**Were Any of the Actions of the Virginia Beach Law Enforcement and Criminal Justice System Against Matthew Rushin Hate Crimes?**

1. **Matthew Rushin’s Treatment by Virginia Beach Law Enforcement and the Virginia Beach Criminal Justice System and the Media**
2. **Reference Documents (Code of Virginia, Virginia Beach Police Department Mission Statement; Virginia Beach Field Manuals**
3. **Matthew Rushin’s Treatment**

**Matthew Rushin’s treatment by the Virginia Beach Police Officers**

Matthew Rushin, a 20-year old autistic black college student with Attention Deficit Hyperactivity Disorder (ADHD), serious anxiety disorder, post-traumatic stress syndrome (PTSD) and a prior brain injury had a very serious car accident on Jan. 1, 2019 in which he was suddenly in the incoming lane of traffic and hit a car, spun and was hit by another car. Minutes prior to this accident, he had been in a fender bender and had left the scene after the other driver did not move out of the roadway or get out of his car so they could exchange information. After calming himself using his breathing exercises, he was on his way back to the location of the fender bender when the 2nd accident occurred.

When Matthew climbed out of the back of his vehicle (the only way to get out), he was “held” by bystanders. When the police arrived, it was clear that he was injured from his appearance (bloody, banged up face) and his actions (“not making sense, flailing his arms, not understanding or responding to questions, disturbed mentally”) yet he **was not transported for medical care.** He was asked if he needed medical care (multiple times and responded “no” each time). During the hours of interrogation, he stated “when I came to” during interrogation, indicating a loss of consciousness. He was observed to be limping in the interrogation room and he commented that his knee was sore. It appears, based on the number of times Matthew was asked if he was ok, that there was concern, and that the VB Officers wanted documentation that they had offered.

