

William R. Moore, Firearms Policy Analyst

Vermont Traditions Coalition

vermonttraditions.org

Some preliminary background on Rep. Notte's Strike All Amendments:

Essentially the Notte Amendments (see attached) will radically extend the "duty to notify" or "duty to protect" for ERPO Statutes to a demand-side incursion into the Doctor-Patient realm. Currently, citizens, abuse victims, the family and spouses may initiate with State's Attorneys these Red Flag orders. The proposal would irreparably harm the confidentiality between all patients in most types of counseling (including depression, addiction recovery, family members seeking help with anger management - perhaps court ordered). Even the debate of these amendments will leak to people now considering seeking help and trigger fear that discussion about suicidal thoughts and ideations will trigger the automatic filing of ERPOs via the source of their Counselors and Doctors. As with the similar problems with H.610 and Judges feeling pressured to "Check the Box" on all case, mental health care providers will fear the risks of not erring on the side of "duty to protect". Existing liability protections for Practitioners who do report threats to others are apparently base largely on the *Peck v. Counseling Services* case Cited below.

Peck V. Counseling Services appears to balance confidentiality in a way that creates and protects Practitioners who feel compelled to "warn" those in danger with continuation of care under a confidential model:

"In the same manner that due care must be exercised in the therapist's determination of what steps may be necessary to protect the potential victim of a patient's threat of harm, so too must due care be exercised in order to insure that only that information which is necessary to protect the potential victim is revealed.

Thus, we hold 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."

NOTHING in that statement veers away from the balanced needs and minimal disclosure "necessary to protect the potential victim of a patient's threat of harm" and certainly does not suggest any public disclosure in a Vermont Court of Public Record and De Facto Warrant such as an ERPO. If the possible victim or the family then wishes to engage at the ERPO process already in statute that decision is theirs and NOT the Practitioners to make. Existing ERPO statute allows for a seamless process at that point.

Vermont Law may or may not be adequate in this complex area but it is Certainly Not the purview of the Judiciary Committee to open the debate of the complexities of the care model here. I expect the basis for proposing this complex change within a notoriously useless Gun Free Zone Bill is the beginning of a "Remote Session" Christmas Tree effort. We must stop all of this here and now. Remote is not Legislating, it is barely a Fiscal Caretaker and pretty piss poor at that.

Vermont and the nation are experiencing explosive rises in depression, suicides, addiction trauma, and related Lockdown Post Traumatic Stress. Encouraging mental health care access and outreach is the prescription for dealing with these. This amendment sends the opposite message and will cause harm. Post lockdown trauma is real and the answer is not more trauma...

See Peck v. Counseling Serv. Of Addison County, Inc., 499 A.2d 422 (1985) for interpretation of duty - appears to apply to threats to real property in addition to threats to people.

<https://law.justia.com/cases/vermont/supreme-court/1985/83-062-0.html>

National Map of similar/lesser legal standards:

<https://www.ncsl.org/research/health/mental-health-professionals-duty-to-warn.aspx>

Excerpted 18 VSA 9432 as Cited in Notte Amendments:

<https://legislature.vermont.gov/statutes/section/18/221/09432>

(8) "Health care **facility**" means all persons or institutions, including mobile facilities, whether public or private, proprietary or not for profit, which offer diagnosis, treatment, inpatient, or ambulatory care to two or more unrelated persons, and the buildings in which those services are offered. *The term shall not apply to any institution operated by religious groups relying solely on spiritual means through prayer for healing, but shall include:*

(A) hospitals, including general hospitals, mental hospitals, chronic disease facilities, birthing centers, maternity hospitals, and psychiatric facilities including any hospital conducted, maintained, or operated by the State of Vermont, or its subdivisions, or a duly authorized agency thereof;

(B) nursing homes, health maintenance organizations, home health agencies, outpatient diagnostic or therapy programs, kidney disease treatment centers, mental health agencies or centers, diagnostic imaging facilities, independent diagnostic laboratories, cardiac catheterization laboratories, radiation therapy facilities, or any inpatient or ambulatory surgical, diagnostic, or treatment center.

(9) *"Health care provider" means a person, partnership, corporation, **facility**, or institution, licensed or certified or authorized by law to provide professional health care service in this State to an individual during that individual's medical care, treatment, or confinement.*