

Police Responsiveness into Behavioural Health Crisis

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ABSTRACT

Law enforcement, the representative image of the official power among the public and community, is important to maintain its integrity and legality when executing its power enshrined by the laws. Yet, the debate regarding the abuse of the police power had gained tremendous mistrust within the community, flagging the insensitiveness of the law enforcement in handling suspects who are vulnerable upon arrest. This could be detrimental to build up the integrity and the accountability of the police in the eyes of the public. The purpose of this article seeks to propose a proactive alternative that could be utilized to manage the incidence of behavioural health crisis of arrested persons more effectively and efficiently. In achieving this objective, the criminal procedure in Malaysia is discussed. This is followed by a doctrinal analysis on the manner of the arrest required for the responsiveness into behavioural health crisis. It is observed that the outreach of procedural justice into the suspects who are mentally vulnerable is not in the common address within our existing criminal procedure. A conclusion could be outlined that a proactive alternative is arguably crucial to improve the existing circumstances. The intervention is expected to be a novel approach to improve the literacy of the law enforcement with behavioural health crisis which includes the criminal procedural justice to be addressed effectively and efficiently.

Keywords: Behavioural health crisis; criminal procedural justice; de-escalation; pre-arrest diversion

INTRODUCTION

Behavioural health crisis is a disruptive and stressful event that happened upon the breakdown of a person's cognition, emotions and behaviours, which lead to psychological disequilibrium, i.e., sudden deterioration in functioning, and increase the risk of self-harm or harming others.¹ Some of the acute symptoms are rapid mood swings, feeling of anxiety, psychosis, paranoia, and increased verbal or physical agitation. At this point, the person is particularly sensitive and vulnerable to any external stimuli and triggers. As such, it is basically impossible to communicate with the person in a concrete and effective manner, due to the overwhelming and disturbed mind.

However, regarding the arrest method, there seems to be a norm of law enforcement to treat every person without taking into account the different nature of the cases that may justify the usage of force.² Nonetheless, the police officers are trained to discharge physical force whenever there is an emergency or crisis event.³ In addition, the knowledge of firearms usage among law enforcement governed under IGP's standing order is not made public,⁴ which could create the debate of police integrity against the usage of force, yet the justification made by the police in the event of police shooting is often not convincing to the victims' family and public.

Nonetheless, law enforcement claimed that the use of firearms is in self-defence. In addition, the usage of force shall be deemed as the last resort unless the person resist aggressively against the arrest, such as attacking the police, that could significantly implicate deadly consequence towards the safety of the police and the public.⁵ In view to the encounter as indicated in the case of Mahmood⁶ whereby the suspect was fully conscious into his own response and action as the consequence from resisting arrest, the use of force, was deemed lawful. However, if the encounter involving the suspects who are dealing with behavioural health crisis appeared to be unfit to respond efficiently over any verbal cue forwarded by the police, the usage of force to effect the arrest might loss its legitimacy and appropriateness instead.⁷

Particularly, in the United States, the cases involving calls who experiencing behavioural health crisis could be distressing and problematic for police officers who are not adequately trained to effectively respond into it.⁸ As the manifestation of behavioural health crisis may be interpreted as resistant to arrest in the eyes of law enforcement. In a situation where a person is highly agitated or aggressive due to behavioural disturbance, resolving the dispute forcefully will escalate the event into tragedy consequences, such as injury or death.⁹ In light of the fact that an individual experiencing behavioural health crisis at that moment might be

unable to respond well to the cues of the police officers in a predictable manner as compared to ordinary encounters.

At the current moment, there is neither any legal guidelines nor any practical skills the officers have adopted with to handle the person who appeared to be mentally disturbing due to behavioural health crisis. This is portrayed under the report of Human Rights Commission of Malaysia,¹⁰ mentioning that the police reports involving the cases of disrupting public by suspects of who are experiencing behavioural health crisis is not rare in Malaysia, yet the standard practice of the police is executing power of arrest and to detain the suspect behind the lock-up.

Nonetheless, in Malaysia, there are limited local studies and relevant case laws about the police encounters with the persons with behavioural health crisis, however, it could not exclusively disregard the events involving behavioural health crisis are happening in Malaysia and the inefficiency outcome resulted from the execution of physical force during arrest.¹¹ From the news, it significantly reflected the necessity to develop a less extreme alternative¹² when encounter with persons who appear to be mentally disturbing, to reduce the occurrence of tragedies.¹³

LEGAL DISCUSSION: MANNER OF ARREST

Section 15¹⁴ of Criminal Procedure Code described the manner of the arrest that shall be deemed lawful. In view to s15, *Shaaban's* case¹⁵ could be a reference to gain the knowledge on how a lawful arrest shall be done. Lord Devlin described the manner of arrest in the case summary:

“An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going when he may want to go.”¹⁶

In respect to Lord Devlin's interpretation, an arrest is only legitimate if the suspect is cautioned by the police officers on its reason and the movement of the suspect had been restrained under the custody of the police officers. As such, the use of force to effect the arrest shall be in the measure of last resort and proportionate into the accused offence unless the verbal or action submission into custody is not effective.¹⁷

