Medway Police Department

DEPARTMENTAL MANUAL **Chapter: 42K**	
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Policy & Procedure No. 42K

SUBJECT **42K Handling the Mentally Ill**	ISSUING AUTHORITY **Chief Allen Tingley**
REFERENCE(S) 1.1.3; 41.2.7	Page **1** of **9**
☐ **New Policy** ☒ **Amended Policy**	

GENERAL CONSIDERATIONS AND GUIDELINES

Reaction to the mentally ill covers a wide range of human responses. People afflicted with mental health issues are ignored, laughed at, feared, pitied and often mistreated. Unlike the general public, however, a police officer cannot permit personal feelings to dictate his reaction to the mentally ill. His/her conduct must reflect a professional attitude and be guided by the fact that mental health issues, 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 duties bring him in contact with a person with a mental health issue.

Definitions

Jail Diversion Program (JDP): A program designed to divert persons with mental health issues who may have committed low level criminal offenses from the criminal justice system and into more appropriate community based mental health treatment. This program is operated by **Advocates Inc.**

Jail Diversion Clinician (JDP Clinician or Clinician): A Master's level mental health clinician assigned to the police department as a resource for officers when interacting with people who have mental health issues.

Psychiatric Emergency Services (PES): Operated by **Riverside Emergency Services**, they are the mobile 24/7 mental health crisis team designated by the Massachusetts Behavioral Health partnership to cover our region.

POLICY

It is the policy of this department that:

- Officers shall accord all persons, including those with mental health issues, all the individual rights to which they are entitled; and
- Officers shall attempt to protect persons with mental health issues from harm and shall refer them to agencies or persons able to provide services where appropriate.

- Officers will make every effort to reduce the necessity or intensity of force to resolve a confrontation with a person with mental health issues without putting themselves, or others, or the mentally ill person, at an undue safety risk.

JAIL DIVERSION PROGRAM

A. The Jail Diversion program (JDP) is designed to divert individuals with a mental health issue, who are non-violent, low level criminal offenders, away from the sanctions of the criminal justice system towards more appropriate mental health treatment. The foundation of the program is the availability of a specially trained mental health clinician assigned to the police department as a resource to co-respond with an officer to calls for service involving persons with mental health issues or who are in crisis.

   a. All clinicians have been carefully selected and appropriately screened to work in the police environment and to be able to share information.
   b. All clinicians have signed a "Waiver of Liability" and therefore may either ride along with an officer during his/her shift (strongly preferred) or be notified of an incident and respond from the station or assignment.
   c. The clinician is furnished with a portable police radio primarily to monitor events but may be used to communicate with police personnel as needed.
   d. The clinician may and is encouraged to attend all scheduled Roll Calls to receive and exchange information.
   e. Clinicians assist officers by providing on-scene and immediate support and/or mental health assessment. These evaluations are ideally performed in the environment where the behavior is occurring (i.e. home, street, park, school) and where environmental factors can be assessed.
   f. Clinicians are not limited to assisting during mental health related calls. They may also provide officer assistance during incidents that involve emotional crisis such as delivering death notifications, drug overdoses, suicides, mass casualty events and traumatic events affecting children (witness to violence or victim of abuse).
   g. The JDP clinician is also available for follow-up on less acute situations after the fact where mental health/substance abuse is present and resources and referrals are needed.

PRODEDURES

I. RECOGNITION AND HANDLING

A. An officer must be able to recognize behaviors that are indicative of a person suffering from a mental health issue if s/he is to handle a situation properly.

   1. Factors that may aid in determining if a person has a mental health issue are listed below. These factors are not necessarily conclusive and are intended only as a framework for proper police response.

      a. severe changes in behavioral patterns and attitudes;

      b. unusual or bizarre mannerisms and/or appearance;

      c. loss of memory / disorientation

d. hostility to and distrust of others;

e. lack of cooperation and tendency to argue;

f. known history of mental illness

g. unresponsiveness to social cues

h. distracted/inattentive behavior

i. impaired judgment

j. substance intoxication

k. grandiosity- exaggerated self-appraisal

l. rapid, hard to interrupt speech

m. suicidal statements, hopelessness, or irrational guilt

n. paranoia

o. responding to voices/ one-sided conversations

p. Hallucinations or delusions;

q. Irrational explanation of events.

r. Lack of cooperation and a tendency to argue; and

s. Lack of insight regarding his/her mental health issue.

t. Lack of or avoidance of eye contact.

u. Echolalia (the uncontrollable repeating of questions or phrases that were asked of them). This is common among persons within the Autism spectrum range of disorders.

