



Dealing with Persons of Diminished Capacity	Related Policies: Response to Resistance
<i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Arkansas Statutes: A.C.A. § 20-47-210; 20-47-207; and 20-47-219	
CALEA Standard: 41.2.7	
Best Practices: “Dealing with the Mentally Ill,” model policy and paper, IACP National Law Enforcement Policy Center, 1997; “Crisis Intervention Technique,” Memphis Police Department	
Date Implemented:	Review Date:

- I. **Purpose:** To provide field officers with the essential tactical and processing skills necessary to effectively deal with persons of diminished capacities in a manner to provide the required professional assistance these persons need, to protect the community, to safeguard the officers involved in the encounter and to enhance the agency’s risk management.
- II. **Policy:** It is the policy of this department to attempt to resolve encounters with persons of diminished capacity in the safest manner possible and help these persons obtain professional resources when reasonable to do so. Every community can expect its law enforcement officers to encounter persons of diminished capacities. This group of persons presents officers with different and often complex issues. Diminished capacity may be the result of intoxication, suicidal potentials, medical complications or mental illness, etc. Persons of diminished capacity present officers with a wide range of behaviors usually different than those exhibited by other members of the community or persons involved in criminal activities. Persons of diminished capacity may display conduct that is bizarre, irrational, unpredictable and/or threatening. They may not comprehend communication in the manner that the officer would expect. They often do not respond to authoritative persons or the display of force. It is not the mission of the officer to diagnose the root cause for the person’s behavior.
- III. **Definitions**
 - A. **Persons of diminished capacity:** Persons encountered in the field who exhibit unusual behaviors commonly referred to as irrational, bizarre, unpredictable, etc. These outward observable symptoms could be the result of intoxication, drug use, suicidal indications, mental illness or medical complications.
 - B. **Mental Illness:** A.C.A. 20-47-202 (10)(A) defines “mental illness” as a substantial impairment of emotional processes, or the ability to exercise

conscious control of one's action's, or the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions.

C. Professional resources: Mental health professionals, emergency medical facilities, detoxification centers, Veteran's Affairs, etc.

D. Voluntary Admissions ACA 20-47-204 The following shall apply to **voluntary** admissions of persons with a mental illness, disease, or disorder:

- i.** Any person who believes himself or herself to have a mental illness, disease, or disorder may apply to the administrator or his or her designee of a hospital or to the administrator or his or her designee of a receiving facility or program to which admission is requested.
 - a.** If the administrator or his or her designee of the hospital or the administrator or his or her designee of a receiving facility or program shall be satisfied after examination of the applicant that he or she is in need of mental health treatment and will be benefitted thereby, he or she may receive and care for the applicant in the hospital or receiving facility or program for such a period of time as he or she shall deem necessary for the recovery and improvement of the person, provided that the person agrees at all times to remain in the hospital or receiving facility or program;
- ii.** If at any time the person who has voluntarily admitted himself or herself to the hospital or receiving facility or program makes a request to leave, and the administrator or his or her designee determines that the person meets the criteria for involuntary admission as defined in § 20-47-207, then the person shall be considered to be held by detention and the involuntary admission procedures set forth herein shall apply;
- iii.** Any person requesting to leave under subdivision (2) of this section shall, within one (1) hour of his or her request to any hospital or receiving facility or program employee, in an administrative or treatment capacity, be provided with a written statement advising him or her of all rights delineated in §§ 20-47-211 and 20-47-212. The person shall further be provided with an acknowledgment confirming that he or she has been advised of the aforesaid rights.
 - a.** If the person refused to sign the acknowledgment, this refusal shall be noted in the person's chart and shall be attested to by two (2) eyewitnesses on a separate document.
 - b.** An original of said attestation shall be furnished to the court.
- iv.** For the purposes of computing the initial period of evaluation and treatment referred to in § 20-47-213, detention begins upon the signing of the acknowledgment by the person or, in the event that the person refuses to sign the acknowledgment, upon the attestation of said refusal by two (2) eyewitnesses; and
- v.** A person voluntarily admitted who absents himself or herself from a hospital or receiving facility or program, as defined in this subchapter, may be placed on elopement status and a pick-up order issued if, in the opinion of the

treatment staff, the person meets the criteria for involuntary admission as defined in § 20-47-207.

