

Handwritten

Reprinted

FILED JAN 14 1991

SENATE FILE 2

BY SZYMONIAK

(COMPANION TO LSB 1072HH

BY DODERER)

(P.1458)

Passed Senate, Date 4/3/91 (p.1025) Passed House, Date 4/23/91

Vote: Ayes 47 Nays 1 Vote: Ayes 93 Nays 0

Approved May 8, 1991

A BILL FOR

1 An Act relating to sexual exploitation by a counselor or
2 therapist and providing penalties.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

SF 2

1 Section 1. Section 702.11, Code 1991, is amended to read
2 as follows:

3 702.11 FORCIBLE FELONY.

4 A "forcible felony" is any felonious child endangerment,
5 assault, murder, sexual abuse ~~other than sexual abuse in the~~
6 ~~third degree committed between spouses or in violation of~~
7 ~~section 709.4, subsection 2, paragraph "c", subparagraph (4),~~
8 kidnapping, robbery, arson in the first degree, or burglary in
9 the first degree. However, sexual abuse in the third degree
10 committed between spouses, sexual abuse in violation of
11 section 709.4, subsection 2, paragraph "c", subparagraph (4),
12 or sexual exploitation by a counselor or therapist in
13 violation of section 709.15, is not a "forcible felony".

14 Sec. 2. NEW SECTION. 709.15 SEXUAL EXPLOITATION BY A
15 COUNSELOR OR THERAPIST.

16 1. As used in this section:

17 a. "Counselor or therapist" means a physician,
18 psychotherapist, psychologist, nurse, social worker, chemical
19 dependency counselor, member of the clergy, or other person
20 whether or not licensed by the state, who renders or purports
21 to render psychotherapy, counseling, or other assessment or
22 treatment involving any mental illness, symptom, or condition
23 or any emotional illness, symptom, or condition.

24 b. "Emotionally dependent" means an impairment of the
25 former patient or former client in being able to withhold
26 consent to sexual conduct, as described in paragraph "e", by
27 the counselor or therapist, based upon the nature of the
28 former patient's or client's emotional condition and the
29 nature of the assessment or treatment provided by the
30 counselor or therapist, which impairment is known or should be
31 known to the counselor or therapist.

32 c. "Former patient or former client" means a person who
33 received psychotherapy, counseling, or other assessment or
34 treatment involving any mental illness, symptom, or condition
35 or any emotional illness, symptom, or condition from a

1 counselor or therapist within three years of the violation or
2 who after three years from the termination of treatment
3 remains emotionally dependent on the counselor or therapist.

4 d. "Patient or client" means any person who receives
5 psychotherapy, counseling or other assessment or treatment
6 concerning any mental illness, symptom, or condition or any
7 emotional illness, symptom, or condition from a counselor or
8 therapist.

9 e. "Sexual exploitation" means any sexual conduct by a
10 counselor or therapist with a patient or client or former
11 patient or former client for the purpose of arousing or
12 satisfying the sexual desires of the counselor or therapist or
13 the patient, client, former patient, or former client, which
14 includes but is not limited to the following: kissing;
15 touching of the inner thigh, breast, groin, buttock, anus,
16 pubes, or genitals or the touching of the clothing covering
17 the inner thigh, breast, groin, buttock, anus, pubes, or
18 genitals; a sex act as defined in section 702.17; or verbal
19 suggestions of sexual involvement. "Sexual exploitation" does
20 not include conduct which is a standard part or a standard
21 medical treatment of a patient or client if performed by a
22 person qualified to perform such medical treatment.

3/43 23 2. It is unlawful for a counselor or therapist to engage
24 in conduct which constitutes sexual exploitation, with or
25 without the consent of the patient or client or former patient
26 or former client.

3/43 27 3. A person who violates this section commits a class "D"
28 felony, except that any person who violates this section by
29 conduct defined as a sex act under section 702.17 commits a
30 class "C" felony.

31

EXPLANATION

32 This bill makes it unlawful for certain persons who render
33 or purport to render psychotherapy, counseling, or other
34 assessment or treatment involving a mental or emotional
35 illness, symptom, or condition to sexually exploit patients or

1 clients or former patients or former clients. Violation would
2 constitute a class "D" felony unless the violation constituted
3 a sex act, in which case violation would constitute a class
4 "C" felony.

5 The bill also provides definitions for certain terms.
6
7
8

10 SENATE FILE 2
11 FISCAL NOTE

A fiscal note for Senate File 2 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.

Senate File 2 makes it unlawful for counselors or therapists to sexually exploit patients or clients or former patients or clients. Violation would be a Class D felony unless the violation constitutes a sex act, in which case violation would be a Class C felony.