* But is offering enough? **NO**! Matthew met criteria in the Virginia Beach Police Department Police Response to Persons with Mental Illness Field Guide that indicated he should have been treated according to those guidelines. ***How many times have they questioned individuals who are clearly not ok after a very serious collision for hours rather than transporting them for medical attention?***
* Did all 17 Virginia Officers who showed up to the scene believe it was ok to rely on the word of a 20 year old autistic individual who had lost consciousness, had an anxiety disorder, PTSD, and ADHD (which decreases executive functioning skills by 30% according to ADHD expert Dr. Russell Barkley)? ***Would this have been the case if the Matthew had been a 20-year-old white woman?***
* According to the attachment to Colin Stolle’s letter which was published on the Virginia Beach Police Department Facebook page, three officers heard Matthew state within minutes of the crash that he was trying to kill himself; and this information was relayed to a fourth officer. A fifth officer, Officer Hosang, who interrogated Matthew for hours, including providing false information about incriminating evidence, is a Crisis Intervention Team (CIT) instructor for the department and has had disability awareness training. A statement about trying to kill oneself and statements about wishing he were dead are indicators that mental illness should be considered according to the **Police Response to Persons with Mental Illness** Field Guide. **He should have been treated as a person in a mental health crisis, not as a criminal.**
* Matthew met the criteria listed for activation of the CIT. The person who interrogated him for hours was a CIT instructor. The CIT manual doesn’t instruct officers to ask someone who is showing signs of mental illness to give consent before transporting for evaluation. **Why wasn’t the CIT protocol activated? Why didn’t they transport Matthew for evaluation as they did the other four people?**
* **Matthew was handcuffed**. He had been handcuffed by an officer who stated that he cuffed Matthew because he was too erratic in movements. Matthew wasn’t making sense and was “flailing.”
	+ The officers knew Matthew was autistic. He was not violent. He was not under arrest. Virginia Beach has had training about autism and should be aware of the tremendous stress caused by handcuffing.
* When they put Matthew in the first patrol car and read him his rights, he asked why they were reading him his rights. The officer responded that they were detaining him. Matthew asked why and the officer responded, “I’m allowed to detain you for 72 hours.” **On what basis?** **What law allows that? Did it occur to them that someone who had lost consciousness, was autistic, had PTSD from a prior car accident, and who was bloody, banged up around the face and mouth, described as ‘not all there, not hearing, not responding to questions” needed medical attention, would not be in the state of mind to recognize the extent of his injuries – or his right to request a lawyer, or to not answer questions for hours, but rather desperately needed medical attention. Where was the humanity?**
* Handcuffing Matthew and questioning him in the police cars meets the following criteria described on page 97 of the Virginia Beach Police Department Field Guide: ***Involuntary movement of a seized person from one place to another is a hallmark characteristic of an arrest in the constitutional sense. Use of force or restraints that are lawfully part of some investigative detentions may nonetheless cause a reasonable person to feel he has been subjected to restraints normally associated with formal arrest.*** Handcuffing Matthew and moving him to four different police cars met the criteria for reasonable presumption that he was being arrested. ***This violated Matthew’s rights*** ***not to be confined, interrogated, in custody without reasonable suspicion of guilt***.
* The officers did not follow their own policy, purpose or objectives, or instructions listed in the **Police Response to Persons with Mental Illness Field Guide. They certainly didn’t act according to the stated policy of diversion from the criminal justice system.**
* The Prosecuting Attorney contended that the **accident was a deliberate attempt by Matthew to kill himself.** There is NO Evidence to support this. Matthew met the criteria in the Police Response to Persons with Mental Illness Field Guide to be concerned about mental illness. The guide states that Officers are **not expected to make judgments of mental or emotional capacity. This violated Matthews rights because the** **statement was the product of an unlawful Fourth Amendment seizure of the defendant’s person - an arrest without probable cause or investigative detention without reasonable suspicion*: the police officers had no reliable information on which to base a suspicion of intentional suicide attempt. Police are not qualified to determine whether an individual is or is not suicidal*.**
* Matthew was **never evaluated** after the accident to determine his mental health status or to determine the extent of the physical injuries he sustained and to determine if and what treatment was needed. The other four individuals were all transported for evaluation and treatment. This is a violation of Matthew’s equal rights to be provided the same level of care. Asking someone who had possibly sustained a 2nd head injury, who was known to have lost consciousness and who was described as “not all there, not hearing, not answering questions, if they wanted to be evaluated is beyond the pale. Any reasonable adult let alone a trained police officer should recognize that individual in such condition was not able to understand what he needed.
* Who made the decision to veer from the **Police Response to Persons with Mental Illness Field Guide?** To treat Matthew as though he was a criminal rather than someone experiencing a mental health crisis. **WHY?**
* **Matthew was not allowed to see his dad**, though Mr. Rushin was on the scene (outside of the area designated by police, by order of the police). ***What possible reason justifies that inhumanity and cruelty?*** It has now been **19 months** since Matthew has hugged or been hugged by his family or talked face to face to a loved one. **This is a violation of his Fourth Amendment Right. He was detained and his freedom curtailed without a reasonable suspicion of guilt.**
* ***Does Virginia Beach have procedures, guidelines, policies that spell out special circumstances for interviewing, interrogating adults whose ability to fully understand what is happening by virtue of their injury, their diagnosis or condition, or their level of stress?***
* **Use of deception** – allowed for adults, not for juveniles or for people with mental illness. The officers lied to Matthew about what evidence they had. They also pretended to be his friend. Autistic individuals are extremely vulnerable to such tactics. **Why would police officers in an organization whose mission statement indicates they will objectively investigate crimes use manipulative tactics on 20 year old autistic man who is injured, in an extreme state of stress and who has underlying conditions of anxiety, PTSD, ADHD, a previous brain injury and a brain tumor?**
* **Failure to objectively investigate the accident; failure to consider all possibilities**. Rather, the interrogations and charge and treatment of Matthew as though he was already found guilty not only violated his rights, but also resulted in missing other key information, such as the possibility of a seizure as the cause of the accident and pedal misapplication. It appears that a decision was made to find Matthew guilty of causing the accident intentionally, then all efforts were made to support that decision.

**Magistrate**

* **The Charge of Attempted 2nd degree murder** was made without qualified mental health professional assessment. **Why wouldn’t the Magistrate demand that a mental health assessment be done before making such a charge?**
* **Matthew’s “mugshot”** was taken with Matthew s face still bloody from the accident that happened 4 or 5 hours previously
	+ Why wasn’t he encouraged to wash his face (take care of himself) during those prior hours
	+ Not telling Matthew to wash off his face prior to the photo set Matthew up for prejudicial opinions about him in court, in the press.
	+ This mugshot which has been published multiple times in press reports **ROBBED MATTHEW OF HIS DIGNITY**

**Prosecutor**

* The prosecutor’s bluster and objections to the reference to the jail doctor’s assessment as cursory was effective in helping to distract the judge from the issue of the need for neurological and neuro-psychiatric follow up. **This was two months after the accident and was not the first time permission for essential medical/psychiatric care was denied.**
* The prosecutor’s over the top negative description of Matthew with no supporting evidence had no resemblance to Matthew’s reality. Painting him as selfish, deliberately making choices to accomplish what he wanted without regard to how it would affect anyone but himself; decision, not an accident (repeated multiple times); uncaring, selfish decision to drive his car because he was in distress into the hardest, fastest thing he could find in front of him and that was (the two cars). [This assumption has been disputed by a crash scene analysis completed by a highly experience forensic engineer and traffic collision reconstructionist.
* The prosecutor argued (stated as fact) that the statements Mathew made within the first few minutes of climbing out the back of his vehicle, injured, disoriented – were the only statements that were true – and that the answers he provided over and over again – to the best of his ability (given his high anxiety and injured state) were made up to cover up the real cause of the accident. Essentially, he took a statement supposedly made (there is no body cam video, just reports from the only three of the 17 police who did not have body cams or did not have them on) and built the entire case on the phrase “I was trying to kill myself” which was reported to have been said in response to a question or statement “were you F…ing trying to kill yourself.” Autistic individuals and people who have had training about autism know that was an echolalic response – used by autistics to aid them in processing communication, not a statement of fact.
* No evidence has been provided to support the contention that Matthew hit the first vehicle. He consistently stated that that vehicle hit him.

