REPORT OF: CCOC Subcommittee on Police and Community Relations

TITLE: Recommendations on Police Policies and Procedures

DATE: April 14, 2017

Introduction

The Common Council Organizational Committee Subcommittee on Police and Community Relations (the Subcommittee) held its first meeting on September 14, 2016 and confirmed the following objectives:

a) Provide a forum for residents and members of the Council to discuss police and community goals, priorities and interactions. Build a deeper understanding of policing for elected officials and members of the public; and,

b) Explore models and options from other communities related to policing and other police policies; and,

c) Provide a forum for information sharing regarding police training, policies, data and trends including detailed presentations from the Madison Police Department (MPD) related to policing; and,

d) Make recommendations to the Council on short-term policy, procedure and training while waiting for the results of the Ad Hoc Review of Police Policies and Procedures.

Ald. Marsha Rummel chairs the Subcommittee and Ald. Shiva Bidar-Sielaff serves as vice chair. Ald. Rebecca Kemble, Ald. Sheri Carter and Ald. Denise DeMarb are members of the Subcommittee.

Overview of Activities

The Subcommittee has received several presentations from experts on policing, including the following:

Internal Investigations and Discipline

On Monday, October 17, 2016, Capt. James Wheeler and Sgt. Erik Fuhreman presented information on the City MPD investigation and discipline process. The officers detailed the process MPD uses to conduct investigations of police misconduct. The vast majority of investigations are handled internally under the leadership of Professional Standards/Internal Affairs (PS/IA). PS/IA is staffed with two officers who rotate into that position for a period of two years.

On occasion, special investigations may be conducted by other departments as ordered by the Chief. All officer-involved deaths are investigated by the State Department of Criminal Investigation. MPD compiles summary information regarding sustained complaints that resulted

in discipline in a quarterly report to the Police and Fire Commission. The reports include a final disposition of complaints. However, other information, such as the number of complaints deemed 'non-sustained,' is not readily available to the public.

Legal Authority of the Council Related to the MPD

On Wednesday, November 9, 2016, City Attorney Michael May and Assistant City Attorney Marci Paulsen presented information regarding the division of legal authority between the Police Chief, the Mayor and the Council in the operation of the police department. The City Attorney referenced a report concerning the legal authority of the Council to prevent MPD from utilizing tasers. The report to the Mayor and the Common Council dated April 7, 2005 explains that "[t]here is nothing in the law that prohibits the Mayor and Common Council, by means of an adopted resolution, from requesting that the Police Department cease engaging in a particular practice. The Police Chief is then free to consider such request and exercise his discretion to accept or reject it based upon his assessment of its wisdom, usefulness, practicality, hazard and other such relevant criteria." The memo goes on to explain that these are not simple questions.

The memo concluded with the statement that Common Council likely has the authority to adopt a resolution prohibiting the use of tasers, however there are legal reservations. "Having the Council interject itself into areas which call for technical law enforcement expertise … may not ultimately be the most prudent and safest course of action for officers and citizens alike. However, the Council's authority is not limited merely to those actions which outsiders might believe are wise or correct–otherwise its jurisdiction would be unnaturally narrowed indeed."

Implementation of the United Way/MPD Task Force Report on Use of Force

On November 21, 2016, Capt. Kristen Roman presented information about the 2016 Special Community/Police Task Force Recommendations Regarding Police 'Use of Force.' The United Way of Dane County, the Dane County Chiefs of Police Association and the Dane County Branch of the NAACP issued the report. The City of Madison and MPD contributed to the development of the report and recommendations.

Since the publication in February of 2016, MPD has implemented some of the recommendations of the report including creating a new Use of Force Coordinator position to track all use of force incidents and provide regular reporting to the Chief on these incidents. Sgt. Kimba Tieu is the new Coordinator and he presented to the Subcommittee at a later date. The Department acquired new software, IA Pro, which provides data management for internal investigations. The Department also developed a new foot pursuit policy and a new Standard Operating Procedure (SOP) on de-escalation.

Use of Force Policies from Other Communities

On December 13, 2016, State Representative Chris Taylor presented her research regarding best practices from other communities and her planned legislative proposals to change use of force policies across WI. She highlighted several principles found in policies and procedures in other communities that she deemed important for Wisconsin communities. Representative Taylor highlighted the following principles:

- *A duty to preserve life* is included as part of NYPD policy. The MPD policy recognizes the "value of life" but does not affirm a duty to preserve life.
- *Deadly force as a last resort* is part of the Department of Justice guidelines. The U.S. DOJ guidelines say that deadly force is reasonable when all other means have failed or would

be likely to fail. Madison's deadly force policy says that such force is authorized when "an officer reasonably believes a lesser degree of force would be insufficient."

- *The principle of proportionality* is the requirement to only respond at the level of threat. This principle is not included in MPD's use of force policies.
- *Tailored guidelines for managing resistant subjects who may be mentally ill or intoxicated.*
  NYPD has an extensive policy related to "emotionally disturbed persons" or EDPs. The NYPD policy provide guidelines for officers to assess, de-escalate, create safety zones, and "if the emotionally disturbed person is armed or violent, no attempt will be made to take the EDP into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the EDP or others present."[1]

A Proposal for Community Control of the Police

On Monday, January 18, 2016, representatives of Freedom Inc., provided a presentation of their proposal regarding community control of the police. The proposal would restructure policing districts to reflect "existing social cohesion of neighborhoods and communities therein." The residents of those districts would then vote on whether they would like to retain the existing police department or replace the department with a force controlled by district residents. New forces would be run by a Community Police Control Board with the power to establish policies and priorities. Members of the Control Board would be chosen randomly from the districts rather than elected or appointed. Freedom Inc. stated that this proposal is legally plausible under existing state statute § 62.13(2e) which "allows cities to forgo the traditional police department and accompanying board in favor of a Combined Protective Services department."[2]

Surveillance Technologies and Policies

Also on January 18, 2016, representatives from the ACLU provided a presentation on surveillance technologies and related policies. The ACLU shared information about new technologies related to video and audio surveillance, as well as GPS and drones now in use by some police departments. The ACLU provided a proposal for the City of Madison to consider clarifying rules related to the acquisition, purchase, and use of technology, as well as the management of surveillance technology and data.

