



**Health Care Agency
Behavioral Health Services
Policies and Procedures**

Section Name: Care and Treatment
Sub Section: Mandated Reporting
Section Number: 01.06.01
Policy Status: New Revised

Chief of Operations,
Behavioral Health Services

SIGNATURE

DATE APPROVED

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) consumers.

SCOPE:

The provisions of this policy are applicable to all HCA/BHS employees 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, and registered psychiatric nurses. It also includes registered psychological assistants, associate clinical social workers, marriage and family therapist Interns, psychological 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, vocational nurses, and licensed psychiatric technicians.

REFERENCES:

California Evidence Code Section 1010

Welfare and Institutions Code Section 5328

California Civil Code Section 43.92

California Code of Regulations Title 9, Chapter 8

Tarasoff v. Regents of the University of California, 1976

Jablonski v. United States, 1983

Hedlund v. Superior Court of Orange County, 1983

Tarasoff and Beyond: Legal and Clinical Considerations in the Treatment of Life-Endangering Patients, 1993

Ewing v. Goldstein, 2004

BHS Policy & Procedure 05.05.02 [Tracking Disclosures of PHI](http://intranet.ochca.com/bhs/pap)
<http://intranet.ochca.com/bhs/pap>

BHS Policy & Procedure 05.05.03 [Accounting for Disclosures of PHI](http://intranet.ochca.com/bhs/pap)
<http://intranet.ochca.com/bhs/pap>

PROCEDURE:

I. Supervisor Involvement

Under current law, the obligation for action is the clinician's. 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 clinician's supervisor shall be notified of the assessment and the resulting decision(s).

II. Steps to Take in Determining a Tarasoff Obligation

A verbal threat alone (communicated by the patient or a patient's family member to the clinician) 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 mental health and/or alcohol or other drug services to HCA/BHS consumers, based upon all the available clinical evidence, believe a consumer 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:

- A. Assess the degree of danger posed by the consumer 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;
- B. Document the violence assessment in the consumer's clinical record;
- C. Select the most appropriate intervention depending on the nature of the case and the outcome of the assessment of the consumer'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 consumer's potential for violence such as: medication adjustment, increasing the frequency of therapy sessions, asking the consumer to relinquish his/her weapon(s), initiating a "no violence contract" and/or incorporating other individuals into the therapy sessions. If these strategies seem insufficient,

consider involuntarily detaining the consumer, or warning the potential victim(s) or class of victims and the police of the consumer's potential for violence;

- D. Document the rationale for the chosen intervention(s) in the consumer's clinical record;
- E. Implement the chosen intervention(s), and;
- F. 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

If the clinical circumstances necessitate an HCA/BHS employee to warn an identifiable potential victim(s) or class of victims of a consumer's threats of violence, the employee shall:

- A. Notify the Service Chief or immediate supervisor;
- B. If possible, obtain the consumer's consent to provide notification and document the effort and outcome in the clinical record;
- C. Make telephone contact with the identified victim(s). 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);
- D. 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 consumer's clinical record;
- E. Follow-up the verbal notification with a certified letter to the identified victim(s) and a copy to police department in the area in which the identified victim(s) resides. Place a copy of the letter in the consumer's clinical record;
- F. Make telephone 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 consumer making the threat, and the nature of the threat. Document the telephone contact in the consumer's clinical record;
- G. Consider as a part of your duty to protect, persons in close relationship to the object of the consumer's threat (e.g., children, spouses, or co-workers) and take the appropriate steps to fulfill your duty to protect;
- H. 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 consumer's clinical record, and;

- I. 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. Consumers on Involuntary Holds and the Tarasoff Obligation

Warning an identifiable victim(s) of a consumer's threat of potential violence when, at the time of the threat, the consumer is:

- A. on an involuntary hold may not be necessary because the detained consumer, at that moment, does not pose an immediate threat to an identified victim(s) who resides outside the detaining facility. Warning a potential victim who resides outside the detaining facility could be viewed as a breach of consumer confidentiality, provided the consumer is being safely detained. Prior to the consumer's release, a re-assessment of the consumer's potential for violence towards an identifiable victim(s) must be conducted and a clinical decision made at that time as to whether a warning is necessary. The consumer's potential for violence towards an identifiable victim may be mitigated after therapeutic intervention (e.g., psychotropic medication and / or anger management).
- B. on an involuntary hold and is being transferred from one detaining facility to another and the identified victim(s) is not a resident of the receiving facility may not be necessary for the same reasons noted in (A). The consumer being transferred from one locked facility to another does not pose an immediate threat to an identified victim(s) who resides outside the receiving facility. This does not preclude the therapist / facility from carefully documenting the threat in the consumer's clinical record so that the receiving facility can be made aware of the situation and continue to monitor and assess the consumer's potential for violence at the time of release.

In both situations, A and B above, the clinician shall notify the detaining facility of the clinician's assessment of risk and of the need for the detaining facility to assess the consumer's potential for violence prior to release. The notification shall be documented in the clinical record and shall include the name and title of the person notified at the detaining facility.

Tarasoff warning shall be made when a consumer is on an involuntary hold and when he/she escapes from detention or is given a therapeutic pass.

V. Minimum Necessary

Only the minimum information necessary to meet the need of completing the above steps shall be disclosed.