

## Victoria Police Manual – Procedures and Guidelines

### Escapees and absconders

#### Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- [Children Youth and Families Act 2005](#)
- [Crimes Act 1958](#)
- [Crimes \(Mental Impairment and Unfitness to be Tried\) Act 1997](#)
- [Disability Act 2006](#)
- [Guardianship and Administration Act 1986](#)
- [Mental Health Act 2014](#)
- **VPMP Escapees and absconders**

#### Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

#### Procedures and Guidelines

### 1. Prisoners

#### 1.1 Powers

The powers in ss.458-9, *Crimes Act 1958* apply.

#### 1.2 Apprehension

A prisoner in a prison, police gaol or in the custody of a police member or

employee of the Office of the Correctional Services Commissioner who escapes or attempts to escape is guilty of an indictable offence under s.479C, *Crimes Act*.

## 2. Children and young persons in custody

### 2.1 Powers

Section 498, *Children Youth and Families Act 2005* enables the apprehension without warrant of a person who escapes or is absent without authority from a remand centre, YJC/YTC or the custody of a police member or other person.

### 2.2 Apprehension

- On apprehension, place them in a DHS facility, or if this is not possible in a prison or police gaol.
- Upon apprehension of Youth Justice Centre (YJC)/Youth Residential Centres (YRC) absconders, the arresting police member is to advise the admitting office at the Melbourne Juvenile Justice Centre who will notify the appropriate facility.
- A child or young person may be charged under s.498, *Children Youth and Families Act 2005* if they:
  - have escaped from a remand centre or YJC/YRC
  - have escaped from police custody or from another person in whose custody they may be
  - are absent without lawful authority.

## 3. Wards of the State/guardianships

### 3.1 Notification

Where a Ward of the State or a person under the Guardianship of the State who is not undergoing a sentence, absconds from the care of DHS:

- under the *Children Youth and Families Act* they cannot be charged with escape
- contact the DHS or the institution to determine their legal status.

### 3.2 Apprehension of persons under the Guardianship and Administration Act 1986

The *Guardianship and Administration Act* has provision for issuing orders that, in some circumstances, particularly when the health and welfare of the person might be at immediate risk, or the person is being detained unlawfully, may require police assistance to enact them. These include the following situations:

- To enforce a decision made by a guardian on behalf of a person with a disability, i.e. to move the person from their place of residence to another place or to transport a person to hospital (s.26)
- To accompany the Public Advocate, or another specified person, in order to visit the person with a disability for the purpose of preparing a report for the Victorian Civil and Administrative Tribunal (VCAT), where application for a guardianship order is being considered (s.27(1))
- To enable the person with a disability to be taken to a place specified in an order for assessment and placement until the Guardianship order is heard. (s.27 (2)).

VCAT must make a specific order under s.26 or s.27 authorising the guardian to seek the assistance of police or other persons, e.g. ambulance staff. The guardian should provide members with a copy of this authority.

Section 27(3) authorises police to use such force as is reasonably necessary to enter the premises.

## 4. Mental health patients or disability clients

### 4.1 *Reporting missing persons*

- Services can report the disappearance of a mental health patient or a disability client who leaves without notice if they hold fears for the welfare of the patient and of others. To assist with the investigation, services will provide the following information, as appropriate:
  - the person's full name, date of birth, address and a recent photograph, if available
  - a description of the person's physical appearance and the clothes they were wearing
  - any medical considerations (eg. taking medication) or vulnerability (eg. infirmity)
  - details of the circumstances surrounding the person going missing such as the activity and location
  - the precise location where the person was last seen
  - features of the person's presentation (e.g. mood) that may influence how police approach the person, including any advice on effective communication strategies
  - any significant events leading up to the incident that may have contributed to the person leaving
  - confirmation that the facility and immediate surrounds have been thoroughly searched
  - the person's legal status: voluntary or compulsory patient. If compulsory, the expiry time and date of the compulsory assessment or treatment order

- details about the person's networks and family to assist in where the person might be found
- details of what enquiries have been made with family and friends
- any likely destinations or places of interest that the person frequents
- whether the person poses a risk to themselves or others
- the name and contact details of the service.
- Members should remind the services to:
  - notify police if they locate the person or if the person returns to the service without police involvement
  - retain relevant medical records, dentals and DNA samples (for example, hair brush, toothbrush) in case police require them because the person is not located within 60 days or it is otherwise believed necessary.
- Record on the Missing Person and Risk Assessment form [Form L18] if an apprehension power exists for the missing person.

