FOID: Clear and Present Danger Act

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Since 2013, changes to the concealed carry laws have required increased reporting of persons who are clear and present dangers. Some of these persons may include students. Social workers who are LCSWs have a responsibility under one set of regulations to report persons who may carry certain diagnoses. Under another set of laws, school principals and their designees have to report students who have been determined to be a clear and present danger to themselves or others. Part of the problem in schools is who makes such determinations. School social workers face legal and ethical conflicts involving decisions and reporting, based on their ethics and relevant school and other laws or regulations, including the duty to warn. This session reviews the Firearm Owner’s Identification Act and the reporting requirements created pursuant to it.
Hi Sandra,

I'm a school social worker (who works with PN) who has been a student of yours in yearrrrs past.

Now that FOID has included the "Clear and Present danger" wording, does the sswer have a "duty to warn" the administrators if one of our students threatens harm to himself/herself or another? Does confidentiality trump our disclosure?

Are you going to make any presentations regarding school social workers and this subject?
I participated in your outstanding presentation last Friday regarding Concealed Carry and Revealed Obligations. As I was looking at the information and thinking about the application in my work setting, I was also thinking about the Bullying Law changes in August of this (last) year. Is there any connection with what you had discussed and the bullying law changes? I want to talk with our administration regarding what I have learned.
"Bullying" means any severe or pervasive physical or verbal act or conduct, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following:

1. placing the student(s) in reasonable fear of harm to the student(s)' person or property;
2. causing a substantially detrimental effect on the student(s)' physical or mental health;
3. substantially interfering with the student(s)' academic performance; or
4. substantially interfering with the student(s)' ability to participate in or benefit from the school’s services, activities, or privileges.

Bullying may include: harassment, threats, intimidation, stalking, physical violence, sexual harassment, sexual violence, theft, public humiliation, destruction of property, or retaliation for asserting or alleging bullying.
Good morning....

I'm a little confused and frustrated. I think that maybe I'm not understanding. Our special ed administration says that EVERY TIME we call SASS we have to fill out the State police form for clear and present danger, even if the student is not hospitalized, etc. I was under the impression that there were quite a few times when maybe you wouldn't. I have heard one of your seminars on this, although I now I feel like I'm stuck reporting 6 year olds all of the time. Not quite sure what to do....

Any advice?

A new LCSW who wants to do the right thing and trusts you....
P.A. 98-0063 created the Firearm Concealed Carry Act
(Effective July 9\textsuperscript{th}, 2013)

It changed the Mental Health and Developmental Disabilities Code (MHDD Code)

It changed the Mental Health and Developmental Disabilities Confidentiality Act (MHDDCA)

It created the School Administrator Reporting of Mental Health Clear and Present Danger Determinations Law (SARMHCPDDL)
There are different types of FOID reporting we can discuss:

Clinician Reporting

School Administrator/Law Enforcement Reporting

Mental Health Facility Reporting
Clinician Reporting
Who must make a report?

Physicians, licensed psychologists, and qualified examiners are required to report three events regardless of where they practice:
1. Who does the reporting requirement apply to?

Sec. 1-120. "Physician" means any person licensed by the State of Illinois to practice medicine in all its branches and includes any person holding a temporary license, as provided in the Medical Practice Act of 1987. Physician includes a psychiatrist as defined in Section 1-121.

Sec. 1-121. "Psychiatrist" means a physician as defined in the first sentence of Section 1-120 who has successfully completed a residency program in psychiatry accredited by either the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.

Sec. 1-103. "Clinical psychologist" means a person licensed by the Department of Financial and Professional Regulation under the Clinical Psychologist Licensing Act.
1. Who does the reporting requirement apply to (continued)?

