

Legal Considerations for Targeted Violence and Terrorism Prevention

*A Practice Guide for the US Prevention
Practitioners Network*

ISD

Powering solutions
to extremism
and polarisation

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INSTITUTE

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About this Practice Guide

The US Prevention Practitioners Network

Since September 2020, [the McCain Institute](#), with support from [the Institute for Strategic Dialogue](#) (ISD) and a steering committee of violence prevention and social safety experts, have been developing and engaging 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, and through providing information packs and practice guides in supplement to the workshops.

For more information about the Network or to access past information packs and practice guides, visit [the McCain Institute's website](#).

About this Document

This document is one in a series of practice guides that ISD and the McCain Institute are producing for the emerging Prevention Practitioners Network. It is a resource for existing and prospective network members that deliver (or seek to deliver) TVTP interventions. This particular guide supplements the third and fourth workshops that were delivered for the emerging Network, and covers civil and criminal liabilities, as well as considerations for information sharing in TVTP. Note that **the contents of this practice guide do not constitute legal advice. This guide is for informational purposes only.**

How does this differ from the read-ahead materials prepared in advance of the workshops?

The read-ahead materials provided to participants prior to each workshop are entry-level resources that provide context and background on a given topic, helping participants prepare for the workshop and identify potential questions for discussion. Read-ahead materials are prepared and provided for every workshop. You can access past read ahead-materials [here](#).

The practice guides, on the other hand, combine the contents of the read-ahead materials with insights from the workshops, to produce instructive and action-oriented guides that Network members can refer to in their work. Each practice guide covers several workshop topics.

Practice guides will be provided to Network members every few months. The first practice guide, on staffing interventions to prevent targeted violence and terrorism, can be found [here](#).

For any inquiries, please contact [the McCain Institute](#) or [ISD](#).



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Chapter One - Introducing Legal Considerations for TVTP

This practice guide covers three categories of legal considerations that TVTP practitioners and program designers must consider in their work. These include:



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 civil or 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, restitution to the victim(s), do community service or complete a prison sentence. Corporations and other legal entities can also be prosecuted for criminal acts.



3. Information Sharing

There are a number of legal and ethical considerations for data-sharing relevant to TVTP practice. 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.

This guide takes you through key considerations and concepts relating to civil liability, criminal liability and information sharing in TVTP. As you read through the guide, remember that:

- **This is an entry-level resource:**

The purpose of this guide is to provide practitioners with basic legal considerations and questions that they should address as they design prevention and intervention programming. This guide does not delve deeply into legal code, instead summarizing key legal concepts that are relevant to TVTP.

- **This guide is for informational purposes only:**

The contents of this guide (and all other materials produced by ISD and the McCain Institute for the US Prevention Practitioners Network) do **not serve as legal advice**, so should not be taken as such. Rather, this guide seeks to give practitioners familiarity with and an entry-level understanding of key legal concepts in TVTP. For legal advice, seek out or speak to your legal counsel.

- **Laws vary from state to state:**

Laws regarding liability vary by state. Service providers should therefore become well-acquainted with the specific legal requirements of where they operate, including how state-level privacy laws interact with federal acts, like the Health Insurance Portability and Accountability Act (see [page 12](#)).

**See page 5 for definitions of "plaintiff" and "defendant". See Appendix A for a glossary of legal terms.*

Key terms and concepts related to legal liability:

Before diving into the specifics of civil liability, criminal liability and information sharing, it is important to be aware of some of the legal concepts that underpin civil and criminal law. These include but are not limited to:

Plaintiff:

In civil law, the person or party that initiates a lawsuit. This is usually the aggrieved party or victim.

Prosecution:

In criminal law, cases are brought to court on behalf of the victim by "the People" via the state or federal government.



Defendant:

In civil law, the person or party being sued by a plaintiff.

In criminal law, the "defendant" is the person or party being prosecuted by the state or federal government.

