


**DISTINGUISHING THE GADFLY
FROM THE GUNSLINGER:
Identifying and Managing the
Potential for Violence**

Colorado Municipal League
June 19, 2014
Paul D. Godec, Esq. and
Todd Faubion, MA MAS CPS CFE


The Assassination of Harvey Milk



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)


Granby Tank Incident



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)


Threatening Voicemail



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Florida School Board Shooting



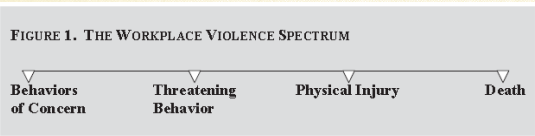
Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Understanding the Basics

Workplace Violence Spectrum

FIGURE 1. THE WORKPLACE VIOLENCE SPECTRUM



Behaviors of Concern **Threatening Behavior** **Physical Injury** **Death**

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Violence Acts Like a Virus

AIDS	SARS
MERS	Bird Flu
West Nile	H1N1 Flu

- Different viruses need different treatments.
- Different kinds of violence require different responses – one response does not fit all of the various forms that violence may take.

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Understanding the Basics

Workplace Violence Terminology

Type I: Violence occurs as a result crime
Type II: Customer/client/patient violence
Type III: Worker-on-worker violence
Type IV: Personal relationship violence
(Domestic Violence spillover)

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Need-to-Know Information

- Most attackers are known by their target(s)
- Mass murderers do not just “snap”
- Mental illness does not cause violence
- Mass killing is a “rare phenomenon”
 - About 20 per year since 1976
- Mass murder cannot be predicted
- Non-action reinforces inappropriate behavior

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

The Active Shooter

Algorithm analysis of active shooters in 2012

- 35 incidents between 1/13/2012 – 12/27/2012
- 57% of the attackers were “insiders”
- 63% broadcasted a perceived injustice
- 71% of the victims targeted in the attacks were the focus of the perceived injustice
- 71% of the attackers walked in unopposed

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

The Active Shooter - Continued


- 74% of the attackers entered through the main entrance
- 49% of attackers committed suicide
- Duration
 - 37% of attacks ended in less than 5 minutes
 - 63% of attacks ended in less than 15 minutes

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

The Active Shooter - Continued


- Location of occurrence
 - 51% workplace
 - 17% schools
 - 17% public place



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Violence vs. Dangerousness



- Violence
 - Physical force, action, or treatment
 - Violence is actual behavior

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Violence vs. Dangerousness - Continued

- Dangerousness
 - Characteristics of an individual, which renders him a threat to his own well-being or the safety of others
 - Characteristics of a situation, which increases the potential for victimization

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Aggression Behavior

- Reactive
 - “Impulsive, impromptu”
 - Emotionally charged and driven
 - Aggressor is “reacting” to a perceived immediate threat
 - Clenched, accelerated heart rate, elevated blood pressure, pacing and posturing

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Aggression Behavior - Continued


- Proactive
 - “Intended”
 - Calculated and purposeful – predatory
 - The aggressor initiated a pre-planned and prepared attack
 - Calm, unemotional, prepared and determined

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Aggression Behavior - Continued

- Aggression directed at:
 - Property
 - Reactive potential
 - Proactive potential
 - Persons
 - Reactive potential
 - Proactive potential
- Behavior intended to disrupt and harm psychologically



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Level of Concern

“The concept of level of concern is particularly applicable to threat assessment in dynamic, operational conditions, because it is judged on what information is currently available, which may be quite incomplete.”


*Meloy, R., Hoffman, J., and James, D. (2011).
The roll of warning behaviors in threat assessment: An exploration and suggested typology.
Behavior Sciences and the Law.*

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

**Proactive Aggression
Avenger – “Revenger”**

- Perceived injustice
- Feeling victimized
- Externalization of responsibility
- Development of a grudge
- Obsessed with avenging
- Avenging action



Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

A Pragmatic Approach

- A multidisciplinary approach:
 - Security
 - Human resources
 - Legal
 - Business owners / executive management
 - Police
 - Risk and crisis manager
 - Threat assessment professionals and investigators
 - Other at-risk entities
 - Friends and family of the subject

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

A Pragmatic Approach - Continued

Identify persons who might post a threat
What do we know about the situation at this time?

Assess those identified as a potential threat
What is the assessment of the known facts at this time?

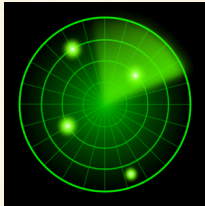
Manage those individuals deemed a threat
What is the recommended protective responses?

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Time Considerations

- Event threshold
 - The moment the subject is on your radar as a problem
- Event horizon
 - The moment the subject initiates his attack



Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Time Responsibilities

- Pre-event threshold actions
 - *What you do before the person is on your radar*
- Event threshold actions
 - *What you do when the person hits the radar*
- Event horizon actions
 - *What you do when the person attacks*
- Post-event horizon
 - *What you do to recover (medical/psychological)*

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Warning Behavior Typology

- Pathway
 - On track to attack
 - *e.g., research, planning, preparation*
- Fixation
 - Displays focus or preoccupation with the target
- Identification
 - “Pseudo-commando”

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Warning Behavior Typology - Continued


- Novel Aggression
 - Unrelated to other typologies
 - “Proof of kill”
- Energy burst
 - Increased frequency of activity to the target
- Leakage
 - Third party communications

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Warning Behavior Typology - Continued

- Last resort
 - “Action imperative”
 - No alternatives to the violence
- Direct threat
 - Statement of intent to harm or kill the target



*Meloy, R., Hoffmann, J., Guldman, A., and James, D. (2011).
The role of warning behaviors in threat assessment: An exploration and suggested typology.
Behavioral Sciences and the Law.*


Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

The Power of Inhibitors

The presence of inhibitors leads to avoiding problem behavior; while the absence contributes to problem behavior.

- Steady job
- Money in the bank
- Reasonable mortgage on the house
- A spouse and children
- Good reputation in the community



*Calhoun, F., Weston, S., (2013) Concepts and case studies
in threat management. Boca Raton, FL: CRC Press.*

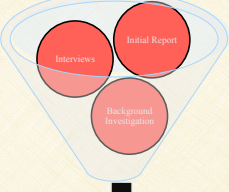
Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness

What to evaluate:

- The individual
- Already existing life stressors
- Involved situation
- The target/victim



Assess, Manage & Monitor
Consequence Management

Paul D. Godec
Todd Faubion

KESSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness - Continued

What to look for:

- Behaviors of concern
- Perceived victimization
- History of arrests/anger
- Subject's interest in "getting even"
- Weapons reference/use/experience
- Possible triggering events
- Possible interventions/strategies
- Target vulnerability



Assess, Manage & Monitor
Consequence Management

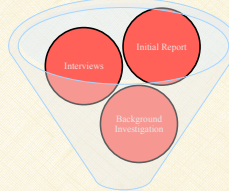
Paul D. Godec
Todd Faubion

KESSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness - Continued

Where to look:

- Arrest/police record
- Civil/criminal records
- Audio/video recordings
- Subject's own writings
- LinkedIn, Youtube, Facebook
- Interviews/depositions
- Past interactions
- Council meeting minutes



Assess, Manage & Monitor
Consequence Management

Paul D. Godec
Todd Faubion

KESSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness - Continued

Violence in a criminal history:

1. Frequency of arrests
2. How recent was the last arrest
3. Severity of crime of violence
4. Pattern among targets
5. Property vs. person crimes



Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness - Continued

Example CBI – Arrest History

4/1990	Trespass/harassment	6/2003	DUR/NPOI
4/1991	3 rd degree assault	7/2005	Assault/menacing
2/1993	Harassment	12/2007	Harassment/phone threats
6/1996	Menacing with a weapon	9/2009	Harassment/phone threats
10/2001	Harassment	9/2010	Disturbing the peace
10/2002	Harassment	1/2012	Harassment/phone threats

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Investigating Dangerousness - Continued

Evaluating anger:

1. How frequently it occurs?
2. How intense is the anger when it occurs?
3. What behavior occurs when anger is present?

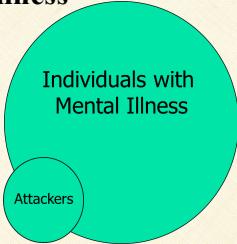


Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Mental Illness

- Perceptions may differ considerably
- Pace the contact
- Patience is priceless
- Be safety vigilant
- Get as much information as possible
 - *Hot button issues*

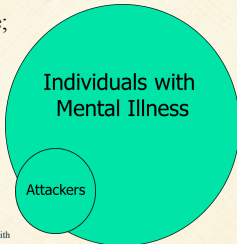


Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Mental Illness - Continued

- Behaviors can be unpredictable; and size can be deceiving
- Don't use past interactions as basis for determining current interaction
- Stay educated on signs and symptoms of certain mental illness



PoliceOne.com, (February, 2010). 6 reminders for contact with emotionally disturbed people. Retrieved June 28, 2011 from http://www.policeone.com/pc_print.asp?val=2008516

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Countermeasures

- No action
- Watch and wait
- Third party control / monitoring
- Subject interview / verbal direction
- Physical presence/security
- Administrative orders
- Trespass/"stay away" letter
- Involving mental health
- Civil action / protection orders
- Police contact
- "Knock & talk" or arrest

Regardless of countermeasure used, monitor for effectiveness.

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Monitoring Behavior Over Time

- Level of concern versus level of risk
- Dynamic versus static case management
- Warning behaviors that suggest increasing or escalating threat (imminence)
- Anticipating triggering events and timeframes

Paul D. Godec
Todd Faubion

RISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Preventing/Disrupting an Attack

- Development of a central data collection point (VORTEX)
- Target hardening
- Victim awareness/victim avoidance
- Threat assessment and effective management
- Early detection of the attack approach
- Activation of dynamic countermeasures at the time of attack

Paul D. Godec
Todd Faubion

RISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Public Targets


- Problematic unwanted approaches toward public targets are as important as stated threats
- Intensity of effort to further a particular quest, personal cause, or fixation toward a target

Paul D. Godec
Todd Faubion

RISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Public Targets - Continued

- Intensity can be measured
 - *Frequency of contact*
 - *Duration of contact*
 - *Multiple means of contact*
 - *Target dispersion*



Meloy, R., Hoffmann, J., Guldman, A., and James, D. (2011). The role of warning behaviors in threat assessment: An exploration and suggested typology. Behavioral Sciences and the Law.

