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| WARWICKSHIRE POLICE | **POLICY** |

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| Security Classification | Official |
| Disclosable under Freedom of Information Act 2000 | YES |

| **POLICY TITLE** | **Right Care Right Person – Absent Without Leave (AWOL)** |
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| REFERENCE NUMBER | **WP211** |
| Version | **1.2** |

| **POLICY OWNERSHIP** | |
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| DIRECTORATE | Local Policing |
| BUSINESS AREA | Public Contact |

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| INITIAL IMPLEMENTATION DATE | **22/08/2024** |
| NEXT REVIEW DATE: | **22/08/2026** |
| RISK RATING | **MEDIUM** |
| EQUALITY ANALYSIS | **MEDIUM** |
| TIER | **1** |

Warwickshire Police welcome comments and suggestions from the public and staff about the contents and implementation of this policy. Please e-mail policiesandprocedures@warwickshire.police.uk

# Contents

## 1.0 POLICY OUTLINE

1.1 The intention of the policy to communicate clear guidelines around the Warwickshire police response to reports of patients who are classed as 'Absent Without Leave' under the Mental Health Act 1983.

1.2 This policy has been created in response to the national roll-out of 'Right Care, Right Person' (RCRP), which is an initiative that was developed by Humberside Police, prior to a phased implementation between May 2020 and November 2021. Further guidance around the implementation of RCRP can be found on the College of Policing website.

1.3 The intention of the policy is to ensure the following.

**a.** Ensure the safety, the dignity and the rights of the public are placed at forefront of all Warwickshire Police decisions on policing and mental health.
**b.** Ensure collaborative partnerships operate effectively.
**c.** Ensure deployments to support MHA Assessments are timely, proportionate, necessary and lawful.
**d.** Ensure Warwickshire Police fulfils its responsibilities under the Mental Health Act 1983 and its Code of Practice.
**e.** Ensure Warwickshire Police is not operating beyond its legal authority.
**f.** Ensure Warwickshire Police officers are not operating beyond professional competence.

1.4 The policy has been developed to be consistent with the policies being implemented by West Midlands Police. The purpose of this alignment of policy is because Warwickshire police and part of West Midlands police are covered by the Coventry and Warwickshire Integrated Care Board (ICB), therefore there is an overlap in force coverage of this ICB area. By having an aligned response, this ensures that the there is a consistent process for all relevant partners, which should allow for a more effective provision of service.

1.5 Failure to comply with policy may result in disciplinary action for staff as well as legal consequences for the force.

## 2.0 PURPOSE OF POLICY

2.1 The purpose of this policy is ensure that Warwickshire police respond appropriately to reports of patients who are classed as being 'Absent Without Leave' under the Mental Health Act 1983. This is consistent with the principles of RCRP, which is built around policing's core duties.

- Protect life and property
- Preserve order
- Prevent the commission of offences.

The definition of when a patient is AWOL is contained in the MHA 1983 s 18(1)

Section 18(1) states that a patient becomes AWOL if they:

**a.** Absent themself from the hospital without leave granted under MHA 1983 s.17
**b.** Fail to return to the hospital at the expiration of any period of leave or on being recalled from leave
**c.** absent themself without permission from any place where they are required to reside in accordance with conditions imposed on any grant of leave

The term can also be applied to community treatment order (CTO) patients who have failed to return to hospital when recalled, or who subsequently abscond from hospital.

In the context of a CTO, recall occurs when the patient's responsible clinician requires the patient to return to hospital.

Patients subject to guardianship are considered to be AWOL when they are absent without permission from the place they are required to live by their guardian.

## 3.0 IMPLICATIONS of the POLICY

3.1 Consideration has been given to the implications surrounding the implementation of this policy.

The legality of this policy has been reviewed, at a national level by Kings Counsel (KC) and the relevant legal guidance has been provided to forces. This ensures that the implementation is consistent with these legal principles and takes full account of Human Rights considerations, specifically around Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment of punishment).

The policy is also consistent and supportive of the Codes of Ethics in relation to Authority, Respect and Courtesy as adherence to this policy will ensure the lawful and proportionate use of police powers.

Additionally, this policy has been completed in support of the Equality and Diversity element of the Code of Ethics, specifically around the fair and non-discriminatory way in which it is applied.

