

SEXUAL ABUSE REPORTING AND INVESTIGATIONS

RICAs



MARYLAND
Department of Health

Overview of Doe settlement

- ❖ The settlement in the 2014-2016 litigation known as *Doe v. DHMH* requires certain key changes to the way that sexual abuse allegations are reported and referred for investigation within State facilities.
- ❖ Applies to all MDH hospitals, the SETT, the RICA's, and the State Residential Centers (Potomac and Holly).
- ❖ Settlement focuses on use of uniform procedures throughout all facilities, protection of patients during investigation process, and defining roles and responsibilities of facility staff, MDH police, and law enforcement when sexual abuse allegations are made.

OVERVIEW OF KEY REQUIREMENTS

- **Within 24 hours of receiving/learning of an allegation of Sexual Abuse that occurred at the facility:**
 - Staff who receive allegation must report to the CEO;
 - CEO must report allegation to law enforcement, OHCQ, DRM, CPS, the Treatment Team of the alleged victim and perpetrator (if applies) and the Central Coordinator.

The treatment team will order any safety measures necessary to protect and support victim and perpetrator (if applies), update the Risk Assessment, and update, or create, Protection Plans if needed.

WHAT DO THOSE WORDS MEAN?

“Central Coordinator”- the individual appointed within BHA, whose responsibilities shall include overseeing development of policies and materials, monitoring compliance, and recommending changes as appropriate to improve Facility prevention, response, and detection of Sexual Abuse.

“Protection Plan”- a plan of care and/or treatment, as appropriate, to address the risk of an individual being the victim or perpetrator of Sexual Abuse while in a Facility.

Risk Assessment Screen”- the uniform tool that will be used by all Facilities to screen patients for a history of sexual abuse and related trauma, risk of being victimized by, or perpetrating, sexual violence in the Facility, or history of sexual aggression.

“Sexual Abuse”- defined in settlement as **Wrongful Sexual Acts** and **Sexual Assaults**.

“AT THE FACILITY”

- Occurs anywhere when sexual abuse is between a RICA staff member and a RICA resident.
- On the premises of the RICA or at any off-premises activity sponsored by the RICA.
- Does not include abuse that occurs when resident on leave of absence or AWOL, unless a RICA staff are involved.

COMAR 10.01.18.03

“SEXUAL ASSAULTS”

“Sexual Assault” – Maryland Criminal Law Article, Title 3

- **Rape/attempted rape:** non-consensual and forcible vaginal intercourse, anal intercourse, or sexual act such as digital penetration or forcible oral sex, OR with a person known by perpetrator to be mentally incapacitated, physically helpless, or substantially cognitively impaired.

- **“Statutory Rape”:**

1st degree: Perpetrator is 18 or older; victim is under 13.

2nd degree: Victim 13 or under; perpetrator at least 4 years older.

SEXUAL ASSAULTS

Sexual Offenses:

- Non-consensual and forcible sexual contact;
- Sexual contact with a person known by perpetrator to be mentally incapacitated, physically helpless, or substantially cognitively impaired
- Sexual contact when victim is 13 or younger and perpetrator is at least 4 years older;
- Vaginal intercourse, oral sex, anal intercourse, or digital penetration when victim is 14 or 15 and perpetrator is at least 21.

SEXUAL ASSAULTS

Sexual Offenses: *continued*

- Sexual contact: intentional touching of genitals or other intimate area of victim or actor for sexual arousal, gratification, or abuse of either person.
- Mentally incapacitated/physically helpless: can't resist act or appraise nature of conduct due to influence of substance or act done to victim, *or victim unconscious*.
- **Substantially cognitively impaired:** can't understand conduct, resist, or consent due to mental disorder or intellectual disability.

SEXUAL ASSAULTS

- **Any Sexual Act between Facility Staff and a resident; consent is NOT relevant.**
 - “Staff” includes all personnel working at the RICA, including employees, contractors and volunteers.
 - Act may not be illegal; but still must be reported to police and CPS.
- Any other illegal Sexual Act.

WHAT IS A “SEXUAL ACT”?

“Sexual Act”-

- described in [COMAR 10.01.18.02B\(8\)](#):
- Does not include acts related to provision of care.
- Must be for purpose of arousing sexual thoughts/feelings or sexual dominance or power.
- Intentionally touching someone’s genitals showing pornography to someone
- flashing someone
- spying on someone in the shower
- drawing a picture of what you think a patient’s breasts look like
- intentionally causing an individual to touch your genitals
- sending text asking another for sexual contact.

WRONGFUL SEXUAL ACTS

- **“Wrongful Sexual Act”**- any Sexual Act that is made or threatened to be made *without consent* of the individual and is not illegal.
- Wrongful sexual acts are separate from Sexual Assaults because, even though done without consent, these sexual acts aren’t criminal under Maryland law.
- Criminal acts must be reported to the police. Note though that some sexual acts done without consent actually may be criminal, such as forced sexual contact, showing pornography to a minor, or indecent exposure.

