

FILED MAR 6 '03

SENATE FILE 316
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SF 169)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the conduct and licensure of school employees
2 by creating a criminal offense of sexual exploitation by a
3 school employee, providing a penalty, authorizing the board of
4 educational examiners to perform record checks at the
5 applicant's expense, and requiring school districts and
6 schools to report practitioner misconduct under certain
7 circumstances.

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

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SF 316

1 Section 1. NEW SECTION. 272.15 SINGLE CONTACT REPOSITORY
2 -- RECORD CHECKS.

3 1. The board may access the single contact repository
4 established by the department of inspections and appeals
5 pursuant to section 135C.33 as necessary for the board to
6 perform record checks of persons seeking renewal of a license
7 or certificate issued pursuant to this chapter.

8 2. The board shall charge an applicant seeking renewal of
9 a license, authorization, or certificate a fee to defray the
10 costs of performing record checks in accordance with
11 subsection 1. This fee is in addition to any other license or
12 other fee charged by the board. The executive director shall
13 deposit the fees with the treasurer of state and the fees
14 shall be credited to the general fund of the state. The
15 executive director shall keep an accurate and detailed account
16 of fees received and paid to the treasurer of state.

17 3. The board of directors of a school district or area
18 education agency and the authorities in charge of a nonpublic
19 school shall report to the board the nonrenewal or
20 termination, for reasons of alleged or actual misconduct, of a
21 contract executed under sections 279.12, 279.13, 279.15
22 through 279.21, 279.23, and 279.24, and the resignation of a
23 person who holds a license, certificate, or authorization
24 issued by the board as a result of or following an incident or
25 allegation of misconduct. For purposes of this subsection,
26 unless the context otherwise requires, "misconduct" means a
27 violation of the criteria of professional practices adopted by
28 rule of the board.

29 Sec. 2. Section 614.1, subsection 12, Code 2003, is
30 amended to read as follows:

31 12. SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR, OR
32 THERAPIST, OR SCHOOL EMPLOYEE. An action for damages for
33 injury suffered as a result of sexual abuse, as defined in
34 section 709.1, by a counselor, or therapist, or school
35 employee, as defined in section 709.15, or as a result of

1 sexual exploitation by a counselor, or therapist, or school
2 employee shall be brought within five years of the date the
3 victim was last treated by the counselor or therapist, or
4 within five years of the date the victim was last enrolled in
5 the school.

6 Sec. 3. Section 692A.1, subsection 10, Code 2003, is
7 amended to read as follows:

8 10. "Sexual exploitation" means sexual exploitation by a
9 counselor, or therapist, or school employee under section
10 709.15.

11 Sec. 4. Section 702.11, subsection 2, paragraph d, Code
12 2003, is amended to read as follows:

13 d. Sexual exploitation by a counselor, or therapist, or
14 school employee in violation of section 709.15.

15 Sec. 5. Section 709.15, Code 2003, is amended to read as
16 follows:

17 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,
18 OR SCHOOL EMPLOYEE.

19 1. As used in this section:

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

26 b. "Emotionally dependent" means that the nature of the
27 patient's or client's or former patient's or client's
28 emotional condition or the nature of the treatment provided by
29 the counselor or therapist is such that the counselor or
30 therapist knows or has reason to know that the patient or
31 client or former patient or client is significantly impaired
32 in the ability to withhold consent to sexual conduct, as
33 described in paragraph-"f" subsection 2, by the counselor or
34 therapist.

35 For the purposes of paragraph-"f" subsection 2, a former

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

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

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

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

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

14 g. "Student" means a person who is currently enrolled at
15 or attending a public or nonpublic elementary or secondary
16 school, or who was a student enrolled at a public or nonpublic
17 elementary or secondary school within thirty days of any
18 violation of subsection 3.

19 ~~f.~~ 2. "Sexual exploitation by a counselor or therapist"
20 occurs when any of the following are found:

21 ~~{1}~~ a. A pattern or practice or scheme of conduct to
22 engage in any of the conduct described in ~~subparagraph-(2)-or~~
23 ~~{3}~~ paragraph "b" or "c".

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

33 ~~{3}~~ c. Any sexual conduct with a patient or client or
34 former patient or client within one year of the termination of
35 the provision of mental health services by the counselor or

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

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

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

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

16 b. Any sexual conduct with a student for the purpose of
17 arousing or satisfying the sexual desires of the school
18 employee or the student. Sexual conduct includes but is not
19 limited to the following: kissing; touching of the clothed or
20 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
21 genitals; or a sex act as defined in section 702.17.

