

 <p><b>Cambridge Police Department</b></p>	<b>POLICY &amp; PROCEDURES</b>		<b>No. 670</b>
	Subject/Title: <b>Protective Custody</b>		
	Issuing Authority: 	Issue Date: <b>February 1, 2010</b>	Effective Date: <b>February 1, 2010</b>
	Robert C. Haas Police Commissioner	Review Date:	Rescinds:
References/ Attachments: <b>M.G.L. c. 111B</b>	Accreditation Standards: <b>74.2.1</b>		

**I. PURPOSE:**

The purpose of this policy and set of procedures is to provide operational guidelines officers are to follow when they encounter incapacitated or intoxicated individuals who require some type of police assistance or intervention. This policy and set of procedures has been developed to incorporate the provisions of Massachusetts state law as outlined in M.G.L. c. 111B, § 8.

**II. POLICY:**

It is the policy of this department to comply with the requirements of M.G.L. c. 111B, § 8 when taking an incapacitated person into protective custody. To that end, this policy will address the following:

- Officers will respond appropriately to individuals who are intoxicated and in need of police assistance;
- Officers will always assess the needs of the individual involved and overall public safety needs in assessing what action or intervention is required; and
- Officers will always assess the medical needs of an individual whom they believe is incapacitated due to intoxication, and address those medical needs before opting to take them into protective custody.

**III. 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 individual 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 involve alcohol abuse. The broken homes that often result are considered a major factor contributing to juvenile delinquency.

Historically, arrests for "drunkenness" represented 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, the Massachusetts legislature determined that public intoxication is not a crime. Alcoholism is a disease. By statute, detoxification facilities and related programs are available for the treatment and rehabilitation of persons suffering from alcoholism.<sup>1</sup> Chapter 111B also permits police officers to take into protective custody persons incapacitated from consumption of 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.

#### IV. DEFINITIONS:

- A. **Alcoholism:** A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in the: (1) 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.<sup>3</sup>
- B. **Facility:** Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.<sup>4</sup>
- 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

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

<sup>2</sup> M.G.L. c. 111B, § 8

<sup>3</sup> M.G.L. c. 111B, § 3

<sup>4</sup> M.G.L. c. 111B, § 3

attention, (3) likely to suffer or cause physical harm or damage property, or (4) disorderly.<sup>5</sup>

- 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. A person held in protective custody shall not be considered to have been arrested or charged with a crime.<sup>6</sup> See M.G.L. c. 111B, § 8.

## V. PROCEDURES:

- A. *Persons Subject to Protective Custody:***<sup>7</sup> Police officers may take into protective custody or otherwise assist persons who are incapacitated by reason of the consumption of intoxicating liquor. An incapacitated person is one who is:
1. Unconscious; or
  2. In need of medical attention; or
  3. Likely to suffer or cause physical damage or harm; and/or
  4. Disorderly.
- B. *Prerequisite to Protective Custody:*** No person shall be placed under protective custody, unless the investigating officer has determined that the person is incapacitated as a result of intoxication. Once the officer makes this determination, the officer may assist the person, with or without his/her consent, as follows:
1. Transport the subject to his/her residence, provided there is someone at the residence who will take responsibility for the subject, provided that the officer reasonably believes that leaving such person at home does not pose an unreasonable danger to the intoxicated person's health or well-being;
  2. In the event that the subject may be in need of medical attention of any kind, the subject should be transported to an appropriate treatment facility; or
  3. In the absence of any other acceptable alternative, the subject should be brought to the police station.

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<sup>5</sup> M.G.L. c. 111B, § 3

<sup>6</sup> M.G.L. c. 111B, § 8

<sup>7</sup> M.G.L. c. 111B, § 3 & 8

4. In the event that the subject requires medical attention, or the subject is unconscious, the officer will immediately request Emergency Medical Services.

- C. Determining a Subject to be Intoxicated:** 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 directive.
- D. Arrest:** In the absence of an accompanying crime, officers shall not place intoxicated individuals under arrest. Mere intoxication is not a crime.
- E. Protective Custody from the Home:** A person may be taken into protective custody from his/her own home.<sup>8</sup> Although the courts have ruled that this is permissible, it is only in those circumstances when the officer believes the individual represents a potential harm to him/herself or others, and only after consultation with a supervisory officer. Generally, the officer should opt to bring the individual to a medical facility, rather than to the police station.
- F. Search and Transportation:** Prior to transportation, an officer is required to make a search of the incapacitated person and his/her immediate surroundings to discover any dangerous weapons that may be used against the officer or other persons present.