(Sec. 1-122. Qualified examiner. "Qualified examiner" means a person who is:

(a) a **clinical social worker** as defined in this Act,
(b) a **registered nurse** with a master's degree in psychiatric nursing who has 3 years of clinical training and experience in the evaluation and treatment of mental illness which has been acquired subsequent to any training and experience which constituted a part of the degree program,
(c) a **licensed clinical professional counselor** with a master's or doctoral degree in counseling or psychology or a similar master's or doctorate program from a regionally accredited institution who has at least 3 years of supervised post-master's clinical professional counseling experience that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders, or

(d) a **licensed marriage and family therapist** with a master's or doctoral degree in marriage and family therapy from a regionally accredited educational institution or a similar master's program or from a program accredited by either the Commission on Accreditation for Marriage and Family Therapy or the Commission on Accreditation for Counseling Related Educational Programs, who has at least 3 years of supervised post-master's experience as a marriage and family therapist that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders.

A social worker who is a qualified examiner shall be a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.
1. Who does the reporting requirement apply to (continued)?

(Sec. 1-122. **Qualified examiner (continued).** "Qualified examiner" means a person who is:

(d) a **licensed marriage and family therapist** with a master's or doctoral degree in marriage and family therapy from a regionally accredited educational institution, who has at least 3 years of supervised post-master's experience as a marriage and family therapist that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders.
1. Who does the reporting requirement apply to (continued)?

Sec. 1-122.1. "Clinical social worker" means a person who (1) has a master's or doctoral degree in social work from an accredited graduate school of social work and (2) has at least 3 years of supervised post-master's clinical social work practice which shall include the provision of mental health services for the evaluation, treatment and prevention of mental and emotional disorders.

A social worker who is a qualified examiner shall be a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act.
What do I report?

Physicians, licensed psychologists, and qualified examiners are required to report three events regardless of where they practice:

The determination that a person is:

- A clear and present danger
- Developmentally Disabled
- Intellectually Disabled
"Clear and present danger" means a person who:

(1) communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to himself, herself, or another person as determined by a physician, clinical psychologist, or qualified examiner; or
"Clear and present danger" means a person who:

(2) demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official.
"Clear and present danger" means a person who:

(1) communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to himself, herself, or another person as determined by a physician, clinical psychologist, or qualified examiner; or

(2) demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official.
"Developmentally disabled" means a disability which is attributable to any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by intellectually disabled persons. The disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap.

The FOID regulations add: “This can include an intellectual disability, autism, cerebral palsy and epilepsy.”

“Intellectually disabled" means significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.
"Developmentally disabled" means a disability which is attributable to any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by intellectually disabled persons. The disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial disability.

This disability results in the professional opinion of a physician, clinical psychologist, or qualified examiner, in significant functional limitations in 3 or more of the following areas of major life activity:

(i) self-care;
(ii) receptive and expressive language;
(iii) learning;
(iv) mobility; or
(v) self-direction.
When must I make a report?

Physicians, licensed psychologists, and qualified examiners are required to report three events regardless of where they practice:

The determination that a person is:

- A clear and present danger
- Developmentally Disabled
- Intellectually Disabled

Within 24 hours of making the determination
Sec. 6-103.2. Developmental disability; notice. If for purposes of this Section, if a person 14 years old or older is determined to be developmentally disabled as defined in Section 1.1 of the Firearm Owners Identification Card Act by a physician, clinical psychologist, or qualified examiner, whether practicing at a public or by a private mental health facility or developmental disability facility, the physician, clinical psychologist, or qualified examiner shall notify the Department of Human Services within 7 days 24 hours of making the determination that the person has a developmental disability….
Physicians, licensed psychologists, and qualified examiners are required to report three events regardless of where they practice:

The determination that a person is:

- A clear and present danger
- Developmentally Disabled
- Intellectually Disabled

Within 24 hours/7 days of making the determination

Illinois FOID Mental Health Reporting System
What is the DHS FOID Mental Health Reporting System?

