State of Vermont Agency of Human Services Department of Corrections	Title: **Incapacitated Persons (INCAPS)**		Page 1 of 10
Chapter (This will be assigned by PDU.)	**#306.01**	Supersedes #*306 Incapacitated Persons*, 08/26/1982	

Attachments, Forms & Companion Documents:

1. Incap Lodging/Discharge Form
2. Incap Protective Custody Check Sheet
3. Incap Special Observation Monitoring Sheet

Local Procedure(s) Required? Yes
Applicability: All staff (including contractors and volunteers).
Security Level:"B"- Anyone may have access to this document.

Approved:

Andrew A. Pallito, Commissioner	**August 19, 2010** **Date Signed**	**September 27, 2010** **Date Effective**

PURPOSE

This purpose of this administrative directive is to establish guidelines for the admission, management, and discharge of persons incapacitated as a result of their use of alcohol and/or other drugs, who are temporarily placed in the protective custody of the Vermont Department of Corrections under 33 V.S.A. § 702 and 708.

POLICY

It is the policy of the state of Vermont that substance abuse (alcohol and other drugs) is correctly perceived as a health and social problem -- rather than a criminal transgression against the welfare and morals of the public. Therefore, substance abusers shall not be subject to criminal prosecution solely because of their consumption of substances or other behavior related to substance abuse, which is not directly injurious to the welfare or property of the public. Therefore, a person judged by a law enforcement officer and evaluated by a designated substance abuse counselor or medical personnel to be incapacitated, and who has not been charged with a crime, may be lodged in a community correctional facility for up to 24 hours. (*33 V.S.A. §§ 701, 702, & 708.*) It is the policy of the Department of Corrections to oversee an incapacitated person who has been lodged in a correctional facility under protective custody with their health and safety in mind, consistent with the safe operation of the facility.

AUTHORITY

33 V.S.A. §§ 701, 702 and 708.

REFERENCES

Department of Health Alcohol & Drug Abuse Programs Administrative Procedures Act (APA) Rule *#86-016, Protective Custody Procedures for Incapacitated Public Inebriates, June 1986.*. National Commission on Correctional Health Care Standards for Health Services in Prisons, 2008, P-G-06. Federal HIPAA Privacy Standards.

DEFINITIONS

ADAP: Vermont State Division of Alcohol and Drug Abuse Programs (part of the Department of Health), which oversees the substance abuse teams who assess individuals for incapacitation and the need for protective custody.

Alcoholism: An addiction to the drug alcohol. It is characterized by:
1) chronic absence of control by the drug user over the frequency or the volume of his or her alcohol intake; and
2) inability of the drug user to consistently moderate his or her drinking practices in spite of the onset of a variety of consequences deleterious to his or her health.

Approved Substance Abuse Treatment Program: A treatment program which is approved by the Secretary of the Agency of Human Services through the VT Department of Health, Division of Alcohol & Drug Abuse as qualified to provide treatment for substance abuse.

Client: A person who is provided treatment services by an approved substance abuse treatment program, substance abuse crisis team, or a designated substance abuse counselor.

Close Observation: When DOC staff watch an incapacitated individual at staggered intervals not to exceed every 15 minutes.

Constant Observation: Continuous uninterrupted observation of an incapacitated individual by staff, who will document the individual's behavior and general condition at 15 minute intervals. (See *Attachment 3, Incaps Special Observation Form.)*

Contraband: Anything not specifically authorized to be in an inmate's possession; used in an unauthorized or prohibited manner; altered in any way; or in excess of allowable limits.

Designated Substance Abuse Counselor: A person approved by the Secretary of the Agency of Human Services to evaluate and treat substance abusers, pursuant to the provisions of statute.

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 includes monitoring and management of the physical and psychological effects of withdrawal, for the purpose of ensuring safe and rapid return of the individual to normal bodily and mental functioning.

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

1) appears to need medical care or supervision by approved substance abuse treatment personnel, as defined in statute, to ensure his or her safety; or
2) appears to present a direct active or passive threat to the safety of others.

Intoxicated: A condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of alcohol and/or other drugs in his or her system.

Law Enforcement Officer: An officer certified by the Vermont Criminal Justice Training Council as provided in sections 2355-2358 of 20 V.S.A., or appointed by the Commissioner of Public Safety as provided in section 1911 of 20 V.S.A.

Licensed Hospital: A hospital licensed under chapter 43 of 18 V.S.A.

