

(Appendix #1)



OFFICE OF THE ATTORNEY GENERAL

HOMELESSNESS CRISIS PROTOCOL

I. Purpose

This protocol is issued to all law enforcement agencies by the Attorney General to comply with the requirement of 17-A M.R.S. §18 [PL 2021, c. 393, §1] that the Attorney General adopt a model homelessness crisis protocol.

II. Declaration of Public Policy

The intent of the Legislature in adopting *An Act to Require the Use of Homelessness Crisis Protocols by Law Enforcement Agencies* is to provide a response other than traditional entry into the criminal justice system for homeless persons whose public behavior constitutes certain low-level violations of law. Citing or arresting homeless persons for these low-level or quality of life infractions or life-sustaining activities are emotionally and physically traumatizing, as well as disruptive to progress toward ending homelessness. Public order may be best served through the promotion of referrals to available services, even when services have been previously declined. This procedure is the preferred approach, with citation or arrest being a last resort. However, recognizing that each situation is likely to present unique factors that will inform the level of response required, the protocol does not constitute the exclusive means by which relevant situations must be managed nor does it discourage the application of judicious discretion based on the totality of a given situation.

III. Definitions

As used in this protocol, unless the context otherwise indicates, the following terms have the following meanings:

- B. “Homeless person” means a person who lacks a fixed, regular, and adequate nighttime residence.
- C. “Law enforcement agency” means any state, county, municipality, or another political unit within the territory belonging to the State or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government that employs law enforcement officers.

- D. “Law enforcement officer” means any person who is vested by law with the authority to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.
- E. “Listed offense” means:
- a. The provisions of the crime of Criminal Trespass that violates 17-A M.R.S. § 402(1)(C) – A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person enters any place from which that person may lawfully be excluded and that is posted in accordance with [the law] or in a manner reasonably likely to come to the attention of intruders or that is fenced or otherwise enclosed in a manner designed to exclude intruders; *or* criminal trespass in violation of 17-A M.R.S. § 402(1)(F) – A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or remains during hours in which visitors are permitted to enter or remain by municipal ordinance or, in the case of a privately owned and operated cemetery, by posting.
 - b. The provision of the crime of Disorderly Conduct that violates 17-A M.R.S. § 501-A(1)(A) - A person is guilty of disorderly conduct if, in a public place, the person intentionally or recklessly annoys others by intentionally (1) making loud and unreasonable noises; (2) activating a device, or exposing a substance, that releases noxious and offensive odors; or (3) engaging in fighting, without being licensed or privileged to do so.
 - c. The provision of the crime of Indecent Conduct that violates 17-A M.R.S. § 854 that is based on urinating in public.
 - d. The provisions of the crime of possession of a scheduled drug in violation of 17-A M.R.S. c. 45 that is based on using the scheduled drug; or
 - e. Public drinking in violation of 17 M.R.S. § 2003-A(2) - A person is guilty of public drinking if the person drinks liquor in any public place within 200 feet of a notice posted conspicuously in the public place by the owner or authorized person that forbids drinking in the public place or after being forbidden to do so personally by a law enforcement officer unless the person has been permitted to do so by the owner or authorized person.

IV. Minimum Standards

- A. By March 1, 2022, all law enforcement agencies must adopt a homelessness crisis protocol. The protocol may, but is not required to, conform with the standards of this model protocol of the Attorney General.
- B. The chief administrative officer of each law enforcement agency shall certify to the Attorney General in a manner prescribed by the Attorney General that such a protocol has been adopted

and that law enforcement officers of the agency have been provided orientation and training concerning the requirements of the protocol.

- C. The protocol must include a statement that diversion from the criminal justice system is desired and preferred when encountering a homeless person engaged in a listed offense or other criminal behavior designated by the agency.
- D. The protocol must, at a minimum, include referral to available crisis services, mental health and substance use disorder professionals, emergency and transitional housing, and case management services, and the method or means of accessing such services.
- E. The protocol must describe the procedure by which a law enforcement officer is required to comply when encountering a homeless person who is committing or has committed a listed offense or other criminal behavior enumerated in the agency's homelessness crisis protocol.
- F. The protocol must provide for a periodic review of the agency's protocol at least once every two (2) years to which the agency invites relevant stakeholders to discuss the effectiveness and sufficiency of the agency's protocol.
- G. The protocol constitutes a public record that is available for inspection or copying under 1 M.R.S. § 408-A.

V. Procedure

- A. A law enforcement officer who responds to a call or otherwise encounters a person who is committing or has committed a listed offense shall inquire whether the person has a home or lacks a home. If the person lacks a home, the law enforcement officer shall respond to the person using the homelessness crisis protocol adopted by the officer's law enforcement agency.

Dated: _____

AARON M. FREY
Attorney General