



# POLICY & PROCEDURE

## ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **INTOXICATED/INCAPACITATED PERSONS**

NUMBER: 6.24  
ISSUED: 06/01/2015

SCOPE: All Department Personnel  
DISTRIBUTION: Policy & Procedure Manual

EFFECTIVE: 07/15/2015

REFERENCE: WI State Statutes: 48.20(6), 51.45, 51.47, 125.07, 125.09

RESCINDS  
 AMENDS  
WILEAG 4<sup>TH</sup> EDITION  
STANDARDS: 6.6.3

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INDEX AS: Alcoholism  
Incapacitated Persons  
Intoxicated Juveniles  
Intoxicated Persons

PURPOSE: The purpose of this Policy & Procedure is to establish procedures consistent with Wisconsin State Statutes to assure that officers of the Elkhart Lake Police Department can respond to the behavior of the intoxicated or incapacitated person.

This Policy & Procedure consists of the following numbered sections:

- I. DEFINITIONS
- II. AUTHORITY AND RESPONSIBILITY
- III. HANDLING OF INTOXICATED PERSONS
- IV. TRANSPORTATION OF INTOXICATED PERSONS
- V. HANDLING OF INCAPACITATED PERSONS
- VI. TRANSPORTATION OF INCAPACITATED PERSONS
- VII. PRIVATE PROPERTY

- VIII. VIOLATIONS OF STATUTES OR ORDINANCES
- IX. EMERGENCY COMMITMENT
- X. VOLUNTARY TREATMENT OF ALCOHOLICS
- XI. INVOLUNTARY COMMITMENT OF ALCOHOLICS
- XII. COMMUNICATIONS WITH PUBLIC TREATMENT FACILITY
- XIII. INCIDENT REPORTING

## DEFINITIONS

The extent of the law enforcement officer's authority and the determination of his response is dependent upon whether the inebriate, as indicated by his behavior and/or condition, is an "intoxicated person" or "incapacitated by alcohol". It is, therefore, of crucial importance that a clear distinction be made between the two standards to provide for the proper application of law enforcement authority.

**INTOXICATED PERSON:** A person whose mental or physical functioning is substantially impaired as a result of the use of alcohol (statute 51.45(2)(f).) An intoxicated person is simply a person who has had too much to drink but does not appear to need medical attention and has not threatened or committed physical harm to himself/herself, to others, or to property.

**INCAPACITATED PERSON:** A person who, as a result of the use of, or withdrawal from alcohol, is unconscious or has his/her judgment so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself/herself, to any other person, or to property, (statute 51.45(2)(d).) Incapacitated person includes a person who clearly needs medical attention, whether conscious or unconscious, or who becomes physically threatening or dangerous to persons or property.

**ALCOHOLIC:** A person who habitually lacks control as to the use of alcoholic beverages, or uses such beverages to the extent that their health is substantially impaired or endangered or social or economic functioning is substantially disrupted.

**MENTAL HEALTH CONSULTANT:** A person employed by the Sheboygan County Human Services (i.e., Crisis Intervention Specialist ) who has authority to advise law enforcement in the assessment and evaluation of persons for the purpose of emergency detention or protective custody/placement.

## AUTHORITY AND RESPONSIBILITY

The officer's role under statute 51.45 is essentially limited to taking the inebriate home, or where appropriate, to taking the person into protective custody and transporting the person to a treatment facility. Protective custody is NOT an arrest.

Authority granted under statute 51.45 shall be applied in a manner consistent with the intent of the Alcoholism & Intoxication Treatment Act and with the objectives of the police department.

Officers acting in compliance with statute 51.45 are acting in the course of their official duty and are not criminally or civilly liable for false imprisonment.

An officer who encounters a person who is "incapacitated by alcohol" has a statutory responsibility to take that person into protective custody and bring the person to an approved public treatment facility for treatment.

In an encounter with an intoxicated or incapacitated person, whether on sight or call response, officers should give consideration to the following to determine if the person's behavior and/or condition objectively evidences extreme physical debilitation or physical harm or threats of harm to himself/herself, or to any other person or property as set out below:

150272352. The inability to stand without assistance.

150272353. Manner of walking; staggering, falling, wobbling, etc.

150272354. Presence of vomit, urination or defecation on clothing.

150272355. Dilation of eyes, flushed complexion, alcohol odor on breath.

150272356. The inability to understand and coherently respond to questions asked; name, age, address, etc.

150272357. Delirium tremens (sweating, trembling, anxiety, hallucinations).

150272358. Unconsciousness.

This alone constitutes sufficient grounds to evidence extreme physical debilitation if it is apparent that the condition is related to alcohol consumption.

Unconsciousness, even when the individual has consumed alcohol, may be caused by other factors; diabetic shock for example.

