

**Maine Criminal Justice Academy
Board of Trustees Minimum Standards, Policy 5**

**RESPONSE TO MENTAL ILLNESS,
INVOLUNTARY COMMITMENT &
PROTECTION FROM SUBSTANTIAL THREATS
POLICY**

Date Board Adopted: 11/19/2021

Effective Date: 1/1/2022

The agency must have a written policy to address Response to Mental Illness, Involuntary Commitment & Protection from Substantial Threats, to include, at a minimum, provisions for the following:

1. Policy and purpose statements that provide guidance for members of the agency on the options and resources available to assist individuals who appear to be mentally ill and/or experiencing a mental health crisis. The policy shall satisfy the requirements of 25 M.R.S. §2803-B, (1-C) “Deviant Behavior,” (1-L) “Response to Mental Illness and Involuntary Commitment,” and 34-B M.R.S. § 3862 (protective custody), § 3862-A (protection from substantial threats, i.e., restricting access to dangerous weapons) and § 3863 (emergency involuntary commitment). The policy shall include current copies of the MH-100 Form, the State of Maine Protective Custody Intake Form, and any forms required for restricting access to dangerous weapons as appendices to this policy.
2. The policy shall include, but not be limited to, the following definitions:
 - a. Advanced Healthcare Directive: An individual instruction from, or a power of attorney for health care by, an individual with capacity for use when the person appears to lack capacity.
 - b. Crisis Intervention Officer (CIO): An officer specifically trained in the identification handling and disposition of individuals exhibiting signs of mental health crisis.
 - c. Crisis Intervention Team (CIT): A group of individuals, including officers specifically, trained in the identification, handling and disposition of individuals exhibiting signs of mental health crisis.
 - d. Dangerous Weapon (or Weapon): Has the same meaning as in 17-A M.R.S, §2(9)(C), including a firearm as defined in 17-A M.R.S. §2(12-A).
 - e. Involuntary Commitment (Blue Paper Process): Three-step process by which:
 1. Any person (friend, relative, social services worker, law enforcement officer, etc.) applies for admission of an individual to a hospital qualified to provide mental health services,
 2. A clinician evaluates the individual, usually at a local hospital, and
 3. If the clinician certifies that the individual is mentally ill and poses a likelihood of serious harm, a judicial officer reviews and, as appropriate, endorses the

paperwork reflecting the first two steps. These three steps are reflected on sections 1, 2, and 3 of the “blue paper,” Application for Emergency Involuntary Admission to a Mental Hospital, MH-100 Form.

- f. Least Restrictive Form of Transportation: The vehicle used for transportation and any restraining devices that may be used during transportation that impose the least amount of restriction, taking into consideration the stigmatizing impact upon the individual being transported.
- g. Likelihood of Foreseeable Harm: For purposes of protection from substantial threats and the issuance of weapons restriction orders, likelihood of foreseeable harm means a substantial risk in the foreseeable future of serious physical harm to the person as manifested by recent behaviors or threats of, or attempts at, suicide or serious self-inflicted harm; or a substantial risk in the foreseeable future of serious physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct or statements placing others in reasonable fear of serious physical harm.
- h. Likelihood of Serious Harm: For purposes of protective custody, likelihood of serious harm means:
 - 1. A substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm;
 - 2. A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm;
 - 3. A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or protect the person adequately from impairment or injury; or
 - 4. For the purposes of Title 34-B M.R.S. §3873-A (which addresses progressive treatment programs), in view of the person’s treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that the person’s mental health will deteriorate and that the person will in the foreseeable future pose a likelihood of serious physical harm as defined above.
- i. Mental Health Crisis: Behavior – such as loss of contact with reality, extreme agitation, severe depression, imminent suicidal or homicidal statements or actions, or inability to control actions – that creates a threat of imminent and substantial physical harm to the person experiencing the behavior or to others and that appears to be of sufficient severity to require professional evaluation.
- j. Probable Cause: Basis of a law enforcement officer’s judgment about appropriateness of protective custody. This judgment must reflect the totality of the circumstances, following the applicable standards of the Law Enforcement Officer’s Manual, and including:
 - 1. Personal observation.
 - 2. Reliable information from third parties, as long as the officer has confirmed that the third party has reason to believe, based upon recent personal observations or conversations with the person who seems to be experiencing a mental health crisis, that the person may be mentally ill and that due to that condition the person presents a likelihood of serious harm; and
 - 3. History, if known, of the person who seems to be experiencing a mental

health crisis.

