


<p><b>Billerica Police Department</b></p> 	<b>POLICY NUMBER</b> PRI-05	<b>PAGES</b> 6	<b>EFFECTIVE</b> 3/27/16
	<p><b>Accreditation Standards:</b> 74.2.1</p> <p><b>General Orders:</b></p>		
<b>Protective Custody</b>			

## I. General Considerations and Guidelines

The abuse of alcohol is a serious, nationwide public health problem. 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 involve alcohol abuse. The broken homes which often result are considered a major factor contributing to juvenile delinquency.

Intoxication, under Massachusetts law, is not a crime. Alcoholism is a disease. By statute, detoxification facilities and related programs are provided for the treatment and rehabilitation of persons suffering from alcoholism.<sup>1</sup> Chapter 111B provides for the protective custody of persons incapacitated from consuming alcohol.<sup>2</sup> **A person who is incapacitated from drugs alone does not fall under the provisions of this law.** 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.

## II. Policy

It is the policy of the Billerica Police Department to comply with the requirements of Massachusetts General Law Chapter 111B when taking an incapacitated person into protective custody.

## III. Definitions

- A. Alcoholism: A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in (1) the substantial interference with an individual's social or economic functions in the community or (2) 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, is (1) unconscious; (2) in need of medical attention; (3) likely to suffer or cause physical harm or damage property; or (4) disorderly.
- D. Protective Custody - "PC": The taking of a person who is intoxicated by alcohol consumption into custody in order to protect that person from suffering or causing physical damage or harm. This is not an arrest.

## **IV. Procedures**

### **A. Taking into Custody**

1. Generally
  - a. An officer may take custody of a person who is intoxicated by the consumption of intoxicating liquor and:
    - 1) Unconscious;
    - 2) In need of medical attention;
    - 3) Likely to suffer or cause physical damage or harm; and/or
    - 4) Disorderly.
  - b. The officer may assist the person, with or without his/her consent to:
    - 1) His/her residence;
    - 2) A treatment facility; or
    - 3) The police station.
2. Determining Intoxication
  - a. Officers may use observations of the person's condition and behavior, the odor of fresh alcoholic beverages, and field sobriety tests of coordination or speech in determining intoxication.
  - b. Officers should be aware of the possibility of other ailments.
  - c. An incoherent, unsteady or unconscious person might be suffering from an epileptic seizure, insulin shock, diabetic coma, stroke, heart attack, or brain injury.
3. Protective Custody from the Home: A person may be taken into protective custody from his or her own home.<sup>3</sup>
4. Arrests: In addition to protective custody, persons may also be placed under arrest. In such cases, qualifications for bail as well as protective custody release apply.
5. Use of Force: 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 breath test or to perform sobriety tests.

### **B. Search and Transportation**

1. Unconscious Persons
  - a. Officers shall call for an ambulance assist for medical evaluation when an intoxicated person is unconscious.
  - b. Unconscious persons should be transported to a medical facility.
2. Persons In Need of Medical Assistance: Such persons shall be evaluated by medical personnel prior to being transported to the police station, home, or an alcohol treatment facility.
3. Likely to Suffer or Cause Physical Harm or Damage
  - a. Non-violent or non-disorderly persons may be taken directly home or to a treatment

- facility at the discretion of the officer and with the authorization of a supervisor.
- b. Persons believed to be highly intoxicated and juveniles may be returned home, provided they are delivered into the custody of a responsible adult.
  - c. Prior to transport, such persons shall be thoroughly searched for weapons.
  - d. Such persons may be transported with or without handcuffs at the discretion of the transporting officer.
  - e. In all cases, the transporting officer shall provide Communications with starting and ending mileage and the destination, and take a direct route to the destination.
4. Disorderly Persons
- a. Disorderly, unruly or belligerent persons, unless in need of medical or mental health assistance, will normally be transported to the police station.
  - b. Any person transported to the police station as a protective custody shall be searched and restrained in the same manner as an arrest. For further information, see the department policy on ***Transportation of Detainees***.
  - c. The transporting officer shall notify Communications that they will be transporting a person in protective custody to the police station.

### **C. Protective Custody Processing**

1. Booking: Detainees in protective custody shall be booked. For further information, see the department policy on ***Detainee Processing***.
2. Rights<sup>4</sup>
  - a. Telephone Calls
    - 1) In Protective Custody: Any person presumed intoxicated and to be held in protective custody at a police station shall, immediately after such presumption, have the right and be informed of the right to make a telephone call at his/her own expense and on his/her own behalf.
    - 2) Detoxification Facility: Any person presumed intoxicated who is assisted by a police officer to a detoxification 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.
  - b. Breath Test
    - 1) Any incapacitated person assisted to the police station shall have the right, after arriving at the station, to request and be administered a breath test and shall immediately be informed in writing of such right.
    - 2) Breathalyzer test results shall be utilized as follows:<sup>5</sup>
      - a) 0.10 or Greater: If the breath test result is 0.10 or more, the person shall be presumed to be intoxicated and shall be placed in protective custody at the police station or transferred to a detoxification facility. (This is a different standard than the .08 for operating a motor vehicle or boat under the influence of alcohol.)
      - b) 0.05 or Less: If the reading is 0.05 or less, the person shall be presumed

not to be intoxicated and shall be released from custody forthwith.

