

# SENATE BILL REPORT

## SB 5660

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As of February 25, 2019

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

**Brief Description:** Concerning the duties of mental health professionals.

**Sponsors:** Senator McCoy.

**Brief History:**

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care:  
2/22/19.

**Brief Summary of Bill**

- Allows a health care professional to disclose health care information to law enforcement to protect another from a threat of physical violence.
- Exempts health care professionals from liability if they decide whether to release information about a threat of physical violence in good faith and without gross negligence.
- Allows a health care professional to discharge the duty to warn or take reasonable precautions by making reasonable efforts to communicate a threat to the person or persons concerned and to law enforcement personnel.

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**SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE**

**Staff:** Kevin Black (786-7747)

**Background:** Under the Uniform Health Care Information Act (act), health care providers may not disclose health care information about a patient to any other person without the patient's written authorization. The act also provides exemptions to this prohibition. For example, a health care provider may, but is not required to, disclose health care information about a patient without the patient's authorization if the disclosure is made because the health care provider reasonably believes that the disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual.

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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.*

Mental health care providers have a duty to warn or to take reasonable precautions to provide protection from violent behavior when a patient has communicated 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 victim or victims and to law enforcement personnel.

In 2016, the Washington Supreme Court decided the case of *Volk. v. DeMeerleer*, 187 Wn.2d 241. The review involved consideration of the duty that mental health professionals have to protect and warn potential victims of violence by a patient under their care. The Supreme Court held that a mental health provider shares a special relationship with their patient, and the special relationship requires the mental health provider to act with reasonable care, consistent with the standards of the mental health profession, to protect the foreseeable victims of the patient. The foreseeability of the victims is a question of fact, which was returned to the trial court to be resolved by further proceedings.

**Summary of Bill:** A health care provider or health care facility may disclose health care information to any person or law enforcement personnel if the disclosure is necessary to prevent or lessen an actual and imminent threat to the health or safety of a reasonably identifiable person or persons.

Exemptions from liability for the health care provider or health care facility are created if the professional person or staff perform their duties to decide whether to release information or detain a person for evaluation and treatment in good faith and without gross negligence. This does not relieve the person from giving required notices to warn or from taking reasonable precautions to provide protection from violent behavior where a patient has communicated an actual threat of physical violence against a reasonably identifiable person or persons.

The duty to warn or take reasonable precautions is discharged if reasonable efforts are made to communicate the threat to the person or persons and to law enforcement personnel.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Scientific research establishes that the duty to protect is more likely to be understood by mental health professionals if the duty is clearly defined. The *Volk* decision narrowed the statutory standard to apply only to involuntary inpatient treatment and created an excessive standard for other practitioners that is not shared by any other state or province. Violent behavior is not consistently foreseeable. The previous standard gave clear instructions but was placed in the wrong chapter of the RCW. This bill allows all health care professionals to focus on assessing actual threats of physical violence against identifiable victims. I discontinued providing risk of violence assessments

as part of my practice due to the *Volk* decision and will not resume providing them until the boundaries of the duty can be more easily ascertained.

CON: We are very supportive of efforts to address the *Volk* decision and the impact it has had on mental health professionals. Concerns about *Volk* are not overblown because it is causing practitioners to change the scope of their practices. The amendments in this bill should not be placed in chapter 70.02 RCW, which is intended to be about privacy, because placing them there could cause confusion. Please resolve this issue in another chapter of the RCW.

OTHER: We appreciate the intent to address the implications of the *Volk* decision, which is necessary. The bill should be amended to specify a clear intention to supersede *Volk* and create one consistent, clear standard across all practice settings. We have grappled with the *Volk* case since 2017. In the two years since then not a single case has been filed, so the concerns seem overblown. The standard existed in previous caselaw and can be traced back to the 1980s. This is a solution in search of a problem. We support giving the Bree Collaborative a chance to report back about this topic later this year. Clinicians should be able to share information with law enforcement. There may be unintended consequences in creating a gap when a threat is made to a public institution like a school rather than to an identifiable person or persons.

**Persons Testifying:** PRO: Samantha Slaughter, Washington State Psychological Association.

CON: Lisa Thatcher, Washington State Hospital Association.

OTHER: Seth Dawson, Washington State Psychiatric Association; Larry Shannon, Washington State Association for Justice; Nathan Roberts, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** No one.