

1987 Assembly Bill 929

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## 1987 Wisconsin Act 380

AN ACT to renumber 940.22 (1) (a) to (e); to amend 939.74 (4), 940.22 (title) and 949.03 (1) (b); and to create 146.82 (2) (a) 13, 940.22 (1) (title), 940.22 (1) (a), (e), (f) and (h) and 940.22 (2) (title) and (3) to (5) of the statutes, relating to reporting alleged incidents of sexual exploitation by a therapist and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 146.82 (2) (a) 13 of the statutes is created to read:

146.82 (2) (a) 13. To persons and entities under s. 940.22.

SECTION 2. 939.74 (4) of the statutes is amended to read:

939.74 (4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 (2) is unable to seek the issuance of a complaint under s. 968.02 due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist shall not be included.

SECTION 3. 940.22 (title) of the statutes is amended to read:

**940.22 (title) Sexual exploitation by a therapist; duty to report.**

SECTION 4. 940.22 (1) (title) of the statutes is created to read:

940.22 (1) (title) DEFINITIONS.

SECTION 5. 940.22 (1) (a) to (e) of the statutes are renumbered 940.22 (1) (b), (c), (d), (g) and (i).

SECTION 6. 940.22 (1) (a), (e), (f) and (h) of the statutes are created to read:

940.22 (1) (a) "Department" means the department of regulation and licensing.

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

SECTION 7. 940.22 (2) (title) and (3) to (5) of the statutes are created to read:

940.22 (2) (title) SEXUAL CONTACT PROHIBITED.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub. (2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par. (a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1 is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub. (2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par. (a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars. (a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub. (3) and maintained by the department, examining boards, district attorneys and other persons, officials

and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub. (3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney or an examining board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub. (3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub. (3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2 or 3, they may inform the applicable patients

or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

SECTION 8. 949.03 (1) (b) of the statutes, as affected by 1987 Wisconsin Act 90, is amended to read:

949.03 (1) (b) The commission or the attempt to commit any crime specified in s. 346.63 (2), 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.09, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225 (1) to (3), 940.23, 940.24, 940.245, 940.25, 940.26 (2), 940.28, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.32 or 944.12.