



COUNTY OF YOLO

HEALTH AND HUMAN SERVICES AGENCY

POLICIES AND PROCEDURES

SECTION 5, CHAPTER 1, POLICY 008

TARASOFF – DUTY TO PROTECT

POLICY NUMBER:	5-1-008
SYSTEM OF CARE:	BEHAVIORAL HEALTH
FINALIZED DATE:	06.01.2020
EFFECTIVE:	06.13.2003
SUPERSEDES # :	Supersedes Policy #'s: PP 902 –Tarasoff-Duty to Warn PP 902-A Expanded Discussion of Tarasoff 5-1-002 Tarasoff – Duty to Warn and Protect

A. PURPOSE: To provide guidance to Yolo County Health and Human Services Agency (HHSA) Behavioral Health (BH) staff regarding the psychotherapist’s duty to warn and to protect a reasonably identifiable victim(s) of a client’s serious threat of physical violence communicated by a client or a credible third party to the psychotherapist (formerly referenced as “*Tarasoff Decision*”), to ensure that those staff who meet the definition of “psychotherapist” as defined in Evidence Code §1010 understand and meet their reporting requirements, and to advise staff who are not psychotherapists about their responsibilities to report to management information that they may have received about a client’s serious physical threats communicated by the client or a credible third party.

B. FORMS REQUIRED:

1. Unusual Occurrence and Event (UOE) Report Form

C. DEFINITIONS:

1. **Psychotherapist:** As defined by California Evidence Code §1010, a person who is, or is reasonably believed by the patient to be:
 - a. A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

- b. A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
- c. A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.
- d. A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.
- e. A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- f. A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.
- g. A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board-certified psychiatrist as required by Section 4996.20 or 4996.21 of the Business and Professions Code.
- h. A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.
- i. A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board-certified psychiatrist.
- j. A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 of, or subdivision (c) of Section 4980.37 of, the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage and family therapist.
- k. A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.

- i. An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.
 - m. A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.
 - 2. **Reasonably Identifiable Victim:** The person(s) or entity the client has made the serious threat of physical violence or death toward, who can be identified by a first and last name, by relation or relationship to client, or title, or specified entity or location, or by any other means available.
 - 3. **Threat:** Verbalization or other communication to a psychotherapist by a client or by a third party regarding a serious threat of physical violence or death towards a Reasonably Identifiable Victim.
 - 4. **Warning:** Written and/or verbal communication by a psychotherapist to a Reasonably Identifiable Victim regarding a client’s serious threat of physical violence or death.
- D. POLICY:** Yolo County HHSBH staff shall take action to protect Reasonably Identifiable Victims from clients consistent with applicable law, including provisions of the Welfare & Institution Code, the Civil Code, the Evidence Code, and the requirements of the Tarasoff decision and subsequent case law.

Under Civil Code Section 43.92 and subsequent judicial rulings establishing a duty to warn and protect, anytime a Psychotherapist is reasonably convinced that a client has communicated a current, serious threat of physical violence against a Reasonably Identifiable Victim, regardless of how or from whom the Psychotherapist learns of the threat. The key is whether the Psychotherapist actually believes that a client has made a credible threat. The duty to warn and protect is discharged by the Psychotherapist making reasonable efforts to communicate the threat to the Reasonably Identifiable Victim and to a law enforcement agency.

When an HHSBH client or a credible third party, including, but not limited to a family member, close acquaintance, member of the clinical team, or school personnel, informs HHSBH staff that a client has made a serious threat of physical violence against Reasonably Identifiable Victim, then actions pursuant to applicable law must be implemented. Staff shall consult with their clinical supervisor, manager, and / or director throughout the process. If questions remain, such as: whether the communication triggers a duty to protect, who is considered a “family member”, or if the Reasonably Identifiable Victim is “reasonably identifiable”, HHSBH staff and providers shall consult with clinical supervisors, managers, directors, and/or the Behavioral Health Compliance Officer.

Decisions made as to how the situation will be handled should be carefully documented in the medical record. At minimum, documentation should address each of the conditions which serve as the basis for the duty to protect: 1) that the client communicated to the Psychotherapist a threat of serious physical violence or the Psychotherapist obtained information of such a threat having been made by the client from a credible third party; 2) that the threat of physical violence was a serious one; and 3)

that the Reasonably Identifiable Victim were reasonably identifiable and notified along with law enforcement.

