

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: H3/8/13 S4/4/13
A Bill

HOUSE BILL 1746

By: Representatives Clemmer, Ferguson, Magie
By: Senator Bledsoe

For An Act To Be Entitled

AN ACT TO REQUIRE A MENTAL HEALTH SERVICES PROVIDER
TO WARN A LAW ENFORCEMENT AGENCY OF A CREDIBLE THREAT
BY A PATIENT; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE A MENTAL HEALTH SERVICES
PROVIDER TO WARN A LAW ENFORCEMENT AGENCY
OF A CREDIBLE THREAT BY A PATIENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 45, is amended to add an additional subchapter to read as follows:

Subchapter 2. Mental Health Services Provider Duty to Warn.

20-45-201. Definitions

As used in this subchapter:

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

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

(3) "Licensed professional counselor" means a licensed professional counselor licensed by the Arkansas Board of Examiners in



Counseling under § 17-27-301 who provides mental health services;

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

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

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

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

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

(B) "Registered nurse" includes an advanced practice nurse.

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

(a) A mental health services provider, hospital, facility, community mental health center, or clinic is not subject to liability, suit, or a claim under § 19-10-204 on grounds that a mental health services provider did not prevent harm to an individual or to property caused by a patient if:

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

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

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

(1) Notifies:

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

(B) A law enforcement agency in the county in which the patient resides; or

(C) The Department of Arkansas State Police; or

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

(c)(1) If a patient who is under eighteen (18) years of age threatens to commit suicide or serious or life-threatening bodily harm upon himself or herself, the mental health services provider shall make a reasonable effort to communicate the threat to the patient's custodial parent.

(2) If the mental health services provider is unable to contact the patient's custodial parent within a reasonable time, the mental health services provider shall make a reasonable effort to communicate the threat to the patient's noncustodial parent or legal guardian.

(d) A mental health services provider, hospital, facility, community mental health center, or clinic is not subject to liability, suit, or claim under § 19-10-204 for disclosing a confidential communication made by or relating to a patient if the patient has explicitly threatened to cause serious harm to an individual or to property under circumstance that could easily lead to serious personal injury or death or if the provider has a reasonable belief that the patient poses a credible threat of serious harm to an individual or to property.

(e)(1) If a patient in the custody of a hospital, community mental health center, or other facility threatens to harm an individual or property, the mental health services provider and the staff of the hospital, community mental health center, or other facility shall consider and evaluate the threat before discharging the patient.

(2) Under subdivision (e)(1) of this section, the mental health services provider may inform an appropriate law enforcement agency and the victim of the threat.

(f) Subsections (a) and (c) of this section apply to a hospital or facility that has custody of a patient who has made or makes a threat to harm an individual or property.

/s/Clemmer