


| | | | | | |
|---|---|--------------------------------|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health OMH Official Policy Manual | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 1 of 11 | Section # QA-530 |
| | Section: Quality Assurance-Reporting and Investigation | | | | |
| | Directive: Reporting Requirements for Events Which May Be Crimes | | | | |

A. Policy Statement

Directors of State operated psychiatric facilities have a statutory duty to notify the local district attorney or other appropriate law enforcement officials when it appears that a crime may have been committed at the facility. (Mental Hygiene Law §7.21(b)). Furthermore, licensed providers (including State operated outpatient clinics and residential programs), are required as a term and condition of licensure to report crimes that appear to have been committed against their patients, regardless of where the crime was allegedly committed (Mental Hygiene Law §31.11). This obligation is simply stated.

However, satisfaction of this obligation in a manner which best promotes the common objectives of the mental health and criminal justice systems is more complicated. Because facilities and law enforcement share an interest in protecting the safety and well-being of patients, employees, and visitors, positive working relationships between mental health and law enforcement professionals are essential in assuring that serious crimes are appropriately prosecuted.

The purpose of this policy directive is to provide guidance to State operated psychiatric facilities with respect to the statutory obligation to notify law enforcement authorities when it appears that a crime may have been committed at the facility, or against a patient receiving services in a licensed State operated setting.


B. Relevant Statutes and Standards

Mental Hygiene Law, Sections 7.21(b), 31.11, 33.13
45 C.F.R. Section 164.512.(f)
New York State Penal Law
OMH Policy Manual, QA-510, Clinical Risk Management & Risk Management Plans
OMH Policy Manual, QA-515, Reporting Requirements for Alleged Child Abuse and Neglect

C. Definitions

The following definitions include descriptions of general terms used throughout this directive, as well as events which would be crimes under New York State law. This is not an exhaustive list, but it does capture the most common crimes. Note that some definitions differ slightly from those found in OMH Official Policy directive QA-510, Clinical Risk Management and Risk Management Plans. This is because not all incidents are necessarily crimes and some crimes are not incidents because they do not involve patients. In most cases, involvement of a patient is not relevant to the definition of a crime.

- 1) Aggravated Assault - an assault which causes a serious physical injury: an assault with a deadly weapon.
- 2) Arson - recklessly or intentionally causing damage to a building or motor vehicle by intentionally starting a fire or causing an explosion.
- 3) Assault - a physical attack resulting in injury.
- 4) Burglary - unlawfully entering or remaining in a building with the intention to commit a crime.


| | | | | | |
|--|---|---|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 2 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

- 5) Credible Evidence - evidence that is worthy and capable of being believed, based on facts which have been established that would lead a person exercising ordinary care and prudence to conscientiously entertain a belief that a crime may have been committed.
- 6) Event - any activity on the facility grounds, including incidents, which may be a crime.
- 7) Homicide - a death of another person apparently caused by an assault or other act by any individual.
- 8) Homicide Attempt - an assault or other act by an individual which was apparently intended to kill another person.
- 9) Incident - an untoward event which adversely affects the well-being of a patient or patients.
- 10) Larceny - intentionally taking, obtaining, or withholding property from its rightful owner.
- 11) Possession of a Deadly Weapon - unauthorized possession of a firearm; possession of a concealed knife or switchblade.
- 12) Possession or Sale of Controlled Substances - unlawful possession or sale of a controlled substance, including cocaine, heroin or other controlled substance, as defined in Article 33 of the Public Health Law,.
- 13) Robbery - forcibly stealing the property of another person by using or threatening the use of physical force.
- 14) Sexual Assault - a sexual attack, rape, or rape attempt; any sexual contact (i.e., any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desires of either party) between a person who is 18 years old or more and a person who is less than 14 years old, or between a person who is 21 years of age or older and a person who is less than 17 years old; any non-consensual sexual contact involving a patient; any sexual contact between a patient and a staff member.
- 15) Staff Member - any employee, consultant, volunteer, or care provider working in a program under the auspices of a State operated psychiatric facility.