In the case of *Yong Moi Sin*,¹⁸ Abdul Malik Ishak J cited the words in *Spicer v Holt*¹⁹ mentioned that the

deprivation of the liberty of the person under arrest to go where he pleases shall be considered into the manner of arrest. Furthermore, the constitutionality of the arrest shall be weighed with the caution statement²⁰ made by the law enforcement in respect to the ground of the arrest as construed in Federal Constitution, Article 5(3)²¹, the violation of it may result into wrongful arrest damage. In addition to CPC Section 23(1)(a)²² where it described that an arrest in the concern of seizable offence²³ shall be established on the ground of reasonable suspicion and complaint only.²⁴ Thus, the caution statement is bound to inform the arrested person on what basis he or she is being arrested. In view to Section 15 and 23, it could be reasonably justified the use of the force under the cases mentioned in the news.²⁵ Yet, in the cases of involving any person who appeared to be aggressive and agitated due to behavioural health crisis, Mental Health Act 2001 could give an explanation.

Section 11²⁶ give authorization to police officer to apprehend any person whom he believed to be mentally disordered and is imminently dangerous to himself and the other persons in the community to a medical officer in psychiatric hospital for examination within twenty-four hours. According to Black's Law Dictionary, apprehend is defined as “to take a person on a criminal process, to seize; to arrest”.²⁷ As such, ‘apprehend’ could be interpreted the same as ‘arrest’. Moreover, Section 11 also iterated the role of police officer as a primary first-line responder in respect to the case involved with the person with mental disorder.²⁸ Yet, Section 11 silent into the manner of the arrest that shall be applied in respect to the cases involved with mentally disordered person. Hence, from here, researcher interprets the manner of arrest under this case is to be construed with Section 15, which authorized the usage of force.

In short, in the perspective of legislation, use of force is allowed on the arrest encountering with any person including those who dealing with behavioural health crisis. However, given the evidence whereby the police officers and the suspects often sustain unnecessary injury from the struggle happening in the process of arresting, it seems that use-of-force has been an inefficient approach in the case of suspects dealing with behavioural health crisis. Hence, in this study, researcher discusses the proactive alternative that could be introduced in fit to the better responsiveness of the police officers into behavioural health crisis.

DISCUSSION

Mental health-based diversion is the alternative intervention to divert the persons with mental illness from formal criminal justice system into community for treatment and care, in lieu of the punitive measures that is utilized in the formal criminal justice system. Diversion is often perceived to be more comprehensive to identify earlier the signs and symptoms of the mental illness compared to criminal justice system, in light to the resources in the jail is insufficient to support the needs of the person with mental illness who needs immediate intervention. When it comes to basic right to healthcare service, offenders are considered as underprivileged group as compared to general populations. Within the criminal justice system, offenders often missed their entitlement to the basic healthcare facilities which consequently led to unfortunate incidents (e.g. death in custody). The issue of no comprehensive cooperation between intergovernmental agencies to deal with this group of offenders reflect in the insufficient make-up of the medical officer in charge of the lock-up causing delay of the mental health assessment schedule, as well as the delay into referral and care when needed.²⁹ Thus, to reduce the burden of the jails and prisons, early identification at the possibly early stage has been recommended,³⁰ particularly, to divert those who allegedly committed low level risk offences, such as public disturbance. Therefore, diversion could be the proactive intervention justifying the right to quality healthcare for the individual who conflict with the law. In addition, diversion is considerably taken its big leap promoting the right to equal treatment across all individuals in the community in view to the vision highlighted in the National Mental Health Policy.

National Mental Health Policy³¹ is developed in 1998 with a vision to establish a psychologically balanced community which emphasizes on three-tier prevention stage: primary, secondary and tertiary prevention. The establishment of the policy serves as the blueprint for the treatment and rehabilitation framework of mental health services in the country. With the establishment of National Mental Health Policy, Mental Health Act 2001 is formulated accordingly. In view to the vision of the Ministry of Health portrayed within this policy, the goal is to build an equal and respectful community on a partnership with multidisciplinary agencies, such as Ministry of Home Affairs, to secure everyone within

the society have access to the enhanced quality of mental healthcare service.

Furthermore, as diversion subjects are persons who conflicts with the law; hence it is important to address the psychosocial needs of the persons in the treatment plan as well. As such, this draws the difference between the institutionalized treatment and community-based treatment. Under diversion, the treatment plan is constructed to address criminogenic risks based on individual needs, whereas criminal justice system without diversion operated on the basis of institutionalized treatment plan.³² Diversion in lieu of detention could significantly reduce the risk of death in custody in lock-up as well. SUHAKAM report³³ summarized the factors of death in custody by detainees' own actions, mental illness is one of the factors on the list along with alcohol abuse and drug abuse. Furthermore, SUHAKAM also encourage the cooperation between law enforcement and different agencies, particularly to provide special precaution into the care of detainees with mental illness to avoid any tragedy, such as suicide. From the list, we could see that these three factors are the factors that could comprised as one of the risk factors of behavioural crisis. In addition, SUHAKAM also recommend the law enforcement to divert the persons who alleged with public disturbance into treatment centre instead of putting them into lock-up.³⁴ Such approach not only effectively decrease the risk of death in custody and the risk of other detainees' safety from jeopardized due to the presence of the behavioural crisis in the lock-up.

