

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/8/13

A Bill

HOUSE BILL 1746

By: Representatives Clemmer, Ferguson, Magie
By: Senator Bledsoe

For An Act To Be Entitled

AN ACT TO REQUIRE A MENTAL HEALTH SERVICES PROVIDER
TO WARN AN INTENDED VICTIM AND A LAW ENFORCEMENT
AGENCY OF A CREDIBLE THREAT BY A PATIENT; AND FOR
OTHER PURPOSES.

Subtitle

TO REQUIRE A MENTAL HEALTH SERVICES
PROVIDER TO WARN AN INTENDED VICTIM AND A
LAW ENFORCEMENT AGENCY OF A CREDIBLE
THREAT BY A PATIENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 45, is amended to add an
additional subchapter to read as follows:

Subchapter 2. Mental Health Services Provider Duty to Warn.

20-45-201. Definitions

As used in this subchapter:

(1) "Licensed certified social worker" means a licensed
certified social worker licensed by the Arkansas Social Work Licensing Board
under § 17-103-306(c) who provides mental health services;

(2) "Licensed marriage and family therapist" means a licensed
marriage and family therapist licensed by the Arkansas Board of Examiners in
Counseling under § 17-27-303 or 17-27-304 who provides mental health
services;



1 (3) "Licensed professional counselor" means a licensed
2 professional counselor licensed by the Arkansas Board of Examiners in
3 Counseling under § 17-27-301 who provides mental health services;

4 (4) "Mental health services provider" means a licensed certified
5 social worker, licensed marriage and family therapist, licensed professional
6 counselor, physician, psychologist, or registered nurse who provides mental
7 health services;

8 (5) "Patient" means an individual with whom a mental health
9 services provider has established a patient care provider relationship;

10 (6) "Physician" means a physician licensed by the Arkansas State
11 Medical Board who provides mental health services;

12 (7) "Psychologist" means a psychologist licensed by the Arkansas
13 Psychology Board who provides mental health services; and

14 (8) "Registered nurse" means a registered nurse licensed by the
15 Arkansas State Board of Nursing who provides mental health services.

16
17 20-45-202. Duty of mental health services provider to take precautions
18 against threatened patient violence – Duty to warn.

19 (a) A mental health services provider is not subject to monetary
20 liability and a cause of action shall not arise against a mental health
21 services provider on grounds that the mental health services provider did not
22 prevent harm to an individual or to property caused by a patient if:

23 (1) The patient communicates to the mental health services
24 provider an explicit and imminent threat to kill or seriously injure a
25 clearly or reasonably identifiable potential victim or to commit a specific
26 violent act or to destroy property under circumstances that could easily lead
27 to serious personal injury or death and the patient has an apparent intent
28 and ability to carry out the threat; and

29 (2) The mental health services provider takes the precautions
30 specified in subsection (b) of this section in an attempt to prevent the
31 threatened harm.

32 (b) A duty owed by a mental health services provider to take
33 reasonable precautions to prevent harm threatened by a patient is discharged,
34 as a matter of law, if the mental health services provider in a timely
35 manner:

36 (1)(A) Notifies:

1 (i) A law enforcement agency in the county in which
2 the potential victim resides;

3 (ii) A law enforcement agency in the county in which
4 the patient resides; or

5 (iii) The Department of Arkansas State Police; and

6 (B) Communicates the threat of death or serious bodily
7 injury to the clearly identified potential victim or victims, including
8 without limitation:

9 (i) The identity of each potential victim or victims
10 of the threat;

11 (ii) The identity of the mental health client or
12 patient making the threat; and

13 (iii) The nature of the threat; or

14 (2) Arranges for the patient's immediate voluntary or
15 involuntary hospitalization.

16 (c) If the victim is under eighteen (18) years of age, the mental
17 health services provider, in addition to taking one (1) or more actions under
18 subsection (b) of this section, shall make a reasonable effort to communicate
19 the threat to the potential victim's custodial parent, noncustodial parent,
20 or legal guardian.

21 (d) If a patient who is under eighteen (18) years of age threatens to
22 commit suicide or bodily harm upon himself or herself, the mental health
23 services provider shall make a reasonable effort to communicate the threat to
24 the patient's custodial parent, noncustodial parent, or legal guardian.

25 (e) A cause of action, either criminal or civil, shall not arise
26 against a mental health services provider for disclosing a confidential
27 communication made by or relating to a patient, if the patient has explicitly
28 threatened to cause serious harm to an individual or to property or if the
29 mental health services provider concludes that the patient is likely to cause
30 serious harm to an individual or to property.

31 (f)(1) If a patient in the custody of a hospital or other facility
32 threatens to harm an individual or property, the mental health services
33 provider and the hospital or other facility shall consider and evaluate the
34 threat before discharging the patient.

35 (2) Under subdivision (f)(1) of this section, the mental health
36 services provider may inform an appropriate law enforcement agency and the

victim of the threat.

(g) Subsections (a) and (d) of this section apply to a hospital or facility that has custody of a patient who has made or makes a threat to harm an individual or property.

/s/Clemmer