

MICHIGAN COMMISSION ON
LAW ENFORCEMENT STANDARDS

**THE LAW ENFORCEMENT RESPONSE
TO
PERSONS WITH MENTAL DISORDERS**

A Policy Writing Guide

2017

Michigan Commission on Law Enforcement Standards	Policy Writing Guide
The Response to Persons with Mental Disorders	Revision Date: December 2017

OVERVIEW

The purpose of this policy writing Guide is to provide assistance to those writing departmental policies and procedures (P&P) in the law enforcement response to persons with mental illnesses or developmental disabilities. We believe that organizational policies and procedures represent the standard of care expected of line officers, particularly for situations calling for reflective thinking and problem solving capabilities. Patrol officers must be provided with guiding principles in order to respond appropriately to those with mental disorders. Officers must recognize behaviors at the scene so they can better assess and de-escalate the situation. In one instance, an arrest may be appropriate, while in another, diversion to mental health services may be the best resolution.

In a fundamental sense, departmental regulations define an organization’s values. Law enforcement administrators attempt to direct officer decision making and discretion by seeking ways to reduce the ambiguities of a situation through official regulations. Such regulations contain the procedures or behaviors expected of responding patrol officers in certain situations. But all too often, policies are written in terms of what officers may *not* do rather than what they *should* do. We recognize that written directives can be difficult to create and may address only part of the total decision making process. Most officers will, of course, conform to agency requirements and administrators must address poor decisions immediately. However, many decisions are made outside the view of supervisors and guidance through written protocols and best practices becomes even more crucial.

Mental disorders are not limited by race, age, socioeconomic class, or occupation. An individual with a mental disorder may be a victim of a crime or accident, may call for law enforcement assistance, or be the subject of a police emergency response. Therefore, it is imperative that those involved in the criminal justice system work in partnership with others in the community to find the most sensible and effective measures to meet the needs of the consumer. The system should respond as it would respond to any other stakeholder or victim in need of assistance. At the scene, officers must pursue remedies appropriate to the situation.

Writing policies requires research and study—a P&P cannot be created overnight—and we hope that this document can provide some assistance in this endeavor. We also recognize that each individual jurisdiction is unique. The essential elements of the Guide can be easily adapted to local needs and best practices. Agency policies should be written within the context of local protocols, organizational culture, and available community resources.

As used in this policy, the term “consumer” refers to an individual with a mental disorder who comes in contact with the system. In this document we purposely avoid using terms such as “victim”, “perpetrator”, “mental”, “complainant”, or other such terms that may unfairly categorize persons requiring services. The intent is to avoid derogatory references, intentional or unintentional, regarding individuals with mental disorders.

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1. Every police agency should acknowledge the existence of the broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgment should take the form of comprehensive policy statements that publicly establish the limits of discretion, that provide guidelines for its exercise within those limits, and that eliminate discriminatory enforcement of the law.
2. Every police chief executive should establish policy that guides the exercise of discretion by police personnel in using arrest alternatives.
3. Every police chief executive should establish policy that limits the exercise of discretion by police personnel in conducting investigations, and that provides guidelines for the exercise of discretion within those limits.
4. Every police chief executive should establish policy that governs the exercise of discretion by police personnel in providing routine peacekeeping and other police services that, because of their frequent recurrence, lend themselves to the development of a uniform agency response.

Source: National Advisory Commission on Criminal Justice Standards and Goals, Police (Washington D.C., US Government Printing Office, 1973, pp. 21-22.

In February, 2004, Governor Granholm convened a special Mental Health Commission, which consisted of participants from various mental health backgrounds across Michigan. In October of that year, the commissioners presented the Governor with a report that contained 71 recommendations for improvements to the system. The recommendations specifically addressed mental disorder and its connection to the criminal justice system.

In 2008, Senator Liz Brater (D-Ann Arbor) and Senator Alan Cropsey (R-Ionia) allocated funding for MCOLES to create training for law enforcement officers and other first responders in the response to those with mental disorders. The overall goal is to improve the system's ability to meet the needs of the consumer. The Senators recognize that too many persons with mental disorders are in jails and prison and would be better served in the mental health system. We thank Senators Brater and Cropsey for their concern regarding this issue.

Note: This Guide offers sample language for those writing departmental policies and procedures. The Guide is written primarily for law enforcement agencies, but those in the mental health profession may find it useful as well. In this Guide, most major headings are accompanied by a **commentary**, which is intended to help clarify the intent of each section and to provide further guidance during the writing process.

