

 <p>Lexington Police Department</p>	<u>Subject:</u> Protective Custody						<u>Policy Number:</u> 72C	
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<u>By Order of:</u> Mark J. Corr, Chief of Police								

GENERAL CONSIDERATIONS AND GUIDELINES

The abuse of alcohol, controlled substances, toxic vapor and other substances is a serious, nationwide public health problem. Excessive drinking and substance abuse often results in breaches of the peace, damage to property, assaults and other more serious crimes. Family neglect and domestic violence requiring police attention often involve some form of alcohol and/or substance abuse. Substance and alcohol abuse is considered a major factor that contributes to juvenile delinquency.

Intoxication, under the Massachusetts General Laws, is not a crime. By statute, detoxification facilities and related programs are provided for the treatment and rehabilitation of persons suffering from alcoholism.ⁱ Chapter 111B, Section 8 authorizes protective custody of persons incapacitated as a result of consuming alcohol.ⁱⁱ

Incapacitation, under the Massachusetts General Laws, is not a crime. By statute an incapacitated person, means the condition of a person who, by reason of the consumption of a controlled substance or toxic vapor or other substance other than alcohol. Chapter 111B, Section 8A authorizes protective custody of persons incapacitated as a result of their consumption of that substance or vapor.

M.G.L. Chapter 111B, Sections 8 & 8A does not prohibit nor affect the enforcement of any laws, ordinances, by-laws, resolutions or regulations against driving after drinking alcohol or consuming a controlled substance or toxic vapor, driving under the influence of alcohol or drugs, or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment. A person who has been taken into protective custody is not considered to have been arrested or charged with a crime.

It is the policy of the Lexington Police Department to comply with the requirements of Massachusetts General Law Chapter 111B, Section 8 and 8A when taking an incapacitated person into protective custody.

PROCEDURE

A. Definitions

1. **Alcoholism:** A medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in:
 - a. The substantial interference with an individual's social or economic functions in the community; or
 - b. The loss of powers of self-control with respect to the use of such beverages.
2. **Facility:**
 - a. Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.
 - b. An acute care hospital or satellite emergency facility as defined in section 51 ½ of chapter 111 or otherwise immediately appropriate emergency medical treatment for persons who consumed a controlled substance or vapor.
3. **Incapacitated:** The condition of an intoxicated person who, by reason of the consumption of intoxicating liquor or the condition of a person who has consumed a controlled substance, toxic vapor or other controlled substance is
 - a. Unconscious;
 - b. In need of medical attention;
 - c. Likely to suffer or cause physical harm or damage property; or
 - d. Disorderly.
4. **Protective Custody - "PC":** The taking of a person who is intoxicated by alcohol consumption or incapacitated by consumption of a controlled substance into custody in order to protect that person from suffering or causing physical damage or harm. This is not an arrest.

B. Taking into Custody

1. Generally
 - a. An officer may take custody of a person who is intoxicated by the consumption of intoxicating liquor, incapacitated by the consumption of controlled substance or vapor and is:
 - i. Unconscious;
 - ii. In need of medical attention;
 - iii. Likely to suffer or cause physical damage or harm; and/or
 - iv. Disorderly.

- b. The officer may assist the person, with or without his/her consent to:
 - i. His/her residence;
 - ii. Acute care hospital or satellite emergency facility or otherwise obtaining appropriate emergency medical treatment;
 - iii. A treatment facility; or
 - iv. The police station.
 - c. Although consent is not required, officers are encouraged to obtain an intoxicated or incapacitated person's voluntary compliance to be transported whenever possible.
2. Determining Intoxication or Incapacitation:
- a. Intoxication:
 - i. 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.
 - ii. Before giving field sobriety tests, officers should insure that the subject understands English, is sufficiently well educated to fully understand instructions and is physically capable of performing any given test.
 - iii. Officers should be aware of the possibility of other ailments.
 - iv. An incoherent, unsteady or unconscious person might be suffering from a seizure, insulin shock, diabetic coma, stroke, heart attack, or brain injury.
 - b. Incapacitation:
 - i. Officer may make requests to persons to submit a reasonable test of coordination, coherency of speech and breath.
 - ii. Gather other information and observations to indicate that person is incapacitated.
3. Protective Custody from the Home: A person may be taken into protective custody from his or her own home.ⁱⁱⁱ
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: A police officer acting in accordance with this section may use such force as is reasonably necessary to carry out the officer's authorized responsibilities.

- a. With the exception of tests for determining intoxication. Persons may not be forced to take a breath test or to perform sobriety tests.
- b. Incapacitated person(s) without consent be immediately transported to an acute care hospital or satellite emergency facility.