- **Negligence** - refers to a failure to abide by or act accordingly with the level of care "[that someone of ordinary prudence](#)" would have demonstrated in a given circumstance. This can refer to both specific acts that are deemed negligent, and to lack of or failure to act appropriately in due time, known legally as an "[omission](#)".
- **Duty** - legal duties are obligated standards of behavior created by law or via contracts. They are essentially requirements to act, respond to a given situation or perform in a certain way and to a designated standard. The most important duties for TVTP practitioners to consider include the "Duty of Care", "Duty to Warn" and "Duty to Protect". These are covered in [Chapter Three](#) of this practice guide.
- **Breach** - when an individual with a duty (see above) failed to act appropriately or did not act at all in a situation where specific conduct or response was expected as per the given duty.
- **Causation** - referring to the reason something (e.g. a specific event or injury) happens. In civil law, for example, plaintiffs must prove a defendant, through their decisions, behavior or negligence, caused the injury, harm or violation of rights that the plaintiff is seeking compensation for. There are two components of causation - **actual (or "factual")**, where a tort or crime would not have occurred if not for the conduct or omissions of the defendant; and **proximate**, where causation needs to be "legally sufficient" (e.g. the defendant committed an act that "[the law recognizes as the primary cause](#)" of an injury or violation).

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 (see "Intent" in the Glossary) 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.

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Chapter Two - Civil vs. Criminal Liability

Civil liability refers to the "[legal obligation that requires a party to pay for damages or to follow other court \[orders\] 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.

Types of Civil Action:

There are [five common types](#) of civil action:

- **Breach of contract** (contract law) -
where the plaintiff claims damages are due primarily to the defendant breaching or failing to fulfill contractual terms.
- **Torts** (tort law)-
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.
- **Complaints against the city** -
where a plaintiff "alleges that city law or policy has caused harm to its citizens".
- **Property disputes** (property law) -
cases regarding ownerships and/or damages to a designated piece of property or real estate.



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 by, for example, **ensuring you have a clear understanding of legal and ethical mandates of your practicing discipline, the proper insurance, and other mitigation factors.**

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What is Criminal Liability?

Criminal liability 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 can be a fine, restitution, a period of probation or a prison sentence. There are different types of "crime" in criminal law:

- [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. Examples [include](#): shoplifting, vandalism, and driving under the influence.
- [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. Examples [include](#): murder, rape, and robbery.

There are different classes of misdemeanor and felony. [Criminal offenses can also be subject to strict liability](#) (see [page 5](#)), 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.



Implications for TVTP:



Negligence and malpractice in social care and the broader public safety field are rarely treated as criminal cases. For professional misconduct to be considered criminal, the prosecution must prove a practitioner acted with blatant ["disregard to obvious risks to human life and safety"](#). In addition to the elements of negligence or malpractice in civil law ("duty", "breach", "cause"), negligence is considered criminal if there is blatant misconduct ["that is so outrageous and reckless that it is a clear departure from the way an ordinary, careful individual would have acted."](#)

If, for example, a practitioner consistently and wilfully underserves a "high-risk" case, and the individual concerned in this case then commits an act of violence that leads to serious bodily harm or the death of others, the practitioner may be held criminally liable for "gross negligence".

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How do criminal and civil liability differ?

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 law. Criminal liability therefore does not require the victim(s) to bring a case to court - the government does this in light of there being an alleged violation of the law. 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 long-term injury or suffering.

In Summary: Civil vs. Criminal Liability



Civil Liability:

Addresses behaviors that cause injury (violation) to the private rights of individuals.

A person or party, known as a plaintiff, initiates a civil action. This is usually the victim of the injury or violation of rights that they deem the defendant is responsible for.

The burden of proof is much lower. Causation must be demonstrated to the extent that it is deemed "more likely than not" that a given harm was caused by the defendant's conduct.

The "punishment" (or "ruling", in civil law) is usually monetary, where a defendant that is judged liable for the plaintiff's harms has to provide the plaintiff with monetary compensation.

Criminal Liability:

Addresses behaviors "that are offenses against the public, society or state".

State or federal government initiates a criminal case. The party accusing another of a crime is known as the "prosecution".

The burden of proof is much higher than in civil law. The prosecution must demonstrate to a jury that the defendant is guilty beyond any reasonable doubt.

