



<b>Health Care Agency Behavioral Health Services Policies and Procedures</b>	Section Name:	Care and Treatment
	Sub Section:	Mandated Reporting
	Section Number:	01.06.01
	Policy Status:	<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised

	SIGNATURE	DATE APPROVED
Deputy Director Behavioral Health Services	<u>Signature on File</u>	<u>8/6/2024</u>

**SUBJECT:** Duty to Protect

**PURPOSE:**

To provide a uniform procedure for protecting reasonably identifiable victim(s) or a class of victims from potentially dangerous / assaultive Health Care Agency (HCA) Behavioral Health Services (BHS) clients receiving services at county-operated programs.

**POLICY:**

It is the policy of HCA BHS to follow all laws and regulations related to protecting reasonably identifiable victims of behavioral health services clients who receive services from county programs. It is the expectation that county contracted programs and designated facilities must have their own written policy regarding handling duty to protect situations with BHS clients in their programs.

**SCOPE:**

The provisions of this policy are applicable to all HCA BHS employees of county-operated programs who meet the definition of “psychotherapists” per the California Evidence Code Section 1010. This includes licensed psychologists, psychiatrists, clinical social workers, marriage and family therapists, professional clinical counselors and registered psychiatric nurses. It also includes registered psychological assistants, associate clinical social workers, marriage and family therapist Interns, psychological interns, registered clinical counselor interns and trainees.

The provisions of this policy are also applicable to all HCA BHS alcohol and other drug certified counselors, mental health workers, mental health specialists, licensed vocational nurses, licensed psychiatric technicians and all other applicable provider types delivering care in county programs.

**REFERENCES:**

[California Evidence Code § 1010](#)

[Welfare and Institutions Code § 5328](#)

[California Civil Code § 43.92](#)

**SUBJECT: Duty to Protect**

---

---

[California Code of Regulations Title 9, Chapter 8](#)

[Code of Federal Regulations 42, Part 2](#)

Tarasoff v. Regents of the University of California, 1976

Jablonski v. United States, 1983

Hedlund v. Superior Court of Orange County, 1983

Ewing v. Goldstein, 2004

[BHS Policy & Procedure 05.05.02 Tracking Disclosures of PHI](#)

[BHS Policy & Procedure 05.05.03 Accounting for Disclosures of PHI](#)

**PROCEDURE:**

I. Supervisor Involvement

- A. Under current law, the obligation to take action is the provider's responsibility. BHS administration shall remain informed of areas of potential liability, including Tarasoff notifications. Therefore, without delaying needed actions, the Service Chief or designee shall be notified when consideration of a Tarasoff notification is in process. In all circumstances regardless of the clinical decision, as soon as a decision has been made and appropriate actions taken, the provider's supervisor shall be notified of the assessment and the resulting decision(s).

II. Steps to Take in Determining a Tarasoff Obligation

- A. A verbal threat alone (communicated by the patient or a patient's family member to the provider) is not sufficient to make a determination of imminent dangerousness and conversely, the absence of a verbal threat does not necessarily rule-out the possibility of imminent dangerousness. Therefore, HCA BHS employees, who in the course of providing behavioral health services to HCA BHS clients in county-operated programs, based upon all the available clinical evidence, believe a client may pose a threat to an identifiable potential victim(s) or a class of victims (e.g., identified school, place of employment, or government building), shall take the following steps:
  - 1. Assess the degree of danger posed by the client to an identifiable victim(s) or a class of victims by conducting a violence assessment based on community standards in the mental health and substance abuse treatment profession;
  - 2. Document the violence assessment in the client's clinical record;

3. Select the most appropriate intervention depending on the nature of the case and the outcome of the assessment of the client's potential for violence. The Tarasoff court did not consider warning the potential victim(s) as the only response to take when danger arises. A variety of interventions can be used in reducing a client's potential for violence such as: medication adjustment, increasing the frequency of therapy sessions, asking the client to relinquish his/her weapon(s), initiating a "no violence contract" and/or incorporating other individuals into the therapy sessions. If these strategies are determined insufficient based on assessment and clinical circumstances, consider involuntarily detaining the client, and warning the potential victim(s) or class of victims and the police of the client's potential for violence;
4. Document the rationale for the chosen intervention(s) in the client's clinical record;
5. Implement the chosen intervention(s), and;
6. Seek out consultation with the Service Chief or immediate supervisor at any time during the assessment and decision-making process.