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Public Targets - Continued

- In a 2007 study of attacks on public figures, 46% of attackers evidenced warning signs.
- In a 1998/1999 study by the U.S. Secret Service:
 - 7% of attackers communicated their threats;
 - 77% had history of communicating about their target;
 - 23% communicated to their target; and
 - 63% had history of indirect, conditional, or direct threats about their target.

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Public Targets - Continued

Every instance of an attack on a public figure in the United State has been the work of a mentally disordered person who issued one or more pre-attack signals in the form of inappropriate letters, visits, or statements.

Meloy, R., Hoffmann, J., Guldman, A., and James, D. (2011). The role of warning behaviors in threat assessment: An exploration and suggested typology. Behavioral Sciences and the Law.

Paul D. Godec
Todd Faubion

KEISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Public Targets – Unwanted Contact

Where you are likely to have contact:

- At a transit point
 - Getting out of a car or coming out of a building
- At scheduled events and appearances
- Business or association meetings
- Council meetings or legislative hearings
- Email, U.S. Mail, and packages

Document any contact as soon as possible and preserve any possible evidence.

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
 3773 Cherry Creek North Drive, Suite 900
 Denver, CO 80209
 303-320-6100 (Phone) 303-327-8601 (Fax)

Public Targets – Unwanted Contact – Cont’d

If contacted:

- Keep the interaction polite and brief
- Don’t engage in the content of the discussion as the interaction will likely deteriorate
- Don’t make promises and don’t lie to the subject
- Direct the person to your office
- Don’t accept gifts, packages, or materials
- Excuse yourself and advise that you have another appointment – *walk away*
- Report the contact immediately to your TVAT

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
 3773 Cherry Creek North Drive, Suite 900
 Denver, CO 80209
 303-320-6100 (Phone) 303-327-8601 (Fax)

Public Targets – Unwanted Contact – Cont’d

If contacted at your residence:

- Be polite and advise the visitor he is on private property and that his visit is “not appropriate”
- Direct the person to leave
- Call 911 if the person refuses to leave and insist that police make an arrest
- Report the occurrence immediately to your TVAT

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
 3773 Cherry Creek North Drive, Suite 900
 Denver, CO 80209
 303-320-6100 (Phone) 303-327-8601 (Fax)

Legal Considerations

- Tort Claims – *Governmental Immunity*
- Constitutional Claims – *Qualified Immunity*
- Workers’ Compensation Claims
- OSHA Penalties
- Employment Law
 - Title VII – Sexual and other harassment
 - Americans with Disabilities Act (ADA)
 - Family & Medical Leave Act (FMLA)
 - Colo. Rev. Stat. §24-34-402.7

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Legal Considerations

Criminal Law

Assault	Harassment
Stalking	Disorderly conduct
Criminal Attempt	Criminal Mischief

Domestic Violence

Domestic Relations
Criminal enforcement

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Legal Considerations

Concealed Weapons Permits

Civil Protective Orders

- Designed for individual to individual violence
- Complication for individual to entity violence
- Temporary CPO
 - On affidavit and *ex parte*
 - 14 days to 1 year duration (if agreed)
- Permanent CPO
 - Negotiated CPO

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-326-6100 (Phone) 303-327-8601 (Fax)

Practical “Tool Kit”

1. “How to Respond to an Active Shooter”
2. “Coping with an Active Shooter Situation”
3. “Bomb Threat Call Procedure”
4. City of Sterling Personnel Policies – Workplace Violence
5. Guidelines for Workplace Violence Prevention Programs
6. “Physical Security Checklist”
7. “Phone Threat Checklist”
8. Bibliography of Resources

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Contact Information

Paul D. Godec, Esq. Kissinger & Fellman, P.C. Ptarmigan Place, Suite 900 3773 Cherry Creek North Drive Denver, CO 80209 Main: 303-320-6100 Fax: 303-327-8601 Paul@kandf.com www.kandf.com	Todd Faubion, MA, MAS, CPS, CFE Security, Risk & Investigations Human Resources Pinnacol Assurance 7501 E. Lowry Blvd. Denver, CO 80230 Main: 303-361-4029 Fax: 303-361-4000 Todd.Faubion@pinnacol.com www.pinnacol.com
--	--

Paul D. Godec
Todd Faubion

KISSINGER & FELLMAN, P.C.
3773 Cherry Creek North Drive, Suite 900
Denver, CO 80209
303-320-6100 (Phone) 303-327-8601 (Fax)

Distinguishing the Gadfly from the Gunslinger: Identifying and Managing the Potential for Violence

Paul D. Godec, Esq., Kissinger & Fellman, P.C.
Todd Faubion, Internal Risk, Security and Investigations, Pinnacol Assurance

1) POTENTIAL LIABILITIES – CIVIL LIABILITIES

- i) Negligent Hiring, Supervision, Retention, or Training
 - a) Example 1: Patient's wife is upset with medical care provided to husband. She and staff engage in heated confrontation. Staff calls security and security removes the woman from the premises by force. Woman suffers injuries and sues the hospital for negligent recruitment, hiring, retention, supervision and training of its staff and security personnel. *Siepierski v. Penrose*, 37 P.3d 537 (Colo. App. 2001).
 - b) Example 2: Trucker applies for a job. In the application, trucker notes "no previous convictions." Employer hires him. Turns out, he did have previous convictions (for assault, burglary, and domestic violence). While on a route, Trucker sexually assaults a hotel receptionist who then sues the employer for negligent hiring in failing to perform adequate background check. *Connes v. Molalla*, 831 P.2d 1316 (Colo. 1992).
- ii) Governmental Immunity
 - a) A municipality constitutes a "public entity" under the Colorado Governmental Immunity Act ("CGIA"). *See* Colo. Rev. Stat. § 24-10-103(5).
 - b) The CGIA provides general immunity for a public entity or the employees of a public entity involving claims that lie in tort or could lie in tort. *Id.* §§ 24-10-106(1) & - 118(2)(a). Certain statutory exceptions to immunity under the CGIA will rarely apply to the facts involving workplace violence. *See id.* §§ 24-10-106(1)(a), (b), (c), (d), (e), (g) & (h).
 - c) The CGIA does not bar actions grounded in contracts. *Grimm Constr. Co., Inc. v. Denver Bd. of Water Comm'rs*, 835 P.2d 599, 601 (Colo. App. 1992); *Elliott v. Colorado Dept. of Corrections*, 865 P.2d 859, 861 (Colo. App. 1993).
 - d) Under the CGIA, a public entity generally must pay the cost of defense for claims filed against public employees "where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton[.]" Colo. Rev. Stat. § 24-10-110(1)(a).
 - e) The CGIA likewise generally requires a public entity to pay "all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton" *Id.* § 24-10-110(1)(b)(I) (emphasis added).
 - f) Employees of public entities do not enjoy sovereign immunity for suits against them in their individual capacities for willful and wanton conduct, because those suits seek

relief from the individuals themselves rather than from the treasury of the public entity. *Middleton v. Hartman*, 45 P.3d 721, 724 & 728 (Colo. 2002); *Robinson v. City & County of Denver*, 39 F. Supp. 2d 1257, 1263 (D. Colo. 1999).

- g) The CGIA itself does not define “willful and wanton.” The Colorado Supreme Court, however, has interpreted the meaning of “willful and wanton” using statutes containing that phrase for purposes of an award of exemplary damages. “As used in this section, ‘willful and wanton conduct’ means conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to the safety of others, particularly the plaintiff.” *Moody v. Ungerer*, 885 P.2d 200, 205 (Colo. 1994); *see also* Colo. Rev. Stat. § 13-21-102(1)(b).
- h) Willful action means voluntary; by choice; intentional; purposeful. Wantonness signifies an even higher degree of culpability in that it is wholly disregarding of the rights, feelings and safety of others. It may, at times, even imply an element of evil. One may be said to be guilty of “wanton and willful disregard” when he is conscious of his misconduct, and although having no intent to injure anyone, from his knowledge of surrounding circumstances and existing conditions is aware that his conduct in the natural sequence of events will probably result in injury ..., and is unconcerned over the possibility of such result. *Moody*, 885 P.2d at 205, *quoting Pettingell v. Moede*, 129 Colo. 484, 271 P.2d 1038, 1042 (Colo. 1954).
- iii) An employer generally does not have a duty to supervise employees in their off-duty time unless the employee is on the employer’s premises or possesses the employer’s property. *Biel v. Alcott*, 876 P.2d 60 (Colo. 1993).
- iv) The employer must be found liable for a tort in order for the employer to be liable for negligent supervision. *Arnold v. Colo. St. Hosp.*, 910 P.2d 104 (Colo. 1995).

2) POTENTIAL LIABILITIES – 42 U.S.C. § 1983

- i) In order to establish a cause of action under 42 U.S.C. § 1983, a plaintiff must establish two elements:
 - a) Deprivation of a right secured by the Constitution or laws of the United States; and
 - b) Caused by a person acting under color of state law.¹
 - (1) Law enforcement officers usually act under color of state law.
- ii) Substantive Due Process Exceptions
 - a) State Created Danger Exception
 - (1) State liability under a state-created danger theory can be established if the plaintiff shows:
 - (a) Affirmative acts by the state which either create or increase the risk that an individual will be exposed to private acts of violence;
 - (b) The victim faces special danger, in that the state’s action place the victim specifically at risk, as distinguished from a risk that affects the public at large; and

¹ *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), *quoting McQueen v. Beecher Cmmt’y Sch.*, 433 F. 3d 460, 463 (6th Cir. 2006).