150272359. Walking into streets or intersections negligent of flow of traffic.

150272360. Sleeping on the street or gutter where the person may be hit by a motor vehicle.

150272361. Sleeping on the sidewalk where the person may be subject to being robbed, assaulted, or molested.

150272362. Anger or hostility expressed towards individuals; wife, friends, others present.

150272363. Threats of harm/damage to persons or property.

## HANDLING OF INTOXICATED PERSONS

When an officer encounters an individual who is an “intoxicated person”, the officer may offer assistance to that person. Beyond the offer of assistance, any further disposition by the officer is dependent upon the response of the person.

The officer cannot take the “intoxicated person” home or to any public or private treatment facility unless the person voluntarily consents to accept the offered assistance.

Providing the “intoxicated person” accepts the officer’s offer to be taken home, the officer may transport the individual to that person’s residence, or he may request for the Sheboygan County Sheriff’s Office to transport, if the individual’s residence is outside the Village limits.

In the event an “intoxicated person” refuses to be conveyed, the officer may suggest and arrange for public transportation at the person’s expense, if available.

The “intoxicated person” must accept an officer’s offer of assistance before an officer can take further action. A threat of arrest for another charge or other behavior designed to coerce an “intoxicated person” into accepting the assistance offered is improper.

## TRANSPORTATION OF INTOXICATED PERSONS

An “intoxicated person” who consents to be taken to a treatment facility shall be transported to the facility and turned over to the staff of the facility, unless other transportation (friend/relative) can be arranged. Officers are not required to wait until admission procedures are completed.

Any further disposition of the “intoxicated person”, i.e., treatment, transportation, etc., shall be the responsibility of the treatment facility which admits the person to the facility, refer or provide alternative resources for shelter or transportation to another facility.

## HANDLING OF INCAPACITATED PERSONS

When an officer has contact with a person determined to be incapacitated by alcohol, the person shall be placed in protective custody and transported to an approved detoxification facility. Statute 51.45 (11)(b) provides that a person brought to such a facility under protective custody shall be deemed under the protective custody of the facility upon arrival.

Normally, when handling an "incapacitated person", a back-up officer shall be dispatched to assist the first officer or may be requested by the first officer.

Any person who is incapacitated by alcohol and is taken into protective custody may, at the discretion of the officer, be handcuffed in accordance with police authority to take reasonable steps for protection.

The officer shall advise the dispatcher that an "incapacitated person" has been taken into protective custody and provide or arrange proper transportation to Sheboygan Memorial Medical Center.

Upon arriving at Sheboygan Memorial Medical Center, the Officer should fill out the Sheboygan County Department of Human Services protective custody form. Copies of this form should be made for the Hospital, the Officers report and the Sheboygan County Corporation Counsel. A photocopy shall accompany the copy of the incident report to Sheboygan County Human Services.

Applicability to juveniles.

150272364. In the event an "incapacitated person" is a juvenile, the officer is authorized to place the juvenile under protective custody and shall do so.

150272365. Unless arrangements are made with the treatment or medical facility, the officer shall attempt to notify the parent, guardian and/or legal custodian, as soon as possible, that the juvenile has been taken into protective custody.

## TRANSPORTATION OF INCAPACITATED PERSONS

Any "incapacitated person" who is taken into protective custody and is in need of medical treatment shall be transported to the hospital.

Any "incapacitated person" who is in need of emergency medical treatment, i.e., unconscious, severe lacerations, fractures, etc., shall be transported to the hospital by ambulance.

Should an "incapacitated person" in protective custody refuse needed medical treatment, Sheboygan Memorial Medical Center shall be responsible to follow through with necessary medical treatment. Incidents where medical treatment is refused shall be handled on an individual basis dependent upon circumstances involved. A supervisor shall be notified of any incident of medical treatment refusal and shall assist in making necessary arrangements with the crisis center for the care of the patient.

The client becomes the responsibility of Sheboygan Memorial Medical Center when, on a voluntary commitment, the client signs the commitment papers, and on an involuntary commitment, when the officer signs the commitment papers.

Officers shall provide reasonable and/or necessary assistance as may be required by hospital or treatment facility staff during admittance of the client.

The Department is responsible for and shall transport involuntary commitment clients under statute 51.45 from the emergency room, after medical clearance, to the Sheboygan County Health Care Center.

150272366. Should the client be admitted to the hospital, the officer should put a "hold" on the subject and return to duty.

150272367. If the client does not receive medical clearance prior to the end of the officer's tour of duty, all reports, including the Application for Emergency Commitment for Alcoholism Treatment form (51.45) should be turned into the Chief of Police.