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

25 2- 4. a. A counselor or therapist who commits sexual
26 exploitation in violation of subsection \pm 2, paragraph "f"
27 "a", subparagraph-(1), commits a class "D" felony.

28 3- b. A counselor or therapist who commits sexual
29 exploitation in violation of subsection \pm 2, paragraph "f"
30 "b", subparagraph-(2), commits an aggravated misdemeanor.

31 4- c. A counselor or therapist who commits sexual
32 exploitation in violation of subsection \pm 2, paragraph "f"
33 "c", subparagraph-(3), commits a serious misdemeanor. In lieu
34 of the sentence provided for under section 903.1, subsection
35 1, paragraph "b", the offender may be required to attend a

1 sexual abuser treatment program.

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

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

8 Sec. 6. Section 802.2A, subsection 2, Code 2003, is
9 amended to read as follows:

10 2. An indictment or information for sexual exploitation by
11 a counselor, ~~or therapist, or school employee~~ under section
12 709.15 committed on or with a person who is under the age of
13 eighteen shall be found within ten years after the person upon
14 whom the offense is committed attains eighteen years of age.
15 An information or indictment for any other sexual exploitation
16 shall be found within ten years of the date the victim was
17 last treated by the counselor or therapist, or within ten
18 years of the date the victim was enrolled in the school.

19 Sec. 7. Section 903B.1, subsection 4, paragraph h, Code
20 2003, is amended to read as follows:

21 h. Sexual exploitation ~~by a counselor~~ in violation of
22 section 709.15.

23 EXPLANATION

24 This bill creates a criminal offense of sexual exploitation
25 by a school employee, provides a penalty, and permits the
26 board of educational examiners to perform record checks of
27 individuals seeking license, authorization, or certificate
28 renewal.

29 The bill permits the board of educational examiners to
30 access the single contact repository established by the
31 department of inspections and appeals to perform the record
32 checks. The board shall charge the applicant a fee to defray
33 the costs of performing the record check.

34 The bill directs school districts and nonpublic schools to
35 report to the board the termination or nonrenewal of a

1 practitioner's or coach's contract, or the resignation of a
2 practitioner, coach, or para-educator for reasons of alleged
3 or actual misconduct. "Misconduct" is defined as a violation
4 of the criteria of professional practices adopted by rule of
5 the board.

6 The bill provides that a school employee shall not engage
7 in any sexual conduct with a student who is enrolled at a
8 public or nonpublic elementary or secondary school, or who was
9 enrolled at a public or nonpublic elementary or secondary
10 school within 30 days of any violation of this bill, for the
11 purpose of arousing the sexual desires of either of them. The
12 bill defines "school employee" to mean a licensed
13 practitioner.

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

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

21 The bill provides that a school employee commits a class
22 "D" felony if the employee engages in a pattern or practice or
23 scheme of conduct to engage in such sexual conduct with a
24 student.

25 The bill provides that a school employee commits an
26 aggravated misdemeanor if the employee engages in such sexual
27 conduct with a student.

28 The amendments to Code sections 614.1, 692A.1, 702.11,
29 802.2A, and 903B.1 conform the new criminal offense of sexual
30 exploitation by a school employee with other sexual
31 exploitation offense provisions found in Code section 709.15,
32 including the five-year civil and 10-year criminal statute of
33 limitations.

34 A class "D" felony is punishable by confinement for no more
35 than five years and a fine of at least \$750 but not more than

1 \$7,500. An aggravated misdemeanor is punishable by
2 confinement for no more than two years and a fine of at least
3 \$500 but not more than \$5,000.

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5 **SENATE FILE 316**

6 **S-3040**

7 1 Amend Senate File 316 as follows:

8 2 1. Page 1, by inserting before line 1 the
9 3 following:

10 4 "Section 1. Section 272.2, subsection 14,
11 5 paragraph b, subparagraph (1), subparagraph
12 6 subdivision (b); Code 2003, is amended by adding the
13 7 following new subparagraph subdivision part:

14 8 NEW SUBPARAGRAPH SUBDIVISION PART. (viii) Sexual
15 9 exploitation by a school employee."

16 10 2. Page 1, line 21, by inserting before the word
17 11 "contract" the following: "person's".

