

NORTHAMPTON POLICE DEPARTMENT		
Administration & Operations Manual		
Policy: Protective Custody <i>Handling Alcoholics/Drug Abusers & Intoxicated/Incapacitated Persons</i>		AOM: O-213
Massachusetts Police Accreditation Standards Referenced:		Issuing Authority <hr/> Jody Kasper Chief of Police
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Introductory Discussion

- A. Traditionally, arrests for “drunkenness” have constituted 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 had no other recourse. In an attempt to solve this long-standing problem, Massachusetts law provides that public intoxication is not a crime.

In the performance of their duties, a police officer will also confront the problem of alcoholism. Excessive drinking due to this disease often results in serious breaches of the public peace, damage to public and private property, assault and battery, and other more serious crimes. Family neglect and abuse requiring police attention are often traced directly to alcoholism. The broken homes which often follow are considered one of the most common causes of juvenile delinquency. As a result, the excessive drinker is a common police problem, placing considerable demand on police services and using a disproportionate share of police personnel. Therefore, under Massachusetts law, alcoholism is now considered a disease for which detoxification facilities and related treatment programs shall be provided (M.G.L. Ch. 111B).

- B. The passage of J. 4490, *An act relative to protective custody*, was signed into law by Governor Baker on July 22, 2016. The bill creates a new provision of the protective custody law, (G.L. Ch. 111E, Sec. 9A), that grants expanded authority to Massachusetts police officers to act to protect vulnerable citizens.
- C. The Police Department shall comply with the requirements of Sec. 8 of Ch. 111B, and Sec. 9A of Ch. 111E of the Massachusetts General Laws when taking an intoxicated or incapacitated person into protective custody.
- D. MGL Ch. 111E Sec. 9A includes two special requirements that police officers must follow when they place into protective custody, an individual incapacitated due to consumption of a substance other than alcohol:
1. The police officer must immediately get the individual emergency medical treatment, either at a hospital or through other emergency medical services.
 2. Whenever a person under the age of 18 who is incapacitated is placed into protective custody, the police officer must immediately notify a parent or guardian.

Incapacitated by Alcohol MGL 111B S8

I. Definitions

- A. Facility: Any public or private place or portion thereof, providing services especially for the detoxification of intoxicated persons or alcoholics.
- B. Intoxicated: The condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of alcohol in their system.
- 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 attention, (3) likely to suffer or cause physical harm or damage property, or (4) disorderly.
- D. Alcoholism: A medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the substantial interference with an individual's social or economic functions in the community or the loss of powers of self-control with respect to the use of such beverages.
- E. Substance Abuser: A person who chronically or habitually consumes or ingests controlled substances to the extent that (1) such use substantially injures their health or substantially interferes with their social or economic functioning, or (2) they have lost the power of self-control over the use of such controlled substances.
- F. Facility: Any Public or private place or portion thereof, providing services especially for the detoxification of intoxicated persons, alcoholics, or substance abusers.

II. Taking custody

- A. In the absence of an accompanying crime, an officer shall not arrest an intoxicated person. If the situation does not warrant an arrest but action is necessary, a police officer has the authority to assist an incapacitated person or a person in danger of incapacitation with or without their consent to:
 - 1. Their residence.
 - 2. Treatment facility, or
 - 3. Police station or the Dukes County Sheriff's Office.

While not required, officers are urged to obtain consent where possible.

- B. 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 Section I of this Policy and Procedure.

- C. 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 of such right with said communication appropriately documented.
- D. If an incapacitated person is assisted to the police station, the Officer-in-Charge or designee shall notify the nearest treatment facility as soon as possible that such person is being held under protective custody. If suitable treatment services are available at a facility and are requested by the incapacitated person, the police shall cooperate as fully as possible to effectuate the transfer of such persons to the facility.
- E. The decision to assist an incapacitated or potentially incapacitated person may be effectuated with or without the person's consent. However, officers are urged to obtain consent if at all possible.
 - 1. Each officer should especially note that this directive shall in no way restrict or forbid the enforcement of any laws, ordinances, by-laws, or similar resolutions regarding the use of alcohol and the operation of motor vehicles. *See [AOM O302 Driving Under the Influence Law Enforcement](#)*
- F. Breathalyzer test results shall be utilized as follows:
 - 1. If the reading which indicates the percentage of alcohol in a person's blood is .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 facility.
 - 2. If the reading is .05 or less, the person shall be presumed not to be intoxicated and shall be released from custody immediately.
 - 3. If the reading is more than .05 and less than .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.
- G. 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 a telephone call at their own expense and on their own behalf.
- H. Any person presumed intoxicated 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 and shall be informed forthwith upon arriving at the facility of said right. (See above Notice of Rights).
- I. 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 arrival at said station or as soon as possible thereafter. Upon the request of the parent or

