

COLCHESTER POLICE DEPARTMENT

		SUBJECT: Protective Custody of Incapacitated Persons	
EFFECTIVE DATE: July 1, 2015	NUMBER: G.O.# 27		
REFERENCE: 33 VSA Chapter 7	SPECIAL INSTRUCTIONS: none		
REEVALUATION DATE: as needed	APPROVED: <i>J. Morrison #190</i>	NO. PAGES: 3	

POLICY: This policy will establish guidelines to assist officers dealing with persons who are suspected of being intoxicated or incapacitated as a result of alcohol consumption. It is the position of this department that alcoholism and alcohol abuse are health and social problems, rather than criminal offenses, as defined in Title 18 V.S.A. 4801.

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I. DEFINITIONS

- A. Incapacitated – means that a person, as a result of using alcohol (regardless of Blood Alcohol Content [BAC]), or other drugs, is in a state of intoxication, or of mental confusion resulting from withdrawal such that:
 - 1. The person appears to need medical care or supervision by approved treatment personnel to assure his/her safety; or
 - 2. The person appears to present an active or passive threat to him/herself or the safety of others.
- B. Intoxicated – a condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of alcohol or other drugs in their system.
- C. Protective Custody – a civil status in which an incapacitated person is detained by a law enforcement officer for the purpose of assuring the safety of the individual and/or the public and assisting the person to return to a functional condition.
- D. Qualified Medical Personnel – any person charged with the screening, evaluating, or treating of persons under the influence of alcohol, incapacitated persons or persons otherwise impaired (e.g. ACT-1, Crisis, Emergency Room personnel, etc).

II. JUDGMENT

- A. Regardless of the BAC of an individual, the following things should be considered in determining the need for further evaluation and disposition of an intoxicated person:
1. physical and mental functioning;
 2. orientation to time/place/etc., judgment & behavior;
 3. impulse control;
 4. suicidal and/or violent behavior;
 5. recommendation of medical or crisis personnel.
- B. More specifically, a person may be incapacitated if some or all of the following conditions, **plus** evidence of drug or alcohol consumption, are noted by the officer:
1. inability to be oriented to time, place, person;
 2. significant impairment of speech or ability to communicate;
 3. significant impairment in basic decision-making or judgment;
 4. loss of motor functions or inability to walk or stand without assistance.
- C. An individual may also be deemed incapacitated if there is evidence of drug or alcohol consumption and he/she is a danger to him/herself by being exposed to dangerous situations such as staggering into a roadway, lying on the ground on a cold winter night, etc.
- D. An individual may also be deemed incapacitated if there is evidence of drug or alcohol consumption and he/she is a danger to others by threatening either verbally or by gestures/behaviors to do harm to another person.
- E. An officer may rely upon the opinion of qualified medical personnel who have evaluated a person to determine if a person has severely impaired judgment or impulse control as a result of drug or alcohol intake. This impaired judgement may include being incapable of recognizing or reacting to hazards or increasing the propensity to act on violent or suicidal thoughts.

III. PROCEDURES

- A. Criminal behavior – If a person has violated a law and is intoxicated, that person should be cited for the appropriate criminal charge or lodged if criteria under the Rules of Criminal Procedure apply. **A person may not be taken into custody for incapacitation in lieu of criminal charges.** A person cited for an offense who is incapacitated may be issued the citation and then taken to detox if appropriate.
- B. Intoxicated person – When an officer encounters a person who they believe is intoxicated, the officer may assist this person if he/she consents. Assistance may take the form of transportation home, transportation to an alcohol treatment center or hospital, or some other

mutually agreeable location. The officer may not compel an intoxicated person to do any of these.

- C. Incapacitated person – When an officer encounters a person who in his/her judgment is incapacitated the officer shall take the person into protective custody and transport the person to ACT-1 or the hospital if an exigent medical need exists.
- D. Incapacitation screening at the request of another agency – if the ER or Crisis or other agency requests that a person be placed or continued in protective custody, the officer must obtain a signed evaluation from the requesting agency. A signed “detox form” will meet this requirement. If qualified medical personnel declare the person incapacitated, protective custody shall continue. If the officer does not feel the person is incapacitated, he/she should inquire of medical personnel the reason for continued custody. In the absence of a declaration of incapacitation by medical personnel, the officer shall use his/her judgment to determine if continued protective custody is necessary.
- E. Protective custody of incapacitated persons shall not be considered an arrest for any purpose. Persons in custody should be properly restrained (handcuffed) and patted down for weapons or hard objects prior to transportation. This search does not extend to closed containers. The officer should not search or open a wallet or other closed container, but rather remove it from the person during transport and custody.
- F. Intoxicated or incapacitated minors – are entitled to the same level of service, however parents/guardians must be involved. Reasonable efforts must be made to transfer custody of the minor to a parent or guardian and to inform them of the police contact with the minor child. When this is not possible, care occurs under Title 33 V.S.A. 5510. See G.O. # 33 “Juvenile Operations” for more detail. Under no circumstances shall an intoxicated or incapacitated minor be held at a correctional facility.
- G. Intoxicated or incapacitated persons under the age of 21 should be referred to the Chittenden County Teen Alcohol Safety Program (TASP). These individuals should be issued a “Notice of Violation” by the officer and all copies of the Vermont Civil Violation Complaint (VCVC) should be forwarded to the Records unit.
- H. Individuals addressed in section G who have prior convictions under 7 VSA 656/657 (16A/B/C) should be issued a citation for 7 VSA 657 in lieu of a TASP notice of violation.

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