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.<sup>9</sup> In an earlier case from 1987, a similar result was obtained when the Court ruled that a gun discovered in a pat down search of an incapacitated individual was lawfully seized.<sup>10</sup>

When taking an incapacitated person into protective custody, officers shall adhere to the following procedures:

1. Before transporting an incapacitated person, the officer shall notify the Sector Sergeant. The Sector Sergeant, after conferring with the officers and determining that there exist sufficient grounds to take the person into

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<sup>8</sup> *Lally v. Carmichael*, 56 Mass.App.Ct. 1103, 776 N.E.2d 1309 (2002).

<sup>9</sup> *Com. v. O'Connor*, 406 Mass. 112, 546 N.E.2d 336 (1989).

<sup>10</sup> *Com. v. Tomeo*, 400 Mass. 23, 507 N.E.2d 725 (1987)

Protective Custody, will direct the officers to take appropriate action. The Sector Sergeant will take the following factors into consideration when directing the officers:

- a. If the incapacitated person is to be transported to his/her residence or a treatment facility, the Sector Sergeant shall authorize the transportation. Transportation will only take place with two officers present in the vehicle, unless the person is being transported by a Patrol Wagon.
  - b. If the incapacitated person is to be transported to his/her home, the preferred method of transportation is via a two-person vehicle (observing the procedural guidelines for transporting an individual via a police cruiser).
  - c. If the incapacitated person is deemed to be homeless and does not require any medical attention, the Sector Sergeant should first consider the availability of the Step Van from 240 Albany Street for transportation to the shelter, provided that the individual is welcomed at the shelter. If the Step Van is not available, the subject may be transported in one of the department's Patrol Wagons.
    - i. Once an officer determines that a homeless person is in need of transportation to a shelter due to incapacitation by virtue of intoxication, the officer will not leave the individual unattended until the individual is turned over to the persons who will be providing the transportation.
  - d. If an incapacitated individual under the age of 18 years is encountered<sup>11</sup> who does not require any medical attention, and who is being transported back to his/her residence, then the subject is to be transported via a cruiser with at least two officers present (observing the department procedures when transporting an individual in a police cruiser). Unless there are extenuating circumstances and approved by a supervisory officer, said individual will not be transported in a Patrol Wagon.
2. If an officer encounters an incapacitated person, the officer shall be aware of and immediately consider the possibility that the individual may suffer from 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.

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<sup>11</sup> M.G.L. ch.111B, s. 8

- b. If the officer, relying on his/her own judgment and field experience, believes the above or similar conditions may be present, he/she shall immediately make arrangements for medical treatment in accordance with departmental procedures.
- 3. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness.

**G. Persons Brought to the Police Station:** If an individual is going to be transported to the police station, because transport to the individual’s residence or a treatment facility is not a viable option, officers will adhere to the following procedures:

- 1. Upon arrival at the police station, all persons detained for protective custody shall be processed in accordance with this directive. However, the intake report is not and shall not be treated as an arrest record.
- 2. *Breathalyzer Test:* 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. 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.

- b. Breathalyzer test results shall be utilized as follows:
  - i. *0.10 or Greater:* If the reading (which indicates the percentage of alcohol in a person's blood) 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.
  - ii. *Less Than 0.05:* If the reading is 0.05 or less, the person shall be presumed not to be intoxicated and shall be released from custody forthwith.

- iii. *Between 0.05 and 0.10*: If the reading is more than 0.05 and less than 0.10, 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.
3. *Juveniles*: With respect to juveniles under the age of eighteen who are held in protective custody, officers shall adhere to the following procedures:
  - a. Officers shall notify the juvenile's parent or guardian of the individual's arrival at the police station immediately, or as soon as possible thereafter.
  - b. Any person under the age of eighteen who is held in protective custody at the police station shall, upon request of his parent or guardian, be released to the custody of his or her parent or guardian.<sup>12</sup>
4. *Notification of Detox Facility*: If an incapacitated person is brought to the police station, the Shift Commander will ensure that during the course of the booking process if the individual is interested in being taken to a treatment facility, providing that one is available, he/she will 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. *Length of Custody*: If a treatment facility is not available, the person may be held in protective custody at the station for the shorter of the following periods:
  - a. Up to 12 hours;
  - b. Until the subject is no longer incapacitated.
6. 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. Incapacitated persons may not be forced to take a breathalyzer test or to perform sobriety tests.

