

THREAT ASSESSMENT AND THREATS OF MASS HARM

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OVERVIEW

- Case law and Threats of Mass Harm
- Obstacles and Prosecution
- Threat assessment principles and procedures
- Working with school districts on discipline and prevention
- Law enforcement alternatives
- Threat Assessment
- Case study – Jonah
 - Background
 - Charges
 - Disposition
- Round table

§240.78: MAKING A THREAT OF MASS HARM

“A person is guilty of making a threat of mass harm when with the intent to intimidate a group of people or to create public alarm, such person threatens to inflict or cause to be inflicted, serious physical injury or death at a school, place of worship, business, government building, or other place of assembly, and thereby causes a reasonable expectation or fear of serious physical injury or death, or causes the evacuation or lockdown of a school, place of worship, business, government building, or other place of assembly.”

- Went into effect 6/6/22
- Class B Misdemeanor
- “Aggravated Threat of Mass Harm” includes making an affirmative act in furtherance of the commission of such crime (such as making a list)
- Partially motivated by decision in People v. Hulsén, 150 A.D.3d 1261 – school custodian stated that teacher “better be absent the day they fire me because I am going to come in here and Columbine this shit”

OBSTACLES AND PROSECUTION

- Still need to show that threat caused reasonable fear of serious physical injury or death OR caused evacuation or lockdown of school, place of worship, etc.
- The threat must be to inflict or cause to be inflicted serious physical injury or death – cannot be overly general
- If written in a public place (i.e. the school bathroom), then it may be difficult to identify with sufficient certainty who wrote or made the threat
- Social pressure can mean that peer witnesses cannot be persuaded to cooperate with law enforcement
- If threats are made over social media, it can be difficult to link account to possible respondent

WORKING WITH SCHOOL DISTRICTS

- The school may be able to refer the case to local services, including the County Threat Assessment Team
- Returning to school from a suspension due to threats can be a stressful time for both the school and the student. In our county, BOCES programs have helped ease the transition back into full time school attendance in these cases
- Mental health professionals at the school (school psychologists, or therapists who work at the school through some other arrangement), may be able to assist in designing a safety plan for the student's return to school
- Though PINS may not be ideal, in a case where charges are unable to be filed, it may present an option connect the Respondent with therapeutic resources

LAW ENFORCEMENT ALTERNATIVES

MHL §9.41

- Person appears to be mentally ill and is conducting him/herself in a way which is likely to result in serious harm to him/herself or others
- Respondent can be held for up to 15 days involuntarily, but duration is often shorter
- If underlying facts and circumstances indicate a person is in crisis, it can be an opportunity to stabilize the individual and address crisis in a clinical setting

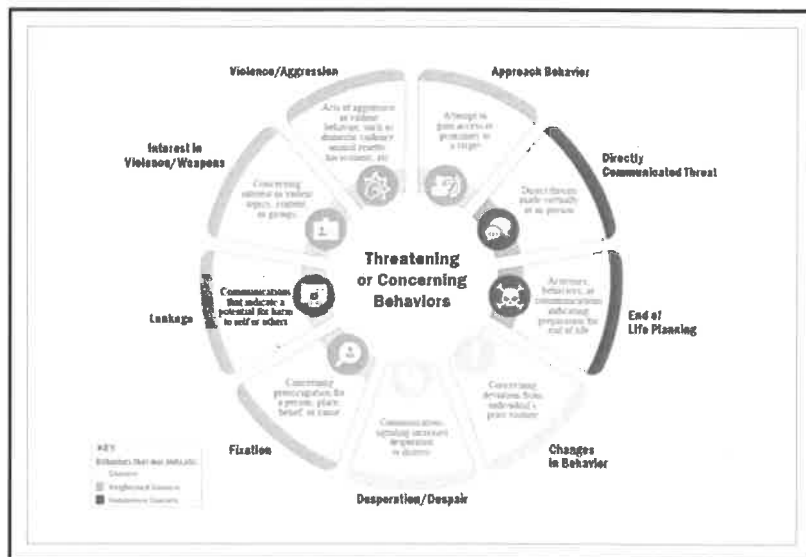
ERPO

- Respondent is likely to engage in conduct that would result in serious harm to self or others
- If judge allows search of respondent's home, can be a way for law enforcement to ensure Respondent has no access to firearms at home
- Anonymous School v. Anonymous Student 76 Misc.3d 1070 (2022) – ERPO filed against student
- If judge grants temporary ERPO, then hearing scheduled within 6 days

THREAT ASSESSMENT AND JUVENILES

Additional information included in written materials

WHY WORRY ABOUT A THREAT?



OTHER PREDICTIVE BEHAVIORS

- NTAC (National Threat Assessment Center) identified 45% of threats they analyzed were retaliation for a perceived grievance
- 44% had school stressors – grades, discipline, etc.
- Interest in violent or hate-filled topics (such as white supremacy or interest in high-profile attacks such as Columbine) was another observation
- Outside of statements made about their attack plans, 74% of plotters made some other form of written or verbal statements that were concerning – usually idealizing violence or ideologies associated with violence
- 37% of plotters had disciplinary history at school
- The most common form of planning is related to weapons, followed by planning the execution of the attack
- 96% of attackers planned to use firearms in their attacks
- Many student plotters had access (at time of discovery) to weapons, including unimpeded access to firearms
- One third of plotters had a history of substance use or abuse
- Peers are often (61%) the ones to report plots to authorities, and they often tell school staff first
- In many cases (41%) the plotter exhibited a “constellation of concerning behaviors”

“PATHWAY OF VIOLENCE”

- Personal Grievance – Ideation – Research/Planning – Prep for Violence – Probing/Breaching – Attack
- Goal is ultimately to disrupt this pathway, and to connect the individual with assistance and services to reintegrate into communities such as school, and to address mental health concerns.
- There is a high correlation between mass attacks and violent behaviors that were noticeable over time, which coincides with the pathway and leakage of the event happening
- Regarding school shootings, in a study of 37 incidents that occurred between 1974 and 2000, there were 41 perpetrators identified. In most of these cases, other individuals besides the perpetrator reported that there was a noticeable change in the perpetrator's behavior and demeanor. In 78% of those cases, however, perpetrators had never received mental health evaluation.