The DHS Firearms Owner's Identification (FOID) Mental Health Reporting System collects information on persons in Illinois that have been: adjudicated mentally disabled persons; voluntarily admitted to a psychiatric unit; determined to be a "Clear and Present Danger"; and/or determined to be "Developmentally Disabled/ Intellectually Disabled."
The DHS FOID Mental Health Reporting System website provides clinicians and facilities with 24-hour and immediate access to report an individual.

https://foid.dhs.illinois.gov/foidpublic/foid/

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Welcome to the Illinois DHS FOID Mental Health Reporting System

Welcome to the Illinois Department of Human Services (DHS) Firearm Owner's Identification Card System. The DHS FOID Mental Health Reporting System was authorized by the FOID Act.

The Illinois DHS FOID Mental Health Reporting System website provides qualified examiners immediate access to report an individual that is receiving mental health treatment or is determined to be a clear and present danger, developmentally disabled or intellectually disabled. DHS is responsible for computing a match against the State Police FOID files to identify possible matches. The ISP is then responsible for reviewing each application for the FOID card.

On July 9th 2013, Illinois passed HB 183 (Public Act 098-0063), also known as the Firearm Concealed and Carry Act expands the reporting requirements for healthcare providers and qualified examiners to include any person that is: adjudicated mentally ill, committed, or admitted to a psychiatric unit; determined to be a "clear and present danger"; and/or developmentally disabled/intellectually disabled.

On July 10th, 2015, the Illinois Governor signed PUBLIC ACT 099-0029. For purposes of this Act, "developmentally disabled" means a disability which is attributable to any other condition which results in significant limitation of personal independence by an intellectual disability and which requires services similar to those required by an individual who has been determined to be intellectually disabled. This disability must originate before the age of 18 years, be expected to continue indefinitely and result in significant functional limitations in 3 or more of the following areas of major life activity: self-care; tenancy; work; social skills; and mobility.

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Note: For Clear and Present Danger you will be asked to briefly describe in your own words why you believe the patient is a clear and present danger.
System Login

User ID: 
Password: 
Login  Clear

Illinois Statutes and DHS policy prohibit unauthorized access or disclosure of DHS client, employee or any other confidential information. Any unauthorized use of DHS computers or disclosure of confidential client or employee information may be cause for disciplinary action, including termination of employment and/or criminal prosecution.

Do not attempt to login unless you are an authorized user.

By logging into any Illinois Department of Human Services System, using your assigned user ID, you acknowledge that you are an authorized user and agree to abide by all rules and regulations of the Illinois Department of Human Services System. It is your responsibility to ensure that your user ID and password are kept private. Do NOT share your login information with anyone. No representative of DHS will ever ask for your password.
Required information about the clinician

DHS Reporting System requires the mandated reporter to provide identifying information to enable DHS to verify their credentials.

Full Name as it appears on their license (no nicknames please)

State License Number (no spaces, hyphens, just the numbers please)

Practice name, address, phone number and work email

Last four numbers of your social security number

*Note: The Illinois FOID Mental Health Reporting System automatically verifies the identity and credentials of the mandated reporter with the IDPFR. If the information does not match exactly DHS personnel will follow up to reconcile any differences.
DHS Reporting System collects certain information about the person or patient being reported

Identifying Information
- Last name, first name, middle name, suffix, and Social Security Number.
- Date of Birth, Address, Gender, Race, Eye Color, Height, and weight.

