



1995 ASSEMBLY BILL 671

November 9, 1995 - Introduced by Representatives GREEN, R. YOUNG, LADWIG, HANSON, WALKER, SCHNEIDERS, ZUKOWSKI, LEHMAN, GOETSCH, FREESE, AINSWORTH, VRAKAS, GUNDERSON and URBAN, cosponsored by Senators ROSENZWEIG, RUDE, CHVALA and SCHULTZ. Referred to Committee on Judiciary.

1 **AN ACT to amend** 118.125 (2) (intro.), 343.16 (5) (a), 448.03 (5) (b) and 449.20; and
2 **to create** 51.30 (4) (am), 118.125 (2) (n), 146.82 (3) (bm), 885.205 (4), 895.475
3 and 905.04 (4) (j) of the statutes; **relating to:** civil liability of therapists.

Analysis by the Legislative Reference Bureau

Under current law, a person has a duty to exercise reasonable care. If a person fails to exercise reasonable care, either by acting or failing to act, the person may be held liable in negligence if it was foreseeable that the failure to exercise reasonable care could cause harm to someone. In *Schuster v. Altenberg*, 144 Wis. 2d 223 (1988), the Wisconsin supreme court held that a psychiatrist may be liable for the injury caused by a patient if the psychiatrist fails to exercise reasonable care as to the following matters:

1. Diagnosing and treating the patient.
2. Warning the patient of the side effects of a medication.
3. Warning 3rd parties of the patient's dangerousness.
4. Instituting proceedings for detention or commitment of a dangerous patient.

Reasonable care for a psychiatrist is that degree of care and skill exercised by the average practicing psychiatrist, acting in the same or similar circumstances.

This bill limits the effect of the supreme court decision by giving therapists immunity from civil actions relating to injuries caused by dangerous patients resulting from the therapist's failure to warn 3rd parties or begin detention or commitment proceedings. Under the bill, a therapist would generally be immune from civil liability proceedings except when the patient communicated to the therapist a threat of physical harm to an identifiable victim or if the patient showed a probability of causing harm to others. Under the bill, if a patient did make a threat of physical harm to an identifiable victim, the therapist may be immune from civil liability by making a reasonable effort to communicate the threat and other relevant information to the victim or to the appropriate law enforcement agency, by obtaining voluntary commitment of the patient, by seeking emergency detention or

involuntary commitment of the patient or by treating the patient in a manner that eliminates the possibility that the patient will carry out the threat. If the patient showed a probability of causing harm to others, the bill provides that the therapist may be immune from civil liability by communicating that information to a law enforcement agency, by obtaining voluntary commitment of the patient, by seeking emergency detention or involuntary commitment of the patient or by treating the patient in a manner that eliminates the possibility that the patient will cause physical harm to others.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 51.30 (4) (am) of the statutes is created to read:

2 51.30 (4) (am) *Reports without informed written consent.* Notwithstanding par.
3 (a), a therapist, as defined in s. 895.475 (1), may follow the procedures in s. 895.475
4 (3) or (4) without first receiving the informed written consent of the subject
5 individual if the circumstances described in s. 895.475 apply.

6 **SECTION 2.** 118.125 (2) (intro.) of the statutes is amended to read:

7 118.125 (2) CONFIDENTIALITY. (intro.) All pupil records maintained by a public
8 school shall be confidential, except as provided in pars. (a) to ~~(m)~~ (n) and sub. (2m).
9 The school board shall adopt regulations to maintain the confidentiality of such
10 records.

11 **SECTION 3.** 118.125 (2) (n) of the statutes is created to read:

12 118.125 (2) (n) A therapist, as defined in s. 895.475 (1), employed by a school
13 district may disclose information in a pupil record under s. 895.475.

14 **SECTION 4.** 146.82 (3) (bm) of the statutes is created to read:

15 146.82 (3) (bm) Notwithstanding sub. (1), a therapist, as defined in s. 895.475
16 (1), may follow the procedures provided in s. 895.475 (3) or (4) without first receiving
17 the informed consent of the patient if the circumstances described in s. 895.475 apply.

1 **SECTION 5.** 343.16 (5) (a) of the statutes is amended to read:

2 343.16 **(5)** (a) The secretary may require any applicant for a license or any
3 licensed operator to submit to a special examination by such persons or agencies as
4 the secretary may direct to determine incompetency, physical or mental disability,
5 disease or any other condition which might prevent such applicant or licensed person
6 from exercising reasonable and ordinary control over a motor vehicle. When the
7 department requires the applicant to submit to an examination, the applicant shall
8 pay the cost thereof. If the department receives an application for a renewal or
9 duplicate license after voluntary surrender under s. 343.265 or receives a report from
10 a physician or optometrist under s. 146.82 (3) (a) or (b), or if the department has a
11 report of 2 or more arrests within a one-year period for any combination of violations
12 of s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a
13 federally recognized American Indian tribe or band in this state in conformity with
14 s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or
15 s. 940.09 where the offense involved the use of a vehicle, the department shall
16 determine, by interview or otherwise, whether the operator should submit to an
17 examination under this section. The examination may consist of an assessment. If
18 the examination indicates that education or treatment for a disability, disease or
19 condition concerning the use of alcohol or a controlled substance is appropriate, the
20 department may order a driver safety plan in accordance with s. 343.30 (1q). If there
21 is noncompliance with assessment or the driver safety plan, the department shall
22 suspend the person's operating privilege in the manner specified in s. 343.30 (1q) (d).