- (c) The state must have known or clearly should have known that its actions specifically endangered an individual.²
 - b) Custody Exception
 - (1) “When the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety.”³
- iii) Qualified Immunity
 - a) Qualified immunity can shield government officials from individual civil liability where their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁴
 - b) U.S. Supreme Court utilizes a two-step analysis to determine whether qualified immunity applies:
 - (1) Whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and
 - (2) Whether that right was clearly established.⁵
 - c) Violation of a Constitutional Right
 - (1) In detailing the law of qualified immunity, the Supreme Court has stated that lower courts should examine this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right?⁶
- iv) Representative Cases
 - a) *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005)
 - (1) Facts: Suit under 42 U.S.C. § 1983, alleging that petitioner violated the Fourteenth Amendment’s Due Process Clause
 - (a) Estranged wife had obtained a restraining order against her husband in divorce proceedings.
 - (b) Order provided in a “Notice to Law Enforcement Officials” that law enforcement officers “shall use every reasonable means to enforce this restraining order. You shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the restrained person when ... information amounting to probable cause that the restrained person has violated or attempted to violate ... this order ...”
 - (c) Colo. Rev. Stat. § 18-6-803.5(3) provides that “[a] peace officer shall use every reasonable means to enforce a restraining order.” “A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when ... information amounting to probable cause that the restrained person has violated or attempted to violate

² *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), quoting *Kallstrom v. City of Columbus*, 136 F. 3d 1055 (6th Cir. 1998).

³ *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989).

⁴ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), citing *Procunier v. Navarette*, 434 U.S.555, 565 (1978).

⁵ *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), quoting *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310-11 (6th Cir. 2005), citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

⁶ *Saucier v. Katz*, 533 U.S. 194, 201 (2001) citing *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

any provision of a restraining order[.]” “A peace officer shall enforce a valid restraining order whether or not there is a record of the restraining order in the registry.”

- (d) Husband abducted three daughters while playing in their front yard and took them to an amusement park in Denver from which he called his estranged wife by telephone.
 - (e) Police officers, acting pursuant to official policy or custom, failed to respond to her repeated reports over several hours that her estranged husband had taken their three children in violation of her restraining order against him.
 - (f) The husband murdered all three children before engaging in a gun battle with police resulting in the husband’s death.
- (2) Analysis: “The simple distinction between government action that directly affects a citizen’s legal rights ... and action that is direction against a third party and affects the citizen only ... incidentally, provides a sufficient answer to” cases finding government-provided services to be entitlements.
- (a) “To have a property interest in a benefit, a person clearly must have more than an abstract need or desire” and “more than a unilateral expectation of it. The person must, instead, have a legitimate claim of entitlement to it.”
 - (b) A benefit does not become a protected entitlement if government officials may grant or deny the benefit at their discretion.
- (3) Rule of Law: The framers of the Fourteenth Amendment and 42 U.S.C. § 1983 did not create a system by which police departments become financially accountable for crimes that better policing might have prevented. “This result reflects ... continuing reluctance to treat the Fourteenth Amendment as ‘a font of tort law.’”
- b) *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989)
- (1) Facts: Custody of a young child was given to the child’s father, who had allegedly abused the child several times. Winnebago County child services did not take custody of the child, and the mother brought suit against child services.
 - (2) Rule of law: The affirmative duty to protect arises not from the State’s knowledge of the individual’s predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.
- c) *Morrow v. Balaski*, 719 F.3d 160 (3rd Cir. 2013)
- (1) Facts: School students and their parents sued a school district and an assistant principal, in their 42 U.S.C.S. § 1983 action alleging that school officials denied them substantive due process under the Fourteenth Amendment by not protecting the students from threats and assaults from fellow students.
 - (2) Rule of Law: Public schools do not have a constitutional duty to protect students from abuse inflicted by fellow students because the school did not have a “special relationship” with students that would create a constitutional duty to protect the students from harm from other students. Further, the “state-created danger” doctrine does not apply because defendants did not affirmatively create or

enhance a danger to the students by suspending the bullying student and then allowing her to return to school when the suspension ended.

- d) *Burella v. City of Philadelphia*, 501 F.3d 134 (3rd Cir. 2007)
- (1) Facts: The husband, a veteran of the city police department, shot and seriously injured his spouse and then shot and killed himself. Although she reported numerous incidents of abuse to the police over the years, obtained several restraining orders just days before the shooting, and told police that her husband continued threatening her despite the orders, police failed to arrest him.
 - (2) Rule of Law: The spouse did not allege any facts that would establish that the officers did anything other than fail to act. That failure, while tragic, did not create a cognizable state-created danger claim. Further, the officers had qualified immunity for the equal protection claim because no comparable evidence existed from which a reasonable jury could find an unlawful custom or infer a discriminatory motive.
- e) *Howard v. Bayes*, 457 F.3d 568 (6th Cir. 2006)
- (1) Facts: A deputy responded to a 911 call regarding a possible drug overdose at the daughter's residence. The daughter denied any violence. Her boyfriend only expressed concern that the daughter had taken some pills. The deputy and four emergency medical technicians left when the daughter refused treatment and signed a refusal-of-treatment form. The next morning, an ambulance was again called to the residence where the daughter was found physically beaten and unconscious. She died in the hospital, and her boyfriend was convicted of murder.
 - (2) Rule of Law: In light of the U.S. Supreme Court's decision in *Castle Rock*, plaintiff failed to demonstrate that a constitutional violation occurred. The deputy also properly remained entitled qualified immunity. Kentucky statutes requiring an arrest of perpetrators of domestic abuse did not create a property interest for victims of domestic abuse. Regarding a wrongful death claim, plaintiff failed to establish any duty on defendants' part to protect the daughter from harm.
- f) *Sutton v. Utah State Sch. For the Deaf & Blind*, 173 F.3d 1226 (1999)
- (1) Facts: A boy told his mother that he had been sexually assaulted at school, and the mother reported the allegation to the school's principal. Another assault occurred one week later. The abuser was caught and convicted. At the trial, the mother learned that her son was supposed to have a teacher's aide assigned to be with him, but the aide was not present when the last assault occurred. The mother brought suit against the school.
 - (2) Rule of law: Where a superior's failure to train amounts to deliberate indifference to the rights of persons with whom his subordinates come into contact, the inadequacy of training may serve as the basis for 42 U.S.C.S. § 1983 liability.
- g) *Phillips v. Kerns*, 483 Fed. Appx. 400 (2012)
- (1) Facts: Phillips brought suit against her neighbors under the Americans with Disabilities Act and 42 U.S.C. 1983 to try and settle her personal disputes with her neighbors in court.

- (2) Rule of law: As the Supreme Court said in both *Castle Rock* and *DeShaney*, “there is no right under the Due Process Clause, either procedural or substantive, to have the police enforce a restraining order or to arrest some third party.”
- (3) The court also stated: “The bottom line here is that Ms. Phillips is attempting to use the police to establish, settle, and protect what she deems to be her rights to property, from boundary lines to electrical outlet access. As Ms. Phillips has been regularly advised all along, these are civil, not police, matters which she must pursue in civil actions in the state courts. She is simply not entitled to have the police do that work for her.”
- h) *Roska v. Sneddon*, 437 F.3d 964 (2006)
 - (1) Facts: A family, including a child, sued caseworkers and their supervisor for deprivation of rights under the Fourth and Fourteenth Amendments as a result of the child’s removal from his home. The caseworkers removed the child from the home without a warrant, even though one of the caseworkers did not believe that the child was in danger of death. The mother had a psychological condition that caused her to inflict pain on the child. A physician treating the child informed the caseworker that removal of the child would not only inhibit the mother’s progress in recovering, it may destroy the family emotionally, scarring the child for life.
 - (2) Rule of law: Caseworkers are not entitled to qualified immunity because though they did rely on the appropriate statute (Utah Code Ann. § 62A-4a-202.1), they did not comply with the statute. The caseworkers should have offered preventative services to the family.

3) POTENTIAL LIABILITIES – WORKERS’ COMPENSATION

- i) Generally, Workers Compensation is the exclusive remedy for an employee who is harmed by a fellow employee. *See* Colo. Rev. Stat. § 8-41-102 & -301.
- ii) Courts look to “totality of circumstances” to determine whether the injury “arose out of” and “in the scope of” employment. *Popovich v. Irelando*, 811 P.2d 379 (Colo. 1991); *but see Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff’d*, 90 P.3d 228 (Colo. 2004).

4) POTENTIAL LIABILITIES – O.S.H.A. PENALTIES

- i) “Each employer... shall furnish to each of his employees employment and a place of employment which are free of *recognized hazards* that are causing or are likely to cause death or serious physical harm to his employees.” 29 U.S.C. § 645(a)(1) (Occupational Safety & Health Act).
- ii) “Any employer who willfully or repeatedly violates the requirements of section 654 or this title, any standard, rule or... regulations prescribed pursuant to this chapter, may be assessed a civil penalty of no more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.” 29 U.S.C. § 666(a) (Occupational Safety & Health Act).
- iii) An employer is not an insurer, and need not take steps to prevent hazards which are not generally foreseeable, including idiosyncratic behavior of an employee, but it must do all it feasibly can to prevent foreseeable hazards including conduct by its employees. An

employer may defend a charge that it violated OSHA by showing the taking of necessary precautions to prevent the occurrence of the violation. *Gen'l Dynamics Corp. v. Occ. Safety & Health Rev. Com'n*, 599 F.2d 453 (1st Cir. 1979).

5) SEXUAL & OTHER HARASSMENT

- i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, requires employers to protect employees against all forms of harassment (*e.g.*, sexual, racial, color, religious, national origin) which may create hostile or offensive workplace.
- ii) Anti-harassment rules also apply under the Age Discrimination in Employment Act (ADEA). 29 U.S.C. § 621 *et seq.*

6) CIVIL PROTECTION ORDERS

- i) Any county or district court shall have the authority to enter an emergency protection order
- ii) An emergency protection order may include:
 - a) Restraining a party from threatening, molesting, injuring, or contacting any other party;
 - b) Excluding a party from the family home or from the home of another party upon a showing that physical or emotional harm would otherwise result. Colo. Rev. Stat. § 13-14-103.
- iii) “[An authorized]court shall have original . . . jurisdiction to issue a temporary or permanent civil protection order . . . for any of the following purposes:
 - a) “To prevent assaults and threatened bodily harm;
 - b) “To prevent domestic abuse;
 - c) “To prevent emotional abuse of the elderly or of an at-risk adult;
 - d) “To prevent stalking.” Colo. Rev. Stat. § 13-14-102(1.5).

