

Legal Liability

Read Ahead Materials for the US Prevention Practitioners Network

Background - the US Prevention Practitioners Network

Over the course of the next two years, [the McCain Institute](#), with support from [the Institute for Strategic Dialogue](#) (ISD) and a steering committee of violence prevention and social safety experts, will develop and engage a [US practitioners network](#) for individuals working in **targeted violence and terrorism prevention (TVTP)**. The aim of this is not only to connect practitioners across the US with one another, but also to build their capacity and the efficacy of their programs through a series of workshops that cover both theoretical and practical elements of delivering prevention and intervention initiatives. This information pack is for a mini workshop series on legal liability in TVTP, covering civil and criminal liability, as well as information sharing.

Why is legal liability an important topic?

TVTP programs are complex efforts to build resilience against violence and hateful ideologies in our communities. Regardless of how well-structured and well-intentioned TVTP programs are, however, they may be vulnerable to threats of malpractice or other legal claims made against them by clients, third parties or the state. As with social work more broadly, this doesn't come as a surprise given the sensitive nature of this type of work, which focuses particularly on individuals potentially vulnerable to violent ideologies, and which deals with difficult and emotive topics. Understanding the concept and types of legal liability and the implications of this for TVTP is an important part of planning appropriate mitigations to protect you, your staff and your practice against the emotional, financial and reputational implications of civil or criminal lawsuits.

What is the purpose of this document?

This document provides entry-level considerations about legal liability in the context of TVTP. **Neither these materials nor the related workshops are to be taken as legal advice** - for legal advice, readers should consult their lawyers or legal counsel. Rather, this document brings together some of the key concepts and terms related to civil and criminal liability, to help readers grasp the topic and the need to plan appropriate insurance and other mitigations accordingly. This information pack provides:

- an introduction to the legal liability workshop series;
- definitional overviews of civil liability and criminal liability;
- an overview of key concepts and considerations related to information sharing;
- a glossary of useful terms;
- recommended further reading.

Documents like this one will be provided ahead of every workshop and will be used, alongside key takeaways from the workshops, to produce practitioner-focused toolkits for TVTP programming. This is an expanded version of the third document, which looked specifically at [civil liability](#), while the first covers [risk, needs and threat assessment](#) and the second looks at [staffing multi-disciplinary interventions](#). For any inquiries, please contact [the McCain Institute](#) or [ISD](#).

Introduction - Legal Considerations for TVTP programming

Based on consultations with those working in TVTP, the Prevention Practitioners Network Steering Committee identified legal considerations in TVTP as a priority topic to support existing and prospective practitioners. Given the complexities and breadth of this topic, particularly for those not familiar with related federal or state law or for those new to TVTP programming, the McCain Institute, ISD and the Steering Committee are delivering a three-part workshop series on various legal considerations for TVTP programming. The three workshops and these read ahead materials cover:



1. Civil Liability

Covering civil actions, which are lawsuits filed by a private person or party against another private person or party. These usually seek financial compensation for injury or loss that the plaintiff* claims is due to a non-criminal act committed by the defendant*.



2. Criminal Liability

Relating to criminal actions whereby an individual is being prosecuted by the government (state or federal) for allegedly committing a crime. As opposed to civil lawsuits where the "punishment" is usually monetary, individuals found guilty of a criminal charge may be required to pay a fine, do community service or complete a prison sentence.



3. Information Sharing

Addressing legal and ethical considerations for data-sharing. Whether information sharing is required while conducting a needs assessment, or whether a case needs to be referred to external services or to law enforcement, the appropriate agreements (e.g. Memorandums of Understanding (MoUs) and non-disclosure agreements (NDAs)) need to be in place to ensure this is done securely and legally.

Important:

Before delving into these topics, it is important to remember the following:

- These are entry-level workshops and read ahead materials - **they do not constitute legal advice**, nor are they intended as guides for mitigating against civil or criminal lawsuits.
- Laws regarding liability vary by state. Service providers should therefore become well acquainted with the specific legal requirements of where they operate.
- Due to the lack of publicly available literature pertaining specifically to legal liability and targeted violence prevention, the contents of this document are informed largely by legal liability in the field of social work more broadly.

**a glossary of useful terms can be found on page 11 of this document*



What is Civil Liability?

