

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 394

BY SENATOR TRUMP

[Introduced January 27, 2016;

Referred to the Committee on Banking and Insurance; and

then to the Committee on the Judiciary.]

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 crime of prohibited sexual contact by a psychotherapist and
 4 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 For the purposes of this article:

2 "Psychotherapist" means any of the following:

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

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

6 (3) A licensed clinical social worker licensed pursuant to article three, chapter thirty-one
 7 of this code;

8 (4) A mental health counselor licensed pursuant to article three, chapter thirty-one of this
 9 code; or

10 (5) Any other person who provides or purports to provide treatment, diagnosis,
 11 assessment, evaluation or counseling of any mental, emotional, behavioral or addictive illnesses,
 12 disorders, symptoms or conditions.

13 "Sexual contact" means any of the following:

14 (1) Anal, oral or vaginal sexual intercourse. Emission is not necessary and penetration,
 15 however slight, is sufficient to complete the crime;

16 (2) Touching of the anus or genitals of the patient or client by the psychotherapist using
17 any instrumentality or any part of the body of the psychotherapist; or

18 (3) Touching of the anus or genitals of the psychotherapist by the patient or client using
19 any instrumentality or any part of the body of the patient or client, if done at the request of the
20 psychotherapist.

21 (4) "Sexual contact" also includes a request by the psychotherapist for the conduct
22 described in subdivisions (1) through (3) of this subsection.

23 "Therapeutic deception" means a representation by the psychotherapist to the patient or
24 client that sexual contact by the psychotherapist is consistent with or part of the treatment of the
25 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 or purports to be a psychotherapist, to engage in sexual contact with either
3 of the following:

4 (1) A client or patient; or

5 (2) A former client or former patient, when the relationship was terminated primarily for the
6 purpose of engaging in the sexual contact.

7 (b) It is not a violation of this section if the sexual contact between the psychotherapist
8 and the former patient or former client occurs more than one year after the termination of the
9 relationship and the psychotherapist has referred the former patient or former client to an
10 independent and objective psychotherapist, recommended by a third-party psychotherapist, for
11 treatment.

12 (c) Consent of the patient or client is not a defense, regardless of the age of the patient or
13 client.

14 (d) For purposes of this section:

15 (1) Any person who violates this section is guilty of a felony and, upon conviction, shall be
16 finned not more than \$10,000, confined in a state correctional facility for not more than ten years,

17 or both fined and confined.

18 (2) Any person who violates this section by means of therapeutic deception is guilty of a
19 felony and, upon conviction, shall be fined not more than \$20,000, confined in a state correctional
20 facility for not more than fifteen years, or both fined and confined.

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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.