

**HOUSE . . . . . No. 1521**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Shaunna L. O'Connell***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the protection of intoxicated individuals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>

**HOUSE . . . . . No. 1521**

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By Mrs. O'Connell of Taunton, a petition (accompanied by bill, House, No. 1521) of Shaunna L. O'Connell and others relative to the protection of intoxicated persons. The Judiciary.

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The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act relative to the protection of intoxicated individuals.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Chapter 94C of the General Laws, as so appearing, is hereby further amended by  
2 inserting after section 36 the following section:--

3 Section 36A. (a) Any person who is incapacitated by drugs in a public place may be  
4 assisted by a police officer with or without his consent to his residence, to a facility for substance  
5 abuse treatment or to a police station. To determine for purposes of this section only, whether or  
6 not such person is incapacitated by drugs, the police officer, following a standard, uniform  
7 procedure developed by the state police, may request the person to submit to a test, as approved  
8 by the department of public health, the bureau of substance abuse services and the state police, to  
9 determine whether the person is incapacitated due to drug use.

10 (b) Any person assisted by a police officer to a police station shall have the right, and be  
11 informed in writing of said right, to request and be administered said test. If evidence from said  
12 test indicates that the person is incapacitated by drugs, the person shall be placed in protective  
13 custody at a police station or transferred to a facility for substance abuse treatment. If evidence

14 from said test indicates that the person is not incapacitated by drugs, the person shall be released  
15 from custody forthwith. If evidence from said test is inconclusive, there shall be no presumption  
16 made based solely on said test. In such instance a reasonable test of coordination or speech  
17 coherency must be administered to determine if said person is incapacitated by drugs. Only when  
18 such test of coordination or speech coherency indicates said person is incapacitated by drugs  
19 shall he be placed in protective custody at a police station or transferred to a facility for  
20 substance abuse treatment.

21 (c) Any person presumed incapacitated by drugs and to be held in protective custody at a  
22 police station shall, immediately after such presumption, have the right and be informed of said  
23 right to make one phone call at his own expense and on his own behalf. Any person assisted by a  
24 police officer to a facility for substance abuse treatment under this section shall have the right to  
25 make one phone call at his own expense on his own behalf and shall be informed forthwith upon  
26 arriving at the facility of said right. The parent or guardian of any person, under the age of 18, to  
27 be held in protective custody at a police station shall be notified forthwith upon his arrival at said  
28 station or as soon as possible thereafter.

29 (d) If any incapacitated person is assisted to a police station, the officer in charge or his  
30 designee shall notify forthwith the nearest facility for substance abuse that the person is being  
31 held in protective custody. If suitable treatment services are available at a facility, the department  
32 of public health shall thereupon arrange for the transportation of the person to the facility.

33 (e) No person assisted to a police station pursuant to this section shall be held in  
34 protective custody against his will; provided, however, that if suitable treatment at a facility is  
35 not available, an incapacitated person may be held in protective custody at a police station until

36 he is no longer incapacitated or for a period of not longer than twelve hours, whichever is  
37 shorter.

38 (f) A police officer acting in accordance with the provisions of this section may use such  
39 force as is reasonably necessary to carry out his authorized responsibilities. If the police officer  
40 reasonably believes that his safety or the safety of other persons present so requires, he may  
41 search such person and his immediate surroundings, but only to the extent necessary to discover  
42 and seize any dangerous weapons which may on that occasion be used against the officer or  
43 other person present; provided, however, that if such person is held in protective custody at a  
44 police station all valuables and all articles which may pose a danger to such person or to others  
45 may be taken from him for safekeeping and if so taken shall be inventoried.

46 (g) A person assisted to a facility or held in protective custody by the police pursuant to  
47 the provisions of this section, shall not be considered to have been arrested or to have been  
48 charged with any crime. An entry of custody shall be made indicating the date, time, place of  
49 custody, the name of the assisting officer, the name of the officer in charge, whether the person  
50 held in custody exercised his right to make a phone call, whether the person held in custody  
51 exercised his right to take a test to determine incapacity, and the results of the test to determine  
52 incapacity if taken, which entry shall not be treated for any purposes, as an arrest or criminal  
53 record.

54 (h) This section shall not apply to any person whom the police have reasonable cause to  
55 believe has committed a misdemeanor, in addition to being incapacitated by drugs in a public  
56 place; nor to any person whom the police have reasonable cause to believe has committed any  
57 felony.