



**YARMOUTH POLICE DEPARTMENT
POLICY AND PROCEDURE**

**PROTECTIVE CUSTODY
2016-1A**

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Chief Frank G. Frederickson

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Policy

The Yarmouth Police Department shall comply with the requirements of Massachusetts General Law Chapter 111B when taking an incapacitated person into protective custody. A person who is incapacitated from drugs alone does not fall under the provisions of this law.

**Response to
Incapacitated
Persons**

Officers responding to a call in regards to an incapacitated person shall be aware of the possibility of other ailments. 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. If the Officer, relying on his/her own judgment and field experience, believes the above or similar conditions may be present, that officer shall render aid and immediately summon the Fire Department medical service to respond.

If an Officer determines that the person is intoxicated, in the absence of an accompanying crime, the Officer shall not arrest the intoxicated person. Officers shall extend the same considerations to an incapacitated person that they would offer to a person suffering from any other illness. If an Officer encounters a person who is intoxicated and by reason of the consumption of intoxicating liquor is unconscious or in need of medical attention then the Officer shall provide medical attention and call for an ambulance.

If an Officer encounters a person who is intoxicated and by reason of the consumption of intoxicating liquor is likely to suffer or cause physical damage or harm to themselves or any real property, then the Officer shall assist the person, with or without his/her consent, to

his/her residence, a treatment facility, the police station, or to the care of another individual who is not intoxicated.

An individual who is placed into protective custody due to intoxication shall be searched and transported according to the policy on Prisoner Transport.

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.

Booking and
Holding
Detainees

Upon arriving at the station, all persons detained for protective custody shall be processed and held according to the department's policies on Prisoner Booking and Processing, with the exception of having their fingerprints taken. The following additional or modified procedures will be followed when processing a detainee in protective custody:

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.

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 person shall be released to the custody of the parent or guardian.¹

If an intoxicated person is assisted to the police station and is willing to enter a treatment facility, the Shift Commander 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 detainee will be transported to such facility.

A person may be held in protective custody at the station for up to 12 hours or until they are no longer incapacitated.

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.

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, shall have a breathalyzer test administered to determine that their level of intoxication is below the legal limit of .10. Those who are still above the legal limit of .10 or who decline to take a breathalyzer test (which is their right) should not be released to their own custody.

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. Shift Commanders shall also take into account the right to a comparison test for alcohol use if the subject consented to the initial breath test at the station.

Reports

Investigating Officer shall file a report indicating the nature of the incident that gave rise to police involvement, the method of handling the problem. The report shall include the following:

- The date, time, and place of custody;
- Any injuries observed by the officer.
- Any medical treatment given.

- Whether the person held in custody exercised his/her right to take a breathalyzer test, and the results of the breathalyzer test if taken.
- Whether the person exercised his/her right to make a telephone call.

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

Treatment

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.ⁱⁱ 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).

Protective Custody other than alcohol:

MGL 111E s 9A

For purposes of this section, “incapacitated” shall mean 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:

- i. unconscious;
- ii. in need of medical attention;
- iii. likely to suffer or cause physical harm or
- iv. damage property; or
- v. disorderly.

Any person who is incapacitated may be placed into protective custody by a police officer without the person’s consent for the purpose of immediately transporting the person to an acute care hospital or satellite emergency facility as defined in section 51½ of chapter 111 or otherwise immediately obtaining appropriate emergency medical treatment. For the purposes of this section, to determine whether or not a person is incapacitated, a police officer may request the person to submit to reasonable tests of coordinate, coherency of speech and breath. A police officer may place the person into protective custody when such tests or other information or observations indicate that the person is incapacitated. Whenever a police officer places into protective custody a

person under the age of 18 in accordance with this section, the police officer shall notify the parent or guardian of that person forthwith. A person may not be held in protective custody against the person's will beyond the time required to complete the person's immediate transport to an acute care hospital or satellite emergency facility as defined in section 51½ of chapter 111, or to otherwise immediately obtain appropriate emergency medical treatment.

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. If the police officer reasonably believes that there may be a risk to the safety of the incapacitated person, the safety of the officer or the safety of other persons present, the police officer may search the person and the immediate surroundings of the person placed into protective custody but only to the extent necessary to discovery and seize any items or weapons which may pose a danger. Any item taken shall be inventoried and, unless the item is contraband or otherwise unlawfully possessed, shall be returned to the person when the person is no longer incapacitated. A person placed under protective custody in accordance with this section shall not be considered to have been arrested or to have been charged with any crime. Any entry of custody shall be made indicating the date, time, place of custody, the name of the A person placed under protective custody in accordance with this section shall not be considered to have been arrested or to have been charged with any crime. Any entry of custody shall be made indicating the date, time, place of custody, the name of the assisting officer and the name of the officer in charge. No such entry shall be treated as an arrest or criminal record for any purpose.

Yarmouth Police Officers should request a no crime incident report documenting the above required information as provided by law. (**date, time, place of custody, the name of the assisting officer and the name of the officer in charge.**) A short, descriptive narrative of the event should also be completed. If the situation evolves into an arrest with use of force, all appropriate reports should be completed as required.

ⁱ M.G.L. ch.111B, s. 8

ⁱⁱ M.G.L. c. 123, s. 35

ⁱⁱⁱ M.G.L. c. 111E, s. 9A