

LD5308200

HOUSE BILL NO. 673

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding a section numbered 54.1-106.1, relating to mental health service providers; duty to protect third parties; immunity.

Patron—DeBoer

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 54.1-106.1 as follows:**

§ 54.1-106.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Community mental health center" means an establishment licensed under Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 which provides mental health, mental retardation and substance abuse programs and services.

"Family and marriage therapist" means a person who specializes in providing mental health services to couples and families and is professionally qualified at the autonomous practice level to provide direct diagnostic, preventive and treatment services.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Chapter 8 (§ 37.1-179 et seq.) of Title 37.1.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Mental health care" means any act, or treatment performed or furnished, or which should have been performed or furnished, by any mental health care provider for, to, or on behalf of a client during the client's diagnosis, care, treatment or confinement.

"Mental health professional" means a person who by education and experience is professionally qualified to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person, corporation, facility or institution that provides mental health care or professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, community mental health center, family and marriage therapist, hospital, licensed practical nurse, mental health professional, physician, professional counselor, psychologist, private mental health institution, registered nurse, school psychologist, social worker, state hospital, and university or college counseling center; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Private mental health institution" means an establishment which is not operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and which is licensed under Chapter 8 (§ 37.1-179 et seq.) of Title 37 for the care or treatment of mentally ill or mentally retarded persons, including psychiatric wards of general hospitals.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3600.

"State hospital" means a hospital, training school or other such institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the care and treatment of the mentally ill or mentally retarded.

"University or college counseling center" means a department operated by a university or college

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60 where mental health services, including substance abuse treatment, are provided to the students or staff
61 by a mental health service provider.

62 B. A mental health service provider has a duty to take precautions to protect third parties from
63 violent behavior or other serious harm only when the client has verbally, in writing, or via sign
64 language, communicated to the provider a specific and immediate threat to cause serious bodily injury
65 or death to an identified or readily identifiable person or persons, or serious damage to his or their
66 tangible property, if the provider reasonably believes, or should believe according to the standards of
67 his profession, that the client has the intent and ability to carry out that threat immediately or in the
68 near future. If the third party is a child, in addition to taking precautions to protect the child from the
69 behaviors in the above types of threats, the provider also has a duty to take precautions to protect the
70 child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse
71 as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated
72 to the provider by the threatening client while the provider is engaged in his professional duties.

73 C. The duty is discharged by a mental health service provider who takes one or more of the
74 following actions:

75 1. Seeks civil commitment of the client under Chapter 2 (§ 37.1-63 et seq.) of Title 37.1.

76 2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential
77 victim if the potential victim is under the age of eighteen.

78 3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or
79 potential victim's place of residence or place of work, or place of work of the parent or guardian if the
80 potential victim is under age eighteen, or both.

81 4. Takes steps reasonably available to the provider to prevent the client from using physical violence
82 or other means of harm to others or their tangible property until the appropriate law-enforcement
83 agency can be summoned and takes custody of the client .

84 5. Provides therapy or counseling to the client or patient in the session in which the threat has been
85 communicated until the mental health service provider reasonably believes that the client no longer has
86 the intent or the ability to carry out the threat.

87 6. Reports the threat of physical violence or other means of harm, within a reasonable period of time
88 after receiving knowledge of the threat, to a supervising physician or psychologist who is designated by
89 the employer of the mental health service provider as an individual who has the responsibility to protect
90 under this section. The supervising physician or psychologist shall discharge his duty by taking one or
91 more of the above five actions enumerated in this subsection.

92 D. A mental health service provider or supervising physician or psychologist shall not be held civilly
93 liable to any person for:

94 1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the
95 threats described in subsection B made by his clients to potential third party victims or law-enforcement
96 agencies.

97 2. Failing to predict, in the absence of a threat described in subsection B, that the client would
98 cause the third party serious physical harm or seriously damage his tangible personal property.

99 3. Failing to take precautions other than those enumerated in subsection C to protect a potential
100 third party victim or his tangible property from the client's violent behavior.