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Recent Legislative Changes – Police, Crime, Sentencing and Courts Act 2022

🕒 17th August 2022



Three recent pieces of legislation have introduced the following changes to the Police, Crime, Sentencing and Courts Act 2022, which impact upon notifiable offences covered by HOCR. For advice or support on any matter relating to crime recording and HOCR, please contact the Force Crime Registrar, [REDACTED]

Sexual Offences

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Section 46: Arranging or facilitating commission of a child sex offence (commencement date: 28 June 2022)

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Section 46 expands section 14 of the Sexual Offences Act 2003 to include offences against children under the age of 13. Section 14 of the Sexual Offences Act 2003 relates to arranging or facilitating the commission of a child sex offence, and The criminal offence covered by section 14 of the Sexual Offences Act 2003 is the arranging or facilitating of the activity. This means that even where no activity takes place, an offence has still been committed when such activity has been arranged or facilitated by an offender. Furthermore, section 14 can be applied regardless of whether the child exists or not, for example if an individual targets a fictitious child who is an undercover police officer pursuing online child sex offenders.

Previously, section 14 only included sections 9 to 13 of the 2003 Act (rape and other offences against children under 16) within its remit. Through the Act, sections 5 to 8 (rape and other offences against children under 13) will also come under the scope of section 14. This amendment ensures that individuals who target children under the age of 13 are sentenced appropriately, based on the severity of the crime they committed.

Section 47: Positions of trust (commencement date: 28 June 2022)

Section 47 inserts a new section 22A into the Sexual Offences Act 2003 ("the 2003 Act"), creating further "positions of trust" for the purposes of the offences set out in sections 16 to 19 of the 2003 Act.

This new section sets out additional circumstances in which person (A) will be in a position of trust in relation to person (B), for the purposes of section 16-19 the 2003 Act, namely, that A must knowingly coach, teach, train, supervise or instruct B on a regular basis in a sport or a religion (section 22A(1)(a)). Read together with the offences in sections 16 to 19, A must be aged 18 or over, and B must be under the age of 18.

The effect of the new section 22A is that the existing 'position of trust' offences will extend to situations where A is in a position of trust by virtue of, for example, being the sports coach of a particular individual aged under 18. This means that it will be an offence for a person (A) to enter into a sexual relationship, or engage in certain other sexual activities, with a young person (B) where they knowingly coach, teach, train, supervise or instruct B on a regular basis in a sport or a religion.

Section 48: Voyeurism: breast-feeding (commencement date: 28 June 2022)

Section 48 amends section 67A of the Sexual Offences Act 2003, to include two new criminal offences (at section 67(2A) and (2B)) of breastfeeding voyeurism.

Section 67(2A) captures a person (A) who operates equipment with the intention of enabling themselves or another person (C) to observe a person (B) at a time when they are breast-feeding a child, without that person's consent or a reasonable belief that they consent.

Section 67(2B) captures a person (A) who records an image of another person (B) breast-feeding a child with the intention that they or a third person (C) will look at that image for a specified purpose, without the breastfeeding person's consent or a reasonable belief that they consent.

To be guilty of the offences the perpetrator must be acting for the purpose of obtaining sexual gratification (whether for themselves, or a third person) or of humiliating, alarming or distressing the victim.

For the purposes of the offences it is irrelevant whether the victim is in a public place or whether their breasts are exposed whilst breast-feeding the child and any references to breast-feeding include rearranging the victim's clothing whilst preparing to breastfeed or having just finished breast-feeding the child.

Domestic Abuse

Section 49: Time limit for prosecution of common assault or battery in domestic abuse cases (commencement date: 28 June 2022)

Section 49 amends the Act to introduce a new section 39A into the Criminal Justice Act 1988, to disapply the time limit for bringing a prosecution set out in section 127(1) of the Magistrates' Courts Act 1980 for cases of common assault or battery where the alleged behaviour of the accused amounts to domestic abuse (as defined by section 1 of the Domestic Abuse Act 2021). This changes the current six-month prosecution time limit for such cases, so that it will in future begin from the date the alleged offence is formally reported to the police through either a witness statement or a video recording made with a view to its use as evidence, rather than from the date of the alleged offence as is currently the case (or from the time of any initial report to the police (e.g. a 999 call)). This will be subject to an overall time limit of a prosecution being commenced within two years of the alleged offence occurring.

