





POLICIES AND PROCEDURES MANUAL

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|  | PROTECTIVE CUSTODY | |
| | POLICY NUMBER: 1-7 | ISSUING AUTHORITY  |
| | EFFECTIVE DATE: January 1, 2025 | Christine A. Elow Police Commissioner |

I. GENERAL CONSIDERATIONS AND GUIDELINES

The abuse of alcohol and other incapacitating drugs or substances is a serious nationwide public health crisis. In an attempt to resolve this long-standing problem, Massachusetts law now provides that public intoxication by alcohol 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. The law also provides for the protective custody of persons incapacitated from consuming alcohol. A person who has been taken into protective custody is not considered to have been arrested or charged with a crime.

However, nothing contained in M.G.L. c. 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 Cambridge Police Department to:

- A. comply with the requirements of M.G.L. c. 111B, § 8 when taking into protective custody a person incapacitated by alcohol; and
- B. comply with the requirements of M.G.L. c. 111E, § 9A when taking into protective custody a person incapacitated by the consumption of a controlled substance, toxic vapor, or substance other than alcohol.

III. DEFINITIONS

- A. *Acute Care Hospital*: Any hospital licensed under M.G.L. c. 111, § 51, and the teaching hospital of the University of Massachusetts Medical School, which contains a majority of medical-surgical,

pediatric, obstetric, and maternity beds, as defined by the Massachusetts Department of Public Health.

- B. *Alcoholism*: A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in the substantial interference with a person's social or economic functions in the community or the loss of powers of self-control with respect to the use of such beverages.
- C. *Custody*: Legal or physical control of a person in an area or facility or while in transit; legal, supervisory, or physical responsibility for a person.
- D. *Facility*: Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.
- E. *Incapacitated by alcohol*: The condition of an intoxicated person who, by reason of the consumption of alcohol, is 1) unconscious; 2) in need of medical attention; 3) likely to suffer or cause physical harm, or damage property; or 4) disorderly.
- F. *Incapacitated by a substance other than alcohol*: The condition of a person who, by reason of the consumption of a controlled substance or toxic vapor or other substance, other than alcohol, is unconscious, in need of medical attention, likely to suffer or cause physical harm or damage property, or disorderly. For the purposes of this policy and consistent with the guidance issued by the Executive Office of Public Safety and Security along with the Municipal Police Training Committee, a person who has been administered nasal naloxone in connection with a drug overdose is still deemed to be *incapacitated* as a person *in need of medical attention*.
- G. *Satellite Emergency Facility*: A health care facility that operates on a 24/7/365 basis, that is located off the premises of a hospital, but is listed on the license of the hospital, which is authorized to accept patients transported to the facility by ambulance.

IV. PROCEDURES

- A. *Custody*
 - 1. In the absence of an accompanying crime, an officer shall not arrest an intoxicated person.
 - 2. If an officer encounters a person who is intoxicated by reason of the consumption of alcohol, the officer may assist the person, with or without consent, to the person's residence, provided that the officer reasonably believes that leaving the person at home does not pose an unreasonable danger to the person. The officer may also assist in transporting to a treatment facility should the person need medical attention of any kind. In the absence of any other acceptable alternative, the subject should be brought to the police station.
 - 3. Officers shall call for an ambulance when an incapacitated person is unconscious.

4. A person may also be requested to take a breathalyzer test to determine blood alcohol concentration.
5. M.G.L. c. 111E, § 9A now allows police officers to take into protective custody those persons who are incapacitated due to substances other than alcohol, such as opiates. For example, when officers administer nasal naloxone to an overdose victim and the person is deemed to be incapacitated, the officers shall facilitate the transport of the person to a medical facility.
6. To determine if a person is incapacitated, an officer may request such person to submit to reasonable tests of coordination, coherency of speech, and breath.
7. A person may be taken into protective custody from their own home; however, it is only in those circumstances when the officer believes the person represents a potential harm to themselves or others, and only after consultation with a supervisor. Generally, the officer should opt to take the person to a medical facility, rather than to the police station.