guardian, the juvenile or such person shall be released to the custody of the parent or guardian.

J. Nothing in these procedures shall be construed to require or permit a police officer to hold a person in protective custody against their will unless suitable treatment at a facility is not available. If such treatment is not available, the person may be held in protective custody at the station for the following periods, whichever is shorter:

1. Up to 12 hours.
2. Until they are no longer incapacitated.

K. An officer may use such force as is reasonable and necessary to carry out the procedures herein.

III. Search and Transportation

A. An officer is authorized to make a search of an incapacitated person and their immediate surroundings whenever the following conditions exist:

1. The officer reasonably believes that the officer's safety or the safety of other persons present requires the search.
2. The search is limited to the extent necessary to discover any dangerous weapons, that on that occasion may be used against the officer or other persons present.

NOTE: *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. A similar result was obtained when the same Court in 1987 ruled that a gun discovered in a pat down search of an incapacitated individual was lawfully seized.*

B. 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.

1. 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.
2. If the officer, relying on their own judgment and field experience believes the above or similar conditions may be present, they shall immediately make arrangements for medical treatment in accordance with departmental procedures as approved by the department's medical director.

3. Officers shall extend the same considerations, including summoning an ambulance to the scene or Station, to an incapacitated person that they would offer to a person suffering from any other illness, such as a person under the influence of any other drug(s). The use of a department DRE may be utilized as well.
4. Before transporting an incapacitated person, the Officer-in-Charge shall be notified so that they may arrange for assistance if available. If an incapacitated person is to be transported to their residence or a treatment facility, the Officer-in-Charge shall make arrangements for such transportation if such residence or facility is not on the route of the patrol officer.

IV. Safeguarding at Police Station

- A. An incapacitated person held in protective custody at the police station shall have the following property taken from them for safekeeping in accordance with [AOM S212 Detainee Property Inventory](#).
 1. Belts, shoe laces, drawstrings, neckties, neck chains, matches, and cigarette lighters.
 2. All other articles which may pose a danger or harm to such person or to others.
 3. Personal property and other valuables.
- B. An unconscious person shall never be placed in a cell unattended at any time. In such cases, immediate medical care shall be provided in accordance with departmental procedures. This medical care should include transport to a medical facility.
- C. Under the general supervision of the Officer-in-Charge, the Cell Monitor or Station Officer shall take every precaution to ensure that all persons held in protective custody are prevented from harming themselves in any way by carefully observing them at intervals of not more than fifteen (15) minutes. A record shall be maintained of the time of such observations in accordance with [AOM O142 Detainee Processing and Confinement](#).
- D. All incapacitated persons may be released from protective custody into their own care prior to the expiration of the maximum statutory twelve-hour holding period, only upon an examination that determines that the individual is no longer incapacitated.
 1. Individuals shall be examined at the end of the twelve-hour holding period in order to determine whether or not they still exhibit signs of incapacitation. If they still exhibit signs of incapacitation they may be brought to a medical facility for further evaluation and given a Breath Test, if allowed. If it is determined that an individual is still incapacitated, protective custody procedures may be initiated once again and the individual held for up to an

additional twelve-hour period or until no longer incapacitated, whichever is sooner. If they do not exhibit signs of incapacitation, they may be released.

