Intoxicated and Incapacitated Persons

Eff. Date 05/11/2026

Purpose

The "Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act" gives law enforcement officers authority to respond to the self-destructive behavior of alcoholics and intoxicated persons. Specifically, Wis. Stat. 51.45, "Prevention and control of alcoholism" states:

> *"It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society."*

The officer's role under Wis. Stat. 51.45(11), "Treatment and Services for Intoxicated Persons and Others Incapacitated by Alcohol," necessitates all officers understand the legal definitions for, and the difference between, those individuals who are simply intoxicated by alcohol and those whom are determined to be incapacitated by alcohol. It shall be the procedure of this department that the authority and responsibility outlined in Wis. Stat. 51.45(11) will be applied in a manner consistent with the intent of the State's "Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act" and with the objectives of this department.

Procedure

INTOXICATED PERSON – DEFINED & ROLE OF LAW ENFORCEMENT

"A person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;" Wis. Stat. 51.45(2)(f). An intoxicated person is likely one who has had too much to drink but does not appear to need medical attention and who has not done, nor threatened to do, physical harm to themselves, others, or property.

Procedures - Intoxicated Person

1. When an officer encounters an "intoxicated person," discretion may be exercised to offer, or not to offer, help to the person. The individual may accept or reject the offer. An officer cannot take the "intoxicated person" home, nor to any treatment facility, unless the person voluntarily consents.
2. A threat of arrest designed to coerce an "intoxicated person" into accepting assistance is improper.
3. If the "intoxicated person" **accepts a ride home**, the officer may transport the individual or may arrange to shuttle the person through adjoining districts. If an "intoxicated person" refuses to be conveyed, the officer may also suggest and arrange for public transportation at the person's expense.
4. If the "intoxicated person" consents to be voluntarily taken to a **treatment facility** (including emergency medical facilities), they will be transported and turned over to the facility staff. Officers are not required to wait until admission procedures are completed. Further disposition, e.g., treatment, transportation, etc., will be the responsibility of the facility staff who may admit the person, refer to another facility, take the person home, or give the person shelter.
5. A case number and a case report **are required** when an officer conveys an "intoxicated person" home or voluntarily to a treatment facility. The report should be entitled "Intoxicated Person/ Conveyance." If the individual is unwilling to provide any information, the report will be completed to the extent possible.

INCAPACITATED BY ALCOHOL – DEFINED & ROLE OF LAW ENFORCEMENT

A person who as a result of the use of or withdrawal from alcohol, is unconscious or has their judgment otherwise so impaired that they are incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm, or threats of harm to themselves or to any other

person, or to property; Wis. Stat 51.45(2)(d). Persons found to be incapacitated by alcohol are clearly in need of immediate protection and medical attention, whether conscious or unconscious.

Wis. Stat. 51.45(11)(b) defines a specific role and responsibility for law enforcement when dealing with persons found to be incapacitated by alcohol:

> *"A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public treatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need emergency medical treatment, the law enforcement officer or designated person upon the request of law enforcement shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking them to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's health and safety."*

Procedure - Protective Custody

1. **Extreme Debilitation** is evidenced by one or more of the following:
   a. Inability to stand without assistance (the need to cling to objects such as buildings or posts in order to remain standing).
   b. Manner of walking (staggering, falling, wobbling).
   c. Presence of vomit, urination, or defecation on clothing.
   d. Dilation of eyes, flushed complexion, alcohol odor on breath.
   e. Inability to understand and coherently respond to questions asked (name, age, address, destination).
   f. Delirium tremens (sweating, trembling, anxiety, hallucinations).
   g. 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, **could be caused by other factors, i.e., diabetic shock.** Any individual found unconscious should be conveyed to a hospital for examination.)
2. **Physical harm (or threats)** to self, others, or property is evidenced by one or more of the following:
   a. Walking into streets or intersections, negligent of the flow of traffic.
   b. Sleeping on the street or gutter, where they may be hit by a motor vehicle.
   c. Sleeping on the sidewalk, where they are subject to being robbed, assaulted, or molested.
   d. Anger or hostility expressed towards individuals, e.g., family, friends, pedestrians.
   e. Threats of damage to property or persons, i.e., assault.
3. Officers who have placed a person in protective custody due to incapacitation from alcohol shall convey the person whom they have placed in protective custody to an emergency medical facility (i.e., hospital emergency room) for medical evaluation and treatment. **Once admitted to the emergency medical facility, the role of law enforcement has been completed.** An officer's protective custody status does not transfer to the emergency room or hospital (in contrast to where it does at Detox) and the person cannot be involuntarily held against their will at a hospital emergency room.
4. In the event that hospital staff calls back either because the incapacitated person is attempting to leave the hospital or has left the hospital, officers will respond to re-evaluate the condition of the person. If the person has left the hospital, prior to officers arriving, officers will attempt to locate and evaluate the condition of the person. Officers will make decisions in accordance with Wis Stat. 51.45 based on the current condition of the person.
5. **Protective Custody is NOT an arrest.** Officers acting in compliance with Wis. Stat. 51.45 are acting in the course of their official duty and are not criminally or civilly liable for false imprisonment (Wis. Stat. 51.45(11)(g)).
6. An officer must make every reasonable effort to protect the health and safety of persons incapacitated by alcohol and take reasonable steps to protect themselves (Wis. Stat. 51.45(11)(b)).