MANAGEMENT AND MITIGATION PLANS – DISRUPTING THE PATHWAY OF VIOLENCE

SANITIZED JUVENILE MANAGEMENT & MITIGATION PLAN

Action	Person Responsible	How often	Desired Outcome
Counseling	Either through the school or privately, as dictated by availability, effectiveness, and family/subject preference	Bi-weekly, or as later designated by counselor. Suggested through end of 2019 and then re-evaluated for continued need.	Provide a safe and helpful environment for the subject to mentally process and adjust as he continues through the major transitions of schools, social support environments, physical homes, his weekly schedule and his family structure.
Club involvement at Main High School	Subject, through Main High School	As designated by club(s)	To re-engage the subject in school involvement as has been effective in the past. To allow the subject to have responsibility, structured socialization with a common goal/interest, and potentially a role influencing the extracurricular activities at school. This could potentially ease the transition into a new school and social support environment greatly.
Academic Improvement Plan	Main Street Academy and then Main High School post-transition, Parental support	Single instance of plan creation with ongoing monitoring of effectiveness and continued applicability	For the subject, along with the school(s) and his parents in support, to create an effective and applicable pathway to academic improvement for the purposes of allowing the subject to be eligible to try out and participate on the school basketball team again, as a self-reported desire of the subject.
Enrollment in a Volunteer Firefighter or ROTC Program	Subject, Parents	Single instance of enrollment with ongoing involvement as designated by program	Subject will practice positive socialization skills in a peer-equal environment. Subject will learn and engage in structured positive behavior while receiving vocational training, as a reported desire of the subject's parent(s).
Meeting with Youth Pastor	Subject, Youth Pastor (Conserve & transportation by father or designee)	Weekly	Establish on-going social/emotional support and connection with a positive adult role model. Identify hobbies that bring pleasure that don't involve violent video games, mission trip involvement, other church activities, volunteer involvement (outside of church) to increase social interaction with others.

STALKING AND THREAT ASSESSMENT

- Usually, stalking involves individual incidents that seem minor, but it's important to view the totality of the circumstances involved
- Stalking behaviors will not always lead to targeted violence but they should be considered as evidence of fixation and the ability to plan and prepare toward a target
- Variables to watch out for
 - Recent escalation of threats or concerning behaviors
 - Persistent physical intimidation
 - Guns or access to weapons
 - Evidence of a violent plan
 - Unabated anger

CASE STUDY – JONAH*

*Name changed to protect Respondent's identity

TEXT MESSAGES GIVEN TO SCHOOL

Screenshots are from Snapchat conversation between Jonah and a classmate

U think ima slaughter u

Hell no

U ain't on my list

I will kill and watch the blood drip from every single fucking person in are school

Don't test me

And I will enjoy it

And laugh

THREAT OF MASS HARM?

“A person is guilty of making a threat of mass harm when with the intent to intimidate a group of people or to create public alarm, such person threatens to inflict or cause to be inflicted, serious physical injury or death at a school, place of worship, business, government building, or other place of assembly, and thereby causes a reasonable expectation or fear of serious physical injury or death, or causes the evacuation or lockdown of a school, place of worship, business, government building, or other place of assembly.”

ADDITIONAL BACKGROUND INFORMATION

- Jonah had a similar incident over the prior summer, and it was agreed between family and law enforcement that the family would seek treatment for him, but they did not
- He was brought to the ER for treatment under MHL §9.41 after these messages came to light, and he was released the next day by the hospital
- He was referred to a short-term outpatient treatment program, but his parents hesitated to connect him with further treatment and services in the community
- Ultimately, the school district connected the family with a program through BOCES that allowed him to attend in-person classes at the BOCES campus and complete the coursework from his middle school, and transition back to his regular classes at his middle school gradually
- The school district worked with us to make sure that we were both on the same page with his progress, and that we could report back to court if things were getting out of hand at school

Upon information and belief: On or about January 31, 2023 in the Town of [REDACTED] County of Ulster, State of New York, the Respondent, with intent to create public alarm, did send messages to [REDACTED] wherein he stated, among other statements, "I will kill and watch the blood drip from every single fucking person in are [sic] school," "u ain't on my list," "It will be so much fun would you like to watch?," and "All my blood dripping out of my exploded head, doesn't that sound cool to see."

Which act if committed by an adult would constitute the crime of making a threat of mass harm, as defined by Section 240.78 of the Penal Law; a class B misdemeanor. 1. A person is guilty of making a threat of mass

CHARGES

PRE-DISPOSITIONAL INVESTIGATION REPORT

ASSESSMENT INFORMATION				
Type	Score	Instrument	Supervision Level	Criminogenic Needs
Screening	Moderate	YASI	Medium Risk	Aggression/Violence, Education/Vocation, Mental Health

"...According to the Youth Assessment and Skills Inventory (YASI), the Respondent has many protective factors, and his overall risk level is Moderate. Due to the nature and seriousness of the charge, it is recommended that the Respondent receive a period of monitoring by the Probation Department to ensure the safety of the Respondent and the school / community as a whole."

PROBATION
RECOMMENDATION:

*Jonah's name has been changed from
the original

- “It is therefore respectfully recommended that the Respondent, Jonah*, be granted a **Supervised Six-Month Adjudgment in Contemplation of Dismissal**. It is also recommended that the Order of Protection in favor of the victim, [name redacted], be continued”

- Have any counties prosecuted a juvenile for a threat of mass harm?
- Have any counties prosecuted a juvenile for an aggravated threat of mass harm?
- Knowing what was presented here, do you think a supervised ACD was an appropriate disposition for Jonah?

ROUND
TABLE

THANK YOU FOR YOUR TIME!

- Bob Fisher – rfis@co.ulster.ny.us (845)750-3932
- Claire Pulver – cpul@co.ulster.ny.us (845)750-3125
- National Threat Assessment Center -
<https://www.secretservice.gov/protection/ntac>
 - “Averting Targeted School Violence: A U.S. Secret Service Analysis of Plots Against Schools”
 - “Improving School Safety Through Bystander Reporting: A Toolkit for Strengthening K-12 Reporting Programs”
- Special thanks to Ulster County’s Department of Emergency Services and Threat Assessment Team!



150 A.D.3d 1261, 56 N.Y.S.3d
335, 2017 N.Y. Slip Op. 04294

****1** The **People** of the State of New York, Appellant,

v

Brian Hulsen, Respondent.

Supreme Court, Appellate Division,
Second Department, New York
1749/15, 2016-03235, 2016-07256
May 31, 2017

CITE TITLE AS: **People v Hulsen**

HEADNOTES

Crimes

Indictment

Sufficiency of Evidence before Grand Jury

Crimes

Making Terroristic Threat

Madeline Singas, District Attorney, Mineola, NY (Tammy J. Smiley, Daniel Bresnahan, and W. Thomas Hughes of counsel), for appellant.

Hession Bekoff & Lo Piccolo, LLP, Garden City, NY (Joseph A. Lo Piccolo of counsel), for respondent.

Appeals by the **People** from (1) an order of the Supreme Court, Nassau County (Berkowitz, J.), entered March 1, 2016, which granted that branch of the defendant's omnibus motion which was to dismiss the indictment on the ground that the evidence presented to the grand jury was legally insufficient, and (2) so much of an order of the same court entered June 27, 2016, as, upon reargument, adhered to its original determination.

Ordered that the appeal from the order entered March 1, 2016, is dismissed, as that order was superseded by the order ***1262** entered June 27, 2016, made upon reargument; and it is further,

Ordered that the order entered June 27, 2016, is affirmed insofar as appealed from.

“Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the **People**, if unexplained and uncontradicted—and deferring all questions as to the weight or quality of the evidence—would warrant conviction” (*People v Woodson*, 105 AD3d 782, 782 [2013] [internal quotation marks omitted]; see *People v Mills*, 1 NY3d 269, 274-275 [2003]; *People v Flowers*, 138 AD3d 1138, 1139 [2016]). “‘Legally sufficient evidence’ means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof” (CPL 70.10 [1]; see *People v Flowers*, 138 AD3d at 1139). “‘In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt’ ” (*People v Jessup*, 90 AD3d 782, 783 [2011], quoting *People v Bello*, 92 NY2d 523, 526 [1998]; see *People v Wisey*, 133 AD3d 799, 800 [2015]; *People v Woodson*, 105 AD3d at 783). “The reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d at 526 [internal quotation marks omitted]; see *People v Deegan*, 69 NY2d 976, 979 [1987]; *People v Woodson*, 105 AD3d at 783).

****2** According to the grand jury minutes, the defendant, who was a custodian at a school for more than a decade, was eating a sandwich in the school's faculty break room when a teacher entered the room and asked how he was doing after the first week of school. The defendant allegedly told the teacher that another teacher was on his “shit list,” and that “people better stay out of [his] way.” When the teacher told him, among other things, that he should “try to relax a little bit” and that “we all have to like work together here,” the defendant allegedly got out of his chair and told the teacher that she “better be absent the day they fire me because I am going to come in here and Columbine this shit.” He then mimed shooting a gun while imitating gun noises. Based upon his statements, the defendant was charged in an indictment with making a terroristic threat (Penal Law § 490.20), a class D felony. ***1263**

Penal Law article 490 was enacted shortly after the attacks on September 11, 2001, to ensure that terrorists are prosecuted and punished in state courts with appropriate severity (see [People v Morales](#), 20 NY3d 240, 244 [2012]). In construing the statute, courts must be cognizant that “the concept of terrorism has a unique meaning and its implications risk being trivialized if the terminology is applied loosely in situations that do not match our collective understanding of what constitutes a terrorist act” ([id.](#) at 249). Penal Law § 490.20 (1) provides, in pertinent part, that “[a] person is guilty of making a terroristic threat when with intent to intimidate . . . a civilian population . . . he or she threatens to commit or cause to be committed a specified offense and thereby causes a reasonable expectation or fear of the imminent commission of such offense.”

Contrary to the People's contentions, the Supreme Court properly granted that branch of the defendant's omnibus motion which was to dismiss the indictment since the People failed to present legally sufficient evidence that the defendant's comment caused a reasonable expectation or fear

of the imminent commission of a specified offense (see [People v Adams](#), 54 Misc 3d 234, 236 [Sup Ct, Kings County 2016]). The teacher testified that she did not believe that the defendant's threat of a school shooting was imminent and, therefore, she waited to report the defendant's comment. Moreover, the defendant's alleged threat was expressly conditioned by the phrase, “the day they fire me.” The People did not present any evidence that the defendant was about to be terminated from his job, or had any reason to believe that he was going to be terminated.

In light of our determination, we need not reach the People's contention that the evidence presented to the grand jury was sufficient to support the element of an “intent to intimidate . . . a civilian population” within the meaning of the statute (Penal Law § 490.20 [1]; see [People v Morales](#), 20 NY3d 240 [2012]). Eng, P.J., Rivera, Balkin and Barros, JJ., concur.

Copr. (C) 2023, Secretary of State, State of New York



--- N.Y.S.3d ----, 2022 WL 4362436
(N.Y.Sup.), 2022 N.Y. Slip Op. 22292

**This opinion is uncorrected and subject to revision
before publication in the printed Official Reports.**

***1** Anonymous School, Petitioner,

v.

Anonymous Student, Respondent.

(And a Related Proceeding)

Supreme Court, Saratoga County

Index No. EF20221330

Decided on July 21, 2022

APPEARANCES OF COUNSEL

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Tony Izzo, Esq.

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Attorney for Non-Party, Saratoga County

OPINION OF THE COURT

Richard A. Kupferman, J.

Before the Court are two related petitions seeking an extreme risk protection order (“ERPO”), pursuant to CPLR Article 63-A, against Respondent, a student (14 years old) at a School. Petitioners contend that Respondent is likely to engage in conduct that would result in serious harm to himself and others. Petitioners each seek an ERPO to prohibit Respondent from purchasing or possessing a gun for one year.

Proceeding No. 1

The first petition (Index No. EF20221330) was filed by the School on June 14, 2022 (“Proceeding No. 1”). The petition includes supporting affidavits from the principal (Dr. S.) and

*2 a social worker (P.K.). The principal asserts that on June 14, 2022, Respondent stated to the class generally that “when [he] graduates, [he] is going to shoot up the school” and that “[he] is going to shoot [him]self in the head at graduation.” In addition, on that same morning, Respondent (according to the principal's affidavit) took a red liquid drink mix out of his pocket and made a gun gesture with his hand at another student while in art class. Respondent (according to the affidavit) squeezed the liquid drink mix out of the container to cause the resemblance of blood splatter. The day prior, on June 13, 2022, Respondent also allegedly sprayed a red liquid drink mix inside the school bathroom, resulting in a blood spatter like effect on the walls.

The principal characterizes Respondent as having a long history of disciplinary issues and violence. He asserts that on June 1, 2022, Respondent hit another student with a clipboard and told another student to “kill yourself”; on June 6, 2022, Respondent allegedly vandalized the bathroom. Photographs attached to the principal's affidavit depict paper in a bathroom sink soaking in water, damage to a paper towel dispenser, and a paper towel roll soaking in the toilet. Additional photographs depict a red liquid (blood like) splatter in multiple locations at the School. An attached report further outlines Respondent's lengthy disciplinary record for the school year.

The principal further asserts that Respondent twice set fires intentionally inside residences, once in his grandmother's home and another time at his mother's; that he has issues related to and requires medication for ADHD, depression, mood and sleep; and that his household has domestic violence issues, excessive alcohol use, and a history of police involvement.

In the accompanying affidavit, the social worker asserts that she interviewed Respondent about the statements he allegedly made on June 14, 2022. She avers that Respondent “acknowledged to [her] that he made those statements further outlined in [the principal's] Affidavit.” When the social worker asked why he wanted to shoot himself in the head after graduation, Respondent allegedly replied “to make everyone happy.” Respondent allegedly showed no emotion and was eerily calm during the questioning. Respondent however was taken into custody by the police department before the social worker could finish discussing the incident with him.

The social worker characterized Respondent as being extremely passive aggressive and very impulsive. She further

asserts that she learned about Respondent setting the two fires in residences from the Respondent's mother. She fears what would happen if Respondent gained possession of a firearm. She further avers that she believes that Respondent represents a danger to himself and others, is at significant risk of engaging in conduct that could harm himself or others, and that he should not be permitted to use or possess firearms or be in a household where he has access to them.

Based on the petition and supporting papers, the Court determined that probable cause existed to grant temporary relief. As a result, on June 14, 2022, the Court issued a temporary extreme risk protection order, *ex parte* (see CPLR 6342). The Court further scheduled a hearing for June 21, 2022 (see CPLR 6343) and directed service on Respondent and his parents (see CPLR 309[a]; 1201).