As police is seen as the primary first-line responder to people dealing with mental illness, improvement in police responsiveness into the behavioural health crisis within the community is necessary. Doing so, our criminal justice system shall engage into an active partnership with mental health community to enhance the development of seamless care pathway. Thus, the mental health-based diversion³⁵ that will be focus on in this paper is pre-arrest diversion. Pre-arrest³⁶ diversion is the first point of interception throughout the continuum of the criminal justice system, to prevent the criminalization of the mental illness, in light to the gatekeeper role of the police officers to guard the entry of the person into criminal justice system. Hence, the attitude of the police is tremendously significant at this point as it closely linked with the public perception into the satisfaction of criminal justice system.³⁷ This is because the citizen's

perception will mirror the attitude regarding police policing in the management of public order. The programs under prearrest diversion, namely specialized policing responses (SPRs)³⁸ could be categorized into two types: co-responder program³⁹ and police-based response program⁴⁰, to address the challenges regarding to community safety and poor mental health service linkage. In addition to the core interest of the police-based crisis intervention is the immediacy⁴¹ that the police could support the person within the short encounter. Hence CIT is introduced.

CRISIS INTERVENTION TEAM (CIT)

CIT is a police-based response program involved partnership among law enforcement, mental health and advocacy community serving the aim to reduce the risk of serious injury or death during the encounter. The module offered under the scheme of CIT trained the law enforcement to identify the signs of mental illness associated with behavioural health crisis, so that the officers can provide better help to the person. It has been widely utilized as one of the diversionary measures for person with mental illness internationally⁴² as it applies a novel concept – tactical disengagement, where the police are to control the encounter from escalating without involving into physical confrontation. With tactical disengagement, CIT trained police officers are considered as “less threaten” in the eyes of the persons experiencing behavioral health crisis, hence, it decreases the likelihood of the encounter from escalating into unnecessary physical confrontation. In short, to ensure the success of CIT which includes contextualizing the programs catering into the specific needs of every community, each stakeholder plays its different and significant role.

1. Law Enforcement Community

In order to have a trained CIT police officers who able to respond into the crisis events posed with high unpredictability by the person experiencing behavioural health crisis, the module includes intensive training involved minimum 40-hours training comprised of lectures involving mental health-related topics; field study, such that visitation to the mental health facilities thorough the interaction with the person experiencing mental illness to learn more on the personal experience comprehensively. As such, the officers able to act with empathy when encounter with the crisis events; and lastly the officers will have to role play the scenario for the de-

escalation technique. In light to the complexity and the intensity of the training program, the officers involved are based on voluntary application as it required the officers to have their physical and mind well prepared to handle the loads of the training program. Hence, the officers who have the same vision in fit into CIT are encouraged.⁴³

Besides, a specialized mental health response centre is crucial to be in place. As the centre is acted as the destination of the officers sending in the person for treatment and care after the de-escalation is done on site. Besides, a separate entry to the facility shall be centralized and specialized for the police cases. In addition, the facility shall adhere to no refusal policy for police cases and as well provide wide range of health care services and disposition options, such as, alcohol and drug emergency services, so that it able to support the high variability of the cases background.⁴⁴ The existence of no refusal policy within the response centre is crucial as this is to adhere into core interest of immediacy, where the officers can access the facilities in time to prevent the lengthy pending time in the waiting lobby that could disrupt the daily duty schedule of the police in the station or on street. With no refusal policy, the persons referred by the police officers who believed to be critical for emergency intervention could be prioritized and attended in the uniform manner regardless of the clinical background and the social background of the person.⁴⁵ Taking the example in the U.S., Montgomery County Emergency Service (MCES) was established as a specialized centre consisting of wide range of services fit into the community needs for pre-arrest diversion, such as substance abuse treatment. In the case involving the cases sent in by the police officers, MCES uphold the vision of no refusal policy and a separate entry secured from public.⁴⁶ With that, MCES successfully minimize the police officer’s average time spent within the facility.

It is also critical that all law enforcement participate in the formation of CIT and engage in all elements of the planning and implementation stages, particularly the development of the policies and practical procedures that could maximize the officer’s discretion in the disposition of the suspects, and to conduct regular evaluation on the impact, outcomes and the efficiency of the program and the performance of the CIT officers, so that the program will not lose its objective and could be sustaining as a part of the system.⁴⁷ The main learning outcome from the crisis intervention knowledge is that police

officer will have better confidence ground to identify and de-escalate the crisis event without the need of using excessive force, as such the officers more likely to deal the incidence with reduced stigma and force during the encounter.⁴⁸

2. Mental Health Community

The partnership of law enforcement and mental health community is crucial when coming into the perspective of preventing the encounter involving suspect who appeared to be mentally disturbing from escalating and apparently fall into the criminal justice system. With the input of reducing the mentally vulnerable persons ending up into criminal justice system, it is arguably reducing the victimization and criminalization of mental health issue within the criminal justice system and the community in the long run.⁴⁹

The role of mental health professional is to provide training for the law enforcement, in which to better prepare the police officers with comprehensive knowledge in mental health and mental illness, as so the police officers able to deal the crisis event in a more comprehensive and effective manner without the needs of executing excessive force.⁵⁰ Yet, interdisciplinary collaboration among law enforcement and mental health community could expect with certain degree of conflict and barriers without an effective communication. As mental health professionals and law enforcement are the distinctive discipline working on different expectation from one another, this raised the notable conflict – conflict of interest among the communities. Hence, to ensure the mutual understanding between the parties, a communication among these two parties needed to be addressed prior to the program creation.

