

S.3: An act relating to mental health professionals' duty to warn

Side by Side Summary

	As Passed Senate	As Passed House Judiciary
Findings	[Not present in Senate version]	<p><u>Sec. 1</u></p> <ul style="list-style-type: none"> • Majority of people diagnosed with mental illness are not more likely to be violent than other persons • Generally, there is no legal duty to control the conduct of another to protect a 3rd person from harm; <i>Peck</i> recognized an exception where a special relationship exists between two people, such as MH professional and patient or client • <i>Peck</i> has been understood and applied by MH professionals for 30+ years • <i>Kuligoski</i> created a duty for MH professionals to provide information to caregivers to enable them to fulfill their role in keeping the patient safe if that patient has violent propensities and the caregiver is within the zone of danger • <i>Kuligoski</i> is seen as unworkable by MH professionals because: <ul style="list-style-type: none"> ○ It does not require that the risk be serious or imminent ○ It does not require that the prospective victim be identifiable ○ It singles out caregivers and potentially creates a situation in which they could be held liable for the actions of persons for whom they are caring ○ It imposes a duty on facilities and MH professionals to protect the public from patients and clients who are no longer in their care and control
Legislative Intent	<p><u>Sec. 1</u></p> <ul style="list-style-type: none"> • It is the GA's intent to respond to <i>Kuligoski</i> by clarifying a MH professional's duty to disclose information concerning a client or patient in certain circumstances 	<p><u>Sec. 2, subsection (a)</u></p> <ul style="list-style-type: none"> • It is the GA's intent to negate <i>Kuligoski</i> and limit MH professionals' duty to that as established in common law in <i>Peck</i>

<p>MH Professionals’ Duty</p>	<p><u>Sec. 2, subsection (a)</u></p> <ul style="list-style-type: none"> • A MH professional has a duty to exercise reasonable care to protect an identifiable victim or property from danger when the MH professional knows or based upon the standards of his or her respective MH profession, should know that his or her client or patient poses: <ul style="list-style-type: none"> ○ An imminent risk of serious danger to the identifiable victim; or ○ An imminent risk to property to the extent that the risk represents a lethal threat to a person in the vicinity of the property 	<p><u>Sec. 2, subsection (a)(1)</u></p> <ul style="list-style-type: none"> • A MH professional’s duty is established in common law by <i>Peck</i>, which states that “a mental health professional who knows or, based upon the standards of the mental health profession, should know that his or her patient poses a serious risk of danger to an identifiable victim has a duty to exercise reasonable care to protect him or her from that danger” • The duty shall be applied in accordance with State/federal privacy and confidentiality laws
<p>Duty & Liability</p>	<p><u>Sec. 2, subsection (a)(2)</u></p> <ul style="list-style-type: none"> • In discharging their duty in good faith: <ul style="list-style-type: none"> ○ No cause of action against a MH professional shall arise concerning client or patient privacy or confidentiality for disclosing information to 3rd parties ○ A MH professional shall not be subject to criminal or civil liability 	<p>[Not present in House version]</p>
<p>Standards of the MH Profession</p>	<p><u>Sec. 2, subsection (b)</u></p> <ul style="list-style-type: none"> • A MH professional shall not be required to violate the standards of his or her respective MH profession in disclosing information pursuant to this section 	<p>[Not present in House version]</p>
<p>Discharge Plans & Liability</p>	<p><u>Sec. 3</u></p> <ul style="list-style-type: none"> • To the extent permitted under State & federal laws, a MH professional discharging a patient/client from a psychiatric inpatient hospital or residential setting shall include in the discharge plan all necessary info on the client/patient’s condition to enable the person to carry out discharge functions • No cause of action against a MH professional shall arise concerning client or patient privacy/confidentiality for disclosing info to 3rd parties pursuant to this section 	<p><u>Sec. 2, subsection (c)</u></p> <ul style="list-style-type: none"> • No limit or restriction on claims under State and federal law related to safe patient care, including: <ul style="list-style-type: none"> ○ Discharge planning regulations w/in COP for hospitals ○ Patient care regulations for other federally certified facilities ○ Emergency Medical Treatment & Active Labor Act ○ Professional licensing standards ○ Facility licensing standards
<p>Communication with Individuals Involved in Care</p>	<p>[Not present in Senate version]</p>	<p><u>Sec. 2, subsection (d)</u></p> <ul style="list-style-type: none"> • To the extent permitted under federal law, this act does not affect the requirements for MH professional to communicate with individuals involved in a patient’s care in a manner that is consistent with legal and professional standards
<p>Effective Date</p>	<ul style="list-style-type: none"> • On passage 	<p>[Same as Senate version]</p>