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POLICY WRITING GUIDE

THE LAW ENFORCEMENT RESPONSE TO PERSONS WITH MENTAL DISORDERS

I PURPOSE

This policy defines the agency's commitment and the officer's responsibility in responding to situations involving individuals with mental illnesses or developmental disabilities. The overall purpose of this policy and procedure is to offer guidance to law enforcement officers in their response to individuals with mental disorders. This agency is an essential component of area local services, which provide support and assistance to those with mental disorders, family members, and the community at large. Officers must determine the most fair and humane response within the context of each situation. The establishment of this policy is intended to help mitigate indecision and ambiguity in the minds of responding officers and to engender confidence when exercising judgment in the performance of their duties.

Goals

The overall goals of the agency's mental disorder response policy are to:

1. Reduce injuries to responding officers by using proper de-escalation techniques;
2. Increase the safety of consumers by using appropriate communication strategies;
3. Identify a community-based approach as a response to those with mental disorders;
4. Identify appropriate resolutions available to responding officers at the scene; and
5. Reduce the stigma associated with mental disorders.

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II POLICY

Department members shall afford individuals with mental disorders all legal rights and access to governmental services that are provided to all citizens. The core objectives of this policy are to ensure the safety of first responders and other individuals at the scene by improving the ability to act appropriately and to identify the proper resolution for each situation. Officers are responsible for responding to many kinds of non-criminal incidents. Officers should respond safely to the scene, interpret verbal and behavioral cues accurately, understand the legal authority to act, and work with partners in the community to best meet the needs of the consumer. Incarceration may not always be the best resolution. An arrest should be used only in situations where there is probable cause that a crime has been committed. Officers must consider a variety of options at the scene, including long-term resolutions, and initiate appropriate action depending on the context of the situation.

Commentary:

The term “mental disorder” is difficult to define precisely. Behaviors seldom fit into neat categories and the categorizations themselves are not always mutually exclusive. Consumers may have more than one disorder or may also have a drug dependency, making it difficult to determine which actions or behaviors result from which underlying problems. Sometimes a person with a developmental disability may also have a mental illness.

Mental illness is defined as a substantial disorder of thought, perception, or mood that places an individual outside the realm of reality. Mental illness may develop at any point during an individual’s lifetime and may sometimes be temporary and reversible. Mental illness is not connected to an individual’s level of intellectual functioning and may not necessarily impair social adaptation.

A *developmental disability* is a condition that may occur from birth or early childhood, which prevents the individual from being fully independent. Developmental disabilities are characterized by the inability to live independently, an inability to communicate, care for oneself, or hold a job.

The American with Disabilities Act (ADA) entitles individuals with mental illness or developmental disabilities to the identical services and protections that law enforcement agencies provide to any citizen. The ADA calls for law enforcement agencies and agency members to make reasonable decisions in their dealings with those with mental disorders, within the context of the ADA.

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III PROCEDURES

I. The Initial Response

- A. When responding to a situation involving an individual with a mental disorder, officers shall carefully and safely assess the situation by determining the nature of the call and its context before deciding which resolution will be most appropriate. Responding officers shall obtain information from dispatch to determine if the situation involves potential violence, the presence of weapons, or physical injuries.
- B. At the scene, officers must first evaluate dangerous or potentially dangerous behavior. This may include the involvement of alcohol or controlled substances, erratic behavior that may escalate to aggression toward the officer or others, or the immediate need for medical assistance.
- C. Responding officers shall approach the scene by maintaining safety through proper positioning, maintaining personal space, using a tactical approach, looking for weapons, and anticipating the potential for violent aggression.
- D. Officers shall stabilize the scene using appropriate de-escalation techniques. In general, officers should approach the scene strategically and interact in a calm, non-threatening manner. The following de-escalation strategies can be used to calm a person who is experiencing an emotional crisis:
 - a. avoid overreacting and indicate a willingness to help and understand;
 - b. speak simply (but not simplistically) and move slowly;
 - c. be patient, accepting, and encouraging, but also remain professional;
 - d. announce actions before initiating them;
 - e. avoid touching (except for safety);
 - f. request additional resources, back-up units, or assistance, as needed; and
 - g. consider using mental health practitioners or other community partners.
- E. Once the scene is stabilized, officers shall ask questions in a respectful manner and listen carefully to what the consumer and others are saying. Officers shall consider all relevant information and recognize the need for a thorough investigation.

