

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2205

FISCAL  
NOTE

**2015 Carryover**

(BY DELEGATES HOWELL, STANSBURY, AMBLER,  
COOPER, MILLER, FAIRCLOTH, ZATEZALO, BLAIR,  
STATLER AND WAGNER)

[Introduced January 13, 2016; referred to the  
Committee on the Judiciary then Finance.]

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 the crime of prohibited sexual contact by a psychotherapist and  
 4 the crime of therapeutic deception; providing elements of the crime; providing  
 5 exceptions; 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 (a) "Psychotherapist" means any of the following:

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

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

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

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

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

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

13 (1) Anal, oral or vaginal sexual intercourse. Emission is not necessary and penetration,

14 however slight, is sufficient to complete the crime;

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

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

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

22 (c) "Therapeutic deception" means a representation by the psychotherapist to the patient  
23 or client that sexual contact by the psychotherapist is consistent with or part of the treatment of  
24 the 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 article is guilty of a felony and, upon conviction thereof,  
16 shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not more than  
17 ten years, or both fined and imprisoned.

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