Proceeding No. 2

The following day, on June 15, 2022, the Court received a similar petition commenced by a city police officer against Respondent (Index No. 20221338), along with sworn statements obtained by the police from two teacher's assistants, an art teacher, and two police officers ("Proceeding No. 2").

One of the teacher's assistants (G.L.) stated to the police that she observed Respondent on June 14, 2022 around 8:20 a.m. in the art classroom with a "Mio fruit punch". Respondent was pointing it like a gun towards another student. Respondent then started squirting it towards the other student, stating something to the effect of it being blood. She took away the drink and threw it in the trash. Respondent then stated, "When I graduate I'm going to shoot up the school." Respondent then proceeded to state, "I'm going to shoot myself in the head at graduation." Respondent took out another Mio fruit punch and was taken out of the classroom by someone else. When she left the classroom, she observed red fruit punch all down the walls in the hallway.

The other teacher's assistant (B.T.) asserts in his sworn statement to the police that he heard Respondent say in the art classroom that "After I graduate I will shoot up the school and that is not a threat." The teacher's assistant asserts that he also observed red fruit punch on the walls. The teacher's assistant later walked Respondent to a place known as the skills room to address his behavior. He avers that there was a splatter on the walls in the skills room and Respondent stated, "That looks like blood."

In another statement, the art teacher (J.V.) informed the police that while working as an art teacher he heard Respondent make some type of comment about a gun. He heard an additional comment about a shooting. He further observed Respondent with a Mio container in his hoodie and one in his hand. Respondent was sent to the skills room. The art teacher observed red fluid on Respondent's desk and saw an employee cleaning red fluid off the walls in the hallway outside the art classroom after Respondent left the art classroom.

The two officers (Officers K.V. and L.M.) reported that they were dispatched to the School and that they interviewed School employees about the incident on June 14, 2022. They brought Respondent back to headquarters to complete a delinquency referral to charge him with Penal Law § 490.20(1), making a terroristic threat. Respondent was eventually turned over to his grandmother, who reportedly has shared custody of Respondent.

Based on the second petition and its supporting papers, on June 15, 2022, the Court issued a second temporary extreme risk protection order. The Court further scheduled a hearing for June 21, 2022, the same day and time as the hearing scheduled for Proceeding No. 1. The Court directed personal service on Respondent, his parents, his grandmother, and his uncle.

The Hearing

At the hearing, Petitioners appeared through their respective counsel in person. In addition, Andy Proler, Esq., appeared in person on behalf of the Saratoga County Attorney's Office. Respondent appeared virtually with his parents and grandmother by telephone by way of Microsoft Teams (see CPLR 1201). The Court provided Respondent and his family with an opportunity to adjourn the proceedings, however, they elected to proceed with the hearing. The Court then proceeded to conduct a joint trial and hear the evidence as if the cases had been *3 joined for trial, without any objection from any of the parties.¹

Summary of the Testimony

The School presented its evidence first. It called three witnesses, namely, the principal, a teacher's assistant (G.L.), and the social worker, who each testified in person. The teacher's assistant testified that on June 14, 2022, she heard Respondent say that after he graduates he will shoot up the

school and that he will shoot himself in the head at graduation. On that day, she also observed Respondent with a Mio fruit punch. She observed him put his hands and fingers around the drink, hold it like a gun, and then aim it at another student. The color of the liquid from the drink was red. She heard Respondent make a comment about it resembling blood. She further testified that Respondent was generally quiet in class. On cross examination by Respondent's mother, the witness admitted that she was not aware if Respondent was upset at the time he made the statements.

The social worker testified that she met with Respondent after he was sent to her for making the statements and spraying the red liquid. At first, Respondent did not want to talk. Respondent then told her that he did not want to go to school that day. She testified that Respondent denied saying that he wanted to shoot others but that he admitted that he said that he wanted to hurt himself. When she asked him "why," Respondent replied, "to make everyone happy."

The social worker testified that she learned of two incidents in which Respondent allegedly set fires in residences located off school property. One of the two incidents allegedly occurred within three months prior to the hearing. She testified that Respondent acknowledged that he had set fire to his blanket in his bedroom. She also testified that Respondent's father reportedly has problems related to alcohol. She believes Respondent is a safety risk. She characterized Respondent as a quiet, angry boy who hates school, does not care about a lot of things, and is impulsive. He also has attention deficient disorder, depression, and oppositional defiant disorder.

When the Court asked the social worker why she did not refer Respondent for a mental health evaluation, she testified that he did not own a gun and that he denied saying that he wanted to shoot others. She further testified that Respondent indicated that he did not have plans to hurt himself or others in the near future, and that he was referring to his high school graduation. On cross examination by Respondent's mother, the social worker agreed that the fires were not set at School.

As its third and final witness, the School called the principal to the stand. He testified about the School's behavior management system and Respondent's disciplinary history. Among other things, he testified about Respondent vandalizing the school bathroom and spraying red *4 liquid on the walls and a toilet in the bathroom. He further testified that on June 14, 2022, Respondent again sprayed the red liquid at his desk and in the hallway.

The Court received into evidence the same photos attached to the principal's affidavit, which depict the vandalism and red liquid splatter. The school principal testified that he believes that Respondent poses a significant risk of harm to the School and that Respondent internally holds things in and lets his emotions build up.

Respondent's grandmother cross-examined the principal. He clarified that the blood splatter incidents occurred on two different days rather than the same day. He further admitted that Respondent did not make the statements directly to him.

After the School rested its case, the city police officer's attorney elected not to proceed with any witnesses given the testimony of the School's witnesses. Respondent's grandmother then testified virtually, by telephone by way of Microsoft Teams, in opposition to the petitions. She testified that Respondent lacks access to a gun and that she would not let him have access to a gun. She testified that Respondent was not a danger and that his prior medication made him angry, but now he has changed his medication and is more relaxed. She also testified that she does not believe that Respondent wants to hurt himself. Respondent and his family did not call any other witnesses or present any other evidence in opposition to the petitions.

Analysis

CPLR Article 63-A was enacted in 2019. The statute (a/k/a the "red flag" law) sets forth the basic procedure for school administrators and police officers (among others) to request a court order to temporarily keep guns away from people who are likely to use them to hurt themselves or others. The statute is intended to help prevent and reduce the number of mass shootings, suicides, and other acts of gun violence.

Application of the Red Flag Law to Minors Generally

As discussed below, the statute contains enough guidance for the Court to determine whether an ERPO should be issued in a case involving a minor respondent such as this one. However, the red flag law appears to have been drafted with adult respondents in mind rather than tailored to address the special circumstances for troublesome minors.

The need for more specific guidance on this issue from the Legislature is highlighted by the blanket statutory directive that police officers and district attorneys must file an ERPO

application when probable cause exists that an individual is likely to engage in conduct that would result in serious harm (CPLR 6341). This mandate requires the initiation and prosecution of cases regardless of the respondent's age. Such a directive fails to consider that the individual may already be prohibited under the law from purchasing or possessing a gun based on his or her age.