Lodged: When an individual is brought into a correctional facility for protective custody due to incapacitation, after being transported to the facility by a duly authorized law enforcement officer.

Medical Care: Care, including mental health, provided to an incapacitated person to fulfill any need to prevent illness/disability, sustain life, and/or to sustain physical/mental health and well-being, provided by a person qualified under statute to do so.

Protective Custody: As defined by statute for purposes of incapacitated individuals only, 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, but is not necessarily limited to, physicians, physician's assistants, nurses, nurse practitioners, dentists, and mental health professionals.

Secretary: The Secretary of the Agency of Human Services or the Secretary's designee.

Substance Abuse Crisis Team: An organization approved by the Secretary to provide emergency treatment and transportation services to substance abusers pursuant to the provisions of statute.

Substance Abuser: Anyone who drinks alcohol or consumes other drugs to an extent or with a frequency which impairs or endangers his or her health or the health and welfare of others.

Treatment: The broad range of medical, detoxification, residential, outpatient, aftercare, and follow-up services which are needed by substance abusers, and may include a variety of other medical, social, vocational, and educational services relevant to the rehabilitation of these persons.

PROCEDURAL GUIDELINES

According to statute, the Department of Corrections is required to accept for lodging those individuals over 18 who have been evaluated by appropriate substance abuse personnel, or medical staff at an emergency room, and determined incapacitated and in need of protective custody. It is the Department's responsibility to provide safe housing and basic services to these individuals within its correctional facilities during the short term that they are lodged, no longer than 24 hours.

1. Assessment of an Individual as Incapacitated Prior to Lodging at a Correctional Facility

a. Persons brought to correctional facilities under 33 V.S.A. §§ 702 and 708 will be accepted only after they have been properly screened and evaluated by a substance abuse crisis team, a designated substance abuse counselor, a clinical staff person of an approved substance abuse treatment program with detoxification capabilities, or a professional medical staff person at a licensed general hospital emergency room and found to be incapacitated (33 V.S.A. §708(e).)

b. However, if the individual is observed during the lodging process to be in need of medical care independent of their incapacitation, or in danger of imminent self-harm, they will not be accepted for protective custody lodging.

c. Correctional staff will not accept the individual without a completed and signed substance abuse team evaluation form indicating that appropriate screening has occurred, and the individual has been determined to be incapacitated. Staff will review for completeness the signed form which is provided by law enforcement personnel. It must certify 1) that the individual has been determined to be incapacitated, and 2) that a less restrictive and safe environment is not available according to the law enforcement personnel bringing the individual for protective custody lodging.

d. If an individual under the age of 18 is brought to a correctional facility as an incapacitated person to be lodged under protective custody, correctional staff will not accept the individual. The facility Superintendent will then notify the Director of the Division of Drug and Alcohol Programs, per statute.

2. Facility Screening/Admission

a. Booking staff will notify the Shift Supervisor and facility qualified health care professional (QHCP) when an incapacitated person is being lodged.

b. If the Shift Supervisor believes that the incapacitated person should not be accepted for lodging due to immediate medical/mental health issues necessitating treatment or further evaluation at a hospital, they will:

i. Ask the law enforcement authority who brought the individual to the facility to transport them to a hospital; or

ii. Call emergency medical services for a medical transport.

c. Personal Property

Staff will, upon lodging the incapacitated person:

i. Remove any unauthorized property from them;

ii. Write up a list of the property, per procedure;

iii. Maintain the property in a secure place while the individual is in protective custody; *and*

iv. Return the property to the individual upon their release.

d. Searches of Incapacitated Persons: Individuals admitted as incapacitated persons may be subject to the following searches:

i. Staff may pat search an incapacitated person's outer clothing or may direct removal of items in pockets according to current training regulations. A pat search shall be conducted by a staff member of the same gender as the incapacitated person except when circumstances are such that delay would jeopardize the safety of the incapacitated person or staff member.

ii. Staff will not strip search an incapacitated individual unless reasonable suspicion exists that the person is concealing contraband, or if they are suicidal or self-harming. If the admitting officer believes that reasonable suspicion exists, the Shift Supervisor shall be notified. The Shift Supervisor shall decide if reasonable suspicion exists and, if so, may give permission for the strip search. The Shift Supervisor shall then file an incident report to document the facts which support the decision to conduct a strip search.

e. During the lodging process correctional staff will call the Department-contracted qualified health care professional to assist in the initial facility screening of the individual to ensure that there are no urgent or emergent medical needs or problems.

