

Eichhorn, Chair
Bauder
Trennel

Succeeded By
SE 0 2493

HSB 649

JUDICIARY

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a criminal offense of sexual exploitation by a
2 peace officer or school employee, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 709.15, Code 2001, is amended to read
2 as follows:

3 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,
4 PEACE OFFICER, OR SCHOOL EMPLOYEE.

5 1. As used in this section:

6 a. "Counselor or therapist" means a physician,
7 psychologist, nurse, professional counselor, social worker,
8 marriage or family therapist, alcohol or drug counselor,
9 member of the clergy, or any other person, whether or not
10 licensed or registered by the state, who provides or purports
11 to provide mental health services.

12 b. "Emotionally dependent" means that the nature of the
13 patient's or client's or former patient's or client's
14 emotional condition or the nature of the treatment provided by
15 the counselor or therapist is such that the counselor or
16 therapist knows or has reason to know that the patient or
17 client or former patient or client is significantly impaired
18 in the ability to withhold consent to sexual conduct, as
19 described in paragraph-"f" subsection 2, by the counselor or
20 therapist.

21 For the purposes of paragraph-"f" subsection 2, a former
22 patient or client is presumed to be emotionally dependent for
23 one year following the termination of the provision of mental
24 health services.

25 c. "Former patient or client" means a person who received
26 mental health services from the counselor or therapist.

27 d. "Mental health service" means the treatment,
28 assessment, or counseling of another person for a cognitive,
29 behavioral, emotional, mental, or social dysfunction,
30 including an intrapersonal or interpersonal dysfunction.

31 e. "Patient or client" means a person who receives mental
32 health services from the counselor or therapist.

33 f. Person detained means a person who is under arrest,
34 being investigated by a peace officer, or is being served with
35 a writ or other legal process by a peace officer.

1 g. "School employee" means a teacher, employee, contract
2 employee, coach, or assistant coach who is teaching or
3 coaching at, or working for, a public or nonpublic school or
4 area education agency.

5 h. "Student" means a person who is currently enrolled at a
6 public or nonpublic secondary school, or who was a student
7 enrolled at a public or nonpublic secondary school within
8 thirty days of any violation of subsection 4.

9 ~~f.~~ 2. "Sexual exploitation by a counselor or therapist"
10 occurs when any of the following are found:

11 ~~(1)~~ a. A pattern or practice or scheme of conduct to
12 engage in any of the conduct described in subparagraph-~~(2)~~-or
13 ~~(3)~~ paragraph "b" or "c".

14 ~~(2)~~ b. Any sexual conduct, with an emotionally dependent
15 patient or client or emotionally dependent former patient or
16 client for the purpose of arousing or satisfying the sexual
17 desires of the counselor or therapist or the emotionally
18 dependent patient or client or emotionally dependent former
19 patient or client, which includes but is not limited to the
20 following: kissing; touching of the clothed or unclothed
21 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
22 or a sex act as defined in section 702.17.

23 ~~(3)~~ c. Any sexual conduct with a patient or client or
24 former patient or client within one year of the termination of
25 the provision of mental health services by the counselor or
26 therapist for the purpose of arousing or satisfying the sexual
27 desires of the counselor or therapist or the patient or client
28 or former patient or client which includes but is not limited
29 to the following: kissing; touching of the clothed or
30 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
31 genitals; or a sex act as defined in section 702.17.

32 "Sexual exploitation by a counselor or therapist" does not
33 include touching which is part of a necessary examination or
34 treatment provided a patient or client by a counselor or
35 therapist acting within the scope of the practice or

1 employment in which the counselor or therapist is engaged.

2 3. Sexual exploitation by a peace officer occurs when any
3 of the following are found:

4 a. A pattern or practice or scheme of conduct to engage in
5 any of the conduct described in paragraph "b".

6 b. Any sexual conduct with a person detained for the
7 purpose of arousing or satisfying the sexual desires of the
8 officer or the person detained. Sexual conduct includes but
9 is not limited to the following: kissing; touching of the
10 clothed or unclothed inner thigh, breast, groin, buttock,
11 anus, pubes, or genitals; or a sex act as defined in section
12 702.17.

13 Sexual exploitation by a peace officer does not include
14 touching which is necessary in the performance of the
15 officer's duties while acting within the scope of employment.

16 4. Sexual exploitation by a school employee occurs when
17 any of the following are found:

18 a. A pattern or practice or scheme of conduct to engage in
19 any of the conduct described in paragraph "b".