#### **4.2 Voluntary mental health patients or disability clients**

If the person is receiving treatment voluntarily, police have no apprehension power and members should treat the person as they would any other general missing person. This means that when members locate the person and have no concerns about their current welfare and the person does not wish to return to their treatment service, police can only notify the service that the person has been located but cannot divulge their whereabouts without the person's consent.

#### **4.3 Apprehension of compulsory patients under Mental Health Act 2014**

- The *Mental Health Act* provides that in certain circumstance people may be compelled to receive treatment for their mental illness. This may be as an inpatient of an Area Mental Health Service or while living in the community. An authorised psychiatrist may authorise the apprehension and return of a patient receiving compulsory treatment to an Area Mental Health Service if the patient:
  - is absent without leave from an inpatient facility; or
  - fails to comply with their Assessment or Treatment Order and it is revoked; or
  - requires treatment that can only be provided by admission to an Area Mental Health Service.
- In the first instance, clinicians will seek to arrange the return of the compulsory patient without police involvement. Clinicians should only request police assistance in apprehending and returning the compulsory patient where a current risk assessment and knowledge of the patient indicate probable safety issues.
- Section 352, *Mental Health Act* provides an apprehension power for compulsory patients absent from a mental health facility without being

granted leave. Members are to confirm the compulsory status remains current when they locate the person. Any decision about whether reasonable grounds exist to enter premises is ultimately a police decision. The usual procedures for the reporting of any property damage and the reimbursement of costs also apply.

- Where possible, members should return the person to their treating Area Mental Health Service, provided it does not prolong the time that the person is in police custody (e.g. police locate the person a considerable distance from their home). Otherwise, members should take the person to the nearest Area Mental Health Service.
- Section 352 provides an apprehension power for security patients reported as missing. Security patients are prisoners with serious medical needs who are transferred to hospital for treatment before being returned to prison. Members should return them to the nearest Area Mental Health Service.
- Members should complete a Mental Disorder Transfer form [Form L42] and notify the relevant service that they have apprehended the person and likely time of their return. Mental health staff will arrange for the transfer of care upon police arrival at the Health Service (i.e. the person does not need to remain in police custody pending assessment) and, if applicable, the subsequent return to the appropriate Area Mental Health Service. The service is responsible for locating an available inpatient bed.

#### **4.4 Apprehension of interstate compulsory patients**

- Section 318, *Mental Health Act* authorises the apprehension of an interstate compulsory patient located in Victoria. The interstate service will issue an Interstate Transfer Order (ITO) to authorise their apprehension and return to the nearest Victorian approved mental health service.
- In most cases, the interstate mental health service will negotiate directly with the Victorian mental health service regarding the return of an interstate compulsory patient, without police involvement. Where the interstate service's risk assessment indicates a need for police involvement or the patient is a forensic or security patient, the interstate service will fax the ITO to Records Services Division. Records Services Division will create a Person Whereabouts Desired [Form L12] and Person Physical Description [Form L10] report on LEAP for each ITO. There is no requirement for police to lodge the executed ITO at court.
- When executing the ITO, members are to:
  - confirm the person's identity
  - confirm with Records Services Division that the ITO remains current
  - notify the nearest Mental Health Triage of the person's apprehension and estimated time of arrival
  - complete the ITO Execution Details form and give it to the receiving

Area Mental Health Service. Members must also fax a copy of the form to Records Services Division, in order to update LEAP.

