INTELLIGENCE COMMUNITY DIRECTIVE

191

21 July 2015

(U) Duty to Warn

A. (U) AUTHORITY: The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; and other applicable provisions of law.

B. (U) PURPOSE

1. (U) This Directive establishes in policy a consistent, coordinated approach for how the Intelligence Community (IC) will provide warning regarding threats to specific individuals or groups of intentional killing, serious bodily injury, and kidnapping.

2. (U) This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States (U.S.), its departments, agencies, or entities, its officers, employees, or agents, or any other person.

C. (U) APPLICABILITY

1. (U) This Directive applies to the IC as defined by the National Security Act of 1947, as amended; and to such elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned.

2. (U) This Directive, for IC elements located within departments, is intended to complement, to the greatest extent possible, departmental policies, including policies that address threats that apply both to official and non-official U.S. citizens and nationals. Any perceived inconsistencies between this Directive and departmental policies shall be resolved in consultations between the Office of the DNI (ODNI) and the department.

D. (U) DEFINITIONS

1. (U) ***Duty to Warn*** means a requirement to warn U.S. and non-U.S. persons of impending threats of intentional killing, serious bodily injury, or kidnapping.

2. (U) ***Intentional Killing*** means the deliberate killing of a specific individual or group of individuals.

3. (U) ***Serious Bodily Injury*** means an injury which creates a substantial risk of death or which causes serious, permanent disfigurement or impairment.

4. (U) ***Kidnapping*** means the intentional taking of an individual or group through force or threat of force.

E. (U) POLICY

1. (U) An IC element that collects or acquires credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping directed at a person or group of people (hereafter referred to as intended victim) shall have a duty to warn the intended victim or those responsible for protecting the intended victim, as appropriate. This includes threats where the target is an institution, place of business, structure, or location. The term *intended victim* includes both U.S. persons, as defined in EO 12333, Section 3.5(k), and non-U.S. persons.

F. (U) IMPLEMENTATION

1. (U) IC elements shall establish internal procedures for making duty to warn determinations based on information they acquire, and for delivering threat information in a timely manner while protecting sources and methods.

2. (U) IC elements shall designate senior officers responsible for reviewing threat information initially determined to meet duty to warn requirements to affirm whether the information is credible and specific, so as to permit a meaningful warning. IC elements shall also designate senior officers responsible for making waiver determinations based on criteria identified in this Directive. The senior officers designated for affirming that duty to warn information is sufficient for a meaningful warning and for making waiver determinations should not be the same individual.

3. (U) Each IC element's duty to warn procedures shall include a provision whereby the duty to warn may be waived. An IC element's internal procedures shall include all justifications appropriate for the IC element. The following are examples of appropriate justifications that should be included in an element's procedures:

a. (U) The intended victim, or those responsible for ensuring the intended victim's safety, is already aware of the specific threat;

b. (U) The intended victim is at risk only as a result of the intended victim's participation in an insurgency, insurrection, or other armed conflict;

c. (U) There is a reasonable basis for believing that the intended victim is a terrorist, a direct supporter of terrorists, an assassin, a drug trafficker, or involved in violent crimes;

d. (U) Any attempt to warn the intended victim would unduly endanger U.S. government personnel, sources, methods, intelligence operations, or defense operations;

e. (U//[redacted] The information resulting in the duty to warn determination was acquired from a foreign government with whom the U.S. has formal agreements or liaison relationships, and any attempt to warn the intended victim would unduly endanger the personnel, sources, methods, intelligence operations, or defense operations of that foreign government; or

f. (U) There is no reasonable way to warn the intended victim.

4. (U) Issues concerning whether threat information meets the duty to warn threshold should be resolved in favor of informing the intended victim if none of the justifications in Section F.3 are present.

5. (U) Upon determination by an IC element that a duty to warn exists and will not be waived that IC element shall generate statements documenting the threat information and the basis for the duty to warn determination, and include an unclassified tear line, where possible, for use in delivering the threat information to the intended victim.

6. (U) Tearlines for delivery to the intended victim should be devoid of information that identifies sources and methods involved in acquiring the information, and consistent with IC Directive 209, *Tearline Production and Dissemination*.

7. (U) Communication of threat information to the intended victim may be delivered in person, or through other verifiable means of communication.

8. (U//[redacted] Communication of threat information to the intended victim may be delivered anonymously if that is the only method available to ensure protection of U.S. government personnel, sources, methods, intelligence operations, or defense operations.

9. (U) If the intended victim is located in the U.S. and its territories, IC elements shall consult with the Federal Bureau of Investigation (FBI) to determine how best to communicate threat information to the intended victim.

10. [redacted]

11. (U) When an IC element identifies a duty to warn in information originated by another IC element, the IC element shall notify the originating IC element, which will make a determination if a duty to warn exists and, if so, shall provide the warning and take other appropriate action in compliance with this policy. The originating element also shall inform the notifying element of its determination and the course of action taken.

12. (U//[redacted] When a threat is so imminent as to render consultation or notification infeasible, an IC element may deliver threat information to an intended victim in an expeditious manner without prior consultation or notification. Notification of the delivery of the threat information shall be made to the FBI or the CIA, as appropriate, and to the originating IC element expeditiously and no later than five days after informing the intended victim.

13. (U) IC elements shall document and maintain records on the following duty to warn actions:

a. (U) The method, means, and substance of any warning given by the IC element;

b. (U) Senior officer reviews of threat information and determinations;

c. (U) Justifications not to warn an intended victim based on waiver criteria identified in this Directive;

d. (U//[redacted] Coordination with the FBI, or CIA, consistent with Sections F.9 and F.10, to determine how best to pass threat information to the intended victim;

e. (U) Decisions to inform the intended victim in light of exigent circumstances that preclude prior consultation;

f. (U) Communication of threat information to another IC element or U.S. government agency for delivery to the intended victim; and

g. (U) Notification to the originating IC element of how and when threat information was delivered to the intended victim.

14. (U) IC elements that receive threat information from another IC element or a U.S. government agency outside the IC for the purpose of delivering the information to an intended victim shall document the steps taken to deliver the threat information to the intended victim and notify the originating IC element or U.S. government agency of the steps taken.

G. (U) DISPUTE RESOLUTION

1. (U) If an issue arises among IC elements regarding a determination to warn an intended victim or waive the duty to warn requirement, or regarding the method for communicating the threat information to the intended victim, resolution of the issue shall occur at the lowest practical and authorized level.

2. (U) If an issue in dispute has been elevated to the heads of the involved IC elements and attempts at resolution remain at an impasse, the heads of the IC elements shall notify the DNI. The DNI will facilitate resolution of issues that have been referred.

3. (U) Dispute resolution shall occur in a manner that does not unnecessarily delay the timely notification of threat information to the intended victim.

H. (U) ROLES AND RESPONSIBILITIES

1. (U) The DNI will oversee and facilitate resolution of disputes referred by heads of IC elements.

2. (U) The heads of IC elements shall:

a. (U) Establish an internal duty to warn process consistent with this Directive;

b. (U) Maintain records on duty to warn determinations, including decisions to waive the requirement and any actions taken to warn the intended victim; and

c. (U) Provide information to the DNI, upon request, regarding duty to warn procedures and actions.

3. (U) IC employees who identify credible and specific information indicating an impending threat of intentional killing, serious bodily injury, or kidnapping of an individual or group shall immediately report this information to their IC element for a determination by the element whether to warn the intended victim.

I. (U) EFFECTIVE DATE: This Directive becomes effective on the date of signature.

//SIGNED//
James R. Clapper

Director of National Intelligence

21 July 2015

Date