Commentary:

The professional research, including research from the American Psychiatric Association, demonstrates that, in general, “violent and criminal acts directly attributable to mental illness account for a very small proportion of all such acts in the United States. Most persons with mental disorders are not criminals, and of those who are, most are not violent” (Marzuk, Archives of General Psychiatry, 1996). Unquestionably, first responder safety must be of primary concern, but many encounters are often more violent for the consumer than for the responding officers.

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II. Behavioral Reactions

- A. Law enforcement officers may encounter a multitude of behaviors when responding to a call involving individuals with mental disorders. Officers must strive to accurately recognize and interpret behaviors at the scene in order to make the most informed decisions to resolve the immediate situation.
- B. Behaviors associated with mental illness may include:
- sitting, doing nothing, or being non-responsive;
 - wearing clothes inappropriate to the weather;
 - hearing voices;
 - demonstrating profound confusion;
 - displaying abnormal fear, panic, apathy; or
 - having endless energy or having grandiose plans.
- C. Behaviors associated with developmental disability may include:
- inattention or inactivity (or a combination of both);
 - social withdrawal;
 - unexpected behavioral outbursts such as screaming or laughing; or
 - worry out of proportion to the feared event.

III. Verbal Responses

- A. Verbal cues associated with mental illness may include a rapid flow of unrelated thoughts, disorganized thinking (including loose associations), talking about delusions or hallucinations, or speaking very slowly or repeating words.
- B. A person with a developmental disability may exhibit:
- slurred speech or invented speech;
 - an inability to express thoughts clearly;
 - an intense desire to please those in authority, and
 - inappropriate laughing.
- C. At the scene, officers may observe some behaviors that may be the result of either a mental illness or a developmental disability or a combination of both.

IV. Interaction at the Scene

- A. Officers shall communicate appropriately and effectively with consumers at the scene by:
- treating the consumer with dignity and respect;
 - not arguing, but asking questions more than once for clarification;
 - maintaining honesty, patience, and understanding;
 - spending extra time to open the lines of communication; and
 - asking about medications or prior hospitalizations.

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- B. If practical, officers shall question family member and/or friends to learn about:
- past suicide attempts or threatened suicide;
 - medications or drugs;
 - a history of mental disorders; or
 - a history of treatment or prior hospitalizations.
- C. Law enforcement officers may observe medications at the scene used by the consumer to manage or control their symptoms. Common medications include:
- Zoloft and Prozac;
 - anti-psychotics such as Mellaril, Haldol, or Thorazine; or
 - anti-anxiety medications such as Valium, Xanax or Ativan.
- D. Officers must recognize that consumers may stop taking their medications for a variety of reasons, including:
- real or imagined serious side effects;
 - an inability to obtain prescriptions; or
 - a sincere belief that the prescribed medications are harmful.
- E. Officers shall not *diagnose* mental disorders and the intent of this policy is not to make officers diagnosticians or clinicians at the scene. Inaccurate classifications of disorders may lead to inappropriate resolutions. But a fundamental understanding of the distinction between mental illness and developmental disability is clearly important for an appropriate response.

Commentary:

It is important for first responders to recognize behaviors that may reveal an underlying mental health issue. The better a first responder is able to appropriately interpret the behaviors he or she observes at the scene or at intake, the better the response will be to assess the situation and meet the needs of the consumer. This understanding may lead to alternative, and perhaps more appropriate, methods of intervention or referral, not only at the scene, but as the consumer interacts with other components of the criminal justice system.

Officers should understand that they may not be able to have a rational conversation with the consumer. But, the conversation should be concrete and redirected when needed. Officers should also acknowledge that delusional statements are very real to the consumer. Officers should recognize that uniforms, radios, flashing lights, etc., may frighten the consumer and may produce a “fight or flight” reaction.

Officers should not express anger, impatience, contempt, or irritation.

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V. Interventions

- A. Law enforcement officers shall make informed decisions regarding intervention strategies at the scene. Officers shall evaluate the nature and seriousness of the situation by considering any physical injury, behavioral cues, current environment, and safety. The officers' decisions to resolve the situation must be based on the totality of circumstances and the legal authority to act.
- B. The determination to take the individual into involuntary custody shall be based on a violation of the criminal statutes or a reasonable belief that the person requires treatment (PRT)—see section VI. Officers shall also check for violations of court orders or outstanding warrants.
- C. Officers shall consider alternatives to involuntary custody, in the absence of a serious offense, outstanding warrant, or PRT. Alternatives include:
 - a. voluntary hospitalization;
 - b. outpatient treatment;
 - c. counsel-and-release;
 - d. referral to a local community based mental health facility;
 - e. referral to local mental health practitioners, clinicians, or service providers; or
 - f. release to family members or peer support groups.
- D. Some jurisdictions administer jail diversion programs, where those charged with less serious, non-violent crimes can be diverted to community based mental health treatment services and other community services or programs.

