

# ***Duty to Protect in Louisiana Checklist***

## **Statute involved is LA. R.S. 9:2008.2 (1986)**

Elements necessary for duty to warn to arise:

- A communicated threat of physical violence, and
- The threat is deemed significant in the clinical judgment of the treating psychologist or psychiatrist, or board certified social worker, and
- The threat is toward a clearly identified victim or victims, and
- The threat is coupled with the apparent intent and ability to carry out such threat.

If one or more of these elements are not present, there is no duty to warn. Rules of confidentiality would then apply.

- “Duty to warn” includes:
  1. A reasonable effort to communicate the threat to the potential victim or victims, and
  2. Notification of law enforcement authorities in the vicinity of the patient’s or potential victim’s residence.
- Standard to be used suggests the exercise of “reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of that profession under similar circumstances”.
- There is no liability or cause of action allowed for invasion of privacy or breach of confidentiality for any confidence disclosed secondary to this statute.
- Please be aware of *Davis v. Puryear*, 673, So.2d 1298 (La. App. 4 Cir. 1996). This involved events in 1984 so this statute could not be applied. In this case a formal voluntary patient in a state hospital escaped, showed up at two other state treatment facilities over the next three days, but was not confined. He then committed a murder. The court found the hospital and the physicians liable because they should have known this was a dangerous patient and confined him. Standards in *Tarasoff* were used in determining that the hospital had a duty to protect the public from harm caused by patients. Held that “The defendants (the hospital) . . . had a duty to guard against harm to third persons by Puryear. The duty was not limited to the giving of warnings but, instead extended to whatever measures were necessary to constitute reasonable care under the circumstances. The duty was not owed only to readily identifiable potential victims of Puryear (there were none) but instead extended to the public.”