Behavioral Threat Assessment and Management

Resources for Minnesota

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This guide is generously provided at no cost by Holly Ryan and Randy McAlister to support your efforts in violence prevention. By utilizing this guide, you acknowledge and credit the authors for their valuable contributions.

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LAW ENFORCEMENT STATUTES

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Extreme Risk Protection Orders (Red Flag Law) 624.7171

- In effect since 1 JAN 2024
- May be petitioned for by:
  - Chief law enforcement officer or designee
  - A city or county attorney
  - Any family, household member, or guardian
  - Training video

Firearms prohibitions (Ineligible persons) 624.713

MN Transfer of Firearm / Permit to Purchase 624.7132

- Issued by LE agency with primary jurisdiction (typically police department)
- Good for 1 year
- Must be applied for in jurisdiction of residence
- Required for handgun and assault weapon purchases
- **As of 1 August 2023, the issuing LE agency can deny for concerns of mental health and harm to self/others**

MN Permit to Carry a Firearm 624.714

- Issued by sheriff's office where applicant lives
- Good for 5 years

Harassment (GM) & Stalking (Felony) – 609.749

- For electronic harassment or stalking may be prosecuted wherever offender lives or victim lives

***Felony stalking convictions require full mental health assessment and firearm prohibition**

Harassment / Stalking 609.749

- Harassment starts at a gross misdemeanor
- Harassment only requires one incident to charge
- Jurisdiction
  - May be charged in any count where one of the acts occurred, or
  - For electronic harassment/stalking - may be charged where the suspect lives or the victim lives

- Stalking starts at a felony with aggravations/enhancements listed in Subdivision 3
- Subdivision 5 lists 16 stalking charges predicated on other criminal violations (10 year sentence)
  - Stalking requires two or more acts within a five year period
  - Consider requesting felony stalking charge in high risk OFP/DANCO/HRO violation cases instead of misdemeanor charges for those. MN appellate case law allows this (**State v. Bowen, 560 N.W.2d 709 (Minn.Ct. App.1997)**
  - Conviction under Subdivision 5 requires a full mental health evaluation and firearms restrictions

MN Threats of Violence 609.713

MN Mandated Reporters for Vulnerable Adults 626.557

MN Crime Victims Reimbursement Program

- Reimburses certain expenses for victims of specified crimes

MENTAL HEALTH

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Mental Health Data / Welfare System – Release to LE 13.46 Subd. 7(c)

c) Notwithstanding any other law to the contrary, a community mental health center, mental health division of a county, or a mental health provider **must disclose** mental health data to a law enforcement agency if the law enforcement agency provides the name of a client or patient and communicates that the:

(1) client or patient is currently involved in a mental health crisis as defined in section 256B.0624, subdivision 2, paragraph (j), to which the law enforcement agency has responded; and

(2) data is necessary to protect the health or safety of the client or patient or of another person.

Mental Health Data / Hospitals and Clinics – Release to LE 144.294 Subd. 2

Notwithstanding section 144.293, subdivisions 2 and 4, a provider **must disclose** health records relating to a patient's mental health to a law enforcement agency if the law enforcement agency provides the name of the patient and communicates that the:

(1) patient is currently involved in a mental health crisis as defined in section 256B.0624, subdivision 2, paragraph (j), to which the law enforcement agency has responded; and

(2) disclosure of the records is necessary to protect the health or safety of the patient or of another person.

Emergency Mental Health or Chemical Hold 253B.051 (NOT a 72 hour hold)

- Pertains to:
  - A police officer
  - Health officer
    - Expanded to include more professionals
  - Requires:
    - Reason to believe subject is:
      - Mentally ill or developmentally disabled
      - And, in danger of injuring self or others if not immediately detained

- **NOT a 72 hour hold** – only hospital can do those
- More of a transport hold (12 hour limit)
- Allows medical facility to hold person up to 72 hours without a court hold If they place an Emergency Hold
- Must be released within 72 hours unless a court order to hold person is obtained Subd. 3(e)
- If released prior to 72 hours, medical facility MUST notify police agency that placed hold
- Run by your command staff and/or attorneys and redact as required
- If "holdable" always place on hold versus voluntary
- Share police reports ASAP with receiving hospital if appropriate/approved
- Share case info with mental health professional
    - Ask, does this trigger a duty to warn?
    - Safety plan with potential targets/victims
    - Notify county mental health

MN Duty to Warn Statutes

"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 the licensee a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim."

