

3.05a PROTECTIVE CUSTODY



PROTECTIVE CUSTODY - ALCOHOL

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I. POLICY

The West Brookfield police department shall comply with the requirements of Section 8 of Chapter 111B of the Massachusetts General Laws when taking an incapacitated person into protective custody.



II. DEFINITIONS

Facility - Any public or private place, or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.

Incapacitated - The condition of an intoxicated person who, by reason of the consumption of intoxicating liquor, is (1) unconscious, (2) in need of medical attention, (3) likely to suffer or cause physical harm or damage property, or (4) disorderly. (MGL 111B Section 3)

III. PROCEDURES

TAKING INTO 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 and by reason of the consumption of intoxicating liquor is:
 - a. Unconscious; or
 - b. In need of medical attention; or
 - c. Likely to suffer or cause physical damage or harm; or
 - d. Disorderly

THEN: the officer may assist the person, with or without their consent to:

- a. Their residence; or
 - b. A treatment facility; or
 - c. The police station.
3. Officers shall call for medical attention when an intoxicated person is unconscious or appears to be suffering from acute alcohol poisoning.
4. To determine whether a person is intoxicated, an officer may request such person to submit to reasonable tests of coordination, coherency of speech, and breath.

TESTS FOR DETERMINING INTOXICATION

1. **Balance:** Have the subject stand on one foot with their arms outstretched; repeat with the other foot. Next, have the subject stand with their feet together, arms by their side, and eyes closed. Note any loss of balance, swaying, and jerky motions by the subject.
2. **Walking & Turning:** Have the subject walk, in a heel to toe manner, a straight line of about 20 feet. Just before the subject reaches the end of the line, direct them 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 them in walking and turning.

3.05a PROTECTIVE CUSTODY

3. Finger to Nose: Have the subject stand with their feet together, arms extended to the side, and eyes closed. Direct them to touch the tip of their nose with the index finger of their 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. Alphabet: Ask the subject to recite the alphabet (A to Z) and note any omissions or difficulties.
5. Indications of Alcohol Consumption: Only persons who are incapacitated by consumption of alcohol (not other drugs) may be taken into protective custody under this section. 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 their person or in their car when stopped; any admission by the subject that he/she has been drinking or is drunk; any statements to the same effect by their companions and any other indications of alcohol use should be so noted.

SEARCH AND TRANSPORTATION

1. An individual who is placed into protective custody due to intoxication shall be transported according to the policy on **Transportation of Detainees**.
2. 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.
 - 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, he/she shall immediately make arrangements for medical treatment in accordance with departmental procedures, as approved by the department's medical director. **[72.6.1]**
3. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness.

3.05a PROTECTIVE CUSTODY

AT THE STATION

Upon arrival at the station, all persons detained for protective custody shall be processed and held according to the department's policies on **Processing Detainees** and **Holding Detainees**, except for having their fingerprints taken. The following additional or modified procedures will be followed when processing a detainee in protective custody:

1. Any incapacitated person assisted to the police station, pursuant to Chapter 111b, Section 8 of the Massachusetts General Laws, shall have the right, issued in writing, to request and be administered a breathalyzer test and have the right to make one phone call at their own expense.

Breathalyzer test results shall be utilized as follows:

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.

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.

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.

2. 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 their 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.¹
[44.2.2(b); 44.2.2(e)]
3. If an intoxicated person is assisted to the police station and is willing to enter a treatment facility, the on-duty officer shall immediately notify the nearest treatment facility that an incapacitated person is being held in protective custody. If suitable treatment services are available, the detainee will be transported to such facility.

3.05a PROTECTIVE CUSTODY

4. A person may be held in protective custody at a station for up to 12 hours or until they are no longer incapacitated.
5. 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 breathalyzer test or to perform sobriety tests.
6. 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 less than .10. Those who are still above .10 or who decline to take a breathalyzer test (which is their right) should not be released to their own custody.
7. Any detainee held in protective custody may be released at any time to an interested adult, who is not intoxicated and agrees to take custody of said detainee.

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.

REPORTS

An officer shall file a report indicating the nature of the incident which gave rise to police involvement, the method of handling the problem. The report shall include the following:

1. The date, time, and place of custody;
2. Any injuries observed by the officer.
3. Any medical treatment given.
4. Whether the person held in custody exercised their right to take a breathalyzer test, and the results of the breathalyzer test if taken.
5. Whether the person exercised their right to make a telephone call.

Such record shall not be treated, for any purposes, as a criminal record.

3.05a PROTECTIVE CUSTODY

ALCOHOL TREATMENT

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.² Where appropriate, police officers should advise the family and friends of an 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 (See section 22 of Chapter 123).

¹ M.G.L. ch.111B, s. 8

² M.G.L. c. 123, s. 22

² M.G.L. c. 123, s. 35