- k. Protective Custody: Custody effected by a law enforcement officer EITHER when that officer has probable cause to believe that a person may be mentally ill and due to that condition the person presents a likelihood of serious harm to self or others OR when the law enforcement officer knows that a person has an advance healthcare directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity.
 - l. Restricted Person: A person taken into protective custody by a law enforcement officer who the officer has probable cause to believe possesses or controls or may acquire a dangerous weapon and who is found by a medical practitioner to present a likelihood of foreseeable harm.
 - m. Threat-based Restriction: A prohibition on a restricted person from purchasing, possessing, or controlling or attempting to purchase, possess or control a dangerous weapon during the period of the restriction.
3. The policy shall include procedures for directing the responding officer to assess public safety; to provide options for the officer to respond to a situation effectively and safely to include the involuntary commitment “blue paper process,” and access to CIT, CIO or DHHS State Crisis Service, if appropriate.
 4. This policy shall include procedures for the officer that if the officer determines that protective custody is not appropriate, the officer may refer the person to a medical or mental health practitioner, or for other services; leave the person in the care of friends, relatives or service providers; or take other steps necessary to maintain public safety. Referral resources include:
 - a. Local mental health agencies – with contact information
 - b. Local hospital with voluntary inpatient capacity – with contact information
 - c. Regional DHHS staff – with contact information
 - d. Licensed mental health professional in private practice – with contact information
 - e. Local DHHS contract crisis provider.
 5. This policy shall require that if an officer takes a person into protective custody, the officer may take the person into custody and deliver the person for examination EITHER under the second step of the blue paper process OR, if the person has an advance healthcare directive, to determine the individual’s capacity and whether the advance healthcare directive is effective. Officers shall fill out the State of Maine Protective Custody Intake Form and provide it to the examining clinician.
 6. The policy shall require that officers are responsible for assessing the difference between criminal conduct and non-criminal conduct as it relates to persons in mental health crisis. If it is determined that a person requires protective custody, and that person has committed a criminal act and may be subject to a warrantless arrest pursuant to 17-A M.R.S. §15, the officer, in consultation with the licensed practitioner examining the person under the involuntary committal process, shall assess and then determine the most appropriate confinement condition to satisfy the protection of the public and the

treatment of the person.

7. The policy shall require that if the clinician for Step 2 of the involuntary committal process determines that the person does not satisfy the criteria for emergency involuntary hospitalization or that the person does not lack capacity so that the person's advance healthcare directive would apply, the officer will release the person from protective custody and, with the person's permission, either takes the person home (if that is in the officer's territorial jurisdiction) or return the person to the place from which the person was taken into custody, except that if the person is also under arrest, the officer will keep the person in custody until the person is released in accordance with law.
8. The policy shall require that if the examining clinician determines that the person satisfies criteria for emergency involuntary hospitalization, [and unless the law enforcement agency has executed a custody agreement with the health care facilities to which persons are delivered for examination under 34-B M.R.S. §3863(2-A)], the officer will secure a judicial endorsement as soon as possible, and shall transport or cause the patient to be transported in the least restrictive form of transportation, to the hospital authorized by the judicial officer.
9. The policy shall require that, if a medical practitioner determines that the person in protective custody presents a likelihood of foreseeable harm, and notifies the law enforcement officer or law enforcement agency of same, the officer or agency shall as soon as practicable seek endorsement by a Superior Court Justice, District Court Judge, judge of probate or justice of the peace of the medical practitioner's determination and the officer's declaration that the person was taken into protective custody and that the officer has probable cause to believe that the person possesses, controls, or may acquire a dangerous weapon.
10. The policy shall require that if the determination in Step 9 is endorsed by a judicial officer, officers are authorized and required, as soon as practicable - but no later than 24 hours after the endorsement - to notify the restricted person that he or she is prohibited from possessing, controlling, acquiring or attempting to possess, control, or acquire dangerous weapons pending the outcome of a judicial hearing. The notification shall also advise the restricted person that he or she is required to immediately and temporarily surrender any dangerous weapons possessed, controlled, or acquired by the restricted person to an officer who has authority in the jurisdiction in which the weapons are located pending the outcome of a judicial hearing, and that the person has a right to a judicial hearing within 14 days.
11. The policy shall require that the officer, after making the required notifications in Step 10, report the person's restricted status to the Department of Public Safety and the District Attorney in the district of the person's residence.
12. The policy shall include instructions regarding the collection, storage, care and return of surrendered weapons. The instructions shall include procedures for verification of

the restricted person's claim, if made, that he or she previously transferred possession of weapons to a third party for storage. The instructions shall also address instances when weapons located in the officer's jurisdiction must be collected pursuant to an order issued to a restricted person who resides in a different jurisdiction.

13. The policy shall include guidance for the officer if the officer or agency has probable cause to believe that a restricted person under 34-B M.R.S. §3862-A possesses or controls but has not surrendered a weapon, to include searching for and seizing such a weapon pursuant to a warrant or other circumstance approved by law, notification of appropriate federal law enforcement agencies including but not limited to the Bureau of Alcohol, Tobacco, Firearms and Explosives (A.T.F.), and charging the restricted person as appropriate.
14. The policy shall require that officers be familiar with the relevant criminal offenses for a restricted person who possesses a weapon, including but not limited to Possession of a Firearm by a Prohibited Person, 15 M.R.S. §393. Officers shall also be aware that a restricted person who makes all practical, immediate efforts to voluntarily comply with a surrender notice is not subject to arrest or prosecution as a prohibited person.
15. The policy shall require that 20% of all full-time law enforcement officers of each agency receive at least 8 hours of nationally recognized or best practice in-person training in Mental Health Identification Awareness for Law Enforcement Officers by January 1, 2018 and that the agency maintains at least 20% after that date. This training standard requirement will be sent annually to the Maine Criminal Justice Academy as part of the annual reporting requirements, as outlined in 25 M.R.S. §2805-B.
16. Officers must abide by their agency policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.

Note: Any violation of these standards may result in action by the Board of Trustees.