**Defense Lawyer**

* Failure to fight the charges – to demand that psychiatric evaluation be done to confirm or disprove contention upon which charge was built
* Failure to insist on a more thorough accident scene evaluation. An investigation by a highly qualified, experienced crash scene investigator concluded that the accident WAS an accident; and that pedal misapplication played a role.
* Failure to raise issues about how Matthew was questioned for hours and was not provided medical or mental health care
* Failure to demand Mental Health and Medical Care in the jail. She gave up after the judge said he didn’t need any more information to know that “Matthew was a danger to himself and others,” which was not why the medical appointments were being sought.
* Failure to demand assessment to support reason for denying bond
* Failure to recognize that an autistic individual under a huge amount of stress was in no position to make the decision about signing the plea deal without consultation with his family or a trusted advocate.
* Failure to tell Matthew’s parents that the plea agreement could be stopped before it was confirmed by the judge.
* Advise to Matthew’s parents not to bring up his disabilities
* Failure to present an alternative narrative – **one that would be accurate**
* Statement at the November 6 hearing when questioning the driver of the car in the first collision “that’s when Matthew hit you, is that correct?” Matthew stated multiple times during his interrogations by the police that the car in the first accident hit him. This is particularly egregious. Matthew’s statements about the other car hitting him are well documented on the police transcripts. Her obligation was to Matthew. She confirmed a contention made by the prosecution that had no objective documentation to support it.

**Judges:**

* Bond denied on basis of Matthew being a danger to himself or others – made by people not qualified to make that assessment.
	+ **Discriminatory use of a rationale not backed by assessment by qualified person – denied Matthew of right to freedom. (A quick search of the internet found examples of individuals whose traffic accidents KILLED another person but who were not charged and put in jail for months – and who received much less severe sentences than Matthew – despite their use of alcohol or drugs at the time of their accident).**
* **No mental health services or medical services** (beyond seeing jail doctor who proclaimed dizziness was vertigo even though it was known he had a brain cyst, a prior confirmed serious brain injury as well as his injuries from the 1/4/19 accident, and was overdue for Neurological follow up.
	+ If denied bond for fear of danger to self – mental health services should have been provided
	+ ***Is denying access to further assessment when Matthew has a known brain cyst and is overdue for Neurological follow up and when Matthew lost consciousness in the collision medically negligent?***
* Imposition of excessive sentence; though 40 years were suspended, Matthew would not be free during those 40 years.

**Witness Tampering?**

* Why was the testimony of the driver of the fender bender at 11 months post- accident so drastically different than his testimony 2 months after the accident? Was there witness coaching?
* Why did witnesses and victims know things they had no way of knowing unless someone familiar with the case told them (ex: knowing about the first accident).

**Jail and Prison**

* No mental health treatment (other than meds), including no follow up to the recommendations made by Dr. Keenen in January and November 2019
* No treatment for headaches, dizziness, periods of blindness other than Tylenol.
* Transfer on March 10, 3 days before MRI that was finally scheduled, to Nottoway where there is no air conditioning. **Why couldn’t the transfer wait for 4 days? Matthew still has not had the MRI; and he is now in a prison with no air conditioning which puts him at additional serious risk based on his untreated health conditions.**
* **Neurologist (Dr. Sol Mora) stated that it was unthinkable that a full neurological work up has not already been done. He also has stated that the heat plus the stress of the prison environment could worsen his medical conditions.**

**Court of Appeals**

* More of the same prejudicial, judgmental behavior on the part of the VB Criminal Justice System. Calling Matthew’s behavior callous and malicious. Stating that his disabilities were considered, when they were not, nor did the VB Police follow their own procedures. A rubber stamp on the whole process.