NOTE: *Individuals who are released on bail following an arrest may be placed in protective custody if they are still "incapacitated" as defined in Chapter 111B. The foregoing considerations regarding release will govern a decision to release such individual from protective custody.*

V. Reporting Requirements

A. A Protective Custody Report shall be completed, indicating the following:

1. The date, time, and place of custody.
2. The name of assisting officers.
3. The name of the Officer-in-Charge.
4. Whether or not a breath test was administered.
5. The results of the breathalyzer test, if taken.
6. Facility notified, if any; and
7. Person contacted at the facility.

Note: *Such report shall not be treated, for any purposes, as an arrest or criminal record.*

B. Officer(s) shall file a report indicating the nature of the incident which gave rise to any police involvement, the method of handling the problem, and any injuries observed on the incapacitated person including their cause and medical treatment, if any.

C. Alcoholics & Substance Abusers

1. M.G.L. Chapter 123, § 35 allows a police officer to petition the District Court in writing, for an order to commit a person whom the officer has reason to believe is an alcoholic or substance abuser. This may be based upon a consistent pattern of abuse, intoxication, or incapacitation that may not only draw upon the resources of the department, but also presents the potential that an individual may have lost the ability of self-control over the use of alcohol or a controlled substance, or the individual presents as a health concern or as social dysfunction. If after a hearing, the court based upon competent medical testimony finds that said person is an alcoholic or substance abuser and that there is a likelihood of serious harm as a result of their alcoholism or substance abuse, it may order such person to be committed to an inpatient public or private facility approved by the Department of Public Health for a period not to exceed thirty (30) days.

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.*

VI. Tests for Determining Intoxication/Impairment

- A. Northampton Police Officers will utilize a series of field sobriety tests and techniques to gauge the intoxication or impairment of persons who have consumed alcohol. These tests and techniques, along with face-to-face observations, will be used to determine a person's level of intoxication.
- B. Officers trained in Standardized Field Sobriety Testing (SFST) will use such testing to determine impairment. The SFSTs or any portion thereof shall be administered in the correct order as trained:

Standardized Tests

- 1. HGN- Horizontal Gaze Nystagmus
- 2. Walk and Turn
- 3. One Leg Stand
- 4. A test/technique from the list below (more than one is acceptable and may be appropriate)

Non-Standardized Tests: *Please note that any one of these tests/techniques may only be administered after the administration of the Standardized Field Sobriety Tests and prior to administering the PBT.*

- 1. Finger to Nose
- 2. Romberg Balance Test
- 3. Alphabet (A-Z)
- 4. Finger Count
- 5. Count Down

Preliminary Breath Test

- 1. Preliminary Breath Test (PBT) is optional, and if administered, shall be the last test given.

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

- C. Officers who are conducting an OUI investigation will not deviate from the above outlined order of testing. This order will always include the three Standardized Field Sobriety Tests, followed by one or more of the non-standardized tests/techniques, followed by an optional administration of the PBT.

D. Use of the Preliminary Breath Test

The basic purpose of the preliminary breath test (PBT) is to demonstrate the association of alcohol with the observable evidence of the subject's impairment. The subject's impairment/intoxication is established through sensory evidence (what the officer hears, sees, and smells) and the field sobriety tests. The PBT provides the evidence that alcohol is the *chemical basis* of that impairment by yielding an on the spot indication of the subject's blood alcohol concentration (BAC). It does not indicate the level of the subject's impairment because impairment varies widely among individuals with the same BAC level.

Most important: *The PBT result is only one of many factors the officer considers in determining whether the subject is impaired due to alcohol consumption. It can confirm or deny that alcohol is the cause of the observed impairment/intoxication.*

E. Procedure for use of the PBT

1. Only Officers who are trained and certified BAT operators are authorized to utilize the PBTs as part of their field sobriety tests.
2. The use of the PBT is optional and should be the last test in the officer's series of field sobriety tests.
3. The PBT should only be administered with the prior consent of the subject.
4. The officer administering the PBT must document the use or refusal of the PBT in their report narrative.
5. Officers should only use the PBT as part of their field sobriety tests and at no time should the PBT be used in the booking room in lieu of the Drager breathalyzer.
6. Any problems with the PBT should be made known to the OIC or one of the BT maintenance officers.
7. The PBT shall only be used for legitimate police purpose as authorized by the Chief of Police.