Dane County's Efforts to Reduce Disparities in Arrests

On Thursday, February 16, 2017, Colleen Clark-Bernhard, Equity and Criminal Justice Council Coordinator, presented information on the initiatives from the Dane County Criminal Justice Council (CJC) to expand collaboration, data driven justice, and innovation. The CJC has focused on improving data management and capabilities as the foundation of their work and in 2016 hired a research analyst in the County Board Office to add analytical capacity to address issues of equity and transparency. Also in 2016, the CJC announced their partnership with the White House Data Driven Justice Initiative to use data to divert people with mental illness away from the criminal justice system and into community-based treatment. Additionally, Dane County is expanding the Community Restorative Court to all of Dane County. This is an existing area of collaboration with

[1] NYPD Patrol Guide Tactical Operations Procedure No: 221-12 Mentally Ill or Emotionally Disturbed Persons. Issued 06/01/2016.
[2] Freedom Inc. Community Control Over the Police Brochure.
https://madison.legistar.com/View.ashx?M=F&ID=4970445&GUID=892D6EDB-7B83-4727-90AF-D35A1B70B570

Madison and Dane County which may have opportunity to grow as the CRC serves more local residents.

Weapons and Use of Force and Use of Deadly Force Policies at MPD

On March 2, 2016 at a special meeting of the Common Council (not a meeting of the Subcommittee), Sgt. Kimba Tieu presented a demonstration of the tools in an officers' belt including a taser, baton, hobble restraints, pepper spray, shotguns with non-lethal rounds and handguns. Sgt. Kimba Tieu also presented the SOPs and answered questions regarding MPD's Use of Force policies and procedures. Sgt. Tieu explained that MPD believes that policing is done in partnership with the community. All use of force data is now available on the MPD website and that Sgt. Tieu is responsible for these data as the Use of Force Coordinator. He is watching for trends in these tactics and seeking to determine whether officers are getting hurt using a particular type of fore or whether one type of force is more or less effective. When asked about specific scenarios and use of force Sgt. Kimba reiterated that officers are authorized to use force if they are acting "reasonably" given the totality of circumstances.

IA Pro Software (internal investigations software)

On Monday, March 20, 2017, Lt. Amy Chamberlin and Assistant Chief Vic Wahl presented detailed information on the implementation of IA Pro Software and the plan to implement an Early Warning System utilizing the IA Pro Software to support internal investigations and personnel management. The program has been in place for one year and all complaints and all use of force data have been entered into the system since 1/1/2016. The data is reviewed daily and the Chief is briefed every Monday on the data. Some of the other data entered into the system include information related to pursuits, squad crashes, use of force, as well as audit results related to squad cars, email and messages. IA Pro allows PS/IA the ability to monitor officers who are on probation or "work rules". IA Pro has a great deal more capability than is currently in use. PS/IA is looking at how best to utilize IA Pro to implement an Early Warning System.

Neighborhood Associations Weigh In

The Subcommittee has also reached out to neighborhood associations directly with a short survey. The goal of the survey is to understand the types of cooperative activities neighborhood associations have with MPD and to learn more about existing neighborhood watch programs, as well as perceptions of public safety. Over 26 neighborhood associations responded. The most frequent public safety concerns cited were pedestrian safety and traffic/speeding issues, as well as petty theft from autos/garages at night. Other public safety concerns cited by more than one neighborhood included gun violence, vagrancy, home burglaries, vandalism, and drug violence/activity. Many neighborhood associations noted that they have frequent positive interactions with MPD, though few have certified neighborhood watch programs.

Actions To Be Taken

The Subcommittee reviewed a wide range of subjects relating to community and police relations throughout the course of their work. The Subcommittee noted that some of the issues are most appropriate for action by the MPD Policy and Procedure Review Ad Hoc Committee (Ad Hoc Committee) while other issues could be addressed directly to the Madison Police Department or the Common Council of the City of Madison.

Safeguarding Emotionally Disturbed People

The majority of officer-involved shootings in the last three years in the City of Madison have involved a person with a mental health issue or an intoxicated person. The Subcommittee would appreciate further clarification of policies relating to people exhibiting signs of mental illness or intoxication who are resistant to medical assistance or arrest. The New York Police Department (NYPD) defines an Emotionally Disturbed Person (EDP) as "a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others."[3]

The MPD SOP on Mental Health Incidents/Crises (12/22/2016) provides some degree of guidance related to this issue. The SOP describes the value in de-escalating crisis situations, the role of Mental Health Officers and the process to assess a person in crisis. However, the SOP does not detail tactics or procedures to de-escalate the situation or establish safety for all persons affected by the situation. A specific protocol is needed to clarify how an officer should interact with EDPs.