7) GENERAL WORKPLACE VIOLENCE

- i) Applicable Criminal Statutes
 - (1) **18-3-204 – Assault (Third Degree)**. “A person commits the crime of assault in the third degree if . . . [t]he person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon[.]”
 - (2) **18-3-206 – Menacing**. “A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury.”
 - (3) **18-3-208 – Reckless Endangerment**. “A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment[.]”
 - (4) **18-3-303 – False Imprisonment**. “Any person who knowingly confines or detains another without the other's consent and without proper legal authority commits false imprisonment.”
 - (5) **18-9-108 – Disrupting Lawful Assembly**. “A person commits disrupting lawful assembly if, intending to prevent or disrupt any lawful meeting, procession, or

- gathering, he significantly obstructs or interferes with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.”
- (6) **18-9-110 – Public Buildings / Trespass, Interference.**
- (a) “No person shall so conduct himself at or in any public building owned, operated, or controlled by ... any of the political subdivisions of the state ... as to willfully deny to any public official, public employee, or invitee on such premises the lawful rights of such official, employee, or invitee to enter, to use the facilities of, or to leave any such public building.”
 - (b) “No person shall, at or in any such public building, willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof.”
 - (c) “No person shall willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer or his designee charged with maintaining order in such public building, if the person has committed, is committing, threatens to commit, or incites others to commit any act which did, or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in the public building.”
 - (d) “No person shall, at any meeting or session conducted ... in any public building, willfully impede, disrupt, or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce, or hinder any member of such body or official engaged in the performance of duties at such meeting or session.”
 - (e) “No person shall, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official at or in any public building, willfully impede, disrupt, or hinder the normal proceedings of such body or official.”
- (7) **18-4-501 – Criminal Mischief.** “A person who knowingly damages the real or personal property of one or more other persons ... commits” criminal mischief.
- (8) **18-9-106 – Disorderly Conduct.** “A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:
- (a) “Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or
 - (b) “Fights with another in a public place except in an amateur or professional contest of athletic skill; or
 - (e) “... discharges a firearm in a public place except when ... hunting; or
 - (f) “... displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.”

- (9) **18-9-111. Harassment – Stalking.** “A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:
- (a) Strikes, shoves, kicks, or otherwise touches or subjects [another person] to physical contact[.]
 - (b) In a public place directs obscene language or makes an obscene gesture to or at another person; or
 - (c) Follows a person in or about a public place[.]
 - (d) Initiates communication with a person, anonymously or otherwise by telephone, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal . . . that is obscene[.]”
- (10) **18-3-602. Stalking - Penalty – Definitions.** “A person commits stalking if directly, or indirectly through another person, the person knowingly:
- (a) Makes a credible threat to another person and . . . repeatedly follows, approaches, contacts, or places under surveillance that person . . . ; or
 - (b) Makes a credible threat to another person and . . . repeatedly makes any form of communication with that person . . . , regardless of whether a conversation ensues; or
 - (c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person . . . that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress.”

8) EMPLOYMENT LAW CONSIDERATIONS

- i) Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, may require accommodation of employee with mental or emotional disability unless employee becomes “unqualified” to perform essential job functions or poses a “direct threat” to the safety or health self or others.
 - a) Threat to co-worker, “Stop calling me or I’ll punch you in the face.” Employer’s warning: “Any single infraction . . . in the future will result in termination.” Referral to EAP resulting in diagnosis of ADHD. One year later, became “irrational and increasingly erratic” following disagreement with boss, and later fired. Suit under ADA rejected because “the ADA does not require that an employee whose unacceptable behavior threatens the safety of others be retained, even if the behavior stems from a mental disability[.]” *Calef v. Gillette Co.*, 322 F.3d 75 (1st Cir. 2003).
 - b) Severe mood swings that admittedly were “grossly out of proportion to any provocation or precipitating factors.” Agreed to short-term disability and diagnosed with Intermittent Explosive Disorder. Treated with drugs and therapy and returned to work. Months later, threatened to kill a manager who disparaged his performance. Co-worker reported threat, and employee was fired. ADA suit rejected because ADA exception for health and safety of others. *Koshko v. Gen’l Elec. Co.*, No. 01-C-5069 (N.D. Ill. 2003).

- ii) Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.*, may require unpaid leave for a “serious health condition” which could include treatment for depression, bipolar disorder, ADHD, and other behavioral health conditions.

9) DOMESTIC VIOLENCE

- i) “Domestic violence” means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.
- ii) “Intimate relationship” means a relationship between spouses, former spouses, past or present unmarried couples, or a person who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time. Colo. Rev. Stat. 18-6-800.3(1) & (2).
- iii) “Domestic violence” also includes any other crime against a person or against property ... when *used as a method of coercion, control, punishment, intimidation, or revenge* directed against a person with whom the actor is or has been involved in an intimate relationship. Colo. Rev. Stat. 18-6-800.3(1).
- iv) Physician duty to warn
 - a) “It shall be the duty of every [physician] who attends or treats ... any ... injury arising from the discharge of a *firearm*, or an injury caused by a ... *sharp or pointed instrument* that the [physician] believes to have been intentionally inflicted ... or ... has reason to believe involves a criminal act, *including injuries resulting from domestic violence*, to report such injury at once to the police ...” Colo. Rev. Stat. § 12-36-135(1) (emphasis added).
 - b) Any [physician] who fails to make a report as required by this section commits a class 2 petty offense ... and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.” Colo. Rev. Stat. § 12-36-135(1).
 - c) “Any [physician] who, in good faith, makes a report ... shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceedings resulting from such report.” Colo. Rev. Stat. § 12-36-135(2).
 - d) “Any [physician] who makes a report ... shall not be subject to the physician-patient relationship ... as to the medical diagnosis and treatment. Such [physician] may be examined as a witness, but not as to statements made by the patient that are the subject matter [of any other physician-patient privilege].” Colo. Rev. Stat. § 12-36-135(3).
 - e) The duty to report to police abrogates the physician-patient privilege only for testimony about information received from the physician’s observations that led to a diagnosis about criminal conduct, but not about any other statements made by the patient to the physician. *People v. Covington*, 19 P.3d 15 (Colo. 2001).
- v) Mental health worker duty to warn
 - a) “A physician, social worker, psychiatric nurse, psychologist, or other mental health professional and a mental health hospital, community mental health center or clinic,

- institution, or their staff shall not be liable for damages in any civil action for failure to warn or protect any person against a mental health patient's violent behavior, and any such person shall not be held civilly liable for failure to predict such violent behavior, except where the patient has communicated to the mental health care provider a serious threat of imminent physical violence against a specific person or persons.” Colo. Rev. Stat. § 13-21-117.
- b) “A physician, social worker, psychiatric nurse, psychologist, or other mental health professional and a mental health hospital, community mental health center or clinic, institution, or their staff shall not be liable for damages in any civil action for warning any person against or predicting a mental health patient's violent behavior, and any such person shall not be subject to professional discipline for such warning or prediction.” *Id.*
 - c) “The provisions of this section shall not apply to the negligent release of a mental health patient from any mental health hospital or ward or to the negligent failure to initiate involuntary seventy-two-hour treatment and evaluation after a personal patient evaluation determining that the person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others.” *Id.*
- vi) Municipal Duties to Victims of Domestic Abuse
- a) “A peace officer shall use every reasonable means to enforce a [restraining] order. A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the restrained person when ... [t]he restrained person has violated or attempted to violate any provision of a [restraining] order.” Colo. Rev. Stat. § 18-6-803.5(3)(a) & (b).
 - b) *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).
- vii) Employees Suffering “Off Duty” Domestic Violence
- a) “Employers shall permit an employee to request or take **up to three working days of leave** from work in any twelve-month period, with or without pay, if the employee is a victim of domestic abuse, ... if such employee is...
 - (1) Seeking a civil protection order ...;
 - (2) Obtaining medical care or mental health counseling or both for ... herself or ... her children...;
 - (3) Making ... her home secure from the perpetrator ...;
 - (4) Seeking legal assistance to address ... domestic abuse[.]” (Colo. Rev. Stat. § 24-34-402.7(1)(a) (emphasis added))
 - b) “The [leave] provisions ... shall apply to employers who employ **fifty or more employees and to employees who have been employed with the employer for twelve months or more.**”
 - c) “An employee seeking leave ..., prior to receiving such leave, shall exhaust any and all annual or vacation leave, personal leave, and sick leave ... that may be available to the employee, unless employer waives this requirement.” Colo. Rev. Stat. § 24-34-402.7(1)(b) & (2)(b).

10) CONCEALED HANDGUN PERMITS

- i) A sheriff shall issue a permit to carry a concealed handgun to a person who:

- a) Is a legal resident of Colorado;
 - b) Is at least 21 years of age;
 - c) Submits evidence of completion of a handgun training class (or similar evidence of handgun competency); and
 - d) Is not otherwise ineligible to obtain a concealed handgun permit under state or federal law. Colo. Rev. Stat. § 18-12-203
- ii) Ineligible persons for permit to carry concealed handguns:
 - a) Persons previously convicted of felonies;
 - b) Persons convicted of perjury in applying for permits;
 - c) Persons who chronically and habitually use alcohol to the point of impairment;
 - d) Persons who are addicted to controlled substances; and
 - e) Persons subject to certain temporary and permanent restraining orders. Colo. Rev. Stat. § 18-12-203.
 - iii) “A permit to carry a concealed handgun authorizes the permittee to *carry* a concealed handgun in all areas of the state, except as specifically limited in this section. A permit does not authorize the permittee to *use* a handgun in a manner that would violate a provision of state law.” Colo. Rev. Stat. § 18-12-214(1)(a) (emphasis added).
 - iv) Exceptions to Concealed Handgun Permits
 - a) “Nothing ... shall be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, private tenant, private employer, or private business entity.” Colo. Rev. Stat. § 18-12-214(5).
 - v) Public Facilities
 - a) “A permit... Does not authorize a person to carry a concealed handgun into a public building at which:
 - (1) Security personnel and electronic screening devices are permanently in place at each entrance to the building;
 - (2) Security personnel electronically screen each person who enters the building ...; and
 - (3) Security personnel require each person who is carrying a weapon of any kind to leave the weapon in the possession of security personnel” Colo. Rev. Stat. § 18-12-214(4).

