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Persons of Diminished Capacity

PURPOSE AND GOALS:

The identification and handling of person of diminished capacity, who are defined by statute in one of two categories, emotionally disturbed or incapacitated persons, is crucial for proper action by the officer. This general order defines our agency's commitment to a successful outcome in these encounters.

The goals of this agency's EMP/IP General Order are to:

- a. Protect the afflicted person;
- b. Protect those persons around them;
- c. Provide proper treatment for the afflicted person;
- d. Reduce injuries to officers;
- e. Reduce liability risks for the Department.

The International Association of Chiefs of Police (IACP) model policy asserts: "Dealing with individuals in enforcement and related contexts who are known or suspected to be mentally ill carries the potential for violence, requires an officer to make difficult judgments about the mental state and intent of the individual, and requires special police skills and abilities to effectively and legally deal with the person so as to avoid unnecessary violence and potential civil litigation. Given the unpredictable and sometimes violent nature of the mentally ill, officers should never compromise or jeopardize their safety or the safety of others when dealing with individuals displaying symptoms of mental illness. In the context of enforcement and related activities, officers shall be guided by this state's law regarding the detention of the mentally ill. Officers shall use this policy to assist them in defining whether a person's behavior is indicative of mental illness and dealing with the mentally ill in a constructive and humane manner."

Suggested tactics when dealing with the mentally ill include:

Should the officer determine that an individual may be mentally ill and a potential threat to him/herself, the officer, or others, or may otherwise require law enforcement intervention for humanitarian reasons as prescribed by statute, the following responses may be taken or considered:

Request a backup officer, and always do so in cases where the individual will be taken into custody.

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Take steps to calm the situation. Where possible, eliminate emergency lights and sirens, disperse crowds, and assume a quiet non-threatening 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.

Move slowly and do not excite the disturbed person, provide reassurance that the police are there to help and that he/she will be provided with appropriate care.

Communicate with the individual in an attempt to determine what is bothering him/her. Relate your concern for their feelings and allow them to ventilate their feelings. Where possible, gather information on the subject from acquaintances or family members and/or request professional assistance if available and appropriate to assist in communicating with and calming the person.

Do not threaten the individual with arrest or in any other manner as this will create additional fright, stress, and potential aggression.

Avoid topics that may agitate the person and guide the conversation toward subjects that help bring the individual back to reality.

Always attempt to be truthful with the mentally ill individual. If the subject becomes aware of a deception, they may withdraw from the contact in distrust and may become hypersensitive or retaliate in anger.

DEFINITIONS:

Persons Requiring Treatment (PRT):

MCL 330.1401 defines a PRT as one of the following:

a. An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.

b. An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has

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demonstrated that inability by failing to attend to those basic physical needs.

c. An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others. This individual shall receive involuntary mental health treatment initially only under the provisions of sections 434 through 438.

d. An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily, who is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of his or her condition and whose noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing 1 or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual under this subdivision is only eligible to receive assisted outpatient treatment under section 433 or 469a.

e. An individual whose mental processes have been weakened or impaired by a dementia, an individual with a primary diagnosis of epilepsy, or an individual with alcoholism or other drug dependence is not a person requiring treatment under this chapter unless the individual also meets the criteria specified in subsection (1). An individual described in this subsection may be hospitalized under the informal or formal voluntary hospitalization provisions of this chapter if he or she is considered clinically suitable for hospitalization by the hospital director.

Incapacitated Person:

MCL 333.6501(3) defines "Incapacitated" as meaning that an individual, as a result of the use of alcohol, is unconscious or has his or her mental or physical functioning so impaired that he or she either poses an immediate and substantial danger to his or her own health and safety or is endangering the health and safety of the public.

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Officers must realize that a person may be incapacitated for reasons other than intoxication. Unconsciousness may be an indication of a medical problem or emergency. In all cases where the unconscious person cannot be aroused by the reasonable efforts of the officer to a level of consciousness where the officer can communicate with the subject, the officer shall consider the subject's condition to be a medical emergency.

