



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

5 E. PINE STREET
GEORGETOWN, DELAWARE 19947
TELEPHONE: (302) 856-5871
FAX: (302) 856-5919

2 PENNS WAY
SUITE 100 B
NEW CASTLE, DELAWARE 19720
TELEPHONE: (302) 323-4530

ALAN G. DAVIS
CHIEF MAGISTRATE

LEGAL MEMORANDUM 98-232 (2nd Supplement)

TO: ALL JUSTICES OF THE PEACE COURT EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE *AGD*

DATE: JULY 14, 2025

**RE: ARRAIGNMENT OF PERSONS WHO HAVE BEEN DRINKING
OR USING DRUGS**

SCOPE

This Legal Memorandum further clarifies how to proceed when a defendant is intoxicated. With an understanding of the many ramifications that a commitment to the Department of Correction has upon a defendant, the Justice of the Peace shall use an individualized analysis and determination of each defendant's capacity to knowingly and intelligently participate in the presentment AND of any available alternatives to an "Intox Hold." If the Justice of the Peace determines that a commitment to the Department of Correction is reasonable and appropriate, an individualized determination shall also be made in scheduling for the earliest time possible for the presentment, within the constraints of the Department of Correction's availability.

Ordering secured or cash bail is no longer necessary for committing a defendant on an Intoxication Hold. When a judge orders an Intoxication Hold, the clerk will click on a new bail type designated as "I" for INTOX HOLD. This will prompt a specialized "Intox Hold Commitment" to print.

DISCUSSION

As discussed in LM 98-232 (1st Supplement) Revised, the judge **must see and speak with** every intoxicated person in police custody prior to making a “determination of incapacity.” The judge may determine that, even though the person has consumed alcohol or used drugs, they are able to knowingly and intelligently participate in the proceeding.

If the judge releases the defendant on unsecured or own recognizance bail, the arresting officer may be able to drive the defendant home or locate someone willing to take custody of the defendant (a co-signer.) Whenever possible and reasonable, the options of officers driving a defendant home or finding a person willing to take custody of the intoxicated defendant are preferable to an Intoxication Hold due to the possible negative ramifications of Intoxication Holds, such as loss of employment, harm to children or other dependents, etc. The judge should appropriately schedule the next court events and provide the arresting officer with a copy of the bonds for the defendant AND a copy for the person taking custody of the defendant.

However, the judge may determine that an “Intoxication Hold” with a scheduled arraignment and conditions other than financial conditions is reasonable and appropriate (i.e. release to a co-signer). Secured financial conditions of bail are no longer necessary for an intoxication hold. This change provides equity throughout the State in the treatment of defendants who are intoxicated. Currently, defendants are not incarcerated when they are intoxicated when the arresting agency has lock-up availability with a “turn key” officer, but defendants are incarcerated when they are intoxicated when the arresting police department has limited availability of holding facilities or officers.

When the judge determines that the person is “**unable** (*emphasis added*) to knowingly and intelligently participate in the presentment proceedings as a result of the consumption of alcohol or the use of drugs,”¹ the defendant is to be seen **within** 12 hours of their commitment by a judge in the 16-hour or 24-hour court location in the county in which the offense allegedly occurred, unless good cause is shown for a delay not to exceed an additional 24 hours.²

The judge ordering the Intoxication Hold should always **schedule the presentment in as short a period of time** as they determine to be necessary. Delaware statute determines the **maximum** time period permitted. Judges themselves determine the time period for which a presentment should be scheduled based upon an individual analysis of the defendant’s mental acuity. The defendant’s blood alcohol content (BAC) level is indicative of the defendant’s motor abilities but may not be indicative of their cognitive abilities. Logically, if a BAC level was *always* indicative of a person’s cognitive abilities, bringing the person before a judge for a determination of the person’s ability to knowingly and intelligently participate would be unnecessary. The Court would

¹ LM 98-232 (1st Supplement) Revised.

² 11 Del. C. § 1909(b)

only be required to rely solely upon the BAC information provided by the officer to make determinations on intoxication holds.

The Department of Correction (DOC) may not be able to present the defendant held on an “Intox Hold” when the judge initially determines that the defendant would be sober for presentment.³ If a defendant will be held longer than the 12-hour statutory limit, the judge shall either:

1) Document the “good cause” why the defendant cannot be seen within 12 hours. A defendant held on an Intox Hold longer than 12 hours should be given priority as much as possible by the judge coming on shift; or

2) Order that the defendant be brought before the Court at an earlier time to align with the DOC facility’s availability, for another determination of the defendant’s ability to knowingly and intelligently participate in the presentment.

REMINDER: If the penalty for the charge does not include jail time, the person should **NOT** be committed on an Intox Hold, “as this raises constitutional concerns.”⁴

cc: Hon. Collins J. Seitz, Jr.
Hon. Kathaleen S. McCormick
Hon. Eric M Davis
Hon. Carl Danberg
Hon. Michael K. Newell
Alderman's Courts
Gale Lafferty, Court Administrator
Elizabeth Petrick, Justice of the Peace Court Administrator
Stephanie Parker, Justice of the Peace Deputy Court Administrator
Rebecca Trifillis, Justice of the Peace Court Staff Attorney
Nathan Kingree, Justice of the Peace Court Staff Attorney
Lauren Ellis, Operations Manager
Roger Roof, Operations Manager
Orlando Harper, Chief of Uniformed Services
Erika Shreve, Justice of the Peace Court Truancy Coordinator

³ Delays may be due to staffing shortages, prison lockdowns, medical issues the defendant is experiencing, etc.

⁴ LM 98-232 (1st Supplement) Revised, p. 3.