3.2 Relevant staff with the Operations and Communications Centre (OCC), will receive training in relation to the implementation and ongoing adherence to this policy and further training will be provided to other officers and staff, as required. Training materials have been provided centrally via the College of Policing to assist in this

3.3 As will be discussed later in this policy, key partners have been widely consulted in the creation of this policy and have had opportunity to provide relevant feedback. There is clearly the potential for this to create additional demand for partners, however the key principle of the policy, and RCRP, is to ensure that the most appropriate agency is involved and provides the right care.

Warwickshire police has a well-established role in locating patients whose location is not known or acting in an emergency to mitigate threats to life involving missing or Absent Without Leave (AWOL) patients. However, a number of other agencies and organisations also owe a duty of care to patients who are missing or AWOL. As such it will be often be the case that they have the lead in such matters and will continue to owe a duty of care when safeguarding patients.

## 4.0 PROCEDURE

4.1 The below records the procedures to be followed in the event that a report of AWOL is made to Warwickshire police.

### 4.2 Initial Police Actions

Police Actions on being notified of AWOL.

- Officers will be deployed immediately it there is an urgent threat to life in respect of anyone, regardless of whether or not the patient's location is has been established.

- A missing person investigation can commence for someone whose location is not known, but Warwickshire police will request the reporting organisation will support their officers by undertaking enquiries which they are better placed to complete.

- The Mental Health Act (MHA) 1983 Codes of Practice (para 28.14) states that where reports relate to a patient whose location is already known, the police should be asked to return patients "where necessary" – this should relate to situations of urgency and / or serious risk. The fact that it has not been possible to identify responsibility within the relevant healthcare organisation in order to give effect to this provision is not sufficient justification to request police support and transport.

*The inquest after the death of Sasha Forster (2019) saw criticism of an NHS trust which could not provide staff to undertake the return of a patient who was known to be highly distressed by any involvement of police officers in their care – a Preventing Future Deaths report was issued.*

Police may support the return of AWOL patients in non-urgent circumstances where the risk of a Breach of the Peace is evident.

- ***Para 28.17 of the MHA 1983 Codes of Practice*** – reports that detained patients are AWOL should include the time scales which will apply to re-detention under the MHA. This is especially necessary where less-common provisions of the Act apply (e.g., S4, S5, or S7 MHA 1983.)

- ***Section 17 MHA 1983 leave / Community Treatment Order (CTO) recalls*** – Warwickshire police has no power to return S17 leave or CTO patients unless their leave has been revoked or they have been recalled from their CTO, in writing.

These are comparatively rare events for officers and if a police presence is required during service of revocation or recall notices because a Breach of the Peace is anticipated, this should be specified.

As failure to return from leave or a recalled CTO renders the patient AWOL, health services should seek assistance to “return an AWOL patient”.

***Breach of the Peace***

A breach of the peace occurs where “Harm is done or likely to done to a person or, in their presence, to their property; or puts that person in fear of such harm being done through an assault, affray, a riot, unlawful assembly or other disturbance.”

Any request for police intervention should make express reference to the threat and risk assessment generated by information supplied to Warwickshire police in 999 calls, or any other communications.

## 4.3 OCC

Warwickshire police has a well-established, but limited, role to play in the response to patients who go missing or are ‘Absent Without Leave’ (AWOL) under the Mental Health Act 1983. It is important to distinguish between someone who is AWOL and someone who is missing (as defined by the Warwickshire force policy).
Not all AWOL patients are ‘missing’ and the duty of care owed when patients are AWOL will usually remain with hospitals or mental health trusts. Upon receipt of a contact, the following questions will be essentially to identifying the appropriate police response:

- ***Is there an urgent threat to life emergency? –*** the police have a duty to protect life and where the location of an AWOL patient is known, the need to act swiftly may justify police attending on their own to making use of their powers. Where such urgency does not exist, other agencies or a slower multi-agency response should be relied upon rather than the police.

- ***Is the patient’s location known*** – if not, the force missing policy must be followed, regardless of questions arising about the person’s MHA 1983 or AWOL status.

  If the patient’s location is already known, then additional questions will be necessary:

- ***What is the patient’s legal status?*** – they may be a voluntary patient or detained under one of the many ‘sections’ of the MHA 1983 which allow for compulsory treatment.

