

<p style="text-align: center;">STATE OF VERMONT AGENCY OF HUMAN SERVICES DEPARTMENT OF CORRECTIONS</p>	<p style="text-align: center;">Incapacitated Persons</p>		<p style="text-align: center;">Page 1 of 7</p>						
<p style="text-align: center;">CHAPTER: FACILITIES - GENERAL</p>	<p style="text-align: center;">#306.01</p>	<p>Supersedes: Interim Memo #306.01, <i>Incapacitated Persons</i>, dated 2/2/2021; Interim Revision Memo #306.01, <i>Incapacitated Persons</i>, dated 3/28/2012; #306.01, dated 9/27/2010</p>							
<p>Local Procedure(s) Required: No Applicability: All staff (including contractors and volunteers) Security Level: “B” – Anyone may have access to this document.</p>									
<p>Approved:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"><u>SIGNED</u></td> <td style="width: 33%; border: none;"><u>01/09/2023</u></td> <td style="width: 33%; border: none;"><u>01/23/2023</u></td> </tr> <tr> <td style="border: none;">Nicholas J. Deml, Commissioner</td> <td style="border: none;">Date Signed</td> <td style="border: none;">Date Effective</td> </tr> </table>				<u>SIGNED</u>	<u>01/09/2023</u>	<u>01/23/2023</u>	Nicholas J. Deml, Commissioner	Date Signed	Date Effective
<u>SIGNED</u>	<u>01/09/2023</u>	<u>01/23/2023</u>							
Nicholas J. Deml, Commissioner	Date Signed	Date Effective							

PURPOSE

This policy establishes the procedure for the admission, observation, and release of incapacitated persons who are placed in the temporary, protective custody of the Vermont Department of Corrections (DOC).

AUTHORITY

18 V.S.A. § 4810.

DEFINITIONS

15-Minute Observation: Physical observation of an individual at staggered intervals not to exceed every 15 minutes. This means that within one hour there should be, at a minimum, four documented observations.

30-Minute Observation: Physical observation of an individual at staggered intervals not to exceed every 30 minutes. This means that within one hour there should be, at a minimum, two documented observations.

Approved Substance Use Treatment Program: A treatment program which is approved by the Secretary as qualified to provide treatment for substance use.

Constant Observation: Continuous physical observation of an individual.

Designated Substance Use Counselor: A person approved by the Secretary to evaluate and treat substance users, pursuant to the provisions of this chapter.

Detoxification: The planned withdrawal of an individual from a state of acute or chronic intoxication, under qualified supervision with or without the use of medication. Detoxification is monitoring and management of the physical and psychological effects of withdrawal, for the purpose of assuring safe and rapid return of the individual to normal bodily and mental functioning.

Incapacitated: When a person, as a result of their use of alcohol and/or other drugs, is in a state of intoxication, or of mental confusion resulting from withdrawal, such that the person:

- 1) Appears to need medical care or supervision by approved substance use treatment personnel, as defined in statute, to assure their safety; or
- 2) Appears to present a direct active or passive threat to the safety of others.

Protective Custody: A civil status in which an incapacitated person is detained by a law enforcement officer for the purposes of:

- 1) Ensuring the safety of the individual or the public or both; and
- 2) Assisting the individual to return to a functional condition.

Qualified Health Care Professional (QHCP): Any person who by virtue of their education, credentials, and experience is permitted by law to evaluate and care for patients. This includes physicians, physician's assistants, nurses, nurse practitioners, dentists, and mental health professionals.

Substance Use Crisis Team: An organization approved by the Secretary of Humans Services, or designee, to provide emergency treatment and transportation services to substance users pursuant to the provisions of statute.

Vermont State Division of Substance Use Programs (DSU): A division within the Department of Health which oversees the substance use teams who assess individuals for incapacitation and the need for protective custody.

POLICY

The DOC's policy is to provide medical care and lodging to any incapacitated person who is in the DOC's temporary, protective custody. The DOC shall accept, and temporarily lodge, a person who is not charged with a crime and who is aged 18 and older if substance use treatment personnel or medical staff at an emergency room determine that the person is incapacitated because of their use of alcohol or other substances. The temporary, protective custody shall not exceed 24 hours. The DOC shall follow all confidentiality guidelines, while a person is in temporary, protective custody, including the Administrative Procedures Act (APA) Rule #08-048, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Standards, and 42 C.F.R. Part 2 (2022).

The DOC recognizes that entering temporary, protective custody in a correctional facility may cause a stress response. To that end, the DOC is committed to maintaining the dignity and safety of all individuals under its temporary, protective custody while also providing compassionate healthcare.