Civil liability refers to the ["legal obligation that requires a party to pay for damages or to follow other court-enforcements in a \[civil action\] lawsuit."](#) Simply put, if a person or party is found liable for a non-criminal act that caused harm to the plaintiff, they are legally required to pay the monetary compensation awarded to the plaintiff by the jury or judge presiding over the case. There are [five common types](#) of civil action, the most relevant of which for TVTP are listed below. Also listed are [two types of liability](#) in civil law where 1) the defendant's intentions do not need to be proven to be held liable or b) where a defendant is held liable for the actions of others.

Types of Civil Action:

- Breach of contract -
where the plaintiff claims damages are due primarily to the defendant breaching or failing to fulfill contractual terms.
- Torts -
tort cases involve allegations of unintentional or intentional wrongdoing ("tort" is French for "wrong") that caused emotional, physical and/or financial injury or loss. This includes things like negligence, breaches of statutory duty, fraud, defamation and discrimination.
- Class Action Cases -
where the plaintiff represents a group of people who have all experienced harm or loss caused by the same thing.

Strict vs. Vicarious Liability:

- Strict liability -
where the plaintiff simply needs to prove the defendant took part in a particular act. The defendant's intentions for engaging in this act or whether they demonstrated negligence do not need to be proven.
- Vicarious liability -
this places liability on a person or party separate to the individual or party that conducted the act(s) that led to harm. For example, if an employer is aware of an employee's misconduct towards a client and fails to address this properly, they may be held vicariously liable for any damage or injury that misconduct caused the client.

Implications for TVTP:



Tort cases are the [most common](#) in social work and other healthcare professions. Potential examples of tort cases related to TVTP include when an intervention provider tries to deliver a service they aren't qualified for (rather than referring the client externally). The intervention provider may be held legally liable for any harm that befalls the client as a result. Alternatively, if a client discloses intent to harm themselves or other identified individuals and the intervention provider does not respond appropriately (e.g. they ignore this stated intent), they may be accused of negligence and be held liable for any resulting harms. Whether you are an independent service provider or part of an agency, this is a risk that must be considered and mitigated. **Ensuring you have the proper insurance and other mitigatory factors in place helps protect against civil liability.**



What is Criminal Liability?

Criminal liability, on the other hand, refers to ["responsibility for a crime and the penalty society imposes for this crime."](#) If you are held liable for a [crime](#), you are therefore legally obligated to complete the penalty, which in the case of criminal law is usually a prison sentence.

How does this differ from civil liability?

As opposed to civil liability, where a private party or individual brings charges against another private party or individual, criminal liability sees **the government** charge an individual with violation(s) of state or federal criminal code. Criminal liability therefore does not require the victim(s) to bring a case to court - the government does this on their behalf. Another key difference between criminal and civil liability regards **burden of proof**. The burden of proof for criminal cases is much higher than that in civil cases. While in criminal law, the government must prove that the defendant is guilty ["beyond reasonable doubt before a jury of peers,"](#) in civil lawsuits, the plaintiff needs to provide enough evidence to show ["it is more likely than not"](#) that the defendant is responsible for the plaintiff's harms.

Importantly, a party or individual can be [subject to both civil and criminal charges](#). For example, someone charged with the crime of assault (["intentionally or recklessly striking another person"](#)) may also be sued in a civil lawsuit brought forth by the victim, particularly if the assault resulted in serious injury or suffering.

Types of Crime:

- **Infraction** - considered the least serious of offenses. Examples include speeding and tailgating.
- **Inchoate Offenses** - also known as "incomplete crimes", these are acts taken "toward committing a crime or acts that constitute indirect participation in a crime". Examples include "attempt" to commit a crime and failing, or "aiding and abetting" a crime.
- **Misdemeanor** - criminal offenses that are punishable by less than 12 months in jail. Misdemeanors may also result in community service, probation, or monetary fines.
- **Felony** - criminal offenses for which the punishment is greater than 12 months. The most severe felonies can result in life imprisonment or, depending on state legislation, in the death penalty.

There are different classes of misdemeanor and felony. [Criminal offenses can also be subject to strict liability](#) (see the previous page), where a defendant is held liable for committing an action, regardless of their intent or mental state. Statutory rape (sexual intercourse with an individual who hasn't yet reached the legal age of consent) cases, for example, are [considered in many states](#) to be strict liability offenses.