B. Search and Transportation

1. Prior to transporting a person incapacitated by alcohol or other intoxicating substances, an officer is required to make a search of the person and the immediate surroundings to discover any dangerous weapons that may be used against themselves, against the officer, or other persons present.
2. As soon as practical, the officer shall separate the detainee from all detainee property, to include all bags and other containers from their immediate surroundings known as the *grabbing area or lunge zone*.
3. Before transporting an incapacitated person, the Sector Sergeant shall be notified.
4. If an incapacitated person is to be transported to a place of residence the officer shall notify the Sector Sergeant and shall accompany the person to the place of residence and confirm that the person is safely inside with another trusted person present.
 - a. Transport to a place of residence shall be conducted with the patrol wagon or with two officers if by cruiser.
 - b. If the person is to be transported to a treatment facility, such transport shall be conducted by ambulance.
5. If an incapacitated person under the age of 18 years is encountered who does not require any medical attention, and who is being transported to the place of residence, then the subject is to be transported by cruiser with at least two officers present while observing department procedures for transporting a person in a police cruiser. Unless there are extenuating circumstances and approved by a supervisor, the subject will not be transported in a patrol wagon.
6. If an officer comes upon, or responds to a call involving an incapacitated person, the officer shall immediately consider the possibility of an underlying medical condition.

7. 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.
8. If the officer, relying on independent judgment and field experience, believes that such a medical condition exists they shall immediately arrange for medical treatment in accordance with departmental procedures.
9. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness.

C. Persons Brought to the Police Station

1. Upon arrival at the police station, all persons detained for protective custody shall be processed in accordance with this directive. However, the booking report is not and shall not be treated as an arrest record.
2. Any person presumed incapacitated who is assisted by a police officer to a facility shall have the right to make one phone call at their own expense and on their own behalf. The person shall be informed immediately by a police officer upon arriving at the facility of this right and shall be afforded such right.
3. 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.

a. NOTICE OF RIGHTS (Protective Custody Cases)

This is to inform you that pursuant to Massachusetts General Laws c. 111B, § 8 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.

4. If an incapacitated person is brought to the police station, the Shift Commander will, during the booking process and if the person is interested in being taken to a treatment facility, providing that one is available, check on the availability of a nearby approved Detox Facility. If suitable treatment services are available, the Massachusetts Department of Public Health shall arrange for the transportation of the person to the facility.
5. If a treatment facility is not available, the person may be held in protective custody at the station for up to twelve (12) hours or until the subject is no longer incapacitated, whichever is shorter.

D. Juveniles

1. The parent or guardian of any person under the age of eighteen (18) who is being held shall be notified immediately upon arrival at the 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 or interested responsible adult.

E. Use of Force

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

F. Reports

1. A report of protective custody is not an arrest report; the detaining officer shall complete an incident report including relevant information.
2. Such record shall not, for any purpose, be treated as an arrest or criminal record.
3. Officers should be aware that M.G.L. c. 123, § 35 authorizes police officers to file a petition in an appropriate district court requesting that a person who is an alcoholic, or drug dependent person, be committed to an in-patient, public, or private facility approved by the Department of Public Health.
 - a. When appropriate, police officers should advise the family and friends of the procedures available under this law.
 - b. Persons who may petition for commitment include any police officer, physician, spouse, a blood relative, guardian, and court official.

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 M.G.L. c. 123.

4. The court may issue a warrant for the apprehension for the person to appear before the court, provided there are reasonable grounds to believe that:
 - a. such person will not otherwise appear;
 - b. any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent;
 - c. no arrest on the warrant of apprehension shall be made unless the person may be presented immediately before a judge of the district court;
 - d. the court must be in session at the time of the arrest or shortly thereafter;
 - e. the arrest must not be made so late in the day that the court cannot process the person;
 - f. under proper conditions, a warrant of apprehension shall be promptly served.

G. Booking Procedures

1. All persons brought to the police station for protective custody shall go through the processing procedures as outlined below. The booking and station relief officers are responsible for processing a person held under protective custody. Other officers may assist

in the processing, and the Shift Commander shall be responsible for overseeing that the prescribed procedures are followed.

- a. The entire protective custody process will be video recorded.
- b. As part of the booking process, the person will be advised of his/her rights as they relate to the Protective Custody statute, and such notification will be documented on the Booking Report.
- c. The Booking Report for Protective Custody will be completed in its entirety, ensuring that all checklists contained within the Booking Report are carried out, and the medical screening portion of the report is completed prior to release.
- d. All property taken from the person will be collected and placed into a property container where it shall remain until it is returned to the person. An inventory of all the property taken will be listed in the Booking Report.
 - (1) At the time when the property is returned to the person, the person will sign for the property as indicated on the Booking Form.
 - (2) If another person is taking responsibility for the person under protective custody, then that person will sign the form in the appropriate place.
 - (3) The officer turning the property over will mark the appropriate boxes on the Booking Report and reflect the date and time of release from custody.
 - (4) If the officer encounters any property that may be considered contraband or of evidential value, those items will be placed into the department's Property and Evidence System, and the item(s) will be listed on the Property and Evidence Report.
- e. If the person elects to take a breathalyzer test, the results of the test will be recorded on the Booking Report.

