

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 581  
Committee Substitute Favorable 4/23/97  
Senate Judiciary Committee Substitute Adopted 8/13/98

Short Title: Sex Exploitation Act.

(Public)

---

Sponsors:

---

Referred to:

---

March 24, 1997

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 a new  
6 Article to read:

7 **“ARTICLE 1F.**

8 **“PSYCHOTHERAPY PATIENT/CLIENT SEXUAL EXPLOITATION ACT.**

9 **“§ 90-21.41. Definitions.**

10 The following definitions apply in this Article:

11 (1) Client. – A person who may also be called patient or counselee who  
12 seeks or obtains psychotherapy, whether or not the person is charged for  
13 the service. The term ‘client’ includes a former client.

14 (2) Psychotherapist. – A psychiatrist licensed in accordance with Article 1  
15 of Chapter 90 of the General Statutes, a psychologist as defined in G.S.  
16 90-270.2(9), a licensed professional counselor as defined in G.S. 90-  
17 330(a)(2), a substance abuse professional as defined in G.S. 90-  
18 113.31(8), a social worker engaged in a clinical social work practice as

1 defined in G.S. 90B-3(6), a fee-based pastoral counselor as defined in  
2 G.S. 90-382(4), a licensed marriage and family therapist as defined in  
3 G.S. 90-270.47(3), or a mental health service provider, who performs or  
4 purports to perform psychotherapy.

5 (3) Psychotherapy. – The professional treatment or professional counseling  
6 of a mental or emotional condition that includes revelation by the client  
7 of intimate details of thoughts and emotions of a very personal nature to  
8 assist the client in modifying behavior, thoughts and emotions that are  
9 maladjustive or contribute to difficulties in living.

10 (4) Sexual exploitation. – Either of the following:

11 a. Sexual contact which includes any of the following actions  
12 whether or not they occurred with the consent of a client or  
13 during any treatment, consultation, evaluation, interview, or  
14 examination:

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

27 2. Kissing of, or the intentional touching by the  
28 psychotherapist of, the client's lips, genital area, groin,  
29 inner thigh, buttocks, or breast, or of the clothing covering  
30 any of these body parts, for the purpose of sexual  
31 stimulation or gratification of either the psychotherapist or  
32 the client, or kissing of, or the intentional touching by the  
33 client of, the psychotherapist's lips, genital area, groin,  
34 inner thigh, buttocks, or breast, or of the clothing covering  
35 any of these body parts, if agreed to or not resisted by the  
36 psychotherapist, for the purpose of sexual stimulation or  
37 gratification to either the psychotherapist or the client.

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

41 1. The psychotherapist's relating to the client the  
42 psychotherapist's own sexual fantasies or the details of the  
43 psychotherapist's own sexual life.

2. The uncovering or display of breasts or genitals of the psychotherapist to the client.
3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.
4. Statements containing sexual innuendo, sexual threats, or sexual suggestions regarding the relationship between the psychotherapist and the client.

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

(6) Therapeutic deception. – A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

**"§ 90-21.42. Action for sexual exploitation.**

Any client who is sexually exploited by the client's psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

- (1) At any time between and including the first date and last date the client was receiving psychotherapy from the psychotherapist;
- (2) Within three years after the termination of the psychotherapy; or
- (3) By means of therapeutic deception.

**"§ 90-21.43. Remedies.**

A person found to have been sexually exploited as provided under this Article may recover from the psychotherapist actual or nominal damages, and reasonable attorneys' fees as the court may allow. The trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes.

**"§ 90-21.44. Scope of discovery.**

(a) In an action under this Article, evidence of the client's sexual history is not subject to discovery, except under the following conditions:

- (1) The client claims impairment of sexual functioning.
- (2) The psychotherapist requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

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

**"§ 90-21.45. Admissibility of evidence of sexual history.**

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

- (1) The psychotherapist requests a hearing prior to trial and makes an offer of proof of the relevancy of the sexual history; and

1           (2)    The court finds that, in the interest of justice, the evidence is relevant  
2                   and that the probative value of the evidence substantially outweighs its  
3                   prejudicial effect.

4           (b)    The court shall allow the admission only of specific information or examples  
5                   of instances of the client's conduct that are determined by the court to be relevant. The  
6                   court's order shall detail the conduct that is admissible, and no other such evidence may  
7                   be introduced.

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

10    **§ 90-21.46. Prohibited defense.**

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

15    **§ 90-21.47. Statute of limitations.**

16           Any action under this Article shall be subject to the limitations on the period for the  
17                   commencement of actions set forth in G.S. 1-52(16).

18    **§ 90-21.48. Agreements to not pursue complaint before licensing entity void.**

19           Any provision of a settlement agreement of a claim based in whole or part on an  
20                   allegation of sexual exploitation as defined in this Article, which prohibits a party from  
21                   initiating or pursuing a complaint before the regulatory entity responsible for overseeing  
22                   the conduct or licensing of the psychotherapist, is void."

23           Section 2. This act becomes effective October 1, 1998, and applies to conduct  
24                   occurring on or after that date.