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## CRIMES AND OFFENSES

### *Sexual Offenses: Prohibit Sexual Contact Between Psychotherapist and Patient*

CODE SECTION: O.C.G.A. § 16-6-5.1 (amended)  
 BILL NUMBER: HB 1523  
 ACT NUMBER: 1141  
 SUMMARY: The Act prohibits psychotherapists from engaging in sexual relations with their patients. Consent of the patient is not a defense to a charge of sexual assault under the Act. A person convicted of violating the Act is guilty of a felony and is subject to imprisonment for not less than one nor more than three years.  
 EFFECTIVE DATE: July 1, 1992

#### *History*

Previously, a psychotherapist who had sexual relations with his patient was guilty of "unprofessional conduct" which could result in a formal reprimand, suspension, or revocation of his license by the Georgia Board of Medical Examiners.<sup>1</sup> There was no statutory provision for the criminal sanction of a psychotherapist.<sup>2</sup> However, there may have been a cause of action for common law seduction in such circumstances.<sup>3</sup> At the urging of several victims who were sexually assaulted by psychotherapists, HB 1523 was introduced in the Georgia General Assembly.<sup>4</sup> The unique relationship between a psychotherapist and his patient has been likened to that of a parent-child relationship.<sup>5</sup> The sponsor stated that patients are in a "lesser bargaining position" than the psychotherapists, which results in the need for some form of protection for the patients.<sup>6</sup> Sexual relations between psychotherapist and patient are not uncommon due to the phenomenon of "transference"

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1. *Therapists, Sex and the Law*, ATLANTA J. & CONST., Apr. 3, 1991, at A6.

2. See 1983 Ga. Laws 721 (formerly found at O.C.G.A. § 16-6-5.1 (1988)).

3. See *St. Paul Fire & Marine Ins. Co. v. Mitchell*, 296 S.E.2d 126, 127-28 (Ga. Ct. App. 1982).

4. Telephone Interview with Rep. Ken Poston, House District No. 2 (Apr. 2, 1992) [hereinafter Poston Interview]. Rep. Poston was the sponsor of HB 1523.

5. Peg Ziegler, who spoke on behalf of the bill, remarked, "the psychotherapist-patient relationship is like a parent-child relationship which never changes and you are always a professional to that person unless you end the relationship in writing." *Lawmakers '92* (WGTV television broadcast, Feb. 12, 1992) [hereinafter Ziegler Remarks] (videotape on file at Georgia State University College of Law Library).

6. Poston Interview, *supra* note 4.

whereby the patient develops strong feelings of love for the psychotherapist, with such feelings possibly exacerbated by the patient's already vulnerable state which may have led to the request for professional help in the first instance.<sup>7</sup> The General Assembly passed HB 1523 making it a felony, punishable by up to three years in prison, for a psychotherapist to have sexual relations with a patient.<sup>8</sup>

### *HB 1523*

The Act amends Code section 16-6-5.1 relating to sexual assault against persons in custody by adding the offense of sexual assault against persons under psychotherapeutic care.<sup>9</sup> This addition is an attempt to afford some protection to those who are vulnerable to psychotherapists.<sup>10</sup>

The Act provides a number of definitions. "Intimate parts" are defined as the "genital area, groin, inner thighs, buttocks, or breasts of a person."<sup>11</sup> "Sexual contact" is defined as "any contact for the purpose of sexual gratification of the actor, with the intimate parts of a person not married to the actor."<sup>12</sup> "Psychotherapy" is defined as the "professional treatment or counseling of a mental or emotional illness, symptom, or condition."<sup>13</sup> "Sexual assault" as defined occurs when:

as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.<sup>14</sup>

Conviction under the Act is a felony and punishment shall be imprisonment for not less than one nor more than three years.<sup>15</sup>

It appears that the subsection defining "sexual contact" could be interpreted as allowing sexual relations to occur in certain circumstances without such relations being considered sexual contact.<sup>16</sup> Since "intimate parts" was not defined to include the

7. See *St. Paul Fire*, 296 S.E.2d at 130 n.1.

8. O.C.G.A. § 16-6-5.1 (1992); see *At A Glance*, ATLANTA J. & CONST., Feb. 21, 1992, at E4.

9. O.C.G.A. § 16-6-5.1 (1992).

10. Poston Interview, *supra* note 4.

11. O.C.G.A. § 16-6-5.1(a)(2) (1992).

12. *Id.* § 16-6-5.1(a)(4) (1992).

13. *Id.* § 16-6-5.1(a)(3) (1992).

14. *Id.* § 16-6-5.1(c)(2) (1992).

15. *Id.* § 16-6-5.1(c)(4) (1992).

16. Telephone Interview with Kathy Hickey (Apr. 2, 1992) (Ms. Hickey is a victim of sexual assault who spoke on behalf of the Act) [hereinafter Hickey Interview].

