

Differentiating Between Police Requests for Emergency Examination and Protective Custody of People Incapacitated by Alcohol, and Best Practices

By Sgt. Russell M. Iger¹

A common area of confusion for police officers is the transport of intoxicated persons to the hospital for treatment. Often, a Police Request for Emergency Examination (“PREE”) under Connecticut General Statute (“CGS”) §17a-503, is incorrectly used for this purpose. In fact, the authority to transport a person who is “incapacitated by alcohol” resides under CGS §17a-683. The PREE is solely meant as a tool to assist those suffering from mental or emotional impairment. There is no State form for officers to complete when a §17a-683 transport is authorized, but some departments have produced their own form to assist in these situations. By taking a closer look at these statutes, we can see the importance of distinguishing between the two for liability and professional standards purposes.

Criteria for Protective Custody under §17a-683

CGS §17a-683 (a) states that “any police officer finding a person who appears to be intoxicated² in a public place and in need of help may, with such person’s consent, assist such person to his home, a treatment facility, or a hospital or other facility able to accept such person.”

CGS §17a-683 (b) states that “any police officer finding a person who appears to be incapacitated by alcohol³ shall take him into protective custody and have him brought forthwith

¹Sergeant Iger is a Connecticut police instructor in several areas including Constitutional Law, Connecticut Criminal Law, Search and Seizure, and Suicide Recognition. He is a licensed attorney in Connecticut and New York, and has been a member of the Coventry Police Department since 2012.

²*See* Definitions, Connecticut General Statutes (“CGS”) §17a-680. “Intoxicated person” means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.’ This is consent based assistance. Notice that this definition applies to both alcohol and drugs.

³*Ibid.* “Incapacitated by alcohol” means a condition in which a person as a result of the use of alcohol has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment.’ This is mandatory assistance. Notice that this definition applies only to alcohol. Assistance to a person who is incapacitated by drugs would fall under the officer’s duty to act to prevent imminent harm.

to a treatment facility... or hospital.”⁴ The statute distinguishes between intoxicated and incapacitated by alcohol, and regulates the authority an officer has over a person based on each.

As a result of the use of alcohol or drugs, an “intoxicated person” is someone whose mental or physical functioning is substantially impaired.⁵ In this case, an officer may choose to offer medical assistance to the person or help create a plan to make sure that he or she is safe. A person that is “incapacitated by alcohol” is so impaired by the use of alcohol that he or she is incapable of making a rational decision about his or her need for treatment. Only in the situation where a person is “incapacitated by alcohol” does the officer have the authority to take that person into protective custody. Furthermore, there is no State form that officers fill out to transport a person “incapacitated by alcohol,” although some police departments have developed their own.⁶ The criteria used on these forms to justify protective custody for alcohol incapacitation are listed as follows: “cannot stand or walk without assistance, unaware of surroundings, found unconscious, incoherent, vomiting uncontrollably.”⁷ Although the opinions of Emergency Medical Technicians (“EMTs”) or paramedics can be taken into consideration, it is ultimately the officer who has the responsibility for determining whether a person is an

⁴See CGS §17a-683 (b): “The police, in detaining the person and in having him brought forthwith to such a treatment facility or a hospital, shall be taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest.”

⁵See Definitions, CGS §17a-680.

⁶Notably the University of Connecticut Police Department (“UCPD”), the Vernon Police Department, and the West Hartford Police Department. UCPD has used their own form for §17a-683 police custody since approximately 2005 when ambulance staff requested that officers provide a paper document for transportation to the hospital of persons incapacitated by alcohol. Tanaka, Peter (Master Sergeant, retired), UCPD. Interview. Conducted by Russell Iger, 27 Feb. 2022.

⁷See UCPD-185, *Emergency Examination Request*, §17a-683 (Rev. 06/15). The criteria for assessing protective custody was developed by the department itself. The questions originally assessed by officers were “what’s your name, who is the current President, and can you walk unassisted?” Tanaka, Interview. These have developed into a more specific analysis: “cannot stand or walk without assistance, unaware of surroundings, found unconscious, incoherent, vomiting uncontrollably.”

