

SOUTH BURLINGTON POLICE DEPARTMENT

PR-302: Use of Force – Appendix D – Interacting with Persons Known to be Experiencing or Perceived to be Experiencing Mental Impairment

Effective: 10/1/2021

Updated: 9/15/2021

1. PURPOSE

These guidelines are an extension of the Statewide Use of Force policy and are intended to assist Vermont law enforcement officers when they encounter persons known to be experiencing, or perceived to be experiencing, mental impairment to bring safe and effective resolution to the situation.

2. INTRODUCTION

Act 27 addresses standards for law enforcement use of force. Specifically, 20 V.S.A. § 2368 (b)(1) states that a law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether the use of force was objectively reasonable. Officers should make reasonable efforts to de-escalate the situation and if force is necessary, use only the force that is objectively reasonable, necessary and proportional to resolve the situation.

3. MENTAL IMPAIRMENT

A. Definition

For purposes of these guidelines, mental impairment is defined as a diminishment in an individual's cognitive, emotional or behavioral functioning as a result of physiological or psychosocial factors. A person may experience mental impairment for a variety of reasons, including as a result of a mental illness, drug or alcohol use or a physical illness such as a traumatic brain injury or a diabetic emergency.

B. Signs that someone may be experiencing mental impairment

Signs that someone may be experiencing mental impairment include, but are not limited to:

- A person experiencing mental impairment may be distracted by auditory, visual or other stimulus and unable to comply with directions from law enforcement or to listen effectively.
- Appearance of heightened emotion or the opposite – flat affect/no emotions.
- Atypical aggression or displaying an unusually high energy level.
- Person may appear to be reacting to external or internal stimuli that is not able to be perceived by the officer (voices, smells, seeing something the officer doesn't).
- Disorganized behavior or atypical behavior like walking in traffic, not having clothes on or doing things that are unexpected given the context/environment.
- Incoherent speech, delayed speech, unprompted vocalizations or providing responses that do not match the questions asked.
- Sensitivity to auditory or sensory stimulation, covering their ears, turning away.
- Rocking back and forth or other self-soothing mechanisms.

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- Non-compliance with officer's instructions in a manner that indicates an inability to comprehend or follow instructions rather than outright defiance. For example, a person may try to retreat away out of fear or appear to "freeze up."

C. Possible reactions to uses of force by a person experiencing mental impairment

These are generalized statements and do not apply to all persons experiencing mental impairment

The person may have unexpected strength and tolerance to pain. This information may be useful when determining how many officers should be present and whether or not a hands-on approach will be successful or merely cause the officer(s) to have to escalate their level of force.

The person may be vulnerable to ill effects of Taser or certain restraints because of pre-existing or medication-induced conditions (if possible, check with family members or health care providers about a subject's pre-existing conditions before deploying force).

4. GUIDING PRINCIPALS

No two situations are alike. While every encounter is unique, there are some fundamental principles that should be upheld in every situation involving a person known to be experiencing or perceived to be experiencing mental impairment. First, acknowledging the sanctity of human life – including the lives of the subject(s), the officer(s), and the general public – is central to the police mission to protect and serve. In addition, the ability for law enforcement officers to display patience, humanity and genuine compassion in these situations will lead to better outcomes and increase public confidence. Next, law enforcement must go beyond a "what is justified" mindset to striving for what is the best possible outcome with the least amount of harm to all involved. This includes trying to limit the amount of trauma experienced by the subject, their family and the community. Lastly, law enforcement officers must be self-aware and not create the exigency that requires a use of force.

5. LEGAL CONSIDERATIONS

There are specific state and federal laws as well as case law that apply to law enforcement use of force against persons law enforcement officers know or perceive to be experiencing mental impairment.

A. Vermont Use of Force Law

Vermont's recently enacted statewide use of force law provides that when a law enforcement officer knows that a subject's conduct is the result of a mental impairment, the officer must take

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that information into account in determining the amount of force appropriate to use on the subject, if any.¹

Vermont's statewide use of force statute also provides that a law enforcement officer shall not use deadly force against a person based on the danger that person poses to himself or herself if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.²

For example, if a person with a gun is threatening to kill themselves, it would be unlawful for a law enforcement officer to use deadly force against that person if an objectively reasonable officer would not believe that the person poses an imminent threat of death or serious bodily injury to others, including the law enforcement officer.