The "punishment" (or "sentence", in criminal law) ranges from restitution to community service to prison time and, in extreme cases, the death penalty.

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Chapter Three - Key "Duties"

This chapter outlines the legal duties that are most relevant to TVTP. Remember that legislation about what constitutes each duty may differ state to state, so **be sure to check the legal specificities of where you are based and where you operate.**

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.



Implications 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. **This is not an exhaustive list of tips.**

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>An up-to-date awareness of good practice in prevention and intervention efforts to counter targeted violence is also essential. Keeping up-to-date on best practice and learnings from other practitioners 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	<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>
Keep accurate and up-to-date records of the support you provide per client	<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>
Do not delegate work unless the colleague or party you delegate this to is qualified and competent to carry out the given tasks	<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>
Protect confidential information except where the wider duty of care or the public interest might justify making it known	

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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](#).

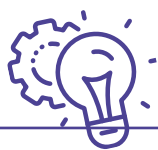
Further, there remain gray areas about **what triggers a duty to warn or protect versus what doesn't**. For example, in some states the [standard of threat](#) is an [imminent threat](#) of serious physical harm or death to others. In other states, the standard is a [serious threat](#) of physical violence. 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 *permitted but not required* to breach patient confidentiality and issue the applicable warnings 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.

In Summary: Duty to Warn vs. Protect

Warn:
permits or requires informing a potential victim of stated or insinuated harm against them.

Protect:
permits or requires "reasonable precautions" (incl. informing the appropriate third parties) to be taken to protect a client or other identified individuals.



Implications for TVTP:

As you deliver TVTP programming in vulnerable communities or with vulnerable individuals, one of your participants or clients may express a desire to harm a named individual or commit an act of violence against a specific institution or community. Deciding whether or not you are thus legally required or permitted to disclose this information to either the named individual or to the appropriate third party (e.g. law enforcement) requires an understanding of:

- **State legislation** - what is considered a threat in the state where you operate? Are you in a state where the duties to warn and protect are mandatory or permissive? **Ask your legal counsel to prepare clear guidance on the requirements in your jurisdiction.**
- **How to classify a threat** - what constitutes the threshold that triggers a duty to warn or protect? **Review past cases to inform your understanding of what constitutes a duty to act versus what doesn't.** Be sure to have robust information-sharing protocols in place should a duty to warn or protect be triggered.

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Chapter Four - Key "Acts"

Beyond the legal "duties" outlined in Chapter Three, there are also several "Acts" that TVTP practitioners should be aware of. This includes the SAFETY Act, which is described on this page. In addition, and perhaps most relevant to TVTP and the broader social and public health fields, are the Health Insurance Portability and Accountability Act, and the Family Educational Rights and Privacy Act. This chapter provides an overview of information-disclosure terms in these two acts, as well as answering frequently asked questions about lawful information disclosure.

The SAFETY Act

What is it? [The SAFETY Act](#) (Support Anti-terrorism by Fostering Effective Technologies), was enacted as part of the Homeland Security Act of 2002. The purpose is to "[ensure that the threat of liability does not deter potential manufacturers or sellers of anti-terrorism technologies from developing, deploying and commercializing technologies that could save lives.](#)" Importantly, "technologies" as used in the SAFETY Act is a blanket term that refers to "a product, device or **service**". The SAFETY Act essentially provides limits on liability arising from selling, practicing or using such a product, device or service (note that the Act has yet to be applied to the "service" of therapy or TVTP intervention), provided they are designated as a "qualified anti-terrorism technology" (QATT). The Act does not indemnify sellers, providers or users of covered technologies. Rather, it **limits** liability in the event of an act of terrorism where a QATT was deployed. The SAFETY Act only applies in events that are designated "acts of terrorism" by the Department of Homeland Security (DHS).

Who does it apply to? The Act applies to qualified anti-terrorism technologies, or **QATTs**, [which are](#) products, devices or services designed or developed for the purpose of preventing, detecting, identifying or deterring acts of terrorism or limiting the harm such acts might otherwise cause. Technologies are designated as QATTs by the Secretary of the DHS or by the [Under Secretary for Science and Technology at DHS](#).