“intoxicated person” who may be offered assistance, or is “incapacitated by alcohol” and shall be taken into protective custody. If a person is “incapacitated by alcohol” the officer has the authority to require that person be transported to the hospital, but the PREE form is not the proper tool to do this.⁸

Confusion between the Use of PREE and Protective Custody

Officers are often asked by EMTs to provide a PREE in order to transport intoxicated persons. Although this is not permissible under CGS §17a-503, the Statewide Emergency Medical Services Protocols⁹ (“EMS Protocols”) that are used to train all EMTs statewide indicate differently. The EMS Protocols state the following: “if the patient is intoxicated and in need of medical treatment and refuses care, police can take custody of the individual under a [PREE].”¹⁰ This is incorrect. The confusion created by this training information may be one of the reasons that officers are asked to provide a PREE for an intoxicated person. Officers should clarify with EMTs that the authority to take protective custody of a person incapacitated by

⁸A PREE mandates up to a 72 hour detention for psychiatric disability. This is a 4th Amendment seizure. §17a-503 demands psychiatric disability, and harm to self or others or gravely disabled. §17a-683 allows protective custody of a person “incapacitated by alcohol.” To use PREE for this would be an unlawful seizure subject to liability for violation of a person’s civil rights. §17a-683 was enacted by the Legislature to address alcohol separately.

⁹See *Statewide Emergency Medical Services Protocols for Connecticut Pre-hospital Medical Providers* (version 2020.3) (“EMS Protocols”).

¹⁰*Id. at 144.* While doing research about criteria for patient refusal, I discovered inaccurate information in the EMS Protocols about using a PREE for intoxication. This information has caused confusion for Emergency Medical Technicians (“EMTs”) and officers as to the use of PREE. In fact, §17a-683, regulates an officer’s authority in dealing with a person who is either intoxicated or incapacitated by alcohol. The EMS Protocol specifies that an intoxicated person may be taken into custody using a PREE. This is incorrect. I contacted the Department of Public Health’s Office of Emergency Medical Services medical director who is responsible for the EMS Protocols and encouraged him to change the language related to PREE and intoxication when it is updated in 2022.

alcohol is not derived from PREE,¹¹ and that although an officer may insist that the person be transported, a form may not be available for the EMTs and hospital.

Criteria for PREE under §17a-503

PREE was designed to address the mental or emotional impairment that occurs related to psychiatric disability.¹² CGS §17a-503 specifies that due to psychiatric disabilities, there is a substantial risk that physical harm will be inflicted by an individual upon his or her own person or upon another person,¹³ or that person is gravely disabled.¹⁴ The statute further delineates that the person is in need of immediate care and treatment.¹⁵ PREE addresses mental or emotional impairment, not intoxication or incapacitation by alcohol.¹⁶ Most importantly, an officer is not authorized to use a PREE for a person solely affected by alcohol. The officer must use the

¹¹*See Id. at 140. Police Custody Procedure 6.11* citing the criteria for PREE and confusing psychiatric disability with incapacitated by alcohol: “under Connecticut Law a Police Officer is authorized to take into custody any person whom the officer reasonably believes meets the criteria for commitment. [The] patient has significant psychiatric disabilities, is dangerous to himself or others, or is gravely disabled.” This is a direct quote from the language of PREE, CGS §17a-503, which does not refer to a person incapacitated by alcohol.

¹²*See* CGS 17a-458, Definitions: “persons with psychiatric disabilities” means those persons who are suffering from one or more mental disorders as defined in the most recent edition of the American Psychiatric Association's “Diagnostic and Statistical Manual of Mental Disorders.”

¹³*See* CGS 17a-495(b), Definitions: “dangerous to himself or herself or others” means there is a substantial risk that physical harm will be inflicted by an individual upon his or her own person or upon another person.