**Attachment to Letter from Colin Stolle to Governor Northam**

* The attachment states Matthew said yes to every question about understanding everything, being satisfied with his lawyer, etc. **Neuroscience explains what happens when there is the kind of power differential that existed between Matthew and the court**. See explanation by Dr. Bruce Perry. See minutes 11:00 – 14:30 <https://youtu.be/ulwfwYDffV8>
* Mr. Stolle reports in this letter that Matthew had three previous suicide attempts. **His explanation for calling the 2017 accident a suicide is a supposed call from Lavern Rushin on Jan. 6, 2019 to Officer Daley and relayed that Matthew had attempted to kill himself in the Jan. 2017 accident. Mrs. Rushin vehemently denies having ever said such a call. Mr. Stolle reports that Dr. Keenen included in his report information about a 2nd suicide attempt. It appears that Mr. Stolle has taken on the role of a psychologist or psychiatrist – since the cutting incident Mr. Stolle is referring to was NEVER identified as a suicide attempt.**
* Examples of private conversations Matthew had with his mom and a friend were used to assert that Matthew expected the sentence he received and that it wasn’t bad. This is especially egregious for two reasons. First, it reports a private conversation to the public. **Does being a prisoner in the US (or in Virginia) mean that you have NO expectation of a private conversation with a loved one?** The visitation is by electronic means – which gives the prison access to every conversation. Even in court, families were instructed not to talk to their relatives, or they would have to leave the courtroom. Inmates were instructed not to LOOK at their loved ones! **Secondly, reporting the conversation without the context completely distorts the meaning of Matthew’s communication. Matthew was trying to be strong for his mother about whom he was very worried due to her cancer. Mr. Stolle’s interpretation is entirely off base.**
* The attachment states that Rushin’s actions escalated from self-harm to self-destructiveness to actions that pose a severe danger to the community at large. His actions are described as intentional malicious conduct. ***Matthew Rushin’s cutting was self-harm, not a suicide attempt.. The car accident was most likely caused by a seizure****. Matthew Rushin exhibited the indicators that should have resulted in the CIT being activated and in transportation to the hospital for evaluation of physical injuries as well as a psychiatric evaluation****.*** *The entire case is built on the assumption that the car accident was an intentional suicide attempt.* ***There is no basis for this – but the prosecution, judge and appeals court accepted that without the very basic requirement of a mental health assessment being met. The report by Dr. Keenen does not confirm the Prosecutor’s statement that Matthew would be a danger to the community nor does it confirm that Matthew was suicidal. Matthew Rushin did not have adequate defense representation though his family paid a significant amount of money to the defense lawyer.***

**Questions about incentives** for officers to make arrests (confidential communication indicated that police get points and that may have influenced the decision to arrest vs. treat as mental illness – or at least follow through with standard operating procedures for mental health evaluation. Same question for prosecutor, defense attorney**.**

**What does “I have not been retained for Circuit Court yet” mean?** Matthew’s lawyer was unable to continue to be his lawyer because she was appointed to be a substitute judge. Could that have contributed to the lackluster defense he received?

**Matthew Rushin was prosecuted in the Media:**

First Report: **January 4**, then updated later:

<https://www.13newsnow.com/article/news/local/mycity/virginia-beach/at-least-one-injured-in-virginia-beach-crash/291-770c3f0c-e2cd-4a2d-a18d-f238058a3350>

**January 7, 2019** <https://youtu.be/63mASy6scuU>

**January 7, 2019** <https://www.13newsnow.com/article/news/local/mycity/virginia-beach/man-faces-attempted-murder-charge-after-allegedly-causing-three-car-crash/291-4a82462b-1848-4e75-a4a2-607bbbc0d86e>

Video that accompanied the above report: <https://13newsnow.com/embeds/video/291-5a0d9f1f-9197-46ff-8c59-34dce0ad0645/iframe?jwsource=cl>

**January 8, 2019** – New Details – Court documents reveal that a witness told police Rushin made statements that he was trying to commit suicide. **Documents explained that there is surveillance video that could support that claim. (FALSE}**

<https://www.13newsnow.com/article/news/local/mycity/virginia-beach/new-details-in-20-year-olds-attempted-murder-change-after-three-car-crash/291-c5f1fedd-e544-4969-bb00-1f2e00b8dcae>

**January 8, 2019** – says police say they have strong evidence that this was no accident. Video available of the accident. **(FALSE).** <https://www.youtube.com/watch?v=kDBgNvDIWFw&feature=youtu.be>

**Jan. 8, 2019** – witnesses said he was going 90 miles/hour. (**FALSE)**. No comment by defense. Defendant’s mother defended him. <https://www.13newsnow.com/article/news/local/mycity/virginia-beach/new-details-in-20-year-olds-attempted-murder-change-after-three-car-crash/291-c5f1fedd-e544-4969-bb00-1f2e00b8dcae>

**Jan. 8, 2019** - <https://youtu.be/I0Wuvvbecvk>

Police Believe Man Purposefully Crashed… **Jan 9, 2019** <https://www.wavy.com/news/police-believe-man-purposely-crashed-into-suv-on-first-colonial-in-suicide-attempt/>

**Feb. 13, 2019** Prosecutors also said Rushin tried to run following the collision, but several bystanders held him down until police arrived. Witnesses reportedly said Rushin told them he was trying to kill himself by **crashing his car**. Rushin’s defense attorney claimed he was upset about the first crash, was not in a right state of mind and lost control on the slick road — which caused the crash. Prosecutors argued Rushin has a history of attempted suicide, and has a traumatic brain injury along with Asperger syndrome and attention-deficit/hyperactivity disorder (ADHD). During Tuesday’s hearing, prosecutors pointed to a case in 2018 when he slammed his car into a barrier at 85 mph.