This section outlines some of the key legal concepts that TVTP programs must consider to operate legally and ethically, and to prevent against civil liability. Importantly, while duty of care is statutory across the United States, legislation regarding what constitutes a breach of duty of care and regarding the duties to protect and to warn vary from state to state. **It is therefore essential that practitioners acquaint themselves with related laws in their jurisdiction.**

Duty of Care

Duty of care refers to the legal responsibility of individuals "[to act reasonably so as to avoid injuring other people](#)." When an individual or party fails to meet this duty, they may be considered liable for any resulting damages experienced by other individuals or parties. In civil law, tort cases that allege negligence or malpractice must be able to prove that the defendant had a duty of care to the plaintiff (e.g. like social workers have to their clients) and that any **foreseeable harm** experienced by the plaintiff was due to a breach of this duty.

What does this mean for TVTP?

The [Social Care Institute for Excellence](#) (SCIE) provides some helpful, transferable tips for demonstrating reasonable care in social work and other healthcare professions. These are provided below, with TVTP-specific tips provided in the second column.

Keep your professional knowledge and skills up to date	<i>Make sure you and your team have a baseline thematic understanding of targeted violence and related phenomena like radicalization and recruitment.</i>
Provide a service of no less quality than that to be expected based on the skills, responsibilities and range of activities widely agreed to be within the remit of your profession	<i>A technical understanding of what works and what doesn't in prevention and intervention efforts to counter targeted violence is also essential. Keeping up-to-date on best practice in this field helps ensure your practice is appropriately informed.</i>
Be in a position to know what must be done to ensure the service is provided safely	
Keep accurate and up-to-date records of the support you provide per client	<i>Appropriate, streamlined and secure data collection and storing mechanisms ensure the same baseline of information is collected per client and that all protected health information and personally identifiable information is stored safely.</i>
Do not delegate work unless the colleague or party you delegate this to is qualified and competent to carry out the given tasks	<i>Never provide a service you are not qualified to provide. Ensure any persons or parties you refer a client to are qualified to provide the service you need them to, and that they have signed the necessary MoUs and NDAs.</i>
Protect confidential information except where the wider duty of care or the public interest might justify making it known	<i>Acquaint yourself with local or state legislation regarding the duties to warn and protect. Make sure you and your team have clear criteria for escalation (e.g. to law enforcement) that account for this legislation.</i>



Duty to Warn and Duty to Protect

Duty to warn and to protect are often used interchangeably. Generally, however, duty to warn focuses on the potential victims of an identified threat - it permits or requires a health professional to breach patient confidentiality "[to protect potential victims from a patient's violent behavior](#)", usually by verbally informing the potential victim. Duty to protect takes a broader approach and refers to the professional duty to take "[reasonable precautions](#)" to protect the client or other identified individuals from harm. This may require service providers "[to inform third parties or authorities](#)" like law enforcement or medical health professionals. Importantly, duty to warn or to protect only requires the specific threat or harms to be communicated to third parties or authorities. Details about the individual and their case history that aren't relevant to the identified threat [should not be shared](#).

Further, there remain gray areas about **what triggers a duty to warn or protect versus what doesn't**. For example, in some states the [standard of threat](#) is an [imminent threat](#) of serious physical harm or death to others. In other states, the standard is a [serious threat](#) of physical violence. States also differ as to whether the duty is triggered when there is a [reasonably identifiable](#), [clearly identifiable](#), or [specific](#) potential victim. Who must be warned specifically, whether it's the identified potential victim and/or law enforcement, also [varies](#).

These duties **may also be mandatory or merely permissive**. In states where the duty is mandatory, a mental health professional must issue the warning if the threshold for escalation is met. In permissive states, a professional is not required to breach patient confidentiality and issue the applicable warnings even when elements of the duty are met. The National Conference of State Legislatures (NCSL) provides [a useful, interactive map](#) that explores mandatory and permissive duty to warn legislation on a state-by-state basis.

A tip for TVTP practitioners:



TVTP intervention programs should have **clear criteria for escalation** to external parties and/or law enforcement. These should account for state legislation about the types of threat that legally trigger a duty to warn, including the perceived "imminence" of the threat and whether the threat is vague or consists of a detailed plot to commit self-harm or to harm others.