F. Indications for Alcohol Consumption

Only persons who are incapacitated by the consumption of alcohol (not other drugs) may be taken into protective custody under **MGL 111B S8**. 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. Some indications include:

1. The odor of alcoholic beverages on the subject's breath.
2. The presence of open alcoholic beverage containers on their person or in their car when stopped.
3. Any admission by the subject that they have been drinking or are drunk.
4. Any statements to the same effect by their companions; and
5. Any other indications of alcohol use should be so noted.

Incapacitated by Drugs and Other Substances Other Than Alcohol MGL Ch 11E S 9A

I. Definitions

- A. Acute Care Hospital: Any hospital licensed under 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 department.

- B. Incapacitated: 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 (1) unconscious, (2) in need of medical attention, (3) likely to suffer or cause physical harm or damage property, or (4) 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”.

The Commonwealth of Massachusetts Executive Office of Public Safety and Security (EOPPS) has received inquiries as to how this law applies after someone has been administered Naloxone (“Narcan”). Please note that while the statute’s definition of “incapacitated” encompasses individuals who are unconscious as a result of overdose, it also includes individuals who are conscious, but who as the result of their consumption of non-alcohol substance are 1) in need of medical attention, 2) likely to suffer or cause physical harm or damage property, or 3) disorderly.

Accordingly, even if the subject becomes conscious as a result of the administration of Naloxone, there are alternative bases under which an officer would be authorized to determine that protective custody is appropriate. If, based on the training and experience of the officer and the observations made of the situation, the subject remains “in need of [further] medical attention” and/or “likely to suffer...physical harm,” the officer can take the subject into protective custody over their objection, even if they are otherwise well behaved and not disorderly.

Put another way, the application of Naloxone can reverse *unconsciousness* without necessarily reversing “*incapacitation*” for purposes of the protective custody statute.

Satellite Emergency Facility: A health care facility that operates on a 7 day per week, 24 hour per day 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.

- C. Facility: Any public or private place or portion thereof, providing services, especially for the detoxification of intoxicated persons, alcoholics, or substance abusers.
- D. Substance Abuser: A person who chronically or habitually consumes or ingests controlled substances to the extent that (1) such use substantially injures their health or substantially interferes with their social or economic functioning, or (2) they have lost the power of self-control over the use of such controlled substances.

II. Taking Custody

- A. 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 an incapacitated person into protective custody and transport the incapacitated person, with or without their consent, to an acute care hospital or satellite emergency facility or otherwise to immediately obtain appropriate emergency medical treatment (Normally this will be Cooley Dickinson Hospital).
- B. Deployment of Naloxone (Narcan) by a Northampton Police Officer, in the presence of a Northampton Police Officer, or when a Northampton Police Officer has direct knowledge of the recent drug overdose reversal due to the deployment of Naloxone.
 - 1. According to EOPPS: “the application of Naloxone can reverse *unconsciousness* without necessarily reversing “*incapacitation*” for purposes of the protective custody statute.
 - 2. Therefore; after the deployment of Naloxone, the patient should be transported by ambulance to the hospital as a voluntary transport or placed in protective custody per this policy, and follow procedures as described in: [*AOM 0-106 Nasal Naloxone \('Narcan'\)*](#)
- C. In order to determine whether or not a person is incapacitated, 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 Section II of this Policy and Procedure. A police officer may place the person into protective custody when such tests or other information or observations indicate that the person is incapacitated. The use of department DRE may be utilized as well.
- D. A person taken into protective custody for incapacitation 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.

- E. Nothing in these procedures shall be construed to require or permit a police officer to hold a person in protective custody against their will beyond the time required to complete the person's immediate transport to an acute care hospital or satellite emergency facility or otherwise to immediately obtain appropriate emergency medical treatment.
- F. An officer may use such force as is reasonable and necessary to carry out the procedures herein.
- G. The decision to assist an incapacitated (or potentially incapacitated) person may be effectuated with or without the person's consent. However, officers are urged to obtain consent if at all possible.
 - 1. Each officer should especially note that this directive shall in no way restrict or forbid the enforcement of any laws, ordinances, by-laws, or similar resolutions regarding the use of alcohol and the operation of motor vehicles. See [AOM O302 Driving Under the Influence Law Enforcement](#)