Commentary:

Some agencies may use crisis intervention teams (CIT), which employ specially trained uniformed officers for response. Other communities may offer comprehensive advanced response, which includes advanced training for all patrol officers in mental health issues. Still other agencies may respond to the scene with mental health professionals or practitioners.

Consumers end up in jail and prison in large numbers, but neither place is a good setting for mental health treatment. Consumers may even get worse when incarcerated. A successful jail diversion program is a cooperative effort and is dependent on working relationships with mental health practitioners and clinicians in the community. Simply incarcerating a consumer is only a short term solution, but long term costs can be considerable. Pre-book jail diversion occurs when an officer encounters a consumer—before admission to jail or before formal charges have been initiated. Diversion from the criminal justice system may occur based on the decision of the responding officer at the scene. Post-book jail diversion occurs after the consumer is admitted to jail. It is crucial for the jail to use the appropriate screening tools to identify those in need of mental health services.

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VI. Person Requiring Treatment (PRT) (MCL 330.1401)

- A. MCL 330.1401 defines PRT as a person who suffers from a mental disorder who can reasonably be expected to:
- intentionally or unintentionally seriously physically injure him/herself or others;
 - is unable to attend to basic physical needs;
 - has judgment that is so impaired that he or she is unable to understand the need for treatment and whose behavior will cause significant physical harm; or
 - has judgment so impaired that he or she is unlikely to voluntarily participate in treatment that has been determined necessary.
- B. Officers must recognize that a PRT may have judgment that is so impaired that he or she is unable to understand the need for treatment and whose behavior will cause significant physical harm. A PRT may also have weakened mental processes because of age, epilepsy, and alcohol or drug dependence.
- C. Officers' decisions to take persons with mental disorders into custody, or protective custody, shall be based on whether the person has committed a criminal offense or whether the person reasonably appears to require treatment (MCL 330.1427). In addition, the person may be subject to a court order or the person may be in non-compliance with a court order (MCL 330.1475).
- D. Law enforcement officers may use the kind and level of force that would be lawful if the officers were making an arrest for a misdemeanor without a warrant (MCL 330.1427a). In any circumstance, officers' actions must be objectively reasonable.

Commentary:

Handling calls involving individuals with mental disorders can be complex and problematic for responding officers, calling on their ability to make appropriate decisions and to properly solve problems at the scene. Knowledge of legal authority is essential.

Consumers deserve to be treated with dignity and officers must treat them with respect. Referral, treatment, and civil commitment should be preferred over arrest and incarceration.

The stigma of mental disorder can manifest itself as shame, guilt, or low self esteem. Officers must recognize the dignity of consumers and the importance of respect and justice.

VI. The Coordinated Community Response

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- A. Officers shall use community programs and other services established to divert persons with serious mental disorders from potential incarceration.
- B. Officers should engage in a coordinated community approach to situations that involve those with mental disorders by building on existing working partnerships in their jurisdiction. Officers can become part of a long-term collaborative approach by interacting with other practitioners and using community resources and services. Further support may be achieved by identifying community stakeholders, consulting with healthy consumers as active partners, or exploring viable treatment options.
- C. Officers must recognize that stakeholder institutions, organizations, and individuals in the community are crucial to supporting a coordinated response to those with mental disorders. For purposes of a long-term response, officers shall work with:
 - a. public and private inpatient and outpatient mental health facilities;
 - b. residential facilities serving individuals with mental disorders;
 - c. general hospitals;
 - d. counselors; or
 - e. therapists.
- D. Further efforts may be pursued by identifying services for the homeless, advocacy organizations, as well as church-based organizations or emergency shelters.
- E. Additional resources may include services for those with substance abuse problems and other services for those with mental disorders in the community.
- F. Determining the appropriate response is dependent on the nature and extent of the local partnerships in the community and the extent to which needed services can be identified and are available.

Commentary:

Each local community will be unique, depending on population demographics, the availability of services, and local protocols. Officers and mental health professionals will therefore be working in a variety of environments and with a variety of individuals.

Some jurisdictions may have mental health courts, intended for the purpose of diverting preliminarily qualified offenders away from prison or jail.

The response to those with mental disorders will work the best if practitioners have the ability to work in partnership, but such partnerships may not be available in all jurisdictions. Community partnerships may have the greatest impact on the law enforcement response to those with mental disorders than any other component in the system.