Importantly, even if a threat doesn't constitute a duty to warn, it should be taken seriously and handled appropriately internally. Failure to act or provide appropriate support in light of a threat may lead to harm or to an unintentional breach of duty of care obligations, providing grounds for a civil action lawsuit.



Also essential to TVTP programming are the [Health Insurance Portability and Accountability Act](#) (HIPAA) Privacy Rule and the [Family Educational Rights and Privacy Act](#) (FERPA), which establish a series of legal requirements for protecting patient and student personal information.

HIPAA Privacy Rule:

What is it?	HIPAA's Privacy Rule " <u>establishes national standards to protect individuals' medical records and other personal health information.</u> "
What does it do?	It requires security measures and safeguards to be in place to adequately protect and uphold the privacy of personal health information. It also sets conditions for the use and disclosure of patient health information and gives patients rights over their information, particularly to obtain and correct their records.
Who does it apply to?	It applies to health plans, health care clearing houses and any health care provider who transmits health information electronically . HIPAA refers to these as " <u>covered entities</u> ."

Information Disclosure:



Covered entities may use or disclose protected health information, including mental health data, in circumstances that do not always require an individual's specific written authorization. Two of these circumstances are particularly pertinent to TVTP:

1. HIPAA **permits disclosure of protected health information for [national security and intelligence activities](#)**, defined as a disclosure to authorized federal officials for the purposes of "lawful intelligence, counter-intelligence, and other [national security activities](#) authorized by the National Security Act."
2. HIPAA **permits disclosures to avert [a serious imminent threat](#) to health or safety of a person or the public**. When disclosing protected health information to avert a serious imminent threat, a health care provider must: (1) have a good faith belief that the disclosure is necessary to prevent or lessen the threat, and (2) it must be made to a person(s) who is [reasonably able](#) to prevent or lessen the threat.

Either disclosure is permitted without individual authorization, but not required. HIPAA provides a federal floor of protection for protected health information that [preempts](#) any conflicting state law. When there is no conflict, however, and state law provides [more stringent](#) privacy protections, then state law prevails. In such cases, HIPAA tends to defer to other laws mandating such disclosures. Finally, HIPAA generally treats all types of protected health information the same, **with the exception of [psychotherapy notes](#)**, which are provided special protections and may only be disclosed if required by law (e.g. where there is a mandatory duty to warn).



FERPA:

What is it?	FERPA is " <u>a Federal law that protects the privacy of student education records.</u> "
What does it do?	FERPA gives parents or guardians a series of legal rights regarding their childrens' education records. These are transferred to students when they turn 18. FERPA also provides conditions for when records may be disclosed without permission from the parent or eligible student (a student aged 18 or above).
Who does it apply to?	All schools that receive funds from applicable programs under the US Department of Education (DoE).

Information Disclosure:



According to the DoE, the four most commonly used exceptions to FERPA's written consent requirement are disclosures:

- (a) designated as "directory information,"
- (b) to school officials or local educational agencies who have a legitimate educational interest and in accordance with annual notification requirements
- (c) to federal/state educational authorities concerning audits or evaluations, and
- (d) to organizations conducting specific studies for, or on behalf of, educational agencies or institutions.

Other FERPA exceptions include disclosures:

1. to school officials of another school relating to a student's enrollment or transfer;
2. in connection with financial aid;
3. concerning the juvenile justice system and its ability to serve a student whose records are released;
4. to an accrediting organization for accrediting functions;
5. to a parent of a dependent student;
6. in compliance with a judicial order or lawfully issued subpoena;
7. for purposes of a health or safety emergency;
8. to a parent of a student who is not an eligible student or the student;
9. of the final results of a disciplinary proceeding to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense;
10. in connection with a disciplinary proceeding at an institution of postsecondary education
11. to the parent of a student at a postsecondary education institution regarding the student's use or possession of alcohol or a controlled substance;
12. concerning sex offenders.

All of FERPA's exceptions have very specific requirements and limitations that necessitate the conditions that must be met to disclose personally identifiable information. This includes restrictions on how much or which aspects of the personally identifiable information may be disclosed, as well as how that disclosed information may be used.



Responses to the following questions were generated by the McCain Institute as a resource for public health practitioners. They do not constitute specific legal advice.

What prospective liability risks may arise if I provide services to someone that goes onto commit a violent attack of which I may, or may not, be aware in advance?

When the aforementioned duties to warn or protect are mandated in a specific state, a mental health professional may be held liable under state law for [civil damages](#) or subject to a [disciplinary action](#) by a licensing entity if the professional acted outside the duty. At minimum, however, the duty often requires that the patient [communicated](#) to the professional an explicit threat of violence to a reasonably identifiable, or specific, victim. It is therefore unlikely that a professional who truly lacked advance notice of a patient's violent attack would incur liability for failure to warn/protect. If a patient commits a violent attack that a mental health professional had advance notice of, and the professional had a duty to warn/protect under state law, civil liability or other penalties may follow depending on specific state laws.

How can I breach confidentiality and remain in compliance with HIPAA Privacy Rule?

As noted previously, the HIPAA Privacy Rule [allows permissive and required disclosures of protected health information](#). Permitted disclosures without a patient's authorization include those:

- to the individual (when not otherwise required);
- for treatment, payment, and health care operations activities;
- made after an individual had the opportunity agree or object to a disclosure;
- made as a result of or incident to an otherwise permitted use and disclosure;
- that constitute "Public Interest and Benefit Activities" per the "12 national priority purposes"; and
- for a limited data set that does not contain specific identifiers and is intended for research, public health purposes or health care operations, if the required data use agreement exists.

Among the 12 national priority purposes are public health activities (such as notifying individuals who may have been exposed to communicable diseases), law enforcement purposes, and serious threats to health or safety, as defined in the Rule. **The [US Department of Health and Human Services](#) notes that in permissive disclosure situations, "covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make."** Under the Rule, a covered entity must disclose certain protected health information in 2 circumstances: (1) disclosures of protected health information to the individual or his/her personal representative; and (2) disclosures to HHS Office for Civil Rights as part of a [compliance investigation](#).

How can I remain in compliance with privacy standards in FERPA if I breach patient confidentiality?

To the extent FERPA [protects](#) student's personal identifiable information in education records, it generally disallows breaches of patient confidentiality without parental or student authorization in most instances, subject to some exceptions. However, provided a mental health professional discloses personal identifiable information consistent with advance authorization or subject to one of the noted exceptions, the professional may effectively breach patient confidentiality lawfully within the scope of FERPA.



TVTP intervention programs require practitioners to gather and store personal and sensitive information about individuals that are referred to them and those they work with, both from external parties and based on internal data collection. TVTP programs may also require practitioners to share information or records about a client externally. **Given that collecting, handling, storing and securing sensitive data are part and parcel of TVTP intervention delivery, it is essential that all these processes are managed in a HIPAA-compliant manner and to the highest ethical degree possible.** Particular considerations include:

- Personally identifiable information and protected health information must be stored in a secure and encrypted location, only accessible by those directly involved in a case. Any hard copies of this information must be locked up when not in use.
- Any client information shared electronically must be done so securely (e.g. through encrypted emails) and shared only between program staff or with external parties who have been vetted and who have signed all the necessary MoUs and NDAs.
- Any data-sharing protocols (e.g. between agencies in a multi-disciplinary intervention) or escalation processes (e.g. to law enforcement) must be informed by both federal laws like HIPAA and FERPA, as well as state legislation about what constitutes a duty to warn and other related obligations. Where possible, **these protocols and processes should be reviewed by legal counsel to help ensure they are legally compliant to relevant federal and state legislation.**

The importance of operating with an informed understanding of what constitutes a legal disclosure of otherwise strictly confidential information cannot be stressed enough. Negligent or unlawful disclosure of data may make practitioners and their programs vulnerable to civil action lawsuits. Should they be found liable for harm, this can have severe personal and professional implications. Further, inappropriate storing of personal data may place clients at harm. Should it be leaked, for example, that an individual is receiving a targeted violence intervention, they and/or their families may be at risk of communal backlash or may be targeted by violent extremists.