i. The QHCP may make the decision that the person needs to be transported to a hospital or emergency treatment facility due to medical/mental health instability.

ii. The QHCP will notify the Shift Supervisor immediately of the above (i.).

iii. Nursing staff will then communicate with the emergency room.

iv. The Shift Supervisor will contact the law enforcement authority who delivered the incapacitated person to the facility to request assistance with the transfer, unless emergency medical service is needed, in which case that service will be called.

v. If emergency medical services transports the person to the hospital, DOC security staff will follow in a State vehicle.

vi. If the hospital requests DOC security staff to remain at the hospital until the incapacitated person is released, they will do so.

f. If the incapacitated person has illicit drugs or other illicit substances in their possession when they are lodged, staff will remove the substances from the individual and contact the law enforcement authority who brought them to the facility to take possession of the substances.

g. If possible, Booking staff will place the incapacitated individual in a cell or area separate from offenders who are not lodged on protective custody status for incapacitation. This should continue during their entire time in the facility.

h. Booking staff will check the Department database to determine whether the incapacitated person is currently under DOC supervision; if so, staff will contact the Probation & Parole office supervising the individual.

i. Booking staff will also check to see if any outstanding warrants exist against the person, and if so, staff will call the law enforcement authority that brought the individual to be lodged.

3. Department Management and Observation

a. Incapacitated persons must be monitored while they are housed at a correctional facility. These individuals are susceptible to unexpected medical emergencies and are at increased risk for accidental or intentional self-harm. They should be placed in an area where they can be observed for signs that suggest this possibility.

b. After the QHCP has screened the individual and found no urgent or emergent medical issues requiring attention, the Shift Supervisor will place the incapacitated person on 30 minute checks, unless a decision is made to keep them on 15 minute checks or constant observation for medical/mental health reasons. Staff will fill out the *Incap Protective Custody Check Sheet (Attachment 2)* and the *Incap Special Observation Monitoring Sheet* (*Attachment 3*) if the individual is under special observation.

c. If at any time during the period that the incapacitated person is lodged at the facility there is a medical need, Department staff will administer appropriate emergency first aid in keeping with their training, and call a QHCP immediately. The QHCP will give emergency medical care, and emergency responders will be called to come to the facility.

4. Discharge

a. Individuals lodged at a correctional facility under 33 V.S.A §§ 702 and 708 will be kept in custody only as long as necessary to fulfill statutory intent, not to exceed 24 hours.

b. The timing of release for incapacitated persons includes the following criteria, whichever comes first:

i. A determination is made that the individual is no longer incapacitated (see Definitions), or

ii. The arrival at the facility of a person who will assume responsibility for the individual, or

iii. The passage of 24 hours.

c. Staff will attempt to notify a family member(s), if relevant, and request that they accept custody, unless the person in custody requests otherwise.

d. A person who accepts custody of the individual who was lodged as an incapacitated person:

i. Must be 18 years of age or older; and
ii. Must not be observably impaired; and
iii. If they are under DOC supervision, it would not be a violation of any DOC-imposed or Court conditions of their supervision to accept custody of the individual.

e. Staff will contact the screening agency that signed the evaluation form accompanying the incapacitated person, informing them of the imminent release of the individual under protective custody. If the screening agency says they are not coming in to meet with the individual before release, staff will complete an Incident Report.

f. If in the judgment of Department staff the lodged individual is still incapacitated after 24 hours, the Shift Supervisor will ensure that emergency responders will be called to take the person to a licensed hospital or an approved substance abuse treatment program.

5. Confidentiality – Information obtained about an individual lodged as an incapacitated person is confidential.

TRAINING

It is the responsibility of the Facility Superintendent to ensure that all affected staff are trained in this administrative directive and its procedural applications. It is the responsibility of the Facilities Executive in collaboration with the Health Services Director to work with the Human Resources Development Unit to develop training.

QUALITY ASSURANCE

a. Department of Corrections' Quality Assurance staff will collaborate with Facility Superintendents where incapacitated persons may be lodged to ensure there is a quality assurance component to the implementation of this administrative directive.

b. Superintendents will ensure that all current local procedures on incapacitated individuals are revised to be in compliance with this administrative directive.

c. The Director of Health Services and staff from Quality Assurance will review all data on incapacitated persons on an annual basis.

d. The Director of Health Services and the Facility Executive or designees will review any significant incidents involving an incapacitated person. These may also be subject to review by the Vermont Department of Corrections Health Services Division Quality Improvement Committee.