D. Body of the Directive

This policy directive consists of seven components:

- 1) Initial Reports
- 2) Investigations
- 3) Recommendations to Law Enforcement Authorities Regarding Police Investigations or Prosecution of Criminal Offenses.
- 4) Filing of Criminal Complaints
- 5) Privacy of Patients


| | | | | | |
|--|---|---|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 3 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

- 6) Agreements with Local Law Enforcement Authorities
- 7) Consultation with Counsel
- 1) Initial Reports
 - a) If a facility director or designee has credible evidence that a crime may have been committed at the facility or against a patient receiving services from a licensed State-operated program, s/he must notify appropriate law enforcement authorities, in accordance with the following:
 - (i) an investigation will be commenced immediately and a criminal complaint will be filed with law enforcement within 24 hours of discovery if it appears, given information reasonably available to facility staff at the time, that the apparent crime includes an employee, intern, volunteer, consultant, contractor, or visitor and:
 - (A) has caused physical injury;
 - (B) subjected the patient to unauthorized sexual contact;
 - (C) endangered the welfare of an incompetent or physically disabled person pursuant to Penal Law Section 260.25¹; or
 - (D) appears to be a felony under state or federal law.²
 - (ii) all other types of apparent crimes shall be investigated in accordance with OMH Official Policy directive QA-510 and reported to law enforcement as soon as possible, and in any event within 3 working days.
 - b) Any sexual contact between a patient and a staff member is considered a sexual assault and should be reported as a crime. Sexual contact between patients should be reported if there is credible evidence that either patient participated unwillingly. As

¹ § 260.25 Endangering the welfare of an incompetent or physically disabled person

A person is guilty of endangering the welfare of an incompetent or physically disabled person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect. Endangering the welfare of an incompetent or physically disabled person is a class A misdemeanor.

² Examples of crimes which are likely to require immediate, within 24 hours reporting include: assault, aggravated assault, homicide, homicide attempt, sexual assault, possession or sale of narcotics, possession of a deadly weapon, burglary, larceny, and robbery. This is only a partial list; a more complete listing, and definitions of crimes can be found in the New York State Penal Law, and some crimes are defined in other statutes. In questionable cases, the facility should contact the Office of Counsel for advice about whether a particular incident or event may be a crime, and whether or not it requires immediate 24 hour reporting or should be reported within 3 working days

| | | | | | |
|--|---|---|----------------------|------------------------|----------------------------|
|  New York State omh Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 4 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

required in Policy Directive QA-510, the capacity of each patient to understand the nature of his or her actions and to voluntarily engage in sexual conduct should be clinically evaluated. If either patient lacks such capacity, the incident should be reported to the police, with a recommendation regarding the appropriateness of police involvement.


- c) Reports of serious events requiring immediate police involvement should be made by telephone.
- d) Reports of less serious events may be made by forwarding to the police a copy of an incident report or safety officer report, or other written communication acceptable to local law enforcement authorities.

2) Investigations

- a) All incidents must be investigated as required and in accordance with OMH Official Policy directive QA-510. The facility Safety Department should be involved as appropriate.
- b) All events on facility grounds or in facility buildings which may be crimes but which do not involve patients should be investigated by the facility Safety Department and reported to law enforcement as required in this policy directive and OMH Official Policy directive QA-510, as indicated.
- c) The timing of a report to the police may vary in accordance with the severity of the event or incident. Those events which do not involve the conduct identified in Section D)1)a)i) of this policy directive, especially those in which patient privacy is an issue, may be investigated somewhat before a decision to notify law enforcement authorities is made to allow a more informed determination of whether credible evidence of a crime exists. This determination should be made as soon as possible, within three working days.
- d) Law enforcement may wish to direct the investigation of apparent crimes that require immediate reporting in accordance with this directive. In those instances, the facility should defer to the police, and cooperate in their investigation.