Other related considerations per [intervention stage](#) include:

- **Intake** - How do you or your affiliated program receive referrals? What information do you collect at this stage and who sees it? Is all related data and communication delivered and stored securely?
- **Risk, Needs and/or Threat assessment** - This stage may require you to gather information about a referred individual from various external agencies. Do you have secure information sharing processes in place to do so? Refer to your lawyer or legal counsel to understand what you are legally permitted to obtain from these external agencies. Also, **does your risk assessment framework account for duty to warn/protect criteria?**
- **Intervention** - Are you and your team trained or qualified to deliver formal interventions? How are you storing notes and other data collection from your sessions with the intervention candidate? Do you have escalation criteria in place that accounts for state legislation to help inform when a duty to warn is triggered? When do you decide an intervention has met its purpose? Ending a support package too early may have counterproductive effects - if this leads to harm, there may be grounds for a civil suit.
- **Aftercare** - Do you need to inform any external parties about the agreed-upon aftercare strategy developed for an individual? Does the individual themselves feel ready to enter this stage?

Term / Phrase:	Definition:
Case Law or Common Law (used interchangeably)	Also known as "common law", case law is law based on judicial decisions rather than on constitutions, statutes and regulations. Case law concerns unique disputes resolved by courts using the facts of a case, as opposed to statutes and regulations, which are written abstractly. These are most common at the state level, there is a limited body of federal case law. - Cornell Law School Legal Information Institute (LII)
Civil Law	In reference to law, "civil" is used primarily as a descriptive term to denote conflicts between private individuals. Where in a civil case two or more individuals or private entities (such as corporations) dispute their rights relative to each other (such as in a contract or a tort), a criminal case involves the government attempting on behalf of its citizens to punish a person for violating its criminal law. - LII
Criminal Law	The system of laws concerned with punishment of individuals that have committed crimes. Importantly, each state has its own criminal code so what constitutes a crime and consequent sentencing varies from state to state. - LII
Defendant	The accused party or person(s) in a court case. - Judicial Learning Center
Duty of Care	At any given time, everyone has a legal duty to act reasonably so as to avoid injuring other people. This is known as "duty of care." When people fail to meet this legal duty, they may be liable for any resulting harm experienced by others. - AllLaw
Duty to Mitigate	Duty to mitigate refers to the obligation of an injured or aggrieved party to make reasonable efforts to minimize the effects of the injury or harm they experienced. In civil law, duty to mitigate can apply to the victim of a tort or a breach of contract. Neglecting a duty to mitigate precludes the recovery of damages that could have been avoided through reasonable efforts. - LII ; FindLaw
Duty to Protect	Duty to protect implies a therapist determining that his or her patient presents a serious danger of violence to another and an obligation to use reasonable care to protect the intended victim against danger (Harvard Mental Health Letter, 2008, January). This may entail a warning, police notification, or other necessary steps. - The New Social Worker
Duty to Warn	Duty to warn means that the social worker (or other mental health professional) must verbally tell the intended victim that there is a foreseeable danger of violence. What triggers a duty to warn and whether it is mandatory or just permitted varies from state to state. - The New Social Worker
Family Educational Rights and Privacy Act (FERPA)	FERPA is a federal law enacted in 1974 that protects the privacy of student education records. FERPA applies to any public or private elementary, secondary, or post-secondary school and any state or local education agency that receives funds under an applicable program of the US Department of Education. The Act serves two primary purposes. It gives parents or eligible students more control over their educational records, and it prohibits educational institutions from disclosing "personally identifiable information in education records" without the written consent of an eligible student, or if the student is a minor, the student's parents. An eligible student is one who has reached age 18 or attends a school beyond the high school level. - US DoE

Term / Phrase:	Definition:
Felonies, Misdemeanors and Infractions	<p>Felonies are the most serious type of crime, defined in federal law as crimes with a sentence of more than one year. Federal law breaks this down further into different "classes" of felony, where the most serious (Class A) results in life imprisonment or the death penalty. Misdemeanors are less serious crimes with punishments of up to a year, while infractions are considered the least serious and, in most cases, do not result in jail time. - FindLaw</p>
Foreseeable harm/risks	<p>A likelihood of injury or damage that a reasonable person should be able to anticipate in a given set of circumstances. Foreseeable risk is a common affirmative defense put up by defendants in civil action lawsuits for negligence, essentially claiming that the plaintiff should have thought twice before taking a risky action. - LII</p>
Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule	<p>The HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections. - US Department of Health and Human Services</p>
Imminent danger/risk/threat	<p>Imminence in legal terms refers to immediacy. "Imminent danger" therefore refers to an immediate threat of harm. Cornell Law School provides a detailed definition of imminent threat as "a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm." In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur." Another metric for determining imminence and intent is TOADS or time, opportunity, ability, desire and stimulus. The US Department of Health and Human Services also provides guidance on what constitutes an imminent threat and therefore legally permits or mandates a duty to warn or to protect.</p> <p>However, it is important to be aware that, because the determination of imminence relies largely on the professional judgement of the service provider, it may be subject to bias. Landmark cases like that of Tarasoff (where the mental health professional was held liable for not warning Tatiana Tarasoff and her family of the threat made against her, even though the perpetrator only acted on his threat months after expressing it) further suggest that imminence is open to interpretation.</p>

