



MONTANA STATE HOSPITAL POLICY AND PROCEDURE

ALLEGATION OF RAPE OR SEXUAL ASSAULT

Effective Date: May 3, 2019

Policy: ER-01

Page 1 of 6

I. PURPOSE: The purpose of this policy is to outline policy and procedures for reporting and responding to allegations of rape or sexual assault.

II. POLICY:

- A. Whenever an allegation of rape is received, every effort will be made to provide proper and immediate notification of law enforcement, to protect physical evidence, maintain the patient's privacy and dignity, and to provide emotional support for the alleged victim.
- B. Montana State Hospital (MSH) will immediately provide for the safety and welfare of the alleged victim, suspect, patient or staff; protecting physical evidence and ensuring timely notification of and cooperation with law enforcement authorities.

III. DEFINITIONS:

- A. ***Sexual Intercourse without Consent/Rape:*** For purposes of this policy, the terms are considered to have identical meaning as defined by Montana Law MCA, 45-5-503. MCA, 45-5-503 defines sexual intercourse without consent as: when a person knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to knowingly or purposefully: cause bodily injury or humiliate, harass, or degrade; or (ii) arouse or gratify the sexual response or desire of either party.
- B. ***Sexual Assault:*** For the purpose of this policy, the term is the legal definition found under Montana Law MCA, 45-5-502. MCA, 45-5-502 defines sexual assault as when a person knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

IV. RESPONSIBILITIES:

- A. ***All employees*** are responsible for immediately notifying their supervisor of any allegation of rape or sexual assault. All employees must cooperate with investigative procedures conducted by law enforcement or MSH investigators.

- B. *Supervisors* are responsible for notifying the Nursing House Supervisor and the Program Manager on the patient's unit. Supervisors are also responsible for protecting all physical evidence.
- C. The *Nurse Supervisor* or designee is responsible for notifying the unit Licensed Independent Practitioner or Licensed Independent Practitioner on-call, Hospital Administrator, Director of Nursing, Medical Director or their designee, and Medical Clinic Licensed Independent Practitioner if deemed appropriate by the unit/on call Licensed Independent Practitioner. Ensure the patient's physical and emotional needs are met.
- D. When a rape is alleged the *Medical Licensed Independent Practitioner* may examine the patient and alleged perpetrator. A "rape kit" is available at the Medical Clinic.
- E. In both a rape and/or sexual assault the attending Licensed Independent Practitioner or on-call Licensed Independent Practitioner *is* responsible to ensure the treatment plan addresses a process for meeting emotional needs as appropriate.

V. **PROCEDURE:**

A. ***Reporting:***

1. When an allegation of rape or sexual assault is received, the Nurse Supervisor must be notified immediately. The Nurse Supervisor will ensure the Licensed Independent Practitioner/Licensed Independent Practitioner on-call; Medical Director, Hospital Administrator and Medical Clinic Licensed Independent Practitioner (if deemed appropriate by the unit/on call Licensed Independent Practitioner) are notified as soon as possible. The Hospital Administrator or his designee and/or the Medical Director will determine who will notify law enforcement.
2. **Allegations of Rape must be "*immediately*" reported to the nurse supervisor, regardless of time of day or day of week.** Failure to do so is considered a serious violation of Hospital policy and will be subject to disciplinary action.
3. When an allegation of rape or sexual assault is received the Nurse Supervisor will follow the direction given to them by the Hospital Administrator or the Medical Director regarding notification of law enforcement. Hospital policy ER-04 "Response and Notification of Authorities In The Event Of A Serious Emergency" outlines the process for notifying Anaconda-Deer Lodge County law enforcement.
4. The Hospital Administrator or designee will notify the Division Administrator.

B. *Treatment and care of the victim:*

1. FOLLOWING AN ACCUSATION OF RAPE:

- a. All staff members will provide emotional support making every effort to protect the patient's privacy.
- b. Prior to the victim being examined by the Licensed Independent Practitioner;
 - i. The victim should not wash any part of their body or hair.
 - ii. The victim should not eat, drink, or rinse their mouth.
 - iii. The victim should not change clothes. If clothes have already been changed, place the clothes in a PAPER bag, seal with evidence tape, sign, date, and refrigerate until they are handed over to law enforcement.
 - iv. The victim should not defecate or urinate before the examination. If urination is necessary, accompany the victim to the bathroom, have the patient void in a urine container and seal the container in a plastic bag with evidence tape, sign, date, and refrigerate until it is handed over to law enforcement. Victim should not wipe before or after urination.
- c. The Licensed Independent Practitioner will determine if a complete rape kit examination or a limited physical exam is necessary, depending on the history of the victim or witnesses if any. Documentation in the patient's chart will summarize the Licensed Independent Practitioner's rationale for the nature and type of exam to be provided. The evaluation and examination of the victim will be conducted only in the presence of a chaperone of the same gender as the victim and preferably, if time permits, after the arrival of the investigating law enforcement officer at MSH.