<https://www.wavy.com/news/man-charged-with-attempted-murder-in-va-beach-crash-denied-bond-again/>

**August 6, 2019** – Virginia Beach Man pleads guilty: <https://www.13newsnow.com/article/news/virginia-beach-man-pleads-guilty-to-supposedly-deliberate-3-car-crash/291-fa0db6de-7793-4cd9-87c9-0d9f9b44a5e8>

**Nov. 6, 2019**: Man sentenced to 10 years for crash he claimed was a suicide attempt**: FALSE – he steadfastly denied it was a suicide attempt. He signed the plea deal because he thought he could come home.** <https://www.wavy.com/news/man-sentenced-to-10-years-for-crash-he-claimed-was-a-suicide-attempt/>

**Nov. 8, 2019** – Victims speak out “We have been ruined financially, physically, mentally. I may have to divorce my husband of almost 52 years in order to protect the assets that we worked so hard to amass,” said Cusick.” <https://www.13newsnow.com/article/news/local/mycity/virginia-beach/victim-of-three-car-crash-speaks-out-after-man-sentenced-for-attempted-murder/291-a6076d46-bffa-4de7-a7a1-b2e21dde3050> Victim told a member of the team helping Matthew (in June 2020) that insurance was covering the cost of the man’s care.

**Articles documenting the contrast in treatment of Matthew and other (white) individuals**

**State Police arrest VB man for DUI, drug charges in fatal Norfolk crash** <https://www.wtkr.com/news/state-police-arrest-vb-man-for-dui-drug-charges-in-fatal-norfolk-crash?fbclid=IwAR0mqzwschiowFwQAWr87-xKEsOQ-HZyIuJgG6m9-NKFRZeJkh_7HEvE7jk>

A man was killed in this accident. The driver was not arrested for 2 months. Mathew was arrested within 6 hours of his car accident in which there were no fatalities.

**Virginia Beach police sergeant avoids jail time with DUI plea** <https://www.pilotonline.com/news/crime/article_1bc7ca63-2ede-5467-84f8-cc385f736ed8.html?fbclid=IwAR0g6lTBUwhXW8KRPIeDQV9J1Ui7FluoidjxUrf8tPLsfqz4QfLzEqKbcjw>

Matthew Rushin’s lawyer successfully argued that this woman should be allowed to spend her jail time at home due to her diabetes. This same lawyer either did not demand or was not successful in demanding that Matthew be released on bond after the evaluation by the licensed clinical psychologist did not confirm suicidal ideation (danger to himself). She was not successful in obtaining permission for Matthew to go to medical appointments while he was awaiting trial.

1. **References**

**The Code of Virginia § 52-8.5 defines “disability” and “hate crime” as follows:**

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities.

"Hate crime" means (i) *a criminal act committed against a person or his property with the specific intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin or that is committed for the purpose of restraining that person from exercising his rights under the Constitution or laws of the Commonwealth or of the United States****;*** (ii) any illegal act directed against any persons or their property because of those persons' race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin; and (iii) *all other incidents, as determined by law-enforcement authorities, intended to intimidate or harass any individual or group because of race, religion, gender, disability, gender identity, sexual orientation, or ethnic or national origin*.

According to The Collins Law Firm, P.C., it is often “hard to determine motivation for a crime unless the accused individual openly stated it or took part in behaviors that made it clear that they were acting against another because of that person’s religion, race, skin color, or national origin. In Virginia, a person who commits a criminal act against another person or the person’s property with the intent to intimidate them because of their race, religion, or ethnicity, or commits the act in hopes of stopping the person from exercising Constitutional rights, will be considered to have committed a hate crime. An illegal act against an individual, group, or property because of one’s religion, race, or national origin will also be considered a hate crime.” <https://www.collinslawpc.com/blog/2017/10/understanding-the-legalities-of-virginias-hate-crime-law/>

**Virginia Beach Law Enforcement Mission Statement**

In service to the ***victims of crime***, the Virginia Beach Police Department Detective Bureau exists to assertively and objectively ***investigate*** crimes while honoring established legal principles, properly ***document*** these investigations, and ***present*** the findings for judicial review.