[Qualified QATTs](#) that may bear relevance for TVTP programming include threat and vulnerability assessment services, venue security, security plans and services, and cyber security technologies.

The SAFETY Act in [practice](#):

In 2017, a shooter opened fire on a music festival from the 32nd floor of the Mandalay Bay Hotel in Las Vegas, killing 60 and injuring more than 500. The venue for the music festival and the hotel are both owned by MGM, which hired Contemporary Services Corporation (CSC) to provide security for the festival. CSC's security procedures, including screening and evacuation protocols, among others, are designated as certified QATTs. When lawsuits against MGM were filed following the shooting MGM argued that, as a purchaser of a QATT, the Safety Act was triggered. Plaintiffs filing lawsuits against MGM, however, argued that the SAFETY Act was not applicable because the act was not designated terrorism by DHS. While this demonstrates how the Act can be referred to post-attack, there was no judicial ruling as to the applicability of the Act because MGM settled the litigation against it.

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The Health Insurance Portability and Accountability Act (HIPAA)

What is it? HIPAA was established in 1996 and delineates several federal regulations for mental health and broader healthcare practitioners. Of particular importance for TVTP is the HIPAA Privacy Rule, which ["establishes national standards to protect individuals' medical records and other personal health information."](#)

The Privacy Rule essentially requires there to be safeguarding and security measures in place that adequately protect and uphold the privacy of personal health information. It also sets conditions for the use, and importantly, **the disclosure of patient health information**, while also giving patients rights over their information, particularly to obtain and correct their records.

Who does it apply to? HIPAA and the HIPAA Privacy Rule apply to health plans, healthcare clearing houses and any healthcare provider (including mental healthcare) who transmits health information electronically. These are referred to as ["covered entities"](#).

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 the health or safety of a person or the public**. When disclosing protected health information to avert a serious imminent threat, a healthcare 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).

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The Family Education and Privacy Rights Act (FERPA)

What is it?

FERPA is "[a Federal law that protects the privacy of student education records](#)." FERPA gives parents or guardians a series of legal rights regarding their children's 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.

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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 healthcare operations activities;
- made after an individual had the opportunity to 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 two 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.

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Before jumping into legal considerations per intervention stage, this page serves as a refresher of the lessons and guidance provided in [the first practice guide](#) produced for the US Prevention Practitioners Network, which covers the four core stages of intervention and how to staff multi-disciplinary teams to support intervention programming. This guide uses the same definition of interventions and provides legal and information-sharing considerations for each of the four stages, which are outlined below. **The considerations and guiding questions provided in this practice guide are not exhaustive and are informational only - they do not constitute legal advice so should not be taken as such.**

Refresher: what are TVTP interventions?

Interventions are initiatives that seek to prevent or reverse radicalization (to violence) through contact (either face to face or through a communications medium) with individuals who may have been, or are at risk of being, radicalized.

There are four core stages in an intervention:

1. Intake

Intake is the process of receiving referrals, determining their appropriateness for intervention and, if they are deemed eligible, preparing for case planning and management.

2. Risk, Needs and/or Threat Assessment

Risk assessments seek to measure and understand the extent to which an individual is susceptible to radicalization, targeted violence or terrorism. Threat assessments often form part of this larger risk assessment and are used specifically to assess the imminence of danger, for example whether an individual poses an immediate threat to themselves or others. Needs assessments, on the other hand, are used to identify treatment and services that will improve their circumstances and build their resilience against radicalization, targeted violence and terrorism.

3. Intervention Delivery

Intervention delivery refers to the provision of services, which are informed by the risk, needs and/or threat assessments conducted, and are intended to mitigate or minimize risk of (further) harm to the individual concerned.

4. Aftercare

Aftercare is an essential part of an intervention program concerned with long-term support and care. Once it has been agreed that the intervention has met its objectives, an "exit" strategy should be designed to facilitate the individual's long term resilience against radicalization and/or recidivism to violence.