MN statute 148.975 applies to psychologists

MN statute 148F.13 Subd. 2 applies to alcohol and drug counselors

MN Statute 148B.391 Subd. 2 applies to marriage and family therapists

MN Statute 148E.230 Subd. 5 / 148E.240 Subd. 6 applies to social workers

MN statutes retrievable at MN Revisor of Statutes: https://www.revisor.mn.gov/statutes/

MN Forensic Navigator Program MN statute 611.55

"Forensic navigators work throughout the state of Minnesota and provide effective and professional coordinated services to defendants who live with mental illnesses, substance use disorders, and/or cognitive impairments. As provided in Minn. Stat. 611.41, subd. 8 and 611.55, subd. 3, forensic navigators work with defendants to ensure they receive appropriate services so they can attain competency and successfully comply with their conditions of release and resolve their case. Forensic navigators do not replace services that defendants are otherwise eligible for, such as pre-trial supervision, probation, and/or county case management services. A forensic navigator may, however, assist the defendant in getting connected to such services."

- Intended to address issue of defendants being found incompetent for trial and then being forgotten about
- Forensic Navigator is supposed to help defendant get to competency through interventions and services
- Practical issue is very few of defendant's referred by courts to the Forensic Navigator program are actually accepted into it, due:
    - Lack of Forensic Navigators in most counties
- Can be a helpful tool if defendant is assigned a Navigator to help them return to competency or at least address some of the underlying issues to maybe mitigate risk of re-offending or risk of violence.

MN Civil Commitment Process Fact Sheet

NAMI – Understanding the MN Civil Commitment Process

Rule 20 – Competency Proceedings

MN PROTECTION ORDERS

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Order for Protection (OFP) 518B.01

- Civil order requiring a victim/petitioner
- Requires a domestic relationship
- Requires some assault or threat generally
- Typically issued for 2 years (but can go up to 50)
- First conviction is MSD, Second conviction is GM, Third is Felony
- ***two or more violations could be charged as felony stalking under 609.749 Subd. 5
- Misdemeanor for employer to discipline employee who takes time off to apply for

Harassment Restraining Order (HRO) 609.748

- Civil order requiring a victim/petitioner
- Lower threshold for issuance
- Does not require domestic relationship
- Can be used for stalking (fee supposed to be waived by courts in stalking cases)
- Misdemeanor for employer to discipline employee who takes time off to apply for

Domestic Abuse No Contact Order (DANCO) 629.75

- Issued by a judge generally at first appearance. Does NOT require petitioner
- Generally enforceable like OFP or DANCO
- Typically only in effect until conclusion of criminal case

The discussions of the referenced statutes are not exhaustive. Please review the actual statute for a detailed understanding of all the criminal elements, penalties, and legal requirements

INFORMATION SHARING

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FERPA: Family Educational Rights and Privacy Act

Who is required to comply with FERPA?

- Educational Institutions and agencies receiving federal education funding.
- School officials: This includes some consultants, contractors, volunteers and organizations that contract or consult with an educational agency or a person acting for such agency when they can be called a "School official". Depending on how an SRO MOU is written, this can include SRO's.

What does FERPA protect?

- "Educational records" include records, files or other documents that include information directly related to a student and are maintained by an educational agency or institution. It also includes records by the health office, IEP, and other SPED documentation and immunizations.
- IT DOES NOT INCLUDE ORAL COMMUNICATION, PERSONAL IMPRESSIONS OR OBSERVATIONS

In what situations can FERPA records be shared or released without written consent?

- To school officials with legitimate educational interest
- Directory information
- **Health or safety emergency (34 CFR §§ 99.31(a)(10) and 99.36)**
- Child abuse reporting
- Court order

HIPAA: Health Insurance Portability and Accountability Act

A federal law that protects health information and sets standards for the electronic transmission of health data.

- HIPAA only applies to "**covered entities.**"
  - Covered entity definition: An organization or individual that handles protected health information in one of three categories (but only if they transmit information electronically):
    - A health care provider
    - A health plan
    - A health care clearinghouse
  - Tool to determine if you are a covered entity and therefore subject to HIPAA

- There are 16 exceptions including Duty to Warn and, Duty to Report, and to Avert serious threat to Health/Safety 164.512 (j) All you need is one exception.
- For covered entities, HIPAA only restricts what they can share, NOT what they can hear. For example, law enforcement can share their information with a clinician even if a clinician cannot even acknowledge having a particular patient.