REFERENCES

1. Dept. of Homeland Security Video on Active Shooter; <http://www.youtube.com/watch?v=5VcSwejU2D0>.
2. Training Programs for Infrastructure Protection (DHS interactive, web-based courses); <http://www.dhs.gov/files/training/training-critical-infrastructure-partners.shtm>.
3. Active Shooter: How to Respond (DHS); http://www.dhs.gov/xlibrary/assets/active_shooter_booklet.pdf.
4. National Threat Assessment Center (United States Secret Service); <http://www.secretservice.gov/ntac.shtml>.
5. J. Reid Meloy, Jens Hoffmann, Angela Guldemann, & David James “The Role of Warning Behaviors in Threat Assessment: An Exploration and Suggested Typology” (Behavioral Sciences and the Law 2011) (Published online in Wiley Online Library, *available at wileyonlinelibrary.com*; DOI: 10.1002/bsl.999).
6. American Psychology Association, *Gun Violence: Prediction, Prevention, and Policy* (Washington, D.C. 2013).
7. J. Reid Meloy, “The Seven Myths of Mass Murder” (*available at www.forensis.org*).

City of Sterling Personnel Policies

Effective Date: April 16, 2007		# of Pages: 3
Rev. Effective Date:		
Personnel Board Approval		Date
Board President	_____	_____
Board Member	_____	_____
Board Member	_____	_____

CHAPTER 16

WORKPLACE VIOLENCE

SECTION 1 - POLICY STATEMENT

It is the City of Sterling's policy to promote a safe environment for its employees and visitors which is free of harassment, intimidation, threats, or violent behavior. The City will not tolerate acts of violence committed by or against City employees or members of the public while on City property or while performing City business at other locations.

The City will not tolerate any action which may be interpreted as one of the following behaviors:

- Intimidating, threatening, or hostile behaviors or comments
- Threatening or hostile verbal or physical behaviors
- Stalking
- Physical or verbal abuse
- Comments regarding violence
- Oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm
- Harassment or assault
- Vandalism
- Threatening or harassing telephone calls or e-mail messages
- Violent criminal actions
- Arson
- Sabotage
- Bizarre or offensive comments about violent events or behavior
- Unauthorized use or possession of deadly weapons or explosives on or in City property, or
- Any other behavior which, in management's opinion, is inappropriate for the workplace.

This list is not all-inclusive, and any other acts deemed inappropriate will also be investigated.

Employees who engage in behavior that violates this policy, fail to report actions which fall under this policy or fail to take appropriate actions outlined in this policy will be deemed in violation of this policy and are subject to disciplinary action up to and including discharge through the City's **Discipline Policy**. Visitors who engage in behavior that violates this policy may be removed and/or prohibited from City facilities, vehicles, or leased property. Actions that appear to be a violation of law or that are deemed to pose a risk to others will be reported to the appropriate law enforcement officials.

City of Sterling Personnel Policies

Employees who feel they are subjected to any of the behavior described above, who observe or have knowledge of any violation of this policy, or who encounter suspicious persons on City property should immediately notify their supervisor. Employees, who believe that workplace violence is so imminent and dangerous that it requires an immediate response, should contact proper law enforcement authorities first, and then report the incident to their supervisor.

Please note: This policy may be waived when in conflict with Law Enforcement personnel's Use of Force when in the line of duty.

SECTION 2 - REPORTING WORKPLACE VIOLENCE

Violations of this policy should not be ignored. If an employee observes or experiences such behavior by anyone on City property or directed at City employees, whether the person is a City employee or not, the employee should report it immediately to a supervisor or department head, the Human Resources staff, Police Department, or the City Manager. Anyone receiving a complaint of this nature shall inform the City Manager of the complaint. If the immediate supervisor is responsible for the behavior, the employee should report to a manager above the supervisor or one of the other contacts listed herein.

If the employee believes the situation requires immediate action in order to avert a violent situation, the employee should contact the appropriate law enforcement agency immediately.

SECTION 3 - VIOLATION OF THIS POLICY

Any reported violation of this policy will be thoroughly and promptly investigated by the Department Director, Human Resources, or the City Manager or their designee. The City Manager or designee will immediately review reported acts of violence or potentially violent situations. During the review of reported acts of violence or potentially violent situations, the City Attorney, Law Enforcement Personnel, Human Resources or the Employee's immediate supervisor may provide input or consultation.

The City of Sterling will take the appropriate disciplinary action if warranted, based on the findings of the investigation. An employee whose behavior is determined to be in violation of this policy is subject to disciplinary action, up to and including dismissal through the City's Discipline Policy.

Please note: During the disciplinary hearing, appeal hearing, or Personnel Board Review, special safety/security precautions may need to be taken due to the nature of this policy violation.

SECTION 4 - SEARCHES

An employee may be subject to a search involving the work site, a City-assigned piece of equipment or property, and/or other items within their personal possession in certain circumstances while on City-owned or City-leased property to the extent allowed by law. During such a search, City property in the unlawful or unauthorized possession of the employee may be confiscated.

City of Sterling Personnel Policies

SECTION 5 - RESTRAINING/PROTECTIVE ORDER

An employee who obtains a protective or restraining order against a City employee or another person, which lists City locations as protected areas, must immediately notify their supervisor or other member of management about the order and its status. A valid restraining order means that the holder must have the physical document in their possession, and the named party must have been served the restraining order. For a supervisor to take action on an employee's restraining order the supervisor must see the physical document and verify the following information:

- Effective dates of the restraining order,
- Date of service of individual,
- Distance limits from a specific address,
- Contact limits; i.e., phone, physical, and
- Signature of a judge.

When an employee has a valid restraining order in place, their supervisor will inform the appropriate Law Enforcement Agency of the restraining order. If the restraining order is violated, the authorities will be notified immediately.

If the restraining order does not name another City employee or identify City locations, the City requests and highly recommends notification in order to alert the appropriate law enforcement agency.

Please Note: A restraining/protective order can only be canceled by the court system. Any reconciliation between the two parties does not lift the order, unless court ordered.

COPING

WITH AN ACTIVE SHOOTER SITUATION

- Be aware of your environment and any possible dangers
- Take note of the two nearest exits in any facility you visit
- If you are in an office, stay there and secure the door
- Attempt to take the active shooter down as a last resort

Contact your building management or human resources department for more information and training on active shooter response in your workplace.

PROFILE

OF AN ACTIVE SHOOTER

An active shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.

CHARACTERISTICS

OF AN ACTIVE SHOOTER SITUATION

- Victims are selected at random
- The event is unpredictable and evolves quickly
- Law enforcement is usually required to end an active shooter situation



**CALL 911 WHEN IT
IS SAFE TO DO SO**

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE OUT

- Hide in an area out of the active shooter's view
- Block entry to your hiding place and lock the doors
- Silence your cell phone and/or pager

3. TAKE ACTION

- As a last resort and only when your life is in imminent danger
- Attempt to incapacitate the active shooter
- Act with physical aggression and throw items at the active shooter

CALL 911 WHEN IT IS SAFE TO DO SO

HOW TO RESPOND

WHEN LAW ENFORCEMENT ARRIVES

- Remain calm and follow officers' instructions
- Put down any items in your hands (i.e., bags, jackets)
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid quick movements toward officers such as attempting to hold on to them for safety
- Avoid pointing, screaming or yelling
- Do not stop to ask officers for help or direction when evacuating

INFORMATION

YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR

- Location of the active shooter
- Number of shooters
- Physical description of shooters
- Number and type of weapons held by shooters
- Number of potential victims at the location

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

QUICKLY DETERMINE THE MOST REASONABLE WAY TO PROTECT YOUR OWN LIFE. CUSTOMERS AND CLIENTS ARE LIKELY TO FOLLOW THE LEAD OF EMPLOYEES AND MANAGERS DURING AN ACTIVE SHOOTER SITUATION.

1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE OUT

- Hide in an area out of the active shooter's view.
- Block entry to your hiding place and lock the doors

3. TAKE ACTION

- As a last resort and only when your life is in imminent danger.
- Attempt to incapacitate the active shooter
- Act with physical aggression and throw items at the active shooter

**CALL 911 WHEN IT IS
SAFE TO DO SO**

HOW TO RESPOND WHEN LAW ENFORCEMENT ARRIVES ON THE SCENE

1. HOW YOU SHOULD REACT WHEN LAW ENFORCEMENT ARRIVES:

- Remain calm, and follow officers' instructions
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid making quick movements toward officers such as attempting to hold on to them for safety
- Avoid pointing, screaming and/or yelling
- Do not stop to ask officers for help or direction when evacuating, just proceed in the direction from which officers are entering the premises

2. INFORMATION YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR:

- Location of the active shooter
- Number of shooters, if more than one
- Physical description of shooter/s
- Number and type of weapons held by the shooter/s
- Number of potential victims at the location

RECOGNIZING SIGNS OF POTENTIAL WORKPLACE VIOLENCE

AN ACTIVE SHOOTER MAY BE A CURRENT OR FORMER EMPLOYEE. ALERT YOUR HUMAN RESOURCES DEPARTMENT IF YOU BELIEVE AN EMPLOYEE EXHIBITS POTENTIALLY VIOLENT BEHAVIOR. INDICATORS OF POTENTIALLY VIOLENT BEHAVIOR MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

- Increased use of alcohol and/or illegal drugs
- Unexplained increase in absenteeism, and/or vague physical complaints
- Depression/Withdrawal
- Increased severe mood swings, and noticeably unstable or emotional responses
- Increasingly talks of problems at home
- Increase in unsolicited comments about violence, firearms, and other dangerous weapons and violent crimes



Contact your building management or human resources department for more information and training on active shooter response in your workplace.