Action Item 1: The Common Council of the City of Madison will direct MPD to issue a SOP that explicitly details the goals, tactics, policies, and procedures to deal with an EDP. In order to do so MPD should refer to the International Association of Chief of Police's model policy Responding to Persons Affected by Mental Illness or in Crisis (see Appendix) and the NYPD Patrol Guide related to Mentally Ill or Emotionally Disturbed Persons (see Appendix).

The Subcommittee requests that MPD consider incorporating Fyfe's principles for interacting with EDPs. Those principles include 1) keeping a safe distance, 2) avoiding unnecessary and provocative displays of force, 3) working with back-up, 4) one officer should interact with the subject, others should remain quiet, 5) the officer interacting with the subject is in charge, no one else should take unplanned action, 6) make it clear officers are there to help not threaten, and finally, 7) officers should take as much time as necessary for an arrest, even hours or days if that is that is what is required.[4]

Action Item 2: The Common Council will direct the Ad Hoc Committee to investigate other possible supports for MPD officers interacting with EDPs. The Subcommittee would encourage further exploration into the types of training and ongoing training strategies that will improve interactions with EDPs. In particular, the Subcommittee would recommend a detailed analysis of

[3] NYPD Patrol Guide Mentally Ill or Emotionally Disturbed Persons. Tactical Operations Procedure No: 221-13. 06/01/2016.

[4] Fyfe, James J. PhD. Policing the Emotionally Disturbed. Journal of American Academy of Psychiatry and the Law. 28:345-7, 2000.

ProTraining[5] which is an evidenced based practice proven to reduce overall use of physical force and the use of weapon force in police calls.[6] The Subcommittee would recommend the Ad Hoc Committee undertake an evaluation of the feasibility of hiring social workers to work with officers to support interactions with EDPs.

Use of Force Policies

The Subcommittee found that the principles of de-escalation and the duty to intercede are included in certain MPD policies but are not incorporated into the MPD Use of Force and Use of Deadly Force SOPs. Incorporation of these principles into the Use of Force SOPs would clarify the duties of officers to put these principles into action especially in scenarios that may require force.

De-escalation tactics and techniques are actions used by officers which seek to minimize the likelihood of the need to use force during an incident. Officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution. The duty to intercede is the principle that officers have a duty to stop other officers who are using excessive force and report them to a supervisor.

Action Item 3. The Common Council of the City of Madison will direct MPD to issue updated MPD Use of Force and the Use of Deadly Force SOPs that explicitly incorporate the duty to intercede and de-escalate.

Additionally, the Subcommittee found that the MPD Use of Deadly Force SOP recognizes "the dignity of all people and the value of human life" which are important principles. However, other cities' policies utilize stronger language that clarifies an officer's "duty to preserve life."

Action Item 4. The Common Council of the City of Madison will direct MPD to incorporate language adapted from NYPD Force Guidelines to emphasize an officer's duty to preserve life into the MPD Use of Force and the Use of Deadly Force SOPs. The Subcommittee recommends that the following language be incorporated into the SOPs;

> "The primary duty of all MPD officers is to protect human life, including the lives of individuals being placed in police custody."[7]

The Subcommittee appreciated learning about other precautionary principles found in some cities' policies regarding use of force. Those principles presented to the Subcommittee by Representative Christ Taylor included the previously addressed duty to preserve live, duty to intercede and the duty to de-escalate. Additionally, the Subcommittee would like to reiterate the importance of other precautionary principles including:

[5] Coleman, T. G. and D. Cotton (2014). "TEMPO: Police Interactions. A Report towards improving interaction between police and people living with mental health problems." Mental Health Commission of Canada.
[6] Frierson, R. L. (2013). "Commentary: Police Officers and Persons with Mental Illness." Journal of the American Academy of Psychiatry and the Law Online 41(3): 356-358.
[7] Adapted from NYPD Patrol Guide Tactical Operations Force Guidelines Procedure No. 221-01.

- Necessity: Deadly force should only be used as a last resort. The necessity to use deadly force arises when all other available means of preventing immediate and grave danger to officers or other persons have failed or would be likely to fail.

- Proportionality: When force is needed, the force used shall be in proportion to the threat posed.

- Reassessment: Officers shall reassess the situation after each discharge of their firearm.

- Totality of officer conduct: The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force. Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.

- Immediate threat: Deadly force is only authorized if the threat is immediate. A threshold of "immediate threat" reflects language in United States Supreme Court decisions. The latest model use of force policy published by the International Association of Chiefs of Police eliminates the term "imminent".

Action Item 5: The Common Council directs the Ad Hoc Committee to evaluate the above principles and determine whether and how they may be addressed in MPD policies, practices and procedures.

Ensuring Officer Well-Being

Officers are regularly exposed to traumatic events at work. In addition, officers must be ever vigilant for life-threatening situations. These conditions can increase the risk for physical and mental illnesses such as PTSD, depression, alcohol and drug abuse and sleep disruptions.

Action Item 6. The Common Council directs MPD to develop programming to build mental health and resilience, and to provide cost estimates and a timeline for this work.

Waiting for Back-Up

Officers are at higher risk, and may be more likely to use deadly force because of that risk, when they engage alone in a situation in which there may potentially be a resistant subject.

Action Item 7. The Council directs MPD to reinstate a back-up policy most recently utilized in November 2016. That policy required officers to wait for backup before approaching subjects, unless an officer reasonably believes there is a substantial risk.[8]

[8] The current MPD policy related to back-up states, *"Officers shall not disregard backup, if so assigned by dispatch, prior to arrival at the scene and assessment of the situation."*

"Officers shall not disregard backup, if so assigned by dispatch. Additionally, officers shall wait for backup before physically approaching any involved subject(s), unless an officer reasonably believes there is a significant risk of bodily injury to any person(s)."