B. Accommodations for Individuals with Known or Apparent Disabilities

When feasible, law enforcement officers should seek to reasonably accommodate individuals with known or apparent disabilities, including when considering the use of force against such individuals. Reasonable accommodations are specific to each situation. Examples of accommodations that may be reasonable include:

- Recognizing that an individual may be overwhelmed and removing distractions from the scene.
- Obtaining relevant information from family members, friends or others at the scene who know the individual and their history.
- Asking an adult member of the individual's family to participate in transport.
- Speaking slowly, simply, and briefly.
- Limiting the number of people who speak to the individual.
- Maintaining a comfortable distance from the individual.
- Engage in non-threatening communications.
- Use the passage of time to defuse a situation.
- Avoid physical contact.
- Call a nearby mental health counselor or peer support specialist.

C. Case law

A subject's mental impairment is one of among many factors that a court will consider in determining whether a law enforcement officer's use of force was objectively reasonable.³ Other

¹ 20 V.S.A. §2368, subdivision (b)(5) (Added 2021, No 27, eff. October 1, 2021.)

² 20 V.S.A. §2368, subdivision (c)(4) (Added 2021, No 27, eff. October 1, 2021.)

³ *Brunette v. City of Burlington*, Case No. 2:15-cv-00061, at p. 40 (D. Vt. Aug. 30, 2018); *Chamberlain v. City of White Plains*, 960 F.3d 100, 106 fn. 9, 108, and 114 (2d Cir. 2020)

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factors include the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.⁴

Thus, use of force against an individual who has committed no crime, poses no threat to the community and whom the officer knows or reasonably should know is experiencing mental impairment is not evaluated in the same way as use of force to apprehend a person suspected of serious criminal wrongdoing or who poses a threat to the community.⁵

6. PROCEDURES

A. Alternatives to be considered

Gaining control is not always necessary if the person is not harming themselves or others. The following suggestions are meant to emphasize the importance of understanding the role of law enforcement in a given situation. If no crime has been committed and the police are serving in a caretaking function, it is essential that the officer make an independent assessment of the situation.

- Even though police were called to the scene, does this constitute an emergency or an appropriate use of police resources? Absent an articulable fear of danger to a person, officers should consider if there are other community partners that might be better suited to handle this situation.
- Even though a person may be experiencing mental impairment does that mean police have to intervene or take the person into custody? Is it a crisis? Is there danger to self or others? Is there an emergent need to take action rather than summon other resources or make a referral to resources?
- Although a person may have a mental illness, this does not necessarily mean they are in need of or want mental health care.

⁴ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

⁵ *Chamberlain v. City of White Plains*, 960 F.3d 100 (2d Cir. 2020); *Gray v Cummings*, 917 F.3d 1, 11 (1st Cir. 2019); *King v. Hendricks County Comm'rs*, 954 F.3d 981, 984 (7th Cir. 2020); *Vos v. City of Newport Beach*, 892 F.3d 1024, 2034 (9th Cir. 2018).

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B. Identify the situation – planning/preparation

When time is available – such as during the response to such an incident – time can be used effectively to assist in a successful resolution. Either the responding officer, or in some cases, the dispatcher, should begin to assess the circumstances by gathering as much information as is available. Useful information can be gleaned by considering the following preparation steps:

BEFORE ARRIVAL TO THE SCENE

- Who called the police and what prompted the call? What does the caller know about the subject? A family member with knowledge of the subject's condition and past history may be able to provide more reliable information than a stranger who can only report behaviors happening in real time.
- If there have been prior instances of the person needing assistance, does the caller know what helped?
- Dispatch should ask the caller if there are weapons involved, who is on scene and what the physical environment is.
- Officers should be familiar with the resources available in the area and enlist assistance as necessary because local resources may have knowledge of the individual and there may be a plan in place for this person.
- Check prior involvements with the person – is there information that points to a mental health impairment? Could this help explain some of the conduct being reported?
- Check CAD/RMS or other resources to see if there are contacts listed or family members or acquaintances who may be useful in the encounter. Information from prior encounters may provide ways to connect with the person.

UPON ARRIVAL AT THE SCENE

- Upon arrival and initial assessment of the situation, the officer should ask *do I need to take immediate action?* If the answer is yes, nothing in this appendix prevents an officer from doing so. If not, **slow everything down.**
- Officers should consider whether summoning a trained crisis negotiator or mental health clinician would be appropriate.

C. Response guidelines – while in the encounter

Once on scene and able to assess the totality of the circumstances, officers may be able to use some of the following suggestions to facilitate a safe outcome. Time, containment, communication, self-regulation and utilization of community resources are effective tools to work toward peaceful resolution.

CONTAINMENT

- Keep distance from the person whenever able, both for officer safety reasons and to avoid making the person feel trapped.

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- Try to limit the number of other influences who may be escalating the situation unknowingly (other persons on scene).

TIME

- Slow down the pace of events and try to establish rapport. Try to create a non-threatening environment where conversation can occur.
- Allow for the possibility that a successful resolution may look different than a typical police response. Expect that this will take longer than usual and do not rush to problem solving. Be open to alternative resolutions and collaboration with other stakeholders.