150272368. When the hospital notifies the department of the client's medical release, the client will have to be reassessed by the responding officer.

150272369. If the client is no longer incapacitated by alcohol because of elapsed time, no transport shall take place.

150272370. The Emergency Commitment form may be disposed of, and a supplement report filed.

The Sheboygan Memorial Medical Center is responsible for and shall transport voluntary commitment clients under statute 51.45 from the emergency room after medical clearance to the Behavioral Health Care Center.

"Incapacitated persons" shall not be transported to their home. They must be taken to a hospital or treatment facility.

## PRIVATE PROPERTY

Statute 51.45 (11)(b) gives authority to police to take a person who is incapacitated by alcohol into protective custody whether the person is on public or private property.

Although granted the authority, the department shall normally refrain from taking into protective custody persons on private property directly under the control of that person. However, the person shall be placed in protective custody if:

150272371. There is a need for emergency medical treatment.

150272372. There is a high probability of physical harm to the person or others present.

The decision to place a person in protective custody while on private property directly under the control of that person shall be made by the officer in conjunction with a field supervisor.

The procedures as outlined in Section V shall be followed when the person is on private property not owned or under the direct control of the "incapacitated person".

## VIOLATIONS OF STATUTES OR ORDINANCES

It is important to recognize that some of the behavior necessary to objectively evidence incapacitation by alcohol may also conceivably be used to substantiate a disorderly conduct violation. Circumstances involving an "incapacitated person" should not result in the person being arrested for disorderly conduct, except in circumstances which are clear violations.

The outer clothing of any person who is incapacitated by alcohol and taken into protective custody shall be routinely frisked for weapons. This limited search is a reasonable step officers are authorized for protection.

In the event an officer discovers a weapon, or instrument that may be used as a weapon, the shift supervisor shall be contacted to make a determination whether to incarcerate the person or to have the person transported to a detoxification facility.

An officer taking an "incapacitated person" into custody shall obtain the identity of the person and routinely make a warrant/wanted check. In the event the person is wanted, the shift supervisor shall be contacted to make a determination whether to incarcerate the person or to have the person transported to a detoxification facility.

An "incapacitated person" who has been arrested for a statute or ordinance violation (including O.A.W.I.) shall be taken to an approved treatment facility after consultation with a Crisis Intervention Specialist.

## EMERGENCY COMMITMENT

Statute 51.45 (12)(b) authorizes a physician, spouse, guardian, relative, or any other responsible person to petition the court for emergency treatment of a person sought to be committed under the following conditions:

150272373. An “intoxicated person” who has threatened, attempted to, or has inflicted physical harm on him/her or another and is likely to inflict such physical harm unless committed.

150272374. A person who is incapacitated by alcohol may be committed to the community board and brought to an approved public treatment facility for emergency treatment.

This treatment is in addition to detoxification and one of the above two conditions must be present. This alternative for treatment may be petitioned by an officer when, in the discretion of the officer, facts can be stated to support the need for emergency treatment and it is not petitioned by other authorized persons.

Officers should be cognizant that this is a “petition for commitment” and does not authorize immediate physical custody other than in conjunction with a ‘protective custody’ for incapacitation. The actual commitment for emergency treatment is granted by the court.

#### VOLUNTARY TREATMENT OF ALCOHOLICS

Statute 51.45 (10) provides that an adult alcoholic may apply for voluntary treatment directly to an approved public treatment facility.

#### INVOLUNTARY COMMITMENT OF ALCOHOLICS

Statute 51.45 (13) provides that a person may be committed to the custody of the community board by the circuit court upon the petition of three (3) adults, each of whom has personal knowledge of the conduct and condition of the person to be committed.

The petition shall allege that the condition of the person is such that he/she habitually lacks self-control as to the use of alcoholic beverages and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted.

This section is informational and the information may be provided to those persons seeking alternative solutions or assistance.

#### COMMUNICATIONS WITH PUBLIC TREATMENT FACILITY

An officer transporting a person to a public treatment facility under this Policy & Procedure shall advise the dispatcher that he/she is transporting to the facility.

The dispatcher shall notify the treatment facility that the officer is en route with a person for treatment.



In the event there is a problem with the admittance of the person to the treatment facility, the officer shall be notified immediately.

The officer shall then contact the mental health consultant on duty (crisis center) at the treatment facility and arrange admittance or resolve the problem.

## INCIDENT REPORTING

Whenever an officer has contact with, and provides assistance to, an intoxicated person or an incapacitated person, or takes any action within his/her authority when in contact with these persons, an incident number shall be obtained and an Incident Report completed.

Officers shall complete any other form or written order as may be required in incidents involving intoxicated or incapacitated persons, including any forms required by the treatment facility.

Michael Meeusen  
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/01/2015