Public Order

Section 78: Intentionally or recklessly causing public nuisance
(commencement date: 28 June 2022)

Section 78 creates a new statutory criminal offence of intentionally or recklessly causing public nuisance, replacing the current common law offence. Section 78(1) provides that a person commits an offence if they do an act or omit to do an act they are required to do by any enactment or rule of law, which creates a risk of, or causes serious harm to the public or a section of the public or obstructs the public or a section of the public from the exercise or enjoyment of a right that they may exercise or enjoy or at large. The person must intend the act or omission of an act in question will have a consequence mentioned above or been reckless as to whether it will have such a consequence.

Section 78(2) defines serious harm as death, personal injury, disease, loss of or damage to property, serious distress, serious annoyance, serious inconvenience or serious loss of amenity.

Section 78(3) provides for a reasonable excuse defence for an act or omission mentioned in section 78(1).

Further information on the Act can be found by following this link.

Circular 005/2022: Police, Crime, Sentencing and Courts Act 2022 – GOV.UK (www.gov.uk)

Health and Care Act 2022

The legislation makes it an offence to carry out, offer or aid and abet virginity testing and hymenoplasty in the United Kingdom. There are separate offences for each UK jurisdiction.

Virginity testing and hymenoplasty are illegal and therefore women and girls are not able to consent to the procedures. Women and girls may request the procedures, but due to the harm they cause and them being precursors to other forms of so called 'honour-based' abuse, the procedures have been banned. As such, there are no circumstances under which a woman or girl should be subjected to a virginity test or hymenoplasty.

It is also an offence for a UK national or resident to aid and abet virginity testing or hymenoplasty that is carried out on a woman or girl who is outside the UK but who is a UK national or resident. It does not matter where the aiding or abetting occurs; arrangements could be made from within the UK or overseas, for example. The nationality status of the person carrying out the test is also irrelevant.

It is also an offence for a UK national or resident who is outside the UK to aid and abet virginity testing or hymenoplasty that is carried out on a woman or girl who is in the UK. This could include a person who arranges for remote virginity testing to be carried out, or who makes arrangements from overseas for a hymenoplasty to be carried out in the UK, for example.

Further information on this piece of legislation can be found by following this link. [Virginity testing and hymenoplasty multi-agency guidance – GOV.UK](#)

Nationality and Borders Act 2022

This act amended the Immigration Act 1971 to include three new offences with a commencement date of 28/06/2022.

- 78/28 Immigration offences relating to entering the UK without proper permissions
- 78/29 Offences relating to the facilitation of the commission of a breach of UK immigration law by a non UK national
- 78/30 Offences relating to assisting asylum seekers entering the UK



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Additional serious injury by careless driving offence in the Road Traffic Act

🕒 28th June 2022



Officers should be aware of a new offence of causing serious injury by careless, or inconsiderate, driving.

The Police, Crime, Sentencing and Courts Act 2022 has introduced the offence. Full guidance is below.

Section 86 The Police, Crime, Sentencing and Courts Act 2022 has introduced an additional offence to the Road Traffic Act 1988.

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Section 2C Road Traffic Act 1988 – Causing serious injury by careless, or inconsiderate, driving.

A person who causes serious injury to another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

Maximum Sentence

On summary conviction in England and Wales –

12 months imprisonment or a fine or both.

On Indictment

2 years imprisonment or a fine or both.

Also carries an obligatory disqualification and 3-11 penalty points.

Please also note the increase in the sentencing tariff to life imprisonment for causing death by dangerous driving and causing death by careless driving whilst over the proscribed limit for drink or drugs.

Serious Injury – In England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.

Mechanically Propelled Vehicle – It is ultimately a matter of fact and degree for the court to decide. At its most basic level it is a vehicle which can be propelled by mechanical means. It can include both electrically and steam powered vehicles.

