

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3288

By Delegates Dean and Howell

[Introduced February 03, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §61-8-31 of the Code of West Virginia, 1931, as amended, relating to
2 the criminal offense of therapeutic deception; and including medical doctors and doctors of
3 osteopathy as medical professionals who are subject to the prohibition against therapeutic
4 deception.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-31. Therapeutic deception; penalties.

1 (a) In this section, unless a different meaning plainly is required:

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

4 (2) "Physician" means a doctor of medicine licensed pursuant to §30-3-1 et seq. of this
5 code or a doctor of osteopathic medicine licensed pursuant to §30-14-1 et seq. of this code;

6 ~~(2)~~ (3) "Psychotherapist" means any of the following:

7 (A) A psychiatrist licensed pursuant to §30-3-1 et seq. of this code;

8 (B) A psychologist licensed pursuant to §30-21-1 et seq. of this code or a medical
9 psychologist licensed pursuant to 30-3-1 et seq. of this code;

10 (C) A licensed clinical social worker licensed pursuant to §30-30-1 et seq. of this code; or

11 (D) A mental health counselor licensed pursuant to §30-31-1 et seq. of this code.

12 ~~(3)~~ (4) "Sexual contact" has the same meaning as provided in §61-8B-1 et seq. of this
13 code.

14 ~~(4)~~ (5) "Sexual intercourse" has the same meaning as provided in §61-8B-1 et seq. of this
15 code.

16 ~~(5)~~ (6) "Therapeutic deception" means a representation by ~~the~~ a physician or
17 psychotherapist to the a patient or client that sexual contact or sexual intercourse with the
18 physician or psychotherapist is consistent with or part of the treatment of the patient or client.

19 (b) It is unlawful for any physician or psychotherapist, or any person who fraudulently

20 represents himself or herself as a physician or psychotherapist, to engage in sexual contact or
21 sexual intercourse with a client or patient by means of therapeutic deception.

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

24 (d) Any person who violates subsection (b) of this section is guilty of a felony and, upon
25 conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional
26 facility for not less than one year nor more than five years, or both fined and imprisoned.

NOTE: The purpose of this bill is to add medical doctors and doctors of osteopathy to the category of medical professionals who are subject to the prohibition against 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.