

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**Report of the Ad Hoc Task Force on the Use of Deadly Force by Law Enforcement Officers
Against Individuals Suffering From Mental Illness**

Final Report - December 4, 2008

Membership: Evert Fowle, District Attorney, Kennebec County (Co-Chair)
Mark Dion, Sheriff, Cumberland County (Co-Chair)
Donald Chamberlain, Director of Community Systems, OAMHS, DHHS
Carolyn Criss, M.D., Psychiatrist, Riverview Psychiatric Center
Patrick Fleming, Colonel, Maine State Police
Edward Googins, Chief, South Portland Police Department
Katherine Greason, Assistant Attorney General
Ann LeBlanc, Ph.D., Director, State Forensic Service
Brian MacMaster, Director of Investigations, Office of Attorney General
Glenn Ross, Sheriff, Penobscot County
Steven Sherrets, Ph.D., Mental Health Criminal Justice Manager, DHHS/ DOC
James Willis, Chief, Mount Desert Police Department

Meetings: October 16, 2008
October 29, 2008
November 17, 2008
December 1, 2008

On September 29, 2008, Attorney General G. Steven Rowe convened an ad hoc task force to review the procedures and protocols in place for handling “situations involving individuals in a state of crisis due to serious mental illness, severe emotional distress or suicidal ideation.” Specifically, the Attorney General asked the group to review materials related to some recent uses of deadly force by law enforcement officers and to “identify additional information and training and additional resources and protocols that may prove helpful in the future to reduce the need for officers to use deadly force.”

After reviewing and discussing the material cited in the Appendix to this report, we can find no consistent deficit in training, procedures, or knowledge on the part of law enforcement that, if addressed, would have led to a different outcome. On the contrary, we observe that the officers in these cases behaved in ways consistent with an understanding of potential mental health issues, with appropriate efforts to gather more information, reasonable for the situations they were facing.

We note, however, that there are a number of antecedent conditions that, if addressed, could decrease the incidence of situations requiring police to intervene with persons with mental illness under similar highly dangerous circumstances.

1. The current blue paper process does not adequately address the concept of dangerousness as understood by public safety personnel and family members. Furthermore, some police

officers and mental health workers, because of the impossibility or perceived impossibility of finding a psychiatric bed, consider application for blue paper admissions to be futile. These factors can lead to mentally ill persons remaining unevaluated and untreated in the community or being released prematurely from voluntary admissions.

- Additional education about the clinical, safety, and procedural components of the involuntary commitment process may foster a better understanding of how that process overlaps with public safety concerns. The task force recommends that further training on this topic be offered to police chiefs and sheriffs.
 - Under Maine's current blue paper system, a mentally ill person can "look good" to an examiner, while information known to family members about recent dangerous behavior is not presented in court. Some states have addressed this by giving families the option of applying directly to the Court for an involuntary inpatient evaluation. The task force recommends that this option be explored in Maine.
 - A uniform checklist for police officers would help them more successfully describe the seriousness of a case to mental health professionals. The task force recommends that such a checklist be developed, and, in fact, task force members are doing so.
2. There is presently a growing challenge to existing inpatient and outpatient resources for treatment of people with mental illness. Public safety crises involving people with mental illness have increased both in frequency and seriousness in their threat to all parties involved. While psychiatric beds may exist, hospital admission may be denied based on the presentation of the person with mental illness. Additionally, access to 72-hour Riverview Psychiatric Center beds reserved for correctional facilities is presently too limited. This leads to mentally ill inmates being released from jails without needed assessment or treatment, thereby increasing the probability of dangerous incidents in the community.
3. Police in crisis situations often do not have access to important mental health information that would help them manage crisis situations. Task force members agree that mental health and public safety professionals must share a common understanding of the balance that confidentiality laws provide between individual rights and public safety needs. A new state law, effective September 20, 2007, allows licensed mental health professionals to disclose protected health information to law enforcement officers if disclosure is necessary to allow the law enforcement officers to address a serious and imminent threat to health or safety.
- The task force recommends including information about this law, with the statutory citation, on the uniform checklist available to all law enforcement personnel.
 - The task force also recommends that the Board of Trustees of the Maine Criminal Justice Academy consider requiring that the checklist be part of law enforcement policies for dealing with persons exhibiting signs of mental illness.

