

H. B. 4130

(By Delegates Howell, Canterbury, Border,
Arvon, Kump, Eldridge, Barill, Fragale,
Campbell, Stagers and Storch)

[Introduced January 14, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new 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.

(a "Psychotherapist" means any of the following:

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

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

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

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

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

14 (b) "Sexual contact" means any of the following:

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

18 (2) Touching of the anus or genitals of the patient or client
19 by the psychotherapist using any instrumentality or any part of the
20 body of the psychotherapist.

21 (3) Touching of the anus or genitals of the psychotherapist by
22 the patient or client using any instrumentality or any part of the
23 body of the patient or client, if done at the request of the
24 psychotherapist.

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

4 (c) "Therapeutic deception" means a representation by the
5 psychotherapist to the patient or client that sexual contact by the
6 psychotherapist is consistent with or part of the treatment of the
7 patient or client.

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

10 (a) It is unlawful for any psychotherapist, or any person who
11 fraudulently represents himself or herself as or purports to be a
12 psychotherapist, to engage in sexual contact with either of the
13 following:

14 (1) A client or patient; or

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

18 (b) It is not a violation of the provisions of this section if
19 the sexual contact between the psychotherapist and the former
20 patient or former client occurs more than one year after the
21 termination of the relationship and the psychotherapist has
22 referred the former patient or former client to an independent and
23 objective psychotherapist, recommended by a third-party
24 psychotherapist, for treatment.

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

3 (d) For purposes of this section:

4 (1) Any person who violates the provisions of this article is
5 guilty of a felony and, upon conviction thereof, shall be fined not
6 more than \$10,000 or imprisoned in a state correctional facility
7 for not more than ten years, or both fined and imprisoned.

8 (2) Any person who violates the provisions of this article by
9 means of therapeutic deception is guilty of a felony and, upon
10 conviction thereof, shall be fined not more than \$20,000 or
11 imprisoned in a state correctional facility for not more than
12 fifteen 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.