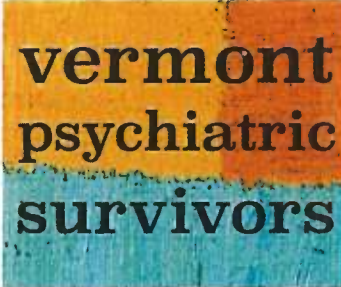


S.3 – Duty to Warn

Testimony of Wilda L. White
Senate Committee on Judiciary
Wednesday, January 18, 2017



**vermont
psychiatric
survivors**

Vermont Psychiatric Survivors, Inc.

Vermont Psychiatric Survivors, Inc. is a statewide, mutual support and civil rights advocacy organization run by and for psychiatric survivors.



Founded in 1983, our primary purpose is to insure the equal rights, protection and participation of people marginalized by psychiatric diagnoses and labels.

Fear and Prejudice

- 68 percent of Americans do not want someone with a mental illness marrying into their family and 58 percent do not want people with mental illness in their workplaces. (*Journal of Health and Social Behavior* (Vol. 41, No. 2))
- People are twice as likely today than they were in 1950 to believe that people with psychiatric diagnoses tend to be violent.

Mental Illness Does not Increase Chance of Violence

- The vast majority of people with mental illness are not violent—though they are 2.5 times more likely to be victims of violence than members of the general population. *International Journal of Law and Psychiatry* (Vol. 24, No. 6).
- 2009 study published in the *Archives of General Psychiatry* (Vol. 66, No. 2) finds that mental illness alone does not increase the chances that a person will become violent.

Discrimination in Employment

- Most people with psychiatric diagnoses considered serious and persistent are willing and able to work
- Surveys of US employers show 50% of them are reluctant to hire someone with past psychiatric history; approximately 70% are reluctant to hire someone currently taking antipsychotic medication; 25% would dismiss someone who had not disclosed a mental illness

Citation: Mental Illness and Employment Discrimination, Heather Stuart, Curr Opin Psychiatry. 2006; 19(5):522-526.

Source of Duty to Warn

- “Legal duties are not discoverable facts of nature but merely conclusory expressions that in particular type of cases, liability should be imposed for damage done.”
- “Duty is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.”
- Citation: *Tarasoff v. Regents of UC (1976) 551 P.2d 334*

Current Draft of S.3

- May perpetuate and be used to justify fear, prejudice and discrimination against people with psychiatric diagnoses
- Appears inconsistent with the Duty to Protect as stated in *Peck v. Counseling Service of Addison County, Inc.*

Draft Proposal

- a) No cause of action shall arise against any mental health professional as defined in 18 VSA §7101 (13) for failing to warn, notify, train or counsel the caretakers of a patient or client about risks a patient or client may pose except where the mental health professional determines, or based on the standards of the mental health profession should have determined, that the client or patient poses a serious risk of danger to a reasonably identifiable person or persons.
- b) This section creates no cause of action.
- c) It is the intent of the legislature in enacting this section to abrogate the decision in *Kuligoski v. Brattleboro Retreat et al.*, 2016 VT 54A, No. 2014-396.

Mental Health Professional, Defined

“Mental health professional” means a person with professional training, experience, and demonstrated competence in the treatment of mental illness, who shall be a physician, psychologist, social worker, mental health counselor, nurse or other qualified person designated by the commissioner.”

18 VSA Section 7101(13)