In the core of mental health treatment, therapeutic basis is the key to construct the treatment plan for each client. Hence, the relationship between treatment provider and the client is always respectful and not superior over one another, the treatment provider normally will not make decision for the client but to guide the client for answer, for example, counselling. While the general practice of law enforcement is based on discretionary and superiority. Hence, in view to contrary interest, both parties shall be educated to understand the concern of both sides, so that, consensus could be reached in a more practical and informed manner. In the comparison between criminal justice and

clinical setting, the duty to disclose the information is the issue have to balance. As in clinical setting, the treatment provider has the duty to not disclose the information (include the assessment result) to anyone else, but to keep it confidential among him and the patient. Most importantly, in clinical setting the clinicians will not forcefully withdraw the patient from the session if lack with cooperation. This is in the basis to protect the interest of the patient from being judged by others. However, in criminal justice or forensic setting, all information in relevant the assessment result and the progress report have to disclose and reduced into writing for the further prosecution purpose. This differentiates from clinical setting, as in forensic setting, the expert has to take into the consideration of public and justice interest as well.

3. Advocacy Community

The advocacy community is a significant partnership to sustain CIT as well. The community played a role as a liaison to assure the quality and the development is well tailored into the needs of the community. This community provides strong support from the perspective of the individuals with mental illness and the family members, who have real-life experience with the mental illness to provide timely guidance and suggestion to improve the quality of the CIT, assured that CIT is not a single way effort without taking in feedback for improvement. As such, a leader out from the advocacy community is significant, to work as a representative of the individuals with mental illness and their family, helping to voice the opinions.⁵¹ Such that, in the U.S., National Alliance of Mental Illness (NAMI)⁵² is one of the advocacy partners collaborated.

Applying the CIT model into Malaysia, the main priority is to promote procedural reform on the police responsiveness into the persons dealing with behavioural health crisis. To achieve this objective, the law enforcement shall initiate an intensive collaboration with the mental health and advocacy community. The focus of this collaboration is to improve the mental health literacy among the law enforcement as they are the first-line responders dealing with any persons who believed to be mentally disordered. Through the increased mental health literacy, the frequency of using excessive police force could significantly reduce. Besides, knowing that use of force could be an inappropriate approach to effect the arrest of the persons who is apparently

at the time of the incidence could not understand the verbal cues posed forward by the police officers, a new legal underpin shall be promoted in regard to the manner of arrest under section 15 of CPC. Arguably, the new legal underpin shall be focused into tactical disengagement, namely verbal de-escalation when dealing with behavioural health crisis instead of physical confrontation.

DE-ESCALATION

De-escalation technique is a variety of psychosocial intervention averting the emotional, physical and mental stress level of the person in the situation involving agitation and aggression, allow the practitioners to regain the control of the situation.⁵³ This technique is commonly deployed in the mental health field, particularly in the hospital setting where some patients might suddenly act aggressively due to the symptoms of the mental illness. As such, the clinical staffs are trained to defuse the situation through verbal and non-verbal communication. De-escalation has been described as *“the result of a combination of communication, empathy, instinct and sound officer safety tactics”*.⁵⁴ From the statement, de-escalation could be interpreted as the result of the effective communication. As such, effective communication *“involved the transmission of the information from one person to another in a way that is mutually understood, and results in the recipient of the information behaving in a manner that demonstrated understanding”* and been reiterated that the difference between effective communication and ineffective communication is the elements of mutual understanding and trust-building between the two parties.⁵⁵

As law enforcement being the first-line responder and primary protector of the safety in the community, hence, when attending to any crisis event in the community, the priority is to develop observation and communication skills effectively. Due to the instant and unpredictable nature of the crisis event, the judgement made by the officers at the shift moment of time shall be appropriate in the sense of minimizing potential volatile situation and regaining the control of the situation. In normal circumstance, the manner of the arrest effected are basically through verbal submission or empty-hand control⁵⁶ to restraint the movement of a person who resists the arrest, which is considered lawful in the perspective of criminal procedure applied for person without the trouble in understanding cues. However, the applied manner of arrest might

be unjust for the person who have no knowledge into his or her conduct due to the disturbing mind. Hence, the existence of crisis intervention is to solve the problem of the person without the need to engage into the use-of-force that might end up with fatal consequence. The purpose of effective communication in this case is to allow the officers to gain valuable information regarding the problem.⁵⁷

Among the domains⁵⁸ of de-escalation technique, active listening⁵⁹ is the essential elements that could determine the effectiveness of the de-escalation.⁶⁰ As it allowed the officer to convey the intention to help the person in a non-judgmental attitude.⁶¹ It required the officers to reflect the feeling and paraphrase the words of the person. As such, the officer will focus into the meaning of the words the person tried to convey and respond into the content of the person conveyed, throughout the presentation of nonverbal language. It illustrated the sincere and genuine of the officer to offer help to the person, so that the person will feel that he or she is being heard and being supported, as so to reduce tension.⁶² Therefore, active listening allows the officer to establish an empathic connection with the person in crisis and ultimately resolve the situation in a safe and effective manner, reduced the usage of force.