PROTECTIVE CUSTODY:

Persons Requiring Treatment (PRT):

MCL 330.1427 defines Protective custody as it applies to law enforcement officers when locating PRT persons.

a. If a peace officer observes an individual conducting himself or herself in a manner that causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in section 401, the peace officer may take the individual into protective custody and transport the individual to a preadmission screening unit designated by a community mental health services program for examination under section 429 or for mental health intervention services. The preadmission screening unit shall provide those mental health intervention services that it considers appropriate or shall provide an examination under section 429. The preadmission screening services may be provided at the site of the preadmission screening unit or at a site designated by the preadmission screening unit. Upon arrival at the preadmission screening unit or site designated by the preadmission screening unit, the peace officer shall execute an application for hospitalization of the individual. As soon as practical, the preadmission screening unit shall offer to contact an immediate family member of the recipient to let the family know that the recipient has been taken into protective custody and where he or she is located. The preadmission screening unit shall honor the recipient's decision as to whether an immediate family member is to be contacted and shall document that decision in the recipient's record. In the course of providing services, the preadmission screening unit may provide advice and consultation to the peace officer, which may include a recommendation to transport the individual to a hospital for examination under section 429, or to release the individual from protective custody. However, the preadmission screening unit shall ensure that an examination is conducted by a physician or licensed psychologist prior to a

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recommendation to release the individual. The preadmission screening unit shall ensure provision of follow-up counseling and diagnostic and referral services if needed if it is determined under section 429 that the person does not meet the requirements for hospitalization.

b. A peace officer is not financially responsible for the cost of care of an individual for whom a peace officer has executed an application under subsection (1).

c. A hospital receiving an individual under subsection (1) who has been referred by a community mental health services program's preadmission screening unit shall notify that unit of the results of an examination of that individual conducted by the hospital.

Incapacitated Persons:

MCL 333.6501 provides a definition for Protective custody as it applies to law enforcement officers when locating incapacitated persons.

a. An individual who appears to be incapacitated in a public place shall be taken into protective custody by a law enforcement officer and taken to an approved service program, or to an emergency medical service, or to a transfer facility pursuant to subsection (4) for subsequent transportation to an approved service program or emergency medical service. When requested by a law enforcement officer, an emergency service unit or staff shall provide transportation for the individual to an approved service program or an emergency medical service. This subsection shall not apply to an individual who the law enforcement officer reasonably believes will attempt escape or will be unreasonably difficult for staff to control.

b. A law enforcement officer may take an individual into protective custody with that kind and degree of force which would be lawful were the officer effecting an arrest for a misdemeanor without a warrant. In taking the individual, a law enforcement officer may take reasonable steps to protect himself or herself. The protective steps may include a "pat down" search of the individual in his or her immediate surroundings, but only to the extent necessary to discover and seize any dangerous weapon which may on that occasion be used against the officer or other individuals present. These protective steps shall be taken by the law enforcement officer before an emergency service unit or staff provides transportation of

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an individual to an approved service program or emergency medical service.

c. The taking of an individual to an approved service program, emergency medical service, or transfer facility under subsection (1) is not an arrest, but is a taking into protective custody with or without consent of the individual. The law enforcement officer shall inform the individual that he or she is being held in protective custody and is not under arrest. An entry or other record shall not be made to indicate that the individual was arrested or charged with either a crime or being incapacitated. An entry shall be made indicating the date, time, and place of the taking, but the entry shall not be treated for any purpose as an arrest or criminal record.

d. An individual taken into protective custody under subsection (1) may be taken to a transfer facility for not more than 8 hours, if there is neither an approved service program nor an emergency medical service in that county and if, due to distance or other circumstances, a law enforcement officer is unable to complete transport of the individual to an approved service program or emergency medical service. The law enforcement officer or agency shall immediately notify and request the nearest approved service program or emergency medical service to provide an emergency service unit or staff as soon as possible to transport the individual to that approved service program or emergency medical service. If neither an emergency service unit nor staff is available for transportation, a law enforcement officer may transport the individual to an approved service program or emergency medical service. If an emergency service unit or staff is to provide transportation, the designated representative of the transfer facility shall assume custody of the individual and shall take all reasonable steps to ensure the individual's health and safety until custody is transferred to the emergency service unit or staff of an approved service program or emergency medical service.

e. An individual arrested by a law enforcement officer for the commission of a misdemeanor punishable by imprisonment for not more than 3 months, or by a fine of not more than \$500.00, or both, may be taken to an approved service program or an emergency medical service for emergency treatment if the individual appears to be incapacitated at the time of apprehension. This treatment is not in lieu of criminal prosecution of the individual for the offense with which the individual is charged, nor shall it preclude the administration of any tests as provided for by law.

