



LEGAL UPDATE

Probable Cause Required to Place Incapacitated Individuals into Protective Custody

Commonwealth v. Verrier, 106 Mass. App. Ct. 10 (2025).

RELEVANT FACTS

Chelsea police responded to a report of man who appeared to need help because he was either drunk or under the influence of drugs. Upon arrival at the shopping center, the officer saw the defendant and noticed that he was “swaying on the sidewalk, staring up to the sky with his eyes closed in the rain, appearing unbalanced on his feet and to be in need of help.” p. 12. The officer reasonably feared that the defendant would fall, step into traffic or fall into traffic.

The uniformed officer observed the defendant for a minute before approaching him. The defendant did not initially seem to notice the officer and just stared blankly. The officer spoke to the defendant who agreed to move away from the road and out of the rain. During this interaction, the defendant swayed and was unsteady, his speech was slurred, and his eyes were pinpoint. “It was obvious to [the officer] that the defendant was under the influence of something, either alcohol or drugs.” p. 12.

The officer also saw evidence of potential drug use. The defendant reported being up for five days and taking Ambien and Tylenol PM but he denied taking any other drugs or alcohol. The defendant told the officer he had recently overdosed and admitted taking fentanyl and methamphetamines in the past. He also reported just getting out of jail and was “not used to the substances like he used to be,” meaning that his tolerance was lower than it was before.

The officer was concerned for the defendant and requested an ambulance. The defendant wanted to leave. The officer told him that he was not under arrest but that he could not leave because he was being placed into protective custody for his well-being so that he could get medical help.

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

For the safety of the EMTs, the defendant was frisked. A loaded firearm was recovered from his waistband. The defendant did not have a license to carry. The defendant was placed under arrest. The defendant was taken to the hospital by ambulance. He was released by the hospital and taken to the police station where he was booked.

The defendant was charged with unlawful possession of the firearm and possession of class B and E drugs for drugs that were recovered from his groin area. The defendant filed a motion to suppress which was denied. The question on appeal was whether the standard for placing someone into protective custody is reasonable suspicion or probable cause to believe that they are incapacitated by drugs.

DISCUSSION

There are two statutes in Massachusetts that allow officers to place incapacitated people into protective custody. The Alcohol Rehabilitation Law is M.G.L. c. 111B, §8. The Drug Rehabilitation Law is M.G.L. c. 111E, § 9A.

M.G.L. c. 111E, § 9A defines “incapacitation” as:

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 damage property; or
- (iv) disorderly.

The definition of “incapacitation” for alcohol is identical, except for the description of the substance involved.

In Commonwealth v. O’Brien, 434 Mass. 615 (2001), the SJC determined that officers must have probable cause to believe someone is incapacitated to place them into protective custody for purposes of the Alcohol Rehabilitation Law. The court has never decided what standard should be applied with respect to the Drug Rehabilitation Law.

The Alcohol Rehabilitation Law allows officers to place an individual in a cell at the police station for up to 12 hours. In contrast, the Drug Rehabilitation Law requires officers to bring an incapacitated person directly to a medical facility. This court determined that this difference does not impact the interpretation of the term “incapacitation.”

“Because there is no material difference between the protective custody authorized by the Alcohol Rehabilitation Law and that authorized by the Drug Rehabilitation Law, we conclude that the level of suspicion necessary for police to place an individual into protective custody under the Drug Rehabilitation Law is the same as the standard for doing so under the Alcohol Rehabilitation Law: probable cause to believe the individual is incapacitated within the meaning of the statute.” p. 15.

When reviewing the facts of this case, the court found that the officer had probable cause to believe the defendant was incapacitated due to substances.

The motion to suppress was properly denied.

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