OSHA: Occupational Safety and Health Administration

Work environment free from specific hazards including threats and/or acts of violence

Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers and visitors. Acts of violence and other injuries is currently the third-leading cause of fatal occupational injuries in the United States. According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI), of the 5,333 fatal workplace injuries that occurred in the United States in 2019, 761 were cases of intentional injury by another person.

Note: Liability for workers compensation can include negligently designed/operated polices and procedures

EDUCATIONAL RECORDS

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Common educational records that can assist with assessment and management

Special Education: In general when assessing a student and developing management plans it would be helpful to request students records. In special education, records that can be helpful would include, all students prior evaluations, and individualized education plans. Evaluations depending on the students eligibility, will often include useful information such as intelligence/cognitive tests, mental health diagnoses, family information, observations, and mental health screening and testing. Looking at all evaluations can also provide information as to if the student of concern has shifted from baseline behavior over time. Evaluations are required to be done when a student enters special education and every 3 years after. If it has been a long time since an evaluation was done, the students Individualized Education Plan will show the progress the student is making towards their goals since the last evaluation.

Regular Education: Educational records that are not specific to special education are very useful in assessing students. Grades, discipline records, attendance, and school logs will often provide critical information that help either increase or decrease the concern for the individual.

General Education

- Contact log
- Teacher log
- School log
- Discipline Records
- Health Records
- Grades
- Enrollment data
- Person documents
- Observations (FERPA)

Special Education

- Behavior Intervention Plans
- Positive Behavior Support Plans
- Individual Education Plans (Annual)
- Functional Behavior Assessments
- Behavior Data
- Special Education Evaluations (3 yrs.)
- IEP Meeting notes

Discipline: If a student is in special education, students have due process rights influencing disciplinary decision's. Before initiating an expulsion or exclusion under sections 121A.40 to

121A.56, the district, relevant members of the child's individualized education program team, and the child's parent shall, consistent with federal law, determine whether the child's behavior was caused by or had a **direct and substantial relationship to the child's disability** and whether the child's conduct was a direct result of a failure to implement the child's individualized education program. When a child with a disability who has an individualized education program is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the child's disability, the district shall continue to provide special education and related services during the exclusion or expulsion.

Minnesota School Discipline Laws and Regulations: Limitations or conditions on Exclusionary Discipline Link

- **MN Suspension:** Link
- **MN Expulsion:** Link

Management

- If a student is in special education, there are likely many more management strategies that can be put in place to help with safety planning including:
  - SPED bussing
  - Escort - typically more staff might be available to support this strategy
  - Smaller classes with lower teacher to student ration
  - Behavior Support Plans
  - Further evaluations
  - More restrictive settings if determined by IEP team

Safety Planning and Search

- The Colorado Supreme Court held that the search of a student conducted on school grounds in accordance with an individualized, weapons-related safety plan by a BTAM team was reasonable under the Fourth Amendment. **People In Int. of J.G**., 2024 CO 16 (2024). Also see Jersey v. T.L.O.

K-12 LEGAL LANDSCAPE

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CIVIL LAW & LITIGATION

Because a person's ideas and plans can be often seen at times prior to a violent act, incidents of school violence can at times be prevented. At any time a threat is made, a team is responsible to quickly collect an array of information and act accordingly. Failure to act from foreseeable harm will increase your teams liability. Utilizing a multidisciplinary BTAM approach protects you from undue litigation.

Foreseeability: When a reasonable person in a given situation should know that specific harm might occur as a result of their action or inaction. Courts are finding school staff responsible for failure to act to prevent foreseeable harm.

Duty of Care: Duty to protect for foreseeable harm. If you breach the standard of duty of care and an injury occurs and the court finds that your breach of duty of care created an injury, you can be found liable. If you BREACH STANDARD and CREATED AN INJURY and THAT BREACH CAUSED INJURY you can be liable.

Ordinary Negligence: The “reasonable person” standard requires individuals to act in a manner that is reasonably prudent in similar circumstances. Civil law requires individuals to take reasonable precautions to protect themselves and others from harm. The law imposes a proper care of duty.

Gross Negligence: describes conduct that is significantly more severe than ordinary negligence and equates to a demonstrated indifference to the value of human life. Courts have defined gross negligence as an egregious violation of a legal duty to protect the rights of others.

