

Law Enforcement H23, No Pass 4/24

APR 16 1992

Judiciary & Law Enforcement
En Pass 4/20/92

HOUSE FILE 2476

BY MCKINNEY and VAN MAANEN

Passed House, Date 4/23/92 (41752) Passed Senate, Date 4/27/92 (41752)

Vote: Ayes 93 Nays 0 Vote: Ayes 44 Nays 0

Approved May 4, 1992

A BILL FOR

1 An Act relating to sexual abuse or sexual exploitation by a
2 counselor or therapist and making penalties applicable.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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H.F. 2476

1 Section 1. Section 614.1, subsection 12, Code Supplement
2 1991, is amended to read as follows:

3 12. Sexual abuse or sexual exploitation by a counselor or
4 therapist. An action for damages for injury suffered as a
5 result of sexual abuse, as defined in section 709.1, by a
6 counselor or therapist, as defined in section 709.15, or as a
7 result of sexual exploitation by a counselor or therapist,
8 shall be brought within five years of the date the victim was
9 last treated by the counselor or therapist.

10 Sec. 2. Section 709.15, subsection 1, paragraph b,
11 unnumbered paragraph 2, Code Supplement 1991, is amended to
12 read as follows:

13 For the purposes of paragraph "f", a former patient or
14 ~~former~~ client is presumed to be emotionally dependent for one
15 year following the termination of the provision of mental
16 health services.

17 Sec. 3. Section 709.15, subsection 1, paragraph f, Code
18 Supplement 1991, is amended to read as follows:

19 f. "Sexual abuse exploitation by a counselor or therapist"
20 occurs when ~~either-or-both~~ any of the following are found:

21 (1) A pattern or practice or scheme of conduct to engage
22 in any of the conduct described in subparagraph (2) or (3).

23 (2) Any sexual conduct, with a an emotionally dependent
24 patient or client or emotionally dependent former patient or
25 client for the purpose of arousing or satisfying the sexual
26 desires of the counselor or therapist or the emotionally
27 dependent patient or client or emotionally dependent former
28 patient or client, which includes but is not limited to the
29 following: kissing; touching of the clothed or unclothed
30 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
31 or a sex act as defined in section 702.17.

32 (3) Any sexual conduct with a patient or client or former
33 patient or client within one year of the termination of the
34 provision of mental health services by the counselor or
35 therapist for the purpose of arousing or satisfying the sexual

1 desires of the counselor or therapist or the patient or client
2 or former patient or client which includes but is not limited
3 to the following: kissing; touching of the clothed or
4 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
5 genitals; or a sex act as defined in section 702.17.

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

11 Sec. 4. Section 709.15, subsection 2, Code Supplement
12 1991, is amended to read as follows:

13 2. A counselor or therapist who commits sexual abuse
14 exploitation in violation of subsection 1, paragraph "f",
15 subparagraph (1), commits a class "D" felony.

16 Sec. 5. Section 709.15, subsection 3, Code Supplement
17 1991, is amended to read as follows:

18 3. A counselor or therapist who commits sexual abuse
19 exploitation in violation of subsection 1, paragraph "f",
20 subparagraph (2), commits an aggravated misdemeanor.

21 Sec. 6. Section 709.15, subsection 4, Code Supplement
22 1991, is amended to read as follows:

23 4. A counselor or therapist who commits sexual abuse
24 exploitation in violation of subsection 1, paragraph "f",
25 subparagraph (3), commits a serious misdemeanor. In lieu of
26 the sentence provided for under section 903.1, subsection 1,
27 paragraph "b", the offender may be required to attend a sexual
28 abuser treatment program.

29 Sec. 7. Section 802.3, Code 1991, is amended to read as
30 follows:

31 802.3 FELONY -- AGGRAVATED OR SERIOUS MISDEMEANOR.

32 1. In all cases, except those enumerated in subsection 2
33 and in sections 802.1 and 802.2, an indictment or information
34 for a felony or aggravated or serious misdemeanor shall be
35 found within three years after its commission.

1 2. An indictment or information for sexual exploitation by
2 a counselor or therapist under section 709.15 shall be found
3 within five years of the date the victim was last treated by
4 the counselor or therapist.

