

JAMES E. VAN ZANDT VA MEDICAL CENTER  
ALTOONA, PENNSYLVANIA

MEDICAL CENTER MEMORANDUM (MCM) 10L-13  
APRIL 2012

**REPORTING OF SUSPECTED AND ACTUAL CRIMES AND ILLEGAL ACTIVITY**

1. **PURPOSE:** To prescribe procedures and regulations for reporting possible or actual crimes (felonies) and illegal activity (misdemeanors) and set forth the enforcement authority governing possible or actual criminal felonies and misdemeanor violations committed at the James E. Van Zandt Veterans Affairs Medical Center including the Annex and the Community Based Outpatient Clinics (CBOCs) under Title 18 United States Code (U.S.C.) and 38 Code of Federal Regulations (C.F.R.) 1.218b.

2. **SUMMARY OF MAJOR CHANGES:** No changes; new MCM.

3. **POLICY:** To provide guidance and requirements for reporting to proper authorities in a timely manner in accordance with 38 CFR and in accordance with VA regulations and policies.

4. **DEFINITIONS:**

a. **Leadership Team** is defined in this MCM as the Director, Chief of Staff, Associate Director, and the Associate Director for Patient/Nursing Services.

b. **Employee** is defined as a person working at the Altoona VAMC, Annex, and CBOC's.

c. **Volunteer** is defined as a person who performs a service willingly and without pay.

d. **Student** is defined as a person formally engaged in learning (extern/intern).

e. **Violence in the Workplace** means physical force exerted for the purpose of injuring, intimidating, damaging, inflicting fear, or abusing another person or property, or committed in reckless disregard of person or property. Violence also includes the use of weapons or objects in a manner, which can result in injury or death.

f. **Security and Law Enforcement at VA facilities:** 38 CFR 1.218 is the authority and rules of conduct for the Altoona VAMC. Pursuant to 38 U.S.C. 901, established rules and regulations apply at all property under the charge and control of VA (and not under the charge and control of the General Services Administration) and to all persons entering into or onto such property. The Director is charged with the responsibility for the enforcement of these rules and regulations and will assure the posting of these rules and regulations are in a conspicuous place on the property.

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g. **Sexual Assault** is defined as any type of sexual contact or attempted sexual contact that occurs without the explicit consent of the recipient of the unwanted sexual activity. Assaults may involve psychological coercion, physical force, or victims who cannot consent due to mental illness or other factors. Falling under this definition of sexual assault are sexual activities such as, but not limited to, forced sexual intercourse, sodomy, oral penetration or penetration using an object, molestation, fondling, and attempted rape. Victims of sexual assault can be male or female. This does not include cases involving only indecent exposure, exhibitionism, or sexual harassment.

h. **Threat** means any physical or verbal expression of an individual's present or future intent to inflict pain, injury, or damage on person or property, or to cause intimidation, helplessness, or fear in another person. This includes any present or future expression of intent to engage in violence as defined above.

i. **Duty to Warn** is the obligation to inform a third party of a threat of violence. Any employee, volunteer, student, contractor, or patient/resident who is witness to a threat of violence towards another employee has a duty to warn. The employee, volunteer, or student has discharged the duty if subsequent to the threat, he/she informs their immediate supervisor of the threat. The supervisor is responsible for reporting the threat to VA Police. If the supervisor is not available, the employee, volunteer, or student should report the threat directly to the police. Patients/Residents will inform VAMC Police of a threat of violence.

j. **VA Office of Security and Law Enforcement (OS&LE).** VA Police Officers, while fully sworn and trained as law enforcement officers, also receive specialized training to help them to function within the VHA culture. For any employee who believes that he or she is the target of verbal abuse, threats, intimidation, or bullying, they may contact their immediate supervisor or the VAMC Police. Doing so can put into motion an investigation and possibly even an arrest or citation if it is found by VA Police that a crime (e.g., 'simple assault' – verbal threat, etc.) has been committed. The VA Police will also be in a position to assess the presence of other violence risk factors in the situation. Even without criminal charges, however, becoming the subject of a police investigation can often be a very sobering message to the alleged perpetrator.

k. **VA Office of the Inspector General (OIG).** OIG conducts independent investigation, audit, and oversight of activities affecting the programs and operations of VA including violations of ethical conduct and abuse of authority.

## 5. RESPONSIBILITIES:

### a. The **Director**:

(1) Will ensure all crimes are reported to proper authorities in accordance with the federal Code of Regulation.