Term / Phrase:	Definition:
Indictment vs. Conviction	If you are indicted, you are formally charged with a crime. If you are convicted, you have been found guilty of (or have pleaded guilty to) the charge(s). - Boston Defense Law
Insurance	A contract in which one party agrees to indemnify another against a predefined category of risks in exchange for a premium. Depending on the contract, the insurer may promise to financially protect the insured from the loss, damage, or liability stemming from some event. An insurance contract will almost always limit the amount of monetary protection possible. Liability insurance can help protect against the potential consequences of civil action lawsuits. - LII
Liability	Liability refers to " the condition of being actually or potentially subject to a legal obligation ." In civil law, if you are held liable for damage or injury of another, you may be legally required to pay compensation. Find Law provides a useful overview of the types of liability.
License	Generally, a "license" is permission granted by a qualified authority permitting a licensee to do something that would otherwise be prohibited. "License" may also refer to a physical document granting such permission, sometimes referred to as a permit. Licenses may have territorial and/or time limits and can be revoked or forfeited. - LII
Malpractice	The tort committed when a professional fails to properly execute their duty to a client. The duty of a professional to a client is generally defined as the duty to follow generally accepted professional standards. Of course, the other elements of a tort (breach, proximate cause, actual cause and damages) must also be shown. Malpractice suits are most common against doctors and lawyers. - LII
Negligence	A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct; where duty to warn is mandated, a failure to trigger this duty appropriately). - LII
Mandatory vs. Permissive	States vary in their duty to warn and to protect legislation. Some states mandate a duty to warn, making it a legal requirement to warn a potential victim of a threat, others permit it but do not legally require it. View this map to learn more about state-by-state legislation on duty to warn.

Term / Phrase:	Definition:
Safety Act	The SAFETY Act provides important legal liability protections for providers of Qualified Anti-Terrorism Technologies - whether they are products or services. The goal of the SAFETY Act is to encourage the development and deployment of effective anti-terrorism products and services by providing liability protections. - The SAFETY Act
Tort	A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers. - LII
Tort Law	The primary aims of tort law are to provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts. Torts can shift the burden of loss from the injured party to the party who is at fault or better suited to bear the burden of the loss. Typically, a party seeking redress through tort law will ask for damages in the form of monetary compensation. Less common remedies include injunction and restitution. - LII

Further Reading

Below are a few useful resources for further reading. These resources were also used to inform the contents of this document.

General:

- [The Legal Information Institute by Cornell Law School](#) - a useful tool to better understand various aspects of US legal code.
- [Judicial Learning Center](#) - a directory of educational resources to learn more about US law. See especially [their overview](#) of criminal vs. civil court cases.
- [Legal resource center](#) by the National Association of Social Workers - this includes resources on HIPAA and telehealth services.
- [Fundamentals of the Law](#) by Lumen Learning - useful resources to gain entry-level understandings of various aspects of US law.

See the next page for more resources.



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Further Reading

Below are a few useful resources for further reading. These resources were also used to inform the contents of this document.

Related to Civil Liability:

- ["Civil Liability - Types of Actions"](#) by Criminal Defense Lawyer.
- ["General Law of Torts"](#) by Law 101: Fundamentals of the Law.
- ["Tort Law Guide"](#) by The Lawyer Portal.
- ["Negligence & Breach of Duty of Care"](#) by HG.org.
- ["Negligence, the 'Duty of Care,' and Fault for an Accident"](#) by NOLO.
- ["Ethical Misconduct and Negligence in Social Work"](#) by Social Work Today.
- ["Civil Conspiracy"](#) by Find Law.
- ["Civil Cases vs. Criminal Cases: Key Differences"](#) by Find Law.
- [Civil Cases](#) by US Courts.