18 12 3. Page 1, line 25, by inserting after the word
19 13 "misconduct." the following: "Information reported to
20 14 the board in accordance with this subsection is
21 15 privileged and confidential, and, except as provided
22 16 in section 272.13, is not subject to discovery,
23 17 subpoena, or other means of legal compulsion for its
24 18 release to a person other than the respondent and the
25 19 board and its employees and agents involved in
26 20 licensee discipline, and is not admissible in evidence
27 21 in a judicial or administrative proceeding other than
28 22 the proceeding involving licensee discipline. The
29 23 board shall review the information reported to
30 24 determine whether a complaint should be initiated."

31 25 4. Page 1, by striking lines 26 through 28 and
32 26 inserting the following: "unless the context
33 27 otherwise requires, "misconduct" means an action
34 28 disqualifying an applicant for a license or causing
35 29 the license of a person to be revoked or suspended in
30 30 accordance with the rules adopted by the board to
31 31 implement section 272.2, subsection 14."

32 32 5. Page 4, line 23, by striking the word "which"
33 33 and inserting the following: "that".

34 34 6. By renumbering as necessary.

35 By JEFF ANGELO

36 **S-3040 FILED MARCH 18, 2003**

37 *Added 3/18/03*

Description

Senate File 316 creates a criminal offense of sexual exploitation by a school employee, provides a penalty, and permits the Board of Educational Examiners (BOEE) to perform record checks of individuals seeking renewal of a license or certificate.

Background

Currently, the Board of Educational Examiners conducts approximately 5,000 background checks annually for applicants seeking new licenses. The fee is \$18, which includes \$10 that is passed through to the Department of Public Safety, Division of Criminal Investigation (DCI); \$2 that is passed through to the Information Technology Department (ITD) for processing charges; and \$6 that is retained by the BOEE to defray personnel costs associated with 1.0 temporary FTE position for a clerk to process the information. In addition, the BOEE has 1.0 FTE position for an investigator to conduct investigations. Denials of licensure may result in hearings that require the compensation of hearing officers at \$65 per hour. There were 12 hearings in FY 2002 at an average cost of \$1,100 per case.

Assumptions

1. The BOEE will conduct an additional 15,000 background checks annually and charge each applicant a fee of \$18, \$6 of which will be retained by the BOEE to defray costs.
 2. The BOEE will require an additional 2.0 FTE positions for office support staff at \$30,000 each and 1.0 FTE position for an additional Investigator II at \$45,000; these costs include salary and benefits.
 3. Denials and revocations will result in 25 additional hearings annually, at an average cost of \$1,100 per case.
 4. The additional staffing will result in the need for three computers at a one-time cost of \$6,000.
 5. The additional workload will result in increased expense for printing and supplies of \$2,000 annually.
 6. The \$10 pass-through fee to DCI and the \$2 pass-through fee to ITD will be sufficient to cover the costs to those agencies.
 7. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
 8. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projection period.
 9. The law will be come effective July 1, 2003. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
 10. This information is provided from the Justice Data Warehouse, which consists of court and Community-Based Corrections (CBC) information through FY 2002.
 11. The average daily cost for parole or probation is \$1.82 per offender. The average length of stay for an aggravated misdemeanor conviction is 19 months on probation or 5 months on parole. The average length of stay for a Class D felony is 26 months on probation or 13 months on parole.
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12. The marginal cost per day for State prisons is \$12.00 per offender. The average length of stay for an aggravated misdemeanor conviction against a person is nine months. The average length of stay for a Class D felony conviction against a person is 23 months.
13. The median cost per case for indigent defense is \$1,000 for an aggravated misdemeanor or a Class D felony.
14. The average cost for an aggravated misdemeanor trial ranges from \$80 to \$470, depending on if a jury is used. The average cost of a Class D felony trial ranges from \$195 to \$1,200. These costs include the time of a court reporter, court attendant, Clerk of Court staff, and a District Associate Judge.
15. Offenders convicted under this Bill may be required to register on the Sex Offender Registry maintained by the Department of Public Safety. The cost associated with the Registry is unknown.

Correctional Impact

The correctional impact of SF 316 cannot be determined due to insufficient information with which to estimate the number of additional convictions, prison terms, jail terms, and/or probation terms that will result.

Senate File 316 would have a minimal correctional impact on prisons, jails, and Community-Based Corrections. In FY 2002, there were nine people convicted of Lascivious Acts with a Minor (Section 709.14, Code of Iowa). However, it cannot be determined how many of these convicted offenders, if any, are school employees. This Bill would criminalize acts against certain minors that are not now against the law. Additionally, some penalties against some minors would be increased from serious misdemeanors to aggravated misdemeanors and Class D felonies.