- E. PROCEDURE:** The following procedures shall be applicable to all HHSA BH staff when a client, a client's family member, or a credible third party communicates to staff a client's serious threat of physical violence against a Reasonably Identifiable Victim.
1. All staff, including non-clinical staff, must immediately report any above-mentioned communication to a clinical supervisor, manager, and/or director to determine the most appropriate action.
 2. Clinical staff, bearing in mind the potential urgency of the danger, shall review the available history and treatment of the client to determine level of risk, and discuss the information with the clinical supervisor, manager, and / or director to decide whether or not the client presents a serious danger to a Reasonably Identifiable Victim.
 3. If the communication is received from a credible third party, such as a family member, staff shall determine the nature of the relationship to verify the individual meets the definition of credible third party, determine whether the communication was made in furtherance of the client's treatment, and determine whether the communication conveys credible serious threat of violence.
 4. If it is decided that the client does not present a serious danger to a Reasonably Identifiable Victim, then this fact must be documented in the medical record, including the rationale. In such instances, where the client does not meet the threshold for issuing a warning, staff should continue monitoring the level of dangerousness through ongoing risk assessment and safety planning, and identify and implement interventions that may decrease the risk.
 5. If it is decided that the client does present a serious danger to a Reasonably Identifiable Victim, the following three actions shall be taken as soon as is practically possible:
 - a. Initiate an evaluation for involuntary hold if the client's dangerousness to others appears to be the result of a mental health disorder and the client can be located. If the client cannot be located, notify local law enforcement for assistance. The receiving Lanterman-Petris Short (LPS)-designated facility shall be informed by the staff initiating the involuntary hold of the efforts to notify law enforcement and to warn a Reasonably Identifiable Victim. Document all efforts in the client's medical record.
 - b. Make reasonable efforts to notify the intended Reasonably Identifiable Victim whether or not the client is hospitalized. Involuntary hospitalizations of the client DOES NOT discharge the duty to protect the Reasonably Identifiable Victim. Contact may be made through whatever means is indicated, such as by telephone, in writing, or visitation. Documentation in the client's medical record is required and should include specific efforts to contact the Reasonably Identifiable Victim, times and dates of these attempts, and copies of any written correspondence.

Only the minimum amount of information necessary to protect a Reasonably Identifiable Victim shall be released. This exception to client confidentiality must be carried out with care and consideration with the maintenance of the public safety and therapeutic relationship as objectives. With issuing warnings concerning Substance Use Disorder programs, staff must take care to safeguard the confidentiality of the clients receiving SUD services.

A verbal or written warning to the Reasonably Identifiable Victim shall include the following information: that you have a professional relationship with the client, that this client has communicated a serious threat of physical violence to the Reasonably Identifiable Victim, that you are required by law to warn the Victim, a description of the threat, and that the Reasonably Identifiable Victim should take steps to ensure one's own protection.

- c. Contact the local law enforcement agency having jurisdiction where the potential Reasonably Identifiable Victim resides. Involuntary hospitalization of the client does not discharge the duty to notify law enforcement. Enter in the medical record the name of the officer/person to whom the report was made, with the date, time, and information released.

- 6. If the client making the credible threats and/or the Reasonably Identifiable Victim is conserved, alert the Public Guardian.

- 7. In the event of an emergency, appropriate action is to be taken immediately and notification of the clinical supervisor or Behavioral Health Director is to occur as soon as possible.

- 8. The Behavioral Health Director and Behavioral Health Quality Management unit shall be notified of all actions considered and/or taken, and an UOE Report Form shall be filed by the clinical staff member issuing the warning with oversight by the supervisor. The UOE Report Form shall include the name of the staff member issuing the warning, the names of any other persons involved in the decision, law enforcement and Reasonably Identifiable Victim notification information, and any relevant

F. REFERENCES: California Civil Code 43.92(b).
California Evidence Code, Section 1010.
California Welfare and Institutions Code (WIC), Section 5328(18).
Tarasoff vs. Regents of the University of California, Case Law.

Approved by:



Karen Larsen, Director
Yolo County Health and Human Services Agency

5/29/20

Date