GENERAL PROCEDURES

A. Accepting Incapacitated Persons into a Facility.

1. A law enforcement officer shall bring an incapacitated person, aged 18 and older who is not charged with a crime, to a DOC facility to be lodged under its temporary, protective custody, only if:
 - a. The incapacitated person refuses transport to a treatment facility, or refuses treatment;
 - b. The incapacitated person leaves the treatment facility before the on-site staff consider them to be no longer incapacitated; or

- c. The law enforcement officer cannot find an approved substance use treatment program with detoxification capabilities or a medical provider at the nearest licensed hospital who will accept the person for treatment.
2. The DOC shall only accept a person into its temporary, protective custody when a screener from a licensed general hospital or Vermont Department of Health (VDH) Public Inebriate Program (PIP) determines that the person is incapacitated. A PIP screener may be:
 - a. Someone from a substance use crisis team;
 - b. A designated substance use counselor; or
 - c. A clinical staff person of an approved substance use treatment program with detoxification capabilities.
3. The DOC shall not accept a person who is incapacitated and under the age of 18 for temporary, protective custody. If a law enforcement officer brings a person who is incapacitated and under the age of 18 to a correctional facility, the facility Superintendent or designee shall email the Director of the Division of Drug and Alcohol Programs, and the Director of Clinical Services, or designee, as soon as practicable, in accordance with the statute.
4. The DOC shall not refuse a law enforcement officer's request to admit and lodge a person who is incapacitated and aged 18 and older, so long as the conditions under this section are met.

B. Facility Admission, Screening, and Medical Care

1. When a law enforcement officer brings an incapacitated person to a facility, the correctional officer (CO) assigned to Admissions and Control, or "Booking" (herein "Booking Officer") shall:
 - a. Notify the Correctional Facility Shift Supervisor (CFSS) and the facility's Qualified Health Care Professional (QHCP);
 - b. Collect the signed incapacitation screening and disposition report certifying that a screener from a licensed general hospital or VDH PIP determined that the person is incapacitated. A Booking Officer shall not accept an incapacitated person into a facility without an incapacitation screening and disposition report;
 - c. Complete the admissions section of the appropriate incapacitated persons admissions and discharge form. The Booking Officer shall store this form with the incapacitation screening and disposition

- report in a central location, in accordance with the policy on records retention and disposition;
- d. Only allow the incapacitated person to retain approved items, in accordance with the policies on property and contraband;
 - e. Confirm whether the incapacitated person is currently under the supervision of DOC by checking the Offender Management System (OMS). If they are, the Booking Officer shall notify their assigned Probation & Parole Officer;
 - f. House the incapacitated person in a cell or area separated from the incarcerated individuals;
 - g. Notify the person's family or next of kin unless the person prohibits notification; and
 - h. Maintain confidentiality of the incapacitated person and not disclose any information obtained about them while they are under DOC's temporary, protective custody to third parties.
2. All searches of incapacitated persons who are lodged in a correctional facility shall be in accordance with the policy on searches of individuals.
Facility staff:
 - a. May conduct a pat search of any lodged incapacitated person at any time; and
 - b. May only conduct an unclothed search of a lodged incapacitated person if the search is imperative to the safety and security of the incapacitated person themselves, others, or to the operations of a facility. Facility staff shall obtain permission from the Superintendent before conducting an unclothed search of an incapacitated person.
 3. The QHCP shall screen the incapacitated person for any healthcare needs and provide clinically appropriate care to all incapacitated persons until they are no longer under the DOC's temporary, protective custody.
 4. When an urgent healthcare need arises that requires hospital level of care, the QHCP shall:
 - a. Ensure that DOC facility staff call emergency medical services;
 - b. Provide emergency medical care until emergency medical services arrive; and
 - c. Notify the emergency room medical staff of the incapacitated person's pending arrival.

C. Facility Observation

1. Once the QHCP completes their screening, they shall determine the medically appropriate level at which the assigned facility staff shall monitor the incapacitated person's behavior and appearance. The QHCP shall also communicate any changes to, or information, about their observation level determinations to facility staff.
2. Facility staff shall:
 - a. Physically observe the incapacitated individual at 15 or 30-minute staggered intervals or on a continual basis if constant observation is required, per the QMHP's determination;
 - b. Immediately notify the QHCP of any change in the incapacitated person's behavior or appearance; and
 - c. Document all monitoring of the incapacitated person's behavior and appearance using the appropriate form. If the facility staff's shift ends before the incapacitated person is discharged, they shall ensure the form is stored in a central location for the next facility staff to resume monitoring.

D. Emergency Medical Response

1. When any urgent healthcare need arises that requires hospital level of care, and
 - a. The assigned facility staff member is the first to arrive, they shall:
 - i. Radio for the CFSS to immediately contact emergency medical services; and
 - ii. Initiate the appropriate medical response until they are relieved by a QHCP. The QHCP shall assume responsibility for the medical care.
 - b. The QHCP is the first to arrive, they shall:
 - i. Ensure that facility staff immediately contact emergency medical services; and
 - ii. Provide the appropriate life-saving measures until the emergency medical services arrive.
2. In general, facility staff shall assist the QHCP while they are providing life-saving measures as requested.

E. Facility Release

1. The person is no longer in the custody of the DOC once they are released from a facility.
2. Facility staff shall release an incapacitated person once:
 - a. A facility Superintendent, or designee, determines that the person is no longer incapacitated; or
 - b. The 24-hour temporary, protective custody has ended.
3. If the person is released after 24 hours, and the Superintendent or designee, determines that the person is still incapacitated, they shall call emergency medical services and alert them.
4. Any time an incapacitated individual is released to emergency medical services, they are no longer in the custody of the DOC. DOC staff shall not accompany the individual to the hospital.
5. Facility staff shall document the date, time, and reason for the person's discharge in the admissions and discharge form and file it.