

DUTY TO WARN LAW

P.L.1991, CHAPTER 270, approved August 27, 1991
Senate Committee Substitute (First Reprint) for
1990 Senate No. 3063

An Act providing immunity from certain civil suits to licensed practitioners of psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling and supplementing chapter 53A of Title 2A of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1.a. Any person who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling, whether or not compensation is received or expected, is immune from any civil liability for a patient's violent act against another person or against himself unless the practitioner has incurred a duty to warn and protect the potential victim as set forth in subsection b. of this section and fails to discharge that duty as set forth in subsection c. of this section.

b. A duty to warn and protect is incurred when the following conditions exist:

- (1) The patient has communicated to that practitioner a threat of imminent, serious physical violence against a readily identifiable individual or against himself and the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or
- (2) The circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself.

c. A licensed practitioner of psychology, psychiatry, medicine, nursing clinical social work or marriage counseling shall discharge the duty to warn and protect as set forth in subsection b. of this section by doing any one or more of the following:

- (1) Arranging for the patient to be admitted voluntarily to a psychiatric unit of a general hospital, a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);
- (2) Initiating procedures for involuntary commitment of the patient to a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);
- (3) Advising a local law enforcement authority of the patient's threat and the identity of the intended victim;
- (4) Warning the intended victim of the threat, or, in the case of an intended victim who is under the age of 18, warning the parent or guardian of the intended victim; or
- (5) If the patient is under the age of 18 and threatens to commit suicide or bodily injury upon himself, warning the parent or guardian of the patient.

d. A practitioner who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling who, in complying with subsection c. of this section, discloses a privileged communication, is immune from civil liability in regard to that disclosure.

2. When a duty to warn and protect arises from the receipt of a privileged communication from a patient in a drug or alcohol abuse program governed by federal law, a licensed practitioner of psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling may be required to obtain a court order authorizing disclosure prior to disclosure of information about the patient including the patient's threat of violence, in accordance with 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 and regulations promulgated thereunder.

[2.]3. This act shall take effect immediately.

CIVIL JUSTICE

Provides civil immunity to licensed practitioners of psychology, psychiatry, medicine, nursing, clinical social work or marriage counseling under certain circumstances.