

HANDLING INTOXICATED PERSONS

Directive: **6.21**

A. Voluntary Treatment Alternatives

The Delaware Code (16 Del. C. § 2203(11)) defines an "intoxicated person" to read:

"... a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol, drugs or other substances."

16 Del. C. § 2211, in part, provides that:

1. An intoxicated person voluntarily may enter an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in public and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility or an approved private treatment facility, whichever he may choose, by a law-enforcement officer or the emergency service patrol.

2. Any intoxicated person, "except where apprehended under a criminal charge, shall be taken into protective custody by the police or emergency service patrol, and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for intoxicated persons. The police, in detaining the person and taking him to an approved public treatment facility, is [sic] 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. Unless such person has been taken into custody for a charge other than simple public intoxication, no entry or other record shall be made to indicate that the person has been arrested or charged with a crime." 16 Del. C. § 2211.

Section (a) should not read to substitute the judgement of a seriously intoxicated person for that of a trained police officer. Therefore, officers must rely on their own best judgement when they feel that it is necessary to protect the health and safety of the intoxicated person or other persons. If the intoxicated person should resist being taken into protective custody, he may be formally charged with resisting arrest. Although the intoxicated person is not formally charged with public intoxication

or drunkenness, the "protective custody" is actually an arrest since the person is detained and deprived of his freedom of movement. Thus the charge of resisting arrest would still apply.

In exceptional circumstances, when the detoxification facility is too full to accept any more patients, the intoxicated person will be taken to any other hospital in the City offering emergency care.

B. Emergency Commitments

16 Del. C. § 2212 provides for emergency commitments which are made via a written application and a physicians certificate. When these documents are in place, a peace officer will be summonsed to transport. Any transfer to other public or private facilities will be made by designated transport personnel.

C. Reporting Procedure

Any police action involving an intoxicated person(s), as described above, will require submission of the appropriate police report.