

Copyright © 2007 American Bar Association. All rights reserved. Nothing contained in these charts is to be considered the rendering of legal advice. The charts are intended for educational and informational purposes only. Information regarding variations from the ABA Model Rules should not be construed as representing policy of the American Bar Association. The charts are current as of the date shown on each. A jurisdiction may have amended its rules or proposals since the time its chart was created.

Comparison of Rule 1.6(b)(1) with Current and Proposed State Ethics Rules (August 2007)

Rule: A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary ... to prevent reasonably certain death or substantial bodily harm.

State Rules:

- ▶ All jurisdictions permit or require disclosure to prevent death or substantial bodily harm in at least some circumstances. Thirteen jurisdictions require such disclosure.¹ New Mexico provides that lawyers “should” disclose.
- ▶ 46 jurisdictions do not require that the injury be imminent.²
- ▶ Thirty jurisdictions do not limit disclosure to situations in which the client is the perpetrator.³ In addition, six jurisdictions do not have this limitation in proposed revisions to their professional conduct rules.⁴

¹AZ, CT, FL, IL, IA (disclosure is required for information necessary to prevent imminent death or substantial bodily harm. Disclosure is permissive when the death or substantial bodily harm is reasonably certain), NV (requires disclosure to prevent a criminal act likely to result in reasonably certain death or substantial bodily harm; disclosure to prevent any other reasonably certain death or substantial bodily harm is permissive), NJ, ND, TX, VA, VT (disclosure is required under current rule; under proposed rule, disclosure is required to prevent criminal or tortious act likely to result in death or substantial bodily harm to person other than client or other person committing act and permissive to prevent reasonably likely death or substantial bodily harm to anyone), WA, WI (disclosure is required to prevent client committing crime or fraud likely to result in death or substantial bodily harm and permissive to prevent reasonably likely death or substantial bodily harm.)

²AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. (Proposals in KY and VT also do not contain the “imminent” requirement.) Some of these jurisdictions use language based on the former Model Code. See, e.g., AR (“A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the commission of a criminal act.”)

³AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, ND, OH, OK, OR, PA, SC, UT, WA, WI (see fn 1.)

⁴AK, IL, KY, ME, NY, VT (required disclosure not limited to client actions, permissive disclosure is; see fn 1).

- ▶ Twenty-five jurisdictions do not require that the conduct be either criminal or fraudulent.⁵ Additionally, six jurisdictions do not have this requirement in proposed revisions to their professional conduct rules.⁶

- ▶ Alaska’s proposal allows disclosure to prevent “future or continued wrongful incarceration.” Massachusetts permits disclosure “to prevent the wrongful execution or incarceration of another.”

⁵CO, DE, FL, GA, ID, IN, IA, LA, MD, MN, MS, MO, MT, NE, NV, NH, ND, OH, OK,OR, PA, SC, UT, WA, WI
(see fn 1.)

⁶AK, IL, KY, ME, NY, RI, VT (required disclosure limited to acts that are criminal, tortious or otherwise in violation of law, permissive disclosure is not; see fn 1).