- Members should transport the person to the Area Mental Health Service (or Emergency Department) that is the nearest geographically to where the person is apprehended.
- The person subject to the ITO remains in police custody until there is a transfer of responsibility to the Victorian mental health service. The Victorian service is responsible for transferring the person to their home state.
- If an interstate absconder is not subject to an ITO only the powers in the *Mental Health Act* apply.

#### **4.5 Apprehension of involuntary clients under Disability Act 2006**

- The *Disability Act 2006* provides an apprehension power for the following categories of disability client who are absent without leave:
  - a resident detained in a residential treatment facility (s.160). The Disability Forensic Assessment and Treatment Service in Fairfield is the only residential treatment facility
  - a forensic resident detained in a residential treatment facility or residential institution (s.160)
  - a security resident detained in a residential institution (s.174). The only three residential institutions are in Colac, Bendigo and Bundoora, or
  - a person subject to a civil supervised treatment order (s.201).
- In the first instance, Disability Services will seek to arrange the return of the person without police involvement.
- Members are to confirm the involuntary status remains current when they locate the person. Any decision about whether reasonable grounds exist to enter premises is ultimately a police decision. The usual procedures for the reporting of any property damage and the reimbursement of costs also apply.
- Members should complete a Mental Disorder Transfer form [Form L42] and notify the relevant service that they have apprehended the person and likely time of their return.

#### **4.6 Voluntary mental health patients or disability clients**

If the person is receiving treatment voluntarily, police have no apprehension power and members should treat the person as they would any other general missing person. This means that when members locate the person and have no concerns about their current welfare and the person does not wish to return to their treatment service, police can only notify the service that the person has been located but cannot divulge their whereabouts without the person's

consent.

## 5. Forensic mental health patients or disability clients

### 5.1 Powers

- A person found not guilty by reason of mental impairment in either the County or the Supreme Court will be placed on a custodial or non-custodial supervision order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
- Thomas Embling Hospital provides the forensic mental health treatment services. The Disability Forensic Assessment and Treatment Service provides the forensic disability treatment services. Both services are located in Fairfield.

### 5.2 Apprehension

Sections 30, 30A and 30B of the *Crimes (Mental Impairment and Unfitness to be Tried) Act* provide police with the power to apprehend a person on a custodial supervision order who absconds or a person on a non-custodial supervision order who has failed to comply with their order in order to take them to the appropriate facility. The same procedures apply as for apprehending other categories of compulsory mental health patient or involuntary disability client.

## 6. Escape from Sheriff's Officer

- Make reports as any other escape.
- There is no specific offence for escaping from the custody of a Sheriff's Officer and charges should be made under s.49E, *Summary Offences Act 1966*.
- If police later apprehend the escapee, the arresting member is to contact the Sheriff's Office. The Sheriff's Office will arrange for their warrant to be conveyed to the police station where the escapee is in custody to ensure completion of the gaol term in accordance with the warrant.

## 7. Offences of assisting or harbouring escapers

### 7.1 Assisting prisoners to escape

Sections 479A and 479B, *Crimes Act*, contain the relevant offences.

### 7.2 Accessory to escape

See s.325, *Crimes Act*, regarding persons impeding the apprehension, prosecution, conviction or punishment of the principal offender.

### 7.3 Offences re children escaping from welfare service

See ss.499-500, *Children Youth and Families Act*.

## 8. Exercising apprehension powers where escape from custody of another agency

Members should ensure that they have an arrest warrant from the agency or, if exercising an apprehension power without warrant, appropriate documentation from the agency supporting exercise of the power.

### Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the Mental Health Portfolio Manager, Priority Communities Division (for further information in relation to Mental Health and/or Disability patients) or your supervisor.

### Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
01/07/2014	Minor amendments to section numbers and terminology to incorporate the revised <i>Mental Health Act 2014</i>	FF-085694