7. At no time will a person in protective custody be conveyed to their home.
8. At the discretion of the officer, a person in protective custody may be placed in handcuffs. Anyone in protective custody will routinely be searched for weapons.
9. The officer will advise the dispatcher once a person has been taken into protective custody for conveyance to a treatment facility.
10. Incapacitated persons placed by officers in protective custody who are in need of emergency medical care (e.g., unconscious, lacerations, fractures, concussions) shall be transported to a hospital by the Madison Fire Department. Officers need not follow or wait with subjects who are receiving emergency medical care at a hospital unless they are also under arrest or violent. Once emergency medical care has been provided by the hospital, the hospital may deem additional medical monitoring of the incapacitated person is necessary.
11. A case number and a case report are required whenever an officer places a person in Protective Custody and conveys that person to a local hospital emergency room. The primary officer will complete the MPD Protective Custody Commitment Report form upon arrival at the hospital. This form has been created to aid officers in detailing their probable cause as to why they believed someone was in need of protective custody pursuant to Wis. Stat. 51.45(11)(b). Once completed, a photocopy of the PC Commitment Report form should be left with hospital emergency room staff for their records. The original shall be submitted in a timely fashion to the Records Section thereby satisfying this reporting requirement.

Procedure - Warrant Checks

A routine warrant check of all persons taken into protective custody will be made.

1. If a misdemeanor/municipal warrant(s) exists, the person will be taken to a hospital. The following documents MUST be completed and stored in the file cabinet: Jail Booking Form, PC Affidavit, if required, Injured Prisoner Medical Clearance when appropriate, and the original incident reports should be completed and routed in accordance with current reporting practices.
2. If a felony warrant(s) exists, the officer will consult with the Officer-in-Charge or designee to arrange for disposition.
3. If the wanted person needs emergency medical attention, they will be taken to a hospital where, depending on the charge, at least one officer will remain. If the person is admitted, hospital staff should be advised to call prior to their release. Deviations will be with the approval of the Officer-in-Charge or designee.

Disorderly Conduct/Other Charges

Some behavior which evidences incapacitation by alcohol might also be used to substantiate a disorderly conduct charge, however, in order to ensure that officers' authority is applied in a manner consistent with the intent of the "Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act":

1. The Officer-in-Charge or designee may determine that a disorderly conduct arrest is not appropriate and if the person is incapacitated by alcohol, may direct that the person be released, taken into protective custody, and conveyed to a hospital.
2. Persons incapacitated by alcohol who have threatened or committed physical harm to themselves, others, or property should be taken into protective custody and conveyed to a local hospital.
3. Officers may encounter resistance and may be required to physically restrain an incapacitated person, particularly if the person is taken into protective custody involuntarily.
4. Officers will respond to the hospital, upon request, if a client becomes belligerent, physically abusive, threatening, or clearly disorderly and will assist the hospital staff.

OWI Charges

A person incapacitated by alcohol who has been arrested for O.W.I. violation may be taken to a treatment facility after being processed, at the direction of the Officer-in-Charge or designee. This will **not affect**

subsequent prosecution but is intended to provide treatment. The person must be advised that a court appearance is mandatory on the day and time designated on the ticket.

Amnesty Through Responsible Action – Underage Consumption of Alcohol and/or Drugs

Amnesty through responsible action promotes community safety by removing potential concerns of legal consequences that could prevent callers from requesting medical assistance for underage persons incapacitated by alcohol and/or other drugs. WI SS 961.443 provides criminal prosecution immunity for persons aiding drug overdose victims. This policy expands on the philosophy of that statute by providing immunity for select Madison ordinance violations for both callers and victims. Citations for Madison ordinance 38.031 (underage alcohol violations) shall not be issued to a caller who requests medical assistance or to the subject in need of assistance under any of the following conditions:

- The caller remains with the impaired individual until assistance arrives and fully cooperates with emergency responders.
- The impaired individual is a victim of crime, such as sexual assault or violent crime.

This policy applies only to the caller and/or impaired individual's personal consumption of alcohol and/or drugs. This program **does not** apply to companion charges or in the following circumstances:

- When contact is initiated by police, EMS, or other emergency responders.
- To ordinance violations involving the supplying of alcohol or other drugs.
- To other crimes/violations not addressed in Madison City Ordinance 38.031

When a youth aged 17 or younger is taken into protective custody under this policy their parent, guardian, or legal custodian will be notified as soon as possible. The responsibility for notification rests with the officer taking the youth into protective custody. The person notified, as well as the date and time of the notification, is to be recorded in the narrative of the Incapacitated Person Report.

Original SOP: 03/06/2015
(Reviewed Only: 02/11/2016, 01/09/2017, 12/26/2017, 02/04/2022, 02/05/2024)
(Revised: 03/02/2016, 05/04/2016, 01/15/2020, 04/22/2025, 05/11/2026)