

**Hope Recovery Network: Peer Recovery Support Specialist's Human Resource Manual**  
**OHIO REVISED CODE (ORC) Section 2305.51: 'Duty to Warn,' 'Duty to Protect' Section**

APPENDIX XX



OHIO LAWS & ADMINISTRATIVE RULES  
LEGISLATIVE SERVICE COMMISSION

**STATUTE:** The Ohio Revised Code imposes a duty to warn or protect when a client or another “knowledgeable person” communicates a threat of serious, imminent physical harm and has the intent to carry out that threat (*even a threat to an identifiable structure that could include potential occupants within the structure*). The statute *Campbell v. Ohio State Univ. Medical Center* also exempts MHPs from liability for harm to third parties.\* *This statute is based from the Tarasoff vs. Regents of California case that set a federal precedent of ‘Duty to Warn’ and ‘Duty to Protect.’*

**THE SPECIFIC DUTY:** Under Ohio’s statute, MHPs have a duty to warn or protect when the client or a “knowledgeable person” communicates an “explicit threat of...imminent and serious physical harm” or a threat of death against a “clearly identifiable” potential victim, and the person “has reason to believe that the...client has the intent and ability to carry out the threat...”

**HOW IS THE DUTY DISCHARGED?** By taking one or more of four actions: exercising authority to hospitalize the client on an emergency basis;\* exercising authority to have the client voluntarily or involuntarily hospitalized;\* establishing and undertaking a written treatment plan reasonably calculated to “eliminate the possibility” that the client will carry out the threat, and obtaining a “second opinion risk assessment” about that treatment plan;\* or warning law enforcement near the victim or client of the nature of the threat, client’s identity, victims’ identity, and warning all victims if feasible.

Ohio’s statute requires MHPs to consider the four actions and to document why each was chosen or rejected.\*

**Meeting this duty, grants immunity from breaching confidentiality.**

**Are there additional duties to warn of harm to others or protect others (*assault, domestic violence, stalking, communicable diseases, driving, threats to public officials*) or harm to self (*suicide, self-injury*)?**

In an emergency, any parole officer, police officer, or sheriff may take a client into custody and transport the client to a general hospital for examination by MHPs to determine whether procedures or involuntary hospitalization should occur.\*\* MHPs may insulate themselves from liability in a duty to protect context by seeking the involuntary admission of their client, when necessary. MHPs appear to have a qualified immunity if they disclose confidential information in good faith to start such proceedings.\*\* In Ohio, a person with mental illness may be involuntarily hospitalized by court order if, because of the illness, the person either represents a substantial risk of harm to self as demonstrated by evidence of threats or attempt at suicide or represents a substantial risk of harm to others as manifested by evidence of recent violent behavior or other evidence of present dangerousness.\*\*

\* OHIO REV. CODE ANN. § 2305.51(B). *Campbell v. Ohio State Univ. Med. Ctr.*, 843 N.E.2d 1194, 1197 (Ohio 2006).

\*\* OHIO REV. CODE ANN. § 5122.29(B) OHIO REV. CODE ANN. § 5122.10. *Id.* § 5122.34. *Id.* § 5122.01.

Section 2305.51 | **Mental health professional or organization not liable for violent behavior by client or patient.**  
Ohio Revised Code / Title 23 Courts-Common Pleas / Chapter 2305 Jurisdiction; Limitation Of Actions

(A) **DEFINITIONS:** (1) As used in this section:

- (a) “**Civil Rights**” has the same meaning as in section ORC 5122.301; (b) “**Mental health client or patient**” means an individual who is receiving mental health services from a mental health professional or organization; (c) “**Mental health organization**” means an organization that engages one or more mental health professionals to provide mental health services to one or more mental health clients or patients; (d) “**Mental health professional**” means an individual who is licensed, certified, or registered under ORC, or otherwise authorized in this state, to provide mental health services for compensation, remuneration, or other personal gain; (e) “**Mental health service**” means a service provided to an individual or group of individuals involving the application of medical, psychiatric, psychological, professional counseling, social work, marriage and family therapy, or nursing principles or procedures to either of the following: (i. *The assessment, diagnosis, prevention, treatment, or amelioration of mental, emotional, psychiatric, psychological, or psychosocial disorders or diseases, as described in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association;* ii. *The assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease.*); (f) “**KNOWLEDGABLE PERSON**” means an individual who has reason to believe that a mental health client or patient has the intent and ability to carry out an explicit threat of inflicting imminent and serious physical harm to or causing the death of a clearly identifiable potential victim or victims and who is either an immediate family member of the client or patient or an individual who otherwise personally knows the client or patient; (g) “**Advanced practice registered nurse**” has the same meaning as in section ORC 4723.01; (h) “**Hospital**” has the same meaning as in section ORC 2305.25; (i) “**Physician**” means an individual authorized under ORC Chapter 4731 to practice medicine and surgery or osteopathic medicine and surgery; (j) “**Physician assistant**” has the same meaning as in section ORC 4730.01.