Communication with City Council

MPD and the Council could work together more closely if communication was enhanced. The Subcommittee found great value in the presentations from MPD relating to internal investigations, use of force, data analysis with IA Pro software and implementation of the community task force recommendations on use of force. The Council recognizes that MPD is a department that generates a high level of interest for members of the public and hopes that increased reporting will allow for greater understanding and transparency of the work of MPD.

Action Item 8. The Council will direct the Chief of Police to provide quarterly written and verbal updates to City Council. The updates will be provided as regular agenda item at either Council or the Common Council Executive Committee and will include the following information: 1) any changes to Code of Conduct and SOP, 2) any changes in training, 3) any new initiatives, 4) MPD arrest data by reason for arrest and race/ethnicity, 4) parking enforcement revenues, and 5) use of force incidents.

Surveillance Policies

Surveillance technologies are rapidly expanding governmental capabilities to gather data on individuals. The City of Madison values the principles of transparency, oversight and accountability and seeks to ensure that residents' civil rights and civil liberties are protected even as the City utilizes surveillance technology to protect public safety. A comprehensive policy governing the purchase and use of surveillance technology is required to ensure these protections.

MPD does have a policy governing use of audio and video surveillance. However, the City of Madison does not yet have citywide surveillance policies. Departments outside of MPD may purchase their own surveillance equipment or utilize equipment borrowed from other departments; this usage is not governed by any existing framework. The proposed policies would address all City employees' and departments' purchase and use of surveillance equipment.

Action Item 9: The Common Council will develop a policy governing the purchase and use of all surveillance equipment employed by all City agencies including MPD. The policy will also address data management and storage as well as clear consequences for policy violations.

Oversight of Internal Investigations

Oversight of internal investigations may take many forms. Two ideas presented here include an audit mechanism of internal investigations and external investigations of complaints.

Investigations into police misconduct are traditionally handled internally, however, all officer-involved deaths are investigated independently by the State Department of Criminal

Investigation. The majority of Madison cases are handled internally in the City of Madison by the MPD PS/IA. The City of Madison PS/IA Office is staffed by officers who serve on two-year rotations before returning to other posts.

Cities such as Portland, Los Angeles and Tucson utilize auditors outside of the police departments[9] to provide reviews and reports of the investigation process by their police departments and to provide recommendations on a regular basis. Such a system provides the benefits of external accountability at a minimal cost. The auditor would regularly review the process for submitting complaints, investigating and disposing of complaints. Such an auditor can help provide the public and elected officials with an impartial analysis of the department's handling of complaints.

Alternatively, the City may consider external investigations. Given the public interest surrounding policing and the public's frequent demand for independent investigations into misconduct, a policy which directs an external investigator to investigate certain complaints may enhance community trust. There is also a benefit to innocent officers when they are investigated externally. Officers declared innocent of the complaint charge by an external body are more likely to be considered innocent by the public, rather than those officers declared innocent by their own departments. External investigations may "help reassure a skeptical public that the department already investigates citizen complaints thoroughly and fairly."[10] The City may consider hiring an investigator to investigate complaints submitted to the PFC so that an external report on the facts of a complaint case may be provided to the Police and Fire Commissioners for review.

Action Item 10: The Common Council directs the Ad Hoc Committee to provide a review of the feasibility of external oversight of MPD internal investigations.

Early Intervention Warning System

Early Warning Systems, also called Early Intervention Systems, are tools to monitor officers who are frequently the subject of citizen complaints or demonstrate behavioral issues. Early Warning Systems are becoming increasingly popular, as of 1999 the most recent survey on early warning systems, 39% of all police forces serving communities of more than 50,000 have a system in place

[9] The Portland Auditor is tasked with reviewing investigations of police conduct as well as managing reviews for other city agencies. The Portland Auditor Mary Caballero is elected to her position and has a background in auditing performance management. https://www.portlandoregon.gov/auditor/27392. This is not staffed by former law enforcement.
The Tucson Independent Police Auditor is managed by a long-time city employee who previously investigated equal opportunity claims and has an investigator on staff. This is not staffed by former law enforcement.
https://www.tucsonaz.gov/manager/independent-police-auditor-civilian-investigator
The Los Angeles Audit Division was established in 2001 as a result of the Consent Decree and is now staffed by over 30 sworn officers and civilian professionals including CPAs, fraud examiners, an professional auditors.
http://www.lapdonline.org/inside_the_lapd/content_basic_view/8772

[10] Peter Finn. Citizen Review of Police: Approaches and Implementation. U.S. Department of Justice. National Institute of Justice March 2001. NCJ 184430.

or are planning to implement one.[11] The City of MPD has purchased police data tracking system called IA Pro, which includes the capabilities of an Early Intervention Warning System. As the Department prepares to implement the early intervention program within IA Pro, it will be valuable to monitor the use of the tool.

Action Item 11: The Common Council directs the Ad Hoc Committee to further explore the IA Pro capabilities for early warning and intervention. In addition, the Subcommittee recommends the Ad Hoc Committee speak with the University of Chicago Data Science for Social Good statisticians to explore collaboration to develop a predictive early warning system.