Most usually reports will relate to a S2 or S3 patient, but they could relate to a number of other provisions – ask for precise clarification in order to establish what the requirement is for the police to attend / support

***Four Options***

1. ***Threat to life emergency*** = deploy officers in accordance with normal deployment principles as such a situation is potentially life-changing or life-threatening.

2. ***Location not known*** = refer to the Warwickshire missing person policy.

3. ***Location known, voluntary patient, no emergency*** = Police officers would have no legal powers to respond and act and will also not be best placed to assess safety or wellbeing of patients.

4. ***Location known, detained MHA patient, no emergency*** = Paragraph 28.14 of the MHA 1983 Codes of Practice stipulates it is for hospitals to arrange return of their patient. Police support can be provided, where justified (see below).

***Police Support***

Where healthcare staff seek police support in their attendance to return an AWOL patient, this can be offered where a patient is likely to be 'violent or dangerous' in order that officers can prevent a breach of the peace. Agreeing to joint attendance against this threshold is perfectly permissible and often necessary to prevent serious risks to healthcare staff.

Warwickshire police will not agree to meet another police force 'half way' if they have decided to return an AWOL patient to expedite their return.

It must be noted that the Force Incident Manager (FIM) will be responsible for making the final decision, related to deployment, if concerns are raised (by partners or others) around any decision not to respond to this call for service. Any decisions should be rationalised and recorded appropriately

## 4.4 <u>Operational Officers</u>

Warwickshire police will deploy to incidents involving AWOL patients in some circumstances.

- ***Urgent threat to life*** – where an AWOL patient is at immediate risk of serious harm, an emergency response will be justified and officers have powers by which to mitigate the risk.

- ***Missing persons*** – where a patient's location is not known and they are reported missing, force policy will apply, regardless of their AWOL status or specific MHA considerations.

- ***Paragraph 28.14 MHA 1983 Code of Practice*** – where the location of an AWOL patient is already known, it is the hospital's responsibility to return the patient. Police may support healthcare staff where the patient is 'violent or dangerous' and a Breach of the Peace may be anticipated.

***AWOL / Section 17 Leave / Community Treatment Orders (CTO)***

The definition of AWOL status is that a patient has been detained in hospital and has

a) absconded without permission;
b) had authorised (S17 MHA 1983) leave 'revoked';
c) been 'recalled from a Community Treatment Order; or
d) failed to return from authorised (S17) leave.

In each situation: the patient is AWOL.
Should there be any confusion arising from the way in which these matters are reported or during discussion with MH professionals, the key question to be considered is –

*"Is this patient AWOL under the MHA 1983 now?"*

- ***If not*** – the only legal power available under the MHA 1983 will be under S136, where officers have encountered the patient outside a domestic dwelling. Otherwise, there is no legal power to act.

- ***If they are AWOL now*** – one further question is required*:*

*"When does the s18 MHA authority expire?"*

If a patient is AWOL, there may be a limited timescale for continued / further detention and detail should be sought from the reporting professionals – they have an obligation to specify this timeframe to you. (Para 28.17 of the MHA 1983 Code of Practice).

***AWOL Powers***

- ***Section 18 MHA*** – officers can re-detain an AWOL patient under S18, however there is no power of entry available, unless S17(1)(e) of PACE applies to protect life or limb.

- ***Section 135(2) MHA 1983*** – where PACE does not apply, a warrant must be secured under S135(2) MHA 1983 to gain entry to the premises. Police can apply for this warrant, if necessary, but in the first instance it should be done by the staff from the patient's hospital.

***Absconding form MHA***

AWOL status does not apply to anyone who absconds from S135 or S136 MHA or absconds after being 'sectioned' but before they arrive at hospital – such patients may be re-detained under S138 MHA and taken (back) to the Place of Safety or hospital as

long as they are re-detained within relevant timescales – see the next section, for detail of timescales which apply.

## 4.5 Supervisors/Tactical Advisors

Where Warwickshire police officers have re-detained an AWOL patient, their legal duty is to return that patient to the hospital from which they are missing, or to which they have been recalled.

It is the legal responsibility of the detaining hospital to arrange for the return of their patient and where the distance involved would take Warwickshire police officers outside the force area, this would be another justification for refusing the request.