ROLES

Click on each of the buttons below.

CEO

POLICE/CPS

TREATMENT TEAM

ROLES

Click on each of the buttons below.

CEO

- Makes required notifications within 24 hours of allegation
- Ensures allegations of “wrongful sexual acts” are investigated

close

ROLES

Click on each of the buttons below.

POLICE/CPS:

- Investigate allegations of sexual assault and child sexual abuse
- Notifies facility of results of investigation

close

ROLES

Click on each of the buttons below.

Treatment Team:

- Reviews the Risk Assessment **within 2 working days** of receiving notice from the CEO
- Updates Protection Plan, Treatment Plan, ensures safety of victim and perpetrator
- Reports results of investigation in Treatment Plan

close

REPORTS TO CPS

- **Must be made within 24 hours of learning of allegation that occurred in facility**

- Follow RICAs' child abuse reporting policy and procedures

What to report:

- Alleged victim is under age 18 *at the time the offense*; **and**
- Alleged perpetrator is a parent, family or household member, or a caretaker (includes all Facility Staff and anyone serving in a caretaking role at or for the Facility).
- Must report even if victim is now an adult.

BUT THIS IS IMPOSSIBLE . . .

- **Within one working day of learning of allegation that is not physically possible:**
 - Report allegations to the Treatment Team of alleged victim by progress note or other appropriate communication.
 - The Treatment Team will consider the allegations; if the Team determines that the abuse may have occurred, it must be reported to the CEO on the reporting form.
 - CEO will report allegations as required.
 - If the Team determines that it is possible that Sexual Abuse occurred, communicate the allegation to the Team for alleged perpetrator or aggressor to consider if additional treatment/support is needed.

THE SEXUAL ASSAULT FORENSIC EXAMINATION

- In Maryland, Forensic Nurse Examiners (FNEs) work within a Sexual Assault Forensic Examiner (SAFE) program in a hospital to complete medical forensic examinations and collect evidence of sexual assault for victims of all ages.
- The facility will arrange for transportation of the individual alleging sexual assault to the nearest SAFE program by ambulance or other appropriate means based upon the circumstances.
- A list of SAFE programs is attached to the Policy on Initial Reporting and Investigation of Sexual Abuse Allegations and in the Resources Section of this training module.



THE SEXUAL ASSAULT FORENSIC EXAMINATION

- If a patient/resident refuses transport to a SAFE program, this must be documented in their medical record.
- The SAFE program will discuss and provide preventative antibiotic therapy, prophylactic medication for pregnancy and sexually transmitted infections, and initial testing as indicated.
- The facility must ensure that any follow-up medical appointments and testing are arranged as indicated by the SAFE and the nature of the allegation.
- An individual has 120 hours (5 days) to receive a SAFE Exam after the incident.

PRESERVING EVIDENCE AT THE FACILITY

- **All staff must follow the Evidence Preservation Procedure when responding to an allegation of sexual abuse.** The procedure is attached to the Policy on Initial Reporting and Investigation of Sexual Abuse Allegations and in the Resources Section of this training module.
- Follow the procedures immediately after learning of the allegation and while waiting for the arrival of police and transport of the patient for SAFE.
- Facility staff do not collect potential evidence relating to the allegation; this is the responsibility of the police and the medical facility that conducts the SAFE.

ROLES OF LAW ENFORCEMENT

RICAs contact the Baltimore City Police Department or Montgomery County Police Department to report sexual assaults.

- Criminal sexual assaults occurring at a RICA:
 - CEO, or their designee, will notify law enforcement.
 - RICA arranges for transportation to the SAFE.
 - least restrictive mode and manner of transport, consistent with the medical needs, legal status, and security needs of the resident, staff, and public, is used.

- Non-criminal allegations and allegations NOT occurring at an MDH facility:
 - Notify CEO, CPS, and local police department as indicated by allegation.

SEXUAL ASSAULT RESPONSE TEAMS

➤ A Sexual Assault Response Team (SART) is a multidisciplinary team that works collaboratively to make system-wide improvements in response to sexual violence to include:

- developing protocol;
- providing training;
- reviewing cases;
- and implementing a coordinated, victim-centered community response.

➤ SART membership includes a SAFE program clinician or medical care provider, a rape crisis advocate, a law enforcement officer, and a prosecutor.

➤ May include other professionals who provide services to survivors of sexual violence also participate.

➤ The investigating police agency may participate in a SART.

USE THE CHECKLIST!!

- A Checklist is attached to the Policy on Initial Reporting and Investigation of Sexual Abuse Allegations and in the Resources Section of this training module.
- Use the Checklist to ensure that all steps in the process are completed.
- When in doubt about what to do, seek assistance immediately from the supervising clinician or administrator.