It is not possible to estimate the fiscal impact of this new crime as there are no historical data with which to estimate the number of offenders who would be sentenced under this legislation. However, Senate File 2 may increase criminal justice system costs, depending upon the number of offenders arrested and convicted. This includes the costs of incarceration pending sentencing, prosecution and defense, increased criminal court cases, community-based supervision, and incarceration in a State prison. A Class D felony is punishable by no more than 5 years in a State prison while a Class C felony is punishable by no more than 10 years in prison.

Sources: Department of Corrections
Department of Human Rights

(LSB 1072ss, BA1.)

20 FILED MARCH 20, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

30
31
32
33
34
35

SENATE FILE 2

S-3143

1 Amend Senate File 2 as follows:

2 1. Page 1, by striking lines 17 through 31 and
3 inserting the following:

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

11 b. "Mental health service" means the treatment,
12 assessment, or counseling of another person for a
13 cognitive, behavioral, emotional, mental, or social
14 dysfunction, including an intrapersonal or
15 interpersonal dysfunction.

16 c. "Emotionally dependent" means that the nature
17 of the patient's or client's or former patient's or
18 client's emotional condition or the nature of the
19 treatment provided by the counselor or therapist is
20 such that the counselor or therapist knows or has
21 reason to know that the patient or client or former
22 patient or client is significantly impaired in the
23 ability to withhold consent to sexual conduct, as
24 described in paragraph "e", by the counselor or
25 therapist."

26 2. Page 1, by inserting after line 31 the
27 following:

SENATE FILE 2

S-3184

1 Amend the amendment, S-3143, to Senate File 2, as
2 follows:

3 1. Page 1, by striking lines 45 through 50 and
4 inserting the following:

5 "(2) Any sexual conduct, with a patient or client
6 or emotionally dependent former patient or client for
7 the purpose of arousing or satisfying the sexual
8 desires of the counselor or therapist or the patient
9 or client or emotionally dependent former patient or
10 client, which".

11 2. Page 2, line 5, by inserting after the word
12 "client" the following: "or former patient or client
13 within one year of the termination of the provision of
14 mental health services by the counselor or therapist".

15 3. Page 2, line 8, by inserting after the word
16 "client" the following: "or former patient or
17 client".

By RALPH ROSENBERG
RICHARD VARN

Adopted 4/3/91 (p. 1025)

S-3184 FILED MARCH 26, 1991

S-3143

Page 2

1 includes but is not limited to the following:
2 kissing; touching of the clothed or unclothed inner
3 thigh, breast, groin, buttock, anus, pubes, or
4 genitals; or a sex act as defined in section 702.17.
x 5 (3) Any sexual conduct with a patient or client
6 for the purpose of arousing or satisfying the sexual
7 desires of the counselor or therapist or the patient
8 or client which includes but is not limited to the
9 following: kissing; touching of the clothed or
10 unclothed inner thigh, breast, groin, buttock, anus,
11 pubes, or genitals; or a sex act as defined in section
12 702.17.

13 "Sexual abuse by a counselor or therapist" does not
14 include touching which is part of a necessary
15 examination or treatment provided a patient or client
16 by a counselor or therapist acting within the scope of
17 the practice or employment in which the counselor or
18 therapist is engaged.

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

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

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

31 Sec. ____ . Section 614.1, Code 1991, is amended by
32 adding the following new subsection:

33 NEW SUBSECTION. 12. SEXUAL ABUSE BY A COUNSELOR
34 OR THERAPIST. An action for damages for injury
35 suffered as a result of sexual abuse by a counselor or
36 therapist shall be brought within five years of the
37 date the victim was last treated by the counselor or
38 therapist."

39 4. By renumbering as necessary.

By COMMITTEE ON JUDICIARY
AL STURGEON, Chairperson

S-3143 FILED MARCH 21, 1991

Adopted as amended by 3184 4/3/91 (p. 1025)

**SENATE FILE 2
FISCAL NOTE**

A fiscal note for Senate File 2 as amended and passed by the Senate 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.

Senate File 2 as amended and passed by the Senate makes it unlawful for counselors or therapists to sexually exploit patients or clients or former patients or clients. A graduated penalty system is imposed, with penalties ranging from a serious misdemeanor to a Class D felony.

It is not possible to estimate the fiscal impact of this new crime as there are no historical data with which to estimate the number of offenders who would be sentenced under this legislation. However, Senate File 2 may increase criminal justice system costs, depending upon the number of offenders arrested and convicted. This includes the costs of incarceration pending sentencing, prosecution and defense, increased criminal court cases, community-based supervision, and incarceration in a State prison. A serious misdemeanor is punishable by no more than 1 year in jail; an aggravated misdemeanor is punishable by no more than 2 years imprisonment; a Class D felony is punishable by no more than 5 years in the State prison.

Sources: Department of Corrections

(LSB 1072ss.2, BAL)

FILED APRIL 16, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

1 Section 1. Section 702.11, Code 1991, is amended to read
2 as follows:

3 702.11 FORCIBLE FELONY.