2. If an officer believes s/he is faced with a situation involving an individual with a mental health issue, s/he should not proceed in haste unless circumstances require otherwise.

    a. In determining the appropriate resolution for a person in crisis, officers will consider the totality of the circumstances, including the behavior of the person with a suspected mental health issue or developmental disability and the government interests at stake.

    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. Also, ask whether the person has any current treatment providers, prescribed

medications, compliance with medications, substance abuse issues, and history of self-injurious or suicidal behavior.

c. An officer should call for the Jail Diversion Program (JDP) clinician for assistance. In the absence of the JDP clinician, Psychiatric Emergency Services (PES) personnel through Riverside Emergency Services may be available to respond on a 24 hour basis and can be reached through dispatch if needed.

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. However, it is more likely the person is as risk for harming him/herself.

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 an individual with a mental health issue. 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. Any officer having contact with an individual with a mental health issue shall keep such matters confidential from public disclosure except to the extent that revelation is necessary for conformance with applicable laws and departmental procedures regarding reports or is necessary during the course of official proceedings.

    a. Criminal Offender Release of Information (CORI): The JPD clinicians assigned to our police department have undergone a thorough pre-employment criminal background check and have been cleared to receive CORI information from police officers.

    b. Health Insurance Portability and Accountability Act (HIPAA): Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specific conditions:

        i. As required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests.
        ii. To identify or locate a suspect, fugitive, material witness, or missing person;
        iii. In response to a law enforcement official's request for information; about a victim or suspected victim of a crime;
        iv. To alert law enforcement of a person's death, if covered entity suspects that criminal activity caused the death;
        v. When covered entity believes that protected health information is evidence of a crime that occurred on its premises; and
        vi. By a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement

about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crimes.

II. TAKING A MENTALLY ILL PERSON INTO CUSTODY

A. An individual with a mental health issue may be arrested if:

1. S/he has committed a crime.

2. S/he poses a **substantial risk of physical harm** to other persons by exhibiting homicidal or other violent behavior, or poses a substantial risk of physical impairment or injury to him/herself (for example, by threats or attempts at suicide), or s/he is exhibiting gross impairment of judgment, and is unable to protect him/herself in the community.

3. S/he has escaped or eluded the custody of those lawfully required to care for him/her.

4. When an officer possesses a commitment order pursuant to G.L. c. 123 § 12(a), commonly referred to as a "pink slip" or "Section 12."

5. Officers may *not* make a forcible entry into a person's dwelling to execute an involuntary civil commitment order (G.L. c. 123 § 12) unless they have a:

    a. Warrant of Apprehension, or

    b. a civil commitment order per G.L. c. 123 § 12 **and** *exigent circumstances*

NOTE: A **Warrant of Apprehension** is required if it appears that the committal paper (G.L. c. 123 § 12) will not be voluntarily complied with and force is necessary to take the person into custody.

B. In an emergency situation, if a physician or qualified psychologist is not available, **a police officer**, who believes 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 four day period at a public facility or a private facility authorized for such purpose by the Massachusetts Department of Mental Health.[i]

C. Although "any person," including a police officer, may petition a district court to commit an individual with a mental health issue to a facility for a ten day period if failure to confine that person would cause a likelihood of serious harm[ii], generally, a police officer should be the last person to initiate such proceedings. Ten day commitment proceedings under section 12(e) of Chapter 113 should be initiated by a police officer only if the following procedures have been observed:

1. Determination has been made that there are no outstanding commitment papers pertaining to the individual; and

2. Every effort has been made to enlist an appropriate physician, psychiatrist, psychologist, social worker or family member to initiate the commitment proceedings; and

3. The officer has received approval from the chief or shift supervisor.

D. Officers may effect a warrantless entry to execute a section 12 applications for temporary hospitalization (pink slip) provided:[iii]

   1. They are in possession of the pink slip;

   2. The entry is of the residence of the subject of the pink slip;

   3. The pink slip was issued by a qualified physician, psychologist, or psychiatric nurse in an emergency situations and where the subject refused to consent to an examination; and

   4. The warrantless entry is made within a reasonable amount of time after the pink slip 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 slip.

