

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 2205

(BY DELEGATES HOWELL, STANSBURY, AMBLER,
COOPER, MILLER, FAIRCLOTH, ZATEZALO, BLAIR,
STATLER AND WAGNER)

[Introduced January 13, 2016;
referred to the Committee on the Judiciary
then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-8F-1 and §61-8F-2, all relating to prohibited sexual contact by
3 psychotherapists; creating the crime of prohibited sexual contact by a psychotherapist and
4 the crime of therapeutic deception; providing elements of the crime; providing exceptions;
5 providing definitions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §61-8F-1 and §61-8F-2, all to read as follows:

ARTICLE 8F. SEXUAL OFFENSES CONCERNING PROFESSIONAL MISCONDUCT.

§61-8F-1. Definitions.

1 In this article, unless a different meaning plainly is required:

2 (a) "Client" or "Patient" means a person that is being treated clinically or medically by a
3 psychotherapist for more than one session or initial visit.

4 (b) "Psychotherapist" means any of the following:

5 (1) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

6 (2) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or
7 medical psychologist licensed pursuant to article three, chapter thirty of this code;

8 (3) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this
9 code; or

10 (4) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this
11 code.

12 (c) "Sexual contact" has the same meaning as provided in article eight-B, chapter sixty-
13 one of this code.

14 (d) "Sexual intercourse" has the same meaning as provided in article eight-B, chapter
15 sixty-one of this code.

16 (e) "Therapeutic deception" means a representation by the psychotherapist to the patient
17 or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or
18 part of the treatment of the patient or client.

§61-8F-2. Prohibited sexual contact by a psychotherapist; exceptions; criminal penalties.

1 (a) It is unlawful for any psychotherapist, or any person who fraudulently represents
2 himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a
3 current or former client or patient whose relationship is known to the psychotherapist; *Provided,*
4 *however,* That it is not a violation of this section if the sexual contact between the psychotherapist
5 and the former patient or former client occurs more than two years after the termination of the
6 treatment.

7 (b) It is unlawful for any psychotherapist, or any person who fraudulently represents
8 himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a
9 client or patient by means of therapeutic deception.

10 (c) For purposes of this section, consent of the patient or client is not a defense, regardless
11 of the age of the patient or client.

12 (d) Any person who violates subsection (a) of this section is guilty of a felony and, upon
13 conviction thereof, shall be fined not more than \$10,000.00 or imprisoned in a state correctional
14 facility for not less than one year nor more than five years, or both fined and imprisoned.

15 (e) Any person who violates subsection (b) of this section is guilty of a felony and, upon
16 conviction thereof, shall be fined not more than \$20,000.00 or imprisoned in a state correctional
17 facility for not less than five nor more than ten years, or both fined and imprisoned.

NOTE: The purpose of this bill is to create the felony crime of prohibited sexual contact by a psychotherapist. The bill provides for elements of the crime, definitions, exceptions, and criminal penalties for the commission of the offense. Separate penalties are provided for the offense of therapeutic deception.

This article is new; therefore, it has been completely underscored.