3) Recommendations to Law Enforcement Authorities Regarding Police Investigations or Prosecution of Criminal Offenses

In many cases, police investigation, arrest and prosecution may not promote law enforcement interest, may disrupt hospital operations, and, most importantly, could traumatize and harm patients. In addition, there may be cases when a delusional patient insists on filing criminal charges against another patient or a staff member when there is no cause to believe that a crime has been committed. The psychiatric facility should inform local law enforcement officials when it believes that clinical considerations warrant discretion in investigating an allegation of criminal conduct or deciding whether to prosecute on a criminal offense. Conversely, there may be cases that the facility believes should be vigorously pursued by police and prosecutors. Guidelines for making these recommendations should be discussed with law enforcement authorities, as described in Section 6 of this directive.

| | | | | | |
|--|---|---|----------------------|------------------------|----------------------------|
|  New York State omh Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 5 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

4) Filing of Criminal Complaints

- a) Patients and staff members have the independent right to file criminal complaints. Exercise of this right shall not be impeded by the facility.
- b) In the event that a criminal complaint is filed against a patient, the Mental Hygiene Legal Service shall be informed.
- c) The facility may inform local law enforcement authorities if the facility believes that there is a lack of credible evidence to support a complaint, or if a patient lacks the capacity to make a sworn oath in support of a complaint.


5) Privacy of Patients

Section 33.13 of the Mental Hygiene Law requires that individuals or organizations which receive information about psychiatric patients preserve the confidentiality of that information. Local law enforcement authorities should be asked to establish confidential files of psychiatric facility reports, and of their investigations of allegations of criminal conduct involving patients. Until such time as criminal charges are actually filed, the identity of any patient should not be a public record.

6) Agreements With Local Law Enforcement Authorities


Local police and district attorneys have legitimate interests regarding the investigation of criminal activities and the processing of criminal complaints. District attorneys have the right to exercise discretion regarding the prosecution of offenses. In turn, psychiatric facilities have reasonable concerns about the effect of a police investigation or criminal prosecution on vulnerable patients, the need to maintain a safe and therapeutic environment, and the need to protect patient privacy. Facility directors should meet with local police authorities and local district attorneys to discuss issues relating to the reporting of criminal conduct on the grounds of State operated psychiatric facilities. Facilities should seek agreement with law enforcement officials regarding:

- a) the types of incidents about which law enforcement authorities wish to be informed;
- b) the means of reporting incidents;
- c) the procedures for investigating serious incidents;
- d) the means of preserving evidence of serious incidents;
- e) the circumstances under which the police will rely on the psychiatric center's investigation of an incident;
- f) police access to wards, checking of weapons, and service of warrants;
- g) the suspension of disciplinary proceedings pending prosecution of criminal offenses;

| | | | | | |
|--|--|---|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health <hr/> OMH Official Policy Manual | Date Issued: 12/5/12 | T.L. 12-09 | Page 6 of 11 | Section # QA-530 |
| | | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

- h) the identification of specific persons who can act as liaison between the psychiatric facility, the police and the district attorney;
 - i) the maintenance of the confidentiality of the identity of patients and the confidentiality of clinical information about patients, as required by Mental Hygiene Law §33.13;
 - j) the procedures for the filing of criminal complaints;
 - k) the means of enabling the psychiatric facility to make recommendations to law enforcement authorities regarding the conduct of police investigations or the prosecution of criminal offenses; and
 - l) any other matters of local importance.
- 7) Consultation with Counsel

In the event that a facility director, Administrator on Duty, or other responsible person has a question about his or her obligation to notify law enforcement authorities of an incident, s/he should contact the Office of Counsel at (518) 474-1331.

| | | | | | |
|--|--|---|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health OMH Official Policy Manual | Date Issued: 12/5/12 | T.L. 12-09 | Page 7 of 11 | Section # QA-530 |
| | | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

MEMORANDUM OF UNDERSTANDING

-between-

(Facility Name(s))

-and-

(Law Enforcement Names (e.g., Local Police Department and District Attorney)

-regarding-

REPORTING AND INVESTIGATION OF CRIMINAL COMPLAINTS

This Memorandum of Understanding is entered into by and between the following NYS Office of Mental Health Psychiatric Center(s): *(identify facility name and address)*


hereinafter referred to as "Facility") and *(identify name of local police and District Attorney)*

hereinafter referred to as "Law Enforcement."