C. 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 will be transported by ambulance to a medical facility.
2. Persons in need of Medical Assistance
 - a. Persons in need of medical assistance shall be evaluated by medical personnel prior to being transported to the police station, home, an alcohol treatment facility, and acute care hospital or satellite emergency facility.
3. Likely to Suffer or Cause Physical Harm or Damage
 - a. An intoxicated non-violent or non-disorderly persons may be taken directly home or to a treatment facility, in lieu of the police station, 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.
 - f. A person determined to be incapacitated shall be transported by ambulance to an acute care hospital or satellite emergency facility.
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, in conformance with Department policy **71A – Transporting Detainees**.
 - b. Any person transported to the police station as a protective custody shall be searched and restrained in the same manner as an arrest.
 - c. The transporting officer shall notify Dispatch that they will be transporting a person in protective custody to the police station.

D. Protective Custody Processing

1. Booking
 - a. Detainees in protective custody shall be booked. The booking officer will proceed with general booking procedures.
2. Searching Incapacitated Person. M.G.L. Chapter 111B, section 8 specifically authorizes:
 - a. A search for weapons if an officer fears for his/her safety; and
 - b. The removal of "all valuables and all articles which may pose a danger to such person or to others may be taken from him for safekeeping and if so taken shall be inventoried."
3. Rights^{iv}
 - a. Telephone Call. Any person presumed intoxicated and to be held in protective custody at the police station shall, immediately after such presumption, have the right and be informed of the right to make one telephone call at his/her own expense and on his/her own behalf. Although the law permits **one** call, it is Department policy to permit the reasonable use of the phone to arrange care at a location other than the police station, if available.
 - b. The booking officer will proceed with the general booking procedures and then print the computer generated Protective Custody Report.
 - 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.
 - d. Breath Test
 - i. 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.
 - ii. Breathalyzer test results shall be utilized as follows:^v
 - (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.

- 4. Juveniles: The parent or guardian of any person under the age of eighteen to be held in protective custody at a police station or acute care hospital or satellite emergency facility shall be notified forthwith upon his/her arrival at said station/emergency facility or as soon as possible thereafter. Upon the request of the parent or guardian, such intoxicated juvenile or person, **shall** be released to the custody of the parent or guardian.^{vi} (Incapacitated juvenile is only detained to acute hospital or satellite emergency facility, notify parents of facility).
- 5. 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 Commanding Officer or designee shall arrange for the transportation of the person to the facility. [1.1.3]
- 6. The following information will be recorded on the Protective Custody Booking Sheet:
 - a. Date and time of notification;
 - b. Facility name;
 - c. Person making notification;
 - d. Whether or not beds are available; and
 - e. Whether or not the person wishes to go.

E. Detaining Persons in Protective Custody

- 1. Detaining
 - a. Persons in protective custody shall be detained, as would an arrest.
 - b. An unconscious person shall never be placed in a cell unattended. In such cases, immediate medical care shall be provided by contacting the Fire Department.
 - c. The Commanding Officer, or his designee, shall take precautions to ensure that all persons held in protective custody are prevented from harming themselves by carefully

observing them at intervals of not more than thirty (30) minutes, and three or four times per hour if possible.

- d. Length of Custody intoxicated person: 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**.
- e. An incapacitated person that consumed a controlled substance shouldn't be held longer than it takes to complete immediate transport to acute care hospital or emergency facility.

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.
 - i. 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.
 - ii. Persons may be released to the custody of a responsible adult.
 - iii. Juveniles, upon the request of the parent or guardian, shall be released to the custody of the parent or guardian.^{vii}
- b. A person who has been in protective custody for intoxication **must not** be held for more than **twelve hours**.

F. Reports

- 1. Incident Report: An incident report of the protective custody shall be made and should 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, any tests of coordination, 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 violations committed during an incident that involved the protective custody of an individual will, however, be treated like other criminal offenses.

G. Commitment of Alcoholics or Substance Abusers [\[74.2.1\]](#) [\[1.1.3\]](#)

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 person, be committed for a period not to exceed thirty days at an in-patient public or private facility approved by the Department of Public Health.^{viii}
- b. Where appropriate, police officers should advise the family and friends of people at risk and in need of services of the procedures available under this law.
- c. Persons who may petition for commitment are:
 - i. Any police officer;
 - ii. Physician;
 - iii. Spouse;
 - iv. A blood relative;
 - v. Guardian; and
 - vi. 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:
 - i. Such person will not otherwise appear; and

- ii. 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.
 - i. The court must be in session at the time of arrest or shortly thereafter.
 - ii. 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 shall be promptly served.
- 3. Chapter 123, Section 22: 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.

H. Caretaking Roll – Incapacitation by Means Other than Alcohol or controlled substance

- 1. Often times a person may be in distress from a medical condition, physical or mental illness:
 - a. Medical personnel are called to the scene;
 - b. The person is left in the care of a responsible adult;
 - c. Officers reasonable believe the subject is reliable to care for his/her self when they leave.

ⁱM.G.L. c. 111B.

ⁱⁱM.G.L. c. 111B, §8.

ⁱⁱⁱ Lally v. Carmichael, 56 Mass.App.Ct. 1103, 776 N.E.2d 1309.

^{iv} M.G.L. c. 111B, §8.

^v M.G.L. c. 111B, §8.

^{vi} M.G.L. c.111B, §8.

^{vii} M.G.L. c.111B, §8.

^{viii}M.G.L. c. 123, §35.