Event type (any or all that apply):
- Clear and Present Danger*
- Developmentally Disabled
- Intellectually Disabled
- Date the determination was made

*Note: For Clear and Present Danger you will be asked to briefly describe in your own words why you believe the patient is a clear and present danger.
(b) The Department of Human Services …and all public or private hospitals and mental health facilities are required...to furnish the Department of State Police only such information as may be required for the sole purpose of determining whether an individual who may be or may have been a patient is disqualified because of that status from receiving or retaining a Firearm Owner's Identification Card … All physicians, clinical psychologists, or qualified examiners at public or private mental health facilities or parts thereof …shall, in the form and manner required by the Department, provide notice directly to the Department of Human Services…who shall then report to the Department
within 24 hours after determining that a person patient as described in clause (2) of the definition of "patient" in Section 1.1 of the Firearm Owners Identification Card Act poses a clear and present danger to himself, herself, or others, or within 7 days after a person 14 years or older is determined to be developmentally disabled by a physician, clinical psychologist or qualified examiner as described in Section 1.1 of the Firearm Owners Identification Card Act. If a person is a patient as described in clause (1) of the definition of “patient” in Section 1.1 of the Firearm Owners Identification Card Act, this information shall be furnished within 24 hours after the physician, clinical psychologist, or qualified examiner has made a determination, or within 7 days after admission to a public or private hospital or mental health facility or the provision of services to a patient described in clause (1) of the definition of "patient" in Section 1.1 of the Firearm Owners Identification Card Act.
School Administrator Reporting
Sec. 100. Short title. Sections 100 - 110 may be cited as the School Administrator Reporting of Mental Health Clear and Present Danger Determinations Law.

Sec. 105. Duty of school administrator. It is the duty of the principal of a public elementary or secondary school, or his or her designee, and the chief administrative officer of a private elementary or secondary school or a public or private community college, college, or university, or his or her designee, to report to the Department of State Police when a student is determined to pose a clear and present danger to himself, herself, or to others, within 24 hours of the determination as provided in Section 6-103.3 of the Mental Health and Developmental Disabilities Code. "Clear and present danger" has the meaning as provided in paragraph (2) of the definition of "clear and present danger" in Section 1.1 of the FOID Card Act.

Sec. 110. Immunity. A principal or chief administrative officer, or the designee of a principal or chief administrative officer, making the determination and reporting under Section 105 of this Law shall not be held criminally, civilly, or professionally liable, except for willful or wanton misconduct.

(Source: P.A. 98-63, eff. 7-9-13.)
Who must make a report?

Principals of public schools or their designees

Chief administrative officers of
- private elementary or secondary schools
- public or private community colleges, colleges or universities

Clinicians*
Who must make a report?

"Clinician"– a physician, psychiatrist, clinical psychologist or qualified examiner.

Physicians, psychiatrists, clinical psychologists, and qualified examiners are required to report three events * regardless of where they practice:
What do I report?

Physicians, licensed psychologists, and qualified examiners are required to report three events regardless of where they practice:

*The determination that a person is:

- A clear and present danger
- Developmentally Disabled
- Intellectually Disabled
What must be reported?

If a student is a clear and present danger to himself, herself, or to others
Where and when to make a report?

Schools

Must report within 24 hours of the determination that a student is a clear and present danger to himself, herself, or to others

To the Illinois State Police

By faxing the Person Determined to Pose a Clear and Present Danger Form

https://www.ispfsb.com/Public/Firearms/ClearAndPresentDanger.aspx

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Illinois State Police
Person Determined to Pose a Clear and Present Danger

It is the duty of law enforcement officials and school administrator to report to the Department of State Police when a student or other person is determined to pose a clear and present danger to themselves, or to others, within 24 hours of the determination. 20 Ill. Admin. Code 1230.120.

This form must be completed in its entirety by the law enforcement official, principal, chief administrative officer, or their designee making the determination. Clear and present danger reporting shall be used by the Department of State Police to identify persons who, if granted access to a firearm or firearm ammunition, pose an actual, imminent threat of substantial bodily harm to themselves or another person(s) that is articulable and significant or who will likely act in a manner dangerous to public interest.