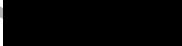
Where – Can be committed on a road or any other public place.

Without due care and attention – For the Court to decide, but basically where the standard of driving/riding falls below that expected of a competent and careful driver/rider.

This is a serious criminal offence that may have significant life changing consequences for both the injured party and perpetrator, attracting greater scrutiny from all involved.

It is the officer's responsibility to investigate this, as all Road Traffic Act offences, to the same high standard as other types of crime. CMU will task officers to achieve this objective.

Advice can be obtained from the [Serious Collision Investigation Unit](#)

 CMU or you can view the [Collision Toolkit](#) on the intranet.

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Extraction of Information from Electronic Devices – Authorising Officer

🕒 2nd December 2022



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The authorised person PDF will provide an overview of the legislative basis for the extraction of information from electronic devices. It provides an introduction to exercising powers provided by the Police, Crime, Sentencing and Courts Act 2022.

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It introduces learners to the legislation, requirements of the codes of practice and the digital processing notice processes. Links to further information are included within the PDF.

The resource is intended for all officers and staff performing the function of 'authorised person' in accordance with the Codes of Practice on the Extraction of Information from Electronic Devices.

To access this content please log on to the College of Policing College Learn at <https://www.learn.college.police.uk> or <https://www.learn.college.pnn.police.uk>

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New Code of Practice for Non-Crime Hate Incidents (NCHI)

🕒 16th June 2023



What is a Non Crime Hate Incident (NCHI)? It is a hate incident that doesn't amount to a crime.

A new **statutory Code of Practice** and corresponding authorised professional practice (APP) has come into force for officers responding to reports of non-crime hate incidents.

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The Code, issued by the Home Secretary, provides guidance to the police in England and Wales for recording non-crime hate incidents (NCHI). It sets out the common-sense and proportionate approach that should be adopted by officers.

The College of Policing's **APP for recording NCHI** has been updated to align with the content of the Code.

The Code introduces an additional threshold test. This clarifies that personal data should only be included in an NCHI record if the event presents a real risk of either:

- significant harm to individuals or groups with a particular characteristic or characteristics
- a future criminal offence being committed against individuals or groups with a particular characteristic or characteristics

For the purposes of the Code, a 'particular characteristic' means race, religion, sexual orientation, disability or transgender identity, as defined in hate crime legislation. This test will enable the police to intervene where necessary to safeguard vulnerable individuals and communities.

Updated APP is now in place for officers to operationalise the new Code. It will support decision making, including whether and how someone's personal data should be processed.

Under the code, if an individual's personal data is processed as part of a NCHI record they should be promptly notified unless the notification presents a safeguarding risk to the complainant.

NCHI recording stems from the murder of Stephen Lawrence in 1993. The 1999 Stephen Lawrence Inquiry Report called for Codes of Practice to create 'a comprehensive system of reporting and recording of all racist incidents and crimes'.

NCHI recording has since expanded to cover all the protected characteristics covered by hate crime laws in England and Wales – race, religion, disability, sexual orientation and transgender identity. This data is vital for helping the police to understand where they must target resources to prevent serious crimes that may later occur.

The code was legislated for through the Police, Crime, Sentencing and Courts Act 2022.

For advice and further materials to support implementing the new Code, officers should refer to:

- [Hate crime APP – Overview](#)
- [Hate crime APP – Responding to hate](#)
- [Hate crime APP – Responding to non-crime hate incidents](#)
- [College Learn e-learning – Recording non-crime hate incidents \(login required\)](#)
- [Staffordshire Police NCHI Workflow](#)



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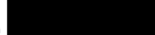
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New developments in Out of Court Resolutions

🕒 22nd January 2024



What are Out of Court Resolutions?

The term Out of Court Disposals (OoCD) was rebranded in June 2023 to **Out of Court Resolutions** (OoCR) as a result of extensive consultation with the public and wider policing family. The name change affects adult OoCRs across England and Wales and it is hoped youth will follow more formally in due course.