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LIABILITY:

Emotionally Disturbed Persons:

MCL 330.1427b indicates that:

- a. A peace officer who acts in compliance with this act is acting in the course of official duty and is not civilly liable for the action taken.
- b. Subsection (a) does not apply to a peace officer who, while acting in compliance with this act, engages in behavior involving gross negligence or willful and wanton misconduct.

In the case *Gaddis v. Redford Township and City of Dearborn Heights* the United States Court of Appeal upheld a lower court's dismissal of a lawsuit against officers and two municipalities for a shooting involving an emotionally disturbed person. In the resulting lawsuit, Gaddis' expert Dr. Jim Fyfe (Commissioner of Training NYPD) provided an affidavit that asserted his opinion "that the officers deviated from proper police techniques for dealing with emotionally disturbed persons. In particular, he testified that "officers using correct police techniques would recognize that 'techniques of intimidation and force' are not likely to work on EDPs in the way they may work on rational persons. Fyfe testified that police should instead have picked a single officer to talk calmly to the EDP, and should have refrained from unnecessary displays of force. He further criticized the officer's use of pepper spray, and described the attempt to tackle Gaddis by surprise from behind as a 'terrible tactic.'"

Although the court upheld the summary judgment for the officers, the court asserted:

"We acknowledge that a suspect's apparent mental state is one of the facts and circumstances of the particular case that should be considered in weighing and excessive force claim. Moreover, the opinions of qualified experts such as Mr. Fyfe are often entitled to be given weight in this determination."

REQUIRED REPORTS:

When the officers takes a PRT or incapacitated person into protective custody, or provides an transports for a voluntary admit, an incident report documenting the contact will be completed.

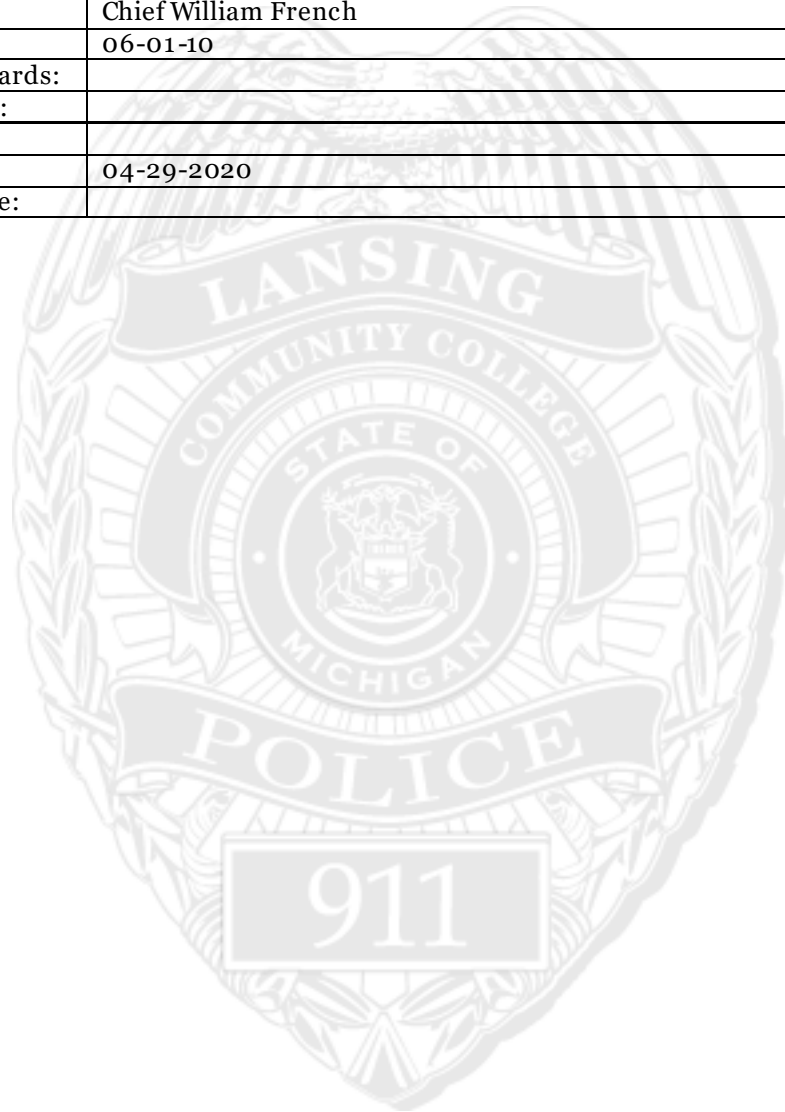
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