

LD4360200

HOUSE BILL NO. 673

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 8, 1994)

(Patron Prior to Substitute—Delegate DeBoer)

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.

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.

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

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia 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 who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed practical nurse, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"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.

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

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

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

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

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

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

5. Provides therapy or counseling to the client or patient in the session in which the threat has been

60 *communicated until the mental health service provider reasonably believes that the client no longer has*
61 *the intent or the ability to carry out the threat.*

62 *D. A mental health service provider shall not be held civilly liable to any person for:*

63 *1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the*
64 *threats described in subsection B made by his clients to potential third party victims or law-enforcement*
65 *agencies or by taking any of the actions specified in subsection C.*

66 *2. Failing to predict, in the absence of a threat described in subsection B, that the client would*
67 *cause the third party serious physical harm.*

68 *3. Failing to take precautions other than those enumerated in subsection C to protect a potential*
69 *third party victim from the client's violent behavior.*