

House Study Bill 649

Bill Text

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1 1 Section 1. Section [709.15](#), Code 2001, is amended to read
1 2 as follows:
1 3 709.15 SEXUAL EXPLOITATION BY A COUNSELOR,

~~OR~~

~~THERAPIST,~~

1 4 ~~PEACE OFFICER, OR SCHOOL EMPLOYEE.~~

1 5 1. As used in this section:

1 6 a. "Counselor or therapist" means a physician,
1 7 psychologist, nurse, professional counselor, social worker,
1 8 marriage or family therapist, alcohol or drug counselor,
1 9 member of the clergy, or any other person, whether or not
1 10 licensed or registered by the state, who provides or purports
1 11 to provide mental health services.

1 12 b. "Emotionally dependent" means that the nature of the
1 13 patient's or client's or former patient's or client's
1 14 emotional condition or the nature of the treatment provided by
1 15 the counselor or therapist is such that the counselor or
1 16 therapist knows or has reason to know that the patient or
1 17 client or former patient or client is significantly impaired
1 18 in the ability to withhold consent to sexual conduct, as
1 19 described in

~~paragraph "f"~~

~~subsection 2~~, by the counselor or
1 20 therapist.

1 21 For the purposes of

~~paragraph "f"~~

~~subsection 2~~, a former

1 22 patient or client is presumed to be emotionally dependent for
1 23 one year following the termination of the provision of mental
1 24 health services.

1 25 c. "Former patient or client" means a person who received
1 26 mental health services from the counselor or therapist.

1 27 d. "Mental health service" means the treatment,
1 28 assessment, or counseling of another person for a cognitive,
1 29 behavioral, emotional, mental, or social dysfunction,
1 30 including an intrapersonal or interpersonal dysfunction.

1 31 e. "Patient or client" means a person who receives mental
1 32 health services from the counselor or therapist.

1 33 f. Person detained means a person who is under arrest,
1 34 being investigated by a peace officer, or is being served with
1 35 a writ or other legal process by a peace officer.

2 1 g. "School employee" means a teacher, employee, contract
2 2 employee, coach, or assistant coach who is teaching or
2 3 coaching at, or working for, a public or nonpublic school or
2 4 area education agency.

2 5 h. "Student" means a person who is currently enrolled at a
2 6 public or nonpublic secondary school, or who was a student
2 7 enrolled at a public or nonpublic secondary school within
2 8 thirty days of any violation of subsection 4.

2 9

~~f.~~

~~2.~~

3 15 officer's duties while acting within the scope of employment.
3 16 4. Sexual exploitation by a school employee occurs when
3 17 any of the following are found:
3 18 a. A pattern or practice or scheme of conduct to engage in
3 19 any of the conduct described in paragraph "b".
3 20 b. Any sexual conduct with a student for the purpose of
3 21 arousing or satisfying the sexual desires of the school
3 22 employee or the student. Sexual conduct includes but is not
3 23 limited to the following: kissing; touching of the clothed or
3 24 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
3 25 genitals; or a sex act as defined in section 702.17.
3 26 Sexual exploitation by a school employee does not include
3 27 touching which is necessary in the performance of the school
3 28 employee's duties while acting within the scope of employment.
3 29

~~2.~~

- 5. a. A counselor or therapist who commits sexual
3 30 exploitation in violation of subsection

~~1~~

- 2, paragraph

~~"f"~~

-
3 31 "a",

~~subparagraph (1),~~

- commits a class "D" felony.

3 32

~~3.~~

- b. A counselor or therapist who commits sexual
3 33 exploitation in violation of subsection

~~1~~

- 2, paragraph

~~"f"~~

-
3 34 "b",

~~subparagraph (2),~~

- commits an aggravated misdemeanor.

3 35

~~4.~~

- c. A counselor or therapist who commits sexual
4 1 exploitation in violation of subsection

~~1~~

- 2, paragraph

~~"f"~~

-
4 2 "c",

~~subparagraph (3),~~

- commits a serious misdemeanor. In lieu

4 3 of the sentence provided for under section 903.1, subsection

4 4 1, paragraph "b", the offender may be required to attend a

4 5 sexual abuser treatment program.

4 6 6. a. A peace officer who commits sexual exploitation in

4 7 violation of subsection 3, paragraph "a", commits a class "D"

4 8 felony.

4 9 b. A peace officer who commits sexual exploitation in

4 10 violation of subsection 3, paragraph "b", commits an

4 11 aggravated misdemeanor.

4 12 7. a. A school employee who commits sexual exploitation
4 13 in violation of subsection 4, paragraph "a", commits a class
4 14 "D" felony.

4 15 b. A school employee who commits sexual exploitation in
4 16 violation of subsection 4, paragraph "b", commits an
4 17 aggravated misdemeanor.

4 18 EXPLANATION

4 19 This bill creates a criminal offense of sexual exploitation
4 20 by a peace officer or school employee.

4 21 The bill provides that a peace officer shall not engage in
4 22 any sexual conduct with a person who is under arrest, being
4 23 investigated by the officer, or who is being served with a
4 24 writ or other legal process, for the purpose of arousing or
4 25 satisfying the sexual desires of either of them.

4 26 The bill provides that a school employee shall not engage
4 27 in any sexual conduct with a student who is enrolled at a
4 28 public or nonpublic secondary school, or who was enrolled at a
4 29 public or nonpublic secondary school within 30 days of any
4 30 violation of this bill, for the purpose of arousing the sexual
4 31 desires of either of them. The bill defines "school employee"
4 32 to mean a teacher, employee, contract employee, coach, or
4 33 assistant coach who is teaching or coaching at, or working
4 34 for, a public or nonpublic school or area education agency.

4 35 The bill defines "sexual conduct" to include but is not
5 1 limited to the following: kissing; touching of the clothed or
5 2 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
5 3 genitals; or a sex act as defined in Code section 702.17.

5 4 Sexual exploitation by a peace officer or a school employee
5 5 does not include touching which is necessary in the
5 6 performance of the officer's or school employee's duties while
5 7 acting within the scope of employment.

5 8 The bill provides that a peace officer or a school employee
5 9 commits a class "D" felony if the officer or employee engages
5 10 in a pattern or practice or scheme of conduct to engage in any
5 11 sexual conduct with a prohibited person under the bill.

5 12 The bill provides that a peace officer or a school employee
5 13 commits an aggravated misdemeanor if the officer or employee
5 14 engages in sexual conduct with a prohibited person under the
5 15 bill.

5 16 A class "D" felony is punishable by confinement for no more
5 17 than five years and a fine of at least \$750 but not more than
5 18 \$7,500. An aggravated misdemeanor is punishable by
5 19 confinement for no more than two years and a fine of at least
5 20 \$500 but not more than \$5,000.

5 21 LSB 6681HC 79

5 22 jm/pj/5