

Detailed Fiscal Analysis

In 1997, the Ohio Supreme Court held that the provisions of the Revised Code providing immunity for mental health professionals and mental health organizations apply only to civil commitment proceedings and do not provide immunity to psychotherapists who provide outpatient treatment (*Estate of Morgan v. Fairfield County Counseling Center*).

Under the bill, a mental health professional or mental health organization may be found liable for damages if an explicit threat toward another individual has been communicated to them, only if they have reason to believe the client has the intent and ability to carry out the threat, and they fail to take one or more of the following actions in a timely manner:

- (1) exercise any authority they possess under Ohio law to hospitalize the client on an emergency basis;
- (2) exercise any authority they possess under Ohio law to have the client involuntarily or voluntarily hospitalized;
- (3) establish and undertake a documented treatment plan, according to appropriate standards of professional practice, to eliminate the possibility that the client will carry out the threat, and concurrent with undertaking the treatment plan, initiate arrangements for a second opinion risk assessment through a management consultation with another licensed mental health professional as designated in the bill;
- (4) communicate the threat to the appropriate law enforcement agency (as defined by the bill) and each potential victim or their parent or guardian (as defined by the bill) of the nature of the threat, the identity of the client making the threat, and the identity of any other potential victims of the threat.

The Legislative Budget Office believes that the annual number of individuals hospitalized could increase due to the requirements listed above. However, the number of additional hospitalizations would be small. Furthermore, the number of additional hospitalizations in the public mental health system would be even smaller. Therefore, additional costs to the state are likely to be minimal.

In general, the bill would reduce future liability costs for local mental health boards by providing immunity for the psychotherapists with whom the boards contract. The bill would also reduce future liability costs for school districts by providing immunity for the psychotherapists they employ or with whom they contract. Although local mental health boards and school districts would incur some costs meeting one of the required actions described above, such costs would be negligible and would be offset by savings resulting from a decrease in future liability costs. The bill is clear that these provisions do not affect the civil rights of a mental health client under Ohio or federal law.

Civil liability cases involving dollar amounts of \$15,000 or less are heard in municipal or county courts, whose operations are funded by municipalities and counties, respectively. Civil liability cases involving dollar amounts of more than \$15,000 are heard in Courts of Common Pleas, whose operations are funded by counties. Because this bill involves the threat of violent behavior, LBO assumes that civil cases filed stemming from such behavior would most likely

involve plaintiffs asking for more than \$15,000 in damages. By more clearly stipulating circumstances limiting civil liability, the bill could reduce the number of such cases that are filed, which would result in savings to counties.

□ *LBO staff Chuck Phillips, Senior Analyst*

\\Budget_office\isis_voll.lbo\FN123\hb0071sr.doc