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House passes bill on mental health provider ‘duty to warn’

by Erin Mansfield

The House has passed a revised version of a bill that seeks to overturn a controversial Vermont Supreme Court decision that places new responsibilities on mental health care providers. The House passed an amended version of S.3 on Friday in a voice vote. The bill would explicitly overturn the decision *Kuligoski v. Brattleboro Retreat and Northeast Kingdom Human Services*.

The bill now moves back over to the Senate, which can decide whether to accept the changes. In the *Kuligoski* case, the family of a man who was allegedly assaulted by Evan Rapoza, who had symptoms associated with schizophrenia, sued the Brattleboro Retreat and Northeast Kingdom Human Services. The family said those providers should have warned caregivers that Rapoza would be dangerous if he stopped taking his medication. A trial court dismissed the case, and the family appealed. The Vermont Supreme Court then ruled that parts of the case had merit and should be allowed to go forward. The case has been interpreted to give mental health care providers a new “duty to warn” caregivers about dangerous patients that goes further than previous court decisions.

The Senate passed a version of S.3 in February that would narrow the definition of a mental health professional’s “duty to warn” and make it clear that mental health providers need to break confidentiality and warn about a potentially dangerous patient only if the patient makes a threat against a specific identifiable person. Additionally, that version of the bill required mental health providers to write detailed discharge plans that include “all necessary information on the client or patient’s condition to enable (caretakers named in the discharge plan) the ability to carry out his or her discharge functions.”

That version of the bill sought to create language that would narrow the “duty to warn” for mental health care providers back to what had been established in a 1985 Vermont Supreme Court case called *Peck v. Counseling Service of Addison County*. The House’s version of S.3 streamlines that approach. The bill’s language says the Legislature intends “to negate” the *Kuligoski* decision and go back to the “duty that is established in common law” by the *Peck* decision. The bill then repeats that “a mental health professional’s duty is established in common law” by the *Peck* decision.

“The *Peck* standard has been understood and applied by mental health professionals in their practices for more than 30 years. ... The *Kuligoski* Decision has been seen by many mental health professionals as unworkable,” the bill argues. The bill also says, “The overwhelming majority of people diagnosed with mental illness are not more likely to be violent than any other person; the majority of interpersonal violence in the United States is committed by people with no diagnosable mental illness.”