

FINAL BILL REPORT

HB 2672

C 173 L 02

Synopsis as Enacted

Brief Description: Limiting the liability of providers of treatment to high risk offenders.

Sponsors: By Representatives Kirby, O'Brien, Ballasiotes, Morell, Darneille, Lovick and Kagi.

House Committee on Judiciary
Senate Committee on Judiciary

Background:

Dangerous Mentally Ill Offenders (DMIO)

In 1999 the Legislature enacted the Dangerous Mentally Ill Offender Act. It requires the Department of Corrections (DOC) to identify offenders in confinement who: (1) are reasonably believed to be dangerous to themselves or others; and (2) have a mental disorder.

Prior to a DMIO's release, the DOC must create a team consisting of representatives from the DOC, regional support networks (RSN), appropriate divisions of the Department of Social and Health Services (DSHS), and other providers to develop a plan for delivery of treatment and support services to the offender upon release.

The team may propose any appropriate treatment plan including: (1) evaluation of the offender by the county designated mental health professional for involuntary civil commitment; (2) department-supervised community treatment; or (3) voluntary community mental health or chemical dependency treatment.

"Licensed service providers" are entities licensed under the mental health laws and individuals licensed as osteopaths, physicians, psychologists, and certain registered nurses.

Providers Subject to Civil Actions for Damages

One of the elements that a plaintiff must show in an action for negligence is the existence of a legal duty that the defendant owed to the plaintiff. A person owing a duty to another may be liable for negligence if the plaintiff shows that the person breached his or her duty, the breach was the proximate cause of the person's injuries, and damages were incurred.

Generally, a person does not have a duty to protect others from the criminal acts of third

persons. However, Washington courts have recognized an exception to this general rule where a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party. Whether a person has a duty to protect another from the intentional acts of a third person depends upon the relationship between the parties and the extent to which the third party's conduct was foreseeable.

The Washington Supreme Court has held that a therapist may incur a duty to take reasonable precautions to protect another person who might foreseeably be endangered by the patient's mental illness. Reasonable precautions may include warning the person in danger.

Gross negligence is negligence substantially and appreciably greater than ordinary negligence. Willful or wanton misconduct is intentional activity done in reckless disregard of the consequences under circumstances such that a reasonable person would know that substantial harm to another is highly likely.

Summary:

A licensed service provider or RSN acting in the course of the provider's or network's duties is not liable for civil damages resulting from injury or death by a dangerous mentally ill offender who is a client, unless the act or omission of the provider or network constitutes:

- (1) gross negligence;
- (2) willful or wanton misconduct; or
- (3) a breach of the duty to warn and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim.

The licensed service provider and RSN shall report an offender's expressions of intent to harm or other predatory behavior, whether or not there is a reasonably ascertainable victim, in progress reports to the courts and supervising entities assessing the progress and appropriateness of treatment.

A licensed service provider's or RSN's mere act of treating a dangerous mentally ill offender is not negligence, and the provider's or RSN's duty of care to the client is not altered.

The limited liability applies only to the conduct of licensed service providers and RSNs and does not apply to the conduct of the state.

Votes on Final Passage:

House 97 0
Senate 45 3 (Senate amended)
House 96 0 (House concurred)

Effective: June 13, 2002