In 2015, an officer shot and killed the suspect's case happened in Arlington, Georgia portrayed the importance of officers to be trained with de-escalation techniques. A grocery store employee lodged a police report mentioning that a man was appeared to be mentally disturbing. The man was allegedly reported that he was staking up and down the aisles, quoting scripture and singing. He also went to ranting and raving at the grocery store staffs after the staffs react in question to his behaviour. The officer arrived at the scene upon the suspect was back in his car, stopped in traffic. Without further thought, the officer immediately affects his verbal command over the suspect requiring him to get out of his car and submit himself into the command. However, the suspect ignored the command and walked towards the officer, unarmed, while singing a hymn. The officer instantly releases his taser gun, yet such response further agitated the man and reacted aggressively at the officer. Sensing an imminent physical danger, the officer shot the man and killed him. Consequently, the officer faced his civil suit, but was cleared by the grand jury. The defence statement of the police officer mentioning he did what he was trained to do, flagging the discussion of little training into de-escalation for person similar to

the man who had a history of mental illness, which could avoid the deadly consequence if did.⁶³Hence, it is observed that the demand to establish a proactive crisis intervention is imminently significant in the event to better engage the encounter involving someone in crisis and to minimize the occurrence of unwanted infortune.

CONCLUSION

This paper had undertaken the task of analysing the lawful application of force as the manner of arrest dealing with behavioural health crisis. This lawful application of force might escalate the event into a circumstance of infortune, such as injuries and civil liability. Hence, to minimize the occurrence of such circumstance, a proper procedural and legal reformation involving the law enforcement training with CIT could be a proactive intervention in such case. Arguably, CIT adopted a novel approach that is distinctive from the traditional police training, which the police officers are taught to de-escalate instead of trained to confront the person. Moreover, by adopting CIT into the training, this could improve the mental health literacy of the officers when dealing with someone appeared to be mentally disturbing. An improved level of mental health literacy, the officers trained to actively listen to the problem of the person and defuse the crisis event before him instead of giving command as a sign of compliance without attending to the problem of the person. In addition, observing the officers who respond “less threaten” over the behavioural health crisis, the public could regain their confidence and trust over the legality of the police authority in the community.⁶⁴ In short, in view to the benefits and outcomes from CIT, the attachment of CIT as a proactive intervention promoting reformation within our existing procedural and legal foundation is a valuable move to consider.

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NOTES

- ¹ P. Kleespies & J.M. Hill, Behavioral emergencies and crises, in D.H. Barlow (ed.), *The Oxford Handbook of Clinical Psychology*, 2nd Edn, 2014, p.1-47.; S. Zeller & E. Kircher, ‘Understanding crisis services: What they are and when to access them’, *Psychiatric Times*, 2020, 6 August, <https://www.psychiatrictimes.com/view/understanding-crisis-services-what-they-are-when-to-access-them> [17 September 2021]. and T. Brister, ‘Navigating a mental health crisis’, *National Alliance on Mental Illness (NAMI)*, 2018, https://www.nami.org/Support-Education/Publications-Reports/Guides/Navigating-a-Mental-Health-Crisis/Navigating-A-Mental-Health-Crisis?utm_source=website&utm_medium=cta&utm_campaign=crisisguide [17 September 2021].
- ² Siti Zaharah Jamaluddin, Norchaya Talib & Zulazhar Tahir Jamaluddin, *Police and the Law*, University of Malaya Press, Kuala Lumpur, 2015, p. 137.
- ³ Human Rights Watch, ‘No answers, no apology: Police abuses and accountability in Malaysia’, 2014, p. 26, https://www.hrw.org/sites/default/files/reports/malaysia0414_ForUpload.pdf [17 September 2021].
- ⁴ Human Rights Watch, ‘No answers, no apology: Police abuses and accountability in Malaysia’, p. 25 and R. Loheswar, ‘Make IGP’s standing orders public, urges Bar Council Task Force on IPCMC’, *Malay Mail*, 26 August 2019, <https://www.malaymail.com/news/malaysia/2019/08/26/make-igps-standing-orders-public-urges-bar-council-task-force-on-ipcmc/1784323> [17 September 2021].
- ⁵ This is well illustrated in the case of *Mahmood v Government of Malaysia & Anor* [1974] 1 MLJ 103. The patrols officers had reasonable suspicion as such the plaintiffs were witnessed running away from the scene where a woman screaming for help. In the basis of possible rape cases, the officers chase after them and warned the plaintiffs not to run. However, the plaintiffs continue to run despite the warning, the officers shot on them to effect the arrest.
- ⁶ *Mahmood v Government of Malaysia & Anor* [1974] 1 MLJ 103.
- ⁷ Charlene Pei Si Teo, *Police and their powers of arrest: An overview*, p. 27.
- ⁸ A.C Watsons & A.J. Fulambarker, ‘The crisis intervention team model of police response to mental health crises: A primer for mental health practitioners’, (2012) 8(2) *Best Practices in Mental Health*, p 71-78.
- ⁹ D.A Fuller, H.R Lamb, M. Biasotti & J. Snook, ‘Overlooked in the undercounted: The role of mental illness in fatal law enforcement encounters’, *Officer of Research & Public Affairs*, 2015, p 4, <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf> [17 September 2021].
- ¹⁰ Human Rights Commission of Malaysia, ‘Deaths in police custody: A thematic study on lock-up conditions and factors contributing to the death’, *SUHAKAM*, 2016, p 107, <https://drive.google.com/file/d/0B6FQ7SONa3PRM1JNUGRvbmRqX3M/view> [17 September 2021].

