

DUTY TO WARN

Minnesota Sex Offender Program

Issue Date: 7/7/15 Effective Date: 8/4/15 Policy Number: 215-5265

POLICY: When a client communicates an imminent specific serious threat of harm against a clearly identified individual, is capable of carrying out the threat, and has the opportunity to do so, Minnesota Sex Offender Program (MSOP) staff must notify the potential victim.

AUTHORITY: Minn. Stat. §245A.04, subd. 14

APPLICABILITY: Minnesota Sex Offender Program (MSOP), program-wide

PURPOSE: To provide procedures for notifying a person when a client has threatened to harm that person and is capable of carrying out the threat. (For threats between clients, refer to MSOP Policy 202.120, “Client Incompatibility.”)

DEFINITIONS:

Duty to warn – the duty to predict, warn of, or take reasonable precautions to provide protection from violent behavior arises only when a client or other person has communicated to MSOP staff an imminent, specific, serious threat of physical violence against a specific clearly identified or identifiable potential victim.

Other person – an immediate family member or someone who personally knows the client and has reason to believe the client is capable of and will carry out the imminent, serious, specific threat of harm to a specific, clearly identified or identifiable victim.

Potential victim – for purposes of this policy, a potential victim is any person against whom a client has communicated an imminent, specific, serious threat of harm. (If there is a previously identified victim, who is the target of the threat, MSOP Policy 203.260, “Victim Notification” also applies.)

Reasonable effort – means communicating the imminent, serious, specific threat to the potential victim and, if unable to make contact with the potential victim, communicating the imminent, serious, specific threat to the law enforcement agency closest to the potential victim or the client.

Secure confidential file

- A. The secure confidential file contains confidential information kept separate from the clinical record, even upon the client’s discharge or death. The file must be accessible to staff 24 hours a day and may not be shown to the client.
- B. Copies of the secure confidential file are provided to an identified person when the client is transferred to another Minnesota Department of Human Services (DHS) facility (refer to MSOP Policy 500.190, “Health Information Management Services (HIMS)”).

PROCEDURES:

- A. Identification and Documentation of Threat
 1. When a client has communicated to staff an imminent, specific, serious threat of harm which could be carried out against a specific, clearly identified or identifiable person, or when another person has reported such a threat to staff, staff will verbally notify the officer of the day (OD) immediately and write a Level I Incident Report.

2. If the OD believes there is an immediate threat, he or she will immediately contact the facility director or designee and the facility clinical director or designee during business hours, or the administrator-on-call after hours who will notify the facility director or designee. (Refer to MSOP Division Policy 410-5300, "Incident Reports" and MSOP Division Policy 410-5200, "On-Call.")
3. The facility director or designee will determine whether a duty to warn exists, and if it is necessary to notify the potential victim.
4. If there is a determination there is a duty to warn, the facility director/designee must notify the potential victim immediately by telephone. If the potential victim cannot be located, the appropriate law enforcement agency must be notified.
5. The facility director or designee will document the following information in the client's secure confidential file using the Duty to Warn Form (215-5265a), attached):
 - a) a specific description of the threat and the ability of the client to carry out the threat;
 - b) the facility's response;
 - c) identifying information regarding the person(s), or agencies notified;
 - d) name of the staff person making the disclosure; and
 - e) the date and time of the disclosure.

B. Data Privacy

Consistent with the Minnesota Government Data Practices Act (Minn.Stat. [§13.46](#)), the facility director or designee cannot provide the potential victim with any information beyond what is necessary to notify that person that a client has made a specific threat.

C. Notification to Law Enforcement

1. If the potential victim cannot be notified immediately, information regarding the threat must be communicated to the appropriate law enforcement agencies (e.g., geographic location(s) of victim, client, etc.).
2. The calls must be documented in the client's secure confidential file.

D. Determination of No Duty to Warn

If it is determined there is no duty to warn, the facility director or designee must document the reasons for the determination in the secure confidential file using the Duty to Warn Form. Factors to consider may include consideration of whether the client is in a position to carry out the threat. Ongoing assessment may be necessary.

REVIEW: Annually

REFERENCES: MSOP Policy 203.260, "Victim Notification" MSOP Division Policy 410-5200, "On-Call" MSOP Division Policy 410-5300, "Incident Reports"
Minn. Stat. [§13.46](#) (Data Practices)

Minn. Stat. §148.975 (Duty to warn; Limitation on Liability; Violent Behavior of Client)

ATTACHMENTS: Duty to Warn Form (215-5265a)

SUPERSESSION: MSOP Policy 203.265, “Duty to Warn,” 10/1/13.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means, regarding this topic.

/s/
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