Indeed, even before the red flag law was enacted, prohibitions already existed on the purchase and possession of guns by a minor under 16 years old (*see* Penal Law § 265.05 [prohibiting minors under 16 years old from possessing a gun]; Penal Law 265.10[5] [prohibiting others from selling or giving guns to anyone under 16 years old]; *see also* *Matter of Thomas R.R.*, 64 NY2d 1062, 1063-1064 [1985]). These provisions remain in effect and a court order is therefore unnecessary to prohibit a minor under 16 years old from legally possessing or purchasing a gun.

Further, there are exceptions that permit a minor under 16 years old to legally possess a gun. However, they are narrow. Penal Law § 265.05, for example, requires a minor to have a hunting license or permit and follow the Environmental Conservation Law, which currently limits hunting to minors 12 years and older and requires adult supervision (*see* Penal Law § 265.05; ECL 11-0701 [1]; 11-0929; 11-0931; *see also* Penal Law §265.20[a][7] [shooting range exemption]).

The existing law also already imposes the same gun storage requirements on people living with minors under 16 years old as the storage requirements for people living with a person who is the subject of an ERPO (*see* Penal Law § 265.45 [safe gun storage requirements]; *see also* CPLR 6343 [5][b] [requiring the Court to direct the return of guns to their lawful owner (including those residing with a person subject to an ERPO) where there is no legal impediment to the person's possession of such]). In addition, given the limited duration of an ERPO (one year, discussed below), a court order issued under the current red flag law may very well expire by the time a minor reaches the legal age to possess a gun.

Despite these significant restrictions on a minor's access to guns, the red flag law does not reference any of the restrictions already in place. Nor does the red flag law attempt to expand on the existing restrictions under the law to tailor a more simplified procedure for minors under 16 years old. Until such time as the Legislature addresses this issue, the courts will continue to have to conduct a full hearing and expend judicial

resources in red flag cases involving minors who are already legally prohibited from having guns.

Setting aside the usefulness of the proceeding for minors under 16 years old, a more troublesome issue concerns the red flag law's effectiveness in limiting a dangerous minor's access to guns during the initial stage of the proceedings. As explained above, such minors are not legally permitted to possess a gun in the first place. While the law should obviously seek to remove any illegal guns possessed by a dangerous minor, it should also aim to limit a dangerous minor's access to guns. Notwithstanding, the statute for the search/inquiry stage appears to focus solely on preventing the minor's "possession" of guns rather than his or her "access" to guns (*see* CPLR 6342[8] [authorizing the court to "direct a police officer to search for firearms, rifles and shotguns *in the respondent's possession.*" (emphasis added)]; CPLR 6342[4] [e] [requiring a temporary ERPO (or TERPO) to include "a form to be completed and executed by the respondent which elicits a list of all firearms, rifles and shotguns *possessed by the respondent* and the particular location of each firearm, rifle or shotgun listed" (emphasis added)]).²

Notably absent from this part of the red flag law is express authorization for a court to direct a search/inquiry regarding the minor's access to guns and in particular the possession of guns by the minor's parents, legal guardian, and others living with the minor. Nor does the statute expressly authorize a court to direct law enforcement to conduct a search/inquiry into whether any guns possessed by others living with the minor respondent are lawfully secured, as required by law. The red flag law also does not expressly require a respondent minor to list all known weapons owned by those with whom he or she resides so that law enforcement may confirm that they are being stored properly around the respondent minor.

Apart from the search/inquiry permitted, the law seems to expressly permit parents and *5 guardians living with a minor to retain their weapons regardless of the adjudicated dangerousness of the minor, provided that they are safely stored (*see* Penal Law § 265.45; *see also* CPLR 6343 [5][b]). This would imply that law enforcement may not seize guns based solely on the dangerousness of the minor, provided that such are stored safely in accordance with the law. Nevertheless, the statute is silent and lacks clarity on this issue.

Application of the Red Flag Law to Respondent Specifically

Despite its lack of specifically tailored provisions applicable to minors, however, the statute contains enough guidance to determine this case. To obtain a final ERPO, the petitioner has “the burden of proving, by clear and convincing evidence, that the respondent is likely to engage in conduct that would result in serious harm to himself, herself or others” (CPLR 6343[2]). There must be either, “1. substantial risk of physical harm to himself [or herself] as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he [or she] is dangerous to himself [or herself], or 2. a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm” (Mental Hygiene Law § 9.39 [a][1]-[2]; *see* CPLR 6343[2]).

“The court may consider the petition and any evidence submitted by the petitioner, any evidence submitted by the respondent, any testimony presented, and the report of the relevant law enforcement agency submitted [for the proceeding]” (CPLR 6343[2]). In addition, the Court must consider various factors or so-called red flags, taking into consideration the date when the event(s) occurred and the age of the person at the time (*see id.*; CPLR 6342[2]). Such red flags include, but are not limited to, the following acts of the respondent:

- “(a) a threat or act of violence or use of physical force directed toward self, the petitioner, or another person;
- (b) a violation or alleged violation of an order of protection;
- (c) any pending charge or conviction for an offense involving the use of a weapon;
- (d) the reckless use, display or brandishing of a firearm, rifle or shotgun;
- (e) any history of a violation of an extreme risk protection order;
- (f) evidence of recent or ongoing abuse of controlled substances or alcohol; or
- (g) evidence of recent acquisition of a firearm, rifle, shotgun or other deadly weapon or dangerous instrument, or any ammunition therefor” (CPLR 6342[2]).

Further, if the petitioner satisfies his or her burden, the Court may issue a final ERPO to prohibit the respondent from purchasing, possessing, or attempting to purchase or possess a firearm, rifle, or shotgun for a period of up to one year, which may be extended for an additional period of time upon application (*see* CPLR 6345).³

Here, several red flags exist that are extremely alarming. The teacher's assistant, for *6 example, testified that she overheard Respondent say that he wanted to shoot up the school and that he wanted to shoot himself at graduation. Further, while Respondent denied that he said that he wanted to shoot up the school, Respondent has not denied that he said that he wanted to kill himself using a gun. In fact, the social worker testified that Respondent admitted this to her.

Equally alarming is Respondent's disturbing belief that killing himself would make everyone happy. This demonstrates that he has an extremely distorted perspective on reality. When combined with the additional testimony that Respondent suffers from depression and other mood disorders, the Court is extremely fearful of what may occur if Respondent were permitted access to a weapon.

In addition, the testimony also reveals that Respondent has engaged in violent acts recently in the past, including destroying school property and harassing other students. He reportedly started two fires inside, one about three months prior to the hearing. Within just one to two weeks prior to saying that he wanted to kill himself, Respondent reportedly hit another student, told another student to kill himself, and vandalized the bathroom. On the day he mentioned his plans for a shooting, Respondent was observed holding a red liquid drink like a gun, pointing it like a gun towards another student, and squirting it around his desk. He also reportedly squirted the red liquid in other areas of the school on that same day, as well as on the previous day, in a manner that simulated blood splatter from a gunshot wound, causing the principal to reasonably fear for the safety of the School.

