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SENATE FILE 44

BY LARSON

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act creating a criminal offense of sexual exploitation by a
2 school employee, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 44 JUDICIARY

1 Section 1. Section 614.1, subsection 12, Code 2003, is
2 amended to read as follows:

3 12. SEXUAL ABUSE OR SEXUAL EXPLOITATION BY A COUNSELOR, OR
4 THERAPIST, OR SCHOOL EMPLOYEE. An action for damages for
5 injury suffered as a result of sexual abuse, as defined in
6 section 709.1, by a counselor, or therapist, or school
7 employee, as defined in section 709.15, or as a result of
8 sexual exploitation by a counselor, or therapist, or school
9 employee shall be brought within five years of the date the
10 victim was last treated by the counselor or therapist, or
11 within five years of the date the victim was last enrolled in
12 the school.

13 Sec. 2. Section 692A.1, subsection 10, Code 2003, is
14 amended to read as follows:

15 10. "Sexual exploitation" means sexual exploitation by a
16 counselor, or therapist, or school employee under section
17 709.15.

18 Sec. 3. Section 702.11, subsection 2, paragraph d, Code
19 2003, is amended to read as follows:

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

22 Sec. 4. Section 709.15, Code 2003, is amended to read as
23 follows:

24 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,
25 OR SCHOOL EMPLOYEE.

26 1. As used in this section:

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

33 b. "Emotionally dependent" means that the nature of the
34 patient's or client's or former patient's or client's
35 emotional condition or the nature of the treatment provided by

1 the counselor or therapist is such that the counselor or
2 therapist knows or has reason to know that the patient or
3 client or former patient or client is significantly impaired
4 in the ability to withhold consent to sexual conduct, as
5 described in paragraph-"f" subsection 2, by the counselor or
6 therapist.

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

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

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

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

19 f. "School employee" means a teacher, employee, contract
20 employee, coach, or assistant coach who is teaching or
21 coaching at, or working for, a public or nonpublic secondary
22 school or area education agency.

23 g. "Student" means a person who is currently enrolled at a
24 public or nonpublic secondary school, or who was a student
25 enrolled at a public or nonpublic secondary school within
26 thirty days of any violation of subsection 3.

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

29 ~~(1)~~ a. A pattern or practice or scheme of conduct to
30 engage in any of the conduct described in ~~subparagraph-(2)~~ or
31 ~~(3)~~ paragraph "b" or "c".

32 ~~(2)~~ b. Any sexual conduct, with an emotionally dependent
33 patient or client or emotionally dependent former patient or
34 client for the purpose of arousing or satisfying the sexual
35 desires of the counselor or therapist or the emotionally

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

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

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

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

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

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

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

33 2- 4. a. A counselor or therapist who commits sexual
34 exploitation in violation of subsection 2, paragraph "f"
35 "a", subparagraph-(1), commits a class "D" felony.

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

4 4- c. A counselor or therapist who commits sexual
5 exploitation in violation of subsection ~~1~~ 2, paragraph "~~2~~"
6 "c", subparagraph-(3), commits a serious misdemeanor. In lieu
7 of the sentence provided for under section 903.1, subsection
8 1, paragraph "b", the offender may be required to attend a
9 sexual abuser treatment program.

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

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

16 Sec. 5. Section 802.2A, subsection 2, Code 2003, is
17 amended to read as follows:

18 2. An indictment or information for sexual exploitation by
19 a counselor, ~~or~~ therapist, or school employee under section
20 709.15 committed on or with a person who is under the age of
21 eighteen shall be found within ten years after the person upon
22 whom the offense is committed attains eighteen years of age.
23 An information or indictment for any other sexual exploitation
24 shall be found within ten years of the date the victim was
25 last treated by the counselor or therapist, or within ten
26 years of the date the victim was enrolled in the school.

27 Sec. 6. Section 903B.1, subsection 4, paragraph h, Code
28 2003, is amended to read as follows:

29 h. Sexual exploitation by-a-counselor in violation of
30 section 709.15.

31 EXPLANATION

32 This bill creates a criminal offense of sexual exploitation
33 by a school employee.

34 The bill provides that a school employee shall not engage
35 in any sexual conduct with a student who is enrolled at a

1 public or nonpublic secondary school, or who was enrolled at a
2 public or nonpublic secondary school within 30 days of any
3 violation of this bill, for the purpose of arousing the sexual
4 desires of either of them. The bill defines "school employee"
5 to mean a teacher, employee, contract employee, coach, or
6 assistant coach who is teaching or coaching at, or working
7 for, a public or nonpublic school or area education agency.

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

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

15 The bill provides that a school employee commits a class
16 "D" felony if the employee engages in a pattern or practice or
17 scheme of conduct to engage in such sexual conduct with a
18 student.

19 The bill provides that a school employee commits an
20 aggravated misdemeanor if the employee engages in such sexual
21 conduct with a student.

22 The amendments to Code sections 614.1, 692A.1, 702.11,
23 802.2A, and 903B.1 conform the new criminal offense of sexual
24 exploitation by a school employee with other sexual
25 exploitation offense provisions found in Code section 709.15,
26 including the five-year civil and 10-year criminal statute of
27 limitations.

28 A class "D" felony is punishable by confinement for no more
29 than five years and a fine of at least \$750 but not more than
30 \$7,500. An aggravated misdemeanor is punishable by
31 confinement for no more than two years and a fine of at least
32 \$500 but not more than \$5,000.

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