

1985 Assembly Bill 776

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1985 Wisconsin Act 275

AN ACT to renumber 972.11 (3); to amend 940.22 (1) (e), 940.22 (2), 949.03 (1) (b) and 972.11 (1); to repeal and recreate 901.04 (3); and to create 893.585, 895.70, 939.74 (4), 971.31 (12) and 972.11 (3) of the statutes, relating to sexual exploitation of a client by a therapist, statutes of limitation and providing a penalty.

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

SECTION 1. 893.585 of the statutes is created to read:

893.585 Sexual exploitation by a therapist. (1) Notwithstanding ss. 893.54, 893.55 and 893.57, an action under s. 895.70 for damages shall be commenced within 3 years after the cause of action accrues or be barred.

(2) If a person entitled to bring an action under s. 895.70 is unable to bring the action due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist, the period of inability is not part of the time limited for the commencement of the action, except that this subsection shall not extend the time limitation by more than 15 years.

SECTION 2. 895.70 of the statutes is created to read:

895.70 Sexual exploitation by a therapist. (1) DEFINITIONS. In this section:

(a) "Physician" has the meaning designated in s. 448.01 (5).

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in s. 940.225 (5) (a).

(e) "Therapist" means a physician, psychologist, social worker, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

(2) CAUSE OF ACTION. Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585.

SECTION 3. 901.04 (3) of the statutes is repealed and recreated to read:

901.04 (3) HEARING OUT OF THE PRESENCE OF A JURY. Hearings on any of the following shall be conducted out of the presence of the jury:

(a) Admissibility of confessions.

(b) In actions under s. 940.22, admissibility of evidence of the patient's or client's personal or medical history.

(c) In actions under s. 940.225, admissibility of the prior sexual conduct or reputation of a complaining witness.

(d) Any preliminary matter if the interests of justice so requires.

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

939.74 (4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 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 5. 940.22 (1) (e) of the statutes is amended to read:

940.22 (1) (e) "Therapist" means a physician, psychologist, social worker, nurse, chemical dependency counselor, member of the clergy or other person providing, whether or not licensed by the state, who performs or purports to perform psychotherapy services.

SECTION 6. 940.22 (2) of the statutes is amended to read:

940.22 (2) Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class A ~~misdemeanor~~ D felony. Consent is not an issue in an action under this subsection.

SECTION 7. 949.03 (1) (b) of the statutes 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, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.26 (2), 940.28, 940.29, 940.30, 940.305, 940.31, 940.32, 943.02, 943.03, 943.04, 943.10, 943.20, 943.32 or 944.12.

SECTION 8. 971.31 (12) of the statutes is created to read:

971.31 (12) In actions under s. 940.22, the court may determine the admissibility of evidence under s. 972.11 only upon a pretrial motion.

SECTION 9. 972.11 (1) of the statutes is amended to read:

972.11 (1) Except as provided in subs. (2) ~~and (3)~~ to (4), the rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construction. No guardian ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895, except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal proceedings.

SECTION 10. 972.11 (3) of the statutes is renumbered 972.11 (4).

SECTION 11. 972.11 (3) of the statutes is created to read:

972.11 (3) (a) In a prosecution under s. 940.22 involving a therapist and a patient or client, evidence of the patient's or client's personal or medical history is not admissible except if:

1. The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the evidence; and

2. The court finds that the evidence is relevant and that its probative value outweighs its prejudicial nature.

(b) The court shall limit the evidence admitted under par. (a) to relevant evidence which pertains to specific information or examples of conduct. The court's order shall specify the information or conduct that is admissible and no other evidence of the patient's or client's personal or medical history may be introduced.

(c) Violation of the terms of the order is grounds for a mistrial but does not prevent the retrial of the defendant.