**H. Required Reporting Procedures:** Whenever an officer takes an incapacitated individual into protective custody, the officer shall initiate a CAD entry and ensure that the appropriate classification is assigned to the log entry. The name of the individual being taken into protective custody will be attached to the CAD entry (ensuring that the Master Name record is appropriately updated). The CAD entry will also contain the location where the subject was taken into protective

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<sup>12</sup> M.G.L. c. 111B, § 10

custody, along with the times that are associated with the incident. In addition to the log entry, the following reports will be required for a protective custody incident:

1. Recognizing the fact there are individuals who this department interacts with on a regular basis (principally individuals who are homeless or who have chronic alcohol problems), unless there are extenuating circumstances, an officer will not be required to do a full police report, but will be expected to provide sufficient detail as part of the CAD notes explaining out the matter was resolved. For example, if an individual who is chronically under the influence of alcohol and needs to be transported to the shelter would not require an incident report as long as the individual is properly identified as part of the CAD entry and the associated notes can capture the essence of what took place. This may also apply to times when an individual is being provided to the hospital, provided there are no other extenuating circumstances.
  - a. If an individual is taken into custody and transported to the police station, then the officer will be required to complete the required all of the associated reports that would be involved with any individual taken into protective custody and brought into the police station for processing (refer to Section V. G. of this directive).
  - b. An officer will be precluded from filing a police report under these circumstances, particularly if the officer may have some concerns that would lead him/her to believe that the situation is more than a “typical” transportation to a shelter or hospital.
2. The officer taking an individual into protective custody will be responsible for completing an incident report (except for those instances noted in the aforementioned section). The report should contain all of the information surrounding the officer’s involvement, the circumstances that led up to the individual being taken into custody (including the observations and sobriety tests administered), and all other relevant factors. The information contained within the report, should include the following:
  - a. Once taken into protective custody, where the subject was transported.
  - b. Whether the subject was in need of medical attention (describing the medical condition), and if so, what action was taken to render appropriate medical care.
  - c. If there were other officers involved or witnesses who may have been present.

3. If the subject is brought back to the police station, the investigating officer will be responsible for completing the Booking Report that is associated with the Protective Custody (refer to attached Booking Report forms)
  - a. Whether the person held in custody exercised his/her right to take a breathalyzer test and the results of the breathalyzer test if taken.
  - b. Such record shall not be treated, for any purposes, as an arrest or criminal record.
4. Officers 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 thirty days to an in-patient public or private facility approved by the Department of Public Health. Where appropriate, police officers should advise the family and friends of an alcoholic of the procedures available under this law.<sup>13</sup>

**I. Processing Procedures:** All persons brought to the police station for protective custody purposes shall go through the processing procedures as outlined below. The investigating officer is responsible for processing an individual held under protective custody. Other officers may assist in the processing, and the Shift Supervisor shall be responsible for overseeing that the prescribed procedures are followed.

1. The entire protective custody processing will be video recorded.
1. As part of the booking process, the individual will be advised of his/her rights as they relate to the Protective Custody statute, and such notification will be reflected on the Booking Report.
3. 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.
4. All property taken from the individual will be collected and placed into a property container where it shall remain until it is returned to the individual. An inventory of all the property taken will be listed on the Booking Report and signed off by the officer and the individual from whom the property was taken.

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<sup>13</sup> M.G.L. c. 123, § 35

- a. At the time when the property is returned to the individual, the individual will sign for his/her property as indicated on the Booking Form.
  - b. If another person is taking responsibility for the individual under protective custody, then that person will sign the form in the appropriate place on the form.
  - c. 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.
  - d. 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.
5. If the individual elects to take a breathalyzer test, the results of the test will be recorded on the Breathalyzer Procedure form (refer to attached forms).
6. *Telephone Calls:* Any person presumed intoxicated and held in protective custody at a police station shall, immediately 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. (Refer to attached copy of Notification of Rights form).
- a. *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. (Refer to attached copy of Notice of Rights form).
7. These supplemental forms will be made part of the officer's incident report.