Out of Court Resolution processes are changing.

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OoCRs refer to disposal options available to be delivered by the police. Forces use guidance documents available from the Crown Prosecution Service (CPS), Ministry of Justice (MoJ) and the National Police Chiefs' Council (NPCC) and formulate their own local guidance as to how they process and administer these. Currently, some forces are operating with six different options, also known as 6 Tier e.g.: conditional caution; simple caution, PND, cannabis warning etc.; with others having transitioned into two options, also known as 2 Tier e.g.: conditional caution and community resolution. Others have a hybrid version of these two frameworks.

However, new legislation has been passed making it statutory at the point of implementation for all forces to only use **the 2+ framework to deliver OoCR: Diversionary Caution & Community Caution**. Forces will also retain use of the current non-statutory disposal, **Community Resolution**. This remains unchanged and is the 'plus' part of the new framework. All the other disposals will cease to exist, however, some Fixed Penalty Notices will remain.

These changes will see officers and properly appointed police staff consider a conditional caution for **low-level crime**, where an **admission of guilt** has been made and **without the need for court**. They give the ability for offenders to be rehabilitated with diversion programmes (e.g. drugs and alcohol courses, anger management, victim awareness courses) to get to the root cause of offending behaviours with the hope that it will reduce the incidence of reoffending whilst victims are put at the heart of the decision-making process.

OoCRs can be **reparative** (makes amends for wrongs done, making a compensation payment); **rehabilitative** (attends an intervention specific to their offending behaviour); **restorative** (opportunity to be face to face with the victim to apologise/understand the effects of their behaviour) or **punitive** (a financial penalty).

For several years the NPCC have been encouraging forces to transition within their existing capabilities to a 2Tier structure to simplify and bring consistency across force areas, as well as to assist force readiness ahead of the 2Tier+ framework being implemented.

Therefore the activities described may well be taking place already in your force.

When will these changes take affect?

This change is a result of the introduction of Part 6 of the **Police, Crime, Sentencing and Courts Act, 2022** which outlines the new 2Tier+ OoCR framework, with the draft **Diversionary and Community Caution Codes of Practice written by the MoJ** which provides the

detail about how police should deliver these, anticipated to be finalised in Spring 2024. An implementation date is forecast for 2025, at which point these changes will become mandatory.

What are the benefits of a 2Tier framework?

T/Deputy Assistant Commissioner Dr. Alison Heydari, Lead for NPCC Out of Court Resolutions portfolio, has set her national vision and strategic direction in the [Out of Court Resolutions National Strategy](#). This strategy has aspirations to achieve a **consistent** service and eliminate the post code lottery for victims and offenders, to eliminate **disproportionality** and set ourselves high standards in matching diversionary interventions that will help reduce **reoffending**.

Diversionary and community cautions are both conditional cautions and will have at least one condition attached which will be mandatory for the offender to complete. This should be a condition that addresses the offending behaviour. Evidence has shown that this decreases the likelihood of the offender reoffending by tackling the **root causes**.¹ Custodial sentences have proven to not always be effective and many will reoffend upon release. In particular, first-time offenders who are helped to tackle the root problem of their behaviour through OoCR **diversionary schemes**, [have proven to be more effective](#).

Some of the other benefits of OoCR are:

- Having the **victim** included in the process, their voice heard and needs addressed in an efficient way;
- Not criminalising **first time** offenders for low level crimes;
- **Changing** offender behaviour through early intervention, diversion and rehabilitation schemes;²
- **Simplified** process for officers with timely decision making and case progression;
- A structure that is **easy** to understand;
- OoCRs have proven to be more **effective compared to court prosecution**.

Support for Change

The NPCC advocates having force centralised OoCR Teams to support effective management of OoCR processes, delivering quality outcomes that meet victim expectations and make changes to life outcomes for offenders. The NPCC OoCR portfolio continues to support forces to make the necessary changes to a 2Tier framework.

¹ Neyroud P (2018) *Out of Court Disposals Managed by the Police: A Review of the Evidence*.