- a. It shall be the responsibility of the sheriff of the county or a law enforcement officer of the city of the first class in which the individual is physically present to transport the individual.
- b. Upon return to the hospital or receiving facility or program, this individual shall be held under detention as defined in § 20-47-202(5).

E. Involuntary Admission - Original Petition ACA 20-47-207:

- i. **Written Petition -- Venue.** Any person having reason to believe that a person meets the criteria for **involuntary admission** as defined in subsection (c) of this section may file a verified petition with the probate clerk of the county in which the person alleged to have mental illness resides or is detained.
- ii. **Contents of Petition.** The petition for **involuntary admission** shall:
 - a. State whether the person is believed to be of danger to himself or herself or others as defined in subsection (c) of this section;
 - b. Describe the conduct, clinical signs, and symptoms upon which the petition is based. The description shall be limited to facts within the petitioner's personal knowledge;
 - c. Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition; and
 - d. Contain a specific prayer for **involuntary admission** of the person to a hospital or to a receiving facility or program for treatment pursuant to § 20-47-218(c).
- iii. **Involuntary Admission Criteria.** A person shall be eligible for **involuntary admission** if he or she is in such a mental condition as a result of mental illness, disease, or disorder that he or she poses a clear and present danger to himself or herself or others:
 - a. As used in this subsection, "a clear and present danger to himself or herself" is established by demonstrating that:
 - b. The person has inflicted serious bodily injury on himself or herself or has attempted suicide or serious self-injury, and there is a reasonable probability that the conduct will be repeated if **admission** is not ordered;
 - c. The person has threatened to inflict serious bodily injury on himself or herself, and there is a reasonable probability that the conduct will occur if **admission** is not ordered;

- d. The person's recent behavior or behavior history demonstrates that he or she so lacks the capacity to care for his or her own welfare that there is a reasonable probability of death, serious bodily injury, or serious physical or mental debilitation if **admission** is not ordered; or:
 - 1. The person's understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily;
 - 2. The person needs mental health treatment on a continuing basis to prevent a relapse or harmful deterioration of his or her condition; and
 - 3. The person's noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least two (2) times within the last forty-eight (48) months or has been a factor in the individual's committing one (1) or more acts, attempts, or threats of serious violent behavior within the last forty-eight (48) months; and
- e. As used in this subsection, "a clear and present danger to others" is established by demonstrating that the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another, and there is a reasonable probability that the conduct will occur if **admission** is not ordered.

IV. Procedure: The ultimate mission of law enforcement when encountering a person of diminished capacity is to control the encounter and determine the best course of action for the subject. Response guidelines can be segmented into four (4) areas: Containment, Coordination, Communication and Time.

- A. **Containment:** Before any reasonable control and defusing techniques can be used, the subject must be contained:
 - i. If circumstances allow, two (2) officers should be dispatched to an incident involving a person of diminished capacity. If an officer finds him/herself in a situation with such a person, the officer should request back-up when reasonable and practical to do so.
 - ii. Responding officers should be aware that the use of emergency lights and siren may agitate the subject of the call or encounter.
 - iii. The officers will attempt to separate the subject from other civilians. This containment should respect the comfort zone of the subject in order to reduce any unnecessary agitation. Officers should convince the subject that they do not have to move. Officers should continuously evaluate this comfort zone and not compress it, unless absolutely necessary.
 - iv. It is important for officers to realize that on-lookers and family members should not become involved either verbally or physically in the control methods when possible.
 - v. Effective containment reduces the elements of agitation, such as large groupings of persons/officers, emergency vehicle equipment, loud police radio transmissions, and multiple persons directing communications to the

subject. Containment is meant to reduce outside influences and sources of agitation.

- vi. Officers should move slowly.
- vii. Officers should utilize available tactics to de-escalate the situation where possible, however if an officer is faced with a dynamic and violent situation that poses a threat to the officer or other persons present, then officers should utilize their law enforcement control tactics outlined under the “Response to Resistance” policy to gain control.