20 b. Any sexual conduct with a student for the purpose of
21 arousing or satisfying the sexual desires of the school
22 employee or the student. Sexual conduct includes but is not
23 limited to the following: kissing; touching of the clothed or
24 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
25 genitals; or a sex act as defined in section 702.17.

26 Sexual exploitation by a school employee does not include
27 touching which is necessary in the performance of the school
28 employee's duties while acting within the scope of employment.

29 2- 5. a. A counselor or therapist who commits sexual
30 exploitation in violation of subsection \pm 2, paragraph "f"
31 "a", subparagraph-(1), commits a class "D" felony.

32 3- b. A counselor or therapist who commits sexual
33 exploitation in violation of subsection \pm 2, paragraph "f"
34 "b", subparagraph-(2), commits an aggravated misdemeanor.

35 4- c. A counselor or therapist who commits sexual

1 exploitation in violation of subsection ~~1~~ 2, paragraph "f"
2 "c", subparagraph-(3), commits a serious misdemeanor. In lieu
3 of the sentence provided for under section 903.1, subsection
4 1, paragraph "b", the offender may be required to attend a
5 sexual abuser treatment program.

6 6. a. A peace officer who commits sexual exploitation in
7 violation of subsection 3, paragraph "a", commits a class "D"
8 felony.

9 b. A peace officer who commits sexual exploitation in
10 violation of subsection 3, paragraph "b", commits an
11 aggravated misdemeanor.

12 7. a. A school employee who commits sexual exploitation
13 in violation of subsection 4, paragraph "a", commits a class
14 "D" felony.

15 b. A school employee who commits sexual exploitation in
16 violation of subsection 4, paragraph "b", commits an
17 aggravated misdemeanor.

18 EXPLANATION

19 This bill creates a criminal offense of sexual exploitation
20 by a peace officer or school employee.

21 The bill provides that a peace officer shall not engage in
22 any sexual conduct with a person who is under arrest, being
23 investigated by the officer, or who is being served with a
24 writ or other legal process, for the purpose of arousing or
25 satisfying the sexual desires of either of them.

26 The bill provides that a school employee shall not engage
27 in any sexual conduct with a student who is enrolled at a
28 public or nonpublic secondary school, or who was enrolled at a
29 public or nonpublic secondary school within 30 days of any
30 violation of this bill, for the purpose of arousing the sexual
31 desires of either of them. The bill defines "school employee"
32 to mean a teacher, employee, contract employee, coach, or
33 assistant coach who is teaching or coaching at, or working
34 for, a public or nonpublic school or area education agency.

35 The bill defines "sexual conduct" to include but is not

1 limited to the following: kissing; touching of the clothed or
2 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
3 genitals; or a sex act as defined in Code section 702.17.

4 Sexual exploitation by a peace officer or a school employee
5 does not include touching which is necessary in the
6 performance of the officer's or school employee's duties while
7 acting within the scope of employment.

8 The bill provides that a peace officer or a school employee
9 commits a class "D" felony if the officer or employee engages
10 in a pattern or practice or scheme of conduct to engage in any
11 sexual conduct with a prohibited person under the bill.

12 The bill provides that a peace officer or a school employee
13 commits an aggravated misdemeanor if the officer or employee
14 engages in sexual conduct with a prohibited person under the
15 bill.

16 A class "D" felony is punishable by confinement for no more
17 than five years and a fine of at least \$750 but not more than
18 \$7,500. An aggravated misdemeanor is punishable by
19 confinement for no more than two years and a fine of at least
20 \$500 but not more than \$5,000.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

3/20/02 Rereferred To: Judiciary

FEB 21 2002
Place On Calendar

HOUSE FILE 2493
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 649)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a criminal offense of sexual exploitation by a
2 peace officer or school employee, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 2493

H-8157

1 Amend the amendment, H-8103, to House File 2493 as
2 follows:

3 1. Page 1, lines 4 and 5, by striking the words
4 "a prosecutor employed in the department of justice"
5 and inserting the following: "a prosecuting attorney
6 as defined in section 13A.1".

7 2. Page 1, line 5, by inserting before the word
8 "public" the following: "state".

9 3. Page 1, line 6, by striking the words
10 "employed in the state public defender's office" and
11 inserting the following: "or appointed attorney as
12 defined in section 13B.1".

By TREMMEL of Wapello

H-8157 FILED MARCH 4, 2002

HF 2493

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 709.15, Code 2001, is amended to read
2 as follows:

3 709.15 SEXUAL EXPLOITATION BY A COUNSELOR, OR THERAPIST,
4 PEACE OFFICER, OR SCHOOL EMPLOYEE.