23 **SECTION 6.** 448.03 (5) (b) of the statutes is amended to read:

24 448.03 **(5)** (b) No physician shall be is liable for any civil damages for either of
25 the following:

1 1. Reporting in good faith to the department of transportation under s. 146.82
2 (3) (a) a patient's name and other information relevant to a physical or mental
3 condition of the patient ~~which~~ that in the physician's judgment impairs the patient's
4 ability to exercise reasonable and ordinary control over a motor vehicle.

5 2. In good faith, not reporting to the department of transportation under s.
6 146.82 (3) (a) a patient's name and other information relevant to a physical or mental
7 condition of the patient ~~which~~ that in the physician's judgment does not impair the
8 patient's ability to exercise reasonable and ordinary control over a motor vehicle.

9 **SECTION 7.** 449.20 of the statutes is amended to read:

10 **449.20 Civil immunity.** No optometrist ~~shall be~~ is liable for any civil damages
11 for either of the following:

12 **(1)** Reporting in good faith to the department of transportation under s. 146.82
13 (3) (b) a patient's name and other information relevant to the vision of the patient
14 ~~which~~ that in the optometrist's judgment impairs the patient's ability to exercise
15 reasonable and ordinary control over a motor vehicle.

16 **(2)** In good faith, not reporting to the department of transportation under s.
17 146.82 (3) (b) a patient's name and other information relevant to the vision of the
18 patient ~~which~~ that in the optometrist's judgment does not impair the patient's ability
19 to exercise reasonable and ordinary control over a motor vehicle.

20 **SECTION 8.** 885.205 (4) of the statutes is created to read:

21 885.205 **(4)** This prohibition does not include communications that a therapist,
22 as defined in s. 895.475 (1), discloses under s. 895.475.

23 **SECTION 9.** 895.475 of the statutes is created to read:

24 **895.475 Civil liability exemption; therapists.** **(1)** In this section,
25 "therapist" means a physician, psychologist, social worker, nurse, chemical

1 dependency counselor or other person, whether or not licensed by the state, who
2 provides treatment to any person who may be drug dependent, as defined in s. 51.01
3 (8), or who may have alcoholism, a developmental disability or mental illness, as
4 defined in s. 51.01 (1m), (5) and (13), if that person is not prohibited by law from
5 providing that treatment.

6 **(2)** A therapist is immune from civil liability for injuries to persons, other than
7 the patient, resulting from the therapist's failure to warn of or take precautions to
8 provide protection from a patient's behavior unless one of the following occurs:

9 (a) The patient has communicated to the therapist a threat of physical harm
10 against a clearly identified or readily identifiable victim.

11 (b) The therapist makes a determination that is reasonable under the
12 circumstances that the patient evidences a substantial probability of physical harm
13 to other individuals as described in s. 51.20 (1) (a) 2. b.

14 **(3)** A therapist is immune from civil liability for injuries to persons, other than
15 the patient, if, after the patient communicates a threat of physical harm against a
16 clearly identified or readily identifiable victim, the therapist takes one or more of the
17 following courses of action and the decision to take that action and the action taken
18 are reasonable under the circumstances:

19 (a) Makes efforts to communicate the threat and other relevant information to
20 the intended victim.

21 (b) Communicates the threat and other relevant information to the law
22 enforcement agency, as defined in s. 165.83 (1) (b), of the jurisdiction where the
23 patient or intended victim resides or is physically present.

24 (c) Takes steps to obtain emergency detention of the patient under s. 51.15,
25 involuntary commitment of the patient under s. 51.20, protective custody of the

1 patient under s. 51.45 (11) or emergency protective placement of the patient under
2 s. 55.06 (11).

3 (d) Secures voluntary admission of the patient to an inpatient facility, as
4 defined in s. 51.01 (10), and communicates the threat and other relevant information
5 to the treatment director, as defined in s. 51.01 (18), or his or her designee.

6 (e) Formulates a diagnostic impression and establishes and undertakes a
7 documented treatment plan calculated to eliminate the possibility that the patient
8 will carry out the threat.

9 (4) A therapist is immune from civil liability for injuries to persons, other than
10 the patient, if, after the therapist determines that the patient evidences a
11 substantial probability of physical harm to other individuals, as described in s. 51.20
12 (1) (a) 2. b., the therapist takes one or more of the following courses of action and the
13 decision to take that action and the action taken are reasonable under the
14 circumstances:

15 (a) Communicates information regarding the patient's substantial probability
16 of physical harm to other individuals to the law enforcement agency, as defined in
17 s. 165.83 (1) (b), of the jurisdiction where the patient resides or is physically present.

18 (b) Takes steps to obtain emergency detention of the patient under s. 51.15,
19 involuntary commitment of the patient under s. 51.20, protective custody of the
20 patient under s. 51.45 (11) or emergency protective placement of the patient under
21 s. 55.06 (11).

22 (c) Secures voluntary admission of the patient to an inpatient facility, as
23 defined in s. 51.01 (10) and communicates information regarding the patient's
24 substantial probability of physical harm to other individuals and other relevant

1 information to the treatment director, as defined in s. 51.01 (18), or his or her
2 designee.

3 (d) Formulates a diagnostic impression and establishes and undertakes a
4 documented treatment plan calculated to eliminate the possibility that the patient
5 will cause physical harm to other individuals.

6 **SECTION 10.** 905.04 (4) (j) of the statutes is created to read:

7 905.04 (4) (j) *Proceeding related to disclosure of patient's threat or probability*
8 *of harm.* There is no privilege as to communications relevant to proceedings
9 resulting from a disclosure under s. 895.475.

10 **SECTION 11. Initial applicability.**

11 (1) This act first applies to a patient's threat of physical violence or evidence
12 of a substantial probability of physical violence to others occurring on the effective
13 date of this subsection.

14 (END)