

NASW-NJ Tip Sheet on New “Duty to Warn or Protect” Provisions

Revised August 23, 2018

As part of a larger package of gun control bills passed by the state legislature, NJ has instituted a new law that strengthens the existing NJ Duty to Warn or Protect Law. It is designed to limit access to firearms by individuals who may pose a threat to themselves or others. The law impacts all licensed health professionals in NJ and **takes effect immediately**. Full text of the legislation can be found here http://www.njleg.state.nj.us/2018/Bills/A1500/1181_R1.PDF

NASW-NJ supported this legislation and had conversations with the bill sponsors to discuss our questions and understand the full intent of the law prior to its enactment.

What the law does and how it impacts clinical social workers:

- It amends existing Duty to Warn or Protect law to **require** that a Licensed Clinical Social Worker (and any other licensed health/mental health professional), who has reason to believe that a client poses a threat to themselves or others and that the client is likely to act on the threat, **must** report this information to the chief law enforcement officer in the municipality where the **client** lives. If the client lives in a municipality that does not have a full-time police department, the clinician is required to report the threat to the Superintendent of State Police.
- Prior to enactment of the law, reporting to law enforcement was one of five ways a clinician could discharge their incurred Duty to Warn or Protect. Nothing in this law precludes a clinician from taking additional steps to discharge a Duty to Warn or Protect; however, notification of police that a Duty to Warn or Protect has been incurred is now required.
- It limits the information clinical social workers must provide to police. Only identifying information, including name and other non-clinical identifying information, is permitted.
- It allows for the notified authority (police) to access records to see if the client has been issued a firearm purchaser identification card, permit to purchase a handgun, or any other permit or license authorizing possession of a firearm in NJ. If the client has, police shall use that information to determine if the client has become subject to any of the conditions set forth in NJ law that prohibit firearm ownership (refer to end of this document for list)*. If the client has become subject to one of these conditions, police may petition the court to remove any firearms and revoke any firearm licenses and permits from the client. Firearms, licenses, and permits may later be returned/reinstated at the discretion of the court.

What the law does not do:

- **It does not prohibit anyone with a diagnosed mental illness from owning a firearm**, nor does it require a clinician to notify police solely because they become aware a client in their care possesses or has access to a firearm. The client must be deemed a threat to themselves or others by the treating clinician in order to establish a Duty to Warn or Protect and the reporting requirements of this law.

- It does not allow police to immediately enter a residence or conduct any unauthorized search and seizure, based solely on a clinician's notification to police. Prior to the removal of an individual's firearms, revocation of licenses and permits, and/or search of their property, police and the courts must determine that the individual is subject to one or more of the exclusionary conditions that prohibit access to firearms in NJ*.
- It does not place the onus for identification of or removal of the firearms and licenses/permits on the clinician. Nor does it require that the clinician ask if the client possesses or has access to a firearm, although the clinician may have already ascertained this in the course of their assessment.
- It does not place the mechanism for return of the firearms or licenses/permits with the clinician. A clinician's statement or testimony may support the eventual return of a firearm or reinstatement of a license/permit; however, the court involved in the removal of these items makes the ultimate determination as to whether they should be returned/reinstated.
- It does not, at this time, outline a specific reporting process (beyond contacting police), nor does it specify a time frame in which the client's information must be reported to police.

How should clinical social workers respond to this law:

- Whenever a clinician is concerned about a client's safety or the safety of others, NASW-NJ recommends that all clinical social workers ask clients if they possess or have access to firearms. This information does not automatically trigger a Duty to Warn or Protect.
- As a reminder, per P.L. 1991, c.270 (C.2A:62A-16), **a Duty to Warn or Protect is incurred when the following conditions exist:**
 1. The client has communicated to the practitioner a threat of imminent, serious physical violence against a readily identifiable person or against himself/herself and the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or
 2. The circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable person or against himself or herself.
- Once incurred, **the Duty to Warn or Protect may be discharged** by doing one or more of the following:
 1. Arranging for the client to be admitted voluntarily to a psychiatric unit of a general hospital, a short-term care facility, a special psychiatric hospital or a psychiatric facility;
 2. Initiating procedures for involuntary commitment of the client to: an outpatient treatment provider, a short-term care facility, a special psychiatric hospital or a psychiatric facility;
 3. Advising a local law enforcement authority of the patient's threat and the identity of the intended victim;

4. Warning the intended victim of the threat, or, in the case of an intended victim who is under the age of 18, warning the parent or guardian of the intended victim; or
 5. If the client is under the age of 18 and threatens to commit suicide or bodily injury upon himself, warning the parent or guardian of the client.
- Once a clinician has incurred a Duty to Warn or Protect, NASW-NJ recommends that **in addition to notifying police** (discharge action #3 above) as now required by law, the clinician also use their best clinical judgement to take additional above steps (as possible) to discharge the Duty to Warn or Protect and ensure the safety of the client and/or their stated victim.
 - For social workers in hospitals or medical facilities, NASW-NJ recommends clinicians contact their supervisor, administrator and/or organizational attorney to review policies, procedures and legal guidance in this matter. Because the goal of the new law is to limit access to firearms for people who may be a threat to themselves or others, NASW-NJ's understanding is that reporting to law enforcement (as outlined above) is required whether or not the individual is being hospitalized.
 - You can locate the contact information for the police department in a particular municipality by performing an internet search for "[name of municipality where client lives] police department" or go to www.state.nj.us/nj/gov/county/localgov.html, click on the link for the municipality in which the client lives, then search the municipal webpage for contact information for the local police or public safety department. If the municipality does not have its own full-time police department, the law directs clinicians to contact the Superintendent of State Police. State Police can be reached at 609-882-2000.
 - When contacting police as required by this law, NASW-NJ recommends:
 1. Call the police department's main phone number provided on the website; do not call 911 unless you are in the midst of an emergency. Never report a Duty to Warn or Protect via e-mail.
 2. Identify yourself as a treating mental health professional who has incurred a Duty to Warn or Protect.
 3. Request to speak to the chief law enforcement officer or their designee to inform them of the Duty to Warn or Protect, and then follow any other directions offered by the representative who answered the phone.
 4. Provide only the client's name and necessary non-clinical identifying information (address, phone number, make/model/license plate of car, etc.). You are not required to release any clinical information to police, including, but not limited to, diagnosis, prognosis, case notes, or therapy notes.
 5. Document the date and time of the call, the law enforcement office you contacted, the name of the law enforcement official(s) you spoke with, and the outcome of the call. Include this information in your case notes for that client.
 - If you are unsure if you have incurred a Duty to Warn or Protect, or if you are unsure whether you have successfully discharged an incurred Duty to Warn or Protect, seek clinical consultation from trusted colleagues or a Legal Consultation. Legal and Ethics Consultations are a benefit of Membership for NASW members.

* Existing New Jersey law (subsection c. of N.J.S.2C:58-3) prohibits issuance of a firearm purchaser identification card (FPIC) or permit to purchase a handgun (PPH) to any person who:

(1) has been convicted of a crime; (2) is drug dependent; (3) has been confined for a mental disorder; (4) is an alcoholic; (5) suffers from a physical defect or disease which would make it unsafe for the person to handle a firearm; (6) knowingly falsifies any information on the application form for a FPIC or a PPH; (7) refuses to waive statutory or other rights of confidentiality relating to institutional confinement; (8) is subject to a domestic violence court order prohibiting firearms possession; or (9) is named on the Terrorist Watchlist maintained by the FBI.