<https://www.vbgov.com/government/departments/police/investdiv/detective-bureau/Pages/default.aspx>

**Virginia Beach Police Department Field Guide**

<https://www.vbgov.com/government/departments/police/Documents/Constitutional%20Issues%20Field%20Guide.pdf>

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**Interviewing and Interrogating Mentally Ill Persons** (CALEA 41.2.7) Interviewing or interrogating a mentally ill individual presents its own unique issues. The number of persons with mental illness who encounter the police as suspects is not inconsequential. Confessions can be excluded from legal proceedings if it can be shown that suspects did not understand or appreciate their Miranda rights and mentally ill defendants, particularly defendants with psychotic disorders, are significantly less likely to understand their interrogation rights than defendants who are not mentally ill. Some interviewing techniques train officers and to take into account nonverbal behavioral cues, such as hesitant speech, sweating, or dry mouth, as indicators of deception. However, these cues, in addition to being general indicators of stress, may appear more frequently among persons with mental illness because of their illness or the medications they are taking. Officers interviewing a mentally ill person must guard against obtaining a false confession. Characteristic traits of mentally ill persons, such as disorganization of thought, deficits in executive functioning and attention, and impaired decision making, could contribute to self-incrimination***. For example, compared with persons without mental illness, persons with mental illness may be more likely to confess, because they believe that the police officer is truly a friend who understands and "has been there" or because they believe that they will be able to go home after confessing.***

**Rights of the Accused**: Patrol officers and investigators often want to use, as evidence in criminal trials, statements that were made by the defendant and are incriminating in nature. Whatever the degree to which a defendant’s prior statements are incriminating, it is likely that the prosecutor’s efforts to use the statements at trial will be met with defense objections, often in the form of pretrial motions to suppress the evidence. ***When these defense objections and/or motions are argued, often at pretrial suppression hearings, the defense attorney will try to show that the incriminating statements were obtained illegally. If the prosecution cannot prove the contrary, the statement generally may not be used at trial, because of the “exclusionary rule” or “fruit of the poisonous tree” doctrine***. Of course, the same constitutional rights violations may result in police civil liability, as well. Evidence and liability problems regarding a suspect’s incriminating statements usually fall into one or more of four categories - ***each involving a claim that the defendant’s constitutional rights were violated***. They are: 1. s. 2. The interrogation did not comply with the Miranda rule (as earlier discussed) and/or the associated protections of the rights to silence and counsel, if asserted. 3. The statement was obtained in violation of the defendant’s Sixth Amendment right to counsel. 4. The statement was product of unlawful coercion in violation of the Fifth Amendment protection against compelled self-incrimination and the Fourteenth Amendment requirement that, to be admissible, an incriminating statement must be voluntary. Although these four claims involve interrelated legal theories, each represents a separate, independent constitutional issue. Each represents a liability threat to police as well as the obvious threat to evidence admissibility.

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“**Voluntariness”** To be admissible in evidence, an incriminating statement must not only clear the above discussed hurdles, it must be made “voluntarily” and not be “compelled” by unlawful government coercion. Determination of what is unlawful coercion and when a statement is voluntary tend to involve the interplay of three factors: 1) the conduct of the government agent (interrogator); 2) **the susceptibilities of the subject** (confessor); and 3) the environment in which the activity (interrogation) occurs. Some coercions are so extreme and obvious that virtually any resulting statement would be judged involuntary. Physical abuse and/or deprivation, threats and/or promises in exchange for confession, and other extreme forms of will-bending are all likely to fall into this category. But what about comparatively innocuous statements like “you’ll feel better if you get this off your chest – that’s a promise.” In fact, **within a certain spectrum of government behavior there is a sliding scale of acceptability that depends substantially on the two other factors. For example, deceptive interrogative tactics like pretending to have evidence which, in fact, does not exist may well be permitted if the suspect is intelligent, criminally experienced, “used to” playing such games**. See Arthur v. Commonwealth, 24 Va. App. 102, 480 S.E.2d 749 (1997). Used on an inexperienced, mentally retarded juvenile, such deception would almost certainly be impermissible. The susceptibilities of the individual suspect to a particular form of coercion will often decide whether that coercion is legally acceptable. Other “susceptibilities” could include cognitive impairments stemming from drunkenness, drug, heavy medication, pain, and the like. Similarly, the environment of the interaction will significantly influence whether certain level and types of coercion will be permitted on certain types of suspects. Perhaps the most coercive environment is police custody – because any coercion is inescapable. In fact, the Supreme Court’s reason for creating the Miranda rule was the “inherently coercive” effect of police custody. As a single factor, of course, custody does not render a derivative statement involuntary. In any event, determining “voluntariness” involves a few absolutes and many variables. **Telling someone that, if he confesses, he will receive a lighter sentence, or no imprisonment is too much.** Telling someone “I don’t make the deals, the prosecutor does. If you cooperate, I’ll make sure the prosecutor knows it” is usually permitted. Like many other areas of police law, legal determinations of voluntariness are heavily fact dependent.

