



Town of Lexington

Police Department

Subject: Protective Custody

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By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

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The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 3.06, "Protective Custody."

GENERAL CONSIDERATIONS AND GUIDELINES

The abuse of alcohol is a serious, nationwide public health problem. Excessive drinking 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 alcohol abuse. The abuse of alcohol 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 authorizes protective custody of persons incapacitated as a result of consuming alcohol.ⁱⁱ **A person who is incapacitated by drugs does not fall under the provisions of this law.**

M.G.L. Chapter 111B does not prohibit nor affect the enforcement of 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. 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 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:** Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.
3. **Incapacitated:** The condition of an intoxicated person who, by reason of the consumption of intoxicating liquor, 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 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 and:
 - 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. A treatment facility; or
 - iii. The police station.
 - c. Although consent is not required, officers are encouraged to obtain an intoxicated person's voluntary compliance to be transported whenever possible.
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. 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.
 - c. Officers should be aware of the possibility of other ailments.
 - d. An incoherent, unsteady or unconscious person might be suffering from a 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.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: 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.

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 should be transported to a medical facility.

2. Persons in need of Medical Assistance

Persons in need of medical assistance 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, en 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.

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 **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

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 a 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 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 juvenile or person, **shall** be released to the custody of the parent or guardian.^{vi}

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.
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.
- f. 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.
- g. 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.

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 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. 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
- 1. Often times a person may be in distress from a medical condition, physical or mental illness or under the influence of drugs, but alcohol consumption does not appear to be involved.
 - 2. If alcohol consumption is not the reason then protective custody, as defined in section 111B, **is not permitted by law**, Officers still have a duty to make sure that any of the following occurs:
 - 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.