Public Protection: Intoxicated Persons

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This is the second part of a two-part article. Click here to read Part 1.

❖ Community Caretaking

Police can play a role in trying to make the community a safer and more secure place. In Winters v. Adams, #00-3061, 254 F.3d 758 (8th Cir. 2001), the court held that officers did not violate a detainee’s Fourth Amendment rights when they extended their investigation because of concerns that he was intoxicated and might be a threat to himself or others. Failure to do so, indeed, the court noted, might have made the officers derelict in their “community caretaking function.”

In that case, Iowa police officers responded to a complaint reporting that a possibly intoxicated individual was observed exiting and reentering a vehicle parked on a dead end street. The officers approached, and the man in the vehicle told them that he was waiting for a push to start his car and wished to be left alone. The officers asked that the man exit the vehicle and produce identification.
The man allegedly appeared to be in a “highly agitated state,” moving “wildly” about the car, and refusing to identify himself or make eye contact. He became increasingly agitated at the officers and yelled at them to leave him alone. They began to suspect that he may be intoxicated from either liquor or drugs.

They decided that they should attempt to enter the vehicle to determine “just how far under the influence” the man might be. He resisted their attempts to unlock and open one of the doors and stretched across the vehicle to hold both locks down at the same time.

Based on reports by the officers about the individual’s behavior and appearance, a Lieutenant supervisor serving as shift commander arrived on the scene and made a decision that the man should be taken to the hospital. While he later said he had not witnessed any “illegal activity” by the man, he stated that he felt that he had a responsibility to protect both the man and the “public at large to make sure this person can’t hurt anyone else.” He broke the passenger side window of the car with his nightstick in order to remove the man from the vehicle, and called an ambulance.

The man’s response was allegedly “extremely violent,” kicking and punching at the officers. He then attempted to flee and was forcibly taken to the ground and handcuffed. At the hospital, he was diagnosed as suffering from methamphetamine intoxication, and was characterized by the hospital as becoming “extremely physically violent” to staff members who approached him, so that he had to be restrained in leather straps.

Rejecting claims for unreasonable seizure and excessive force, a federal appeals court ruled that the officers did not violate the detainee’s Fourth Amendment rights when they extended their investigatory encounter based on their concerns that he was intoxicated and presented a threat to himself or others.

The court noted that police officers are not only permitted, but expected, to exercise “community caretaking functions,” and may have the occasion to seize a person “in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity.”

In this case, the court found, if the police officers simply walked away from the vehicle, “perhaps permitting a possibly intoxicated individual to drive the vehicle, potentially harming himself and other citizens,” the officers might have been “derelict in their duties” under this community caretaking function.
Similarly, in *Tinius v. Carroll County Sheriff Department*, #03-3001, 321 F. Supp. 2d 1064 (N.D. Iowa 2004), the court found that deputy sheriffs did not violate an apparently intoxicated individual’s rights by detaining him and transporting him to the hospital, despite having no reason to suspect that he committed any crime.

Under the deputies’ “community caretaking” function, they were justified in detaining him when he was found walking along a roadway in a rural area in the winter without proper winter clothing. Additionally, they were justified in assisting, at the hospital, with his involuntary catheterization, when they were merely helping medical personnel to carry out health care decisions they did not assist in making.

**Recommendations**

Before addressing recommendations for police departments to consider in relation to protection of intoxicated persons who officers encounter, there is a general point worth making. These two articles have almost entirely focused on interactions between police and intoxicated members of the public not in custody.

When the intoxicated person – especially the highly intoxicated person – is in custody, the entire relationship changes. Law enforcement, whether a police department or correctional authorities at a jail or prison, becomes responsible for assisting and protecting those in custody, including providing them with medical assistance when required. Failure to do so can easily result in injury or death and civil liability.

In *Livermore v. City of New York*, #08-CV-04442, (S.D.N.Y. May 23, 2011), for instance, New York City wound up reaching a $2 million settlement in a lawsuit alleging that an intoxicated postal worker, detained after a dispute in which he was barred from his apartment, died in custody from the untreated effect of severe alcohol withdrawal. The decedent had reportedly told jail medical personnel that he had been drinking two or three pints of rum a day, and he appeared agitated and disoriented. The defendants subsequently allegedly failed to follow a written protocol on treatment of severe alcohol withdrawal, which includes hospitalization. Instead, he was kept in the jail's general population, and died approximately 28 hours after his arrival there.

Not all those taken into custody are that severely impacted by alcohol, but even the common drunk can easily stumble around in their cell, fall, and injure themselves in a variety of ways, making precautions and observation necessary.
Many states provide a variety of detoxification facilities and related programs for the treatment and rehabilitation of persons incapacitated from consuming alcohol. Laws vary greatly from state to state, but in some jurisdictions, officers may have discretion to take intoxicated persons into protective custody.

A person is generally considered incapacitated by alcohol use if they are unconscious, in need of medical attention, likely to suffer or cause physical harm or damage property, or disorderly. An officer may generally assist such a person, with or without consent, to their residence, to a treatment facility, or to the police station.

This article has focused on the issue of when there may be civil liability for failure to provide protection to intoxicated persons. Those legal standards do not generally impose on officers the highest duty of care. Courts are loathe to impose civil liability on officers who exercise their discretion and, in many instances, just let an intoxicated person who does not seem severely incapacitated, and is not engaging in disorderly conduct, drunken driving or other egregious criminal conduct, go on their way.

Most police departments and most officers aspire to something more than just doing the bare minimum that the law requires when encountering intoxicated persons who may need assistance.

Law enforcement agencies should:

- Conduct training for officers that addresses the various options available in dealing with intoxicated persons, including a review of their state’s laws on issues of protective custody. In some appropriate instances, a person might be taken into protective custody even from their own home.

- Include in such training discussion of scenarios in which intoxicated persons may need medical attention or simply assistance getting home or to a place of safety.

- Such training should include discussion about how to differentiate intoxication from other problems, such as insulin shock, diabetic coma, epileptic seizure, heart attack, brain injury or stroke.
• When an intoxicated person is unconscious, an officer should call for an ambulance assist for medical evaluation, and then the person should be taken to a medical facility.

• Intoxicated persons who are belligerent, unruly, or disorderly should ordinarily be taken to a police station unless also in need of medical assistance.

• Intoxicated persons taken into protective custody should be searched and restrained in the same manner as an arrest, for their own safety and for the safety of the officer and others.

❖ Resources

The following are some useful resources related to the subject of this article.

• Alcoholics Anonymous.
• Alcohol Abuse and Rehabilitation. AELE Correctional Case Summaries.
• Alcoholism and Alcohol Abuse. PubMed Health.
• About.com Alcoholism.
• Dealing With Intoxicated Persons. Wisconsin Polytechnic University.
• Handling Intoxicated Persons. D.C. Metropolitan Police, General Order 501.03 (February 25, 2003).
• Protective Custody. Policy & Procedure No. 3.06. Massachusetts Police Accreditation Standards 74.2.1.
• Protective Custody. Truro Police Department Manual.
• Public Intoxication. Wikipedia article.
• Public Protection: Intoxicated Persons. AELE Case Summaries.

❖ Prior Relevant Monthly Law Journal Articles


• **Public Protection: Arrestees**, 2011 (2) AELE Mo. L. J. 101.

• **Disturbed/Suicidal Persons -- Part One**, 2012 (2) AELE Mo. L. J. 101.

• **Disturbed/Suicidal Persons -- Part Two**, 2012 (3) AELE Mo. L. J. 101.

❖ **References:** *(Chronological)*


• The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.

• The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.