Inquiries and inquests have examined critical incidents involving mental health patients being moved long distances in police vehicles and the MHA 1983 Code of Practice states conveyance by police vehicle should be exceptional and only where justified by risk. Even where a patient is 'violent or dangerous', long journeys will require clinical supervision and may be better managed by specialist clinical transport which can be arranged by the hospital.

If it will take time for a hospital to make the necessary arrangements to return their patient, consideration needs to be given to that person's immediate care. Nothing prevents a local NHS trust being asked to accommodate the AWOL patient in a Place of Safety until arrangements are complete. Whilst they are not obliged to assist, nothing prevents them from doing so if their facility is not in use and this should be attempted wherever possible.

If it is unavoidable, nothing prevents an AWOL patient re-detained by the police under S18 or S135(2) MHA 1983 from being temporarily held at a police station. The law prohibiting the use of police stations as a Place of Safety apply only to those detained under S135(1) or S136 MHA and whilst it is preferable to avoid police stations, it is not prohibited if there are no other practical options.

- Where a patient from the Warwickshire police area is re-detained elsewhere, no obligation is created for Warwickshire police to be involved – the patient's return is a matter for the hospital and the other force.
- Warwickshire police will not agree to meet another police force 'half way' if they have decided to return an AWOL patient by police vehicle in order to expedite the patient's return.

***Timescales – Re-Detention of AWOL / Absconded Patients***

An Approved Mental Health Professional (AMHP), a constable or anyone authorised by the hospital may act:

- S2 – up until 28 days after their original admission to hospital

- S3 – up to six months after the date on which they become AWOL

- S4 – up to 72hrs after their original admission to hospital
- S5(2) – up to 72hrs after their original detention under 5(2).
- S5(4) – up to 6hrs after their original detention under 5(4).
- S7 – up to six months after the date on which they become AWOL
- S17A – up to six months after the date on which they were recalled.
- S37 – up to six months after the date on which they become AWOL
- S37/41 – any time after they become AWOL.

***Unusual Circumstances***

In these instances, only the police may re-detain.

- S35, 36 and 38 patients may all be retaken in to custody under powers specific to those sections (see s35(10), s36(9), s38(7) MHA 1983) at any time after they abscond: However.
- S35, 36 or 38 patients must then be taken to ***back to court***, ***not to hospital***

4.6 ***Please state which head of department or chief officer has been consulted in the development of this policy:***

| ***Head of Dep't/ Chief Officer Consulted*** | ***Date Communication Sent*** |
|---|---|
| ***C/Supt Mike Smith*** | ***12/01/2024*** |

## 5.0 DOCUMENT HISTORY

The history and rationale for change to policy will be recorded using the below chart:
If you are using this template for a review of a harmonised policy **you must** state in the amendment(s) section what you have changed and complete a Summary of Change form, (please request from Policy Team).

| Date | Author / Reviewer | Amendment(s) & Rationale | Date of Approval / Adoption |
|---|---|---|---|
| 19/12/2023 | DCI Martyn Kendall | New Policy | |

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| 12/01/2024 | DCI Martyn Kendall | Amendments made after proof reading. Clarification given around FIM being the final decision maker. | August 2024 |

## 6.0 CONSULTATION

6.1 This policy has been created in consultation with a number of stakeholders. Consultation has taken place with West Midlands police, due to Coventry and Warwickshire ICB cover both force areas, in order to ensure a consistent approach is taken.

Coventry and Warwickshire ICB have been widely consulted, along with representatives from regional hospitals. Warwickshire County Council have also been consulted from a social care perspective.

This policy has also been consulted on with other ICB's within the West Midlands police force area, as part of a consistent and partnership led implementation across the Warwickshire and West Midlands force areas.

## 7.0 ASSESSMENT AND ANALYSIS

***(the relevant EA, HAS and RA are being completed)***

*7.1* Every policy and procedure will be subject of an Equality Analysis (EA), Health and Safety Assessment (HAS) and Risk Assessment (RA) to be completed by the policy writer, and will be referred to if requested by the reader. There is a separate template for this purpose available in the Policy Writers' Pack in the force document search page.

7.2 **It is compulsory to consult with, and receive a response from Risk Management, Health & Safety and Equality & Diversity as part of the Assessment form to be completed and also your Business Lead on every policy**