Root Cause Analysis

The National Transportation Safety Board and many hospitals utilize root cause analysis processes to determine the factors that may have contributed to an adverse event such as a plane crash or an outbreak of disease. The purpose of root cause analysis is not to assign blame but to enable complex organizations to identify opportunities for improvement. The Subcommittee encourages the Ad Hoc Committee to consider the value of a root cause analysis process and protocol for MPD to examine critical incidents and broader trends. Such a system would require robust data analytics, which may be available through expansion of the IA Pro system or other data systems.

Action Item 12: The Common Council directs the Ad Hoc Committee to provide an implementation plan for a root cause analysis process at MPD.

Conclusion

The Subcommittee achieved the objectives established in September 2016 and has created a series of actions to be taken up by the Common Council, the MPD and the Ad Hoc Committee.

The recommendations directed to the MPD and Common Council are short-term policy recommendations which are designed for consideration before the completion of the work of the Ad Hoc Committee. The Subcommittee also evaluated several other areas of interest related to the on-going work of the Ad Hoc Committee and has crafted specific action items for those issues. These issues require a more in-depth understanding and familiarity with police policies and procedures for successful completion.

The Subcommittee learned a great deal through its work and wishes to express its gratitude to the residents of Madison, the MPD, the Ad Hoc Committee and the Common Council for their participation and support of this effort.

[11] Shultz, Ashley. Early Warning Systems: What's New? What's Working. CNA Analysis & Solutions. December 2015. https://www.cna.org/cna_files/pdf/CRM-2015-U-012182.pdf

APPENDIX

Madison Police Oversight Committees

Madison Police and Fire Commission	Public Safety Review Committee	MPD Policy and Procedure Review Ad Hoc Committee	Common Council Organizational Committee Subcommittee on Police and Community Relations
Permanent, established by WI Statute	Permanent, established by Common Council	Temporary, established by Common Council	Temporary, established by Common Council
Madison General Ordinance Sec. 33.06 and State Statutes 62.13 - Appoints the chief of each department; approves or disapproves promotions and supervision of the hiring process, with certification of an eligibility list and approval of those who are finally hired; holds hearings on disciplinary matters brought to its attention either directly or through appeal and imposes discipline if appropriate.	Madison General Ordinance Sec. 33.22 - The board shall be advisory to the mayor and Common Council to assist them in the performance of their statutory duties. The board may review and make recommendations concerning departmental budgets; review service priorities and capital budget priorities of the Police and Fire Departments; serve as liaison between the community and the city on public safety issues; and review annually and make recommendations to the Common Council regarding the annual work plans and long-range goals of the departments.	The Committee's objective is to complete a thorough review of the MPD's policies, procedures, culture and training using the consultant report, other resources and testimony. Creating resolution RES-15-00477, File ID# 37863; effective 5/21/2015	The Subcommittee's objective is to provide a forum for residents, to share information on Madison policies and procedures, to explore police policies and procedures from other communities, and to make short-term policy recommendations while waiting for the results of the MPD Policy and Procedure Review Ad Hoc Committee. Established 9/14/2016.

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RESPONDING TO PERSONS AFFECTED BY MENTAL ILLNESS OR IN CRISIS

Model Policy

Effective Date	*Number*
January 2014	

Subject
Responding to Persons Affected by Mental Illness or in Crisis

Reference	*Special Instructions*

Distribution	*Reevaluation Date*	*No. Pages*
		4

I. PURPOSE

It is the purpose of this policy to provide guidance to law enforcement officers when responding to or encountering situations involving persons displaying behaviors consistent with mental illness or crisis.

II. POLICY

Responding to situations involving individuals who officers reasonably believe to be affected by mental illness or in crisis carries potential for violence; requires an officer to make difficult judgments about the mental state and intent of the individual; and necessitates the use of special police skills, techniques, and abilities to effectively and appropriately resolve the situation, while avoiding unnecessary violence and potential civil liability. The goal shall be to de-escalate the situation safely for all individuals involved when reasonable, practical, and consistent with established safety priorities. In the context of enforcement and related activities, officers shall be guided by this state's law regarding the detention of persons affected by mental illness or in crises. Officers shall use this policy to assist them in determining whether a person's behavior is indicative of mental illness or crisis and to provide guidance, techniques, and resources so that the situation may be resolved in as constructive and humane a manner as possible.

III. DEFINITIONS

Mental Illness: An impairment of an individual's normal cognitive, emotional, or behavioral functioning, caused by physiological or psychosocial factors. A person may be affected by mental illness if he or she displays an inability to think rationally (e.g., delusions or hallucinations); exercise adequate control over behavior or impulses (e.g., aggressive, suicidal, homicidal, sexual); and/or take reasonable care of his or her welfare with regard to basic provisions for clothing, food, shelter, or safety.

Crisis: An individual's emotional, physical, mental, or behavioral response to an event or experience that results in trauma. A person may experience crisis during times of stress in response to real or perceived threats and/or loss of control and when normal coping mechanisms are ineffective. Symptoms may include emotional reactions such as fear, anger, or excessive giddiness; psychological impairments such as inability to focus, confusion, nightmares, and potentially even psychosis; physical reactions like vomiting/stomach issues, headaches, dizziness, excessive tiredness, or insomnia; and/or behavioral reactions including the trigger of a "fight or flight" response. Any individual can experience a crisis reaction regardless of previous history of mental illness.

IV. PROCEDURES

A. Recognizing Abnormal Behavior

Only a trained mental health professional can diagnose mental illness, and even they may sometimes find it difficult to make a diagnosis. Officers are not expected to diagnose mental or emotional conditions, but rather to recognize behaviors that are indicative of persons affected by mental illness or in crisis, with special emphasis on those that suggest potential violence and/or danger. The following are generalized signs and symptoms of behavior that may suggest mental illness or

crisis, although officers should not rule out other potential causes such as reactions to alcohol or psychoactive drugs of abuse, temporary emotional disturbances that are situational, or medical conditions.

