
Judiciary Committee

ESB 5800

Title: An act relating to obligations of mental health professionals.

Brief Description: Concerning obligations of mental health professionals.

Sponsors: Senator Baumgartner.

Brief Summary of Engrossed Bill

- Amends the Involuntary Treatment Act to provide that:
 - A mental health professional or an individual health care provider (professional/provider) providing mental health services to a patient has a duty to warn of a patient's violent behavior only if the patient has communicated to the professional/provider an actual threat of physical violence that poses a serious or imminent threat to the health or safety of a reasonably identifiable person or persons.
 - This duty to warn is discharged if reasonable efforts are made to communicate the threat to the person identified and law enforcement personnel.
 - No professional/provider is liable for civil damages for discharging the duty to warn or, having discharged the duty to warn, for failing to predict, warn of, or take reasonable precautions to provide protections from a patient's violent behavior so long as the professional/provider acted in good faith and without gross negligence.

Hearing Date: 3/22/17

Staff: Cece Clynch (786-7195).

Background:

Negligence Actions.

In a negligence action, the plaintiff must prove that the defendant owed him or her a legal duty and breached that duty, proximately causing the plaintiff's injury and resulting in damages.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, a person does not have a legal duty to prevent another from causing harm to a third person. However, the Washington Supreme Court (Court) has recognized an exception to this general rule where a special relationship exists between a person and either a third party or the foreseeable victim of that third party.

Duty of a Mental Health Professional.

There is common law, as well as statutory law found in the Involuntary Treatment Act (ITA), that speaks to the duty of a mental health professional with respect to third persons.

In Petersen, a 1984 decision, the Court recognized a special relationship between a mental health professional and his patient in the context of a case involving the ITA, which provides the process for the involuntary treatment, including possible confinement, of a person with a potential mental disorder. The patient in Petersen had been involuntarily committed, but was released from Western State Hospital and injured the plaintiff when he ran a red light while traveling approximately 50 to 60 miles per hour, apparently under the influence of drugs. The plaintiff maintained that the psychiatrist had a duty to seek additional confinement of the patient who remained potentially dangerous after initial hospitalization. The ITA provides that staff responsible for performing functions necessary to the administration of mental commitment laws shall not be held civilly or criminally liable for detaining or releasing a person as long as such duties are performed in good faith and without gross negligence. The Court held that mental health professionals have a duty to take reasonable precautions to protect anyone who might foreseeably be endangered by their patients with whom they have a special relationship, that the plaintiff had provided sufficient evidence of gross negligence on the part of the psychiatrist, and affirmed a jury verdict for the plaintiff.

In the 1986 Bader case, a mental health center patient shot and killed his neighbor, and the neighbor's estate filed a wrongful death suit against the center. The estate argued that a mental health center, which undertakes treatment of a mentally disturbed individual with known dangerous propensities, owes a duty to the general public at large, and it is foreseeable that such an individual may cause injury to a member of the general public. The Court of Appeals (Division III), relying upon Petersen, agreed and held that a psychiatrist or therapist has a duty to take reasonable precautions to protect any person who might foreseeably be endangered by his patient's mental problems. The court in that case remanded for trial, including on the question of fact as to the foreseeability of the patient doing what he did and the actions the center should have taken once it became aware the patient was violating conditions of his court-ordered release.

Three years after Petersen, the ITA was amended to further provide that the section providing immunity for decisions with respect to detention or release did not relieve a person from giving certain notices or the duty to warn or to take reasonable precautions to provide protection from a patient's violent behavior if the patient communicates an actual threat of physical violence against a reasonably identifiable victim or victims.

In the recent Volk case, a psychiatric outpatient killed his former girlfriend and her child and injured another child. The patient had seen the psychiatrist for nine years and sometimes expressed suicidal and homicidal ideations but never identified his girlfriend or her children as potential victims. The injured child and the estates sued the psychiatrist and the clinic. The psychiatrist admitted a special relationship existed with the patient, but denied that he owed any

duty to third persons absent the patient voicing an actual threat of physical violence against a reasonably identifiable victim. The trial court agreed and dismissed the psychiatrist and the clinic on summary judgment. In so doing, the trial court found that there were no facts to indicate that the patient had ever made specific threats against the victims and concluded that, absent specific threats, the psychiatrist had no legal duty to warn the victims.

On appeal, the Court of Appeals (Division III) directly addressed whether the immunity protections and parameters on duty found in the ITA were applicable outside of an involuntary commitment setting or, in that court's words, "whether a mental health professional's duty of care, when treating a voluntary outpatient, is limited to warning someone identified by the patient as the target of an act of violence." The majority of that court held that because the Legislature had not extended the same protections outside of the ITA, the Petersen duty applied and that there was a question of fact as to whether the mental health professional violated a duty to the patient's girlfriend and her family. The dissent, on the other hand, would have held that absent an actual threat of physical harm concerning the girlfriend and her family, there was not the necessary foreseeable risk of harm to raise a legal duty to protect and would have affirmed the grant of summary judgment.

The Supreme Court in Volk affirmed the Court of Appeals with respect to the medical negligence claim, and held that a mental health professional is under a duty to use reasonable care to protect any foreseeable victims of his or her patient, and whether the injuries to the victims in this case were foreseeable was a question of fact for the trier of fact. The dissent disagreed that the plaintiffs had presented a viable medical negligence claim, but reasoned that even if they had, the majority erred in what the dissent termed an expansion of the special relationship exception to encompass any mental health professional regardless of that person's ability or inability to exercise control over the patient.

Summary of Bill:

A new section is added to the Involuntary Treatment Act (ITA) which provides as follows:

1. A mental health professional or an individual health care provider (professional/provider) providing mental health services to a patient has a duty to warn of a patient's violent behavior only if the patient has communicated to the professional/provider an actual threat of physical violence that poses a serious or imminent threat to the health or safety of a reasonably identifiable person or persons.
2. The duty to warn of a serious or imminent threat is discharged by the professional/provider if reasonable efforts are made to communicate the threat to:
 - a. the reasonably identifiable person whose health or safety is threatened; and
 - b. law enforcement personnel.
3. No professional/provider is liable for civil damages for discharging the duty to warn or, having discharged the duty to warn as provided, for failing to predict, warn of, or take reasonable precautions to provide protections from a patient's violent behavior so long as the professional/provider acted in good faith and without gross negligence.

For purposes of this new section, the following terms are defined:

- "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse

practitioner, psychiatric nurse, social worker, or chemical dependency professional, and any person licensed by the Department of Health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate.

- "Mental health services" means voluntary or involuntary outpatient and inpatient services provided to diagnose or treat mental disorders covered by the diagnostic categories listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association, or any successor publication.

Amendments are made to existing sections within the ITA that provide: (1) civil and criminal immunity for decisions regarding commitment absent a lack of good faith and without gross negligence; (2) immunity to peace officers with respect to referral or the failure to refer; and (3) that persons are not relieved from giving certain notices or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims, and that the duty to warn or to take reasonable protections is discharged if reasonable efforts are made to communicate the threat to the identifiable victim and to law enforcement. The latter language, regarding the duty to warn and reasonable efforts to communicate the threat, is stricken from the section and a reference to the new section included in its place.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, the existing section of the Involuntary Treatment Act which is amended, which takes effect April 1, 2018, at which time the parallel section 2 expires.