B. Coordination: This is essential for control of the encounter and is the foundation for the development of an effective plan and use of personnel and resources:

- i. One officer at the scene shall be designated or assume the position of being the lead officer. This may not be the most senior person on the scene.
- ii. A perimeter should be determined to ensure that outside persons and/or family members don’t become involved.
- iii. Officers should limit observable indications of force.
- iv. The lead officer should designate an officer to gather intelligence regarding the subject being encountered. This type of information can come from persons at the scene, neighbors and/or family. This information can become important in determining the further tactical approaches to the subject and the most appropriate form of referral.
- v. The lead officer is responsible for determining what resources should be requested including additional police personnel, specialized weapons, professional resources and staged medical personnel.
- vi. When warranted, the lead officer will designate the location for a command post and staging area.

C. Communication with the person of diminished capacity should be planned and controlled:

- i. When possible, prior to engaging the subject in communication, the initial responder should await the arrival of a cover officer. When dealing with subjects armed with edged weapons officers should, where possible, maintain a zone of safety which allows for reaction should the subject decide to attack.
- ii. One officer should be designated as the primary communicator and other officers should refrain from becoming involved.
- iii. Verbal communication should be non-threatening. Whenever possible, use open-ended questions designed to facilitate the subject’s participation. If the subject does not respond, use other communication techniques. It may be necessary to change the person designated as the primary communicator and determine whether that might be beneficial.
- iv. It has been found that threats to arrest or use force are not productive when dealing with persons with diminished capacities. Reassure the subject that the police are there to help them.

- v. Officers must constantly analyze what affect, if any, their efforts are having on the subject. This is essential to identify areas that appear to agitate the subject that should then be avoided.
 - vi. Normally, family members should not be used in an attempt to establish communications. This frequently exacerbates the situation.
- D.** Time is the concept of elongating the encounter, rather than hastening it:
- i. History has shown that the longer the encounter is allowed to occur, the better the chance for a successful and safe resolution.
 - ii. Increasing the time of the encounter and using defusing techniques allows the subject to reflect upon his/her predicament.
 - iii. Creating time also allows for the field units to be supported by the deployment of additional police personnel, specialized equipment and medical support personnel.
 - iv. Time encourages the ability to communicate and create a relationship between the subject and the primary communicator.
- E.** Commitment Procedures:
- i. In determining the most appropriate form of professional resource and referral, officers should consider the information provided by professional resources, persons and family members.
 - ii. Any peace officer who has reasonable grounds to believe that the individual is mentally ill and presents a danger or threat of danger to self, family or others if not restrained shall take the individual into custody and transport the individual without unnecessary delay to a hospital or designated psychiatric facility and execute a written petition for involuntary commitment with the probate clerk of the county in which the person alleged to have mental illness resides or is detained prescribed and provided by the A.C.A. § 20-47-207.
 - iii. An interested citizen may take the person to a hospital or to a receiving facility or program. If no other safe means of transporting the individual is available, it shall be the responsibility of the law enforcement agency that exercises jurisdiction at the site where the individual is physically located and requiring transportation, or unless otherwise ordered by the judge. A petition, as provided in § 20-47-207, shall be filed in the probate court of the county in which the person resides or is detained within seventy-two (72) hours, excluding weekends and holidays, and a hearing, as provided in § 20-47-209(a)(1) shall be held.
 - iv. Officers shall not use a detention facility as a holding facility for meeting the criteria of this policy unless the person also has criminal charges pending or the detention facility is the designated receiving facility pursuant to state law.
 - v. No officer shall place criminal charges against a person who is mentally ill and need of hospitalization for the purpose of avoiding transporting the person to an appropriate medical or psychiatric facility.
 - vi. "If any person involuntarily admitted to a receiving facility or program or hospital for care pursuant to this subchapter absents himself or herself from

a receiving facility or program or hospital without leave or fails to comply with the court-approved treatment plan, the person will be returned, upon the request of the person's treatment staff, to the receiving facility or program or hospital by the sheriff of the county or law enforcement officer of the city of the first class in which the individual is physically present or the hospital or receiving facility or program security personnel without further proceedings," A.C.A. 20-47-21.

- vii.** Officers are required to prepare or assist in the preparation of all required reports.