1. Strong and unrelenting fear of persons, places, or things. Extremely inappropriate behavior for a given context.
2. Frustration in new or unforeseen circumstances; inappropriate or aggressive behavior in dealing with the situation.
3. Abnormal memory loss related to such common facts as name or home address (although these may be signs of other physical ailments such as injury or Alzheimer's disease).
4. Delusions, the belief in thoughts or ideas that are false, such as delusions of grandeur ("I am Christ") or paranoid delusions ("Everyone is out to get me").
5. Hallucinations of any of the five senses (e.g., hearing voices commanding the person to act, feeling one's skin crawl, smelling strange odors); and/or
6. The belief that one suffers from extraordinary physical maladies that are not possible, such as persons who are convinced that their heart has stopped beating for extended periods of time.

B. Assessing Risk

1. Most persons affected by mental illness or in crisis are not dangerous and some may only present dangerous behavior under certain circumstances or conditions. Officers may use several indicators to assess whether a person who reasonably appears to be affected by mental illness or in crisis represents potential danger to himself or herself, the officer, or others. These include the following:
   a. The availability of any weapons.
   b. Statements by the person that suggest that he or she is prepared to commit a violent or dangerous act. Such comments may range from subtle innuendo to direct threats that, when taken in conjunction with other information, paint a more complete picture of the potential for violence.
   c. A personal history that reflects prior violence under similar or related circumstances. The person's history may already be known to the officer—or family, friends, or neighbors might provide such information.
   d. The amount of self-control that the person, particularly the amount of physical control over emotions of rage, anger, fright, or agitation. Signs of a lack of self-control include extreme agitation, inability to sit still or communicate effectively, wide eyes, and rambling thoughts and speech. Clutching oneself or other objects to maintain control, begging to be left alone, or offering frantic assurances that one is all right may also suggest that the individual is close to losing control.
   e. The volatility of the environment is a particularly relevant concern that officers must continually evaluate. Agitators that may affect the person or create a particularly combustible environment or incite violence should be taken into account and mitigated.
2. Failure to exhibit violent or dangerous behavior prior to the arrival of the officer does not guarantee that there is no danger, but it might diminish the potential for danger.
3. An individual affected by mental illness or emotional crisis may rapidly change his or her presentation from calm and command-responsive to physically active. This change in behavior may come from an external trigger (such as an officer stating "I have to handcuff you now") or from internal stimuli (delusions or hallucinations). A variation in the person's physical presentation does not necessarily mean he or she will become violent or threatening, but officers should be prepared at all times for a rapid change in behavior.

C. Response to Persons Affected by Mental Illness or in Crisis

If the officer determines that an individual is exhibiting symptoms of mental illness or in crisis and is a potential threat to himself or herself, the officer, or others, or may otherwise require law enforcement intervention as prescribed by statute, the following responses should be considered:

1. Request a backup officer. Always do so in cases where the individual will be taken into custody.
2. Take steps to calm the situation. Where possible, eliminate emergency lights and sirens, disperse crowds, and assume a quiet nonthreatening manner when approaching or conversing with the individual. Where violence or destructive acts have not occurred, avoid physical contact, and take time to assess the situation. Officers should operate with the understanding that time is an ally and there is no need to rush or force the situation.

3. Move slowly and do not excite the person. Provide reassurance that the police are there to help and that the person will be provided with appropriate care.
4. Communicate with the individual in an attempt to determine what is bothering him or her. If possible, speak slowly and use a low tone of voice. Relate concern for the person's feelings and allow the person to express feelings without judgment. Where possible, gather information on the individual from acquaintances or family members and/or request professional assistance if available and appropriate to assist in communicating with and calming the person.
5. Do not threaten the individual with arrest, or make other similar threats or demands, as this may create additional fright, stress, and potential aggression.
6. Avoid topics that may agitate the person and guide the conversation toward subjects that help bring the individual back to reality.
7. Always attempt to be truthful with the individual. If the person becomes aware of a deception, he or she may withdraw from the contact in distrust and may become hypersensitive or retaliate in anger. In the event an individual is experiencing delusions and/or hallucinations and asks the officer to validate these, statements such as "I am not seeing what you are seeing, but I believe that you are seeing (the hallucination, etc.)" is recommended. Validating and/or participating in the individual's delusion and/or hallucination is not advised.
8. Request assistance from individuals with specialized training in dealing with mental illness or crisis situations (e.g., Crisis Intervention Training (CIT) officers, community crisis mental health personnel, Crisis Negotiator).