**H. Detaining Persons in Protective Custody:** If a determination is made that a person will be held in protective custody beyond the booking process, then the following steps will be taken:

1. An unconscious person 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 to ensure that all persons held in protective custody are prevented from harming themselves in any way by monitoring such persons in accordance with the department policy on **#660 – Holding Facility Operations**.
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.<sup>14</sup> All breathalyzer tests administered for the purpose of protective custody may be administered through a Probable Breath Test (PBT) device maintained in the booking area.

- a. In those instances where the Shift Commander believes that an individual no longer represents a risk to him/herself or others and can be reasonably able to care for him/herself, then the Shift Commander can authorize the release of the individual, even though the contemplated release is prior to the twelve-hour maximum holding period. This often may be the case with those individuals who are considered to be chronically intoxicated.
  - b. **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.
4. If the person held in protective custody is under the age of eighteen, it shall be the responsibility of the Shift Supervisor to ensure that person's parent or guardian is immediately notified upon arrival at the police station, or as soon as practically possible to do so thereafter. If the individual is a juvenile under age eighteen, and the parents, guardian or some other responsible adult cannot be contacted, then the duty Juvenile Probation Officer and the Shift Supervisor will ensure that the instructions received from the Juvenile Probation Officer is carried out. Information relative to contacting the Juvenile Probation Officer and the instructions received will be incorporated into a police report.
  5. It shall be the responsibility of the Shift Supervisor to ensure that the nearest Detox Facility is contacted to see if there are any treatment services available to the person under protective custody.
    - a. If such services are available and if the person wishes to accept such treatment services, then arrangements will be made to transport that person to the facility.
    - b. No person shall be held in protective custody against his/her will; provided however, that if suitable treatment at a Detox facility is not available, an incapacitated person may be held in protective custody at the police station until he/she is no longer incapacitated or for a period of not longer than twelve (12) hours, whichever is shorter.

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<sup>14</sup> M.G.L. c. 111B, § 8

**I. Tests for Determining Intoxication:** The following are suggested sobriety tests that an officer may administer to assess whether a person may be intoxicated. Officers will incorporate what sobriety tests were administered and the results of those tests into a police report.

1. **Balance:** Have the subject stand on one foot with his/her arms outstretched; repeat with the other foot. Next, have the subject stand with his/her feet together, arms by his/her side, and eyes closed. Note any loss of balance, swaying, and jerky motions by the subject.
2. **Walking and Turning:** Have the subject walk, in a heel to toe manner, a straight line of about twenty (20) feet. Just before the subject reaches the end of the line, direct him/her to quickly turn and walk heel to toe back to the starting point. Note any deviations from the line by the subject as well as any difficulty or loss of balance experienced by him/her in walking and turning.
3. **Finger to Nose:** Have the subject stand with his/her feet together, arms extended to the side, and eyes closed. Direct him/her to touch the tip of his/her nose with the index finger of his/her 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.
4. **Coins:** Place several coins of different denominations on the floor. 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/she performs this task.
5. **Alphabet:** Ask the subject to recite the alphabet (A to Z) and note any omissions or difficulties.

**Note:** No officer is to administer any type of test that has not been approved by the Police Commissioner in advance.

6. **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/her person or in his/her 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/her companions and any other indications of alcohol use should be so noted.

**VI. COMMITMENT OF ALCOHOLICS OR SUBSTANCE ABUSERS:<sup>15</sup>**

**Petition for Commitment:** 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 of not to exceed thirty days to an in-patient public or private facility approved by the Department of Public Health.<sup>16</sup>

1. When appropriate, police officers should advise the family and friends of the procedures available under this law.
2. Persons who may petition for commitment are:
  - a. Any police officer;
  - b. Physician;
  - c. Spouse;
  - d. A blood relative;
  - e. Guardian; and
  - f. Court Official.

**B. Warrant of Apprehension:** 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.
3. No arrest on the warrant of apprehension shall be made unless the person may be presented immediately before a judge of the district court.
  - a. The court must be in session at the time of the arrest or shortly thereafter.
  - b. The arrest must not be made so late in the day that the court cannot process the person.
4. Under proper conditions, a warrant of application shall be promptly served.

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<sup>15</sup> CALEA Std.: 74.2.1 – *Written directives govern the service of civil process documents.*

<sup>16</sup> M.G.L. c. 123, § 35