- ¹¹ Zuliaty Zukilffli, 'Kejar abang dengan pisau, ugut tikam', *My Metro*, 26 August 2020, <https://www.hmetro.com.my/mutakhir/2020/08/614326/kejar-abang-dengan-pisau-ugut-tikam> [17 September 2021]. In this case, the suspect was under the conditions of substance-induced psychosis, threatening his family member with a knife, asking for money to buy drug. The knife was successful retained by the officers; Adie Sufian Zulkefli, 'Suami pukul isteri, anak ugut simbah petrol selepas ditegur bising', *Astro Awani*, 8 September 2020, <https://www.astroawani.com/berita-malaysia/suami-pukul-isteri-anak-ugut-simbah-petrol-selepas-ditegur-bising-258561> [17 September 2021]. The suspect was verbally abusive against his wife, witness by his daughter. The suspect was believed under substance influence, causing physical injury into his wife and daughter. Police report was lodged by suspect's wife and the incident was contained by police officers through physical force; Shuhada Abdul Kadir, 'Anggota polis cedera warga emas serang guna sabit', *Astro Awani*, 17 October 2020, <https://www.astroawani.com/beritamalaysia/anggota-polis-cedera-warga-emas-serang-guna-sabit-263976> [17 September 2021]. In this case, the suspect who was a 61-year-old elderly, disturbing a food truck bazaar with a sickle, and suddenly lunged into patrol officer. Verbal warning was given initially but failed to contain the situation, at the end to use physical force. Unfortunately, one of the attended patrol officers and the suspect were sustained with injuries; Ahmad Ismadi Ismail, 'Anggota polis cedera dibaling pinggan kaca', *Sinar Harian*, 12 December 2020, <https://www.sinarharian.com.my/article/114521/BERITA/Semasa/Anggota-polis-cedera-dibaling-pinggan-kaca> [17 September 2021]. In this case, the patrol officers were being dispatched to attend a family dispute after received police report claiming a man was acting agitative. However, during the defusing the condition quickly elevated become aggressive causing officers injured; Anon, 'Tindakan polis URB lepaskan tembakan depan bank di klang wajar – Ketua polis negara', *Astro Awani*, 3 April 2019, <https://www.astroawani.com/berita-malaysia/tindakan-polis-urb-lepaskan-tembakan-depan-bank-di-klang-wajar-ketua-polis-negara-203116> [17 September 2021]. The patrol officers under the threat of being stabbed, during the encounter with the suspect who was acting aggressive against the patrol officers, after he failed to withdraw money from ATM. Therefore, the officer shot the suspect to the ground.
- ¹² Human Rights Watch's report (Human Rights Watch, "No answers, no apology": Police abuses and accountability in Malaysia, 2014, p 27) cited the words from UN Basic principle on the Use of Force and Firearms by Law enforcement officials (Article 20), where it encourages the usage of verbal de-escalation and to consistently review the training and the operational procedures in light of the nature of the different events.
- ¹³ In a crisis event, it is crucial at the basis, the police officers to understand the circumstance that not necessary all the arrest shall be done with physical force. They must be able to recognize the characteristics of individuals in crisis to provide an effective and helpful resolution to the situation while reducing liability and risk of injury.
- ¹⁴ (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest such officer or other person may use all means necessary to effect the arrest.
- (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.
- ¹⁵ Shaaban & Ors v Chong Fook Kam & Anor [1969] 2 MLJ 219.
- ¹⁶ Farah Nini Dusuki, Talat Mahmood Abdul Rashid & Tiong Guan Saw, *Casebook on Criminal Procedure in Malaysia: Jurisdiction of Courts and Pre-Trial Matters*, University of Malaya Press, Kuala Lumpur, 2018, p 216.
- ¹⁷ Farah Nini Dusuki et al, *Casebook on Criminal Procedure in Malaysia: Jurisdiction of Courts and Pre-Trial Matters*, p 224.
- ¹⁸ Yong Moi Sin v Kerajaan Malaysia & Anor [2000] 1 MLJ 35. ".....Whether or not a person has been arrested depends not on the legality of the arrest but on whether he has been deprived of the liberty to go where he pleases."
- ¹⁹ [1976] RTR 389 at p 400.
- ²⁰ Section 28A(1), CPC. A person arrested without a warrant, shall be informed as soon as may be of grounds of his arrest by the police officer making the arrest.
- ²¹ Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.
- ²² (a) any person who has been concerned in any offence committed anywhere in Malaysia which is a seizable offence under any law in force in that part of Malaysia in which it was committed or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;
- ²³ In CPC Section 2, "seizable offence" means an offence for which and "seizable case" means a case in which a police officer may ordinarily arrest without warrant according to the third column of the First Schedule.
- ²⁴ In Shaaban's case, p.220, the Privy Council iterated that in the case of wrongful arrest it is important to identify the time where there is reasonable existence of the reasonable suspicion. Meanwhile Mahmood v Government of Malaysia & Anor [1974] 1 MLJ 103, Yong J, in his words, cited D.V. Chitale, reasonable suspicion is "to mean a bona fide belief on the part of the police officer that an offence had been committed, or is about to be committed". See Farah Nini Dusuki et al, *Casebook on Criminal Procedure in Malaysia: Jurisdiction of Courts and Pre-Trial Matters*.
- ²⁵ Refer note 11.
- ²⁶ (1) Any police officer or social welfare officer may apprehend any person whom he has reason to believe is mentally disordered and is, because of mental disorder, dangerous to himself or to other persons or property. (2) The police officer or social welfare officer who has apprehended a person under subsection (1) shall as soon as practicable, but not later than twenty-four hours after the apprehension, bring the person to a medical officer in a government psychiatric hospital or a registered medical practitioner in a gazetted private psychiatric hospital for examination.
- ²⁷ H.C. Black, *Black's Law dictionary: Definition of the terms and phrases of American and English jurisprudence, ancient and modern*, 4th Edn, West Publishing Co., 1968, p 130.

