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## Judiciary Committee

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### HB 1810

**Title:** An act relating to obligations of mental health professionals.

**Brief Description:** Concerning obligations of mental health professionals.

**Sponsors:** Representatives Cody, Graves and Macri.

#### Brief Summary of Bill

- Provides that a mental health professional has a duty to warn or to take reasonable precautions to prevent his or her patient from harming a third person only if the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims, and that duty is discharged if reasonable efforts are made to communicate the threat to the identifiable victim and law enforcement.
- Specifies that a mental health professional is not liable for civil damages unless he or she fails to make reasonable efforts to communicate the threat or take other reasonable measures.

**Hearing Date:** 2/15/17

**Staff:** Alex Arkfeld (786-7290) and Cece Clynch (786-7195).

#### **Background:**

##### Negligence Actions.

In a negligence action, the plaintiff must prove that the defendant owed him or her a legal duty and breached that duty, proximately causing the plaintiff's injury and resulting in damages. Generally, a person does not have a legal duty to prevent another from causing harm to a third person. However, the Washington Supreme Court (Court) has recognized an exception to this general rule where a special relationship exists between a person and either a third party or the foreseeable victim of that third party.

##### Duty of a Mental Health Professional.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In *Peterson v. State*, a 1984 decision, the Court recognized a special relationship between a mental health professional and his patient in the context of the Involuntary Treatment Act (ITA). The ITA provides the process for the involuntary treatment, including possible confinement, of a person with a potential mental disorder. The patient in *Peterson* had been involuntarily committed, but was released, and injured the plaintiff when he ran a red light. The Court held that mental health professionals have a duty to take reasonable precautions to protect anyone who might foreseeably be endangered by their patients.

Three years later, the ITA was amended to provide that a mental health professional has a duty to warn or take reasonable precautions to provide protection from a patient's violent behavior if the patient communicates an actual threat of physical violence against a reasonably identifiable victim or victims.

In *Volk v. DeMeerleer*, a 2016 decision, the Court recognized a special relationship between a mental health professional and his or her voluntary outpatient in the context of definite, established, and continuing treatment. The patient had seen the psychiatrist for nine years and sometimes expressed suicidal and homicidal ideations but never pointed to his girlfriend or her children as potential victims. The Court held that a mental health professional is under a duty of reasonable care to protect any foreseeable victims of his or her patient, and whether the injuries to the victims in this case were foreseeable was a question of fact.

### **Summary of Bill:**

Mental health professionals and individual health care providers providing mental health services have a duty to warn or to take reasonable precautions to provide protection from a patient's violent behavior only if the patient has communicated to the professional or provider an actual threat of physical violence against a reasonably identifiable victim or victims. This duty is discharged if reasonable efforts are made to communicate the threat to the reasonably identifiable victim or victims and to law enforcement personnel.

A mental health professional or health care provider is not liable for civil damages for failing to predict, warn of, or take reasonable precautions to provide protections from his or her patient's violent behavior unless he or she fails to do either of the following:

- make reasonable efforts to communicate the threat to the reasonably identifiable victim or victims and to law enforcement personnel; or
- take other reasonable measures, which may include reasonable attempts to hospitalize the patient voluntarily.

"Mental health professional" includes the following:

- psychiatrists;
- psychologists;
- physician assistants working with a supervising psychiatrist;
- psychiatric advanced registered nurse practitioners;
- psychiatric nurses;
- social workers;
- chemical dependency professionals; and

- any person licensed by the Department of Health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate.

"Mental health services" means outpatient and inpatient services provided to diagnose or treat mental disorders covered by the diagnostic categories listed in the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders or any successor publication.

This section does not limit any other statutory immunities from liability of mental health professionals or individual health care providers.

**Appropriation:** None.

**Fiscal Note:** Requested on 2/9/17.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.