

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1746

5 By: Representatives Clemmer, Ferguson, Magie
6 By: Senator Bledsoe
7

For An Act To Be Entitled

9 AN ACT TO REQUIRE A MENTAL HEALTH SERVICES PROVIDER
10 TO WARN AN INTENDED VICTIM AND A LAW ENFORCEMENT
11 AGENCY OF A CREDIBLE THREAT BY A PATIENT; AND FOR
12 OTHER PURPOSES.
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Subtitle

15 TO REQUIRE A MENTAL HEALTH SERVICES
16 PROVIDER TO WARN AN INTENDED VICTIM AND A
17 LAW ENFORCEMENT AGENCY OF A CREDIBLE
18 THREAT BY A PATIENT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code Title 20, Chapter 45, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 2. Mental Health Services Provider Duty to Warn.
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28 20-45-201. Definitions

29 As used in this subchapter:

30 (1) "Licensed certified social worker" means a licensed
31 certified social worker licensed by the Arkansas Social Work Licensing Board
32 under § 17-103-306(c) who provides mental health services;

33 (2) "Licensed marriage and family therapist" means a licensed
34 marriage and family therapist licensed by the Arkansas Board of Examiners in
35 Counseling under § 17-27-303 or 17-27-304 who provides mental health
36 services;



1 (3) "Licensed professional counselor" means a licensed
 2 professional counselor licensed by the Arkansas Board of Examiners in
 3 Counseling under § 17-27-301 who provides mental health services;

4 (4) "Mental health services provider" means a licensed certified
 5 social worker, licensed marriage and family therapist, licensed professional
 6 counselor, physician, psychologist, or registered nurse who provides mental
 7 health services;

8 (5) "Patient" means an individual with whom a mental health
 9 services provider has established a patient care provider relationship;

10 (6) "Physician" means a physician licensed by the Arkansas State
 11 Medical Board who provides mental health services;

12 (7) "Psychologist" means a psychologist licensed by the Arkansas
 13 Psychology Board who provides mental health services; and

14 (8) "Registered nurse" means a registered nurse licensed by the
 15 Arkansas State Board of Nursing who provides mental health services.

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 17 20-45-202. Duty of mental health services provider to take precautions
 18 against threatened patient violence – Duty to warn.

19 (a) A mental health services provider is not subject to monetary
 20 liability and a cause of action shall not arise against a mental health
 21 services provider on grounds that the mental health services provider did not
 22 prevent harm to an individual or to property caused by a patient if:

23 (1) The patient communicates to the mental health services
 24 provider an explicit and imminent threat to kill or seriously injure a
 25 clearly or reasonably identifiable potential victim or to commit a specific
 26 violent act or to destroy property under circumstances that could easily lead
 27 to serious personal injury or death and the patient has an apparent intent
 28 and ability to carry out the threat; and

29 (2) The mental health services provider takes the precautions
 30 specified in subsection (b) of this section in an attempt to prevent the
 31 threatened harm.

32 (b) A duty owed by a mental health services provider to take
 33 reasonable precautions to prevent harm threatened by a patient is discharged,
 34 as a matter of law, if the mental health services provider in a timely
 35 manner:

36 (1)(A) Notifies:

1 (i) A law enforcement agency in the county in which
 2 the potential victim resides;

3 (ii) A law enforcement agency in the county in which
 4 the patient resides; or

5 (iii) The Department of Arkansas State Police; and

6 (B) Communicates the threat of death or serious bodily
 7 injury to the clearly identified potential victim or victims, including
 8 without limitation:

9 (i) The identity of each potential victim or victims
 10 of the threat;

11 (ii) The identity of the mental health client or
 12 patient making the threat; and

13 (iii) The nature of the threat; or

14 (2) Arranges for the patient's immediate voluntary or
 15 involuntary hospitalization.

16 (c) If the victim is under eighteen (18) years of age, the mental
 17 health services provider, in addition to taking one (1) or more actions under
 18 subsection (b) of this section, shall make a reasonable effort to communicate
 19 the threat to the potential victim's custodial parent, noncustodial parent,
 20 or legal guardian.

21 (d) If a patient who is under eighteen (18) years of age threatens to
 22 commit suicide or bodily harm upon himself or herself, the mental health
 23 services provider shall make a reasonable effort to communicate the threat to
 24 the patient's custodial parent, noncustodial parent, or legal guardian.

25 (e) A cause of action, either criminal or civil, shall not arise
 26 against a mental health services provider for disclosing a confidential
 27 communication made by or relating to a patient, if the patient has explicitly
 28 threatened to cause serious harm to an individual or to property or if the
 29 mental health services provider concludes that the patient is likely to cause
 30 serious harm to an individual or to property,

31 (f)(1) If a patient in the custody of a hospital or other facility
 32 threatens to harm an individual or property, the mental health services
 33 provider and the hospital or other facility shall consider and evaluate the
 34 threat before discharging the patient.

35 (2) Under subdivision (f)(1) of this section, the mental health
 36 services provider may inform an appropriate law enforcement agency or the

1 victim of the threat.

2 (g) Subsections (a) and (d) of this section apply to a hospital or
3 facility that has custody of a patient who has made or makes a threat to harm
4 an individual or property.

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