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# S.3 – An Act Relating to Mental Health Professionals’ Duty to Warn

Wilda L. White, Executive Director  
Vermont Psychiatric Survivors, Inc.  
House Committee on Judiciary  
April 19, 2017

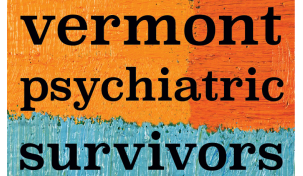
# About Wilda White

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- Executive Director, Vermont Psychiatric Survivors since July 2015
- Trial attorney licensed to practice in NY, CA and MA
- Psychiatric Survivor
- Member of broad group concerned about adverse impacts of *Kuligoski* decision

# Subject of Today's Testimony

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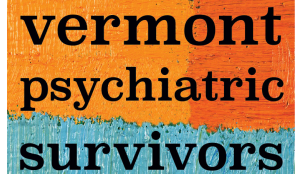


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- Impact of *Kuligoski* on patients and clients
- Impact on caregivers
- How proposed stakeholder statutory language improves upon Senate Bill No. 3

# *Kuligoski* Decision Summary

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The logo for Vermont Psychiatric Survivors is a square with a textured background. The top half is orange and the bottom half is blue. The text "vermont psychiatric survivors" is written in a white, sans-serif font, stacked vertically across the square.

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“Duty to provide information” to caregivers to “enable [the caregivers] to fulfill their role in keeping (the patient) safe” if that patient has violent propensities and “the caregiver is ... within the zone of danger of the patient’s violent propensities.”

# Who are patients impacted by *Kuligoski*?

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- About 10% of Vermonters (62,751) receive mental health services
- Includes people from all walks of life
- Common thread among us is discrimination we suffer based on mental health diagnosis or challenges, real or perceived

# Employment Discrimination

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## Employers -

- 50% are reluctant to hire someone with a past psychiatric history
- ~70% are reluctant to hire someone currently taking antipsychotic medication
- 25% would dismiss someone who had not disclosed a mental illness

# Housing Discrimination

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## Housing -

- 33% of Americans unwilling to have people with mental health problems as neighbors, friends or residents in a nearby group home
- Landlords are reluctant to rent to people with mental health diagnoses

Martin et al. Of Fear and Loathing: The Role of 'Disturbing Behavior,' Labels, and Casual Attributions in Shaping Public Attitudes Toward People with Mental Illness. *Journal of Health and Social Behavior* 2000, Vol 41 (June):08

# Discrimination Driven by Misconceptions

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- Mental illness alone does not increase the chances that a person will become violent
- Media report violence disproportionate to actual rates of violence
- Disproportionate emphasis leads to public policies that penalize people with mental health challenges

*Archives of General Psychiatry* (Vol. 66, No. 2) 2009.

McGinty, E et al. Trends in News Media Coverage of Mental Illness in the United States: 1995 – 2014. *Health Aff* (Millwood). 2016 June 1; 35(6):1121-1120



# *Kuligoski* and Senate S.3 Perpetuate Discrimination

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- Singling out mental health providers perpetuates a false belief about a link between mental illness and violence
- Operate as a license to discriminate in housing and employment
- Uncertainty of *Kuligoski* duty threatens the therapeutic alliance between mental health professionals and their clients and patients

# *Kuligoski* and Caregivers

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- Caregiver is actively engaging with the patient's provider in connection with the patient's care or treatment plan
- Provider substantially relies on that caregiver's ongoing participation
- Caregiver is himself or herself within the zone of danger of the patient's violent propensities

# Examples of Caregiver Actively Engaging

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- Mental health provider asks “caregiver” to remind patient to take medication
- Mental health provider asks “caregiver” to monitor patient/client for reaction to medication
- Mental health provider asks “caregiver” to assess patient/client’s mood

# Impact on Caregivers

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- Blamed by doctor and patient/client
- Sued by third-party
- Wracked with guilt
- Families torn apart
- Caregivers decline to cooperate or be helpful
- Clients/Patients lose critical support

# Senate S.3 Shortcomings

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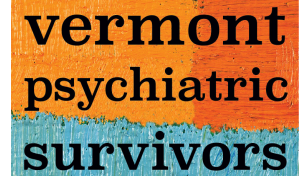
- Does not clearly abrogate or negate *Kuligoski*
- Perpetuates false belief about link between mental illness and violence, thereby reinforcing discrimination
- Creates a risk of legal liability for caregivers
- Creates a new, undefined standard for hospitals and residential facilities (i.e., “necessary information”)

# Proposed Stakeholder Draft

- Clearly abrogates *Kuligoski* (p. 4, Sec. 2(a))
- Does not perpetuate false belief of link between mental illness and violence (p. 1, Sec. 1(1))
- Does not operate as a **statutory** license to discriminate (p. 4, Sec. 2(b))
- Does not threaten caregivers with legal liability; risk of liability remains with mental health professionals through discharge planning rules and regulations (p. 4, Sec. 2(c))

# Contact Information

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