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***Involuntary movement of a seized person from one place to another is a hallmark characteristic of an arrest in the constitutional sense. Use of force or restraints that are lawfully part of some investigative detentions may nonetheless cause a reasonable person to feel he has been subjected to restraints normally associated with formal arrest.***

The United States Supreme Court ruled in Colorado v. Spring, 107 S. Ct. 851 (1987), that an officer does not have to inform a person of “all possible topics” or of the nature of the investigation as part of an advice of Miranda rights. However, **it is not advisable for an officer to deceive the suspect concerning the subject matter of the pending custodial interrogation. While courts generally allow certain kinds of deception by police during interrogation (provided the suspect is mentally competent), the type of deception that must always be avoided is that which could affect the voluntariness of a waiver of rights.** For example, a suspect who believed he was being questioned on a misdemeanor matter might waive his rights when, had he known the questioning actually concerned a murder, he instead might have chosen to remain silent and/or to seek legal counsel.

**Right to Counsel Issues** The right to counsel comes in two varieties. One is the right to counsel created in the Miranda decision. It is associated with the Fifth Amendment right to remain silent and is designed to help protect a person subject to in-custody interrogation from being compelled to incriminate himself. This Fifth Amendment based right to counsel is separate and distinct from the better known Sixth Amendment right to counsel. The differences between the two rights to counsel are important. The Fifth Amendment or Miranda right to counsel is present any time there is police interrogation of a person who is in arrest-type custody

**Probable Cause**: A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. **Under the Fourth Amendment, probable cause – which amounts to more than a bare suspicion but less than evidence that would justify a conviction – must be shown before an arrest warrant or search warrant may be issued.**

**Police Response to Persons with Mental Illness: Field Guide**

<https://www.vbgov.com/government/departments/police/Documents/Response%20to%20Persons%20with%20Mental%20Illness%20Field%20Guide.pdf>

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**Policy** In accordance with the Mission and Values of the Virginia Beach Police Department, the Department is committed to the compassionate treatment of the mentally ill or those suffering a mental health crisis. Though it may be necessary, at times, to enforce the law, officers shall strive to refer mentally ill persons for treatment, in lieu of criminal charges, when and where possible and appropriate. When necessary, officers will take the proper action to detain and/or transport mentally ill persons or persons suffering a mental health crisis for treatment, to properly identified mental health and/or medical facilities as required by law.

**Purpose** It is the purpose of this field guide to provide guidance to law enforcement officers when encountering persons with mental illness or who may be suffering a mental health crisis, in accordance with the Code of Virginia which governs civil mental detention procedures, and the commitment of minor respondents. This field guide further establishes guidelines for the utilization of members assigned to the Crisis Intervention Team by outlining specific training and deployment procedures. All officers will follow the policies set within this field guide when dealing with individuals that display symptoms of a mental disability, illness, injury, or crisis.

**Definitions**

A. Mental Illness - Any of the various conditions characterized by impairment of an individual’s normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic, or other factors, such as infection or head trauma.

B. Mental Health Crisis - A person is in crisis when he or she is unable to cope with internal or external stimuli creating an inability to function at their normal level, thus creating a risk of harm to themselves or others.

C. Respondent - The individual alleged to be mentally ill, emotionally distraught, mentally disturbed, or is otherwise suffering a mental health crisis

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**Responsibility of the Department**

It is important to remember that the vast majority of persons suffering mental illness will have little to no contact with police. However, handling individuals who are known or suspected to be mentally ill or who may be suffering a mental health crisis carries the potential for violence. This will require an officer to make difficult judgments about the mental state and intent of the individual and requires special attention and understanding to effectively and legally deal with the person so as to avoid violence or other potential issues. For this purpose, the Police Department has established a mental health Crisis Intervention Team (CIT) to provide a higher quality of service to members of our community and to mitigate the sometimes difficult situations and persons that officers may encounter, as well as to divert mentally ill persons from the criminal justice system when mental health treatment would be a more appropriate option. Given the unpredictable and sometimes violent nature of some individuals, officers should never compromise or jeopardize their safety or the safety of others when confronted with individuals displaying symptoms of emotional instability or mental illness. In the context of enforcement and related activities, officers shall be guided by the Code of Virginia regarding the detention of the mentally ill or subjects suffering a mental health crisis. Officers should utilize discretion when encountering possibly mentally ill subjects who are engaging in, or have committed, minor crimes (Ex: trespassing, public intoxication, disturbing the peace) when deciding whether criminal charges or mental health diversion is the most appropriate course of action.