5 1. As used in this section:

6 a. "Counselor or therapist" means a physician,
7 psychologist, nurse, professional counselor, social worker,
8 marriage or family therapist, alcohol or drug counselor,
9 member of the clergy, or any other person, whether or not
10 licensed or registered by the state, who provides or purports
11 to provide mental health services.

12 b. "Emotionally dependent" means that the nature of the
13 patient's or client's or former patient's or client's
14 emotional condition or the nature of the treatment provided by
15 the counselor or therapist is such that the counselor or
16 therapist knows or has reason to know that the patient or
17 client or former patient or client is significantly impaired
18 in the ability to withhold consent to sexual conduct, as
19 described in paragraph-"f" subsection 2, by the counselor or
20 therapist.

21 For the purposes of paragraph-"f" subsection 2, a former
22 patient or client is presumed to be emotionally dependent for
23 one year following the termination of the provision of mental
24 health services.

25 c. "Former patient or client" means a person who received
26 mental health services from the counselor or therapist.

27 d. "Mental health service" means the treatment,
28 assessment, or counseling of another person for a cognitive,
29 behavioral, emotional, mental, or social dysfunction,
30 including an intrapersonal or interpersonal dysfunction.

31 e. "Patient or client" means a person who receives mental
32 health services from the counselor or therapist.

33 f. "Person detained" means a person who is under arrest,
34 being investigated by a peace officer, or is being served with
35 a writ or other legal process by a peace officer.

1 g. "School employee" means a teacher, employee, contract
2 employee, coach, or assistant coach who is teaching or
3 coaching at, or working for, a public or nonpublic school or
4 area education agency.

5 h. "Student" means a person who is currently enrolled at a
6 public or nonpublic secondary school, or who was a student
7 enrolled at a public or nonpublic secondary school within
8 sixty days of any violation of subsection 4.

9 f- 2. "Sexual exploitation by a counselor or therapist"
10 occurs when any of the following are found:

11 {1} a. A pattern or practice or scheme of conduct to
12 engage in any of the conduct described in subparagraph-{2}-or
13 {3} paragraph "b" or "c".

14 {2} b. Any sexual conduct, with an emotionally dependent
15 patient or client or emotionally dependent former patient or
16 client for the purpose of arousing or satisfying the sexual
17 desires of the counselor or therapist or the emotionally
18 dependent patient or client or emotionally dependent former
19 patient or client, which includes but is not limited to the
20 following: kissing; touching of the clothed or unclothed
21 inner thigh, breast, groin, buttock, anus, pubes, or genitals;
22 or a sex act as defined in section 702.17.

23 {3} c. Any sexual conduct with a patient or client or
24 former patient or client within one year of the termination of
25 the provision of mental health services by the counselor or
26 therapist for the purpose of arousing or satisfying the sexual
27 desires of the counselor or therapist or the patient or client
28 or former patient or client which includes but is not limited
29 to the following: kissing; touching of the clothed or
30 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
31 genitals; or a sex act as defined in section 702.17.

32 "Sexual exploitation by a counselor or therapist" does not
33 include touching which is part of a necessary examination or
34 treatment provided a patient or client by a counselor or
35 therapist acting within the scope of the practice or

1 employment in which the counselor or therapist is engaged.

2 3. Sexual exploitation by a peace officer occurs when any
3 of the following are found:

4 a. A pattern or practice or scheme of conduct to engage in
5 any of the conduct described in paragraph "b".

6 b. Any sexual conduct with a person detained for the
7 purpose of arousing or satisfying the sexual desires of the
8 officer or the person detained. Sexual conduct includes but
9 is not limited to the following: kissing; touching of the
10 clothed or unclothed inner thigh, breast, groin, buttock,
11 anus, pubes, or genitals; or a sex act as defined in section
12 702.17.

13 Sexual exploitation by a peace officer does not include
14 touching which is necessary in the performance of the
15 officer's duties while acting within the scope of employment.

16 4. Sexual exploitation by a school employee occurs when
17 any of the following are found:

18 a. A pattern or practice or scheme of conduct to engage in
19 any of the conduct described in paragraph "b".

20 b. Any sexual conduct with a student for the purpose of
21 arousing or satisfying the sexual desires of the school
22 employee or the student. Sexual conduct includes but is not
23 limited to the following: kissing; touching of the clothed or
24 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
25 genitals; or a sex act as defined in section 702.17.

26 Sexual exploitation by a school employee does not include
27 touching which is necessary in the performance of the school
28 employee's duties while acting within the scope of employment.

29 A school employee does not commit sexual exploitation by a
30 school employee unless the student is four or more years
31 younger than the employee.