- The task force also recommends that educational efforts be made through licensing boards, professional organizations, mental health agencies, or other appropriate means so that licensed mental health professionals will know that they may disclose information when they identify a dangerous situation.

The state mental health confidentiality statute does not allow disclosure of protected health information to law enforcement in all cases where disclosure would be permitted under federal law (HIPAA).

- The task force recommends broadening disclosures permitted under state law to the level allowed by HIPAA.

While state law allows mental health professionals to disclose information to law enforcement personnel of serious and imminent threats to health or safety, it does not create a duty to disclose. Arguably, mental health professionals have an independent common law duty to report.

- The task force recommends amending existing law to require mental health professionals to disclose to law enforcement personnel information relevant to a serious and imminent threat to health or safety, with appropriate immunities for good faith disclosures.

To the extent possible, in crisis situations, law enforcement personnel should have instantaneous access to existing databases with information about a subject's history of involuntary commitment. This would allow police to take into account that person's history of mental health problems when trying to ensure his or her safety, that of the community, and that of the officers involved.

4. Persons transported by law enforcement personnel to hospital emergency departments for a mental health evaluation are usually released without any notification to the police. Information about release would allow the police to provide extra attention to the family and neighborhood, and to take appropriate steps as needed to ensure safety and prevent escalation of any subsequent incidents.
 - The task force recommends that when persons in custody are taken to hospitals for evaluation, the hospital be required to notify the police if the person is released from the hospital following evaluation.
5. There is limited awareness on the part of mental health providers that possession of a firearm by persons who have been committed to state institutions is currently a misdemeanor under 15 M.R.S.A. §393.
 - The task force recommends that mental health professionals be educated about this provision.
 - The task force also recommends that mental health professionals who have reason to believe that persons who have been committed to state institutions have

firearms be required by law to notify the police, with appropriate immunities for good faith disclosures.

- The task force also recommends that discharge planning for persons who have been committed to state institutions must include (and document) inquiries into access by those persons to firearms, and notification of the patient, the family, and any caregivers of the prohibition against firearms in the home.

6. Potentially violent mentally ill individuals in the community pose a unique challenge.

- The task force recommends that the Board of Trustees of the Maine Criminal Justice Academy incorporate specific training on mental illness as a component of the police tactical team certification process.

Members of this task force recognize that none of these recommendations would be sufficient, alone or in combination, to eliminate the kinds of crisis situations represented by the cases reviewed. We observe, however, that improvements can be made in the way that mental health care providers and law enforcement interact with each other in times of crisis and before a crisis occurs. Some of these improvements require changes in statutes and regulations, while others require education and a current knowledge of existing law by all of the professions involved. It is hoped that with the consideration and adaptation of these proposals, communication and information sharing will be improved so as to reduce the number of instances where the safety of the police, community and the individual are placed in grave jeopardy.

Appendix to Report of Ad Hoc Task Force

Materials reviewed:

- Case summaries (5) and materials provided by Attorney General Steven Rowe
- News release (2/13/2004) pertaining to shooting outside of Lewiston Police Department
- News release (undated) pertaining to shooting in Indian Township, 5/12/2008
- Statesman Journal article: "*Officers now Educated in mental illness*" (Liao, 2008)
- Wall Street Journal article: "*A Death in the Family*" (August 16, 2008)
- Treatment Advocacy Center Briefing Paper: "*Law enforcement and people with severe mental illness*"(2005)
- United States Court of Appeals for the First Circuit decisions:
 - *Berube v. Conley*, 506 F.3d 79 (2007)
 - *Buchanan v. Maine*, 469 F.3d 158 (2006)
- Materials pertaining to civil commitment procedures in State of Florida (Baker Act)
- Table: State of Maine Police-involved shootings 1990-2008
- Table: 5 Year Compiled Report, Department of Human Services Perceived Threats/Assaults (October 2008)