

DBHS Practice Protocol

Rights of victims of assault in behavioral health facilities



**Developed by the
Arizona Department of Health Services
Division of Behavioral Health Services**

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Purpose: To set forth Arizona Department of Health Services, Division of Behavioral Health Services (ADHS/DBHS) expectations for rights of victims of assault in behavioral health facilities.

Target Audience:

This protocol will be made available to behavioral health service providers and behavioral health representatives.

Target Populations:

This protocol affects victims and perpetrators of assaults that take place in behavioral health treatment facilities.

Background

Violence in psychiatric settings is a problem that is not uncommon, and the fact that the alleged victim, the alleged assailant, or both may be behavioral health care recipients potentially complicates such violence. Sound practices for dealing with these complications need to be employed which both respect the challenges faced by behavioral health care recipients and uphold the rights of victims.

This policy takes the right of individuals to petition the government for redress of grievances to mean that any behavioral health care recipient or staff member who claims to have been assaulted at an inpatient facility has a right to submit a complaint to the police. It is expected that the police will treat a behavioral health care facility as they would any other community location when investigating an assault complaint.

Once police have started an investigation into such a complaint, laws governing the rights of the alleged victim include the Arizona Constitution, Article 2, Section 2.1 (The Arizona Victims' Bill of Rights) and Arizona Revised Statutes (A.R.S.), Title 13, Chapter 40.

Procedures:

1. The first priority in any incident of alleged assault is to assure the immediate safety of all individuals involved. Staff of the behavioral health treatment facility ("facility") will immediately take action to assure that no further assault takes place and to arrange for treatment of any acute injuries incurred in the incident.
2. When an alleged assault takes place, the facility will generate a critical incident report, collect written reports from witnesses when possible, and photograph the victim if relevant and appropriate.
3. As noted in the [ADHS/DBHS Provider Manual Section 7.4, Reporting of Incidents, Accidents and Deaths](#), "Significant events, such as accidents, injuries, allegations of abuse, human rights violations, and deaths require careful examination and review to ensure the protection of behavioral health care recipients. ADHS/DBHS, as well as other federal and state agencies, requires the prompt reporting of significant events involving persons receiving services within the public behavioral health system." Of specific relevance to this matter is [ARS § 46-454\(A\)](#): "a person who has responsibility for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the adult has occurred or that exploitation of the adult's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday." Facilities will be familiar with and comply with this and other such reporting rules, as itemized in the Provider Manual.
4. Both the facility and the alleged victim have the right to submit a complaint to the police independent of each other.

5. If the staff member or behavioral health care recipient that is an alleged victim of assault decides to contact the police directly, the facility will provide that individual with means to do so while respecting his or her privacy.
6. A representative of the facility will explain the following to alleged victims of assault who wish to notify police: In order to press charges, the victim must be willing to state that he or she wishes charges pressed. He or she will likely be asked to participate in the legal process including but not limited to possible depositions, court appearances, and testimony.
7. Excepting the case in which the individual wishing to lodge the complaint is receiving acute treatment for injuries incurred, he or she is expected to be available to be interviewed by the police.
8. If the individual is a vulnerable adult and unable to speak to the police, the facility will provide someone to speak on the behavioral health care recipient's behalf. Generally, this will be the staff member who meets both of the following criteria:
 - a. Most closely observed the alleged assault, or if the assault was not observed by a staff member, received the most direct account of the assault from the behavioral health care recipient.
 - b. Was not directly involved in the alleged assault as either a victim or an assailant.
9. Based on the merits of the allegations, the police may decide not to investigate an incident.
10. Once the police initiate an investigation, they, not the facility, determine if an arrest is to be made and whether the case should be referred for prosecution.
11. Police also have the legal responsibility to determine whether or not the alleged victim is eligible for crime victim rights under the Arizona Crime Victims' Bill of Rights and the accompanying Arizona Revised Statutes.
12. The facility leadership has the responsibility to ensure that any behavioral health care recipient or staff member who is the alleged victim of an assault receive appropriate support and assistance.
 - a. The facility will assist police in ensuring that alleged victims are granted the rights noted in the Arizona Constitution and the Arizona Revised Statutes (see references). Foremost among those rights is the right to be treated with fairness, respect, and dignity.
 - b. The facility will advise and assist behavioral health care recipients who desire to request assistance from the Division of Behavioral Health Services (DBHS) Office of Human Rights and/or the Human Rights Committee.
 - c. The facility will fully assess alleged victims, assailants, and everyone in the milieu for both physical and psychological trauma, and will provide appropriate therapeutic support for any such trauma identified.
 - d. The facility also has the responsibility to assist behavioral health care recipients who are subject to police investigation or arrest.
13. As noted in [ARS § 13-4416](#), if a behavioral health care recipient or staff member is granted victims' rights under the Arizona Constitution and makes a request for notice and the assailant is an inpatient under court order in the facility, the facility will provide to the victim written notice of the assailant's discharge at least 10 days prior to the date of discharge from the facility. Similarly, if such an assailant escapes from a facility or is readmitted, immediate notice will be given to the victim.
14. In those instances in which the police have issued a police detective report, the facility will contact the police in ten days to request a copy of this report.
15. The incident of alleged assault should be reviewed by facility administration to assess for opportunities for quality improvement.

References

1. [United States Constitution, Amendment I](#)
2. [Arizona Constitution, Article 2, Section 2.1](#)
3. [Arizona Revised Statutes, Title 13, Chapter 40](#)

4. [Arizona Revised Statutes, Title 46-454\(A\)](#)
5. [ADHS/DBHS Provider Manual Section 7.4, *Reporting of Incidents, Accidents and Deaths*](#)

Constitution of the United States of America, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Arizona Constitution Victims' Bill of Rights Section 2.1

(A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.

12. To be informed of victims' constitutional rights.

(B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

(D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(E) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.

ARS § 13-4416

A. If the victim has made a request for notice, a mental health treatment agency shall mail to the victim at least ten days before the release or discharge of the person accused or convicted of committing a criminal offense against the victim, notice of the release or discharge of the person who is placed by court order in a mental health treatment agency pursuant to section 13-3994, 31-226, 31-226.01, 36-540.01, 36-541.01 or 36-3707.

B. A mental health treatment agency shall mail to the victim immediately after the escape or subsequent readmission of the person accused or convicted of committing a criminal offense against the victim, notice of the escape or subsequent readmission of the person who is placed by court order in a mental health treatment agency pursuant to section 13-3994, 31-226, 31-226.01, 36-540.01, 36-541.01 or 36-3707.

ARS § 36-454(A)

A physician, registered nurse practitioner, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the adult has occurred or that exploitation of the adult's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. The guardian or conservator of an incapacitated or vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday.