathering).

**CASE STUDY**

When Miss Smith, aged 16, was arrested on suspicion of threatening her mother with a knife, the L&D street triage practitioner had already been made aware of concerns about her mental health. They offered her support during her detention in police custody but Miss Smith refused. However, later that evening, with the consent of her mother, she was approached again by the street triage practitioner and an assessment was arranged. Her health records suggested Miss Smith had a history of behavioural difficulties which had escalated in the last four months and her risks had increased in relation to potential sexual exploitation; there was evidence of promiscuity, unsafe sexual practices and potentially inappropriate and sexualised use of social media.

Miss Smith was provided with one-to-one support, safeguarding protocols were applied, and she was initially bailed pending ongoing police enquiries. The street triage practitioner assessed what her care needs would be upon her return home and she was also assessed by the L&D youth worker.

Dorset L&D service

**FIND OUT MORE**


About the L&D programme

The national L&D programme was originally established in response to *The Bradley Report*. *The Bradley Report* made 82 recommendations to tackle the over-representation of people with mental health problems in prisons in England, including a recommendation to divert offenders with mental health problems from custodial settings. In response, a number of L&D pilots were established in England in 2011/12 with plans for full coverage to be achieved across the country.

L&D services aim to improve access to healthcare and support services for vulnerable individuals, reduce health inequalities, divert individuals, where appropriate, out of the youth and criminal justice systems into health, social care or other supportive services, deliver efficiencies within the youth and criminal justice systems and reduce reoffending or escalation of offending behaviours.

THE CORE OPERATING MODEL

A revised national core operating model has been developed, which will include:

- An all-age service across all sites available at all points of intervention
- Early intervention including identification, assessment and referral
- An integrated model for children, youths and adults
- Targeting a range of vulnerabilities, including learning disabilities, substance misuse, housing and education
- Provision at police custody and courts
- Hours to suit operational requirements
- A range of referral pathways to suit identified issues

Aim of L&D manager and practitioner resources

Many of the challenges around developing L&D services will require a joint partnership response, with criminal justice, mental health, substance misuse, housing, welfare and other support services working together to support individuals with complex needs. In some local areas, the development of L&D services may require significant changes in culture and working practices at every level, while maintaining and improving existing services at the same time. However, each local area is unique and local stakeholders and partners are best placed to determine the progression of their services and to plan according to local needs.

This series of resources will comprise of eight practical guides on the key elements of L&D provision. The purpose of these resources is to provide a toolkit to help practitioners understand how to develop effective L&D services in their local area.