House Committee on Judiciary
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Thank you for the opportunity to speak with you today on S.3 Duty to Warn bill, as it will have major implications on how mental health professionals practice if areas of concern are not recognized and discussed. I have spent the last 16 years both providing direct emergency care to people in both New York and Vermont, as well as managing and leading crisis programs in both states. For the last 5 years, I have been the Director of Acute Care services at the Clara Martin Center, and am also the current chair of the statewide Emergency Services Director's group.

In that time, the work that emergency services has done has followed the standards established in the Peck decision, and that understanding has been shared amongst the DA system providers, inpatient providers, and community partners. It allowed clients the ability to form trusting relationships with their therapists, where issues they were addressing could be discussed openly and honestly in a confidential setting, with the understanding that if there were ever an imminent threat revealed towards an identified person, the therapist had a responsibility to act on that threat. The role of the clinician in these situations was discussed with the client at the time they first begin services.

The decision made by the court in regards to the Kuligoski case, has had many consequences on how care is delivered across the spectrum of services, and has increased stigma against those with mental health concerns. What has begun to happen with more frequency is a twofold issue. From an inpatient perspective, we are hearing about delays in discharging clients to community based care, as the ruling has increased the liability for both hospitals and caregivers if a situation were to occur, even though future behavior cannot be predicted, so holds both entities to a limitless standard of care with situations that are fluid and always changing.

The Emergency Services Director's group has discussed the implications for the ruling, and have asked each other to assess how our screeners are addressing the standard newly established from the court decision. The consensus is that while the ruling does not appear to have altered the threshold for screeners on when they determine someone appropriate for both voluntary and involuntary inpatient care, it has raised concerns around the liability of discharging someone from an emergency room, and has resulted in situations where screeners have determined that the situation does not rise above the threshold for an Emergency Exam, but the Emergency Room Medical Doctor is not willing to discharge the client, having the potential of holding clients in emergency rooms for longer than needed as the situation continues to evolve.

As we work to combat stigma against those with mental health concerns, the implications of the current law directly challenge those efforts. With the expectation that mental health professionals now must inform anyone identified in the undefined "zone of danger" when a client is to remain in the community, it sends the message that people with mental health issues are unsafe, even though the risk of violence from people with mental health issues is no more pronounced than the risk of violence from the general public. As mental health professionals now must reveal confidential information on client beyond periods of imminent risk, it puts them in direct violation of federal privacy laws.