
Judiciary Committee

HB 2672

Title: An act relating to limiting the liability of providers of treatment to high risk offenders.

Brief Description: Limiting the liability of providers of treatment to high risk offenders.

Sponsors: Representatives Kirby, O'Brien, Ballasiotes, Morell, Darneille, Lovick and Kagi.

Brief Summary of Bill

- Provides that a mental health service provider or regional support network treating a dangerous mentally ill offender is not civilly liable for injury caused by the client unless the provider's or network's act constituted: (a) gross negligence; (b) willful or wanton misconduct; or (c) a breach of the duty to warn.

Hearing Date: 2/7/02

Staff: Trudes Hutcheson (786-7384).

Background:

Dangerous Mentally Ill Offenders (DMIO)

In 1999, the legislature enacted the Dangerous Mentally Ill Offender Act. It requires the Department of Corrections (DOC) to identify offenders in confinement who: (1) are reasonably believed to be dangerous to themselves or others, and (2) have a mental disorder. In determining an offender's dangerousness, the DOC must consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness.

Prior to the offender's release, the DOC must create a team consisting of representatives from the DOC, regional support networks (RSN), appropriate divisions of the Department of Social and Health Services (DSHS), and other providers to develop a plan for delivery of treatment and support services to the offender upon release.

The team can propose any appropriate plan including: (1) evaluation of the offender by the county designated mental health professional (CDMHP) for involuntary civil commitment for

inpatient treatment; (2) department-supervised community treatment; or (3) voluntary community mental health or chemical dependency treatment.

If the team recommends evaluation by a CDMHP, the offender's criminal history, history of involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment must be forwarded to the CDMHP.

The CDMHP may recommend a less restrictive alternative to total civil commitment, in which case the offender is required to appear at a facility for treatment.

Providers Subject to Civil Actions for Damages

One of the essential elements in an action for negligence that the plaintiff must show is the existence of a legal duty that the defendant owed to the plaintiff. A person owing a duty to another may be liable for negligence if the plaintiff shows that the person breached his or her duty, the breach was the proximate cause of the person's injuries, and that damages were incurred.

Generally, a person does not have a duty to protect others from the criminal acts of third persons. However, Washington courts have recognized an exception to this general rule where a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party. Whether a person has a duty to protect another from the intentional acts of a third person, therefore, depends upon the relationship between the parties and the extent to which the third party's conduct was foreseeable.

Washington's supreme court has held that a therapist may incur a duty to take reasonable precautions to protect another person who might foreseeably be endangered by the patient's mental illness. *Petersen v. State*, 100 Wn.2d 421 (1983). Case law has suggested that reasonable precautions may include warning the person in danger or notifying law enforcement.

Gross negligence is negligence substantially and appreciably greater than ordinary negligence. Willful or wanton misconduct is intentional activity done in reckless disregard of the consequences under circumstances such that a reasonable person would know that substantial harm to another is highly likely.

Summary of Bill:

A mental health service provider or regional support network acting in the course of the provider's or network's duties, is not liable for civil damages resulting from injury or death by a dangerous mentally ill offender who is a client, unless the act or omission of the provider or network constitutes:

- (a) gross negligence;
- (b) willful or wanton misconduct; or
- (c) a breach of the duty to warn and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably

ascertainable victim.

The mental health service provider and network shall report an offender's expressions of intent to harm or other predatory behavior, whether or not there is a reasonably ascertainable victim, in progress reports to the courts and supervising entities assessing and the progress and appropriateness of treatment.

A mental health service provider's or network's mere act of treating a dangerous mentally ill offender is not negligence, and the provider's or network's duty of care to the client is not altered.

The limited liability applies only to the conduct of mental health service providers and regional support networks and does not apply to the conduct of the state.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.