Vote YES on Sen. O’Ban amendment to SB 5800
Support access to mental health care

In its Volk decision, the state Supreme Court established a new standard for the circumstance in which mental health providers have a duty to warn based on statements made in the outpatient setting.

Under this new duty, providers treating patients in a voluntary setting would be required to meet a new “foreseeability” standard in trying to determine when a duty to warn exists.

Compliance with this new standard could lead providers to avoid accepting potentially violent patients or to unnecessarily increase the number of patients for which they seek commitment.

The chilling effect created by Volk could lead some patients to have difficulty finding providers willing to treat them in the outpatient setting, and could improperly inhibit the free exchange of information crucial to a healthy patient-provider relationship.

The new duty would force providers to violate federal patient privacy laws (HIPAA) by requiring them to share confidential patient information with a wide array of people.

Sen. O’Ban’s amendment to SB 5800 solves problems created by the Volk decision

- Aligns outpatient duty to warn requirements and liability protections with the Involuntary Treatment Act (ITA).

- The duty requires a provider to warn if a patient has communicated an actual threat of physical violence that poses a serious or imminent threat to a reasonably identifiable person(s).

The ITA has contained a duty to warn standard for inpatient involuntary treatment since the 1980s and has been working well.

The legislature developed the ITA duty to warn after the Petersen case created ambiguity. We are asking the legislature to eliminate similar ambiguity created by the Volk ruling, using an approach that mirrors the existing ITA duty to warn standard. The standard also reflects the approach widely adopted by other state legislatures around the country.

Supporters of Sen. O’Ban’s amendment to SB 5800