Willful, Wanton, and Reckless Behavior: For a case to meet this standard, it requires a high level of probability that substantial harm would happen to another party.

Deliberate Indifference: When someone intentionally disregards a significant risk to the health or safety of another person. Its more than negligence, but less than intentionally causing harm. Lately there is a shift to greater school accountability in protecting students given what educators knew or should have known.

K-12 CASE PRECEDENT

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Jones v. Logan County Board of Education

A person does not generally owe a duty to protect another from the willful, malicious acts of a third party, but a **duty** may arise when the person's affirmative actions or omissions have exposed another to a **foreseeable** high risk of harm from the intentional misconduct. The principal owed the student a duty of protection and/or supervision because it was or should have been **foreseeable** to him.

Jones v. Logan County Board of Education is a notable case concerning school liability in the context of student bullying and harassment, particularly how schools handle threats and student safety.

- Reaffirmed that schools have a responsibility to protect student from ongoing harassment and bullying especially when the school is made aware of the threats.
- Schools are expected to take action once notified of bullying or threats to school safety.
- Schools can be held liable for physical and psychological and emotional harm.

Victor Valley Union High School District v. Superior Court of San Bernardino County.

A notable case that addressed issues of school district liability for failing to prevent student violence, specifically concerning the role of schools in ensuring student safety when a known threat is present. The core issue revolved around whether the district had a **legal duty to protect** the student and whether its actions (or inactions) contributed to the harm.

The court emphasized that schools have a responsibility to provide a safe environment for students, particularly when they have prior knowledge of threats or dangerous conditions. It also reaffirmed that schools are expected to intervene when there is a foreseeable risk of harm to students.

- Schools have a legal obligation to protect students from foreseeable harm, especially when they have prior knowledge of a threat or dangerous conditions. The failure to take adequate steps to address such situations can lead to liability.

- In cases where schools are aware (foreseeability of harm) of specific threats or violent tendencies, they must take reasonable precautions to protect students. The court highlighted that a school district's liability depends on whether the harm was foreseeable based on the available information.
- The case underscores the importance of having effective protocols in place for identifying and responding to threats. A school's failure to act on known dangers can be seen as negligence.

F.H. v. The City of Yonkers

A legal case that revolves around the issue of school district liability and negligence for failing to stop bullying, despite being made aware. for student safety, particularly in the context of bullying and harassment.

- Schools are generally held to a high standard when it comes to student safety. If bullying is reported and the school fails to take adequate steps to protect the victim, they can be found negligent, particularly if the harm was foreseeable.
- This case underscored the importance of schools responding effectively when they are made aware of threats or bullying. If school officials are aware of the harassment and fail to act, liability may result.
- The case emphasized the responsibility of schools not just to prevent physical harm but also to protect students from emotional and psychological harm caused by bullying, particularly when the school's inaction contributes to the student's distress.

Oxford High School

Oxford Michigan case shows the changing nature of a school's legal duty to provide a safe educational environment Link

Molly Darnell, the only teacher shot, also filed a lawsuit against the Oxford Community School District for "recklessly creating or exacerbating the risk of a mass shooting," according to the suit. Five former school officials were also named in the lawsuit. The lawsuit alleges that the school district claims that its employees "had no choice" other than to send the shooter back to class that day because they were adhering to its policy that a student couldn't be sent home or kept in the counselor's office "unless there was a disciplinary issue."

Criminal Cases

James and Jennifer Crumbley, a school shooter's parents, are sentenced to 10-15 years

Richneck Elementary, Newport; Assistant Principal charged with Felony Child abuse (case)

Criminal Case: Ebony Parker the assistant principal On or about January 6, 2023 being a person **responsible for the care** of students under the age of eighteen at Richneck Elementary School, feloniously did commit a willful act or omission in the care of such students, in a manner so gross, wanton and culpable as to show a reckless disregard for human life, in violation of 18.2-371(B) of the code of Virginia (1950) as amended. Virginia Code: 10.2-371.1(B) (Gross, Wanton, or Reckless Care for Child (Felony))

Civil Cases: Victim Abby Zwerner pursuing $40M Lawsuit for negligence.

