

**Mandatory Reporting Laws**  
**Envision Clinical Training Summary**  
**April 6, 2020**

**When a client gives information that needs to be reported, who do I call?**

- If you need immediate action (if the threat/risk is imminent) or if the incident has just occurred, call law enforcement (police).
- If it's not an imminent concern or something that happened some time ago, call department of human services (DHS) or child protective services (CPS). They are a funnel that decides how to proceed from there.
  - If they recommend law enforcement, you can say that you believe it's more suitable for human services.

**Do I report when a client tells us information about a non-client?**

- You do not *have* to report when it involves a third party.
  - You're in privity only with your client.
- If you get a specific name and it's **imminent** – report to law enforcement.
  - Imminent threats include when someone has acquired a firearm/ammunition.
  - Separate imminent threat from gossip.
    - “I heard so-n-so wanted to take their life.” No duty to report.
    - Always err on the side of reporting for clients.
    - For non-clients, take a more relaxed approach (unless it's an imminent threat)
- If you're reporting in good faith, you can report anything.
  - If divorcing spouses in custody dispute are telling on the other one – the court has sanction/punishment cases like that.

**Do I report when a non-client tells us information about a client?**

- Don't investigate this too much.
- Is there *reason to know or suspect* that what the non-client is saying is true? If so, you need to report.
- *Reason to know or suspect* is a LOW standard. (Contrast it with *probable cause* or *beyond a reasonable doubt*.)

**Do I report when the adult client's report is from childhood?**

- Our lawyer says: if the therapist can demonstrate that the person who did the harm is no longer alive, or no longer of a danger to society (e.g. you have proof the person is dead or in prison) – you don't need to report. Also, if the client is in their 60s and it happened 50+ years ago - don't need to report.
- However, CPS is unable to do ANYTHING for an adult. Their jurisdiction is protecting children from harm. Therefore, it is often not worth damaging the rapport with your client to report (since nothing can be done by CPS). If you have *reason to know or suspect* the perpetrator is still harming children, please make the report.

### **Do I report when young children of similar ages engage in sexual play?**

- Yes, report. Perpetrators will harm as many as 136 people in their lifetime. The law errs on the side of reporting.

### **Do I report if a client tells me that they already made a report?**

- Get proof. Don't trust that someone else made a report.
- Proof = the client will have a case #, detective's name, or record that the report was found unfounded. If they don't have records, make the report.

### **General Reporting Guidelines**

- Failure to report is a serious crime.
- Client has 7 years after they turn 18 to bring a lawsuit about reportable crimes.
- Client can also bring a lawsuit when they realize how traumatic the event was. (This could happen at any time!)
- Bottom line: Keep records forever.  
Therapist themselves and ECC maintains proof that the report had been made.
- **\*\*Document everything\*\***  
Get badge number, ID, date & time, Case tracking number.  
Keep this information forever.
- When in doubt: Report! You may lose the relationship with your client, but the law really wants you to report.
- Dangers of not reporting
  - the perpetrator keeps perpetrating
  - you can be taken to court for failing to report.
- You don't have to tell your client that you're reporting, but it is best practice to tell them.
- You can request confidentiality (to report anonymously), but in reality - nothing is confidential.

### **Do I report if the situation is vague/non-specific or neglect?**

- Same requirements for emotional abuse as sexual or physical abuse
- Emotional abuse and neglect are harder to prove.
- Sexual abuse is easier to identify.
- You do need to inquire a little – if you suspect something – and they give a not-believable reason for the thing that makes you suspect the abuse/neglect, you would report.

### **Do I report sexual involvement among minors? What ages?**

- Police have a policy that if the girl is over 15 and the boy is 17, they won't do anything. But this is not the law.
- If minors of any ages are sexually active, officially, you need to make the report, but there are gray areas here.

- If the older person is an adult, and the younger is a minor - definitely make the report.
- Consider: Is the relationship developmentally appropriate or abusive?
- Remember: The law says a minor cannot consent.
- When you call to report, you can comment that you don't think it needs to go further, but that you have to make the report. The law enforcement won't do anything about it (e.g. in the case of a 15 and 17 year old having sex).
- If cognitive impaired minor is having sex, definitely report this. It's a Class 3 felony!
- DORA doesn't have standards, therapeutic standards haven't been developed, the law says report, but therapists have to come to their own resolutions.

#### **Do I report when we have absolutely no information about the perpetrator?**

- Still need to report. The law enforcement will contact the client and attempt to gather that information.
- Err on the side of reporting.

