

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 884

Short Title: Sex Exploitation Act.

(Public)

---

Sponsors: Representatives Hackney, Russell, Gardner, Alexander, Neely, Crawford; Hurley and H. Hunter.

---

Referred to: Judiciary II.

---

April 12, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE  
3 SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 90 of the General Statutes is amended by adding the  
6 following new Article to read:

7 **"ARTICLE 1E.**  
8 **"PSYCHOTHERAPY PATIENT/CLIENT**  
9 **SEXUAL EXPLOITATION ACT.**

10 **"§ 90-21.24. Definitions.**

11 As used in this Article, unless the context clearly requires otherwise, the term:

- 12 (1) 'Client' means a person who may also be called patient or counselee who  
13 seeks or obtains psychotherapy, whether or not the person is charged for  
14 the service; the term 'client' includes a former client.  
15 (2) 'Psychotherapist' means a physician, psychologist, nurse, counselor,  
16 substance abuse counselor, social worker, member of the clergy,  
17 marriage and family therapist, physician's assistant, mental health  
18 service provider, or other person, regardless of license, certification, or

1 registry status and regardless of employment setting, who performs or  
2 purports to perform psychotherapy.

3 (3) 'Psychotherapy' means the professional treatment or counseling of a  
4 mental or emotional illness, symptom, condition, or problem of living.

5 (4) 'Sexual exploitation' means:

6 a. Sexual contact which includes any of the following actions  
7 whether or not occurring with the consent of a client and  
8 regardless of whether it occurred during any treatment,  
9 consultation, evaluation, interview, or examination:

10 1. Sexual intercourse, cunnilingus, fellatio, anal intercourse,  
11 or any intrusion, however slight, into the oral, genital, or  
12 anal openings of the client's body by any part of the  
13 psychotherapist's body or by any object used by the  
14 psychotherapist for the purpose of sexual stimulation or  
15 gratification of either the psychotherapist or the client; or  
16 any intrusion, however slight, into the oral, genital, or anal  
17 openings of the psychotherapist's body by any part of the  
18 client's body or by any object used by the client for the  
19 purpose of sexual stimulation or gratification of either the  
20 psychotherapist or the client, if agreed to, or not resisted  
21 by the psychotherapist; or

22 2. Kissing of, or the intentional touching by the  
23 psychotherapist of, the client's lips, genital area, groin,  
24 inner thigh, buttocks or breast, or of the clothing covering  
25 any of these body parts, or similar activities by the client  
26 that have been agreed to or not resisted by the  
27 psychotherapist.

28 b. Any act done or statement made by the psychotherapist for the  
29 purpose of sexual stimulation or gratification of the client or  
30 psychotherapist which includes any of the following actions:

31 1. The relating by the psychotherapist to the client the  
32 psychotherapist's own sexual fantasies or the details of the  
33 psychotherapist's own sexual life;

34 2. The uncovering or display of breasts or genitals of the  
35 psychotherapist to the client;

36 3. The showing of sexually graphic pictures to the client for  
37 purposes other than diagnosis or treatment; or

38 4. Statements containing sexual innuendo, threats, or  
39 suggestions regarding the relationship between the  
40 psychotherapist and the client.

41 (5) 'Sexual history' means sexual activity of the client other than that  
42 conduct alleged by the client to constitute sexual exploitation in an  
43 action pursuant to this Article.

- 1           (6) 'Therapeutic deception' means a representation by a psychotherapist that  
2           sexual contact with the psychotherapist is consistent with or part of the  
3           client's treatment.

4 **"§ 90-21.25. Action for sexual exploitation.**

5           Any client of a psychotherapist who is sexually exploited by the psychotherapist shall  
6 have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

- 7           (1) During the period the client was receiving psychotherapy from the  
8           psychotherapist;  
9           (2) Within three years after the termination of the psychotherapy; or  
10          (3) By means of therapeutic deception.