Six lawsuits for $3M a piece of Richneck Elementary students families sue the Superintendent, former Principal and Vice Principal for “gross negligence” and “Negligent infliction of emotional distress”

Davis v. Monroe County Board of Education (1999): This U.S. Supreme Court case established that schools could be liable under Title IX for student-on-student harassment if school officials are deliberately indifferent to known bullying and harassment. Link

Cleveland v. Taft Union High School District (2015): The court ruled that the school was liable for not adequately responding to threats made by a student, leading to a shooting incident. This case underscored the importance of having effective threat assessment and intervention protocols.

During the trial, each side presented expert testimony on the effectiveness of TUHS’s threat assessment. The jury found that TUHS's employees were 54% responsible for Plaintiff’s injuries and the trial court entered a judgment for $2,052,000 against TUHS based on their employees’ negligence.

TUHS appealed and claimed, in part, that its employees were immune under state law. The California appellate court disagreed with TUHS, finding that TUHS employees breached their duty of care to Plaintiff because

1) the threat assessment was not carried out by the TAT collectively,
2) the school resource officer should have been a core member of the TAT,
3) the TAT failed to communicate amongst themselves about B.O.,
4) the TAT failed to adequately communicate with B.O.'s parent,
5) the TAT failed to recommend counseling to B.O.'s parent as an intervention technique, and
6) the TAT did not continue to collectively monitor B.O. and reassess his safety plan.

T.E. v. South Glens Falls Central School District

"Schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision . . . . The duty owed derives from the simple fact that a school, in assuming physical custody and control over its students, effectively takes the place of parents and guardians" **Evidence of the foreseeability of a student-perpetrated assault may include "prior specific knowledge of the student's propensity to engage in such conduct"** Case

Parents of Nahzir Taylor sued the Charlotte-Mecklenburg Board of Education

Two years after he was shot and killed by another student while getting off of a school bus. The new lawsuit claims school employees heard a student threaten to kill him earlier that day, but did not report it to police or parents. Parents say the school was negligent ahead of the fatal shooting. Parents claim the school knew about a dangerous conflict between the

students, including bullying and threats, but failed to warn parents or report anything to police. Case

Behavior Threat Assessment and Management: Resources for Minnesota is curated by by Holly Ryan, NCSP and Capt. Randy McAlister CTM (ret.). This guide is generously provided at no cost by Holly Ryan and Randy McAlister to support your efforts in violence prevention. By utilizing this guide, you acknowledge and credit the authors for their valuable contributions.

Captain Randy McAlister (ret.) served 34 years in public safety as an EMT, Nationally Registered paramedic, and a police officer. He retired from the Cottage Grove Police Department in 2024 after serving 26 years. While there he oversaw investigations and threat management. He was also a task force officer with the FBI-Minneapolis's JTTF where he served as a Threat Management Coordinator Liaison. Additionally, he is a Master Trainer for DHS's National Threat Evaluation & Reporting (NTER) program.

Randy holds an M.A. from Concordia University (St. Paul, MN) in Criminal Justice Leadership and a B.A. from Bethel University (St. Paul, MN). He has attended Gavin de Becker and Associates' Advanced Threat Assessment and Management Academy in Lake Arrowhead, California and is also a member of the Association of Threat Assessment Professionals (ATAP). In 2015 Randy became one of the first twenty-four Certified Threat Manager's™ in the country through ATAP and founded two community-based threat advisory teams in the Twin Cities.

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Holly Ryan is a Nationally Certified School Psychologist with 22 years of experience in the Lakeville Area Schools. She currently serves as the district's Threat Assessment Specialist, overseeing the implementation, training, and coordination of behavior threat assessment, management, anonymous reporting, and other safety initiatives. In addition, Holly is the founder of School Threat Solutions, a consulting firm focused on preventative K-12 targeted violence. She provides consulting and training for Minnesota school districts.

Holly's dedication to school safety was deeply influenced by the tragic shooting at Sandy Hook Elementary in her hometown of Newtown, CT. She is an active member of the Association of Threat Assessment Professionals and serves on the Great Lakes Chapter Board as Sergeant at Arms. Holly also serves on the Minnesota FBI Threat Assessment and Threat Management Team and is a Threat Liaison Officer with the Minnesota Fusion Center.

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School Threat Solutions
PRIORITIZING SAFETY

This operational guide is based on the collective experiences of the authors in managing and preventing numerous cases of targeted violence. This should not be interpreted as legal advice and users are cautioned/encouraged to check with their legal counsels or chains of command before implementing.