BOMB THREAT CALL PROCEDURES

Most bomb threats are received by phone. Bomb threats are serious until proven otherwise. Act quickly, but remain calm and obtain information with the checklist on the reverse of this card.

If a bomb threat is received by phone:

1. Remain calm. Keep the caller on the line for as long as possible. DO NOT HANG UP, even if the caller does.
2. Listen carefully. Be polite and show interest.
3. Try to keep the caller talking to learn more information.
4. If possible, write a note to a colleague to call the authorities or, as soon as the caller hangs up, immediately notify them yourself.
5. If your phone has a display, copy the number and/or letters on the window display.
6. Complete the Bomb Threat Checklist (reverse side) immediately. Write down as much detail as you can remember. Try to get exact words.
7. Immediately upon termination of the call, do not hang up, but from a different phone, contact FPS immediately with information and await instructions.

If a bomb threat is received by handwritten note:

- Call _____
- Handle note as minimally as possible.

If a bomb threat is received by e-mail:

- Call _____
- Do not delete the message.

Signs of a suspicious package:

- No return address
- Excessive postage
- Stains
- Strange odor
- Strange sounds
- Unexpected Delivery
- Poorly handwritten
- Misspelled Words
- Incorrect Titles
- Foreign Postage
- Restrictive Notes

DO NOT:

- Use two-way radios or cellular phone; radio signals have the potential to detonate a bomb.
- Evacuate the building until police arrive and evaluate the threat.
- Activate the fire alarm.
- Touch or move a suspicious package.

WHO TO CONTACT (select one)

- Follow your local guidelines
- Federal Protective Service (FPS) Police
1-877-4-FPS-411 (1-877-437-7411)
- 911

BOMB THREAT CHECKLIST

Date: Time:

Time Caller Hung Up: Phone Number where Call Received:

Ask Caller:

- Where is the bomb located?
(Building, Floor, Room, etc.)
- When will it go off?
- What does it look like?
- What kind of bomb is it?
- What will make it explode?
- Did you place the bomb? Yes No
- Why?
- What is your name?

Exact Words of Threat:

Information About Caller:

- Where is the caller located? (Background and level of noise)
- Estimated age:
- Is voice familiar? If so, who does it sound like?
- Other points:

Caller's Voice

- Accent
- Angry
- Calm
- Clearing throat
- Coughing
- Cracking voice
- Crying
- Deep
- Deep breathing
- Disguised
- Distinct
- Excited
- Female
- Laughter
- Lisp
- Loud
- Male
- Nasal
- Normal
- Ragged
- Rapid
- Raspy
- Slow
- Slurred
- Soft
- Stutter

Background Sounds:

- Animal Noises
- House Noises
- Kitchen Noises
- Street Noises
- Booth
- PA system
- Conversation
- Music
- Motor
- Clear
- Static
- Office machinery
- Factory machinery
- Local
- Long distance

Threat Language:

- Incoherent
- Message read
- Taped
- Irrational
- Profane
- Well-spoken

Other Information:



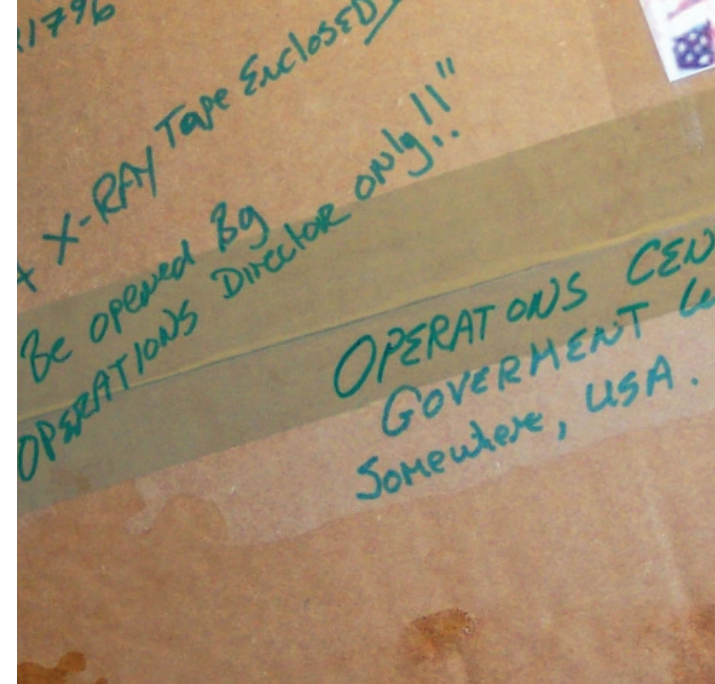
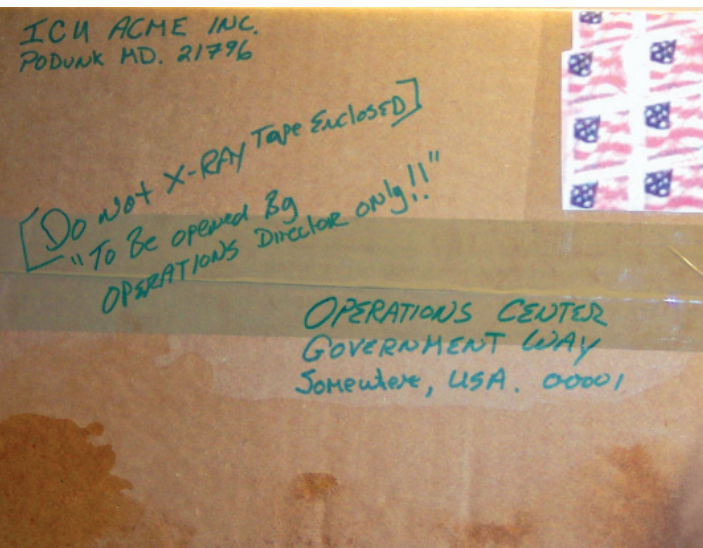
Homeland Security

Characteristics of a Suspicious Package

Always remain aware!

Look for the anomalies:

- Rigid or bulky
- Lopsided or uneven
- Wrapped in string
- Badly written or misspelled labels
- Generic or incorrect titles
- Excessive postage
- No postage
- Foreign writing, postage, or return address
- Missing, nonsensical, or unknown return address
- Leaks, stains, powders, or protruding materials
- Ticking, vibration, or other sound



Response Checklist

Suspicious Packages and Mail



U.S. Department of Homeland Security

Office of Security

Phone: (202) 447-5010

E-mail: OfficeofSecurity@dhs.gov



Homeland
Security

CHECKLIST OF ACTIONS TO TAKE

1. Leave the mail piece or substance where it was found. Do not disturb. Do not try to clean up the substance.
2. Clear the immediate area of all persons and keep others away.
3. Instruct people in the immediate area to wash hands and other exposed skin with soap and water.
4. Direct these people to a designated area away from the substance to await further instruction.
5. List the names of the persons in the immediate area of the mail piece or substance.
6. Cordon off the immediate area.
7. Shut down all equipment in the immediate area and HVAC systems (heating, ventilation, and air conditioning).
8. If possible without disturbing the mail piece or substance, document:

Location of mail piece or substance:

Description of substance:

Description of mail piece (markings, labels, declarations, postage):

Addressee's name and address:

Mailer's name and address:

9. Contact and pass information to the appropriate agency. A list of Contacts in Case of Emergency is provided at right.
10. Take actions and make appropriate notifications as directed or as published in your local emergency plan.

Contacts in Case of **EMERGENCY**

FEDERALLY LEASED OR OWNED FACILITIES

Life-threatening Emergencies

Dial 911 & follow your building's procedures, then:
 Notify the Federal Protective Service (FPS)
 National Toll Free Number:
 1-877-4FPS-411 (1-877-437-7411)

Non-Life-threatening Emergencies Security Issues

Contact local building security management representative, then call:
 Federal Protective Service (FPS)
 National Toll Free Number:
 1-877-4FPS-411 (1-877-437-7411)

NEBRASKA AVENUE COMPLEX PROCEDURES

Medical Emergencies

Dial 911, then call:
 NAC Security Desk
 Phone: (202) 282-9700

Non-Life-threatening Emergencies

NAC Security Desk
 Phone: (202) 282-9700

NON-FEDERAL BUILDINGS

Dial 911 or follow your building's procedures.



Phone Threat Checklist

The Phone Threat Checklist is based on a similar form used by California State government offices. It should be near all phones likely to receive calls from the public.

The Checklist allows employees to document telephone threats in an organized way. Once the checklist is completed, it should be routed to the employer's Security Department or Threat Management Teams for review.

Additionally, the Checklist's questions 5 through 9 have assisted employees in getting to the heart of callers' complaints. It is possible for employees to defuse callers' anger and frustration by allowing them to explain why they are mad and what help they would like.

Sometimes upset callers do not realize that their words are coming across as threatening. When callers are directly asked question 9, they may be startled. Some have been known to apologize and then become reasonable.

Of course, if the call is in fact intended as a threat, completing the form with the caller's own words will be strong evidence for later consideration by the employer's Threat Management Team, Security Department, or even Law Enforcement.

Prior to distribution, the "Notify" box should be filled in with the name, telephone and fax numbers of the person or office within the organization that should be notified when telephone threats are received.

Employees should also be advised to call for emergency police assistance if they believe that they or others are in imminent danger of harm.

Phone Threat Checklist

1. Date of Call	2. Time of Call	3. Caller I.D.
4. Exact Words of the Caller:		

ASK THE CALLER (ASK THE QUESTIONS IN THE FOLLOWING ORDER)

5. Who are you talking about (where do you think you are calling)?	
6. Why are you making these comments?	
7. Is there any other way to help you?	
8. What is your name and telephone number?	
9. Are you really threatening someone?	