D. Taking Custody or Making Referrals to Mental Health Professionals
   1. Based on the totality of the circumstances and a reasonable belief of the potential for violence, the officer may provide the individual and/or family members with referral information on available community mental health resources, or take custody of the individual in order to seek an involuntary emergency evaluation. Officers should do the following:
   2. Offer mental health referral information to the individual and or/family members when the circumstances indicate that the individual should not be taken into custody.
   3. Summon an immediate supervisor or the officer-in-charge prior to taking custody of a potentially dangerous individual who may be affected by mental illness or in crisis or an individual who meets other legal requirements for involuntary admission for mental examination. When possible, summon crisis intervention specialists to assist in the custody and admission process.
   4. Continue to use de-escalation techniques and communication skills to avoid provoking a volatile situation once a decision has been made to take the individual into custody. Remove any dangerous weapons from the immediate area, and restrain the individual if necessary. Using restraints on persons affected by mental illness or in crisis can aggravate any aggression, so other measures of de-escalation and commands should be utilized if possible. Officers should be aware of this fact, but should take those measures necessary to protect their safety.
   5. Document the incident, regardless of whether or not the individual is taken into custody. Ensure that the report is as detailed and explicit as possible concerning the circumstances of the incident and the type of behavior that was observed. Terms such as "out of control" or "mentally disturbed" should be replaced with descriptions of the specific behaviors, statements, and actions exhibited by the person. The reasons why the subject was taken into custody or referred to other agencies should also be reported in detail.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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PATROL GUIDE

Section: Tactical Operations	Procedure No: 221-13		
MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS			
DATE ISSUED: 06/01/16	DATE EFFECTIVE: 06/01/16	REVISION NUMBER:	PAGE: 1 of 5

PURPOSE To safeguard a mentally ill or emotionally disturbed person who does not voluntarily seek medical assistance.

SCOPE The primary duty of all members of the service is to preserve human life. The safety of ALL persons involved is paramount in cases involving emotionally disturbed persons. If such person is dangerous to himself or others, necessary force may be used to prevent serious physical injury or death. Physical force will be used ONLY to the extent necessary to restrain the subject until delivered to a hospital or detention facility. Deadly physical force will be used ONLY as a last resort to protect the life of the uniformed member of the service assigned or any other person present. If the emotionally disturbed person is armed or violent, no attempt will be made to take the EDP into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the EDP or others are present. If an EDP is not immediately dangerous, the person should be contained until assistance arrives. If the EDP is unarmed, not violent and willing to leave voluntarily, a uniformed member of the service may take such person into custody. When there is time to negotiate, all the time necessary to ensure the safety of all individuals will be used.

DEFINITIONS EMOTIONALLY DISTURBED PERSON (EDP) - A person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.

ZONE OF SAFETY - The distance to be maintained between the EDP and the responding member(s) of the service. This distance should be greater than the effective range of the weapon (other than a firearm), and it may vary with each situation (e.g., type of weapon possessed, condition of EDP, surrounding area, etc.). A minimum distance of twenty feet is recommended. An attempt will be made to maintain the "zone of safety" if the EDP does not remain stationary.

PROCEDURE When a uniformed member of the service reasonably believes that a person who is apparently mentally ill or emotionally disturbed, must be taken into protective custody because the person is conducting himself in a manner likely to result in a serious injury to himself or others:

UNIFORMED MEMBER OF THE SERVICE

1. Upon arrival at scene, assess situation as to threat of immediate serious physical injury to EDP, other persons present, or members of the service. Take cover, utilize protective shield if available and request additional personnel, if necessary.
   a. If emotionally disturbed person's actions constitute immediate threat of serious physical injury or death to himself or others:
      (1) Take reasonable measures to terminate or prevent such behavior. Deadly physical force will be used only as a last resort to protect the life of persons or officers present.

NOTE *Damaging of property would <u>not</u> necessarily constitute an immediate threat of serious physical injury or death.*

UNIFORMED MEMBER OF THE SERVICE (continued)

b. If EDP is unarmed, not violent and is willing to leave voluntarily:
   (1) EDP may be taken into custody without the specific direction of a supervisor.

c. In all other cases, if EDP's actions do <u>not</u> constitute an <u>immediate</u> threat of serious physical injury or death to himself or others:
   (1) Attempt to isolate and contain the EDP while maintaining a <u>zone of safety</u> until arrival of patrol supervisor and Emergency Service Unit personnel.
   (2) <u>Do not attempt to take EDP into custody without the specific direction of a supervisor</u>.

2. Request ambulance, if one has not already been dispatched.
   a. Ascertain if patrol supervisor is responding, and, if not, request response.

NOTE *Communications Section will automatically direct the patrol supervisor and Emergency Service Unit to respond to scene in such cases. Patrol supervisors' vehicles are equipped with non-lethal devices to assist in the containment and control of EDP's, and will be used at the supervisor's direction, if necessary.*

3. Establish police lines.
4. Take EDP into custody if EDP is unarmed, not violent and willing to leave voluntarily.

PATROL SUPERVISOR

5. Verify that Emergency Service Unit is responding, if required.
   a. Cancel response of Emergency Service Unit if services not required.
6. Direct uniformed members of the service to take EDP into custody if unarmed, not violent, and willing to leave voluntarily.

NOTE *When aided is safeguarded and restrained comply with steps 25 to 32 inclusive.*

<u>WHEN AIDED IS ISOLATED/CONTAINED BUT WILL NOT LEAVE VOLUNTARILY</u>:

PATROL SUPERVISOR

7. Establish firearms control.
   a. Direct members concerned not to use their firearms or use any other deadly physical force unless their lives or the life of another is in imminent danger.
8. Deploy protective devices (shields, etc.).
   a. Employ non-lethal devices to ensure the safety of all present (see "*ADDITIONAL DATA"* statement).
9. Comply with provisions of *P.G. 221-14, "Hostage/Barricaded Person(s),"* where appropriate.
10. Establish police lines if not already done.

PATROL SUPERVISOR (continued)

11. Request response of hostage negotiation team and coordinator through Communications Section.
12. Notify desk officer that hostage negotiation team and coordinator have been notified and request response of precinct commander/duty captain.
13. Request Emergency Service Unit on scene to have supervisor respond.
14. If necessary, request assistance of:
    a. Interpreter, if language barrier
    b. Subject's family or friends
    c. Local clergyman
    d. Prominent local citizen
    e. Any public or private agency deemed appropriate for possible assistance.