Fiscal Impact

Due to insufficient information, the fiscal impact of creating a new offense under SF 316 cannot be determined. However, the State's cost for one aggravated misdemeanor conviction for a crime against a minor ranges from \$1,100 to \$5,000. The State's cost for one Class D felony conviction for a crime against a minor ranges from \$1,600 to \$11,200. These costs will be incurred across multiple years while the person is supervised in the correctional system, either in prison or in the community.

The estimated net fiscal impact of SF 316 to the Board of Educational Examiners is as follows:

	<u>FY 2004</u>	<u>FY 2005</u>
<u>Revenues</u>		
Applicant fees	\$270,000	\$270,000
<u>Expenditures</u>		
Salaries	\$105,000	\$105,000
Pass-through fees	180,000	180,000
Hearing costs	26,000	26,000
Other	8,000	2,000
Total expenditures	<u>\$319,000</u>	<u>\$313,000</u>
Net impact	<u>\$-49,000</u>	<u>\$-43,000</u>

Sources

Board of Educational Examiners
 Department of Human Rights, Criminal and Juvenile Justice Planning Division
 Department of Corrections
 Judicial Branch
 State Public Defender's Office

/s/ Dennis C Prouty

March 17, 2003

SENATE FILE 316
BY COMMITTEE ON EDUCATION

(SUCCESSOR TO SF 169)

(AS AMENDED AND PASSED BY THE SENATE MARCH 19, 2003)

_____ - New Language by the Senate

Passed Senate, Date Passed 3/18/03 Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the conduct and licensure of school employees
2 by creating a criminal offense of sexual exploitation by a
3 school employee, providing a penalty, authorizing the board of
4 educational examiners to perform record checks at the
5 applicant's expense, and requiring school districts and
6 schools to report practitioner misconduct under certain
7 circumstances.

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

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S.F. 316

1 Section 1. Section 272.2, subsection 14, paragraph b,
2 subparagraph (1), subparagraph subdivision (b), Code 2003, is
3 amended by adding the following new subparagraph subdivision
4 part:

5 NEW SUBPARAGRAPH SUBDIVISION PART. (viii) Sexual
6 exploitation by a school employee.

7 Sec. 2. NEW SECTION. 272.15 SINGLE CONTACT REPOSITORY --
8 RECORD CHECKS.

9 1. The board may access the single contact repository
10 established by the department of inspections and appeals
11 pursuant to section 135C.33 as necessary for the board to
12 perform record checks of persons seeking renewal of a license
13 or certificate issued pursuant to this chapter.

14 2. The board shall charge an applicant seeking renewal of
15 a license, authorization, or certificate a fee to defray the
16 costs of performing record checks in accordance with
17 subsection 1. This fee is in addition to any other license or
18 other fee charged by the board. The executive director shall
19 deposit the fees with the treasurer of state and the fees
20 shall be credited to the general fund of the state. The
21 executive director shall keep an accurate and detailed account
22 of fees received and paid to the treasurer of state.

23 3. The board of directors of a school district or area
24 education agency and the authorities in charge of a nonpublic
25 school shall report to the board the nonrenewal or
26 termination, for reasons of alleged or actual misconduct, of a
27 person's contract executed under sections 279.12, 279.13,
28 279.15 through 279.21, 279.23, and 279.24, and the resignation
29 of a person who holds a license, certificate, or authorization
30 issued by the board as a result of or following an incident or
31 allegation of misconduct. Information reported to the board
32 in accordance with this subsection is privileged and
33 confidential, and, except as provided in section 272.13, is
34 not subject to discovery, subpoena, or other means of legal
35 compulsion for its release to a person other than the

1 respondent and the board and its employees and agents involved
2 in licensee discipline, and is not admissible in evidence in a
3 judicial or administrative proceeding other than the
4 proceeding involving licensee discipline. The board shall
5 review the information reported to determine whether a
6 complaint should be initiated. For purposes of this
7 subsection, unless the context otherwise requires,
8 "misconduct" means an action disqualifying an applicant for a
9 license or causing the license of a person to be revoked or
10 suspended in accordance with the rules adopted by the board to
11 implement section 272.2, subsection 14.

12 Sec. 3. Section 614.1, subsection 12, Code 2003, is
13 amended to read as follows:

14 12. SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR, OR
15 THERAPIST, OR SCHOOL EMPLOYEE. An action for damages for
16 injury suffered as a result of sexual abuse, as defined in
17 section 709.1, by a counselor, or therapist, or school
18 employee, as defined in section 709.15, or as a result of
19 sexual exploitation by a counselor, or therapist, or school
20 employee shall be brought within five years of the date the
21 victim was last treated by the counselor or therapist, or
22 within five years of the date the victim was last enrolled in
23 the school.