E. 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.[iv] Such persons who are absent for less than six months may be returned by the police. This six-month limit 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.[v]

F. At all times, an officer should attempt to gain voluntary cooperation from the individual.

G. Any officer having contact with a person with a mental health issue 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.

H. Whenever a person with a mental health issue or who is intellectually challenged is suspected of a crime 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. The departmental policy and procedure on ***Interrogating Suspects and Arrestees*** should be consulted.

I. In addition, it may be very useful to incorporate the procedures established for interrogating juveniles when an officer seeks to interrogate a suspect with a mental health issue or who is intellectually challenged. Those procedures are set out in the departmental policy and procedure ***Handling Youthful Offenders.***

J. Before interrogating a suspect who has a known or apparent mental health issue 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 Miranda rights and in deciding whether or not to waive any of those rights in a knowing, intelligent and voluntary manner.

K. If an individual with a mental health issue or an intellectually challenged person is reported lost or missing, police should provide the family with 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 friend or relative. The telephone number is 740-423-4279. See departmental ***policy 44H Missing Persons***.

L. An officer who receives a complaint from a family member of an alleged individual with a mental health issue who is not an immediate threat or is not likely to cause harm to themselves or others, should advise such family member to consult a physician or mental health professional. The officer should also notify the JDP clinician.

M. Once an officer arrests a mentally ill person who is unable to be safely contained at the holding facility, the person should be brought to a proper mental health facility for evaluation, i.e. Milford Regional Hospital if the JDP clinician or PES is unavailable.

N. If the person is able to be safely contained, but is threatening self-harm or presenting with concerning psychiatric symptoms, contact the JDP clinician, or in their absence PES for consultation or to request evaluation at the station. If evaluation at the station is not possible, the Shift Supervisor should be notified as the subject may need to be transported to the hospital for evaluation under G.L 123 § 12.

III. DETAINMENT FOR CRIMINAL OFFENSE

The following is to be followed when a person is in Police Lock-Up prior to arraignment, but is need of in-patient psychiatric hospitalization due to unsafe behaviors.

1. Whenever police take an individual with a mental health issue into custody, the JDP Clinician should be notified. If the clinician is unavailable, Psychiatric Emergency Services (PES) should be notified. 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.[vi]

    a. There should be a probable cause determination as required by *Jenkins.*

    b. The detainee should receive an in-cell assessment by the JDP clinician or in their absence a clinician from PES.

    c. If the JDP/PES clinician recommends inpatient psychiatric evaluation, the clinician will contact the on-call clinician for the Department of Mental Health (DMH) Forensic Psychologist to facilitate a transfer to a locked psychiatric placement for the detainee.

    d. Once an in-patient bed has been located, the judicial response system on-call judge should be contacted by the DMH clinician in coordination with the police. The police should be prepared to provide the judge with the following information:

        a. the charges

        b. the condition of the detainee, including the findings from the clinician

        c. a listing of any default warrants (if any) outstanding

c. any other pertinent information

2. The on-call judge after conferring with the police and with the evaluating clinician, may issue an order committing the detainee to a specified, locked in-patient facility pursuant to G.L. 123 § 18, until court is in session.

3. On the designated court day, the detainee will be transported to court by the department's court officer.

4. 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 individual with a mental health issue continues, the officer shall not abandon the individual, but shall take measures in the best interests of that person and, if necessary, take the individual with a mental health issue to the station house. Notification of such action shall immediately be given to the Shift Supervisor or the Chief of Police, who can notify the Department of mental Health.

5. Police 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.[vii]

IV. TRAINING

1. All personnel (including civilians who deal directly with the public) will receive training on these procedures during their orientation as well as a refresher at least every two years.

2. The department will offer Mental Health First Aid training to all sworn officers.

Approved_____ **Review Date: Annual**

Chief of Police Allan M. Tingley

[i] M.G.L. C. 123 § 12(a); Ahern v. O'Donnell, 109 F.3d 809 (1st Cir. 1997)
[ii] M.G.L. C. 123 § 12(e)
[iii] McCabe v. Life-Line Ambulance Service, Inc., 77 F.3d 540 (1st Cir. 1996)
[iv] M.G.L. c. 123 § 30
[v] M.G.L. c. 123 § 30
[vi] M.G.L. c. 123 § 12(a)
[vii] M.G.L. c. 123 § 22