WITNESSETH:

WHEREAS persons with mental illness have the right to be free from abuse by staff and other residents while receiving care at facilities of the Office of Mental Health (NYS Mental Hygiene Law §33.02); and

WHEREAS, the NYS Office of Mental Health is charged with ensuring that persons with mental illness receive high quality care and that the safety and well-being of persons served are of the highest priority; and

| | | | | | |
|---|---|---|----------------------|------------------------|----------------------------|
|  New York State Office of Mental Health OMH Official Policy Manual | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 8 of 11 | Section # QA-530 |
| | | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

WHEREAS, pursuant to NYS Mental Hygiene Law §7.21(b), Executive Directors of facilities of the Office of Mental Health have an obligation to notify law enforcement officials when it appears that a crime may have been committed on the grounds of a facility; and

WHEREAS, Facility and Law Enforcement share an interest in protecting the safety and well-being of patients, employees and visitors in assuring that serious crimes are appropriately investigated and prosecuted; and

WHEREAS, Facility and Law Enforcement agree that with respect to minor criminal offenses when clinical considerations outweigh law enforcement interests, and the safety and well being of patients, employees and visitors are not at significant risk, it may be inappropriate to obligate law enforcement resources; and


WHEREAS, Facility is a “covered entity” for purposes of 45 C.F. R. Parts 160, 164 (the HIPAA Privacy Rules) and is therefore bound by the provisions of these rules; and

WHEREAS, Facility wishes to ensure that all Protected Health Information received or created from, for or on behalf of the Facility is in accordance with all applicable state and federal laws, including, without limitation, NYS Mental Hygiene Law §33.13 and the HIPAA Privacy Rules, and associated Office of Mental Health policies and procedures; and

WHEREAS, pursuant to both State law and the HIPAA Privacy Rules, Facility may disclose Protected Health Information to a law enforcement official, for law enforcement purposes, including in response to a law enforcement official’s request for such information to identify and locate a suspect, fugitive, material witness, or missing person; and/or to a district attorney, when the request for information is in connection with and in to the furtherance of a criminal investigation of patient abuse (NYS Mental Hygiene Law §§7.21(b); 33.13(c)(9)(ii), (vi); 45 CFR §164.512(f) (1),(2),(3); OMH Official Policy Directive QA-530); and

WHEREAS, pursuant to the HIPAA Privacy Rules, Facility may use and disclose protected health information without individual authorization to the extent the disclosure is required by law, including by statute, regulation, or court orders.(45 C.F.R. § 164.512(a)); and

WHEREAS pursuant to NYS Mental Hygiene Law §7.21(b), if it appears that a crime may have been committed, the director of a Facility is required by law to give notice to the district attorney or other appropriate law enforcement official as soon as possible and in any event within 3 working days, provided, however, that immediate (or in any event, within 24 hours), notification must be provided when it appears that the crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the conduct causes physical injury, or the patient was subject to unauthorized sexual contact; or the crime endangers the welfare of an incompetent or physically disabled person, pursuant to Penal Law Section 260.25; or the crime was a felony under state or federal law; and

| | | | | | |
|--|---|---|----------------------|------------------------|----------------------------|
|  New York State omh Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 9 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

WHEREAS, Facility and Law Enforcement wish to identify those actions that Facility and Law Enforcement mutually agree should be referred to Law Enforcement for potential criminal investigation and the means by which Law Enforcement will assist Facility in ensuring that Law Enforcement response to such referrals is appropriate;

NOW THEREFORE, in consideration of the mutual rights and obligations set forth herein, the parties agree to the following:

1. For purposes of this Agreement, a crime is defined as an event which is or appears to be a crime as defined by the Penal Law of the State of New York, or any Federal Law. Crimes include but are not limited to the following: arson, assault, homicide, possession of a deadly weapon, possession and/or sale of narcotics and controlled substances, robbery or sex offense.