NOTE *The highest ranking uniformed police supervisor at the scene is in command and will coordinate police operations. If the mentally ill or EDP is contained and is believed to be armed or violent but due to containment poses no immediate threat of danger to any person, no additional action will be taken without the authorization of the commanding officer or duty captain at the scene.*

EMERGENCY SERVICE UNIT SUPERVISOR

15. Report to and confer with ranking patrol supervisor on scene.
    a. If there is no patrol supervisor present, request response forthwith, and perform duties of patrol supervisor pending his/her arrival.

NOTE *The presence of a supervisor from any other police agency does not preclude the required response of the patrol supervisor.*

16. Evaluate the need and ensure that sufficient Emergency Service Unit personnel and equipment are present at the scene to deal with the situation.
17. Verify that hostage negotiation team and coordinator are responding, when necessary.
18. Devise plans and tactics to deal with the situation, after conferral with ranking patrol supervisor on scene.

DESK OFFICER

19. Verify that precinct commander/duty captain has been notified and is responding.
20. Notify Operations Unit and patrol borough command of facts.

COMMANDING OFFICER/ DUTY CAPTAIN

21. Assume command, including firearms control.
22. Confer with ranking Emergency Service Unit supervisor on scene and develop plans and tactics to be utilized.
23. Direct whatever further action is necessary, including use of negotiators.
24. Direct use of alternate means of restraint, if appropriate, according to circumstances.

WHEN PERSON HAS BEEN RESTRAINED:

UNIFORMED MEMBER OF THE SERVICE

25. Remove property that is dangerous to life or will aid escape.
26. Have person removed to hospital in ambulance.
    a. Restraining equipment including handcuffs may be used if patient is violent, resists, or upon direction of a physician examiner.
    b. If unable to transport with reasonable restraint, ambulance attendant or doctor will request special ambulance.
    c. When possible, a female patient being transported should be accompanied by another female or by an adult member of her immediate family.
27. Ride in body of ambulance with patient.
    a. At least two uniformed members of the service will safeguard if more than one patient is being transported.

NOTE *If an ambulance is NOT available and the situation warrants, transport the EDP to the hospital by RMP if able to do so with reasonable restraint, at the direction of a supervisor. UNDER NO CIRCUMSTANCES WILL AN EDP BE TRANSPORTED TO A POLICE FACILITY.*

28. Inform examining physician, upon arrival at hospital, of use of non-lethal restraining devices, if applicable.
29. Safeguard patient at hospital until examined by psychiatrist.
    a. When entering psychiatric ward of hospital, unload revolver at Firearm Safety Station, if available (see *P.G. 216-07, "Firearms Safety Stations at Psychiatric Wards and Admitting Areas"*).
30. Inform psychiatrist of circumstances which brought patient into police custody:
    a. Inform relieving uniformed member of circumstances if safeguarding extends beyond expiration of tour.
    b. Relieving uniformed member will inform psychiatrist of details.
31. Enter details in **ACTIVITY LOG (PD112-145)** and prepare **AIDED REPORT WORKSHEET (PD304-152b)**.
    a. Indicate on **AIDED REPORT WORKSHEET**, name of psychiatrist.
32. Deliver **AIDED REPORT WORKSHEET** to desk officer.

ADDITIONAL DATA *Refer persons who voluntarily seek psychiatric treatment to proper facility.*

Prior to interviewing a patient confined to a facility of the NYC Health and Hospitals Corporation, a uniformed member of the service must obtain permission from the hospital administrator who will ascertain if the patient is mentally competent to give a statement.

Upon receipt of a request from a qualified psychiatrist, or from a director of a general hospital or his/her designee, uniformed members of the service shall take into custody and transport an apparently mentally ill or emotionally disturbed person from a facility licensed or operated by the NYS Office of Mental Health which does not have an inpatient psychiatric service, or from a general hospital which does not have an inpatient psychiatric service, to a hospital approved under Section 9.39 of the Mental Hygiene Law.

ADDITIONAL DATA (continued)

Uniformed members of the service will also comply with the above procedure upon direction of the Commissioner of Mental Health, Mental Retardation and Alcoholism Services or his/her designee.

USE OF NON-LETHAL DEVICES TO ASSIST IN RESTRAINING EMOTIONALLY DISTURBED PERSONS

Authorized uniformed members of the service may use a conducted energy weapon (CEW) to assist in restraining emotionally disturbed persons, if necessary.

Authorized uniformed members of the service will be guided by Patrol Guide 221-08, 'Use of Conducted Electrical Weapons (CEW),' when a CEW has been utilized.

THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154) *will be prepared whenever a less lethal device is used by a uniformed member of the service in the performance of duty.*

RELATED PROCEDURES

Unusual Occurrence Reports (P.G. 212-09)
Hostage/Barricaded Person(s) (P.G. 221-14)
Unlawful Evictions (P.G. 214-12)
Aided Cases General Procedure (P.G. 216-01)
Mental Health Removal Orders (P.G. 216-06)
Use of Conducted Electrical Weapons (CEW) (P.G. 221-08)

FORMS AND REPORTS

ACTIVITY LOG (PD112-145)
AIDED REPORT WORKSHEET (PD304-152b)
THREAT, RESISTANCE OR INJURY (T.R.I.) INCIDENT WORKSHEET (PD370-154)
UNUSUAL OCCURRENCE REPORT (PD370-152)