"mouth," it is unclear whether oral sex would be a violation of the Act.<sup>17</sup> Also, if "sexual gratification" is interpreted as meaning orgasm, it may not be a violation of the Act for the psychotherapist to fondle the "intimate parts" of the patient if the psychotherapist is not attempting to achieve orgasm.<sup>18</sup>

The Act targets "actual or purported" practitioners of psychotherapy.<sup>19</sup> The significance of the language "actual or purported" is to bring within the ambit of the Act those who are licensed practitioners of psychotherapy, such as psychiatrists, as well as those who are not required to be licensed, and even those who may be "sham artists."<sup>20</sup> The Act also prohibits the "treatment or counseling relationship" from being used to "facilitate" sexual contact between the psychotherapist and the patient.<sup>21</sup> This language prohibits one from using his professional status to lure an unsuspecting victim into sexual relations.<sup>22</sup>

Consent from the patient is not a defense to prosecution under the Act.<sup>23</sup> This is due to the unique relationship of the psychotherapist and patient in which the patient is in a "lesser bargaining position" and is possibly in a vulnerable state which led to the forming of the relationship in the first place.<sup>24</sup>

The Act went through several changes before being adopted by the General Assembly. The bill as originally introduced defined "psychotherapy" as the "professional treatment, *assessment*, or counseling of a mental or emotional illness, symptom, or condition."<sup>25</sup> The Judiciary Committee amended the bill as introduced by deleting "assessment" from the definition of "psychotherapy."<sup>26</sup> "Assessment"

17. *Id.*

18. *Id.*

19. O.C.G.A. § 16-6-5.1(c)(2) (1992).

20. Poston Interview, *supra* note 4; see also *Therapists, Sex, and the Law*, *supra* note 1 (psychiatrists cannot practice without a medical license but psychologists may practice without a license provided they do not refer to themselves as a license holder).

21. O.C.G.A. § 16-6-5.1(c)(2) (1992).

22. Poston Interview, *supra* note 4. This is to be distinguished from an acceptable situation such as two people meeting in a bar, where one mentions he is a psychotherapist and they end up having sex. In such a situation, there would be no violation because there is no psychotherapist-patient relationship and the psychotherapist did not use his professional status to facilitate sexual contact. *Id.*

23. O.C.G.A. § 16-6-5.1(c)(3) (1992).

24. Poston Interview, *supra* note 4. Rep. Poston likens the situation to statutory rape. *Id.*

25. HB 1523, as introduced, 1992 Ga. Gen. Assem. (emphasis added).

26. HB 1523 (HCS), 1992 Ga. Gen. Assem.

was dropped from the definition because it was too broad and would apply to clerical workers gathering routine information.<sup>27</sup>

Also, the bill as introduced prohibited sexual contact with someone who "is or *has been*" the subject of psychotherapeutic care.<sup>28</sup> The prohibition of sexual contact with someone who "has been" a patient was deemed too encompassing, as this would reach anyone a psychotherapist had ever counseled even if the professional relationship had long since ended.<sup>29</sup> Thus, this language was taken out by the Judiciary Committee.<sup>30</sup> Opinions differ as to when the psychotherapist-patient relationship ends, if ever, and as to when, if ever, it would be acceptable for sexual relations to occur between the parties.<sup>31</sup>

In the version of the bill as passed, the practitioner of psychotherapy is referred to as a "he or she."<sup>32</sup> Also, the prohibition against using the counseling relationship to "facilitate" sexual contact between a psychotherapist and his patient was added to the bill as passed.<sup>33</sup>

The Act is the first attempt by the General Assembly at addressing sexual assault in the psychotherapist-patient relationship.<sup>34</sup> The results of this legislation are that the Board of Medical Examiners is no longer the only body with the power to resolve problems concerning abuse which may arise in a psychotherapist-patient relationship and that the courts are now able to handle such instances of abuse.<sup>35</sup> The Act's sponsor summarized the Act's intent, stating that its purpose is to extend protection to people who cannot help themselves or are in a position unequal to the therapist.<sup>36</sup>

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27. Poston Interview, *supra* note 4.

28. HB 1523, as introduced, 1992 Ga. Gen. Assem. (emphasis added).

29. HB 1523 (HCS), 1992 Ga. Gen. Assem.; Poston Interview, *supra* note 4.

30. HB 1523 (HCS), 1992 Ga. Gen. Assem.

31. Ziegler Remarks, *supra* note 5 (professional relationship endures until you end it in writing). Rep. Ken Poston remarked, "once the relationship is *ever* present there should never be sexual contact." *Lawmakers '92* (WGTV television broadcast, Feb. 12, 1992) (videotape on file at Georgia State University College of Law Library) (emphasis added).

32. O.C.G.A. § 16-6-5.1(c)(2) (1992).

33. See Poston Interview, *supra* note 4; see also *supra* notes 21-22 and accompanying text.

34. Poston Interview, *supra* note 4.

35. Hickey Interview, *supra* note 16. Ms. Hickey believes that the Board of Medical Examiners has been ineffective in dealing with the issue of therapists who sexually abuse their patients. *Id.*; see Jane Hansen, *Therapists, Patients Not Equal on Couch*, ATLANTA J. & CONST., Feb. 11, 1992, at H1.

36. Poston Interview, *supra* note 4.