Completed forms and attachments should be faxed to the Illinois State Police, Firearm Services Bureau at 217/782-9139. For questions or to confirm receipt of a fax, please call the Firearms Services Bureau, Monday through Friday, 8:30 a.m. to 5:00 p.m. at 217/782-3700. For assistance from the Firearms Services Bureau beyond normal business hours, contact the Statewide Terrorism and Intelligence Center at 877/455-7842. If immediate police assistance is required, contact your local law enforcement agency or call 911.
What is Making a Determination?
“We are leaving the exact definition of determination up to the qualified examiner. If you believe you are making the determination the individual is DD/ID then you should report.”
Source: DHS FOID Reporting website

“A clinician has to use their best professional judgment when making a determination after considering all factors.”
Source: DHS FOID Reporting website

“Making a ‘determination’ is not based on simply an observation or anecdotal information. ‘Determining’ indicates the mandated reporter has completed a structured evaluation or assessment that supports the diagnosis.”

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“Determined” – the mandated reporter has completed a formal structured evaluation and/or assessment that, in his or her clinical judgment, supports the diagnosis of developmentally disabled and/or intellectual disability.

Source: DMH’s adopted FOID regulations

"Determined to be developmentally disabled by a physician, clinical psychologist, or qualified examiner" means in the professional opinion of the physician, clinical psychologist, or qualified examiner, a person is diagnosed, assessed, or evaluated to be developmentally disabled.

Sec. 6-103.3 Clear and present danger; notice. (continued)

For the purposes of this Section:

"Clear and present danger" has the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act.

"Determined to pose a clear and present danger to himself, herself, or to others by a physician, clinical psychologist, or qualified examiner" means in the professional opinion of the physician, clinical psychologist, or qualified examiner, a person poses a clear and present danger.

"School administrator" means the person required to report under the School Administrator Reporting of Mental Health Clear and Present Danger Determinations Law.
Sec. 6-103.3 Clear and present danger; notice.

If a person is determined to pose a clear and present danger to himself, herself, or to others by a physician, clinical psychologist, or qualified examiner, whether employed by the State, by any public or private mental health facility or part thereof, or by a law enforcement official or a school administrator, then the physician, clinical psychologist, qualified examiner shall notify the Department of Human Services and a law enforcement official or school administrator shall notify the Department of State Police, within 24 hours of making the determination that the person poses a clear and present danger. The Department of Human Services shall immediately update its records and information relating to mental health and developmental disabilities, and if appropriate, shall notify the DSP in a form and manner prescribed by the DSP.
Sec. 6-103.3 Clear and present danger; notice. (continued)

The physician, clinical psychologist, qualified examiner, law enforcement official, or school administrator making the determination and his or her employer shall not be held criminally, civilly, or professionally liable for making or not making the notification required under this Section, except for willful or wanton misconduct. This Section does not apply to a law enforcement official, if making the notification under this Section will interfere with an ongoing or pending criminal investigation.
a) Physicians, clinical psychologists and qualified examiners shall report determinations of a clear and present danger to the Department by making notification to the Department of Human Services in the form and manner prescribed at Section 6-103.3 of the Mental Health and Developmental Disabilities Code.
Section 1230.120  Clear and Present Danger Reporting

b) Law enforcement officials and school administrators shall report determinations of a clear and present danger directly to the Department. The Department shall make a form and instruction for the reporting available to law enforcement officials and school administrators on its website.

1) Clear and present danger reporting shall be used by the Department to identify persons who pose an actual, impending, or imminent threat of substantial bodily harm to themselves or another person that is articulable and significant or who will be likely to act in a manner dangerous to public safety or contrary to the public interest if they were granted access to a weapon.