¹⁴*See Ibid.* “Gravely disabled” means that a person, as a result of mental or emotional impairment, is in danger of serious harm as a result of an inability or failure to provide for his or her own basic human needs such as essential food, clothing, shelter or safety and that hospital treatment is necessary and available and that such person is mentally incapable of determining whether or not to accept such treatment because his judgment is impaired by his psychiatric disabilities.

¹⁵Emergency rooms often quickly release people sent by officers using a PREE because they do not meet this criteria of being in need of immediate care. Referral to Mobile Crisis, or other agencies can fill this gap, and help hospital staff take PREE more seriously when they encounter people in need of immediate emergency care.

¹⁶Admittedly, they could be co-occurring elements. Some people suffering from psychiatric disabilities may also be suffering from addiction or substance abuse. *See* American Psychiatric Association (2013), *Diagnostic and statistical manual of mental disorders (5th ed.)*. Also, chronic alcohol and drug abuse could be framed as a mental disorder. *See Ibid.* However §17a-683 directly addresses alcohol in the language of the statute and should be used by officers to take a person into protective custody for “incapacitation by alcohol” rather than using the PREE.

protective custody provision of CGS §17a-683 if applicable. This does not involve submission of a State form to EMTs and the hospital as in the case of a PREE.¹⁷

Best Practices and Safety Plans

When an officer determines that transporting a person to the hospital is not authorized or not the best option available, it is important for the officer to ensure that the person is left under safe conditions. This safety plan could include leaving the person with family or friends who are capable of caring for that person if needed. It may also include referral to Mobile Crisis, or other mental health or substance abuse services. Officers should take care not to leave a person in a more compromising situation than that in which they encountered him or her.¹⁸ Ideally, the decision that the officer makes will put the person in the best situation for his or her needs while respecting the person's individual rights.

¹⁷It may be helpful for departments to develop their own forms. EMTs and hospitals may feel more comfortable from a liability standpoint if they receive a signed form from an officer. Ideally, the State of Connecticut should issue a form created for CGS §17a-683 purposes.

¹⁸See Rutledge, Devallis. "Liability for Failure to Protect," *Police Mag* online, June 1, 2010, <https://www.policemag.com/340328/liability-for-failure-to-protect> *describing* the "state-created danger" doctrine- where state action creates or exposes an individual to a danger which he or she would not otherwise have faced."



1585 Main St. Coventry CT 06238
Coventry Police Department

EMERGENCY EXAMINATION REQUEST

Sec. 17a-683. (Formerly Sec. 19a-126c). Police assistance for intoxicated persons. Protective custody of person incapacitated by alcohol. Medical examination. Detention and release. Notification to family. Assistance for nonadmitted person. (a) Any police officer finding a person who appears to be intoxicated in a public place and in need of help may, with such person's consent, assist such person to his home, a treatment facility, or a hospital or other facility able to accept such person.

(b) **Any police officer finding a person who appears to be incapacitated by alcohol shall take him into protective custody and have him brought forthwith to a treatment facility** which provides medical triage in accordance with regulations adopted pursuant to section 19a-495 or to a hospital. The police, in detaining the person and in having him brought forthwith to such a treatment facility or a hospital, shall be taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime. For purposes of this section "medical triage" means a service which provides immediate assessment of symptoms of substance abuse, the immediate care and treatment of these symptoms as necessary, a determination of need for treatment, and assistance in attaining appropriate continued treatment.

CPD Case # _____ Date _____ Time _____

Location Found _____ Officers Badge _____

Person To Be Examined

Name _____ DOB _____

Address _____ Phone _____

Indicators of intoxication to the point of incapacitation:

- Subject cannot stand or walk without assistance
- Subject incoherent
- Subject Unaware of surroundings
- Subject vomiting uncontrollably
- Subject found unconscious

Comments: _____

The above named individual has been determined by me to be intoxicated to the point of incapacitation and it is requested that he/she be examined under C.G.S. 17a-683

Officer _____ Signature _____ Date _____