32 2- 5. a. A counselor or therapist who commits sexual
33 exploitation in violation of subsection \S 2, paragraph "f"
34 "a", subparagraph-(1), commits a class "D" felony.

35 3- b. A counselor or therapist who commits sexual

1 exploitation in violation of subsection ± 2, paragraph "f"
2 "b", subparagraph-(2)}, commits an aggravated misdemeanor.
3 4. c. A counselor or therapist who commits sexual
4 exploitation in violation of subsection ± 2, paragraph "f"
5 "c", subparagraph-(3)}, commits a serious misdemeanor. In lieu
6 of the sentence provided for under section 903.1, subsection
7 1, paragraph "b", the offender may be required to attend a
8 sexual abuser treatment program.

9 6. a. A peace officer who commits sexual exploitation in
10 violation of subsection 3, paragraph "a", commits a class "D"
11 felony.

12 b. A peace officer who commits sexual exploitation in
13 violation of subsection 3, paragraph "b", commits an
14 aggravated misdemeanor.

15 7. a. A school employee who commits sexual exploitation
16 in violation of subsection 4, paragraph "a", commits a class
17 "D" felony.

18 b. A school employee who commits sexual exploitation in
19 violation of subsection 4, paragraph "b", commits an
20 aggravated misdemeanor.

21 EXPLANATION

22 This bill creates a criminal offense of sexual exploitation
23 by a peace officer or school employee.

24 The bill provides that a peace officer shall not engage in
25 any sexual conduct with a person who is under arrest, being
26 investigated by the officer, or who is being served with a
27 writ or other legal process, for the purpose of arousing or
28 satisfying the sexual desires of either of them.

29 The bill provides that a school employee shall not engage
30 in any sexual conduct with a student who is enrolled at a
31 public or nonpublic secondary school, or who was enrolled at a
32 public or nonpublic secondary school within 60 days of any
33 violation of this bill, for the purpose of arousing the sexual
34 desires of either of them. The bill defines "school employee"
35 to mean a teacher, employee, contract employee, coach, or

1 assistant coach who is teaching or coaching at, or working
2 for, a public or nonpublic school or area education agency.

3 The bill defines "sexual conduct" to include but is not
4 limited to the following: kissing; touching of the clothed or
5 unclothed inner thigh, breast, groin, buttock, anus, pubes, or
6 genitals; or a sex act as defined in Code section 702.17.

7 Sexual exploitation by a peace officer or a school employee
8 does not include touching which is necessary in the
9 performance of the officer's or school employee's duties while
10 acting within the scope of employment. Sexual exploitation by
11 a school employee does not occur unless the student is four or
12 more years younger than the employee.

13 The bill provides that a peace officer or a school employee
14 commits a class "D" felony if the officer or employee engages
15 in a pattern or practice or scheme of conduct to engage in any
16 sexual conduct with a prohibited person under the bill.

17 The bill provides that a peace officer or a school employee
18 commits an aggravated misdemeanor if the officer or employee
19 engages in sexual conduct with a prohibited person under the
20 bill.

21 A class "D" felony is punishable by confinement for no more
22 than five years and a fine of at least \$750 but not more than
23 \$7,500. An aggravated misdemeanor is punishable by
24 confinement for no more than two years and a fine of at least
25 \$500 but not more than \$5,000.

26
27
28
29
30
31
32
33
34
35

HOUSE FILE 2493

H-8103

1 Amend House File 2493 as follows:

2 1. Page 1, by inserting after line 11 the
3 following:

4 "aa. "Court employee" means a prosecutor employed
5 in the department of justice, a public defender
6 employed in the state public defender's office, or a
7 court employee or judicial officer as defined in
8 section 602.1101."

9 2. Page 2, by inserting before line 1 the
10 following:

11 "ff. "Person appearing in court" means a person
12 appearing in a juvenile, civil, or criminal hearing or
13 proceeding in a courtroom where a court employee is
14 working.

15 fg. "Person in authority" means any person having
16 authority or control over another person."

17 3. Page 3, by inserting after line 1, the
18 following:

19 "2A. Sexual exploitation by a court employee
20 occurs when any of the following are found:

21 a. A pattern or practice or scheme of conduct to
22 engage in any of the conduct described in paragraph
23 "b".

24 b. Any sexual conduct with a person appearing in
25 court for the purpose of arousing or satisfying the
26 sexual desires of the court employee or the person
27 appearing in court. Sexual conduct includes but is
28 not limited to the following: kissing; touching of
29 the clothed or unclothed inner thigh, breast, groin,
30 buttock, anus, pubes, or genitals; or a sex act as
31 defined in section 702.17."