While the Court truly wants to believe Respondent's grandmother that Respondent is a good kid, the Court cannot ignore Respondent's recent obsession with death, killing, and blood, which is extremely disturbing. His conduct has not only been reckless, but potentially criminal as well (*see* Penal Law § 490.20 [making a terroristic threat]; *see also* Penal Law § 240.78 [making a threat of mass harm, effective June 6, 2022]). His conduct sadly demonstrates that he has formulated an intention to bring a gun onto School property and that he has created a disturbing fantasy about splattering blood onto the walls of his School. Such conduct, while hopefully just a temporary stage in his life, demonstrates extremely poor judgment and a lack of maturity.

Accordingly, the Court finds that clear and convincing evidence exists that Respondent is likely to engage in conduct that would result in serious harm to himself and others. The Court therefore grants the petitions.

Dated: July 21, 2022

at Ballston Spa, New York

HON. RICHARD A. KUPFERMAN

Acting Supreme Court Justice

FOOTNOTES

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Footnotes

- 1 Although the parties did not make a formal motion under CPLR 602, the parties nevertheless all appeared at the same day/time for a hearing and presented their proof as if the cases had been consolidated for purposes of trial. The Court therefore considers Proceeding Nos. 1 and 2 as having been consolidated for trial (*see Matter of Rostkowski v Baginski*, 96 AD3d 1066, 1066-1067 [2d Dept 2012]; *Prutsmann v Manchester*, 79 AD2d 1078, 1078 [3d Dept 1981]; *see also Matter of Amy M.*, 234 AD2d 854 [3d Dept 1996]).
- 2 "Possess" is defined as "to have physical possession or otherwise to exercise dominion or control over tangible property" (**Penal Law** 10.00[8]; *see* CPLR 6340[4]).
- 3 Notwithstanding, no finding or determination made during these proceedings "shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding" (CPLR § 6347).

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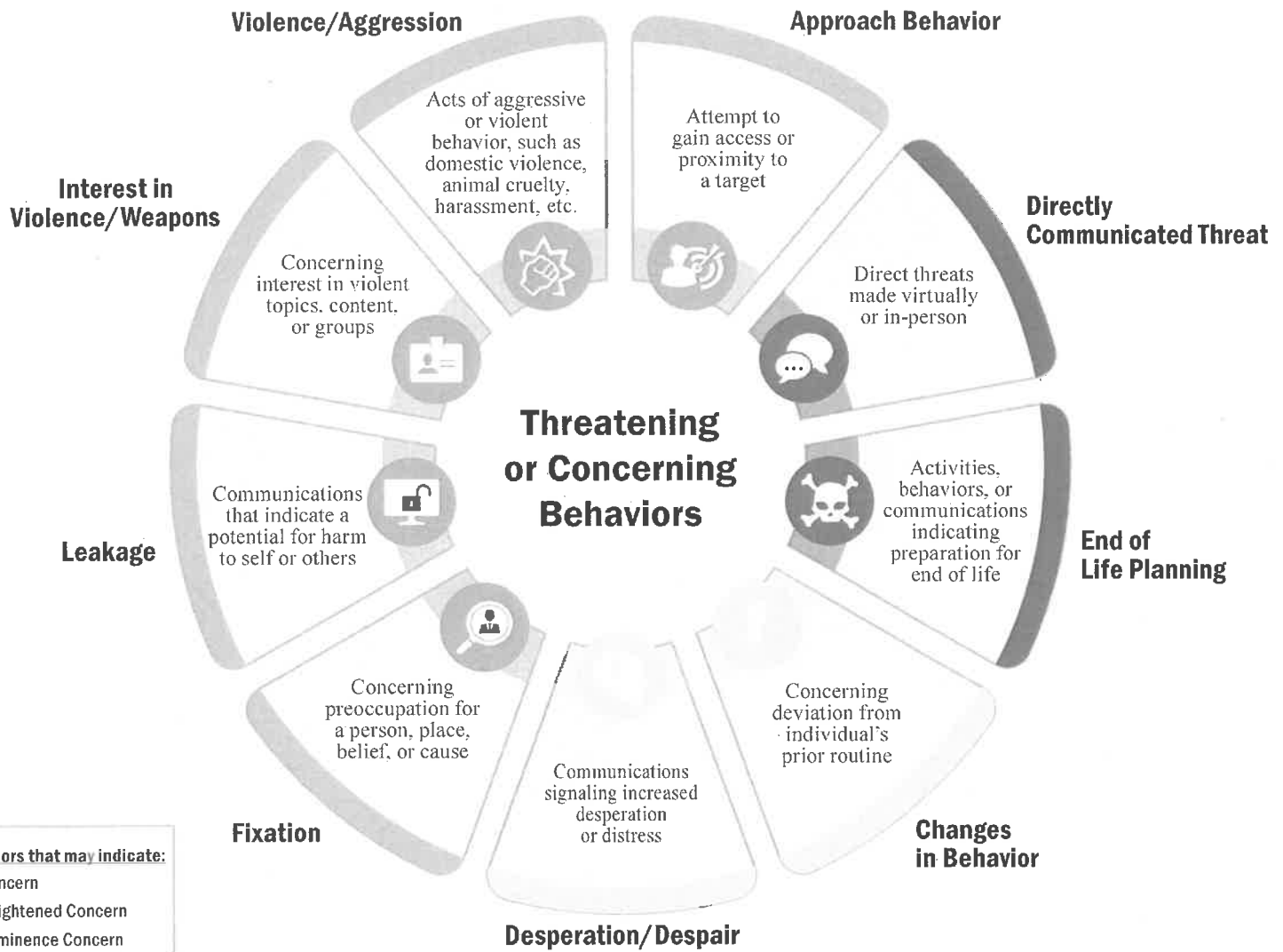
Behavioral Approach to Violence Prevention



Many individuals who are planning to engage in targeted violence display threatening or concerning behaviors that are observable to others. Utilizing behavioral threat assessment and management (BTAM), a proactive, evidence-based method of investigation, analysis, and management that focuses on an individual's patterns thinking and behavior, can determine whether, and to what extent, an individual may be moving towards an act of intended violence. Further, BTAM can assist with the development of intervention techniques designed to move an individual away from conducting a potential attack.

Identifying Threatening or Concerning Behaviors

Those who have perpetrated acts of targeted violence have no profile. The following represent common threatening or concerning behaviors identified across a wide variety of completed and averted acts of targeted violence. Alone, these threatening or concerning behaviors may not signal an attack.



Assessing Threatening or Concerning Behaviors

These behaviors should be assessed within an individual's totality of circumstances, including life stressors, personal risk factors, and threat mitigators, to identify if a person is moving along a pathway to violence.



NOTE: Vetting threatening or concerning behaviors to determine the potential for intended violence will require additional information. Please report this activity to 9-1-1 or consult with your local BTAM team who can investigate, assess, and manage a potential subject of interest while adhering to the individual's privacy and civil rights.