- ²⁸ According to Section 2 of Mental Health Act 2001, mental disorder means any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired.
- ²⁹ Johari Khamis, 'Prison mental health service in Malaysia: Where do we start?' (2020) 29(2) *Malaysia Journal of Psychiatry*, p 1-13.
- ³⁰ There are five intercepts in the criminal justice system. The possible early stage could happen during first intercept (where law enforcement officer is in the discretion to divert the person to treatment in lieu of arrest, and as well at intercept 2, where the person was arrested and detained in the lock-up. This intercept 2 required intensive screening of the mental health condition upon entry into the lock-up to ensure that early assessment could be done to identify and to offer the necessary aid to the person as soon as possible.
- ³¹ The policy iterated 10 goals in the policy for service improvement: (1) accessibility and equity; (2) comprehensiveness; (3) continuity and integration; (4) multi-sectoral collaboration; (5) community participation; (6) human resources and training; (7) standards and monitoring; (8) research; (9) legislation; and (10) review. See Ministry of Health Malaysia, 1998.
- ³² Institutionalized treatment is based on medical treatment, focusing into the clinical symptoms however, the community-based treatment operated in more individualized basis, as such the treatment plan include clinical symptoms and the psychosocial factors that possibly determine the resistance of the criminality. See Jamaiah Haniff, 'Community mental health in Malaysia: Marriage of psychiatric and public health', (2000) *Bulletin Kesihatan Masyarakat Isu Khas*, p 155-166.
- ³³ Human Rights Commission of Malaysia, *Deaths in police custody: A thematic study on lock-up conditions and factors contributing to the death*, p 174.
- ³⁴ Human Rights Commission of Malaysia, *Deaths in police custody: A thematic study on lock-up conditions and factors contributing to the death*, p 176.
- ³⁵ There is in total five intercepts which is introduced by Sequential Intercept Model (SIM) along the criminal justice continuum to be utilized for diversion programs. Intercept 1 is the pre-arrest diversion, which is covered in this paper; Intercept 2 is the pre-booking diversion which happened at the point of jail detention, focus into early identification of the persons with mental illness and in the discretion of PP in regard to the institution of the charge; Intercept 3 is the post-booking diversion happened at the point of court trial prior conviction, focus into the court discretion to divert the persons into community treatment as conditional release; Intercept 4 is the post-conviction diversion happened at the point where the person has been convicted to serve sentences in prison, focused into transitioning approach into community; and Intercept 5 is the diversion happened in the basis under community corrections through parole or probation, the focus is on the recovery and prevention of the persons from failing back into the criminal justice system through intensive support provided by the parole officers.
- ³⁶ Pre-arrest stage is the initial point of contact between an individual with police officers.
- ³⁷ J.M. Gau, N. Corsaro, E.A. Steward & R.K. Brunson, 'Examining macro-level impacts on procedural justice and police legitimacy' (2012) 40(4) *Journal of Criminal Justice*, p 333-343.; D.K. Pryce & G. Wilson, 'Police procedural justice, lawyer procedural justice, judge procedural justice, and satisfaction with the criminal justice system: Findings from a neglected region of the world', (2020) 31(9) *Criminal Justice Policy Review*, p 1286-1311.
- ³⁸ SPRs programs are characterized by strong partnership among law enforcement agencies, behavioral health service providers, family members and public.
- ³⁹ Co-responder program involves mental health professionals who are deployed on the site together with the police officer to defuse the crisis event. This program required police officer trained with basic knowledge of mental health and basic de-escalation skills, whereas the mental health professional will either give teleconsultation or deployed on the crisis event site together with the police officer to intensively assess the situation.
- ⁴⁰ Police-based response program focuses into law enforcement as the main responder on field, trained with intensive knowledge and technique of de-escalation from the mental health professionals with the minimal usage of physical force.
- ⁴¹ As law enforcement are always constraint with time, hence, a quick response with an effective intervention is crucial. Hence, upon designing the intervention, it is significant to keep in mind that the police-based response should always keep within the minimum turnover referral time after the immediate de-escalation done by the police on site. As compared to co-responder program which might need to take up longer turn-up time, at the same time the officers are easily being distracted as they have the obligation to secure the safety of the mental health professional who deployed together with them.
- ⁴² In Australia and New Zealand, Mental Health Intervention Team (MHIT) was developed based on CIT model; In Canada, Mobile Crisis Intervention Teams (MCIT) was developed based on collaborative partnership between mental health nurse and specially trained police officer; and in UK, Mental Health Street Triage (MHST) was developed involved the collaboration between police and mental health practitioners attend to a crisis event, aims to divert these persons to appropriate services, avoiding from penetrating into criminal justice system.
- ⁴³ A.C. Watsons et al, 'The Crisis Intervention Team Model of police response to mental health crises: A primer for mental health practitioners'.
- ⁴⁴ R. Dupont, S. Cochran & S. Pillsbury, 'Crisis Intervention Team Core Element', *The University of Memphis*, 2007, <https://cit.memphis.edu/pdf/CoreElements.pdf> [17 September 2021].
- ⁴⁵ A.C. Watsons et al, 'The Crisis Intervention Team Model of police response to mental health crises: A primer for mental health practitioners'.
- ⁴⁶ H.J. Steadman, K.A. Stainbrook, P. Griffin, J. Draine, R. Dupont & C. Horey, 'A specialized crisis response site as a core element of police-based diversion programs', (2001) 52(2) *Psychiatric Services*, p 219-222.
- ⁴⁷ R. Dupont et al, *Crisis Intervention Team Core Element*.

