

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 risk of serious danger to a reasonably identifiable victim.

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 the Vermont  
13 Supreme Court's decision in Kuligoski v. Brattleboro Retreat, 2016 VT 54A.  
14 In Kuligoski, the Court held that a psychiatric hospital and designated agency  
15 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  
20 serious danger to an identifiable victim, but does not require a mental health

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

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

5 § 7115. MENTAL HEALTH PROFESSIONAL; DUTY TO WARN

6 (a) A mental health professional, as defined in section 7101 of this title,  
7 who knows or, based upon the standards of his or her respective mental health  
8 profession, should know that his or her client or patient poses an imminent risk  
9 of serious danger to an identifiable victim has a duty to exercise reasonable  
10 care to protect the identifiable victim from that danger.

11 (b) A mental health professional may discharge his or her duty to exercise  
12 reasonable care to protect an identifiable victim by:

13 (1) communicating the serious risk of danger to the identified victim or  
14 victims; or

15 (2) notifying an appropriate law enforcement agency of the serious risk  
16 of danger to the identified victim or victims.

17 (c) No cause of action against a mental health professional shall arise  
18 concerning client or patient privacy or confidentiality for disclosing  
19 information to third parties in order to discharge the duty described in  
20 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  
4        from any behavior of the patient or client.

5        Sec. 3. EFFECTIVE DATE

6        This act shall take effect on passage.