



Approved:  
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Subject:

## 263. Peace Officer Custody

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### 263.1: PURPOSE AND SCOPE

This policy provides guidelines for when officers may take an individual into custody when the officer has probable cause to believe the person is a danger to self or to any other person and is in need of immediate care, custody, or treatment for mental illness ([ORS 426.228](#)). It is the purpose of this policy to provide guidance to officers when dealing with suspected mentally ill persons.

### 263.2: POLICY

It is the policy of the Albany Police Department to protect the public and individuals through legal and appropriate use of peace officer custody authority.

### 263.3: AUTHORITY

- a. An officer may take a person into custody when the officer has probable cause to believe the person is dangerous to themselves or to any other person and is in need of immediate care, custody or treatment for mental illness ([ORS 426.228\(1\)](#)).
- b. An officer shall also take a person into custody at the direction of the community mental health program director when the director has probable cause to believe the person is imminently dangerous to themselves or to another person. The director is mandated to prepare a report for the officer to deliver to the treating licensed independent practitioner ([ORS 426.228\(2\)](#)).
- c. The officer shall transport the person in custody to the nearest facility approved by the Oregon Health Authority (OHA) or will transfer custody of the person to a mental health representative authorized under [ORS 426.233\(3\)](#).
- d. If, upon delivery of the person to the facility, the licensed independent practitioner finds the person is not in need of emergency care or treatment for mental illness, the person is to be released from custody. The officer or the program director shall return the person to the place where he/she was taken into custody, or other reasonable local location, unless the person declines that service.

**263.3.1: VOLUNTARY EVALUATION**

If an officer encounters an individual who may qualify for custody (ORS 426.228), the officer may inquire as to whether the person volunteers to be evaluated at an appropriate facility. If the individual volunteers, the officer(s) should:

- a. Transport the individual to an appropriate facility that is able to conduct the evaluation and admit the person.
- b. If at any point the individual changes their mind regarding voluntary evaluation, officers should proceed with custody (ORS 426.228), if appropriate.
- c. Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.

**263.3.2: RESTRAINTS**

If the patient is violent or potentially violent, the officer will notify the staff of this concern. The staff member in charge will have discretion as to whether soft restraints will be used. If these restraints are desired, the officer will wait while they are being applied to help provide physical control of the patient, if needed, and in conformance to the [Use of Force: Policy 0240](#).

**263.3.3: MENTAL HEALTH DOCUMENTATION**

Officer(s) transporting a person in custody pursuant to ORS 426.228 shall provide a verbal summary to an emergency department staff member regarding the circumstances leading to the involuntary detention.

**263.3.4: SECURING OF WEAPONS**

If a receiving and secured facility prohibits weapons or if an extraordinary event occurs in the treatment facility and officers determine a need to secure their firearms, the firearm shall be secured in the appropriate gun locker at the facility or in the police vehicle.

**263.3.5: EXTREMELY DANGEROUS PERSONS**

An officer may take into custody an individual on conditional release from a state hospital pursuant to an order of revocation. The written order does not have to be in the possession of the officer and may be confirmed through the Law Enforcement Data System (LEDS) ([ORS 426.701](#)).

A person may be taken into custody if all of the following conditions apply (ORS 426.701):

- a. An officer has reasonable cause to believe the individual is an Extremely Dangerous Person with a mental illness (as defined by ORS 426.701);
- b. The person presents a serious danger to others because of a mental disorder;

- c. The person is in need of immediate care, custody, or treatment;
- d. The person has been committed to the jurisdiction of the Psychiatric Security Review Board by a court;

The officer shall transport the individual to a state hospital operated by the Oregon Health Authority.

#### 263.4: CONSIDERATIONS AND RESPONSIBILITIES

- a. Any officer handling a call involving an individual who may qualify for custody (ORS 426.228) should consider, as time and circumstances reasonably permit:
  - 1) Available information that may assist in determining the cause and nature of the individuals' conduct or stated intentions;
  - 2) Community or neighborhood mediation services;
  - 3) Conflict resolution and de-escalation techniques;
  - 4) Available community or other resources available to assist in dealing with mental health issues.
  - 5) Involvement, when safe and feasible, of mobile mental health services, which may be obtained through the Communications Center.
- b. Nothing in this section is intended to dissuade officers from taking reasonable action to ensure their safety and the safety of others.

##### 263.4.1: FOREIGN NATIONALS

If an officer takes a person into custody and reasonably suspects that the person is a foreign national, the officer shall inform the person of their right to communicate with an official from the consulate of the person's country (ORS 426.228(9)) and follow [Arrest or Detention of Foreign Nationals: Policy 0607](#).

#### 263.5: TRANSPORTATION AND ADMITTANCE

- a. When transporting any individual under this policy, the transporting officer should notify the receiving facility of the estimated time of arrival, the level of cooperation of the individual, and whether any special medical care is needed.
- b. Officers may transport individuals in a patrol vehicle and shall secure them in conformance to the Use of Force: Policy 0240. Should the individual require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an officer during the transport, supervisor approval is required before the transport occurs.

**263.5.1: CLEARANCE REQUIRED**

If transportation to an appropriate facility will require more than one hour to accomplish, the transporting officer shall obtain, if possible, a certificate from a licensed independent practitioner, who has personally examined the person within the last 24 hours, stating that the person is in need of immediate care or treatment for mental illness and that travel will not be detrimental to the person's physical health (ORS 426.228(3)).