- c) 0.06 and 0.09: If the reading is 0.06 to 0.09, no presumption based solely on the breathalyzer test shall be made. In this event, a determination of intoxication must be based upon field sobriety tests of coordination or speech coherency. If not previously given, they must be administered.
- c. Notice of Rights: Protective custody cases shall be administered the following rights. Such rights are printed on the detainee rights form.

***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 OWN BEHALF.***

- 3. Juveniles: The parent or guardian of any person under the age of eighteen to be held in protective custody at a police station shall be notified forthwith upon his/her arrival at said station or as soon as possible thereafter. Upon the request of the parent or guardian, such person shall be released to the custody of the parent or guardian.<sup>6</sup>
- 4. Notification of Detox Facility: If an incapacitated person is assisted to the police station, the Officer-in-Charge or his/her designee shall immediately notify the nearest treatment facility that an incapacitated person is being held under protective custody. If suitable treatment services are available, the Massachusetts Department of Public Health shall thereupon arrange for the transportation of the person to the facility.
- 5. Length of Custody: If a treatment facility is not available, the person may be held in protective custody at the station until [s]he is no longer incapacitated, but not for more than twelve hours.

#### **D. Detaining Persons in Protective Custody**

- 1. Detaining
  - a. Persons in protective custody shall be detained as would an arrest. For further information, see the department policy on ***Detaining Prisoners***.
  - b. An unconscious person shall never be placed in a cell unattended. In such cases, immediate medical care shall be provided in accordance with departmental procedures.
- 2. Releasing
  - a. Persons may be released from protective custody prior to the expiration of the maximum statutory twelve-hour holding period, provided that they are no longer intoxicated.
    - 1) Those who would be released into their own care and custody may, if in the opinion of the releasing officer still appear intoxicated, be offered a breath test.

- a) Those who obtain a reading of 0.10 or higher, or who decline to take a breath test (which is their right), should not be released to their own custody.
  - b) Those who obtain a result between 0.06 and 0.09 may be subject to field sobriety testing.
  - c) NOTE: Individuals who are released on bail following an arrest may be placed in protective custody if they are still "incapacitated" as defined in c. 111B. The foregoing considerations regarding release will govern a decision to release such individuals from protective custody.
- 2) Persons may be released to the custody of a responsible adult.
  - 3) Juveniles, upon the request of the parent or guardian, shall be released to the custody of the parent or guardian.<sup>7</sup>
- b. A person who has been in protective custody must not be held for more than twelve hours.

## **E. Reports**

- 1. Incident Report: An incident report of the protective custody shall be made and must include:
  - a. The date, time, and place of custody;
  - b. The name of the assisting officer and Officer-in-Charge;
  - c. Whether the person held in custody exercised his/her right to make a phone call; and
  - d. Whether the person held in custody exercised his/her right to take a breathalyzer test, and the results of the breathalyzer test if taken.
  - e. The report must indicate the nature of the incident that gave rise to any police involvement, the method of handling the problem, and any injuries observed on the incapacitated person, including their cause and medical treatment, if any.
- 2. Non-Criminal
  - a. Such record shall not be treated, for any purposes, as an arrest or criminal record.
  - b. Criminal offenses committed during the incident that involved the protective custody may, however, be treated as criminal offenses.

## **F. Commitment of Alcoholics or Substance Abusers [74.2.1]**

- 1. Petition for Commitment
  - a. M.G.L c. 123, §35 authorizes police officers and certain other persons to file a petition in an appropriate district or juvenile court requesting that a person who is an alcoholic or drug dependent be committed for a period not to exceed thirty days to an in-patient public or private facility approved by the Department of Public Health.<sup>8</sup>
  - b. Where appropriate, police officers should advise the family and friends of the

procedures available under this law.

c. Persons who may petition for commitment are:

- 1) Any police officer;
- 2) Physician;
- 3) Spouse;
- 4) A blood relative;
- 5) Guardian; and
- 6) Court official.

## 2. Warrant of Apprehension

a. The court may issue a warrant for the apprehension for the individual to appear before the court, provided there are reasonable grounds to believe that:

- 1) Such person will not otherwise appear; and
- 2) Any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent.

b. No arrest on the warrant of apprehension shall be made unless the person may be presented immediately before a judge of the district court.

- 1) The court must be in session at the time of arrest or shortly thereafter.
- 2) The arrest must not be made so late in the day that the court cannot process the person.

c. Under proper conditions, a warrant of apprehension will be promptly served.

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<sup>1</sup>M.G.L. c. 111B.

<sup>2</sup>M.G.L. c. 111B, §8.

<sup>3</sup> Lally v. Carmichael, 56 Mass.App.Ct. 1103, 776 N.E.2d 1309.

<sup>4</sup> M.G.L. c. 111B, §8.

<sup>5</sup> M.G.L. c. 111B, §8.

<sup>6</sup> M.G.L. c.111B, §8.

<sup>7</sup> M.G.L. c.111B, §8.

<sup>8</sup>M.G.L. c. 123, §35.