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Considerations for Practitioners:

The following three pages provide legal and information-sharing tips and considerations for TVTP practitioners. Due to the limited public availability of guidance specifically for TVTP, these tips are largely informed by desk-based research into the social and public health fields more broadly, including, for example, [UNISON's Duty of Care Handbook](#) and the [National Association of School Psychologists](#).

Designing Intervention Programs: Information Retention and Sharing Policies, Protocols and Procedures:

TVTP programs must have robust information-sharing protocols in place. When a duty to protect is triggered, for example, you may be required to report threats of violence to law enforcement. Alternatively, you may need to call upon others to provide information about a client, be this medical or educational records, employment information, etc. You should therefore have a pre-existing understanding of the type of information you can retain, what you can and should share, when and with who, as well as who and what you can legally ask for when prompting others for information.



1) Have best practice guidelines or clear procedures in place for how to undertake specific tasks per intervention stage.

2) Ensure there are clear policies for risk mitigation and management.

Intake and Risks, Needs and Threat Assessment:

- Consider how you receive referrals - are you using **encrypted** communication channels or reporting mechanisms?
- Referrals, particularly those containing personal identifiable information, must be **stored promptly in a secure location**. This pertains to all documentation, files, records, forms and data related to a referral. Physical data must be stored in a secure location, while electronic or digital information must be saved in an encrypted drive or server. Consider who has access to this information and why.
- You may need to draw on other professions while you conduct the risk, needs and/or threat assessment of an individual that has been referred to you. Make sure you have the appropriate information-sharing protocols in place, which identify:
 - Who you can ask for information:
 - Who would be legally permitted to disclose information?
 - Who do you have information-sharing and confidentiality agreements in place with?
 - What you can ask for and why you need that information;
 - How you should obtain this information (e.g. electronically, through what medium?);
 - Where and how this information should be stored.

Good to know:

HIPAA requires all covered entities to:

- (1) Ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity or business associates creates, receives maintains or transmits.
- (2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information.

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- As you conduct your intake or risks, needs and threat assessments, you may feel the needs of the individual cannot be met by your team or, in case you are part of a multi-disciplinary team, by the professions involved. In this case, you will need to a) **refer** the individual to an external service not accounted for in the multi-disciplinary team or b) **escalate** the case to the appropriate authorities, should the "level" of risk require it. In both cases, it is important to have clear thresholds, policies and guidelines for referral and escalation. Look at existing assessment frameworks (see, for example, the assessments listed in [the first practice guide](#) created for the emerging US Prevention Practitioners Network) to help develop these. Again, identify:
 - the process of referral - how is case information shared? Through what medium? **Make sure you use secure channels so that you abide by HIPAA guidelines for data security and confidentiality.**
 - Consider **consent**. Ask your legal counsel for when you are allowed to share information without the individual's authorization to do so.
 - What can you share and why? Consider [principles](#) of:
 - Relevance - what does the recipient of the information need to know to take the case on effectively and in an informed manner?
 - Accuracy - how much information gives an adequate and accurate picture of the nature of the case?
 - Timely - information should be shared at the appropriate time to mitigate risks of missed opportunities for support.

Intervention:

- Similarly, there should be clear escalation processes in place in the event that an individual expresses a threat of violence (against themselves or another) in one-to-one intervention sessions with you. Ask yourself:
 - What is the threshold for escalation? What constitutes a "serious and imminent" threat that would make for lawful information disclosure?
 - **Consider state legislation about duty to warn and to protect.** Are you in a state where duty to warn is mandated or permitted but not legally obligated?

Aftercare:

- What are the criteria that a case must meet for the individual to start transferring from intensive one-to-one interventions to aftercare?
- What information do you need to share (and can you legally share) with those involved in the aftercare support package, and do you have the right agreements in place with the relevant services?
- Do you have mitigation policies in place should additional risks and needs be identified during the aftercare phase of the intervention?

Good to know:

The "imminence" of a threat as a threshold for legal information disclosure is an ambiguous and often difficult measure to grasp. Have a look at existing guidance. See, for example, the [TOADS](#) metric, which some practitioners use to help determine the imminence of a threat:

T - time - does the person have the time to act on the stated threat?