Note the Following

10. <input type="checkbox"/> Male <input type="checkbox"/> Female	11. Estimated Age: _____	12. Accent? <input type="checkbox"/> Yes <input type="checkbox"/> No Description:
13. Speech Pattern <input type="checkbox"/> Slow <input type="checkbox"/> Excited <input type="checkbox"/> Disguised <input type="checkbox"/> Broken <input type="checkbox"/> Normal <input type="checkbox"/> Rapid <input type="checkbox"/> Loud <input type="checkbox"/> Slurred <input type="checkbox"/> Sincere <input type="checkbox"/> Other _____		
14. Background Noises		
15. Additional Comments		

Name of Person Receiving Call: _____
 Office: _____ Phone: _____

NOTIFY

PHYSICAL SECURITY CHECKLIST

NOTE: This checklist has been prepared and published for adaptation and use by employers. Attention is directed to the fact that individual organizations will have specific Workplace Violence (WPV) requirements which are not possible to list here. A "yes" response to the question does not necessarily indicate that the organization is free of WPV problems in that area.

POLICIES		Yes	No
1	Is there a formal workplace violence policy in place?		
2	Is it policy to use hiring processes as part of an integrated workplace violence screening/reduction procedure?		
3	Is there a drug-free workplace policy in effect?		
4	Is use/possession of alcohol prohibited in the workplace and during work hours?		
5	Is there a policy making workplace safety and security the responsibility of all employees?		
6	Is there a clearly defined and fair discipline policy?		
7	Is there a policy prohibiting the possession of weapons in the workplace?		
8	Are there policies that promote a respectful workplace by prohibiting harassment and requiring cooperation and civil communication (applicable to all employees and managers)?		
9	Are all policies relating to workplace violence clearly communicated to all employees?		
10	Are company WPV policies seriously regarded by management?		
11	Are company WPV policies enforced?		

PERSONNEL SCREENING		Yes	No
1	Does employer use a formal written application form for all hires?		
2	Do all applicants authorize in writing the employer to conduct a full background investigation?		
3	Does the employer reserve the right to withhold or terminate employment if background investigation results are unsatisfactory?		
4	Does the employer verify all periods of non-employment during prior 7-10 years?		
5	Does the employer call each previous employer and inquire into applicants' history of threats, violence, inappropriate behavior or illegal harassment in addition to normal job performance topics?		
6	Does the employer consider a demonstrated commitment to respectful/non-violent interaction with others to be a bona fide occupational qualification for all employees?		
7	Does the employer contact all listed personal references on application for information to verify items claimed on application?		
8	Are prior employers and references used to develop the names of persons who also know the applicant?		
9	Are these "developed" references contacted to provide information regarding the applicant?		

10	Are applicants required to disclose and discuss all prior incidents of violence in which they have been in any way involved?		
11	Are such prior violence accounts verified?		
12	Are employees required to disclose that they have ever applied for a temporary restraining order?		
13	Are employees required to disclose that they have ever been served with a temporary restraining order?		

WORKPLACE VIOLENCE THREAT ASSESSMENT & MANAGEMENT		Yes	No
1	Does employer encourage upward reporting of employee WPV concerns?		
2	Are employees notified that they are required to notify management of the following:		
	a. direct threats of harm to employees or customers?		
	b. allusions to violence made during conflict with co-workers, subordinates, or supervisors?		
	c. angry outbursts by employees or customers?		
	d. drug/alcohol use/possession on the job?		
	e. weapons in the workplace or employer-owned parking lot?		
	f. intimidation of employees at the workplace?		
	g. employee involvement in incidents of domestic violence?		
	h. employee involvement in incidents of stalking?		
	i. employee fears of harm at work from any cause?		
	j. applying for or being the subject of any temporary restraining order?		
3	Does employer use the following methods of obtaining WPV concerns information?		
	a. outside hotline?		
	b. designated senior manager for WPV concern reporting?		
	c. standard forms distributed to supervisors?		
	d. periodic discussions with employees and supervisors		
	e. outside consultants?		
	f. employee/supervisor surveys?		
	g. exit interviews?		
4	Are all supervisors trained to properly collect, document and refer reported incidents of threats of targeted violence?		
5	Is collected information reviewed by a person trained in WPV issues?		
6	Does employer have any established "Threat Management Team," or functional equivalent?		
7	Do all employees know how to access the "Threat Management Team?"		
8	Has the entire "Threat Management Team" received specific training in assessing and managing WPV?		
9	Did that training include managing scenarios that were realistic to the employer's workplace?		
10	Does the policy establishing the Team dictate that SAFETY is to be its primary guiding principle?		
11	If not SAFETY, what other primary principle is the Team mandated to use in its work?		
12	Does the Team include a Senior Management Executive who can commit the employer, and its resources, in order to undertake all necessary action?		

13	Are all employees/supervisors/managers required to cooperate with the Team in its inquiries?		
14	Is the Team immediately reachable to all employees 24 hours a day?		
15	Has the employer pre-identified the following specialists for the Team to use as necessary?		
	a. Employee Assistance Program professionals experienced in handling WPV matters?		
	b. Fitness-for-Duty assessors (psychologists/psychiatrists)		
	c. treatment professionals (psychologists/psychiatrists)		
	d. background researchers		
	e. licensed investigators		
	f. physical security consultants		
	g. outplacement/employment agencies		
	h. attorneys experienced in WPV matters		
	i. Threat Assessment and Management (TAM) Professionals		
	j. Critical Incident Stress counselors		
16	Does the Team monitor cases as necessary after immediate incidents are resolved?		
17	Has the Team fully determined law enforcement resources/responses available to the employer?		

RISK ASSESSMENTS

		Yes	No
1	Do employees frequently work during hours of darkness?		
2	Do customers visit during hours of darkness?		
3	Are customers/visitors frequently in distress/crisis during interactions with staff?		
4	Does employer dispense/serve/allow alcohol on premises?		
5	Do employees handle cash on premises?		
6	Are cash or other valuables kept on premises overnight?		
7	Are drugs dispensed/stored on premises?		
8	Are the premises in an immediate area that has experienced robberies/assaults/homicides or other violent crimes?		
9	Are employees expected to confront persons committing crimes (shoplifting, etc.?)		

ACCESS CONTROL

		Yes	No
1	Are there conspicuous signs communicating open/closed hours, prohibiting trespassing, and restricting the public to certain areas of premises?		
2	Private areas are separated by: (check all that apply)		
	a. signage		
	b. cordons		
	c. counters		
	d. partitions		
	e. fences		
	f. glass walls		
	g. walls (wallboard)		
	h. walls (masonry)		
	i. walls (ballistic resistant)		
	j. normally unlocked doors		

	k. normally locked doors		
3	Employees access private areas by:		
	a. key		
	b. combination lock (mechanical)		
	c. electronic combination keypad (shared code)		
	d. electronic combination keypad (employee-specific code)		
	e. electronic access device (card, fob, etc.)		
	f. admission by other staff only		
4	Logging of entry/exit is done for:		
	a. no one		
	b. all non-employee visitors		
	c. after-hours employees		
	d. customers/clients		
	e. vendors		
	f. deliveries		
	g. all persons and all hours		
5	Entry/exit log-ins compiled using:		
	a. manual system (sign-in sheets)		
	b. video camera recording		
	c. electronic data		
6	Entry/exit data is reviewed:		
	a. never		
	b. systematically as an assigned duty		
	c. only after incidents have occurred		
7	Visitors are controlled while on premises by:		
	a. no one (open access in all areas)		
	b. visitor badge/sticker only		
	c. escorted at all times by employees		
8	Are unauthorized persons excluded from premises?		
9	Are organization access control procedures enforced?		
10	Parking areas:		
	a. are publicly accessible at all hours without restriction		
	b. are fenced and gated		
	c. are access restricted to authorized parkers via permit		
	d. are access restricted to authorized parkers via card access/code or similar device		
	e. are access restricted to authorized parkers admitted by attendant/guard		
	f. are patrolled at least hourly by maintenance personnel		
	g. are patrolled at least hourly by security guards		
	h. are monitored via CCTV cameras		
	i. include emergency service intercom stations		
	j. are lit well during all hours.		
11	How are former employees/contractors prevented from accessing private areas?		
	a. no restrictions imposed on former employees/contractors		
	b. policy only		
	c. retrieval of keys/access devices		
	d. change of locks/combinations/codes upon separation		

	e. cancellation of computer/voicemail and electronic access code/devices upon separation		
	f. changes of combination/locks/codes whenever loss of keys/codes/combinations are reported		
	g. periodic changes of combination/locks/codes		
	h. special notice to all receptionists, security personnel or others who grant normal or after-hours access		
12	Persons at entrances are observable:		
	a. while approaching entry		
	b. while at entry		
	c. by CCTV camera system showing whole body		
	d. by CCTV camera system showing facial details sufficient for identification		
	e. through open sightline (no barriers)		
	f. through open sightline (over counter/through open window)		
	g. through closed window in/at doorway		
	h. through door viewer (peep hole)		
	i. enhanced by intercom/microphone/speaker		
13	The receptionist or others who meet with the public is visible:		
	a. from outside the premises		
	b. only within reception area		
	c. from secure areas by open space plan		
	d. from secure area through window		
	e. from secure area through video camera		
14	Sounds in the reception area can be heard:		
	a. only within reception area		
	b. from secure areas through open space plan		
	c. from secure area through window		
	d. from secure area through intercom		
15	Lighting is sufficient to observe people at a distance at all times in:		
	a. interior work areas		
	b. halls		
	c. stairways		
	d. outside building entrances		
	e. inside elevators		
	f. elevator lobbies		
	g. exterior walkways		
	h. parking areas		
	i. gates		
	j. exterior storage areas		
16	Does organization use security officers?		
17	Do security officers receive at least the same training in WPV given to all staff?		
18	Are security officers in uniforms clearly distinguishable from other employees?		
19	Do security officers receive formal classroom training in general security topics?		
20	Do security officers receive sufficient training on site to ensure full working knowledge of facility systems/procedures?		

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21	Are all security officers provided with information/pictures relative to persons deemed to pose threats?		
22	Does organization use law enforcement special duty officers during high-risks periods?		