SANITIZED JUVENILE MANAGEMENT & MITIGATION PLAN

Action	Person Responsible	How often	Desired Outcome
Counseling	Either through the school or privately, as dictated by availability, effectiveness, and family/subject preference	Bi-weekly; or as later designated by counselor. Suggested through end of 2019 and then re-evaluated for continued need.	Provide a safe and helpful environment for the subject to mentally process and adjust as he continues through the major transitions of schools, social support environments, physical homes, his weekly schedule and his family structure.
Club involvement at Main High School	Subject; through Main High School	As designated by club(s)	To re-engage the subject in school involvement as has been effective in the past. To allow the subject to have responsibility, structured socialization with a common goal/interest, and potentially a role influencing the extracurricular activities at school. This could potentially ease the transition into a new school and social support environment greatly.
Academic Improvement Plan	Main Street Academy and then Main High School post-transition; Parental support	Single instance of plan creation with ongoing monitoring of effectiveness and continued applicability	For the subject, along with the school(s) and his parents in support, to create an effective and applicable pathway to academic improvement for the purposes of allowing the subject to be eligible to try out and participate on the school basketball team again, as a self-reported desire of the subject.
Enrollment in a Volunteer Firefighter or ROTC Program	Subject; Parents	Single instance of enrollment with ongoing involvement as designated by program	Subject will practice positive socialization skills in a peer-equal environment. Subject will learn and engage in structured positive behavior while receiving vocational training, as a reported desire of the subjects parent(s).
Meeting with Youth Pastor	Subject, Youth Pastor (Consent & transportation by father or designee)	Weekly	Establish on-going social/emotional support and connection with a positive adult role model. Identify hobbies that bring pleasure that don't involve violent video games; mission trip involvement; other church activities; volunteer involvement (outside of church) to increase social interaction with others.

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SANITIZED JUVENILE MANAGEMENT & MITIGATION PLAN

Resource Guide For Medical Insurance Assistance And Mental Health Treatment	BeTA Unit	Once	Information and resources available in local area for assistance with medical insurance and mental health treatment.
Meeting With School Administrators At Subject's Current School	BeTA Unit	Once	<p>Academic – Identify appropriate supports that can be initiated to improve academic functioning (i.e., grades).</p> <p>Social/Emotional – Identify why subject is sitting with his teacher at lunch; how to enhance social interactions with his peers; build relationship with SRO who can have regular check-ins with subject and establish a relationship so the subject has a person he can talk to if he experiences bullying behavior while at school.</p>
Engage in vocational training for mechanical interest	Camp Life; Guardian; then the Local Technical Education Center	Bi-Weekly	Life-planning through Camp Life. Structured training for subject to engage in his self-noted mechanical interest, providing him with vocational training in alignment with future career goals
Positive behavior reinforcement	Camp Life; the Guardian	Weekly	Behavioral point-based system to earn privileges, activities, at Camp Life. Guardians will attend the scheduled monthly meeting at Camp Life and will be brought into the program so that they can facilitate positive behavior when subject returns home.
Functional Family Therapy	Juvenile Probation & Parole Program	Bi-Weekly or Monthly	Engage subjects' guardians in program prior to subjects release from Camp Life and continue as part of the step-down plan for subject upon his release. Provide education and support to subjects grandparents regarding the importance of subject's interaction with peers regardless of race or differences.

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SANITIZED JUVENILE MANAGEMENT & MITIGATION PLAN

Positive Attitude Youth Center – Teen Achievers Program	Guardians	As designated by program; Bi-Weekly	Character building classes and recreational programs to encourage subject to make better choices and increase his self-awareness
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National Threat Evaluation and Reporting Office Behavioral Threat Assessment and Management Toolkit



The Role of Stalking in Behavioral Threat Assessment and Management

Identifying Stalking Cases

It can be difficult to identify stalking cases. Initially, stalking often presents itself as individual incidents that appear minor, but these minor incidents, when viewed within the totality of circumstances, are often far more serious. Because these cases often begin as minor incidents, it is common for stalking victims to try to manage the situation themselves before involving law enforcement. When reviewing behaviors indicative of stalking, be vigilant of any prior stalking incidents and of the possibility that the victim may have filed multiple reports. It is important to thoroughly investigate a case to determine whether minor incidents add up to a more serious stalking case.

Common harassing and stalking behaviors:

- Entering the victim's home when the victim is not there
- Threats or obscene phone calls, texts, or emails
- Distributing private or embarrassing photos and/or information about the victim to friends, family or coworkers
- Following, either in person or using GPS technology
- Sending unwanted letters or gifts
- Repeatedly driving by or showing up at the victim's home or work location
- Using social media to harass, threaten, or follow the victim's activities
- Stealing mail to gather intelligence on the victim's activities
- Surveilling the victim, the victim's family, or significant other
- Vandalism



Stalking and Targeted Violence

Stalking will not always lead to an act of targeted violence. However, stalking behaviors should be considered in any BTAM, regardless of whether it is related to the identified grievance. Stalking behaviors reveal fixation and the ability to engage in research, planning, and preparation towards a target.

Variables that warrant further consideration:

- Recent escalation of threats or observable behaviors that may concern others
- Persistent physical intimidation
- Guns or access to weapons
- Evidence of a violent plan
- Unabated anger

Want more information regarding the BTAM model? Interested in further training resources and information to assist in the development of BTAM processes in your organization or community? Please contact NTER.MTP@hq.dhs.gov



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Domestic Violence in Behavioral Threat Assessment and Management

Overview

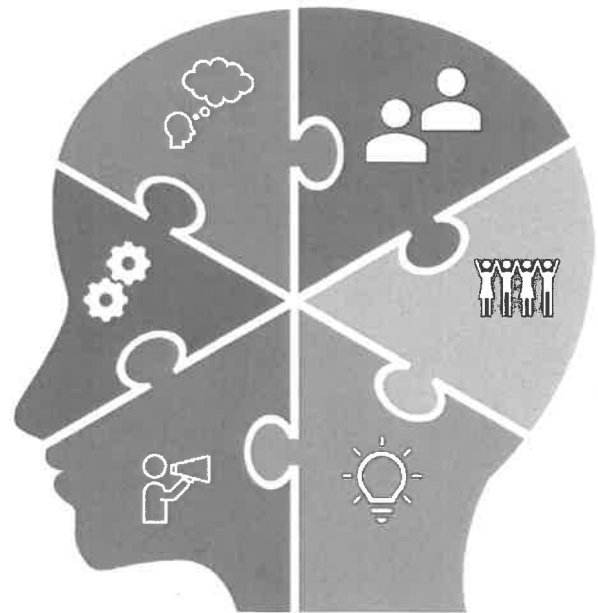
While domestic violence (DV) has traditionally been labeled a *private* problem, there is increasing awareness that it can, and often does, spillover into public areas, jeopardizing public safety. Abusers often seek out their victims in public spaces, making it important for Behavioral Threat Assessment and Management (BTAM) professionals to be aware of the risks posed by DV. These risks apply not only to spouses or former spouses, but also to friends of victims, children living in abusive households, and any other groups that maintains contact with an abuser or victim.