III. Search and Seizure

- A. An officer is authorized to make a search of an incapacitated person and their immediate surroundings whenever the following conditions exist:
 - 1. The officer reasonably believes that the officer's safety or the safety of other persons present requires the search.
 - 2. The search is limited to the extent necessary to discover any dangerous weapons, that on that occasion may be used against the officer or other persons present.
- B. Any item taken shall be inventoried and secured, and unless the item is contraband or otherwise unlawfully possessed, shall be returned to the person when the person is no longer incapacitated.
- C. If the officer discovers contraband or items unlawfully possessed on the incapacitated person, the officer may take the appropriate actions to charge the person with the possession of such items. The primary consideration of the officer however, should remain on immediately transporting the individual to an acute care hospital or satellite emergency facility or otherwise to immediately obtain appropriate emergency medical treatment. Officers shall not however, charge an individual with possession of a controlled substance under G.L. c. 94C, §§ 34 or 35, if that person in good faith, seeks medical assistance for themselves or another person who is experiencing a drug-related overdose.

IV. Transportation

- A. The officer shall immediately call emergency medical services upon making a determination that an individual is incapacitated. The officer shall direct that emergency medical services personnel transport the incapacitated person. If emergency medical services personnel transport the incapacitated person, the officer should accompany the incapacitated person in the emergency medical services vehicle, if requested by medical personnel, or in the alternative, otherwise escort the emergency medical services vehicle to the destination.
- B. Unless articulable exigent circumstances exist in which an incapacitated person cannot be transported by emergency medical services personnel, officers shall not transport an incapacitated person in police vehicles. If such circumstances exist as to require the transport of an incapacitated person in a police vehicle, the transporting officer shall adhere to the departmental policies and procedures relative to the transport of an individual in a police vehicle.
- C. Before transporting an incapacitated person, the Officer-in-Charge shall be notified so that they may arrange for assistance, if available.
- D. 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.
- E. 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.
 - 1. 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.
 - 2. If the officer, relying on their own judgment and field experience, believes the above or similar conditions may be present, they shall immediately make arrangements for medical treatment in accordance with departmental procedures.
- F. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness.
- G. Whenever an officer places into protective custody a person under the age of 18, the officer shall notify the parent or guardian of that person immediately.

V. Reporting Requirements

- A. Once the transport is complete, a report of protective custody shall be made indicating the date, time, place of custody, the name of the assisting officer, the name of the Officer-in-Charge, the nature of the incident which gave rise to any police involvement, the method of handling the problem, what the officer relied upon in determining that the person was incapacitated, what modes of transport were requested, what mode of transport was used, the location to which the person was transported, any exigent circumstances justifying a different mode of transport, and any injuries observed on the incapacitated person including their cause and medical treatment, if any, and the facility personnel to whom the officer relinquished custody of the incapacitated person.

This report will be entered in IMC as an AR, and the information will be placed in the Protective Custody Book at the desk area indicating it is a PC under MGL Ch. 111E Sec. 9A.

- B. Such record shall not be treated, for any purposes, as an arrest or criminal record.
- C. Police 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 drug dependent, be committed for a period not to exceed fifteen 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 a problem 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.

VI. Tests for Determining Intoxication/Impairment

- A. Northampton Police Officers will utilize a series of field sobriety tests and techniques to gauge the intoxication or impairment of person who has consumed substances other than alcohol. These tests and techniques, along with face-to-face observations, will be used to determine the persons' level of intoxication.
- B. Officers trained in Standardized Field Sobriety Testing (SFST) will use such testing to determine impairment. The SFSTs or any portion thereof shall be administered in the correct order as trained:

Standardized Tests

1. HGN- Horizontal Gaze Nystagmus
2. Walk and Turn
3. One Leg Stand
4. A test/technique from the list below (more than one is acceptable and may be appropriate)

Non-Standardized Tests *Please note that any one of these tests/techniques may only be administered after the administration of the Standardized Field Sobriety Tests.*

1. Finger to Nose
2. Romberg Balance Test
3. Alphabet (A-Z)
4. Finger Count
5. Count Down