

SENATE BILL REPORT

ESB 5800

As Passed Senate, March 8, 2017

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

Brief Description: Concerning obligations of mental health professionals.

Sponsors: Senator Baumgartner.

Brief History:

Committee Activity: Health Care: 2/14/17, 2/16/17 [DP, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/08/17, 33-16.

Brief Summary of Engrossed Bill

- Provides that a mental health professional providing mental health services to a patient has a duty to warn or take reasonable precautions to provide protection from a patient's violent behavior, only if the patient has made an actual threat of physical violence that poses a serious or imminent threat to the health or safety of a a reasonably identifiable person or persons.
- Provides that the duty to warn is discharged if the mental health professional makes reasonable efforts to communicate the threat to the reasonably identifiable person who is threatened and to law enforcement.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass.

Signed by Senators Rivers, Chair; Becker, Vice Chair; Cleveland, Ranking Minority Member; Bailey, Baumgartner, Fain, Mullet and Walsh.

Minority Report: Do not pass.

Signed by Senators Kuderer, Assistant Ranking Minority Member; Conway, Keiser and Miloscia.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban.

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.

Staff: Kathleen Buchli (786-7488)

Background: Under the Uniform Health Care Information Act (Act), health care providers may not disclose health care information about a patient to any other person without the patient's written authorization. The Act also provides exemptions to this prohibition. For example, a health care provider may, but is not required to, disclose health care information about a patient without the patient's authorization if the disclosure is made because the health care provider reasonably believes that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual.

Mental health care providers have a duty to warn or to take reasonable precautions to provide protection from violent behavior when a patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. This duty is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

On December 22, 2016, the Supreme Court filed its opinion on its review of the trial court's summary judgment dismissal in *Volk. v. De Meerler*. The review involved consideration of the duty that mental health professionals have to protect and warn potential victims of violence by a patient under their care. The Supreme Court held that the mental health provider shared a special relationship with his patient and the special relationship required the mental health provider to act with reasonable care, consistent with the standards of the mental health profession, to protect the foreseeable victims of the patient. The foreseeability of the victims is a question of fact and this issue was returned to the trial court to be resolved by the fact finder.

Summary of Engrossed Bill: Mental health professionals have a duty to warn or take reasonable precautions to provide protection from a patient's violent behavior only if the patient has communicated to the mental health professional 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 is discharged if reasonable efforts are made to communicate the threat to the reasonably identifiable person or persons and to law enforcement.

A mental health professional is not liable for civil damages for discharging the duty to warn or for failing to predict, warn of, or take reasonable precautions to provide protections from a patient's violent behavior so long as the mental health professional acts in good faith and without gross negligence.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This addresses the court decision which talks about warning all foreseeable victims and is a standard that is too broad. Warnings should only be provided when there is an imminent threat. There is a concern that this decision will cause mental health care professionals to not take difficult cases and there may not be enough providers to take up care of these individuals. The standard in *Volk* is unworkable in practice and the bill is more realistic and appropriate. The definition of mental health professional should include unlicensed professionals such as agency affiliated counselors. If the court decision stands, it will be harder to provide service for people who have violent thoughts and if the bill doesn't pass there will be a decrease in qualified mental health providers. *Volk* will slow integration of behavioral health into primary care settings. Family physicians will be reluctant to take these patients into their practices. The decision is a departure from current law. The foreseeability standard is new.

CON: This is not a new standard; this is consistent with previous cases and is not a change in law. *Volk* is not final; it is still in court and the Supreme Court has sent it back to the fact finder to determine if the actions were foreseeable. The immunity provisions are dangerous and it will protect those who have not tried to stop the conduct.

Persons Testifying: PRO: Seth Dawson, Washington State Psychiatric Association; Joan Miller, Washington Council for Behavioral Health; Laura Goshong, WA State Society for Clinical Social Work, WA State Coalition of MH Prof. and Consumers; Jonathan Seib, Washington Academy of Family Physicians; Taya Briley, WSHA.

CON: Larry Shannon, Washington State Association for Justice; Jack Connelly, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: No one.