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(2) As head of the facility, is charged with the responsibility for the enforcement of rules and regulations under 38 Code of Federal Regulations 1.218 - Security and Law Enforcement at VA facilities. These rules and regulations **MUST** be posted in a conspicuous place on the property. If a crime is suspected to have been committed, appropriate officials (Director, VA Police) must be notified.

b. **Leadership Team:** Will ensure that any report of crime, violence, threats of violence, and/or alleged violations of this policy will be reported to VA Police and OIG as required and investigated. They must ensure whatever action deemed appropriate will be taken to protect employees, their families, volunteers, students, contractors, patients/residents, and medical center property.

c. **Chief of Police or designee** will notify the OIG in a timely manner when they become aware of a felony or suspected felony. The Chief of Police or designee will ensure that any report of crime, violence, threats of violence, and/or alleged violations of this policy will be investigated. The Chief of Police and/or VA OIG will refer crimes as needed to non-VA Law Enforcement officials. Employees will not report crimes or illegal activity that have occurred on VA property or fall under VA jurisdiction to non-VA Law Enforcement (anyone other than VA Police, VA OIG, or Assistant United States Attorney [AUSA]) without approval of one of the following: Director, Chief of Staff, Associate Director, Associate Director for Patient/Nursing Services, VA OIG, or Chief of Police.

(1) The investigative efforts of seeking out witnesses, collecting evidence, and performing tasks designed to complete an investigation may all prove meaningless if the results are not adequately recorded. The accuracy of the information contained in the report is essential for future reference and possible referral by investigators, a court, or an investigative board.

(2) Every reasonable attempt will be made to preserve the confidentiality of any reported act or threat of violence within the framework of the law. If grievance, legal, or other proceedings become necessary to deal with the act or threat, complete confidentiality will not always be possible. Unless and until such disclosure becomes necessary, the identity of the reporting employee(s) will be kept confidential and, if necessary, will only be disclosed to the team members that need to know, including, but not limited to, legal counsel and crisis intervention professionals.

(3) To Report to VA Office of Inspector General, Pittsburgh Resident Agency,

Special Agent Dominski: (412) 460-7907

Supervisory Special Agent Tim Barry: (412)460 -7906

Fax: (412) 460- 7911

d. **Service Chiefs** will ensure that any report of crime, violence, threats of violence, and/or alleged violations of this policy will be investigated. Whatever action

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deemed appropriate will be taken to protect employees and their family, volunteers, students, contractors, patients/residents, and medical center property.

##### **e. All employees:**

(1) Have a continuing responsibility to immediately report to their supervisor and/or VA Police or the Director any suspected criminal activity, theft, or damage to government or personal property, illegal drug or alcohol use, unauthorized firearms or weapons introduction, fraud, etc., occurring on VA property. Employees have an obligation to inform their supervisor and/or Police Service of a threat of violence (i.e., duty to warn). The employee has discharged the duty if subsequent to the threat, he/she informs their immediate supervisor of the threat. The supervisor is responsible for reporting the threat to Police Service immediately. If the supervisor is not available the employee should report the threat directly to the police. The Police Service will investigate the complaint and will keep the threatened party informed of the ongoing investigation.

(2) As a Department of Veterans Affairs employee, they are required to furnish all information or evidence in their possession and to testify freely and honestly concerning their knowledge of the matter under investigation. Any refusal on their part to testify, or concealment of a material fact, or inaccurate testimony knowingly or willingly given, may be grounds for disciplinary action against them personally.

(3) Are not required, however, to give testimony against themselves in any matter in which there is an indication they were involved personally in a violation of the law and there is a possibility their testimony would be self incriminating. If this is a criminal investigation by the VA Police or any other Law Enforcement Official, then that employee will be read their Miranda Rights in which they are advised of their rights and may request to have an attorney present to answer the questions or the employee may waive their rights and answer the questions from the Law Enforcement Officer.

(4) Have the right to refuse to answer a question because their response might tend to incriminate them self. However, they do not have the right to refuse to answer a question because their response might incriminate a person other than them self.

(5) If the employee or supervisor intentionally obstructs, impairs, or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions may be charged under Pennsylvania Crime Codes (PACC) 18: 5101, Obstructing administration of law or other governmental function.

(6) In an administrative or policy violation or an employee feels that the questioning could lead to disciplinary or adverse actions that their rights as an employee are being

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violated, they may request that questioning be suspended to afford them an opportunity to seek advice from their Labor Organization Representative.

f. If a crime is suspected to have been committed, appropriate officials (e.g., facility Director, VA Police) must be notified as soon as possible by management consistent with 38 C.F.R. 1.203. NOTE: Specific guidance on safeguarding evidence is provided in VA Handbook 0730, Security and Law Enforcement. To the greatest degree possible, the surrounding area must not be disturbed so that evidence is available for review by the police (VHA Handbook 1050.01, VHA National Patient Safety Improvement Handbook, dated March 4, 2011) and other authorities. However, care needed by the patient/resident must always be provided for, as quickly as possible, regardless of the effect on the potential evidence.

g. Requesting Assistance:

(1) To report to the Director, dial 7031.

(2) To request emergency Police assistance at the VAMC Altoona, dial 25 or 7911. For routine assistance dial 7059. They may also be reached by two-way radio through the telephone operator or Administrative Officer of the Day (AOD).

## 6. PROCEDURES:

a. Classification of Crimes:

(1) The most commonly occurring acts constituting crimes against the United States at VA facilities are contained in Title 38 CFR § 1.218, and Titles 18 and 21 U.S.C.