2. ACCUSATION OF SEXUAL ASSAULT:

- a. All staff members will provide emotional support making every effort to protect the patient's privacy and provide for their dignity.

C. *Protection of physical evidence:*

1. Evidence must be protected from accidental contamination until it is turned over to law enforcement officers.

2. The number of persons who handle the evidence must be kept to a minimum. A “chain of custody” must be recorded for any evidence obtained.
3. Evidence must be carefully handled to avoid destroying any clues or fingerprints. Before touching potential evidence protect the area to be handled with cloth or tissue.
4. Removal of evidence or the victim from the crime scene must be documented in detail, to include: date, time, place evidence found, circumstances of recovery, description of item recovered, name(s) of person(s) removing the evidence and to whom it was given.
5. Place evidence in a suitable container such as an envelope, plastic sack, or box. NOTE: Blood stained items should not be placed in a plastic bag.
6. Maintain evidence under secure conditions until given to law enforcement.
7. Obtain a receipt that identifies all evidence turned over to law enforcement. The receipt must be signed by the person releasing the evidence, the person receiving the evidence and one witness to the transaction.

D. ***Treatment and care of alleged perpetrator:***

1. If the alleged perpetrator is a patient, the patient must have a physical examination and a “suspect” rape kit examination conducted as deemed necessary by the Licensed Independent Practitioner. Potential evidence must be handled as described above. The alleged perpetrator should not cleanse self or change clothes.
2. If the alleged perpetrator is not a patient, law enforcement must be notified immediately.
3. The alleged perpetrator should not defecate or urinate before the examination. If urination is necessary, accompany the alleged perpetrator to the bathroom, have the alleged perpetrator void in a urine container and seal the container in a plastic bag with evidence tape, sign, date, and refrigerate until it is handed over to law enforcement. Alleged perpetrator should not wipe before or after urination.
4. All attempts will be made to keep the victim and the alleged perpetrator separated.
 - a. In the event the alleged perpetrator is a staff member that person shall be removed from the treatment unit.

Montana State Hospital Policy and Procedure

- c. The victim should be retested for HIV 6 weeks, 12 weeks and 6 months after exposure. Retesting for Hepatitis B and C should be done after 12 weeks and 6 months.
 - d. Other tests and treatment may be ordered at the discretion of the examining Licensed Independent Practitioner.
2. Counseling of the victim by unit professional staff will occur as soon as possible after the incident and will continue on a regularly scheduled basis for as long as it is necessary and appropriate.

VI. REFERENCES: MCA, 45-5-503; MCA, 45-5-502.

VII. COLLABORATED WITH: Medical Clinic Physician, Director of Nursing, Director of Quality Improvement, Director of Health Information, Safety Officer, Anaconda Deer Lodge Chief of Police.

VIII. RESCISSIONS: ER-01, *Allegations of Rape or Sexual Assault* dated March 31, 2014; ER-01, *Allegation of Rape or Sexual Assault* dated August 22, 2008; ER-01 *Allegation of Rape* dated May 2, 2005; ER-01, ER-01 *Allegation of Rape* dated January 28, 2002; Policy ER-01, *Allegation of Rape* dated July 13, 2001; ER-01, *Allegation of Rape* dated February 14, 2000; HOPP 5 – E.R. 020290, *Allegation of Rape*, dated August 1994.

IX. DISTRIBUTION: All hospital policy manuals.

X. ANNUAL REVIEW AND AUTHORIZATION: This policy is subject to annual review and authorization for use by either the Administrator or the Medical Director with written documentation of the review per ARM § 37-106-330.

XI. FOLLOW-UP RESPONSIBILITY: Hospital Administrator.

XII. ATTACHMENTS: For internal use only.

A. Release of Information – Alleged Rape

Signatures:

Kyle Fouts
Interim Hospital Administrator

Thomas Gray, MD
Medical Director