SELF-REGULATION

- Self-regulation – controlling your own level of stress and conveying calm. Officers should be mindful to not escalate things by their own behavior.
- Make a conscious choice to shift from enforcement mode to peaceful resolution mode. The safety of all persons trumps the need for the officer to control every movement. Be respectful. Avoid whispering or laughing. Validate the person's concerns and perspective of distress whether or not it is something you personally would find distressing.
- Officers should continually re-assess the purpose of their presence on scene and what the desired outcome is. Focus on keeping the person and situation calm.
- Be nice. Treat the person as a fellow human and provide the level of service that you would want if this was your loved one.

COMMUNICATION

- Utilize a contact officer and a cover officer. The cover officer should ensure the environment is safe and allow the contact officer to focus on the subject. The contact officer should be the only one to talk to the subject. The contact officer should continually assess their demeanor and intensity to try and de-escalate the situation. Consider changing contact officers or changing roles among responders if things are not going well or if the contact officer loses their patience.
- Command presence is unlikely to be effective in an encounter with a person experiencing mental impairment. Shouting or making threats is often counterproductive. Maintain your professionalism and calm demeanor. Do not use profanity or raise your voice. Some persons experiencing certain mental impairments may experience hyper-sensitive hearing such that a whisper may sound like a shout.
- Avoid directives such as "calm down" or "relax". Consider using non-adversarial phrases such as "I see you are upset. Please tell me about it" or "What can I do to help you?" Assure the person that you are there to help and they are not in trouble (or that the trouble can be overcome).
- Make only one request at a time or ask only one question. Ask open ended questions. Listen carefully to the responses and see if there is useful information to develop rapport or

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identify needs. Repeat back what they have said to you, paraphrase and check for understanding.

- Be aware of your non-verbal cues – facial expressions, body language, tone of voice and eye contact can be effective to help de-escalate a volatile situation.
- If an officer takes an action, assessing whether it had the desired effect or not will help inform next steps.

COMMUNITY RESOURCES

- Utilize community resources such as social workers, CRISIS clinicians, military resources (if the subject is a veteran), peer support specialists or other community members with special knowledge or a connection to the subject and allow them to inform elements of the response or take the lead as appropriate.
- Offer alternative resources as appropriate – if you gain information that the person is concerned about domestic violence or substance use, offer to connect them to community resources that do not focus on mental health.

7. SPECIAL SITUATIONS

A. Welfare Checks

When called to check the welfare of a person, the primary objective is to help and do no harm. Most welfare checks do not involve an allegation of criminal behavior and that changes the calculus of what is reasonable. The desired outcome is to get the subject whatever help they need without unnecessary harm or trauma being inflicted through the encounter.

DISPATCHER/CALL TAKER

- The call taker/dispatcher should try to ascertain as much information as possible about the situation, the subject of concern and the caller.
- Determine the caller's basis of knowledge of the subject.

LAW ENFORCEMENT INDEPENDENT ASSESSMENT

- The officer needs to make an independent assessment of the situation and whether police intervention is needed. Consider speaking to the complainant prior to responding. Is an in-person response required?

UPON ARRIVAL

- On arrival, state who you are and why you are there. Try to reassure the person that you are there to help and determine that they are safe. Provide information about what would assist in resolving the concern.

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- Try to establish communication, even if through a closed door.
- Officers should determine whether or not the person poses a risk to themselves or others. If the answer is yes, a plan should be made to take the person into protective custody. If the answer is no, the officer should consider making referrals to available resources or asking community resources to follow up with the subject.

WARRANTLESS ENTRY –CONSIDERATIONS

It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. However, officers may render emergency assistance to occupants of private property who are seriously injured or threatened with such injury. The mere possibility of danger is insufficient. And, a person's mental illness does not alone create an exigent circumstance.

The core question is whether the facts would lead a reasonable officer to believe that there was an urgent need to render aid or take action. A warrantless search is no longer permissible once the exigency ends. The exigent circumstances rule does not apply where the police, without a warrant or any legally sound basis for warrantless entry, threaten that they will enter without permission unless admitted.

If police are going to make forced entry to the residence or a room, strong consideration should be given to announcing the intention to do so and allow the person an opportunity to open the door. Again, officers should not create the exigency that then requires immediate, forced entry.

II. Warrants for emergency examination

Law enforcement officers are periodically requested to take a person into custody pursuant to a warrant for emergency examination (EE). These guidelines should provide strategies for these encounters. Officers are reminded to make reasonable accommodations during service of EE warrants so long as it is feasible under the circumstances.