#### **Do I report when the report seems not truthful?**

- Err on the side of reporting. It's not our job to determine if the report is truthful.

#### **Do I report when a report has been filed/police called, but the client has shared more information?**

- You can supplement the report. Find the detective or sergeant that is handling the case to share additional information.
- You don't have to supplement.
- Supplementing would show that you've done everything possible to help the person at risk.

#### **Do I report when substance use is involved?**

- If adult is sharing drugs (including pot) with a child, this is reportable.
- If child is in a home where pot is being smoked, some agencies say that the smoke is harmful to the kid. Our lawyer says it's reportable.
- Using harder drugs (meth, heroine) in a home is reportable.

#### **Do I report if the crime was done in a different state or country?**

- Report to your county and let Colorado figure that out.
- You do not have to investigate that or call any other state or country.
- It's the Colorado officials' job to go further.

#### **How do I get information from a client to find out if I need to report?**

- We don't have a duty to investigate, we have a duty to ascertain if there is a reason to know or suspect.
  - Ascertain: Is there a reason to know or suspect that this is credible?
  - Investigate: Find out exactly what happened.

- Example questions to use: Tell me more about it? By whom? When did this happen? (Not specifics!) Then stop questions.
- If client shares more, and if the perpetrator is charged, you'll probably be put on trial. Defense will try to poke holes to say you planted this memory. You may listen so your testimony is *"I just let them talk. This is what they said."*

## Duty To Warn

The difference between Mandatory Reporting and Duty to Warn is "imminent threat" to the client themselves or to someone else. Person is about to commit a dangerous act or crime. Mandatory Report has to do with something that happened to the client previously (with the perpetrator still out there). Imminence isn't part of this.

### **Do I have Duty to Warn?**

- If there is a reason to know or suspect someone is about to commit a crime, you have a duty to warn. There is no privilege if a client tells you they are about to commit a crime.
- If they tell us that they have committed a crime, that is privilege (*EXCEPT if they've harmed an at-risk person*).
- If they tell us they have harmed an at-risk person, you have to make a mandatory report.

### **When do I have a Duty to Warn?**

- New language in Duty to Warn statutes says "substantial risk" and "manifested by evidence," but this is the same as *reason to know or suspect*. More information is located:
  - Criminal Statute: 18-6.5-103
  - Legislative Declaration: 18-6.5-101
  - Definitional Statement: 18-6.5-102
  - If you have a reason to know or suspect that someone will harm themselves or someone else.
  - If you have reason to know or suspect that someone is at risk to be harmed.

### **Who are At-Risk People?**

- 17 years or younger
- 70 years or older (may need to ask how their finances are being handled)
- Adult with Intellectual Disability

### **When do I give a mandatory report or give duty to warn?**

- 24 hours (best practice)
- Don't wake a sleeping dog. Don't go back to a case months ago and now make a report.
- If client brings it up again, make the report.
- If no longer seeing the person, lay low in the foxhole.
- If you're feeling you need to report, call lawyer to learn how to share.

### **How do I Report a Crime Committed by a Therapist**

- CURRENT LAW – *If I witness* a therapist doing something improper or unethical, we need to report to DORA. No time limit to this. Not making a report to DHS – you are filing a grievance against this therapist to DORA.
- Sunset statute currently looking at this, so it may change. The new way to deal with this would be: Therapist can resolve this one-on-one with offending therapist. (Not yet signed into law.)
- If a client says something the therapist has done wrong, but doesn't want to report the therapist, you are not bound to report it. The client must sign a release of information form.
- EXCEPT If therapist committed sexual misconduct with a client, *that must be reported* – it's a felony for the therapist to be sexually involved within 2 years of treatment. *No permission from the client is necessary.*
- By national standards: Never get sexually involved with a client.
- By ECC standards: Never get sexually or romantically involved with a client – current or former. Ever. We will always love you, but the result is termination.

### **Which Church Leaders are Mandatory Reporters?**

- Recognized church leaders (came from the IRS code) – This was broadened in scope about 10 years ago in the statutes. This includes pastors, church employees, volunteers.
- Roman Catholic church exception – in confessional box. If the priest is following a pure method of confession, then the priest does not have to report. (No exception in protestant churches.) Lawyers are also a person that doesn't need to report.
- If information arises that causes reason to suspect or know about harm to an at-risk person, the church leader *has* to report – even if pastor doesn't want them to.