

## **709.15 Sexual exploitation by a counselor, therapist, or school employee.**

1. As used in this section:

*a. "Counselor or therapist"* means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

*b. "Emotionally dependent"* means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in subsection 2, by the counselor or therapist.

For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

*c. "Former patient or client"* means a person who received mental health services from the counselor or therapist.

*d. "Mental health service"* means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

*e. "Patient or client"* means a person who receives mental health services from the counselor or therapist.

*f. "School employee"* means a practitioner as defined in section 272.1.

*g. "Student"* means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

2. Sexual exploitation by a counselor or therapist occurs when any of the following are found:

*a.* A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "*b*" or "*c*".

*b.* Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

*c.* Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

3. Sexual exploitation by a school employee occurs when any of the following are found:

- a.* A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "*b*".
- b.* Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.

4. *a.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "*a*", commits a class "D" felony.

*b.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "*b*", commits an aggravated misdemeanor.

*c.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "*c*", commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph "*b*", the offender may be required to attend a sexual abuser treatment program.

5. *a.* A school employee who commits sexual exploitation in violation of subsection 3, paragraph "*a*", commits a class "D" felony.

*b.* A school employee who commits sexual exploitation in violation of subsection 3, paragraph "*b*", commits an aggravated misdemeanor.

91 Acts, ch 130, § 2; 92 Acts, ch 1163, § 119; 92 Acts, ch 1199, § 26; 2003 Acts, ch 180, §65; 2004 Acts, ch 1086, §102