

Senate Bill No. 352

(By Senator Unger)

[Introduced February 22, 2013; referred to the Committee on
Health and Human Resources; and then to the Committee on the
Judiciary.]

A BILL to amend and reenact §27-3-1 of the Code of West Virginia,
1931, as amended, relating to mandatory disclosure of a
substantial danger of harm to a person by a mental health
patient or client.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of
treatment or evaluation of any client or patient are confidential
information. ~~Such~~ The confidential information includes the fact
that a person is or has been a client or patient, information

1 transmitted by a patient or client or family thereof for purposes
2 relating to diagnosis or treatment, information transmitted by
3 persons participating in the accomplishment of the objectives of
4 diagnosis or treatment, all diagnoses or opinions formed regarding
5 a client's or patient's physical, mental or emotional condition,
6 any advice, instructions or prescriptions issued in the course of
7 diagnosis or treatment, and any record or characterization of the
8 matters hereinbefore described. It does not include information
9 which does not identify a client or patient, information from which
10 a person acquainted with a client or patient would not recognize
11 ~~such the~~ client or patient and uncoded information from which there
12 is no possible means to identify a client or patient.

13 (b) Confidential information ~~shall~~ may not be disclosed,
14 except:

15 (1) In a proceeding under section four, article five of this
16 chapter to disclose the results of an involuntary examination made
17 pursuant to section two, three or four of ~~said~~ that article;

18 (2) In a proceeding under article six-a of this chapter to
19 disclose the results of an involuntary examination made pursuant
20 thereto;

21 (3) Pursuant to an order of any court based upon a finding
22 that the information is sufficiently relevant to a proceeding
23 before the court to outweigh the importance of maintaining the
24 confidentiality established by this section;

1 (4) To provide notice to the federal National Instant Criminal
2 Background Check System, established pursuant to section 103(d) of
3 the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, in
4 accordance with article seven-a, chapter sixty-one of this code;

5 (5) To protect against a clear and substantial danger of
6 imminent injury by a patient or client to himself, herself or
7 another;

8 (6) For treatment or internal review purposes, to staff of the
9 mental health facility where the patient is being cared for or to
10 other health professionals involved in treatment of the patient;
11 and

12 (7) Without the patient's consent as provided for under the
13 Privacy Rule of the federal Health Insurance Portability and
14 Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days
15 from the date of admission to a mental health facility if: (i) The
16 provider makes a good faith effort to obtain consent from the
17 patient or legal representative prior to disclosure; (ii) the
18 minimum information necessary is released for a specifically stated
19 purpose; and (iii) prompt notice of the disclosure, the recipient
20 of the information and the purpose of the disclosure is given to
21 the patient or legal representative.

22 (c) Notwithstanding any provision of law or rule to the
23 contrary, confidential information shall be disclosed to potential
24 victims and law enforcement to protect against a clear and

1 substantial danger of imminent injury by a patient or client to
2 another person.

NOTE: The purpose of this bill is to make it mandatory for mental health professionals to tell a potential victim and law enforcement officials if a patient or client presents a clear and substantial risk of harm to another person.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.