24 Sec. 4. Section 692A.1, subsection 10, Code 2003, is
25 amended to read as follows:

26 10. "Sexual exploitation" means sexual exploitation by a
27 counselor, or therapist, or school employee under section
28 709.15.

29 Sec. 5. Section 702.11, subsection 2, paragraph d, Code
30 2003, is amended to read as follows:

31 d. Sexual exploitation by a counselor, or therapist, or
32 school employee in violation of section 709.15.

33 Sec. 6. Section 709.15, Code 2003, is amended to read as
34 follows:

35 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,

1 OR SCHOOL EMPLOYEE.

2 1. As used in this section:

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

9 b. "Emotionally dependent" means that the nature of the
10 patient's or client's or former patient's or client's
11 emotional condition or the nature of the treatment provided by
12 the counselor or therapist is such that the counselor or
13 therapist knows or has reason to know that the patient or
14 client or former patient or client is significantly impaired
15 in the ability to withhold consent to sexual conduct, as
16 described in paragraph-"f" subsection 2, by the counselor or
17 therapist.

18 For the purposes of paragraph-"f" subsection 2, a former
19 patient or client is presumed to be emotionally dependent for
20 one year following the termination of the provision of mental
21 health services.

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

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

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

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

32 g. "Student" means a person who is currently enrolled at
33 or attending a public or nonpublic elementary or secondary
34 school, or who was a student enrolled at a public or nonpublic
35 elementary or secondary school within thirty days of any

1 violation of subsection 3.

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

4 {1} a. A pattern or practice or scheme of conduct to
5 engage in any of the conduct described in ~~subparagraph-(2)-or~~
6 {3} paragraph "b" or "c".

7 {2} b. Any sexual conduct, with an emotionally dependent
8 patient or client or emotionally dependent former patient or
9 client for the purpose of arousing or satisfying the sexual
10 desires of the counselor or therapist or the emotionally
11 dependent patient or client or emotionally dependent former
12 patient or client, which includes but is not limited to the
13 following: kissing; touching of the clothed or unclothed
14 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
15 or a sex act as defined in section 702.17.

16 {3} c. Any sexual conduct with a patient or client or
17 former patient or client within one year of the termination of
18 the provision of mental health services by the counselor or
19 therapist for the purpose of arousing or satisfying the sexual
20 desires of the counselor or therapist or the patient or client
21 or former patient or client which includes but is not limited
22 to the following: kissing; touching of the clothed or
23 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
24 genitals; or a sex act as defined in section 702.17.

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

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

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

34 b. Any sexual conduct with a student for the purpose of
35 arousing or satisfying the sexual desires of the school

1 employee or the student. Sexual conduct includes but is not
2 limited to the following: kissing; touching of the clothed or
3 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
4 genitals; or a sex act as defined in section 702.17.

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

8 ~~2.~~ 4. a. A counselor or therapist who commits sexual
9 exploitation in violation of subsection ~~± 2~~, paragraph "~~f~~"
10 "a", ~~subparagraph-(±)~~, commits a class "D" felony.

11 ~~3.~~ b. A counselor or therapist who commits sexual
12 exploitation in violation of subsection ~~± 2~~, paragraph "~~f~~"
13 "b", ~~subparagraph-(2)~~, commits an aggravated misdemeanor.

14 ~~4.~~ c. A counselor or therapist who commits sexual
15 exploitation in violation of subsection ~~± 2~~, paragraph "~~f~~"
16 "c", ~~subparagraph-(3)~~, commits a serious misdemeanor. In lieu
17 of the sentence provided for under section 903.1, subsection
18 1, paragraph "b", the offender may be required to attend a
19 sexual abuser treatment program.

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

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

26 Sec. 7. Section 802.2A, subsection 2, Code 2003, is
27 amended to read as follows:

28 2. An indictment or information for sexual exploitation by
29 a counselor, ~~or~~ therapist, or school employee under section
30 709.15 committed on or with a person who is under the age of
31 eighteen shall be found within ten years after the person upon
32 whom the offense is committed attains eighteen years of age.
33 An information or indictment for any other sexual exploitation
34 shall be found within ten years of the date the victim was
35 last treated by the counselor or therapist, or within ten

1 years of the date the victim was enrolled in the school.

2 Sec. 8. Section 903B.1, subsection 4, paragraph h, Code
3 2003, is amended to read as follows:

4 h. Sexual exploitation ~~by-a-counselor~~ in violation of
5 section 709.15.

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