ATTACHMENT 1 – SAMPLE

PROTECTIVE CUSTODY OF AN INCAPACITATED PERSON LODGING & DISCHARGE FORM

SECTION I: LODGING/INTAKE

Facility: _____ Date & Time Brought In: _____

Detaining Officer & Agency that Brought Incap: _____

_____

Screening Form completed by Alcohol Crisis Team member & signed: YES [ ] NO [ ]

Shift Supervisor notified of arrival: [ ] _____

Incap accepted by DOC: [ ] YES Time: _____ By Whom? _____

[ ] NO Reason not accepted:

_____

QHCP notified of arrival of Incap: [ ] Date & Time: _____

By Whom: _____

Medical Screening completed: Date & Time _____

QHCP: Medically OK to hold [ ] YES [ ] NO

Incap sent to ER [__] _or Other Site [__]: _____

Who authorized above? _____

Transported by whom? _____ Time: _____

Location Incap Placed in Facility: _____

Drug [ ] or Alcohol [ ] Incapacitation? Both [ ] *(Check box)*

BAC: _____ If not obtained, briefly state reason: _____

_____

Incap put on 30 minute checks [ ] 15 minute checks [ ] or constant observation [ ].

(*Fill out Incap Special Observation Form, Attachment 3.*)

Family member ☐ Other ☐ Called by DOC: _____ Date & Time: _____

If released to same (see **Discharge Section.**)

DOC Staff Signature: _____

SECTION II: INCAP DISCHARGE

Mr./Mrs./Ms._____ DOB: _____
is being released from protective custody due to the occurrence of one or more of the following:

A. [ ] The passage of 24 hours since their lodging under statute, *or*

B. [ ] The arrival at the facility of a person willing to accept custody of the individual, *or*

C. [ ] A determination has been made that the individual is no longer incapacitated.

BAC at time of discharge: _____

[ ] Individual released to Emergency Responders or approved substance abuse treatment program if staff judges them still incapacitated after 24 hours.

Property returned to Incap (*if relevant*): YES [ ] NO [ ]

Medication(s) returned to Incap (*if relevant*) – either A or C above. YES [ ] NO [ ]

Medication(s) returned to adult accepting custody of the individual – B above. YES [ ] NO [ ]

Staff member authorizing release: _____
Date: _____ Time: _____

Released: To Responsible Adult [____] Name of Adult: _____
Transport Arranged [ ] _____

No Arrangements [ ] _____Date:_____ Time: _____

Substance Abuse Screener evaluated Incap on site before discharge? YES [ ] NO [ ]
Date_____ Time_____

(Print name & signature of screener)_____

Signature of Incap: _____

Signature of DOC Staff Releasing Incap: _____

Date of Release: _____ Time of Release: _____

ATTACHMENT 2 – SAMPLE

INCAP PROTECTIVE CUSTODY CHECK SHEET

Incap Name:_____Date:_____Time:_____

Note: Checks shall be completed at least every 30 minutes at staggered intervals. (Incaps on suicide watch or with medical/mental health precautions shall be monitored more frequently by use of the Special Observation Monitoring Sheet.)

Time	Comment/Observation	Officer/Staff	Time	Comment/Observation	Officer/Staff

Date Completed: _____

Supervisor Review:_____ _____

Signature ***Date***

ATTACHMENT 3 - SAMPLE

INCAP SPECIAL OBSERVATION MONITORING SHEET

Incap Name: _____ Facility: _____

Date: _____

Type of Observation: **Suicide/Self Harm** ☐ **Mental Health** ☐ **Medical** ☐ **Other** ☐

Start Date:	Start Time:	Cell Location:	Discontinuation Date/Time:

Observation Conditions	
	CLOSE OBSERVATION - Physical checks at staggered intervals not to exceed every 15 minutes (e.g., 5, 10, or 12 minutes)
	CONSTANT OBSERVATION – Continuous uninterrupted observation
	Special Accommodations:

Codes for Incap Behavior and Staff Interaction

A. Quiet
B. Appears to be Asleep
C. Agitated Behavior
D. Destructive Behavior
E. Eating
F. Threatening Behavior
G. Out of Cell Activities
H. Other

Time	Incap Behavior	Correctional Officer	Time	Incap Behavior	Correctional Officer	Time	Incap Behavior	Correctional Officer

Shift Supervisor's Signature: _____ Date: _____ Time: _____
(Each shift)