

SB 5800 - S AMD 129  
By Senator O'Ban

ADOPTED 03/08/2017

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 71.05  
4 RCW to read as follows:

5 (1) As used in this section:

6 (a) "Mental health professional" means a psychiatrist,  
7 psychologist, physician assistant working with a supervising  
8 psychiatrist, psychiatric advanced registered nurse practitioner,  
9 psychiatric nurse, social worker, or chemical dependency  
10 professional, and any person licensed by the department of health as  
11 a mental health counselor, mental health counselor associate,  
12 marriage and family therapist, or marriage and family therapist  
13 associate.

14 (b) "Mental health services" means voluntary or involuntary  
15 outpatient and inpatient services provided to diagnose or treat  
16 mental disorders covered by the diagnostic categories listed in the  
17 most current version of the diagnostic and statistical manual of  
18 mental disorders, published by the American psychiatric association,  
19 or any successor publication.

20 (2) A mental health professional or an individual health care  
21 provider providing mental health services to a patient has a duty to  
22 warn of a patient's violent behavior only if the patient has  
23 communicated to the mental health professional or the individual  
24 health care provider providing mental health services to the patient  
25 an actual threat of physical violence that poses a serious or  
26 imminent threat to the health or safety of a reasonably identifiable  
27 person or persons.

28 (3) The duty to warn of a serious or imminent threat to the  
29 health or safety of a reasonably identifiable person or persons is  
30 discharged by the mental health professional or the individual health  
31 care provider providing mental health services to the patient if  
32 reasonable efforts are made to communicate the threat to the

1 reasonably identifiable person or persons whose health or safety is  
2 threatened and to law enforcement personnel.

3 (4) No mental health professional or individual health care  
4 provider providing mental health services is liable for civil damages  
5 for discharging the duty to warn as provided in this section, or  
6 having discharged the duty to warn, for failing to predict, warn of,  
7 or take reasonable precautions to provide protections from a  
8 patient's violent behavior so long as the mental health professional  
9 or individual health care provider providing mental health services  
10 acted in good faith and without gross negligence.

11 (5) This section does not limit, and is in addition to, any other  
12 statutory immunities from liability of mental health professionals or  
13 individual health care providers as otherwise provided by law.

14 **Sec. 2.** RCW 71.05.120 and 2016 c 158 s 4 are each amended to  
15 read as follows:

16 (1) No officer of a public or private agency, nor the  
17 superintendent, professional person in charge, his or her  
18 professional designee, or attending staff of any such agency, nor any  
19 public official performing functions necessary to the administration  
20 of this chapter, nor peace officer responsible for detaining a person  
21 pursuant to this chapter, nor any ((county)) designated mental health  
22 professional, nor the state, a unit of local government, or an  
23 evaluation and treatment facility shall be civilly or criminally  
24 liable for performing duties pursuant to this chapter with regard to  
25 the decision of whether to admit, discharge, release, administer  
26 antipsychotic medications, or detain a person for evaluation and  
27 treatment: PROVIDED, That such duties were performed in good faith  
28 and without gross negligence.

29 (2) Peace officers and their employing agencies are not liable  
30 for the referral of a person, or the failure to refer a person, to a  
31 mental health agency pursuant to a policy adopted pursuant to RCW  
32 71.05.457 if such action or inaction is taken in good faith and  
33 without gross negligence.

34 (3) This section does not relieve a person from giving the  
35 required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the  
36 duty to warn ~~((or to take reasonable precautions to provide  
37 protection from violent behavior where the patient has communicated  
38 an actual threat of physical violence against a reasonably  
39 identifiable victim or victims. The duty to warn or to take~~

1 ~~reasonable precautions to provide protection from violent behavior is~~  
2 ~~discharged if reasonable efforts are made to communicate the threat~~  
3 ~~to the victim or victims and to law enforcement personnel)) as~~  
4 ~~provided for in section 1 of this act.~~

5 **Sec. 3.** RCW 71.05.120 and 2016 sp.s. c 29 s 208 and 2016 c 158 s  
6 4 are each reenacted and amended to read as follows:

7 (1) No officer of a public or private agency, nor the  
8 superintendent, professional person in charge, his or her  
9 professional designee, or attending staff of any such agency, nor any  
10 public official performing functions necessary to the administration  
11 of this chapter, nor peace officer responsible for detaining a person  
12 pursuant to this chapter, nor any designated crisis responder, nor  
13 the state, a unit of local government, an evaluation and treatment  
14 facility, a secure detoxification facility, or an approved substance  
15 use disorder treatment program shall be civilly or criminally liable  
16 for performing duties pursuant to this chapter with regard to the  
17 decision of whether to admit, discharge, release, administer  
18 antipsychotic medications, or detain a person for evaluation and  
19 treatment: PROVIDED, That such duties were performed in good faith  
20 and without gross negligence.

21 (2) Peace officers and their employing agencies are not liable  
22 for the referral of a person, or the failure to refer a person, to a  
23 mental health agency pursuant to a policy adopted pursuant to RCW  
24 71.05.457 if such action or inaction is taken in good faith and  
25 without gross negligence.

26 (3) This section does not relieve a person from giving the  
27 required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the  
28 duty to warn (~~or to take reasonable precautions to provide~~  
29 ~~protection from violent behavior where the patient has communicated~~  
30 ~~an actual threat of physical violence against a reasonably~~  
31 ~~identifiable victim or victims. The duty to warn or to take~~  
32 ~~reasonable precautions to provide protection from violent behavior is~~  
33 ~~discharged if reasonable efforts are made to communicate the threat~~  
34 ~~to the victim or victims and to law enforcement personnel)) as~~  
35 ~~provided for in section 1 of this act.~~

36 NEW SECTION. **Sec. 4.** Section 2 of this act expires April 1,  
37 2018.

1        NEW SECTION.    **Sec. 5.**    Section 3 of this act takes effect April  
2    1, 2018."

**SB 5800** - S AMD 129  
By Senator O'Ban

**ADOPTED 03/08/2017**

3        On page 1, line 1 of the title, after "professionals;" strike the  
4    remainder of the title and insert "amending RCW 71.05.120; reenacting  
5    and amending RCW 71.05.120; adding a new section to chapter 71.05  
6    RCW; providing an effective date; and providing an expiration date."

EFFECT: Mental health professionals have a duty to warn of a patient's violent behavior if the patient has communicated an actual threat of physical violence that poses a serious or imminent threat to the health or safety of a reasonably identifiable person or persons.

The duty to warn is discharged if the mental health professional makes reasonable efforts to communicate the threat to the reasonably identifiable person or persons whose health or safety is threatened and to law enforcement.

Mental health professionals are not liable for civil damages for discharging the duty to warn or for failing to predict, warn of, or take reasonable precautions to provide protections from a patient's violent behavior so long as the mental health professional acts in good faith and without gross negligence.

--- END ---