III. Warning Identifiable Potential Victim(s) or Class of Victims

- A. If the clinical circumstances necessitate an HCA BHS employee to warn an identifiable potential victim(s) or class of victims of a client's threats of violence, the employee shall:
  1. Utilize the "minimum necessary" standard when disclosing information. This would include, but is not limited to, identifying the program as "Health Care Agency." Do not use other identifying language such as "Behavioral Health Services," "Adult and Older Adult Behavioral Health," "Children and Youth Behavioral Health", "Westminster Mental Health", "Crisis Assessment Team", etc. When using written communication, use letterhead that limits the information to "Health Care Agency" and does not include additional identification Behavioral Health Services or any other more detailed program identification.
  2. Notify the Service Chief or immediate supervisor;
  3. If possible, obtain the client's verbal or written consent to provide notification and document the effort and outcome in the clinical record;
  4. Make every reasonable attempt to contact the identified victim(s) and document all contact attempts. Reasonable attempts are determined based on each case circumstance and may include telephone outreach, or other methods. If notifying a class of victims (e.g., identified school, facility, or government building) speak with someone in management (e.g., school principal or building manager);

**SUBJECT: Duty to Protect**

---

---

5. Disclose pertinent information regarding the threat to the identified victim(s) such as who is making the threat and nature of the threat. Also, tell the identified victim(s) to take steps to protect themselves and those around them. Document the telephone contact in the client's clinical record;
6. Follow-up the verbal notification with a letter sent to the identified victim(s) using both delivery confirmation and certified mail methods and a copy to the police department in the area (or via the police department website if preferred by the police department) in which the identified victim(s) resides, within 24 hours. All letters shall be approved by the program's service chief, manager or designee prior to mailing. Sample letters are available from program administration upon request. Place a copy of the letter in the client's clinical record;
7. Make telephone and/or, if preferred, electronic contact with the police department in the area in which the identified victim(s) resides. Provide the police with the name and location of the identified victim(s) and that of the client making the threat, and the nature of the threat. Document the telephone and/or electronic contact in the client's clinical record;
8. Consider as part of the duty to protect the obligation to notify persons in close relationship to the object of the client's threat (e.g., children, spouses, or co-workers) and take the appropriate steps to fulfill this duty to protect. Document the notification in the client's clinical record;
9. Contact the United States Secret Service at (714) 246-8257 if the identifiable victim is the President of the United States, certain members of their families, (former Presidents, or foreign heads of State while they are in the United States). Document the telephone contact in the client's clinical record, and;
10. Document the release of this information on the Protected Health Information (PHI) Tracking Log, as detailed in BHS P&P 05.05.02 Tracking Disclosures of PHI.

**IV. Clients on Involuntary Holds and the Tarasoff Obligation**

- A. It is required to warn the identifiable victim(s) of the potential threat of violence, even if the client is being detained. Failing to warn a potential victim(s) could lead to serious consequences, outweighing concerns about breaching a client's confidentiality.
- B. The following procedures apply for clients detained at the County Crisis Stabilization Unit (CSU) designated facility.
  1. Prior to the client's release from the County CSU, a re-assessment of their potential for violence towards an identifiable victim(s) must be conducted and a clinical decision made regarding the necessity of a warning upon

**SUBJECT: Duty to Protect**

---

---

release. The client's potential for violence towards an identifiable victim may be mitigated after therapeutic intervention (e.g., psychotropic medication and/or cognitive behavioral therapy).

2. If the client is being transferred from the County CSU to another designated facility and remains a danger to an identifiable victim(s), staff shall;
  - a) take steps to warn the victim(s), following the procedures described in section III above.
  - b) notify the admitting facility of the provider's assessment of risk and of the need for the admitting facility to continue to monitor and assess the client's potential for violence prior to release.
    - i) The notification shall be documented in the clinical record and shall include the name and title of the person notified at the receiving facility.
- C. Tarasoff warning shall be made when a client is on an involuntary hold and he/she escapes from the County CSU facility and/or is absent for any reason.