Related to Criminal Liability:

- [Criminal Liability](#) by Criminal Defense Lawyer.
- [What is the Difference between Civil and Criminal Lawsuits?](#) by Castle Law Office.
- [Criminal Law](#) by the LII.
- [Criminal Law](#) by Justia.
- [Types of Criminal Offenses](#) by Justia.
- [Sentencing Laws in the US](#) by Find Law.
- [Criminal Cases](#) by US Courts.

Related to HIPAA, FERPA and other Acts:

- [Summary of the HIPAA Privacy Rule](#) by the US Department for Health and Human Services (HHS).
- ["HIPAA for Professionals"](#) by the HHS.
- ["To Whom Does the \[HIPAA\] Privacy Rule Apply and Whom Will it Affect?"](#) by the National Institutes of Health.
- [HIPAA and psychotherapy notes](#) by the HHS.
- Summary of [information disclosure regulations under FERPA](#) by the US Department of Education.
- Useful printable [introductory materials on the SAFETY Act](#) by SAFETYAct.gov.

See the next page for duty of care, duty to warn and duty to protect and other resources.



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Further Reading

Below are a few useful resources for further reading. These resources were also used to inform the contents of this document.

Related to information sharing more broadly:

- [Information Sharing with Relevant Agencies](#) by Active Social Care Limited.
- ["Sharing Client Information with Colleagues"](#) by Frederic G. Reamer.
- ["The Complexities of Client Privacy, Confidentiality, and Privileged Communication"](#) by Frederic G. Reamer.
- [The School Social Worker and Confidentiality](#) by the NASW.
- [Sharing Behavioral Health Information: Tips and Strategies for Police - Mental Health Collaborations](#) - by the Justice Center.
- [Information Sharing in Criminal Justice - Mental Health Collaborations: Working with HIPAA and Other Privacy Laws](#) by the Justice Center.
- ["Confidentiality and its Exceptions"](#) by the Society for Advancement of Psychotherapy.

Related to duty of care, duty to warn, and duty to protect:

- [Summary of the duty to warn and its clinical significance](#), by the National Center for Biotechnology Information.
- ["Duty to Warn, Duty to Protect"](#) by The New Social Worker - this provides examples of duty to warn and to protect in mental healthcare.
- ["Duty to Protect"](#) by the American Psychological Association - a look at duty to warn roles and responsibilities for psychologists.
- [The Duty to Protect: Four Decades after Tarasoff](#) by Ahmad Adi and Mohammad Mathbout - a useful look into the implications of the Tarasoff case on duty to warn forty years on. This resource also ties in risk assessment frameworks and HIPAA.
- ["Common Induction Standard 5: Principles for Implementing Duty of Care"](#) by the Social Care Institute for Excellence - a very useful run-through of incorporating appropriate duty of care standards in social work.
- ["Duty of Care"](#) by All Law - a useful summary of duty of care and potential implications of breaching duty of care.
- ["The History and Purpose of Duty to Warn in Therapy"](#) by Very Well Mind - provides examples to help demonstrate when a duty to warn is clearly triggered, versus when it may rely on the professional judgement of the care provider.

See the next page for more resources.



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Further Reading

Below are a few useful resources for further reading. These resources were also used to inform the contents of this document.

- ["Mental Health Professionals' Duty to Warn"](#) by the National Conference of State Legislatures - a useful, interactive map that provides an overview of duty to warn legislation by state.
- [Warning a Potential Victim of a Person's Dangerousness: Clinician's Duty or Victim's Right?](#) by Alan R. Felthous - a look at duty to warn and the Tarasoff case.
- [Tarasoff v. Regents](#) by Good Therapy - the implications of the Tarasoff case on duty to warn amongst mental health professionals.

Other:

- ["The Digital and Electronic Revolution in Social Work: Rethinking the Meaning of Ethical Practice"](#) by Frederic G. Reamer - a useful look at ethical and privacy considerations in digital service provision.
- [Risk Management in Social Work: Preventing Professional Malpractice, Liability and Disciplinary Action](#) by Frederic G. Reamer - a reflective overview of privacy and confidentiality considerations and risk mitigation in social work. Reamer also explores the challenges brought about by online service provision.