O - opportunity - does the person have the opportunity to act on the stated threat?

A - ability - do they have the ability ("access to the means") to complete the stated threat?

D - desire - how strong is their desire to carry out the act?

S - stimulus - is there a precipitating stimulus that would trigger an act of violence?

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Delivering Intervention Programs:

You must operate with the appropriate duty of care as you deliver your intervention program. Decision-making and when and how the protocols designed in the development phase of your program are operationalized must prioritize the well-being and best interests of the intervention "client" and the wider public, while also ensuring the safety of you and your team.

3) Delineate clear lines of responsibility and accountability for the quality of care given to an individual with whom you're working.

Intake and Risks, Needs and Threat Assessment:

- Who is most qualified to lead the assessment process?
- What is the sign-off process when it comes to agreeing on and deploying a support package for the individual concerned? Specifically, who approves the support package and is accountable for monitoring that it meets the identified needs of the individual?

Intervention:

- During the one-to-one intervention stage, bear in mind the duty of care you have to the individual. Remember:
 - **Never provide a service you are not qualified to provide.** This will not only be counter-productive but it may be seen as a breach of your duty of care because you did not refer the individual to someone who is qualified to help with the given need.
 - Always deliver to the standard expected of your profession. Maintain clear professional boundaries with the individual concerned (and their family).
 - If you're feeling burned out or like you cannot provide the necessary support to the level of standard required, report this to the appropriate colleagues immediately so that the necessary mitigations can be put in place.
- **Record everything clearly and adequately.** It is important to have a trail of decision-making and intervention progress-reporting, especially if there are complaints from an individual being supported or their family. This is also essential to monitor the overall impact of the support being provided and subsequently to identify whether:
 - the support package is **adequate** (e.g. it's having the desired impact) and/or the individual can either continue with support as is or can soon transfer to aftercare;
 - the support package is **insufficient** (e.g. additional services may be required);
 - the support package is **counter-productive** (e.g. it is having a negative impact). In this case, regroup with your (multidisciplinary) team to a) operationalize any mitigation policies you have in place and b) identify the appropriate type of support. You will breach your duty of care to the individual if you continue providing services that are deemed harmful or detrimental to their progress.

Aftercare:

- Who decides that the individual is ready to transition to aftercare?
- Who approves the aftercare strategy? Who is responsible for monitoring the impact of an aftercare strategy? Is the burden of responsibility shared across the services involved in the aftercare strategy or does the case lead (e.g. the one-to-one intervention provider) still maintain a duty of care to the client, and is therefore responsible for ensuring the aftercare strategy meets the needs of the client?

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Appendices

Appendix A - Glossary of Useful Legal Terms

- **Case Law or Common Law**

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](#)

- **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](#)

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- **Felonies, Misdemeanors and Infractions**

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 (sometimes referred to as "violations") are considered the least serious and, in most cases, do not result in jail time. - [FindLaw](#)

- **Foreseeable harm / risk**

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](#)

- **Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule**

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](#)

- **Imminent danger / risk / threat**

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.

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.

- **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 against a pre-defined categories 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](#)

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- **Intent**

Intent "[generally refers to the mental aspect behind an action](#)", and it often forms a core component of Criminal Law. Criminal intent is defined as "[the resolve or determination with which a person acts to commit a crime](#)". - [LII](#); [Office of Justice Programs](#)

- **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 (someone who holds a license) 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 a duty to act (e.g. a duty to help victims of one's previous conduct; where duty to warn is mandated but there is a failure to follow through or respond 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.

- **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 and Tort Law**

A tort is an act or omission that gives rise to injury or harm to another and amounts a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion or violation of any legal right, whereas "harm" describes a loss or detriment that an individual suffers. - [LII](#)

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](#)

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Appendix B - Glossary of General Interventions Terminology

- **Targeted violence**

In its [Strategic Framework for Countering Terrorism and Targeted Violence](#), the Department of Homeland Security defines targeted violence as “any incident of violence that implicates homeland security and/or U.S. Department of Homeland Security (DHS) activities, and in which a known or knowable attacker selects a particular target prior to the violent attack”. The definition is based on [research from the NIJ](#), wherein the term was first coined.