2. Reporting:

(a) The Facility Safety Department shall immediately investigate and will file a criminal complaint within 24 hours of discovery, when it appears that a crime has been committed on Facility grounds and it further appears, given information reasonably available to Facility staff at the time, that the apparent crime includes an employee, intern, volunteer, consultant, contractor, or visitor and the conduct has caused physical injury, or a patient was subjected to unauthorized sexual contact; or the apparent crime endangered the welfare of an incompetent or physically disabled person, pursuant to Penal Law Section 260.25; or the crime appears to be a felony under state or federal law. Upon the next business day, Facility will notify by telephone the applicable District Attorney's office, with follow-up dispatch of a copy of the criminal complaint, as requested. Specific information (e.g., form and format of filed reports, telephone numbers, other procedures/protocols, etc.) to facilitate the implementation of this paragraph follows below:

(b) All other types of apparent crimes shall be investigated by the Facility Safety Department in accordance with OMH Official Policy directive QA-510 and reported to Law Enforcement within 3 working days.

(c) If a matter reported to Law Enforcement under the notification protocols does not result in prosecution, the matter will be timely referred back to Facility for any action it deems appropriate.

3. The scene of any apparent crime that requires immediate notification to the police will be protected and maintained undisturbed to the extent possible until the arrival of the police.

| | | | | | |
|--|---|---|----------------------|-------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 10 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

4. The Facility Risk Management and Safety Departments and Law Enforcement will cooperate fully under applicable laws and regulations in furtherance of any criminal investigation.

5. The identity of patients and any confidential information about such patients obtained in the course of police investigation *prior to arrest* shall not constitute a public record and shall not be disclosed. Similarly, it is understood that records of criminal proceedings against patients *after an arrest is made* may be a matter of public record.

6. The parties have designated the following individuals to act as Liaison Officers:


Police:

District Attorney:

Psychiatric Center(s):

7. The parties to this Agreement will maintain lines of communication with each other so that consultations on specific cases can be timely held. When clinical considerations warrant limiting police investigations or justify a decision against prosecution of an act which may be a crime, Facility clinical staff will so advise Law Enforcement. Such clinical opinions will be taken into consideration during the course of an investigation by Law Enforcement.

8. Individual patients or employees of the psychiatric center may wish to file criminal complaints in some cases for which Facility has determined Law Enforcement notification is not warranted.

| | | | | | |
|--|---|---|----------------------|-------------------------|----------------------------|
|  New York State Office of Mental Health | State of New York Office Of Mental Health | Date Issued: 12/5/12 | T.L. 12-09 | Page 11 of 11 | Section # QA-530 |
| | <hr/> OMH Official Policy Manual | Section: Quality Assurance-Reporting and Investigation | | | |
| | | Directive: Reporting Requirements for Events Which May Be Crimes | | | |

These individuals will be referred the Facility Safety Department, who will facilitate them in pursuing their complaint in the proper manner. Facility may also inform Law Enforcement if it appears there is a lack of credible evidence to support a complaint. Nothing in this Agreement will be construed to limit the right of a person to make a complaint directly to Law Enforcement.

9. Warrants for the arrest of any inpatient of Facility will be delivered to the Facility Safety Office. In the event that a patient's clinical condition precludes an arrest or court appearance, Law Enforcement will be so informed. In such a case, service of the warrant on the patient will be deferred, arraignment on the charges deferred, or other action will be taken by Law Enforcement to defer criminal proceedings.

10. Nothing herein shall be deemed to restrict or impair the statutorily authorized jurisdiction of any Party hereto.

11. If staff of the Facility or Law Enforcement are dissatisfied with any aspect of their working relationship, the liaison officers will attempt to resolve the problem. When necessary, the Facility director, police chief, or district attorney will be asked to help to resolve a dispute.

12. This Agreement shall remain in effect until a Party requests alteration or cancellation. It may be revised at any time whenever conditions may require written Agreement of the parties. This review will be done by the liaisons with a report given to the principal signatories.

13. The Parties agree to use any information obtained under this Agreement only as necessary to properly discharge the obligations provided hereunder.

14. This Agreement may be revised at any time upon written consent of the Parties.

15. Any Party may withdraw from this Agreement after providing 60 days' prior written notice to all Parties. Such notice shall contain the rationale for the intended action and shall schedule a meeting among the parties within 30 days for the purpose of review of the matter.

16. This Agreement shall become effective on: _____

THEREFORE, the foregoing is accepted and agreed to by:

(identify all signatories)