- ⁴⁸ M.S. Rogers, D.E. McNeil & R.L. Binder, 'Effectiveness of police crisis intervention training programs', (2019) 47(4) *Journal of the American Academy of Psychiatry and the Law*, p 414-421.
- ⁴⁹ C. White & D. Weisburd, 'A co-responder model for policing mental health problems at crime hot spots: Findings from a pilot project', (2018) 12(2) *Policing: A Journal of Policy and Practice*, p 194-209.
- ⁵⁰ M. Reuland & K. Yasuhara, Law enforcement and emergency services, in P.A. Griffin, K. Heilburn, E. Mulvey, D. DeMatteo & C. Schubert (eds.), *The Sequential Intercept Model and Criminal Justice: Promoting Community Alternatives for Individuals with Serious Mental Illness*, Oxford University Press, 2015, p 40-56.
- ⁵¹ R. Dupont et al, *Crisis Intervention Team Core Element*.
- ⁵² NAMI is a mental health NGO operated to improve the lives of the individuals with mental illness and promoting mental health awareness through the delivery of some educational programs to its community members. Some of the significant programs administered by NAMI are training workshop, and Family Education and Support program.
- ⁵³ R. Abanonu, 'De-escalating police-citizen encounters', (2018) 27(3) *Southern California Review of Law and Social Justice*, p 239-270.
- ⁵⁴ R. Abanonu, 'De-escalating police-citizen encounters', p 245.
- ⁵⁵ J.R. Oliva, R. Morgan & M.T. Compton, 'Practical overview of de-escalation skills in law enforcement: Helping individuals in crisis while reducing police liability and injury', (2010) 10 *Journal of Police Crisis Negotiation*, p 20.
- ⁵⁶ This is a type of use-of-force where it involves using no weapon and only bare hands to physically restrain the movement of the person who resisting the arrest.
- ⁵⁷ J.R. Oliva et al, 'Practical overview of de-escalation skills in law enforcement: Helping individuals in crisis while reducing police liability and injury'.
- ⁵⁸ There are 10 domains of de-escalation technique: (1) respect personal space; (2) do not be provocative; (3) establish verbal contact; (4) be concise; (5) identify wants and feelings; (6) active listening; (7) agree or agree to disagree; (8) set clear limits; (9) offer choices and optimism; and (10) debrief the person.
- ⁵⁹ Active listening is a therapeutic skill which showed unconditional positive regards of a person's experience through feeling reflection. The authors also concluded the result shown that study participants who received active listening responses will feel more satisfied with the conversation, as such, it could promote the relationship between the speaker and the listener. As such, it promotes the building of trusted relationship.
- ⁶⁰ J.S. Richmond, J.S. Berlin, A.B. Fishkind, G.H. Holloman, S.L. Zeller, M.P. Wilson, M.A. Rifai & A.T. Ng, 'Verbal de-escalation of the agitated patient: Consensus statement of the American Association for emergency psychiatry BETA de-escalation workgroup', (2012) 13(1) *Best Practices in Evaluation and Treatment of Agitation*, p 17-25.
- ⁶¹ H. Weger, G.C. Bell, E.M. Minei & M.C. Robinson, 'The relative effectiveness of active listening in initial interactions', (2014) 28 *The International Journal of Listening*, p 13-31.
- ⁶² H. Weger et al, 'The relative effectiveness of active listening in initial interactions'.
- ⁶³ C. Gilbert, 'Not Trained to Not Kill', *APM reports*, 2017, <https://www.apmreports.org/story/2017/05/05/police-de-escalation-training> [18 September 2021].
- ⁶⁴ In the judgement of public, the legitimacy of the usage of force is perceived on whether the police officer treat the person with dignity, focusing into voluntary compliance from the person. So that the public will respect the police instead of fear. See J.M. Gau et al, 'Examining macro-level impacts on procedural justice and police legitimacy'.

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