- **Criminogenic needs**

Criminogenic needs are needs which, if not filled, may lead to criminal behavior. They typically encompass four to eight needs domains. [See here](#) for more.

- **Risk factors**

Factors that [“increase the likelihood of a given outcome”](#). In the case of TVTP, factors that increase the likelihood of radicalization and violence.

- **Protective factors**

Factors that make an individual more resilient to a given outcome, or that decrease the likelihood of a negative outcome. In the case of TVTP, factors that [“insulate and buffer an individual’s resilience to radicalization into violent extremist ideologies and organizations”](#).

- **Factors vs. indicators**

Although often used interchangeably, factors and indicators are distinct. RTI distinguishes between the two as follows: [“...factors increase the likelihood of a given outcome, while indicators help signal the presence of that outcome”](#). In practice, therefore, a risk factor could be having an extensive criminal history, while an indicator would be an individual expressing threats or violence offline or online.

- **Disengagement vs. deradicalization**

Disengagement in TVTP refers to [“the abandonment of extremist activity, \[while\] deradicalization is viewed as involving the abandonment or rejection of extremist beliefs and ideology”](#).

- **Radicalization vs. mobilization**

In TVTP, radicalization is the complex process by which an individual adopts extremist beliefs and ideology. Mobilization refers to when an individual [prepares to engage in violent extremist or terrorist activity](#), for example facilitating or committing an attack, or traveling for violent extremist or terrorist purposes.

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Intervention Stages:

- **Intake**

Intake is the process of receiving referrals, determining their appropriateness for intervention and, if they are deemed eligible, preparing for case planning and management.

- **Risk, Needs and/or Threat Assessment**

Risk assessments seek to measure and understand the extent to which an individual is susceptible to radicalization, targeted violence or terrorism. Threat assessments often form part of this larger risk assessment and are used specifically to assess the imminence of danger, for example whether an individual poses an immediate threat to themselves or others. Needs assessments, on the other hand, are used to identify treatment and services that will improve their circumstances and build their resilience against radicalization, targeted violence and terrorism.

- **Intervention Delivery**

Intervention refers to the provision of services, which are informed by the risk, needs and/or threat assessments conducted, and are intended to mitigate or minimize risk of (further) harm to the individual concerned.

- **Aftercare**

Aftercare is an essential part of an intervention program concerned with long-term support and care. Once it has been agreed that the intervention has met its objectives, an "exit" strategy should be designed to facilitate the individual's long term resilience against radicalization and/or recidivism to violence.

Types of Assessment:

- **Clinical risk assessments** are based on interviews and qualitative data collection between a clinician or practitioner and the individual concerned. Clinical risk assessments are often criticized as too subjective, as the assessment relies predominantly on the practitioner's judgement or "weighting" of identified risk factors and is therefore subject to significant personal bias.
- In the criminal justice space, **actuarial risk assessments** ["use measurable and statistically significant predictors or risk factors"](#) to provide a quantitative assessment of risk informed by databases of offenders with similar criminal and/or personal histories. Actuarial assessments are typically disregarded in TVTP as too inflexible as they are based on static factors that the individual has or doesn't have in common with other offenders.
- **Structured Professional Judgement** combines the strengths of clinical and actuarial risk assessments by leveraging both relevant statistics and practitioner experience. They are presently considered [the preferred method for risk assessment](#) as they account for the individuality of extremist offenders or individuals at risk of this, the invaluable experience of practitioners, all while still providing guidelines and criteria per assessment.

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Appendix C - Further Reading Recommendations

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. See also the [FAQ](#).
- ["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.

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Further Reading Recommendations

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.
- ["Information Sharing - Advice for practitioners providing safeguarding services to children, young people, parents and carers"](#) by Her Majesty's Government, United Kingdom. While this is written for a UK audience, it will have transferable insights and learnings for US-based practitioners.

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.

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