(2) The Assimilative Crimes Act, Title 18 U.S.C. § 13, will be used at facilities having exclusive or concurrent jurisdiction in those instances where a crime has been committed and no specific Federal law exists defining the offense. The local U.S. Attorney will be consulted when considering use of the Assimilative Crimes Act.

(3) Specific crimes against the United States and all crimes against the state occurring at facilities under proprietorial jurisdiction are processed by either the U.S. or state judicial system as applicable.

b. 38 CFR 1.201 - Employee's duty to report: All VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, Director, or VAMC Police.

c. 38 CFR 1.203 - Information to be reported to VA Police: Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA

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premises, will be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information will be reported to Federal, state, or local law enforcement officials, as appropriate.

d. 38 CFR 1.204 – Information to be reported to the Office of Inspector general: Information on criminal matters involving felonies must be immediately referred to the Office of Inspector General (OIG), Office of Investigation. The Leadership Team and the Chief of Police or Designee with information about possible criminal matters involving felonies must ensure (and be responsible for) prompt referral to the OIG. Examples of felonies include, but are not limited to: theft of Government property valued over \$1,000; false claims; false statements; drug offenses; crimes involving information technology; and serious crimes against a person, i.e., homicides, armed robbery, rape, aggravated assault, and serious physical abuse of a VA patient/resident.

e. 38 CFR 1.205 - VA police or the OIG, whichever has the primary responsibility within VA for investigation of the offense in question, is responsible for notifying the appropriate United States Attorney's office, pursuant to 28 U.S.C. 535.

f. Chief of Police, Assistant Chief, Detective or officer on duty must ensure notification is given to the Deputy Assistant Secretary for Security and Law Enforcement through assigned Inspectors by providing Uniform Offense Report (UOR) numbers in the following cases:

- (1) Anytime an officer is injured
- (2) Anytime police officers utilize weapons against another
- (3) Anytime a serious injury, suspicious, or wrongful death occurs
- (4) Aggravated assaults or sexual assaults
- (5) Felonies
- (6) Missing patient
- (7) Physical arrest
- (8) Suicide (or attempt)
- (9) Bomb threat
- (10) Fire or disaster in or within close proximity of Department property
- (11) Any other incident, which they feel is significant or sensitive in nature.

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g. Leadership Team must ensure any required notification and/or Issue Briefs are given to the VISN office. The VISN Director, or designee, will inform the Deputy Under Secretary for Health for Operations and Management (10N) when required.

h. If a crime is suspected to have been committed, facility Police and medical staff may need to assist law enforcement agencies with preserving evidence (e.g., blood alcohol levels, weapons, controlled substances, etc.). Local policies and procedures for maintaining the chain of custody of evidence apply in these instances (for specific guidance regarding the safeguarding of evidence see VA Handbook 0730, Security and Law Enforcement).

i. Administrative Investigative Boards (AIBs) must ensure they follow this reporting requirement: During the course of an investigation, an investigator may encounter evidence of larceny, fraud, assault, illegal use or distribution of narcotics, or other possible criminal activity. Upon discovery of possible criminal activity, AIBs shall suspend any activities that may interfere with law enforcement investigations. They shall not conduct additional interviews or discuss related matters with witnesses until directed to resume the investigation by the Convening Authority. They shall immediately report the information discovered and the action taken to the Convening Authority. In suspending their activities, AIBs shall take special care to avoid alerting witnesses, subjects, or others that information suggesting criminal activity has been discovered. When evidence of criminal conduct is discovered, the Convening Authority must coordinate with federal law enforcement authorities, including the VA Office of the Inspector General and VA Police as appropriate, before an administrative investigation proceeds. The Convening Authority should not resume the investigation until the Regional Counsel or General Counsel has concurred in proceeding with the investigation. The requirement for law enforcement notification and review does not preclude investigators or VA officials taking appropriate actions to safeguard and care for persons and property.

j. Sexual Assaults: All VA employees must ensure that all allegations of sexual assault on VA property (or off-property in the execution of official VA duties) involving a Veteran, VA employee, contractor, visitor, patient/resident, or volunteer are reported within two hours, in accordance with OS&LE requirements, to the Director and/or VA Police.

7. **REFERENCES:** Title 38 United States Code, Section 1.218, Security and Law Enforcement at VA Facilities; VA Regulations 38; C.F.R. 1.218b. 1.201. 1.203, 1.204, 1.205, Security and Law Enforcement at VA Facilities; VA Directives 0730 and 0730h, Security and Law Enforcement; American Federation of Government Employees (AFGE) Master Agreement; VA Directive 0700, Administrative Investigations; VA Handbook 0700, Administrative investigations.

8. **RESCISSION:** None.

9. **REISSUE DATE:** Three years from date of MCM.

8. MCM 10L-13, Reporting of Suspected and Actual Crimes and Illegal Activity

10. **FOLLOW-UP RESPONSIBILITY:** Chief, Police Service

/s/

WILLIAM H. MILLS

Director

Distribution: E