

		Policy & Procedures			No. 1.24	
		Subject: Protective Custody of Incapacitated Person(s)				
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CALEA STANDARDS: 44.2.2 72.5.1 72.7.1

GENERAL CONSIDERATIONS AND GUIDELINES

The abuse of alcohol is a serious, nationwide public health problem. The compulsive use of alcohol has an adverse effect not only on the alcoholic but also on their families, their employers and the community as a whole.

Excessive drinking often results in serious breaches of the public peace, damage to property, assault and battery, and other more serious crimes. Family neglect and domestic violence situations requiring police attention often involves alcohol abuse. The broken homes, which often result, are considered a major factor contributing to juvenile delinquency.

In an attempt to resolve this long-standing problem, Massachusetts's law now provides that public intoxication is NOT a crime. It recognizes that alcoholism is a disease. By statute M.G.L.C. 111B, detoxification facilities and related programs are provided for the treatment and rehabilitation of persons suffering from alcoholism. The law also provides for the protective custody of persons incapacitated from consumption of alcohol as well as consumption of a controlled substance or toxic vapor or other substance other than alcohol.

As of July, 25, 2016 under Chapter 161, the 'Act Relative to Protective Custody', a person who is incapacitated from any substance other than alcohol falls under the provisions of this law as well. The expansion of the protective custody law now allows for transport to a facility for those who are incapacitated due to any substance excluding alcohol.

A person who has been taken into protective custody is not considered to have been arrested or charged with a crime.

Nothing contained in Chapter 111B shall affect any laws, ordinances, by-laws, resolutions or regulations against driving after drinking alcohol, driving under the influence of alcohol, or other

similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment.

I. DEFINITIONS

A. Alcoholism: A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in the (i) substantial interference with an individual's social or economic functions in the community or (ii) the loss of powers of self-control with respect to the use of such beverages.

B. Facility: Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.

C. Incapacitated: The condition of an intoxicated person who, by reason of the consumption of intoxicating liquor or any substance other than alcohol as a result of that substance, that person is (1) unconscious, (2) in need of medical attention, (3) likely to suffer or cause physical harm or likely to damage property, or (4) disorderly.

II. TAKING CUSTODY

A. In the absence of an accompanying crime, an officer shall not arrest an intoxicated person. If the situation does not warrant an arrest, but action is necessary, a police officer has the authority to assist an incapacitated person, with or without his consent, to his/her residence, to a treatment facility, or to the police station. While certainly not required, officers should attempt to obtain consent where possible.

B. A person who is incapacitated may be placed in protective custody by a police officer without the person's consent for the purpose of immediately transporting the person to an acute care hospital or satellite emergency facility as defined in section 51.5 of Chapter 111 or otherwise immediately obtaining appropriate emergency medical treatment.

C. All persons receiving naloxone by law enforcement officers or in the presence of law enforcement officers shall be transported to an appropriate facility by EMS. In the event that the person wishes to refuse transportation, law enforcement officers should place the person under protective custody where transportation will now become medically mandated. The individual is not to be released or brought back to the police station without having been seen by a medical professional in a hospital setting.

D. In order to determine whether or not a person is intoxicated, an officer may request such person to submit to standardized field sobriety tests including coordination, coherency of speech, and breath.

E. Any incapacitated person assisted to the police station shall have the right, after arriving at the station, to request and be administered a breathalyzer test and shall immediately be informed in writing of such right.

NOTE: The following notice of rights is the minimum required by law. **72.7.1**

NOTICE OF RIGHTS
(Protective Custody Cases)

THIS IS TO INFORM YOU THAT PURSUANT TO CHAPTER 111B, SECTION 8 OF THE MASSACHUSETTS GENERAL LAWS, YOU HAVE THE RIGHT TO REQUEST AND BE ADMINISTERED A BREATHALYZER TEST. IF YOU ARE TO BE HELD IN PROTECTIVE CUSTODY, YOU ALSO HAVE THE RIGHT TO MAKE ONE TELEPHONE CALL AT YOUR OWN EXPENSE ON YOUR BEHALF.

F. Breathalyzer test results shall be utilized as follows:

1. If the reading (which indicates the percentage of alcohol in a person's blood) is .10 or more, the person shall be presumed to be intoxicated, and shall be placed in protective custody at the police station for up to 12 hours or be transferred to a facility.
2. If the reading is .05 or less, the person shall be presumed to be NOT intoxicated and shall be released from custody forthwith.
3. If the reading is more than .05 and less than .10, no presumption based solely on the breathalyzer test shall be made. In this event, a reasonable test of coordination or speech coherency must be administered to determine if the person is intoxicated.

G. Any person presumed intoxicated and to be held in protective custody at a police station shall, immediately after such presumption, be told he/she has the right to make a telephone call at his/her own expense and on his/her own behalf. **72.7.1 D**

H. Any person presumed intoxicated who is assisted by a police officer to a facility shall have the right to make one phone call at his/her own expense and on his/her own behalf and shall be informed forthwith upon arriving at the facility of said right. (See above Notice of Rights.)