H. Detaining Persons in Protective Custody

1. An unconscious person in need of medical care shall never be left in a cell unattended at any time. In such cases, immediate medical care shall be provided in accordance with departmental procedures.
2. The Shift Commander will take every precaution so that all persons held in protective custody are prevented from harming themselves in any way by providing for the monitoring of such persons in accordance with department policy requiring cell checks every 15 minutes.
3. Under M.G.L. c. 111B, § 8, a breathalyzer of .10 establishes a presumption of incapacitation. Persons who are to be released from protective custody prior to the expiration of the maximum statutory twelve-hour holding period, and 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. All breathalyzer tests administered for the purpose

- of protective custody may be administered through a Breath Test (BT) device maintained in the booking area.
- a. Subjects who indicate a reading of .05 or below shall be released immediately.
 - b. Subjects who indicate a reading between .06 and .09 shall be held at the officer's discretion.
 - c. Subjects who indicate a reading of .10 or greater establishes incapacitation and shall be held until release is advisable.
 - d. If a minor, a child under the age of 18, registers any breathalyzer reading, the officer shall only release the minor to a parent, guardian, or interested responsible adult.
4. In those instances where the Shift Commander believes that a person no longer represents a risk to themselves or others and can be reasonably able to care for themselves, then the Shift Commander can authorize the release of the person, even though the contemplated release is prior to the twelve-hour maximum holding period. This often may be the case with those persons who are considered to be chronically intoxicated.
 5. Persons 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 M.G.L. c. 111B. The foregoing considerations regarding release will govern a decision to release such person from protective custody.
 6. If the person held in protective custody is under the age of eighteen, it shall be the responsibility of the Shift Commander to notify that person's parent or guardian is immediately upon arrival at the police station, or as soon as practically possible to do so thereafter. If the person is a juvenile under age eighteen and the parents, guardian or some other responsible adult cannot be immediately contacted, the juvenile should be held in a non-secure area until a parent, guardian, or other responsible adult can be located and come to the station.
- I. Incapacitated by Drugs and Substances Other Than Alcohol
1. In the absence of an accompanying crime, an officer shall not arrest an incapacitated person. If the situation does not warrant an arrest, but action is necessary, a police officer has the authority to place a person incapacitated by drugs and/or substances other than alcohol into protective custody and transport the incapacitated person, with or without consent, to an acute care hospital or satellite emergency facility or otherwise to immediately obtain appropriate emergency medical treatment.
 2. A person taken into protective custody for incapacitation by drugs and/or substances other than alcohol shall not be taken to the police station and must be immediately transported to an acute care hospital or satellite emergency facility or otherwise to immediately obtain appropriate emergency medical treatment.
- J. Transportation of Persons Incapacitated by Drugs and Substances Other Than Alcohol

1. Upon determining that a person is incapacitated, the officer shall immediately call emergency medical services. The officer shall direct Emergency Medical Services personnel to transport the incapacitated person. If EMS personnel transport the person, the officer may accompany the incapacitated person in the EMS vehicle, or alternatively, escort the EMS vehicle to the destination.
2. Unless articulable exigent circumstances exist in which an incapacitated person cannot be transported by EMS personnel, officers shall not transport an incapacitated person in police vehicles. If such exigent circumstances exist or there is a significantly prolonged delay in EMS response, as to require the transport of an incapacitated person in a police vehicle, the transporting officer shall adhere to departmental policies and procedures regarding transportation of detainees.
3. At the destination, the officer shall escort the incapacitated person into the facility, request that the person be evaluated, and relinquish custody of the person to facility personnel.
4. If an officer comes upon or responds to a call related to an incapacitated person, the officer shall be aware of and immediately consider the possibility of other ailments.
 - a. 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.
 - b. If the officer, relying on his/her own judgment and field experience, believes the above or similar conditions may be present, they shall immediately arrange for medical treatment in accordance with departmental procedures.
 - c. Officers shall extend the same considerations to an incapacitated person that would be offered to a person suffering from any other illness.
 - d. Officers shall document the act of placing a person into protective custody who is incapacitated by drugs and/or substances other than alcohol.
 - e. Whenever an officer places into protective custody a person under the age of 18, the officer shall immediately notify the parent or guardian of that person.