

Victoria Police Manual – Procedures and Guidelines

Severe Substance Dependence Treatment Act 2010

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- *Severe Substance Dependence Treatment Act 2010*
- *Severe Substance Dependence Treatment Regulations 2011*
- **VPMP Arrest and Preventative Action**

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

Procedures and Guidelines

1. Treatment options

1.1 *Voluntary treatment*

A person who is repeatedly arrested for drunkenness or chronic drug use may need some form of intervention to break the cycle of chronic alcohol and/or drug use. As indicated in **VPMP Arrest and Preventative Action** the preferred approach is that police encourage the person to seek treatment voluntarily. Persons are more likely to engage in longer term treatment if they are actively involved in the decision to seek help. It may be appropriate to talk to the person about the need for an assessment for their alcohol/drug problem. It is possible, with their permission, to contact the local drug and alcohol treatment centre and refer/make an appointment for the person to attend voluntarily. A visit to the service can also sometimes reduce a person's anxiety about

voluntary treatment. Alternatively, advice can be sought from an appropriate health service.

1.2 Compulsory treatment

In very limited circumstances, it may be appropriate to seek a compulsory detention and treatment order from a Magistrates' Court under the *Severe Substance Dependence Treatment Act 2010* as detailed in section 2 under these Guidelines. The Act provides for a period of detention (up to 14 days) and compulsory treatment of people with severe substance dependence in a treatment centre. The Act is targeted at those people with the most severe substance dependence who urgently require treatment to save their life or prevent serious damage to their health.

It should be noted that police both can apply for orders under the Act (see section 2 below) and have responsibilities to enforce orders (outlined in section 3 below).

2. Applying for Detention and Treatment Order under the *Severe Substance Dependence Treatment Act 2010*

2.1 Applications

Orders should only be sought by members where the person has repeatedly come into police custody and the criteria for an order can be met (see section 2.2 below). As anyone 18 years or older is able to apply for a court order (s.10(1)), it is not solely a police responsibility to apply for such orders. Where members of the public are seeking to obtain such an order they should be referred to the local Magistrates' Court for advice (or their website) and to the Department of Health website for further information:

<http://www.health.vic.gov.au/ssda>

2.2 Criteria

All the following criteria apply in respect to applications for orders (s.8):

- the person must be 18 years or older;
- the person has a severe substance dependence, as defined in s.5 –
 - the person has a tolerance to a substance
 - the person shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance; and
 - the person is incapable of making decisions about their substance use and personal health, welfare and safety due primarily to the person's dependence on the substance;
- because of the person's severe substance dependence, immediate treatment is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health;

- the treatment can only be provided to the person through the admission and detention of the person in a treatment centre; and
- there is no less restrictive means reasonably available to ensure the person receives the treatment.

Detention and treatment must be a consideration of last resort (s.3(2)(a)).

2.3 Initial action

Members intending to apply for an order should:

- Gather evidence addressing the s.8 criteria. Obtain details of past interactions with police. For instance, details of relevant offences and other interventions; their domestic situation; illnesses or injuries; and past attempts at treatment/withdrawal. This information will be needed by the Custodial Medical Officer (CMO) (see below).
- Consult with a Custodial Medical Officer (CMO) to ensure a place is available at an appropriate treatment centre under s.7. The only centre currently declared under the Act is St. Vincent's Hospital, Melbourne.
- While the person is in custody, arrange for the CMO to attend. The CMO's recommendation will be required to support the application (see section 2.4). CMOs are prescribed registered medical practitioners for the purposes of the Act.
- If the person is not in custody then another prescribed registered medical practitioner is to be contacted (see <http://www.health.vic.gov.au/ssdta>)

2.4 Making the application

- Complete an *Application for a Detention and Treatment Order* accompanied by a *Recommendation for Detention and Treatment Order* from the CMO (s.10(2), rr.5, 7, *Severe Substance Dependence Treatment Regulations 2011*). These forms are available from the Department of Health web site (<http://www.health.vic.gov.au/ssdta/forms.htm>).
- Advise the local prosecutions office of the matter (prosecutors can appear on behalf of the police applicant under s.18) and take the documents to the Magistrates' Court nearest to the place of residence of the person to get a place and time for the hearing (s.10(4)).
- Within 24 hours of filing of the application with the court the applicant member is required to serve the documents as required by ss.10(3) and 11(3).

