

HOUSE No. 4490

Section 73 contained in the engrossed Bill making appropriations for the fiscal year 2017 (see House, No. 4450), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment I of House, No. 4505). July 11, 2016.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to protective custody.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for protective custody, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

1 SECTION 1. Chapter 111B of the General Laws is hereby further amended by inserting
2 after section 8 the following section:-

3 Section 8A. Any person who is incapacitated for a reason other than the consumption of
4 intoxicating liquor may be assisted by a police officer, with or without the person’s consent, to
5 the person’s residence or to a facility. For purposes of this section, to determine whether or not a
6 person is incapacitated, the police officer may request the person to submit to reasonable tests of
7 coordination, coherency of speech and breath. Only when such tests indicate that the person is
8 incapacitated shall the person be placed into protective custody and immediately transferred to
9 the person’s residence or to a facility for treatment. Whenever a police officer assists a person

10 under the age of 18 in accordance with this section, the police officer shall notify the parent or
11 guardian of that person forthwith.

12 No person assisted in accordance with this section shall be held in protective custody at a
13 police station or against the person's will; provided, however, that a police officer may hold an
14 incapacitated person in protective custody while attempting to locate that person's residence or a
15 facility or when transporting an incapacitated person to that person's residence or a facility.

16 A police officer acting in accordance with this section may use such force as is
17 reasonably necessary to carry out the officer's authorized responsibilities. If the police officer
18 reasonably believes that the officer's safety or the safety of other persons present so requires, the
19 officer may search the person being assisted and that person's immediate surroundings but only
20 to the extent necessary to discover and seize any items or dangerous weapons which may, on that
21 occasion, pose a danger to the person, the officer or other persons present. Any items taken shall
22 be inventoried and returned to the person when the person is no longer incapacitated.

23 A person assisted in accordance with this section shall not be considered to have been
24 arrested or to have been charged with any crime. An entry of custody shall be made indicating
25 the date, time, place of custody, the name of the assisting officer and the name of the officer in
26 charge. No such entry shall be treated as an arrest or criminal record for any purpose.

27 SECTION 2. This act shall take effect as of July 1, 2016.