



# POLICY AND PROCEDURE

NO.740

## Protective Custody Intoxicated Persons

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The abuse of alcohol is a serious, nationwide public health problem. The compulsive use of alcohol has an adverse effect not only on the patient but 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 involve alcohol abuse. The broken homes, which often result, are considered a major factor contributing to juvenile delinquency. The abuse of alcohol also proves to initiate the potential for a multi-generational cycle of similar abuses.

Historically, arrests for "drunkenness" have constituted a high proportion of police activity in every community. In the past, except for traffic violations, more arrests were made for drunkenness than for all other offenses combined. The punitive approach to this social problem has been costly, time-consuming, and ineffective. This, of course, has not been the fault of the police, for they previously had no other recourse.

In an attempt to resolve this long-standing problem, Massachusetts's law now provides that public intoxication 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 M.G.L. C 111B. The law also provides for the protective custody of persons incapacitated from consuming alcohol M.G.L. C 111B S.8. 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 nor 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.

### 2. 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, is (1) unconscious, (2) semi-conscious, (3) in need of medical attention, (4) likely to suffer or cause physical harm or damage property, or (5) disorderly.

### 3. 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 residence, to a treatment facility, or to the police station. While not required, officers are urged to obtain consent where possible.
- B. In order to determine whether or not a person is intoxicated, an officer may request such person to submit to reasonable tests of coordination, coherency of speech, and breath. Examples of such tests are listed at the end of this Policy and Procedure.
- C. 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 be informed in writing of such right.

**NOTE:** The following notice will be provided.

#### **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 OWN BEHALF.*

- D. **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 or transferred to a facility.
  - 2. If the reading is .05 or less, the person shall be presumed not to be 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.
- E. 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 own expense and on his own behalf.
- F. 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 own expense and on his own behalf and shall be informed forthwith upon arriving at the facility of said right. (See above Notice of Rights).
- G. 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 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.

- H. If an incapacitated person is assisted to the police station, the Officer-in-Charge 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 person will be transported to the facility.
- I. Nothing in these procedures shall be construed to require or permit a police officer to hold a person in protective custody against his will unless suitable treatment at a facility is not available. If such treatment is not available, the person may be held in protective custody at the station for the following periods, whichever is shorter.
  - 1. Up to 12 hours;
  - 2. Until he is no longer incapacitated.
  - 3. Up to 4 hours (**ONLY** Persons less than 17 yrs old **and** found to be knowingly in the presence of drugs listed in MGL Chapter 94C classes A, B, or C of section 31 and in violation of any provision of said chapter [ C. 94C s 36] ).

(See below the applicable section of policy #710 *Juvenile Arrests* for treatment and exception regarding juveniles)

*When a juvenile is placed in protective custody under either of the statutes listed in MGL Chapter 111B or 94 C the juvenile should be informed of the authority under which they are being placed in custody.*

*A juvenile who has been placed in protective custody shall not be deemed to have been arrested or to have incurred a delinquency or criminal record for any purpose. However, a departmental record of the custody shall be maintained indicating the circumstances of detention. The time which the juvenile was placed in protective custody should be noted on the electronic journal and the dry erase prisoner board located in the cell room because of the statutory limits to the length of time the juvenile can remain in protective custody. Under the Alcohol Treatment and Rehabilitation Law, the juvenile, under certain circumstances, cannot remain in protective custody for more than twelve (12) hours. Under the Controlled Substance Act, juveniles under the age of 17, who are found to be knowingly where certain controlled substances are present, can be held in protective custody for no longer than four (4) hours.*

*All rights granted under Chapter 111B to adults shall apply to juveniles. Any provision requiring the consent of the person requires the consent of both the juvenile and the parent or legal guardian.*

*Any juvenile held in protective custody, upon the request of the juvenile's parent(s) or legal guardian may be released to the custody of the parent or legal guardian. During the time a juvenile is held in protective custody, all valuables and all articles which may pose a danger to the juvenile may be taken, inventoried and held in safe-keeping according to existing policies (Handling of Prisoners 700).*

*A juvenile, who is placed in protective custody under the provisions of the Alcohol Treatment Law, may, as a last resort or option, be placed in a DYS-approved cell. A juvenile in protective custody under the Controlled Substance Law will not be placed in a cell but under supervision in a secure area pending final disposition.*

- J. An officer may use such force as is reasonable and necessary to carry out the procedures herein.