- (2) For the purpose of this section, in the case of a threat to a readily identifiable structure, "clearly identifiable potential victim" includes any potential occupant of the structure.
- (B) A mental health professional or mental health organization may be held liable in damages in a civil action, or may be made subject to disciplinary action by an entity with licensing or other regulatory authority over the professional or organization, for serious physical harm or death resulting from failing to predict, warn of, or take precautions to provide protection from the violent behavior of a mental health client or patient, only if the client or patient or a knowledgeable person has communicated to the professional or organization an explicit threat of inflicting imminent and serious physical harm to or causing the death of one or more clearly identifiable potential victims, the professional or organization has reason to believe that the client or patient has the intent and ability to carry out the threat, and the professional or organization fails to take one or more of the following actions in a timely manner:
- (1) Exercise any authority the professional or organization possesses to hospitalize the client or patient on an emergency basis pursuant to section ORC [5122.10](#);
  - (2) Exercise any authority the professional or organization possesses to have the client or patient involuntarily or voluntarily hospitalized under ORC Chapter 5122;
  - (3) Establish and undertake a documented treatment plan that is reasonably calculated, according to appropriate standards of professional practice, to eliminate the possibility that the client or patient will carry out the threat, and, concurrent with establishing and undertaking the treatment plan, initiate arrangements for a second opinion risk assessment through a management consultation about the treatment plan with, in the case of a mental health organization, the clinical director of the organization, or, in the case of a mental health professional who is not acting as part of a mental health organization, any mental health professional who is licensed to engage in independent practice;
  - (4) **COMMUNICATE WITH LAW ENFORCEMENT AGENCY with jurisdiction in the area where each potential victim resides**, where a structure threatened by a mental health client or patient is located, or where the mental health client or patient resides, and if feasible, communicate to each potential victim or a potential victim's parent or guardian if the potential victim is a minor or has been adjudicated incompetent, all of the following information:
    - (a) **NATURE OF THE THREAT;**
    - (b) **IDENTITY OF MENTAL HEALTH CLIENT OR PATIENT MAKING THE THREAT;**
    - (c) **IDENTITY OF EACH POTENTIAL VICTIM OF THE THREAT.**
- (C) All of the following apply when a mental health professional or organization takes one or more of the actions set forth in divisions (B)(1) to (4) of this section:
- (1) The mental health professional or organization shall consider each of the alternatives set forth and shall document the reasons for choosing or rejecting each alternative.
  - (2) The mental health professional or organization may give special consideration to those alternatives which, consistent with public safety, would least abridge the rights of the mental health client or patient established under the Revised Code, including the rights specified in sections ORC [5122.27](#) to [5122.31](#).
  - (3) The mental health professional or organization is not required to take an action that, in the exercise of reasonable professional judgment, would physically endanger the professional or organization, increase the danger to a potential victim, or increase the danger to the mental health client or patient.
  - (4) The mental health professional or organization is not liable in civil action, and shall not be subject to disciplinary action by any licensed entity or other regulatory authority over the professional or organization, for disclosing any confidential information about a mental health client or patient that is disclosed for the purpose of taking any of the actions.
- (D) Notwithstanding any other ORC provision, a physician, physician assistant, advanced practice registered nurse, or hospital is not liable in damages in a civil action, and shall not be made subject to disciplinary action by any entity with licensing or other regulatory authority, for doing either of the following:
- (1) Failing to discharge or to allow a patient to leave the facility if the physician, physician assistant, advanced practice registered nurse, or hospital believes in the good faith exercise of professional medical, advanced practice registered nursing, or physician assistant judgment according to appropriate standards of professional practice that the patient has a mental health condition that threatens the safety of the patient or others;
  - (2) Discharging a patient whom the physician, physician assistant, advanced practice registered nurse, or hospital believes in the good faith exercise of professional medical, advanced practice registered nursing, or physician assistant judgment according to appropriate standards of professional practice not to have a mental health condition that threatens the safety of the patient or others.
- (E) The immunities from civil liability and disciplinary action conferred by this section are in addition to and not in limitation of any immunity conferred on a mental health professional or organization or on a physician, physician assistant, advanced practice registered nurse, or hospital by any other section of the Revised Code or by judicial precedent.
- (F) This section does not affect the civil rights of a mental health client or patient under Ohio or federal law.**