2) Clear and present danger reporting shall be made consistent with the Family Educational Rights and Privacy Act (20 USC 1232g) to assist the Department with protecting the health and safety of the public by denying persons who present a clear and present danger from having lawful access to weapons.
Mental Health Facility Reporting
"Mental health facility" means any licensed private hospital or hospital affiliate, institution, or facility, or part thereof, and any facility, or part thereof, operated by the State or a political subdivision thereof which provide treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, mental health centers, colleges, universities, long-term care facilities, and nursing homes, or parts thereof, which provide treatment of persons with mental illness whether or not the primary purpose is to provide treatment of persons with mental illness.
An **inpatient mental health facility** includes:

**State-operated mental health facility** as described in Section 4 of the Mental Health and Developmental Disabilities Administrative Act

**Psychiatric hospital as authorized by DPH**;

The **specific units of a general hospital providing psychiatric services** as authorized by the DPH; and

**Residential settings**.
Residential settings.

Nursing homes or long-term care facilities which are considered Institutes for Mental Disease;

The specific units of a nursing home or long-term care facility authorized by the DPH to provide psychiatric or behavioral healthcare;

The specific units of a nursing home or long-term care facility held out by the facility as providing psychiatric or behavioral health care;

Specialized Mental Health Rehabilitation Facilities;

A supervised transitional residential program funded by the DHS-DMH where that level of service has been determined to be medically necessary.
Inpatient mental health facilities are required to report:

A) a person who has been a patient of a mental health facility within the past 5 years
B) a person who had been a patient in a mental health facility more than 5 years ago who has not received the certification required under Section 8(u) of the FOID Act --8(u) unless he or she has received a mental health evaluation by a physician, clinical psychologist, or qualified examiner, and has received a certification that he or she is not a clear and present danger to himself, herself, or others--.
C) a person who is a clear and present danger to himself or herself, any other person or persons or the community
D) a person who is intellectually disabled
E) a person who has been adjudicated as a mentally disabled person
F) a person who has been found to be developmentally disabled
G) a person involuntarily admitted into a mental health facility
An **outpatient mental health facility** includes:

A community mental health agency;

A general hospital that does not provide inpatient psychiatric care;

A general hospital emergency department;

The portions of a psychiatric hospital (or general hospital with psychiatric services) that do not provide inpatient psychiatric services;

A nursing home or long-term care facility that does not provide inpatient psychiatric care;

A health counseling center or health clinic operated by a college or university;

A clinic
Outpatient mental health facilities that provide only outpatient services are required to report:

- a person whose mental condition is a clear and present danger to himself or herself, any other person or persons or the community;
- a person who is intellectually disabled;
- a person who has been adjudicated as a mentally disabled person;
- a person who has been found to be developmentally disabled;
- a person involuntarily admitted into a mental health facility.
Mental health facilities are required to report within 7 calendar days after a person is admitted as an inpatient or as a resident and within 7 calendar days after a person is discharged from inpatient or residential care.
"Patient" means:

(1) a person who voluntarily receives mental health treatment as an in-patient or resident of any public or private mental health facility, unless the treatment was solely for an alcohol abuse disorder and no other secondary substance abuse disorder or mental illness; or

(2) a person who voluntarily receives mental health treatment as an out-patient or is provided services by a public or private mental health facility, and who poses a clear and present danger to himself, herself, or to others.
Immunity for Reporting

Any person, institution, or agency participating in good faith in the reporting or disclosure of records and communications otherwise in accordance with this provision....shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of the action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure in accordance with this provision, the good faith of any person, institution or agency so reporting or disclosing shall be presumed. The full extent of the immunity shall apply to any person, institution or agency that fails to make a report or disclosure in the good faith belief that the report or disclosure would violate federal regulations governing the confidentiality of alcohol and drug abuse patient records...
Immunity for Reporting

The clinician making the determination that the person poses a clear and present danger or making the determination that the person has a developmental disability and his or her employer shall not be held criminally, civilly, or professionally liable for making or not making the notification required under this subsection, except for willful or wanton misconduct.

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Problems:

1. Duplication of reports

2. Lack of sanctions for failing to report

3. Relationship between reporting and “duty” to warn

4. Lack of clarity between language in different Acts

5. Assumptions regarding guns and violence

6. Assumptions regarding legal and illegal gun possession

7. Lack of knowledge regarding law
What are some of the ethical problems that you see?