American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

POLICY STATEMENT

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# *Best Practice Guidelines for Evaluating Patients in Custody in the Emergency Department*

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Evaluating and treating patients in law enforcement custody can be challenging. As with all encounters, emergency physicians (EPs) must balance their responsibilities and ethical obligations to the patient with the safety of the department, its personnel, other patients, and visitors. For this patient population, EPs must first refer to institutional policy for operational guidance on the provision of care. EPs must also consider relevant local, state, and federal rules and statutes. Hospital legal counsel or risk management may help interpret these policies and statutes or clarify situations that are not explicitly addressed. Early communication with law enforcement personnel regarding their responsibilities, governing policies, and protocols is also beneficial to understand their constraints. In addition to specific guidance from the above resources, EPs may use the following principles to guide care:

1. Physicians have a responsibility to respect the autonomy, privacy, and dignity of patients in custody and to recognize the security and safety concerns of law enforcement, the care team, and the community. EPs should work with patients and stakeholders, including law enforcement, to evaluate each situation based on available information and act accordingly.
2. Under EMTALA, physicians are required to provide these patients with an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition exists.
3. Post-conviction patients who are incarcerated have a constitutional right to health care under the Eighth Amendment.
4. Patients in custody make their own medical decisions if they have decision-making capacity. They may also appoint a surrogate decision-maker using a written advance directive, medical power of attorney, or verbal designation. Physicians should communicate with law enforcement officers when surrogate or emergency contact information is needed.
5. It is ethically unjustifiable for wardens or other prison officials to serve as a patient's surrogate decision-maker unless explicitly chosen by the patient.

6. Considerations during the patient encounter:
   a. History-Taking
      i. As much of the history as possible should be obtained from the patient. In situations where the patient only can provide limited history, collateral sources of information, including accompanying officers, may be helpful.
      ii. Consider asking officers to turn off recording devices (such as body cameras) and to step out of earshot (if caregivers' safety can be assured) while the history is being taken. Officers may decline this request due to relevant policy or safety concerns.
      iii. Unless directly related to medical decision-making or safety concerns, neither look up nor solicit information about the crime or offense these patients may have committed as it can further stigmatize them and bias care.
   b. Physical Exam
      i. Use appropriate draping techniques during the physical exam. Examine sensitive areas such that they cannot be easily viewed by others in the room or request that only officers who are gender-concordant with the self-identified gender of the patient be present in the room during sensitive exams.
      ii. Communicate with law enforcement officers to facilitate necessary physical exam and delivery of care. This may involve requesting non-medical restraints be adjusted or removed, which may not be honored if a security risk is posed.
   c. Documentation
      i. Documentation of the patient encounter should accurately describe the chief concern, its related symptoms, and should justify medical decision-making.
      ii. Avoid using stigmatizing language.
      iii. Given variable recognition of physician-patient privilege in court and exceptions to HIPAA when law enforcement investigates criminal activity, EPs should not guarantee to the patient that information shared verbally by a patient or documented in the ED note will not be used as evidence in court.
   d. Disposition
      i. Share decision-making with the patient, if possible.
      ii. Absent a legal directive, court order, or patient consent, share with law enforcement officers only the personal health information necessary to ensure that the patient gets proper follow-up and aftercare. The details of medical decision-making should not be shared with law enforcement.
7. Considerations from a law enforcement and security perspective:
   a. Law enforcement's main priorities are to maintain public order, manage public safety, supervise patients in custody, and ensure these patients remain detained.
   b. Recognize that sharing certain information with a patient, their surrogate decision-makers, or their emergency contacts (such as patient location and timing of follow-up appointments) may pose a security risk. Communication and consultation with law enforcement officers before sharing information may help mitigate this risk.
   c. EPs should make a reasonable effort to preserve physical evidence and maintain chain of custody.
8. Patients in custody may accept or decline interventions such as physical exam and diagnostic workup if they have decision-making capacity, but this is not an absolute right. Circumstances in which they may not refuse interventions include, but are not limited to, the following:
   a. They may not refuse testing or treatment for high-risk communicable diseases that pose a public health risk (such as tuberculosis and bacterial meningitis).
   b. They may not refuse involuntary treatment of agitation if they pose a danger to themselves or others.
   c. They may not refuse additional forensic testing on specimens that have already been collected for medical reasons.

9. If patients in custody do not consent to an intervention (such as diagnostic workup, physical exam, or a body cavity search) and there is no medical indication for the intervention, it should not be performed in the emergency department.
10. As stated in the ACEP policy Law Enforcement Information Gathering in the Emergency Department, EPs may conscientiously object to complying with legal orders that violate the rights or jeopardize the welfare of their patients acknowledging that there may be legal ramifications to these actions.