WHAT SHOULD YOU DO

James, a 14 year old resident at RICA, returns from a leave of absence (LOA) weekend at home. When he returns to RICA, he tells other residents that he had sex with a 30 year old woman while on LOA. Should this be reported?

[Click here to find out.](#)

WHAT SHOULD YOU DO

James, a 14 year old resident at RICA, returns from a leave of absence (LOA) weekend at home. When he returns to RICA, he tells other residents that he had sex with a 30 year old woman while on LOA. Should this be reported?

The abuse did not occur at the facility so it does not need to be reported under Doe. However, if the resident wants to file a criminal report, assist resident/family to do so. Report allegation to CPS and make any other usual and/or required notifications. Notify the treatment team so that the Risk Assessment and Protection Plan can be updated.

[Continue](#)

WHAT SHOULD YOU DO

Same scenario except
the woman is an
employee of
RICA. Should this be
reported?

[Click here to find out.](#)

WHAT SHOULD YOU DO

Same scenario except the woman is an employee of RICA. Should this be reported?

Yes. Since staff was involved; it doesn't matter that it occurred during LOA.

Continue

WHAT SHOULD YOU DO

Andy, a 16 year old resident, sees a staff member coming down the hallway. He yells that he is going to rape her until she dies. Does this need to be reported?

[Click here to find out.](#)

WHAT SHOULD YOU DO

Andy, a 16 year old resident, sees a staff member coming down the hallway. He yells that he is going to rape her until she dies. Does this need to be reported?

This is not likely an illegal sexual act under criminal law, and is not a “sexual act” unless it was done for the purpose of sexual arousal or sexual dominance or control over the staff member. Do not report but notify treatment team so that the Risk Assessment and Protection Plan can be updated as needed.

Continue

WHAT SHOULD YOU DO

Andy exposes his genitals to another resident while at the facility (resident did not “consent”). Andy has a mild learning disability as well as mental health diagnoses.

[Click here to find out.](#)



MARYLAND
Department of Health

WHAT SHOULD YOU DO

Andy exposes his genitals to another resident while at the facility (resident did not “consent”). Andy has a mild learning disability as well as mental health diagnoses.

Exposing genitals may be criminal indecent exposure. It is a wrongful sexual act if done to sexually arouse or to exert sexual power. Consider Andy’s motives in light of his diagnoses and history; however, best practice is to report to the CEO as a wrongful sexual act. The CEO investigates internally and further action may be taken based on the findings. Notify treatment teams of both residents so the Risk Assessment and Protection Plan can be updated as needed.

[Continue](#)

WHAT SHOULD YOU DO

Polly, a 16 year old resident engages in consensual vaginal intercourse with another 16 year old resident at the RICA. Should this be reported?

[Click here to find out.](#)

WHAT SHOULD YOU DO

Polly, a 16 year old resident engages in consensual vaginal intercourse with another 16 year old resident at the RICA. Should this be reported?

No. Consensual sex is not a sexual assault or a wrongful sexual act. Notify the treatment teams of both residents and update the Risk Assessments and Protection Plans as necessary, implement orders for safety, etc.

Continue

WHAT SHOULD YOU DO

Same scenario
except three days
later Polly admits
that the sex was not
consensual.

[Click here to find out.](#)

WHAT SHOULD YOU DO

Same scenario
except three days
later Polly admits
that the sex was not
consensual.

Yes, report, since non-consensual sex is a
sexual assault.

Continue

WHAT SHOULD YOU DO

Same scenario but
sex occurred outside
of the facility during
LOA.

Click here to find out.

WHAT SHOULD YOU DO

Same scenario but sex occurred outside of the facility during LOA.

Do not report since it did not occur in the facility. Does the resident want to report the incident to police? If so, provide assistance.

Continue

WHAT SHOULD YOU DO

Same scenario except Polly, who has turned 18, engages in sexual contact with another resident who is 13.

[Click here to find out.](#)



MARYLAND
Department of Health

WHAT SHOULD YOU DO

Same scenario except Polly, who has turned 18, engages in sexual contact with another resident who is 13.

Yes, report. This is statutory sexual offense due to the ages of the victim and perpetrator.

Continue

FINAL POINTS

- Protect confidentiality of abuse reports, persons involved, and investigation: must not disclose unless necessary for internal investigation, CPS, OHCQ, police investigation, or for another lawful purpose.
- Use the Checklist attached to the Policy on Initial Reporting and Investigation of Sexual Abuse Allegations to ensure compliance.
- Contact your facility training director/coordinator with any questions on the reporting and investigation policy. .

Final Task

To complete the course, you must click the link below
to take a short survey:

<https://www.surveymonkey.com/r/WJDNCSK>