Explicit Threats of Violence

While explicit threats of violence are not seen in all instances of targeted violence, they are a behavior commonly seen in situations involving DV. In fact, one study found that over 70 percent of men who murdered their intimate partners explicitly threatened to do so beforehand. Particular attention should be given to these cases because the closeness of the relationship between abuser and target allows for familiarity of the target's frequented places and potential vulnerabilities.

BTAM Considerations

- The targeted individual may offer useful insights on how they think the perpetrator might react to various actions such as protective orders and cease and desist letters or law enforcement welfare checks to engage the individual for assessment.
- The victim's perspectives should be included, given the unreliability of information reported by the perpetrator.
- Victims may significantly underestimate the risk of violence to themselves.
- A victim might fear that the BTAM process could increase the danger posed to them.
- The victim might be reluctant to provide information for several reasons, including a distrust of the criminal justice system.
- The victim could be reluctant to provide risk-relevant information and/or violence predictions owing to concerns about the confidentiality of the information.



Sources

Dept of Justice, Federal Bureau of Investigation, Behavioral Analysis Unit, "Making prevention a reality: Identifying, assessing, and managing the threat of targeted attacks," 2017.

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Professional Standards Board, "Standard (WVPI.1): Workplace Violence Prevention and Intervention," *ASIS International*, 2011.

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Signs visible in a public setting that an individual may be experiencing abuse:

- Change in job performance, poor concentration, errors, slowness, inconsistent work quality.
- An unusual number of phone calls/text messages, strong reactions to those calls/text messages, and/or a reluctance to converse or respond to phone/text messages.
- Co-workers receive insensitive or insulting messages intended for the colleague experiencing abuse.
- Disruptive personal visits to workplace by present or former partner or acquaintance.
- Questions about whereabouts, company, and activities from a spouse, former spouse, or acquaintance.
- Absenteeism or lateness for work.
- Requests for special accommodations, such as requests to leave early or to change schedules.
- Reluctance to leave work.
- Obvious injuries such as bruises — these are often attributed to “falls,” “being clumsy,” or “accidents.”
- Clothing that is inappropriate for the season, such as long sleeves and turtlenecks—also wearing sunglasses and unusually heavy makeup.
- Minimization or denial of harassment or injuries.
- Isolation; unusually quiet and keeping away from others.
- Emotional distress or flatness, tearfulness, depression, or suicidal thoughts.
- Signs of anxiety and fear.
- Sensitivity about home life or hints of trouble at home — comments may include references to bad moods, anger, temper, and alcohol or drug abuse.
- Fear of job loss.



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18 USC 1038: False information and hoaxes

Text contains those laws in effect on September 12, 2023

From Title 18-CRIMES AND CRIMINAL PROCEDURE

PART I-CRIMES

CHAPTER 47-FRAUD AND FALSE STATEMENTS

Jump To:

[Source Credit](#)

§1038. False information and hoaxes

(a) CRIMINAL VIOLATION.-

(1) **IN GENERAL.-**Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall-

(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

(2) **ARMED FORCES.-**Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged-

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

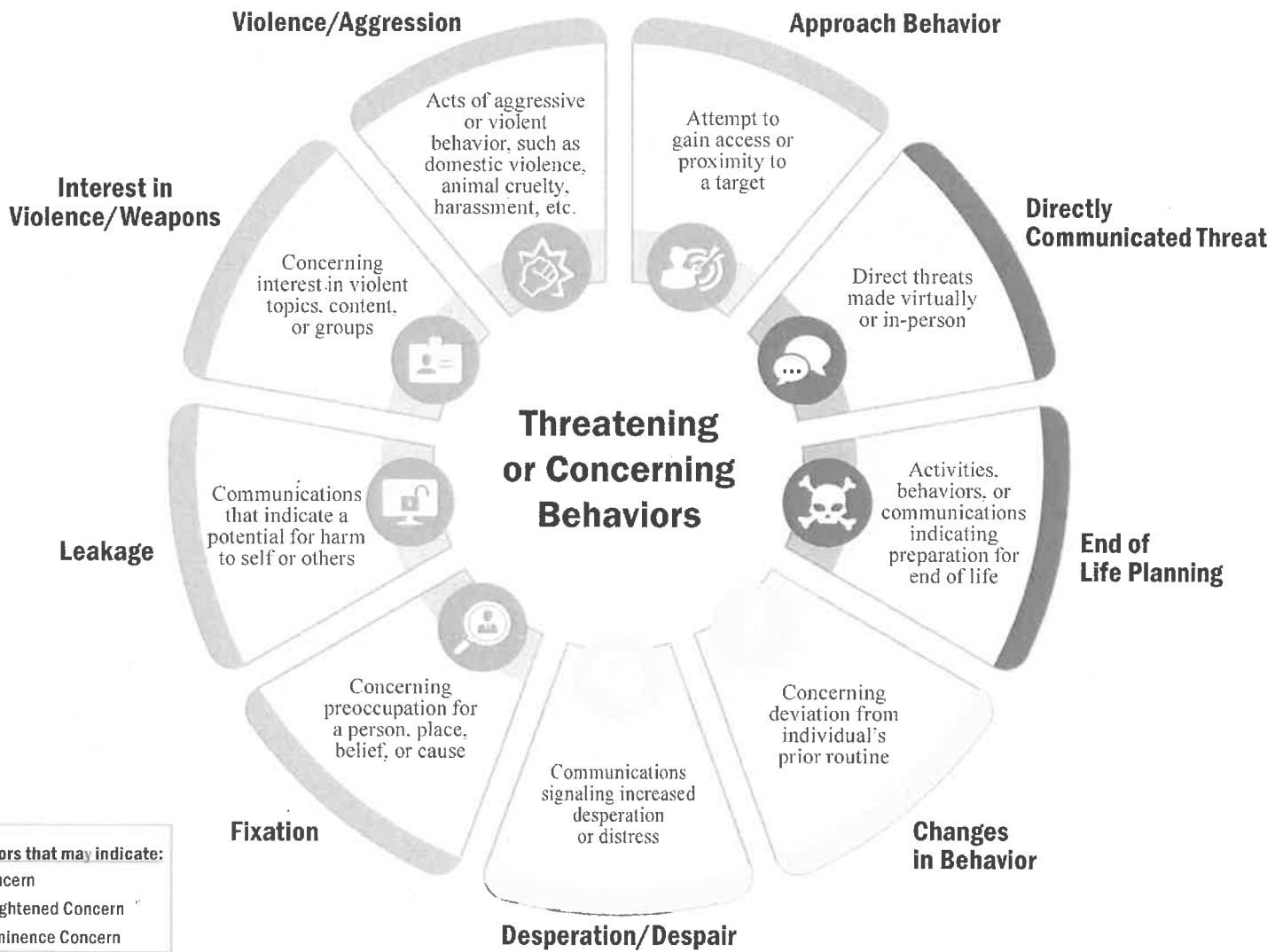
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