4 A "forcible felony" is any felonious child endangerment,
5 assault, murder, sexual abuse ~~other-than-sexual-abuse-in-the~~
6 ~~third-degree-committed-between-spouses-or-in-violation-of~~
7 ~~section-709.47-subsection-27-paragraph-"c",-subparagraph-(4),~~
8 kidnapping, robbery, arson in the first degree, or burglary in
9 the first degree. However, sexual abuse in the third degree
10 committed between spouses, sexual abuse in violation of
11 section 709.4, subsection 2, paragraph "c", subparagraph (4),
12 or sexual exploitation by a counselor or therapist in
13 violation of section 709.15, is not a "forcible felony".

14 Sec. 2. NEW SECTION. 709.15 SEXUAL EXPLOITATION BY A
15 COUNSELOR OR THERAPIST.

16 1. As used in this section:

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

23 b. "Mental health service" means the treatment,
24 assessment, or counseling of another person for a cognitive,
25 behavioral, emotional, mental, or social dysfunction,
26 including an intrapersonal or interpersonal dysfunction.

27 c. "Emotionally dependent" means that the nature of the
28 patient's or client's or former patient's or client's
29 emotional condition or the nature of the treatment provided by
30 the counselor or therapist is such that the counselor or
31 therapist knows or has reason to know that the patient or
32 client or former patient or client is significantly impaired
33 in the ability to withhold consent to sexual conduct, as
34 described in paragraph "f", by the counselor or therapist.

35 For the purposes of paragraph "f", a former patient or

1 former client is presumed to be dependent for one year
2 following the termination of the provision of mental health
3 services.

4 d. "Former patient or client" means a person who received
5 mental health services from the counselor or therapist.

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

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

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

12 (2) Any sexual conduct, with a patient or client or
13 emotionally dependent former patient or client for the purpose
14 of arousing or satisfying the sexual desires of the counselor
15 or therapist or the patient or client or emotionally dependent
16 former patient or client, which includes but is not limited to
17 the following: kissing; touching of the clothed or unclothed
18 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
19 or a sex act as defined in section 702.17.

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

29 "Sexual abuse by a counselor or therapist" does not include
30 touching which is part of a necessary examination or treatment
31 provided a patient or client by a counselor or therapist
32 acting within the scope of the practice or employment in which
33 the counselor or therapist is engaged.

34 2. A counselor or therapist who commits sexual abuse in
35 violation of subsection 1, paragraph "f", subparagraph (1),

1 commits a class "D" felony.

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

5 4. A counselor or therapist who commits sexual abuse in
6 violation of subsection 1, paragraph "f", subparagraph (3),
7 commits a serious misdemeanor. In lieu of the sentence
8 provided for under section 903.1, subsection 1, paragraph "b",
9 the offender may be required to attend a sexual abuser
10 treatment program.

11 Sec. 3. Section 614.1, Code 1991, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 12. SEXUAL ABUSE BY A COUNSELOR OR
14 THERAPIST. An action for damages for injury suffered as a
15 result of sexual abuse by a counselor or therapist shall be
16 brought within five years of the date the victim was last
17 treated by the counselor or therapist.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Sec. 2. NEW SECTION. 709.15 SEXUAL EXPLOITATION BY A COUNSELOR OR THERAPIST.

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. "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.

c. "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 paragraph "f", by the counselor or therapist.

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

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

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

f. "Sexual abuse by a counselor or therapist" occurs when either or both 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 a patient or client or emotionally dependent former patient or client for the purpose

SENATE FILE 2

AN ACT

RELATING TO SEXUAL EXPLOITATION BY A COUNSELOR OR THERAPIST AND PROVIDING PENALTIES.

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

Section 1. Section 702.11, Code 1991, is amended to read as follows:

702.11 FORCIBLE FELONY.

A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse ~~other than sexual abuse in the third degree committed between spouses or in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4)~~, kidnapping, robbery, arson in the first degree, or burglary in the first degree. However, sexual abuse in the third degree committed between spouses, sexual abuse in violation of section 709.4, subsection 2, paragraph "c", subparagraph (4), or sexual exploitation by a counselor or therapist in violation of section 709.15, is not a "forcible felony".

of arousing or satisfying the sexual desires of the counselor or therapist or the 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 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.

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

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

4. A counselor or therapist who commits sexual abuse in violation of subsection 1, paragraph "f", subparagraph (3), 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.

Sec. 3. Section 614.1, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 12. SEXUAL ABUSE BY A COUNSELOR OR THERAPIST. An action for damages for injury suffered as a result of sexual abuse by a counselor or therapist shall be brought within five years of the date the victim was last treated by the counselor or therapist.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2, Seventy-fourth General Assembly.

Approved May 8, 1991

JOHN F. DWYER
Secretary of the Senate

TERRY E. BRANSTAD
Governor