² Blakeborough L, Pierpont H (2007) *Conditional Cautions: An Examination of the Early Implementation of the Scheme*. London: Ministry of Justice.

Easton H, Slivestri M, Evans K, et al. (2010) *Conditional Cautions: Evaluation of the Women Specific Condition Pilot*. London: Ministry of Justice.

Lipsey M, Cullen F (2007) The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science*.

Streamlining Out of Court Disposals: Assessing the Impact on Reoffending and Police Practice Michael Rowe, Aaron Amankwaa, Paul Biddle and Lyndsey Bengtsson Northumbria University, UK



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OUT OF COURT RESOLUTIONS

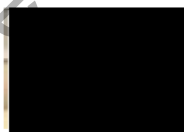


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New legislation – please make sure you are up to date with police driver training

🕒 2nd December 2022



New regulations, effective from 30 November 2022, set out the prescribed training that will in effect give trained police drivers the better protection under the [Police, Crime, Sentencing and Courts Act](#) and [The Road Traffic Act 1988 \(Police Driving: Prescribed Training\) Regulations 2022](#).

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The new regulations will have an impact on officers trained to drive police vehicles. Their driving will no longer be assessed by the standards of the careful, competent driver, as was previously the case, but will now be judged by those of their careful and competent colleagues who have completed the same level of prescribed training.

The previous legislation did not recognise the training that police response drivers undertake and the tactics they may need to employ when responding to emergencies or pursuing criminals. This new legislation is good news but, for the new test to be applied, officers must be driving for police purposes and have undertaken the prescribed training as set out in the regulations.

It is the responsibility of the officer to make sure that they only drive when they are up to date with the prescribed training as defined in the regulations and legislation. Please ensure you are meeting this requirement and contact driver training or the Roads Policing Unit if you need advice.

There is more information on the legislation in this [frequently asked question document](#).

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Operation Modify the Sequel: Developing Digital Thinking – Maximising Digital Information and Intelligence

🕒 11th May 2023



Welcome to Operation Modify
Improving digital thinking



Operation Modify products have been update to reflect the legislation and Code of Practice governing the extraction of information from electronic devices.

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Changes have been made within the Operation Modify products to ensure they reflect the legislation and Code of Practice governing the extraction of information from electronic devices.

It now covers current requirements for the roles of authorised person and sanctioning officer with links to role specific College of Policing knowledge products as well as NPCC Digital Processing Notices (DPNs).

It is aligned to the Code of Practice and legislation contained within the Police, Crime, Sentencing and Courts Act 2022.

Operation Modify the Sequel: Developing Digital Thinking continues on from the 10-episode boxset, Operation Modify: Improving Digital Thinking. Working with subject matter experts from across policing, listening to force feedback and identifying digital learning based on the demands of policing, four new modules have been developed.

The first module, Assessing Risk and Vulnerability in a Digital Environment (released on 20 January 2022), built on the missing from home aspect of the original boxset and focused on a vulnerable teenage girl and her relationship with a man who is grooming her online.

This second module, Maximising Digital Information and Intelligence, continues the story and focuses on how to maximise data throughout an investigation.

By the end of the module, learners will know how to:

- use the APP guidance document, 'Principles for the extraction of material from digital devices for the purpose of an investigation'
- apply the 10 principles for the extraction of material from digital devices for the purpose of an investigation
- use technology to maximise information and intelligence in everyday policing

The module will also cover signposting to partner organisations and additional resources.

This unique, enjoyable and innovative learning package brings digital investigation skills to the front line, to ensure that all police officers and staff have the ability, knowledge and confidence to operate in an ever-changing digital landscape.

This module will be followed by two further learning opportunities:

- Managing Digital Evidence
- Case File Digital Evidence

This module is intended for Front line officers and police staff.

To access this content please log on to the College of Policing College Learn at <https://www.learn.college.police.uk> or <https://www.learn.college.pnn.police.uk>

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MAXIMISING DIGITAL INFORMATION AND INTELLIGENCE

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Police Digital Service [REDACTED] – a trial for RASSO and Child Protection colleagues

🕒 6th November 2024



Staffordshire Police are pleased to be working with Police Digital Service (PDS) to [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED] aims to support the Police, Crime,

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Sentencing and Courts Act (2022) by ensuring that data is only captured if it relates to the reasonable lines of enquiry, therefore minimising intrusion to the victim or witness.