2.5 *Hearing of the application*

- Onus of proof is on the applicant to establish on the balance of probabilities that each of the criteria for detention and treatment applies to the person who is the subject of the application (s.15(5)).
- The applicant for the order must give evidence of how and when the copy of the application for the order was served. If a copy of the application was not personally served on the person and, where applicable, served on the person's guardian the applicant must give evidence about the steps taken to serve the application (ss.16(1)-(2)).
- The court may hold the application in closed court or issue orders protecting the confidentiality of proceedings (s.19(1)-(4)). However, whether or not the Court makes an order, a person must not publish or broadcast anything in relation to the hearing in which are identified, or are identifiable, the person who is the subject of the application, the applicant for the order, or a witness (s.19(5)).

2.6 *Making of the order*

If a court makes an order under s.20 for treatment and detention:

- The order remains in force for 14 days following the admission of the person to the treatment centre (s.20(3)).
- If within seven days after the order is made, the person has not been admitted to a treatment centre, the order lapses, unless within that period, on application from the applicant, an extension is granted by the Court (s.21(4)).
- The applicant must make the necessary arrangements, in consultation with the manager of the treatment centre specified in the order, for the person to be taken and admitted to the treatment centre at St. Vincent's Hospital, Melbourne. The manager of the treatment centre can be contacted on 9288 2624 or 9288 2211 after hours. If a bed is not available at the treatment centre specified in the order, the person may be taken and admitted to any other appropriate treatment centre (s.21(2)-(3)).
- Although s.20(3) authorises a number of persons to take the person who is subject to the order to a treatment centre, the preferred method of transport is ambulance. The process for organising ambulance transport is explained at www.health.vic.gov.au/ssdta/application/step6.htm. Ambulance Victoria have the primary responsibility for transporting persons under the Act and police should only be used to provide transport as a last resort where there are safety risks.
- If police do not provide transport, the police applicant should verify attendance at the treatment centre by the due date as specified in the

order. For the purposes of taking the person to the treatment centre, an authorised person is authorised, subject to s.37 (see section 3.2 below), to enter any premises in which they reasonably believe the person who is the subject of the detention and treatment order may be found (s.20(4)). Section 38 provides powers to restrain or sedate a person if either or both are necessary to enable the person to be safely taken to the treatment centre (see section 3.3 below).

2.7 Application for special warrant to examine person

Section 13 makes provision for application for a special warrant to require a person to be examined by a prescribed registered medical practitioner. On application by police or any person 18 years or over a Magistrate may issue a Special Warrant where satisfied that:

- each criteria for detention and treatment applies to a person.
- a prescribed registered medical practitioner is unable to examine the person for the purpose of determining on recommendation for detention and treatment order.

A special warrant remains in force for seven days after its making. Only police can enforce special warrants, see section 3.1 below.

3. Responsibilities of police under the *Severe Substance Dependence Treatment Act 2010*

3.1 Introduction

In addition to responsibilities that police have under the Act if they are an applicant for a compulsory treatment order (outlined above in section 2), police have other responsibilities under the Act regardless of who is the applicant. These responsibilities are outlined below.

3.2 Execution of special warrants

A special warrant issued under s.13 authorises and directs a member of the police force accompanied by a prescribed registered medical practitioner to enter premises and use appropriate force to examine the person.

Magistrates Courts fax these warrants to the police station closest to the residence of the person named in the warrant. Members should consult with the Custodial Medical Officer for advice on seeking the services of a prescribed registered medical practitioner to accompany the member executing the warrant.

3.3 Entry powers

Section 37 details the powers and requirements that apply if a person is authorised (this includes police) to enter a premises under a warrant issued under s.13 (special warrant), under a detention and treatment order to take a

person to a treatment centre (s.20), or under s.34 to apprehend someone who is absent without leave from a treatment centre:

3.4 Power to restrain or sedate a person

A power to restrain or sedate a person is provided under s.38. If necessary to enable the person to be taken, transferred or returned safely to the treatment centre or taken to or returned from the medical facility (s.38(2)):

- a member of the police force or ambulance paramedic may use reasonable force to restrain the person; and
- a registered medical practitioner may administer or direct a suitably qualified person to administer sedation to the person.

Police have power to search in such cases as detailed in s.38(4).

3.5 Transportation

As detailed at section 2.6, Ambulance Victoria has primary responsibility to provide transport to people subject to detention and treatment orders.

3.6 Apprehension where person leaves treatment centre

Section 34 details powers of apprehension. An authorised person under s.34 includes a member of police (amongst other persons).

Further Advice and Information

For further advice and assistance regarding these Guidelines, contact Drug & Alcohol Strategy Unit on 9247 3549.

Update history

Date of first issue	12/09/2011	
Date updated	Summary of change	Force File number
12/09/2011	New Guidelines developed to support implementation of the <i>Severe Substance Dependence Treatment Act 2010</i> which came into effect on 1 March 2011. It repealed and replaced the <i>Alcoholics and Drug-dependent Persons Act 1968</i>	FF 066858/11