11 **"§ 90-21.26. Remedies.**

12          A person who has been found to have been sexually exploited as provided under this  
13 Article may recover from the defendant actual or nominal damages. In cases where the  
14 conduct is willful, wanton, malicious or intentional, constitutes gross negligence,  
15 evidences an intentional or reckless disregard by the psychotherapist of the needs of the  
16 client, or consists of continued, multiple acts of sexual exploitation, the trier of fact may  
17 award punitive damages. In addition, if a person bringing an action pursuant to this  
18 Article is found by the trier of fact to have been sexually exploited by the defendant, the  
19 court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as part of  
20 the court costs.

21 **"§ 90-21.27. Scope of discovery.**

22          (a) In an action under this Article for sexual exploitation, evidence of the  
23 plaintiff's sexual history is not subject to discovery except under the following  
24 conditions:

- 25           (1) The plaintiff claims impairment of sexual functioning; or  
26           (2) The defendant requests a hearing prior to conducting discovery and  
27           makes an offer of proof of the relevancy of the evidence, and the court  
28           finds that the information is relevant and that the probative value of the  
29           history outweighs its prejudicial effect.

30          (b) The court shall allow the discovery only of specific information or examples of  
31 the plaintiff's conduct that are determined by the court to be relevant. The court order  
32 shall detail the information or conduct that is subject to discovery.

33 **"§ 90-21.28. Admissibility of evidence of sexual history.**

34          (a) At the trial of an action under this Article, evidence of the plaintiff's sexual  
35 history is not admissible at trial unless:

- 36           (1) The defendant requests a hearing prior to trial and makes an offer of  
37           proof of the relevancy of the sexual history, and  
38           (2) The court finds that, in the interest of justice, the evidence is relevant  
39           and that the probative value of the evidence substantially outweighs its  
40           prejudicial effect.

41          (b) The court shall allow the admission only of specific information or examples  
42 of instances of the plaintiff's conduct that are determined by the court to be relevant. The

1 court's order shall detail the conduct that is admissible, and no other such evidence may  
2 be introduced.

3 (c) Sexual history otherwise admissible pursuant to this section may not be proved  
4 by reputation or opinion.

5 (d) Violation of the terms of an order entered pursuant to this section may be  
6 grounds for a new trial.

7 **"§ 90-21.29. Prohibited defense.**

8 It shall not be a defense in any action brought pursuant to this act that the client  
9 consented to the sexual exploitation or that the sexual contact with a client occurred  
10 outside a therapy or treatment session or that it occurred off the premises regularly used  
11 by the psychotherapist for therapy or treatment sessions.

12 **"§ 90-21.30. Statute of limitations.**

13 (a) An action for sexual exploitation must be commenced within four years after  
14 the cause of action accrues. A cause of action for sexual exploitation accrues at the later  
15 of either:

16 (1) The last act of the defendant giving rise to the cause of action; or

17 (2) At the time the client discovers or reasonably should discover that he or  
18 she was injured as a result of the sexual exploitation; provided in no  
19 event shall an action pursuant to this Article be commenced more than  
20 15 years from the last act of the defendant giving rise to the cause of  
21 action.

22 (b) If a person entitled to bring an action under this Article is unable to bring the  
23 action due to the effects of the sexual exploitation or due to any threats, instructions, or  
24 statements from the psychotherapist, the duration of such period of inability shall not be a  
25 part of the limitation period for the commencement of an action for sexual exploitation.

26 **"§ 90-21.31. Agreements not to pursue complaint before licensing entity prohibited.**

27 It is prohibited for any person settling or compromising a claim involving the conduct  
28 defined herein as sexual exploitation to request or agree, as a term of settlement, not to  
29 pursue a complaint before the regulatory entity responsible for overseeing the conduct or  
30 licensing of the defendant."

31 Sec. 2. This act becomes effective October 1, 1995, and applies to exploitative  
32 conduct occurring on or after that date.