5 EXPLANATION

6 This bill provides that a current patient or client must be
7 emotionally dependent in order for sexual exploitation by a
8 counselor or therapist constituting an aggravated misdemeanor
9 to occur. The bill provides that the criminal statute of
10 limitations for sexual abuse or sexual exploitation by a
11 counselor or therapist is five years. The bill also makes
12 changes in the wording of section 709.15 regarding sexual
13 exploitation by a counselor or therapist to make internal
14 references consistent. Sexual abuse is defined in section
15 709.1 and the bill incorporates this into the statute of
16 limitations for a civil action arising out of sexual abuse or
17 sexual exploitation by a counselor or therapist.

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HOUSE FILE 2476
FISCAL NOTE

A fiscal note for House File 2476 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2476 provides that a current patient or client must be emotionally dependent in order for sexual exploitation by a counselor or therapist to occur. A graduated penalty system is imposed for sexual exploitation, ranging from a serious misdemeanor to a Class D felony.

Assumptions

1. There were no charges against counselors or therapists for sexual abuse during FY 1991.
2. There will be few charges against counselors and therapists under the provisions of HF 2476.
3. The creation of new crimes or enhancement of existing penalties potentially increases the demand for criminal justice system resources.

Fiscal Impact

The penalty for a serious misdemeanor offense is a maximum of no more than one year confinement, or a fine not to exceed \$1,000, or both. The penalty for an aggravated misdemeanor offense is a maximum of no more than two years confinement, or a fine not to exceed \$5,000, or both. The penalty for a Class D felony is a maximum of no more than five years confinement, or a fine not to exceed \$7,500, or both.

It is not possible to predict the number of convictions for sexual exploitation. To the extent that charges do occur, there will be an impact on criminal justice system resources. Following is the average daily cost for certain criminal justice system functions.

County jails: \$45.

State prisons and Community Based Corrections facilities: \$50.

Probation/parole supervision: \$1.57.

Presentence investigation: \$288 (average cost per investigation).

Pretrial interview: \$77.64 (average cost per interview).

Pretrial release with services: \$0.74.

In addition, average indigent defense cost per case ranges from \$180 (public defenders) to \$225 (court-appointed counsel for misdemeanor offenses).

Sources: Departments of Human Rights and Inspections and Appeals

Department of Corrections and Judicial Department

Iowa State Association of Counties

(LSB 5742hh, BAL)

FILED APRIL 16, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR



HOUSE FILE 2476

AN ACT

RELATING TO SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR
OR THERAPIST AND MAKING PENALTIES APPLICABLE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA

Section 1. Section 674.1, subsection 12, Code Supplement 1991, is amended to read as follows:

12. Sexual abuse or sexual exploitation by a counselor or therapist. An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor or therapist, as defined in section 709.15, or as a result of sexual exploitation by a counselor or therapist, shall be brought within five years of the date the victim was last treated by the counselor or therapist.

Sec. 2. Section 709.15, subsection 1, paragraph b, unnumbered paragraph 2, Code Supplement 1991, is amended to read as follows:

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

Sec. 3. Section 709.15, subsection 1, paragraph f, Code Supplement 1991, is amended to read as follows:

f. "Sexual abuse or exploitation by a counselor or therapist" occurs when either or both any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3);

(2) 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.

(3) 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 abuse or 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.

Sec. 4. Section 709.15, subsection 2, Code Supplement 1991, is amended to read as follows:

2. A counselor or therapist who commits sexual abuse or exploitation in violation of subsection 1, paragraph "f", subparagraph (1), commits a class "D" felony.

Sec. 5. Section 709.15, subsection 3, Code Supplement 1991, is amended to read as follows:

3. A counselor or therapist who commits sexual abuse or exploitation in violation of subsection 1, paragraph "f", subparagraph (2), commits an aggravated misdemeanor.

Sec. 6. Section 709.15, subsection 4, Code Supplement 1991, is amended to read as follows:

4. A counselor or therapist who commits sexual abuse or exploitation in violation of subsection 1, paragraph "f", subparagraph (3), commits a serious misdemeanor. In lieu of the sentence provided for under section 305.1, subsection 1, paragraph "b", the offender may be required to attend a sexual abuser treatment program.

Sec. 7. Section 802.3, Code 1991, is amended to read as follows:

802.3 FELONY -- AGGRAVATED OR SERIOUS MISDEMEANOR.

1. In all cases, except those enumerated in subsection 2 and in sections 802.1 and 802.2, an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.

2. An indictment or information for sexual exploitation by a counselor or therapist under section 709.15 shall be found within five years of the date the victim was last treated by the counselor or therapist.

ROBERT C. ARNOULD
Speaker of the House

MICHAEL E. GRONSTAL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2476, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved _____, 1992

TERRY E. BRANSTAD
Governor