I. The parent or guardian of any person under the age of eighteen being held in protective custody at a police station shall be notified forthwith upon the juvenile's arrival at said station or as soon as possible thereafter. Upon the request of the parent or guardian, such person may be released to the custody of the parent or guardian. **44.2.2 (2E)**

J. If an incapacitated person is assisted to the police station, the Shift Supervisor or his designee shall notify forthwith the nearest treatment facility that such person is being held under protective custody. If suitable treatment services are available at a facility, the Shift Supervisor shall thereupon arrange for the transportation of the person to the facility. The availability of services and/or transportation should be documented in the log.

K. If suitable treatment at a facility is not available, the incapacitated person may be held in protective custody at a police station until he is no longer incapacitated or for a period of no longer than twelve hours, whichever is shorter.

L. An officer may use such force as is reasonable and necessary to carry out the procedures herein, with the exception of tests for determining intoxication. Persons may not be forced to take a breathalyzer test or to perform sobriety tests.

III. SEARCH AND TRANSPORTATION

A. An officer is authorized and is required to make a search of an incapacitated person and his immediate surroundings whenever the following conditions exist:

1. The officer reasonably believes that his/her safety or the safety of other persons present requires the search;
2. The search is limited to the extent necessary to discover any dangerous weapons that on that occasion may be used against the officer or other persons present.

B. Before transporting an incapacitated person, the Shift Supervisor should be notified so that he/she may arrange for assistance, if available.

C. If an officer comes upon, or responds to a call-in regard to an incapacitated person, the officer shall be aware of and immediately consider the possibility of other ailments.

1. An incoherent, unsteady or unconscious person, for example, might be suffering from an epileptic seizure, insulin shock, diabetic coma, stroke, heart attack, or brain injury.
2. If the officer, relying on his own judgment and field experience, believes the above or similar conditions may be present, the Canton Fire Department should be notified and the person should be examined.

D. Officers shall extend the same considerations to an incapacitated person that they would to a person suffering from any other illness.

IV. SAFEGUARDING AT STATION

A. An incapacitated person held in protective custody at the police station shall have the following property taken from him for safe keeping and returned upon release in accordance with departmental procedures: (see policy and procedure “detainee property inventory”)

1. Belts, shoe laces, neckties, neck chains, string to a sweatshirt or a pair of sweatpants, matches, and cigarette lighters;
2. All other articles which may pose a danger or harm to such person or to others;
3. Personal property and other valuables.

NOTE: Such property shall be kept in a secure/locked detainee locker and an itemized inventory shall be maintained. **72.5.1 A, B**

B. An unconscious person should never be placed in a cell unattended at any time. In such cases, immediate medical care should be provided in accordance with departmental procedures.

C. The Shift Supervisor or his designee shall take every reasonable precaution to ensure that all persons held in protective custody are prevented from harming themselves in any way by carefully observing them at intervals of not more than fifteen minutes. The officer assigned to check the incapacitated person will utilize the swipe-card reader in the cell block area.

V. RELEASE

A. Persons to be released from protective custody prior to the expiration of the maximum statutory twelve-hour holding period, who will be released into their own care and custody, will be done so at the direction of a supervisor. A breathalyzer test may be administered to determine that their level of intoxication is below the legal limit of .10. A thorough log entry will be made.

B. If another person is taking responsibility for the individual under protective custody, he/she must be over 18 and must be sober. When possible, a copy of their driver's license shall be made. This shall be stapled to a copy of the Protective Custody Release Form that the responsible person must sign.

VI. REPORTS

A. A report of protective custody shall be made indicating the date, time, place of custody, the name of the assisting officer, the name of the Officer-in-Charge, whether the person held in custody exercised his right to make a phone call, whether the person held in custody exercised his right to take a breathalyzer test, and the results of the breathalyzer test if taken. Such record shall not be treated, for any purposes, as an arrest or criminal record.

B. A patrol officer shall file a report indicating the nature of the incident which gave rise to police involvement, the method of handling the problem, and any injuries observed on the incapacitated person including their cause and medical treatment, if any.

C. Police should be aware that Massachusetts Law authorizes police officers (and certain other persons) to file a petition for a Warrant of Apprehension in an appropriate district court requesting that a person who is an alcoholic (or drug dependent person) be committed for a period not to exceed fifteen days to an inpatient public or private facility approved by the Department of Public Health. Where appropriate, police officers should advise the family and friends of a problem alcoholic of the procedures available under this law.

NOTE: Police officers are immune from civil suits for damages for restraining, transporting, applying for the admission or admitting any person to a facility if the officer acts pursuant to the provisions of Chapter 123.

TESTS FOR DETERMINING INTOXICATION

A police officer may request the person to submit to reasonable tests of coordination, coherency of speech, & breath. These tests may include but are not limited to the standardized field sobriety tests as outlined in Canton Police Department policy 1.27 Operating Under the Influence Arrests.

INDICATIONS OF ALCOHOL CONSUMPTION

Persons who are incapacitated by consumption of intoxicating liquor or other incapacitating substances may be taken into protective custody. In addition to conducting tests to determine intoxication, officers must be careful to observe and to make note of all other indicators that the intoxication is due to the consumption of alcohol. The odor of alcoholic beverage on the subject's breath; the presence of open alcoholic containers on his person or in his car when stopped; any admission by the subject that he/she has been drinking or is drunk; any statements to the same effect by his companions and any other indications of alcohol use should be so noted.

If officers or EMS administer naloxone to a subject, the party must be transported to the hospital. Transportation is now medically mandated. The subject can either go voluntarily or if they refuse, they will be placed into protective custody and transported.