

(123rd General Assembly)
(Amended House Bill Number 71)

AN ACT

To amend section 5122.34 and to enact section 2305.51 of the Revised Code with regard to actions by mental health professionals and organizations to predict, warn of, or take precautions to prevent the violent behavior of mental health clients or patients.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 5122.34 be amended and section 2305.51 of the Revised Code be enacted to read as follows:

Sec. 2305.51. (A)(1) AS USED IN THIS SECTION:

(a) "CIVIL RIGHTS" HAS THE SAME MEANING AS IN SECTION 5122.301 OF THE REVISED CODE.

(b) "MENTAL HEALTH CLIENT OR PATIENT" MEANS AN INDIVIDUAL WHO IS RECEIVING MENTAL HEALTH SERVICES FROM A MENTAL HEALTH PROFESSIONAL OR ORGANIZATION.

(c) "MENTAL HEALTH ORGANIZATION" MEANS AN ORGANIZATION THAT ENGAGES ONE OR MORE MENTAL HEALTH PROFESSIONALS TO PROVIDE MENTAL HEALTH SERVICES TO ONE OR MORE MENTAL HEALTH CLIENTS OR PATIENTS.

(d) "MENTAL HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR REGISTERED UNDER THE REVISED CODE, OR OTHERWISE AUTHORIZED IN THIS STATE, TO PROVIDE MENTAL HEALTH SERVICES FOR COMPENSATION, REMUNERATION, OR OTHER PERSONAL GAIN.

(e) "MENTAL HEALTH SERVICE" MEANS A SERVICE PROVIDED TO AN INDIVIDUAL OR GROUP OF INDIVIDUALS INVOLVING THE APPLICATION OF MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL, COUNSELING, SOCIAL WORK, OR NURSING PRINCIPLES OR PROCEDURES TO EITHER OF THE FOLLOWING:

(i) THE ASSESSMENT, DIAGNOSIS, PREVENTION, TREATMENT, OR AMELIORATION OF MENTAL, EMOTIONAL, PSYCHIATRIC, PSYCHOLOGICAL, OR PSYCHOSOCIAL DISORDERS OR DISEASES, AS DE

SCRIBED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS PUBLISHED BY THE AMERICAN PSYCHIATRIC ASSOCIATION;

(ii) THE ASSESSMENT OR IMPROVEMENT OF MENTAL, EMOTIONAL, PSYCHIATRIC, PSYCHOLOGICAL, OR PSYCHOSOCIAL ADJUSTMENT OR FUNCTIONING, REGARDLESS OF WHETHER THERE IS A DIAGNOSABLE, PRE-EXISTING DISORDER OR DISEASE.

(f) "KNOWLEDGEABLE PERSON" MEANS AN INDIVIDUAL WHO HAS REASON TO BELIEVE THAT A MENTAL HEALTH CLIENT OR PATIENT HAS THE INTENT AND ABILITY TO CARRY OUT AN EXPLICIT THREAT OF INFLECTING IMMINENT AND SERIOUS PHYSICAL HARM TO OR CAUSING THE DEATH OF A CLEARLY IDENTIFIABLE POTENTIAL VICTIM OR VICTIMS AND WHO IS EITHER AN IMMEDIATE FAMILY MEMBER OF THE CLIENT OR PATIENT OR AN INDIVIDUAL WHO OTHERWISE PERSONALLY KNOWS THE CLIENT OR PATIENT.

(2) FOR THE PURPOSE OF THIS SECTION, IN THE CASE OF A THREAT TO A READILY IDENTIFIABLE STRUCTURE, "CLEARLY IDENTIFIABLE POTENTIAL VICTIM" INCLUDES ANY POTENTIAL OCCUPANT OF THE STRUCTURE.

(B) A MENTAL HEALTH PROFESSIONAL OR MENTAL HEALTH ORGANIZATION MAY BE HELD LIABLE IN DAMAGES IN A CIVIL ACTION, OR MAY BE MADE SUBJECT TO DISCIPLINARY ACTION BY AN ENTITY WITH LICENSING OR OTHER REGULATORY AUTHORITY OVER THE PROFESSIONAL OR ORGANIZATION, FOR SERIOUS PHYSICAL HARM OR DEATH RESULTING FROM FAILING TO PREDICT, WARN OF, OR TAKE PRECAUTIONS TO PROVIDE PROTECTION FROM THE VIOLENT BEHAVIOR OF A MENTAL HEALTH CLIENT OR PATIENT, ONLY IF THE CLIENT OR PATIENT OR A KNOWLEDGEABLE PERSON HAS COMMUNICATED TO THE PROFESSIONAL OR ORGANIZATION AN EXPLICIT THREAT OF INFLECTING IMMINENT AND SERIOUS PHYSICAL HARM TO OR CAUSING THE DEATH OF ONE OR MORE CLEARLY IDENTIFIABLE POTENTIAL VICTIMS, THE PROFESSIONAL OR ORGANIZATION HAS REASON TO BELIEVE THAT THE CLIENT OR PATIENT HAS THE INTENT AND ABILITY TO CARRY OUT THE THREAT, AND THE PROFESSIONAL OR ORGANIZATION FAILS TO TAKE ONE OR MORE OF THE FOLLOWING ACTIONS IN A TIMELY MANNER:

(1) EXERCISE ANY AUTHORITY THE PROFESSIONAL OR ORGANIZATION POSSESSES TO HOSPITALIZE THE CLIENT OR PATIENT ON AN EMERGENCY BASIS PURSUANT TO SECTION 5122.10 OF THE REVISED CODE;

(2) EXERCISE ANY AUTHORITY THE PROFESSIONAL OR ORGANIZATION POSSESSES TO HAVE THE CLIENT OR PATIENT INVOL-

UNTARILY OR VOLUNTARILY HOSPITALIZED UNDER CHAPTER 5122. OF THE REVISED CODE:

(3) ESTABLISH AND UNDERTAKE A DOCUMENTED TREATMENT PLAN THAT IS REASONABLY CALCULATED, ACCORDING TO APPROPRIATE STANDARDS OF PROFESSIONAL PRACTICE, TO ELIMINATE THE POSSIBILITY THAT THE CLIENT OR PATIENT WILL CARRY OUT THE THREAT, AND, CONCURRENT WITH ESTABLISHING AND UNDERTAKING THE TREATMENT PLAN, INITIATE ARRANGEMENTS FOR A SECOND OPINION RISK ASSESSMENT THROUGH A MANAGEMENT CONSULTATION ABOUT THE TREATMENT PLAN WITH, IN THE CASE OF A MENTAL HEALTH ORGANIZATION, OR, IN THE CASE OF A MENTAL HEALTH PROFESSIONAL WHO IS NOT ACTING AS PART OF A MENTAL HEALTH ORGANIZATION, ANY MENTAL HEALTH PROFESSIONAL WHO IS LICENSED TO ENGAGE IN INDEPENDENT PRACTICE;

(4) COMMUNICATE TO A LAW ENFORCEMENT AGENCY WITH JURISDICTION IN THE AREA WHERE EACH POTENTIAL VICTIM RESIDES, WHERE A STRUCTURE THREATENED BY A MENTAL HEALTH CLIENT OR PATIENT IS LOCATED, OR WHERE THE MENTAL HEALTH CLIENT OR PATIENT RESIDES, AND IF FEASIBLE, COMMUNICATE TO EACH POTENTIAL VICTIM OR A POTENTIAL VICTIM'S PARENT OR GUARDIAN IF THE POTENTIAL VICTIM IS A MINOR OR HAS BEEN ADJUDICATED INCOMPETENT, ALL OF THE FOLLOWING INFORMATION:

(a) THE NATURE OF THE THREAT;

(b) THE IDENTITY OF THE MENTAL HEALTH CLIENT OR PATIENT MAKING THE THREAT;

(c) THE IDENTITY OF EACH POTENTIAL VICTIM OF THE THREAT.

(C) ALL OF THE FOLLOWING APPLY WHEN A MENTAL HEALTH PROFESSIONAL OR ORGANIZATION TAKES ONE OR MORE OF THE ACTIONS SET FORTH IN DIVISIONS (B)(1) TO (4) OF THIS SECTION:

(1) THE MENTAL HEALTH PROFESSIONAL OR ORGANIZATION SHALL CONSIDER EACH OF THE ALTERNATIVES SET FORTH AND SHALL DOCUMENT THE REASONS FOR CHOOSING OR REJECTING EACH ALTERNATIVE.

(2) THE MENTAL HEALTH PROFESSIONAL OR ORGANIZATION MAY GIVE SPECIAL CONSIDERATION TO THOSE ALTERNATIVES WHICH, CONSISTENT WITH PUBLIC SAFETY, WOULD LEAST ABRIDGE THE RIGHTS OF THE MENTAL HEALTH CLIENT OR PATIENT ESTABLISHED UNDER THE REVISED CODE, INCLUDING THE RIGHTS SPECIFIED IN SECTIONS 5122.27 TO 5122.31 OF THE REVISED CODE.

(3) THE MENTAL HEALTH PROFESSIONAL OR ORGANIZATION IS NOT REQUIRED TO TAKE AN ACTION THAT, IN THE EXERCISE OF REASONABLE PROFESSIONAL JUDGMENT, WOULD PHYSICALLY ENDANGER THE PROFESSIONAL OR ORGANIZATION, INCREASE THE

DANGER TO A POTENTIAL VICTIM, OR INCREASE THE DANGER TO THE MENTAL HEALTH CLIENT OR PATIENT.