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**Crisis Intervention Team (CIT) Objectives**:

1. Pre-arrest diversion of the mentally ill from the criminal justice system.
2. Provide law enforcement with the tools needed to handle encounters with mentally ill persons.
3. Delivery of proper care for the individual in crisis through collaboration between the mental health and criminal justice systems.

**Crisis Intervention Team Member Selection**

1. Members of the Crisis Intervention Team will be sworn members of the Department who have volunteered to serve as a Crisis Intervention Team Officer. Those officers seeking to become a CIT officer shall complete a CIT candidate application and questionnaire that will be forwarded for review before a selection committee. The selection committee will be comprised of the CIT Coordinator, CIT Officer, Mental Health Representative from Emergency Services, a PD&T staff member and any other CIT certified officer or supervisor assigned by the CIT coordinator to serve on the committee. The names of the officers whose applications are approved will be forwarded back to the officers’ command. The command will then decide when the approved candidate will attend which up-coming 40-hour certification training course.
2. Applicant officers seeking appointment as a CIT member shall possess the following traits:
	1. Good communication skills
	2. Active listening skills
	3. Ability to work well under pressure
	4. Ability to maintain a positive attitude under stressful conditions
	5. Ability to absorb verbal abuse without negative responses
	6. Ability in exercising good judgment and decisions making skills

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**Recognizing Abnormal Behavior (CALEA 41.2.7 A)**

Mental illness is often difficult for even the trained professional to define in a given individual. Officers are **not expected to make judgments of mental or emotional capacity** but rather to recognize behavior that is potentially destructive and/or dangerous to self or others.

The following are generalized signs and symptoms of behavior that may suggest mental illness or indicate a person suffering a mental health crisis, although members should not rule out other potential causes such as reactions to, or withdrawal from, drugs or alcohol or temporary emotional disturbances that may be motivated by a given situation:

1. Delusions or hallucinations

2. Nonsensical speech patterns and disorientation

3. Severe depression and/or severe agitation

4. Suicidal talk or acts

5. Violent talk or behavior resulting from mental illness

6. Social withdrawal

7. Dramatic changes in eating or sleeping habits

8. Strong feelings of anger

9. Increased inability to cope with daily problems and activities

10. Denial of obvious problems and/or many unexplained physical problems

11. Abuse of drugs and/or alcohol

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**Police Management of the Mentally Ill (CALEA 41.2.7 B, C**)

Police personnel should adhere to the following when handling those persons who appear to be in need of treatment for mental issues, may be suffering a mental health crisis, or when the magistrate issues an Emergency Custody Order (ECO) and/or a Temporary Detention Order (TDO). A minimum of two (2) officers or detectives will be present initially during the call to include the entire ECO/TDO process (if issued) for the safety of the officers as well as the safety of the respondent and the community. Upon executing the ECO (either with an issued paper or a paperless ECO) the primary officer assigned shall notify Emergency Services (DHS MHSA) as soon as practicable after taking the person into custody. Any person taken into custody as a result of an emergency custody order shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures. The Virginia Supreme Court has developed a standardized form (DC-4050) to accomplish the notification. The officer should supply this form to the respondent as soon it is safe and practical to do so. If, during the process, the subject is, and remains non-violent, and the officers have no reason to believe or information that the subject has been violent in the past, the primary officer shall have the discretion to determine if the assist officer(s) need to remain during the remainder of the process/encounter.

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**Voluntary/Consensual Crisis Intervention Process**:

**Police officers are in no position to deem a person who is exhibiting symptoms of mental illness or is suffering a mental health crisis as capable of making a voluntary informed consent for admission to a treatment facility**. Any such determination will be made by an Emergency Services pre-screener. For the purposes of this field guide, a voluntary/consensual commitment process is one in which a respondent is willing to seek treatment voluntarily and has already contacted a facility that is willing to accept them as a patient. In most cases the family may provide their own transportation to the mental health facility in which the subject is to receive treatment. Police may be called, however, to provide assistance to family members with crisis intervention and with transportation if the family has no transportation of their own, or if the family member, needing or seeking treatment, refuses to go with his or her family members.

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**Emergency Custody Process and Emergency Custody Orders (§37.2-808)**: The Code of Virginia mandates that the magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute an emergency custody order and provide transportation. As the Virginia Beach Police Department is the primary law enforcement agency in the City of Virginia Beach, the Police Department shall execute all emergency custody orders (ECO). **A police officer may take a subject into emergency custody, commonly referred to as a non-judicial process or “paperless ECO”, based upon his or her observation or through the reliable report of others, when he or she has probable cause to believe that any person within his or her judicial district (i) has a mental illness, (ii) and there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious bodily harm to himself or others as evidenced by recent behavior causing, attempting, threatening- harm and other relevant information, if any, or (b) suffer serious harm due to lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to §37.2-804.**