#### 4. 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 the officer's 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.

**NOTE:** The Massachusetts Supreme Judicial Court ruled in 1989 that a "pat down" search of an incapacitated individual who is being taken into protective custody which detected the presence of drugs was lawful. The Court ruled that the inevitable discovery exception to the exclusionary rule was applicable since the same evidence would have been inevitably discovered when an inventory search was conducted upon arrival at the police station. A similar result was obtained when the same Court in 1987 ruled that a gun discovered in a "pat down" search of an incapacitated individual was lawfully seized.

- B. 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, unconscious, semi-conscious 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, he shall immediately make arrangements for medical treatment by summoning an ambulance.
  - 3. An unconscious or semi-conscious person shall **NEVER** be transported in the patrol wagon. An ambulance shall be summoned. A semi-conscious person is a person who is conscious but is not alert or aware of their surroundings and may lapse into a state of unconsciousness.
  - 4. It shall also be the duty of the officer that apprehends or holds an incapacitated person, to have that person treated for any injury prior to his being brought to the station house or treatment center.
- C. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness.

#### 5. SAFEGUARDING AT STATION:

- A. An incapacitated person held in protective custody at the police station shall have the following property taken from him for safekeeping in accordance with departmental procedures regarding handling of prisoners in general.
  - 1. Belts, shoelaces, neckties, neck chains, 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 safe place, and an inventory shall be maintained.

- B. An unconscious, or semi-conscious person, shall **NEVER** be placed in a cell. In such cases, immediate medical care shall be provided by requesting an ambulance for emergency medical treatment and transportation. If a prisoner displays objective signs of intoxication to a level of semi-consciousness, that prisoner shall be transported to the hospital by ambulance for treatment.
- C. The Officer-in-Charge, or his designee, shall take every 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 (15 minutes). A record shall be maintained of the time of such observations in accordance with departmental Procedures (i.e. Handling of Prisoners #700 with utilization of the Watch Tour Monitoring System).
- D. 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, should have a breathalyzer test administered to determine that their level of intoxication is below the legal limit of .10. Those who are still above the legal limit of .10 or who decline to take a breathalyzer test (which is their right) should not be released to their own custody.

**NOTE:** Individuals who are released on bail following an arrest for driving under the influence of alcohol 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 individual from protective custody.

## **6. REPORTS:**

- A. A report of protective custody shall be made indicating the date, time, place of custody, the name of the assisting officer(s), 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 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.
- C. Police should be aware that Massachusetts Law authorizes police officers (and certain other persons) to file a petition 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 15 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.

## **Indications of Alcohol Consumption:**

Only persons who are incapacitated by consumption of alcohol (not other drugs) may be taken into protective custody. In addition to conducting tests to determine intoxication, officers must be careful to observe and make note of all indications that the intoxication is due to the consumption of alcohol. The odor of alcoholic beverages on the subject's breath; the presence of open alcoholic beverage containers on his person or where he is only a passenger in a car when stopped and not the operator; any admission by the subject that he 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.

**TESTS FOR DETERMINING INTOXICATION:**

**Balance:**

Have the subject stand with their arms by their sides, one foot on the ground and the other foot raised 6 inches off the ground while counting to 30, then repeat with the other foot. Note any loss of balance, swaying, and jerky motions by the subject.

**Walking and Turning:**

Have the subject walk, in a heel to toe manner, a straight line 9 steps. Just before the subject reaches the end of the line, direct him to safely turn and walk heel to toe back 9 steps. Note any deviations from the line by the subject as well as any difficulty or loss of balance experienced by him in walking and turning.

**Finger to Nose:**

Have the subject stand with his feet together, arms extended to the side, and eyes closed. Direct him to touch the tip of his nose with the index finger of his right hand; repeat with the left index finger. Note if and where the index fingers touch and the degree of certainty with which the subject moves.

**Coins:**

Place several coins of different denominations on the floor or ground. Ask the subject to pick up a particular coin and hand it to you; repeat. Note any loss of balance by the subject as he performs this task.

**Alphabet:**

Ask the subject to recite the alphabet (A to Z) and note any omissions or difficulties.

Per:



Gary J. Gemme  
Chief of Police