If you are involved in the trial (running until 13 November), [REDACTED]

If you would like to learn more about [REDACTED] please contact [REDACTED] Quality Services Project Coordinator – [REDACTED]

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Pre-Charge Bail changes go live today

🕒 28th October 2022



The Police, Crime, Sentencing and Courts Act 2022 (PCSC) was introduced in April 2022 to rebalance the use of pre-charge bail. It removed the presumption against bail, replacing it with a neutral position to encourage the use of pre-charge bail where it is necessary and proportionate in all of the circumstances of the case.

It amended the levels of authority and changed the duration of the applicable bail periods (ABPs), including extending the initial ABP to three months in standard cases.

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To involve victims further, the PCSC introduced a duty to seek the views of victims when imposing or varying bail conditions. It provided for a three-hour pause to the detention clock so that arrests for breach of bail conditions, or failing to answer bail, do not negatively affect the original Police and Criminal Evidence Act 1984 (PACE) clock

Police forces are now required to move into implementation stage of the new reforms with the support of the College of Policing (CoP) and National Police Chief's Council (NPCC).

The main changes include:

Removal of the presumption against pre-charge bail

The Government has established a neutral position within legislation, by removing the presumption against pre-charge bail. This is designed to encourage its use when necessary and proportionate to do so, based on each case's individual circumstances and the list of risk factors now set out in legislation. Custody officers will continue to make this decision on a case by case basis. The use of pre-charge bail is likely to increase as a result of this change, with a corresponding decrease in the use of the Released Under Investigation (RUI) process.

Amendments to timescales and the level of sign-off

The reforms enable custody officers, who are independent of investigations, to authorise the first period of pre-charge bail to a period of three months in standard police cases. Further extensions in these cases will require approval from an officer of the rank of Inspector or above to six months, and a Superintendent or above will need to authorise any extension to nine months. Judicial approval will then be sought to extend beyond nine months.

Duty to inform/seek the views of victims

There is a duty on investigating officers to inform victims when pre-charge bail conditions are set or varied and seek their view on those conditions which relate to the victim's safeguarding, where reasonably practicable. Investigating officers will then pass this information to custody officers. This will enable custody officers to consider any safeguarding concerns, putting appropriate measures in place and ensure that victims feel involved in the process. Decisions on the pre-charge bail conditions which are set remain a matter for the custody officer, taking into account the views fed in from the victim as well as other considerations.

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Changes to the custody clock

In order to simplify arrangements for arrest for breach of pre-charge bail conditions, a 'pause' on the custody clock of 3 hours when a suspect is arrested for such a breach has been introduced which will enable police to arrest for breach of pre-charge bail.

Guidance/implementation

Statutory Guidance developed by the CoP and NPCC addresses ways forces can deal with people who are being investigated for criminal offences but who have not yet been charged. These include

- pre-charge bail without conditions
- pre-charge bail with conditions
- released under investigation (RUI)

There is evidence that imposing pre-charge bail on a suspected perpetrator, and the conditions attached to it, are linked with victims' feelings of safety. Victims who don't feel well supported by the police reported experiencing significant and long-lasting consequences. In several cases, victims who were dissatisfied with the police response felt they would be less likely to report a crime in the future.

When it is lawful for police officers to do so, imposing bail with conditions can communicate to victims, suspected perpetrators and support organisations that the matter is being taken seriously.

The **PCB College e-learning course** and **training aide** have been developed to provide you with the relevant up-to-date information and understanding in the use of pre-charge bail. These learning aides have been developed in close partnership with operational subject matter experts from Merseyside Police.

A temporary helpline* staffed by operational staff who have been involved in the development of the Statutory Guidance has also been set up and additional support can also be found on the **College's pre-charge bail Knowledge Hub**.



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