(4) THE MENTAL HEALTH PROFESSIONAL OR ORGANIZATION IS NOT LIABLE IN DAMAGES IN A CIVIL ACTION, AND SHALL NOT BE MADE SUBJECT TO DISCIPLINARY ACTION BY ANY ENTITY WITH LICENSING OR OTHER REGULATORY AUTHORITY OVER THE PROFESSIONAL OR ORGANIZATION, FOR DISCLOSING ANY CONFIDENTIAL INFORMATION ABOUT A MENTAL HEALTH CLIENT OR PATIENT THAT IS DISCLOSED FOR THE PURPOSE OF TAKING ANY OF THE ACTIONS.

(D) THE IMMUNITIES FROM CIVIL LIABILITY AND DISCIPLINARY ACTION CONFERRED BY THIS SECTION ARE IN ADDITION TO AND NOT IN LIMITATION OF ANY IMMUNITY CONFERRED ON A MENTAL HEALTH PROFESSIONAL OR ORGANIZATION BY ANY OTHER SECTION OF THE REVISED CODE OR BY JUDICIAL PRECEDENT.

(E) THIS SECTION DOES NOT AFFECT THE CIVIL RIGHTS OF A MENTAL HEALTH CLIENT OR PATIENT UNDER OHIO OR FEDERAL LAW.

Sec. 5122.34. (A) Persons, including, but not limited to, boards of alcohol, drug addiction, and mental health services and community mental health agencies, acting in good faith, either upon actual knowledge or information thought by them to be reliable, who procedurally or physically assist in the hospitalization or discharge, determination of appropriate placement, or in judicial proceedings of a person under this chapter, do not come within any criminal provisions, and are free from any liability to the person hospitalized or to any other person.

(B) REGARDLESS OF WHETHER ANY AFFIRMATIVE ACTION HAS BEEN TAKEN UNDER THIS CHAPTER WITH RESPECT TO A MENTAL HEALTH CLIENT OR PATIENT AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 2305.51 OF THE REVISED CODE, NO person shall be liable for any harm that results to any other person as a result of failing to disclose any confidential information about THE mental health client OR PATIENT, or failing to otherwise attempt to protect such other person from harm by such client OR PATIENT.

(C) THIS section applies to expert witnesses who testify at hearings under this chapter.

(D) THE IMMUNITY FROM LIABILITY CONFERRED BY THIS SECTION IS IN ADDITION TO AND NOT IN LIMITATION OF ANY IMMUNITY CONFERRED BY ANY OTHER SECTION OF THE REVISED CODE OR BY JUDICIAL PRECEDENT.

SECTION 2. That existing section 5122.34 of the Revised Code is hereby repealed.

SECTION 3. In amending section 5122.34 and in enacting section 2305.51 of the Revised Code, it is the intent of the General Assembly to respectfully disagree with and supersede the statutory construction holdings of the Ohio Supreme Court relative to section 5122.34 of the Revised Code as set forth in **Estates of Morgan v. Fairfield Family Counseling Ctr.** (1977), 77 Ohio St. 3d284, under heading G of section I at 304-305, and, thereby, to supersede the second, third, and fourth syllabus paragraph holdings of the Court in that case.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 19 __

Approved _____, 19 __

Governor.

The section number of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A.D. 19 ____.

Secretary of State.

File No. _____ Effective Date _____

(123rd General Assembly)
(Amended House Bill Number 71)

AN ACT

To amend section 5122.34 and to enact section 5122.34 and to enact section 2305.51 of the Revised Code with regard to actions by mental health professionals and organizations to predict, warn of, or take precautions to prevent the violent behavior of mental health clients or patients.

Introduced by

REPRESENTATIVES VESPER-VAN VYVEN-D.MILLER-
KRUPINSKI-LAWRENCE-MOTTLEY-CALLENDER-EVANS-
HARTNETT-BENDER-SULLIVAN-OPFER-OLMAN-HOOPS-
JONES-PRINGLE-PATTON-HAINES-MAIER-TAYLOR-OGG-
TERWILLEGER-SUTTON-BRADING-HOLLISTER-PADGETT-
SCHURING-SMITH-HARRIS-METZGER-THOMAS-BATEMAN-
YOUNG-ALLEN-BRITTON-KREBS-MYERS-O'BRIEN-
KRUPINSKI-BARRETT-WINKLER-WILLAMOWSKI-
GARDNER-DePIERO-SENATORS.ARMBRUSTER-DRAKE-
BLESSING-FINGERHUT-SPADA-KEARNS-PRENTISS-RAY-
GARDNER-ESPY-WATTS

Passed by the House of Representatives,

_____ 19, _____

Passed by the Senate,

_____ 19, _____

*Filed in the office of the Secretary of State at Columbus,
Ohio, on the*

_____ day of _____, A. D. 19 _____

Secretary of State.

(((

(((

(((