**263.5.2: TRANSFER TO APPROPRIATE FACILITY**

- a. Upon arrival at the facility, the officer will escort the individual into a treatment area designated by a facility staff member. If the individual is not seeking voluntary treatment, the officer should provide the staff member with probable cause, director's hold, or judge order and remain present to provide clarification of the grounds for detention, upon request.
- b. Absent exigent circumstances, the transporting officer should not assist facility staff with the admission process, including restraint of the individual. However, if the individual is transported and delivered while restrained, the officer may assist with transferring the individual to facility restraints and will be available to assist during the admission process, if requested. Under normal circumstances, officers will not apply facility-ordered restraints.

**263.5.3: MEDICAL CLEARANCE DENIAL**

If a licensed independent practitioner examines the individual and does not find that emergency care or treatment for mental illness is needed, the individual is to be released from custody. The officer or the community mental health program director shall return the person to the place where the person was taken into custody unless the person declines that service (ORS 426.228(4)).

**263.6: DOCUMENTATION**

- a. The officer should complete a peace officer custody form, provide it to the facility staff member assigned to the individual and retain a copy of the peace officer custody form for inclusion in the case report.
- b. The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the involuntary detention.
- c. Officers shall ensure that the report states (ORS 426.228):
  - 1) The reason for custody;
  - 2) The date, time, and place the person was taken into custody;
  - 3) The name and telephone number of the community mental health director.

**263.7: CRIMINAL OFFENSES**

- a. Officers investigating an individual who is suspected of committing a minor criminal offense and who has been taken into custody (ORS 426.228) should issue a criminal citation in lieu of physical custody, if appropriate.
- b. When an individual who may qualify for custody (ORS 426.228) has committed a serious criminal offense that would normally result in an arrest and transfer to a jail facility, the officer should:
  - 1) Arrest the individual when there is probable cause to do so;
  - 2) Notify the appropriate supervisor of the facts supporting the arrest and the facts which would support the custody (ORS 426.228);
  - 3) Transport the individual to the jail facility;
  - 4) Notify the jail staff;
  - 5) Thoroughly document in the related reports the circumstances that indicate the individual may qualify for custody (ORS 426.228).
- c. In the supervisor's judgment, the individual may instead be arrested or booked and transported to the appropriate mental health facility. The supervisor should consider the seriousness of the offense, the treatment options available, the ability of this department to regain custody of the individual, department resources (e.g., posting a guard), and other relevant factors in making this decision.

**263.8: FIREARMS AND OTHER WEAPONS**

- a. Whenever an individual is taken into custody (ORS 426.228), the handling officers should seek to determine if the individual owns or has access to any firearm or other deadly weapon. Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g. safekeeping, evidence, consent).
- b. Officers are cautioned that a court order (e.g., search warrant, ERPO) may be needed before entering a residence or other place to search unless lawful, warrantless entry has already been made (e.g., exigent circumstances, consent).
- c. The handling officers should further advise the individual of the procedure for the return of any firearm or other weapon that has been taken into custody and follow procedures outlined in the Property and Evidence Policy.

**263.9: TRAINING**

The Department will provide training in the recognition of persons suffering from mental health issues during the training of new employees and will provide ongoing training on an annual basis. Training at the DPSST Academy will satisfy this requirement for newly hired police officers.

**263.10: RECOGNITION OF MENTAL HEALTH ISSUES**

Persons who are known or suspected to be mentally ill require an officer to make difficult judgments about the mental state and intent of the individual. Identifying mental health issues requires a special skillset. Officers need to identify the signs of a mental health disability in order to properly evaluate the situation.

- a. Recognizing abnormal behavior includes things such as:
  - 1) Measuring the degree of reactions ranging from extreme reclusive or aggressive without apparent provocation.
  - 2) Understanding the appropriateness of behavior from emotional instability to extreme inappropriate behavior.
  - 3) Extreme rigidity or inflexibility.
  - 4) Abnormal memory loss of common facts such as name or address.
  - 5) Delusions or paranoid thoughts or ideas that are false; including hallucinations and belief of extraordinary physical ailments.
  - 6) Extreme fright or depression.
- b. Determining potential danger related to the persons actions may include:
  - 1) The availability of weapons to the suspect.
  - 2) Statements by the person that suggest to the officer that the individual is prepared to commit a violent or dangerous act.
  - 3) A personal history that reflects prior violence under similar or related circumstances.
  - 4) The amount of control that the person demonstrates is significant, particularly the amount of physical control over emotions of rage, anger, fright, or agitation.
  - 5) The volatility of the environment should be considered as agitators can affect the person that may incite violence.

**263.11: DEALING WITH MENTALLY ILL PERSONS**

If an officer determines during a police contact that an individual may be mentally ill and/or a potential threat to themselves, the officer, or others, the following responses should be considered:

- a. Request for backup officer.
- b. Take steps to de-escalate the situation.

- c. When practical, do not excite the disturbed person.
- d. Communicate with the individual in an attempt to calm the person.
- e. Avoid topics that may agitate the person and guide the conversation toward bringing the individual back to reality.