THREAT COMMUNICATIONS

		Yes	No
1	The organization uses:		
	a. panic buttons (to on-site staff)		
	b. panic buttons (to off-site alarm company)		
	c. premises perimeter alarms (local only)		
	d. premises perimeter alarms (to off-site alarm company)		
	e. verbal code words/phrases to indicate duress		
	f. hand or other signals to indicate duress		
	g. network-wide computer duress messages		
2	Does the organization use a telephone threat form?		
3	Are the telephone threat forms:		
	a. the subject of training for all staff?		
	b. collected and filed by a central designee?		
	c. reviewed immediately by supervisors/management?		
	d. referred as appropriate to incident management team?		
	e. referred as appropriate to law enforcement?		
4	Are all exits well-marked?		
5	Are all staff familiar with all exits for workspace?		
6	Saferooms/Refuges:		
	a. there is/are designated saferooms or refuges known to staff		
	b. saferooms have solid core doors with functioning locks or heavy duty slide bolts		
	c. saferooms have telephones		
	d. saferooms have first aid kits		
	e. doors to saferooms have viewers allowing exterior views		
	f. saferooms have alternate exits		
	g. saferooms have flashlights		
	h. staff knows to remain in saferoom until removed by law enforcement personnel		

PROCEDURES/TRAINING

		Yes	No
A	<i>Pre-incident</i>		
1	Staff is trained in recognizing/reporting pre-incident indicators		
2	Management trained in pre-termination procedures:		
	a. appropriate timing		
	b. appropriate location		
	c. removing potential hazards from site		
	d. adequate management staffing		
	e. adequate security staffing		
	f. meeting scripting		
	g. maintaining employee dignity		
	h. appropriate responses to threats and intimidation		
	i. return of company property by ex-employee		
	j. return of personal property to ex-employee		

	k. termination of computer and physical access		
3	Staff is trained in dealing with anxious/defensive persons		
4	Supervisors are trained in dealing with employee arguments and fights		
5	Staff trained in robbery prevention procedures?		
6	Staff trained in company violence reaction procedures?		
B.	<i>During incident</i>		
1	Staff employs techniques to reduce the stress/anxiety/anger in anxious and frustrated individuals		
2	Staff employs team approach whenever possible		
3	Staff moves bystanders to safe areas early		
4	Staff takes immediate steps to ensure own/others' safety		
5	Staff summons required security/police/medial assistance		
6	Staff takes steps to secure or evacuate facility as indicated?		
7	Staff notifies management of situation as early as appropriate?		
C.	<i>Post-Incident</i>		
1	Medical attention provided to all injured parties		
2	Facility and personnel security re-established		
3	Post-incident stress sessions held as indicated		
4	Management information communication plan initiated (internal and external publics)		
5	Liaison/cooperation with law enforcement is maintained		
6	Area clean up accomplished as soon as appropriate		
7	Organization legal/risk/liability review conducted		
8	Victims, witnesses, and families provided on-going mental-health and other services as necessary		
9	Post-incident review conducted by management assisted by impartial outside resources (i.e., consultants, investigators, psychologist, etc.)		
	a. fact-finding completed		
	b. involved parties counseled/disciplined as appropriate		
	c. Pre-existing procedures/training examined for possible revision in view of new history		
	d. changes made to facility security as indicated		
	e. staff re-training conducted		

MISCELLANEOUS

		Yes	No
1	Are all WPV policies/plans/procedures developed with the assistance of persons who have specialized training and experience in WPV?		
2	Do those persons provide expertise in:		
	a. employment law?		
	b. physical security?		
	c. employee assistance?		
	d. threat assessment and management?		
	e. psychology?		
3	Are organization WPV policies/plans/procedures reviewed by experts on a regular basis?		
4	Do all employees receive annual rebriefings on company WPV/safety/security policies/plans/procedures?		

NOTES:

COMPILED BY:
DATE:

Provided by Safeguard Services, Inc.

GUIDELINES FOR WORKPLACE VIOLENCE PREVENTION PROGRAMS

WORKPLACE VIOLENCE CHECKLIST

Periodic inspections to identify and evaluate workplace security hazards and threats of workplace violence are performed by the following competent observer in the following areas of the workplace:

Periodic inspections are performed according to the following schedule”

1. Frequency: regular calendar schedule, every month;
2. When new, previously unidentified security hazards are recognized;
3. When occupational death, injuries, or threats of injury occur;
4. When safety, health and security program is established;
5. Whenever workplace security conditions warrant an inspection.

Periodic inspections for security hazards include identification of potential workplace security hazards and changes in employee work practices which may lead to compromising security. Most workplaces may require assessment for all three types of work place violence, that s Type I: Criminal or robbery, Type II, Assault from clients or customers, Type III, Employee, supervisor, or work related abuse. Please use the checklist to identify and evaluate workplace security hazards.

Evaluation for all of the types of workplace security hazards to include assessing the following factors. YES answers indicate a potential for serious security hazard risk.

Y N, Is the industry frequently targeted for violent behavior, i.e., robbery, assaults on staff?

Y N, Is the area in which the business is located known for regular occurrences of violence?

Y N, Have violent acts occurred in any way on the premises or in the conduct of business?

Y N, Do customers or clients assault, threaten, yell, push, or verbally abuse staff members or use of racial or sexual remarks?

Y N, Employees are not required to report incidents or threats of violence, regardless of injury, severity, to employer?

Y N, Employees have not been trained by employer to recognize and handle threatening, aggressive or violent behavior?

Y N, Is violence thought to be “part of the job” by some managers, supervisors and/or employees? (e.g., police, community health workers, psychiatric hospital workers)

Inspections for Type I workplace security hazards, (retail establishments or those who might experience a robbery or criminal activity) include assessing the following questions. NO answers indicate areas where corrective action should be taken if appropriate for the establishment.

- Y N, Is the entrance to the building easily seen from the street and free of heavy shrub growth?
- Y N, Are security cameras and mirrors placed in locations that would deter robbers or provide greater security for employees?
- Y N, Are signs posted notifying the public that limited cash, no drugs, or other valuables are kept on the premises?
- Y N, Drop safe or time access safes are utilized?
- Y N, Lighting is bright in the parking and adjacent areas?
- Y N, There is a second room in which one or more employees may be working unknown to the attacker?
- Y N, Windows and view outside and inside are clear of advertising and other obstructions
- Y N, The cash register is in plain view of customers, police cruisers, etc. to deter robberies
- Y N, Employees work with at least one other person.
- Y N, The facility is closed during the night or during the high risk hours of 9PM-6AM
- Y N, Emergency telephone numbers for law enforcement, fire and medical services are posted in areas where employees have access to a telephone with an outside line.
- Y N, Employees have been trained in the proper procedures to use for reporting suspicious persons or activities.

Inspections for Type II work place hazards (hospitals, security guards, police risk from clients/patients) include assessing the following factors. NO answers indicate the areas where corrective action should be taken if appropriate for the establishment.

- Y N, Access and freedom of movement within the workplace is restricted to only those who have a legitimate reason for being there.
- Y N, The workplace security system is adequate, such as functioning door locks, secure windows, physical barriers and container systems.
- Y N, Employees or staff members have never been assaulted, threatened, or verbally abused by recipients of service.

Y N, Medical and counseling services have been offered to employees who have been assaulted.

Y N, Alarm systems such as panic alarm buttons, or personal electronic alarm systems have been installed to provide prompt security assistance.

Y N, There is regular training provided on correct response to alarm sounding.

Y N, Alarm systems are tested on a monthly basis to assure correct function.

Y N, Security guards are employed at the workplace.

Y N, Personal protective devices are provided and must be worn and used.

Y N, Closed circuit cameras and mirrors are used to monitor dangerous areas.

Y N, Hand held or other metal detectors are available and used in the facility.

Y N, Employees have been trained in recognition and control of hostile behavior, escalating aggressive behavior, and management of assaulting behavior.

Y N, Employees do have the option of adjusting work schedules to use the "buddy system" for visits to clients in areas where they feel threatened.

Y N, Cellular phones or other communication devices are made available to field staff for requesting aid.

Y N, Vehicles are maintained on a regular basis to insure reliability and safety.

Y N, Equipment is provided that may add to the security officer's safety and ability to do the job, such as closed circuit cameras, silent alarms.

Y N, Employees work with others where assistance is not immediately present, in detention, in caregiver or other potentially hazardous work settings.

Inspections for Type III workplace security hazards including disgruntled employees, former employees or acquaintances of employees include assessing the following factors. NO answers indicate the areas where corrective action should be taken if appropriate for the establishment.

Y N, Employees, supervisors and managers have been effectively informed about the establishment's anti-violence policy.

Y N, It is known how employees feel about management treatment of employees or personal policies.

Y N, Employees, supervisors, and managers have been trained to recognize warning signs of potential workplace violence.

Y N, Access to and freedom of movement within the workplace by non-employees is restricted, including persons who have threatened employees.

Y N, Employees are never threatened by supervisors or other employees with physical or verbal abuse.

Y N, Threats of violent acts, damage or other signs of strain or pressure in the workplace are always handled effectively by management, i.e. recorded, investigated, and action taken to correct.

Y N, There is a policy to assure that employee disciplinary and discharge procedures are handled fairly and effectively, recognizing the employee's rights, and every effort's made to assist the employee in transition.

Y N, There is an Employee Assistance Program (EAP) or other mental health assistance provided for employees who may be experiencing personal problems, who may have exhibited aggressive behavior, or who have made other employees fearful of being assaulted by the employee.

When you complete this checklist, YES answers on the first seven questions indicate that there is a serious potential for violence to occur. NO answers in the remainder of the questions indicate areas in which there is a need to improve on procedures or to take corrective action to adequately prevent violence in the workplace.

Procedures to take to investigate incidents of workplace violence may include:

1. Review all previous incidents involving violence including threats and verbal abuse.
2. Visit the scene of an incident as soon as possible.
3. Interview the injured or threatened employee and witnesses.
4. Examine the workplace for security risk factors associated with the incident, including any reports of inappropriate behavior by the perpetrator.
6. Determine the cause(s) of the incident, i.e., unlawful entry, unresolved Grievance, alarm system malfunction, barriers not effective, training not provided, etc.
7. Take corrective action(s) to prevent the incident from recurring.
8. Record the findings and corrective action taken to including medical treatment or psychological counseling provided.
9. Record in OSHA Log of Injury & Illness if applicable and report to OSHA if a fatality or catastrophe occurs.