32 4. Page 3, by inserting after line 31 the
33 following:

34 "4A. Sexual exploitation by a person in authority
35 occurs when any of the following are found:

36 a. A pattern or practice or scheme of conduct to
37 engage in any of the conduct described in paragraph
38 "b".

39 b. Any sexual conduct with another person for the
40 purpose of arousing or satisfying the sexual desires
41 of the person in authority or the other person.
42 Sexual conduct includes but is not limited to the
43 following: kissing; touching of the clothed or
44 unclothed inner thigh, breast, groin, buttock, anus,
45 pubes, or genitals; or a sex act as defined in section
46 702.17."

47 5. Page 4, by inserting after line 8 the
48 following:

49 "5A. a. A court employee who commits sexual
50 exploitation in violation of subsection 2A, paragraph

H-8103

H-8103

Page 2

- 1 "a", commits a class "D" felony.
2 b. A court employee who commits sexual
3 exploitation in violation of subsection 2A, paragraph
4 "b", commits an aggravated misdemeanor."
5 6. Page 4, by inserting after line 20 the
6 following:
7 "8. a. A person in authority who commits sexual
8 exploitation in violation of subsection 4A, paragraph
9 "a", commits a class "D" felony.
10 b. A person in authority who commits sexual
11 exploitation in violation of subsection 4A, paragraph
12 "b", commits an aggravated misdemeanor."
13 7. Title page, line 2, by inserting after the
14 word "officer" the following: ", court employee,
15 person in authority,".
16 8. By renumbering as necessary.

By BAUDLER of Adair

BELL of Jasper

H-8103 FILED FEBRUARY 27, 2002**HOUSE FILE 2493****H-8279**

- 1 Amend House File 2493 as follows:
2 1. Page 2, line 4, by inserting after the word
3 "agency" the following: "and who comes into contact
4 with a student as a result of the school employment or
5 participates in sexual conduct with a student only
6 after the student has knowledge of the school
7 employment".

By EICHHORN of Hamilton

H-8279 FILED MARCH 13, 2002

Legislative Fiscal Bureau

Fiscal Note

HF 2493 - Sexual Exploitation by School Employee or Officer (LSB 6681 HV)
Analyst: Jennifer Dean (Phone: (515) 281-7846) (jennifer.dean@legis.state.ia.us)
Fiscal Note Version - New

Description

House File 2493 creates a criminal offense for sexual exploitation by a peace officer or school employee and provides penalties.

Assumptions

1. The law will become effective July 1, 2002.
2. The penalty for sexual exploitation by a school employee under current law is a serious misdemeanor. The Bill would increase the penalty to an aggravated misdemeanor.
3. The average cost per indictable misdemeanor case for the Judicial Branch ranges from \$70 to \$460, depending on whether a jury trial occurs. These figures include the costs of a District Court Judge, Clerk of Court staff, court reporter, and a court attendant.
4. Fines collections rates range from 20.0% for felonies to 68.0% for a simple misdemeanor.
5. The cost of defense for a serious misdemeanor is approximately \$500 to \$750 per case.
6. The cost of defense for an aggravated misdemeanor is approximately \$1,000 per case.
7. A contempt of court proceeding costs the indigent defense fund \$250 to \$300 per case.
8. The average length of stay in field services or street supervision is 19 months.
9. The marginal cost per day for a probation/parole client is \$1.55.

Correctional Impact

House File 2493 would have a minimal correctional impact on prisons, jails, and Community-Based Corrections. In FY 2001, there were seven persons convicted of current Lascivious Conduct with a Minor (Section 709.14, Code of Iowa); however, it cannot be determined if any of those individuals were school employees. House File 2493 reduces penalties for certain sex acts committed against 14- and 15-year olds that are now defined as Class C Sexual Abuse – third degree.

House File 2493 would not have a significant correctional impact for sexual exploitation by a peace officer. Under current law, it is an aggravated misdemeanor for a correctional officer or community corrections worker to engage in a sex act with an offender (Section 709.16, Code of Iowa). During FY 2001, there were two people convicted of this offense.

Fiscal Impact

The overall General Fund fiscal impact of House File 2493 cannot be determined due to insufficient information.

For one person convicted of an aggravated misdemeanor, the costs are as follows:

Court Costs	\$ 70	to	\$ 500
Probation Costs			900
Indigent Defense Costs	<u>500</u>	to	<u>750</u>
Total Costs	<u>\$1,500</u>	to	<u>\$2,100</u>

Sources

Judicial Branch
Department of Human Rights, Criminal and Juvenile Justice Planning Division
State Public Defender

/s/ Dennis C Prouty

February 28, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.
