

1 S.3

2 Introduced by Senators Sears, Ayer, and White

3 Referred to Committee on

4 Date:

5 Subject: Human services; mental health; duty to warn

6 Statement of purpose of bill as introduced: This bill proposes to impose a duty

7 on mental health professionals to take reasonable precautions when a patient

8 ~~poses an imminent foreseeable risk of serious danger harm to a reasonably
identifiable victimself or others.~~

8

9 An act relating to mental health professionals' duty to warn

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. LEGISLATIVE INTENT

12 ~~It is the intent of the General Assembly in this act to overrule clarify the Vermont
law~~

13 ~~Supreme Court's on the subject of the Supreme Court's decision in *Kuligoski v.*
Brattleboro Retreat, 2016 VT 54A.~~

14 ~~2016 VT 54A In *Kuligoski*, the Court held that a psychiatric hospital and designated
agency~~

15 agency had a duty to inform parents caring for a recently discharged patient of the
16 patient's risk of harm to himself and others and to provide information on
17 managing the patient's ongoing treatment. In this act, the General Assembly
18 ~~responds to the Kuligoski decision by clarifying that a mental health~~
19 ~~professional's duty to warn is triggered when there is an imminent risk of~~
18 ~~serious danger to an identifiable victim, but does not require a mental health adopting~~
~~the principle that mental health care~~
1 ~~provide appropriate information, as measured by the standards of the mental health~~
1 ~~profession, to patients and caretakers of patients.~~
2

~~2 professional to otherwise train or advise caregivers or to take other precautions
3 to protect an unidentifiable victim or victims or property from a client's or
4 patient's behavior.~~

53 §Sec. 2. 18 V.S.A. § 7115 is added to read:

64 § 7115. MENTAL HEALTH PROFESSIONAL; DUTY TO WARN

75 (a) A mental health professional, as defined in section 7101 of this title,

86 who knows or, based upon the standards of his or her respective mental health

97 profession, should know that his or her client or patient poses an ~~imminent~~
foreseeable risk

108 of ~~serious danger~~harm or injury to ~~an identifiable victim~~his or herself or another ~~has~~
a duty to exercise reasonable

119 ~~care to protect the identifiable victim from that danger.~~

1210 (b) A mental health professional may discharge his or her duty to exercise

13 reasonable care to protect an identifiable victim by:

14 (1) ~~communicating the serious risk of danger to the identified victim or~~

15 ~~victims; or~~

16 (2) ~~notifying an appropriate law enforcement agency of the serious risk~~

17 ~~of danger to the identified victim or victims.~~

18 (c) ~~No cause of action against a mental health professional shall arise~~

- 19 ~~concerning client or patient privacy or confidentiality for disclosing~~

- 20 ~~information to third parties in order to discharge the duty described in~~

- 21 ~~subsection (a) of this section.~~

~~1 (d) Except as directed in subsection (a) of this section, a mental health
2 professional shall not have a duty to warn, train, or counsel the caretakers of a
3 patient or client, nor otherwise take precautions to protect a person or property
11 from any behavior of the patient or client by meeting the standard of due care
established in the mental health
412 profession.~~

~~513 Sec. 3. EFFECTIVE DATE~~

~~614 This act shall take effect on passage.~~