

Mandatory Reporting of Serious Criminal Offences

Policy Number 2.024

Policy Function Continuum of Care

Issue Date 6 October 2017

Summary This policy assists staff in fulfilling their mandatory disclosure obligations under the *Crimes Act 1900* (NSW) when a patient provides information revealing the commission of a serious indictable offence.

Responsible Officer Executive Director, Performance and Planning

Applicable Sites

- Administration Centres
- Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
- Health Centres (Adult Correctional Centres or Police Cells)
- Health Centres (Juvenile Justice Centres)
- Long Bay Hospital
- Forensic Hospital

Previous Issue(s) Policy 2.024 (November 2014)

Change Summary

- Significant re-write of the policy to clarify issues surrounding the mandatory disclosure requirement under the *Crimes Act 1990* (NSW).

TRIM Reference POLJH/2024

Authorised by Chief Executive, Justice Health & Forensic Mental Health Network

1. Preface

This policy assists staff to fulfil their “mandatory disclosure” obligations under section 316 of the *Crimes Act 1990* (NSW) and applies to all Justice Health & Forensic Mental Health Network (JH&FMHN) staff. It may be of particular relevance or assistance to clinical staff who have contact with patients.

2. Policy Content

2.1 Mandatory Requirements

Under s316 of the *Crimes Act 1990* (NSW), a person who knows or believes that:

- 1) another person has committed a serious indictable offence; and
- 2) he or she has information which might be of material assistance in:
 - a) securing the apprehension of the offender; or
 - b) the prosecution or conviction of the offender for it

is liable to imprisonment for 2 years if he or she fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority.

What are the Key Elements of the Mandatory Disclosure Obligation?

Element	Interpretation
Serious indictable offence	An indictable offence that is punishable by imprisonment for life or for a term of 5 years or more (s4, Crimes Act). This includes drug trafficking, serious assaults, sexual assaults, murder and manslaughter, but does not cover minor possession offences or any offences under public health legislation.
Knows or believes	This must amount to more than a mere suspicion that an offence occurred.
Offence has been committed	Mandatory disclosure obligation only applies to a past offence or a past and continuing offence, and not to any future offence that may be committed.
Information of material assistance	‘Material’ – information must be of crucial or substantial assistance to the prosecution of offence or apprehension of offender.
Fails without reasonable excuse	What is a ‘reasonable excuse’ can vary depending on the circumstances, but must generally provide a real justification or defence and not be implausible or remote.

Prosecution only with Approval of Attorney-General

Persons who acquire knowledge or information of an offence in the course of professional practice – relevantly, as a legal practitioner, medical practitioner, psychologist, nurse, social worker (including victims support worker and counsellor), or academic or professional researcher – may only be prosecuted under s316 with the approval of the Attorney-General.

3. Procedure Content

Informed Consent and the Limits of Privacy Protection

The provision of health care usually commences with obtaining a patient's informed consent to undergo medical assessment or treatment, including consent to the collection, use and disclosure of health information in accordance with legislation. A patient with capacity for informed consent should understand that disclosure of a patient's health and other information obtained in the course of treatment may, in some circumstances, be required or compelled by law. Where there is a risk that a patient may disclose to the practitioner information about having committed a serious criminal offence, the practitioner should advise the patient that reporting of that information to relevant authorities may be compelled by the practitioner's mandatory disclosure obligation under s316 of the Crimes Act.

Notification and Disclosure

Staff who acquire information or knowledge or who otherwise believe that a patient has committed a serious indictable offence (including an offence as witnessed by staff) should carefully evaluate the elements of the mandatory disclosure obligation listed in the table above to form a decision as to whether or not the obligation under s316 is enlivened in the circumstances.

There is no obligation to report offences which already are or have been the subject of police reporting or investigation, unless the practitioner is of the view that the patient has disclosed new information which would be of material assistance to the apprehension, prosecution or conviction of the offender.

In addition, it is reasonable for staff to consider the mental state and capacity of each patient in forming a view as to the veracity of any disclosure made and whether the information disclosed by the patient would be of material assistance to police.

Staff should be aware that the obligation to report is a personal obligation and not a JH&FMHN obligation. Where a practitioner believes that the s316 mandatory reporting obligation may have been triggered, the practitioner should notify his or her line manager and may seek advice from the Clinical and Corporate Governance Unit.

4. Definitions

Must

Indicates a mandatory action to be complied with.

Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

5. Legislation and Related Documents

Legislation

[Crimes Act 1900](#)

[Crimes Regulation 2010](#)

NSW MoH Manuals and Policy Directives

[NSW Health Privacy Manual for Health Information](#)

JH&FMHN Policies

[2.010 Code of Conduct](#)