

# HANDLING THE MENTALLY ILL

POLICY & PROCEDURE NO. <b>2.03</b>	ISSUE DATE: <b>July 27, 2015</b>
	EFFECTIVE DATE: <b>8/3/2015</b>
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>none</b>	REVISION DATE: _____

## I. GENERAL CONSIDERATIONS AND GUIDELINES

Reaction to the mentally ill covers a wide range of human response. People afflicted with mental illness are ignored, laughed at, feared, pitied and often mistreated. Unlike the general public, however, a police officer cannot permit personal feelings to dictate his/her reaction to the mentally ill. His/her conduct must reflect a professional attitude and be guided by the fact that mental illness, standing alone, does not permit or require any particular police activity. Individual rights are not lost or diminished merely by virtue of a person's mental condition. These principles, as well as the following procedures, must guide an officer when his/her duties bring him/her in contact with a mentally ill person.

## II. POLICY

- A. It is the policy of this department that:
1. Officers shall accord all persons, including those with mental illness, all the individual rights to which they are entitled;  
and

2. Officers shall attempt to protect mentally ill persons from harm and shall refer them to agencies or persons able to provide services where appropriate.

### III. PROCEDURES

#### A. Recognition and Handling

1. An officer must be able to recognize a mentally ill individual if [s]he is to handle a situation properly.
  - a. Factors that may aid in determining if a person is disturbed are:
    - i. Severe changes in behavioral patterns and attitudes;
    - ii. Unusual or bizarre mannerisms and/or appearance;
    - iii. Distorted memory or loss of memory;
    - iv. Hallucinations or delusions;
    - v. Irrational explanation of events;
    - v. Hostility to and distrust of others;
    - vii. Fear of others such as paranoia;
    - viii. Marked increase or decrease in efficiency;
    - ix. Lack of cooperation and tendency to argue;
    - x. One-sided conversations; and
    - xi. Lack of insight regarding his/her mental illness.
  - b. These factors are not necessarily, and should not be treated as, conclusive. They are intended only as a framework for proper police response. It should be noted that a person exhibiting signs of an excessive intake of alcohol or drugs may also be mentally ill.

2. If an officer believes [s]he is faced with a situation involving a mentally ill person, [s]he should not proceed in haste unless circumstances require otherwise.
  - a. An officer should be deliberate and take the time required for an overall look at the situation.
  - b. An officer should ask questions of persons available to learn as much as possible about the individual. It is especially important to learn whether any person, agency or institution presently has lawful custody of the individual, and whether the individual has a history of criminal, violent or self-destructive behavior.
  - c. An officer should call for and await assistance. It is advisable to seek the assistance of professionals such as doctors, psychologists, psychiatric nurses and clergy, if available. The officer should have telephone numbers and locations of crisis centers.
  - d. It is not necessarily true that mentally ill persons will be armed or resort to violence. However, this possibility should not be ruled out and because of the potential dangers, the officer should take all precautions to protect everyone involved.
3. It is not unusual for such persons to employ abusive language against others. An officer must ignore verbal abuse when handling such a situation.
4. Avoid excitement. Crowds may excite or frighten the mentally ill person. Groups of people should not be permitted to form or should be dispersed as quickly as possible.
5. Reassurance is essential. An officer should attempt to keep the person calm and quiet. [S]he should attempt to show that [s]he is a friend and that [s]he will protect and help. It is best to avoid lies and not to resort to trickery.
6. An officer should at all times act with respect towards the mentally ill person. Do not "talk down to" such person or treat such a person as "child-like." A person with mental illness may be both highly intelligent and acting irrationally. Mental illness, because of human attitudes, carries with it a serious stigma. An officer's response should not increase the

likelihood that a disturbed person will be subjected to offensive or improper treatment.

## B. **Taking a Mentally Ill Person into Custody**

1. A mentally ill person may be taken into custody if:
  - a. [S]he has committed a crime.
  - b. The officer has a reasonable belief, under the circumstances, that [s]he poses a substantial danger of physical harm to himself/herself or other persons.<sup>1</sup> Threats or attempts at suicide should never be treated lightly.
  - c. [S]he has escaped or eluded the custody of those lawfully required to care for him/her.
2. At all times, an officer should attempt to gain voluntary cooperation from the individual.
3. **Chapter 123, Section 12(e) Petitions:**
  - a. In an emergency situation, if a physician or qualified psychologist is not available, a police officer, who *reasonably believes* under the circumstances that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness, may restrain such person and apply for the hospitalization of such person for a ten day period at a public facility or a private facility authorized for such purpose by the Massachusetts Department of Mental Health.<sup>2</sup>
  - b. Although "any person," including a police officer, may petition a district court to commit a mentally ill person to a facility for a ten day period if failure to confine that person would cause a likelihood of serious harm<sup>3</sup>, generally, a police officer should be the last person to initiate such proceedings. Ten day commitment proceedings under section 12(e) of Chapter 123 should be initiated by a police officer only if all of the following procedures have been observed:

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- i. Determination has been made that there are no outstanding commitment orders pertaining to the individual; and
  - ii. Every effort has been made to enlist an appropriate physician, psychiatrist, psychologist, social worker or family member to initiate the commitment proceedings; and
  - iii. The officer has received approval from the Chief or the appropriate commanding officer of the department.
- c. Officers may effect a warrantless entry to execute a section 12 application for temporary hospitalization (pink paper) provided:<sup>4</sup>
- i. They are in possession of the pink paper;
  - ii. The entry is of the residence of the subject of the pink paper;
  - iii. The pink paper was issued by a qualified physician, psychologist, or psychiatric nurse in an emergency situation and where the subject refused to consent to an examination; and
  - iv. The warrantless entry is made within a reasonable amount of time after the pink paper has been issued.

NOTE: If any of the above criteria are not met and unless exigent circumstances are present, a warrant shall be obtained prior to any entry of a residence to execute a pink paper.

#### 4. ***Escapes from Mental Health Facilities***

- a. If a patient or resident of a facility of the Massachusetts Department of Mental Health is absent without authorization, the superintendent of the facility is required to notify the state and local police, the local district attorney and the next of kin of such patient or resident. <sup>5</sup>

- b. Such persons who are absent for less than six months may be returned by the police. This six month limitation does not apply to persons who have been found not guilty of a criminal charge by reason of insanity nor to persons who have been found incompetent to stand trial on a criminal charge.<sup>6</sup>

## 5. ***Taking Into Custody***

- a. Whenever police take a mentally ill person into custody, the appropriate mental health officials should be contacted. They should be informed of the individual's condition and their instructions sought on how to properly handle and, if necessary, restrain the individual and to what facility [s]he should be taken.<sup>7</sup>
- b. If an officer makes application to a hospital or facility and is refused, or if [s]he transports a person with a commitment paper (section 12 paper) signed by a physician, and that person is refused admission, [s]he should ask to see the administrative officer on duty to have him/her evaluate the patient. If refusal to accept the mentally ill person continues, the officer shall not abandon the individual, but shall take measures in the best interests of that person and, if necessary, take the mentally ill person to the station house. Notification of such action shall immediately be given to the officer-in-charge or the Chief, who can notify the Department of Mental Health.
- c. Police officers are immune from civil suits for damages for restraining, transporting, applying for the admission of or admitting any person to a facility if the officer acts pursuant to the provisions of Chapter 123.<sup>8</sup>

## 6. ***Interrogating Mentally Ill Suspects***

- a. Whenever a mentally ill or mentally deficient person is a suspect and is taken into custody for questioning, police officers must be particularly careful in advising the subject of his/her Miranda rights and eliciting any decision as to whether [s]he will exercise or waive those rights. It may not be obvious that the person does not understand his/her rights. The departmental

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policy and procedure on ***Interrogating Suspects and Arrestees*** should be consulted.

- b. In addition, it may be very useful to incorporate the procedures established for interrogating juveniles when an officer seeks to interrogate a suspect who is mentally ill or mentally deficient.
  - c. Before interrogating a suspect who has a known or apparent mental condition or disability, police should make every effort to determine the nature and severity of that condition or disability, the extent to which it impairs the subject's capacity to understand basic rights and legal concepts such as those contained in the Miranda warnings and whether there is an appropriate "interested adult," such as a legal guardian or legal custodian of the subject, who could act on behalf of the subject and assist the subject in understanding his/her Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.
7. CONFIDENTIALITY: Any officer having contact with a mentally ill person shall keep such matter confidential except to the extent that revelation is necessary for conformance with departmental procedures regarding reports or is necessary during the course of official proceedings.
8. LOST OR MISSING: If a mentally ill or deficient person is reported lost or missing, police should provide the family of the telephone number of the National Alliance for the Mentally Ill (NAMI)/Homeless or Missing Persons Service which operates an emergency hotline to assist all families and friends who have a missing relative or friend. The telephone number is (740) 423-4279. See the departmental policy and procedure on ***Missing Persons***.
9. COMPLAINTS WITH NO IMMEDIATE THREAT: An officer who receives a complaint from a family member of an allegedly mentally ill person who is not an immediate threat or is not likely to cause harm to himself or others, should advise such family member to consult a physician or mental health professional.

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<sup>1</sup> *Ahern v. O'Donnell*, 109 F.3d 809 (1st Cir. 1997)

<sup>2</sup>M.G.L. c. 123, s. 12(a); *Ahern v. O'Donnell*, 109 F.3d 809 (1st Cir. 1997)

<sup>3</sup>M.G.L. c. 123, s. 12(e)

<sup>4</sup> *McCabe v. Life-Line Ambulance Service, Inc.*, 77 F.3d 540 (1st Cir. 1996)

<sup>5</sup> M.G.L. c. 123, s. 30

<sup>6</sup>M.G.L. c. 123, s. 30

<sup>7</sup> M.G.L. c. 123, s. 12(a)

<sup>8</sup>M.G.L. c. 123, s. 22