Am. Sub. S.B. 9*

124th General Assembly
(As Reported by H. Criminal Justice)

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BILL SUMMARY

- Provides that a civil assault or battery action based on a mental health professional's sexual activity with a mental health client or patient of the mental health professional who was not the mental health professional's spouse generally must be brought within two years after the cause of action accrues, and provides that, if the mental health service relationship between the plaintiff in the action and the mental health professional continues after the date on which the cause of action accrues, the two-year period does not begin to run until the date on which that mental health service relationship is terminated by either or both of the parties.

- Specifies that, in a civil assault or battery action brought against a mental health professional that asserts as a claim that, while the plaintiff was a mental health client or patient of the mental health professional, the mental health professional engaged in sexual conduct with, had sexual contact with, or caused one or more other persons to have sexual contact with the plaintiff, the plaintiff's consent to the sexual conduct or sexual contact is not a defense to the claim unless either of the following applies: (1) at the time of that sexual conduct or sexual contact, the plaintiff was the spouse of the mental health professional, or (2) the mental health professional proves by a preponderance of the evidence that: (a) at the time of the sexual conduct or sexual contact, the plaintiff was not "emotionally dependent" upon the mental health professional, and (b) the plaintiff did not submit to the sexual conduct or sexual

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* *This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

contact because of "therapeutic deception" by the mental health professional or because the mental health professional falsely represented to the plaintiff that the sexual conduct or sexual contact was necessary for medical or mental health purposes.

- Expands the offenses of sexual battery and sexual imposition so that they also prohibit a mental health professional from engaging in sexual conduct, having sexual contact, or causing sexual contact with a mental health client or patient of the mental health professional, who is not the mental health professional's spouse, if the mental health professional induces the client or patient to submit by falsely representing to the client or patient that the sexual conduct or sexual contact is necessary for mental health treatment purposes.

- Specifies that, if a mental health professional is indicted or charged and bound over to the court of common pleas for trial for committing sexual battery or sexual imposition as amended by the bill as described in the preceding paragraph, the prosecutor must send notice of the indictment or charge to the licensing entity with authority over the mental health professional and that, if the mental health professional is convicted of the violation, the court must send a copy of the judgment entry of conviction to that licensing entity.

- Modifies the State Board of Psychology's membership by increasing the total membership to nine, eliminating the existing requirement that one of the members not be a psychologist or other health professional, and replacing the eliminated requirement with a requirement that three members must be patient advocates who are not mental health professionals and who are either parents or relatives of a former or current patient or client or representatives of organizations that represent patients or clients; provides a procedure for transition to the new membership; expands the Governor's authority to remove a Board member to also require the removal, after a hearing, of any member who has been convicted of any felony; prohibits the appointment to the Board of any person who has been convicted of any felony; and enacts a specific prohibition against a Board member engaging in any conduct involving a conflict of interest with the member's Board duties.

- Commencing in the first even-numbered year after the biennium in which it takes effect, increases to 23 hours the minimum number of continuing psychology education hours that each licensed psychologist or school

psychologist must complete in each two-year reporting period, specifies that the 23 hours must include not less than three hours of continuing psychology education in professional conduct and ethics, and specifies that each licensed psychologist or school psychologist must be given a sufficient choice of programs or courses on professional conduct and ethics, and other required topics, to have a reasonable opportunity to take courses that are relevant to the person's practice.

- Permits the State Board of Psychology, on the receipt of a complaint alleging the existence of any of the existing grounds upon which the Board may refuse to issue a license, issue a reprimand, or suspend or revoke a license, to suspend the license of a licensed psychologist or licensed school psychologist prior to holding a hearing under the Administrative Procedure Act if it determines, based on the complaint, that there is an immediate threat to the public; provides for notification of a psychologist or licensed school psychologist whose license is so suspended; and requires the Board to permanently revoke the license if a psychologist or licensed school psychologist whose license is so suspended fails to timely request an adjudication under that Act.

- Specifies that if the State Board of Psychology determines at an Administrative Procedure Act hearing that a licensed psychologist or licensed school psychologist has engaged in "sexual conduct" or had "sexual contact" with the psychologist's or school psychologist's patient or client in violation of the Sex Offenses Law, the Board must either suspend or permanently revoke the psychologist's or school psychologist's license or, if it determines that neither of those sanctions is appropriate, must impose another sanction it considers appropriate and issue a written finding describing its reasons for that action.

- Specifies that any finding made, and the record of any sanction imposed, by the State Board of Psychology under existing law or the bill in relation to the disciplining of a psychologist or school psychologist is a public record under the existing Public Records Law.

- Requires the State Board of Psychology to provide access through the Internet to: the names of all licensed psychologists and licensed school psychologists; the names of all licensed psychologists and licensed school psychologists who have been reprimanded by the Board for misconduct, the names of all psychologists or school psychologists who have current licenses but whose licenses are under an active suspension

imposed for misconduct, the names of all former licensed psychologists and licensed school psychologists whose licenses have been suspended or revoked for misconduct, and the reason for each reprimand, suspension, or revocation; and in relation to misconduct involving illegal "sexual conduct" or "sexual contact" with a patient or client, if the Board imposes a sanction other than a license suspension or permanent revocation, its reasons for the sanction imposed and for deciding that neither suspension nor permanent revocation was appropriate.

TABLE OF CONTENTS

In general 4
Civil law provisions--existing law 5
Civil law provisions--operation of the bill 5
Period of limitations for civil assault or battery action based on a mental health professional's sexual activity with a client or patient 5
Criminal law provisions 7
Existing law--sexual battery 7
Existing law--sexual imposition 8
Operation of the bill--expansion of sexual battery and sexual imposition 8
Notification to licensing entity regarding charges or conviction 9
Licensing, regulation, and discipline of psychologists and school psychologists 10
State Board of Psychology membership; removal from office 10
Continuing education for psychologists and school psychologists 12
License denial, suspension, or revocation, issuance of reprimands, or other sanctions 13
Access to findings and record of sanctions 15
Internet access to certain information 15
Definitions 15

CONTENT AND OPERATION

In general

The bill enacts a two-year period of limitations for a civil assault or battery action based on a mental health professional's sexual activity with a mental health client or patient who was not the mental health professional's spouse and tolls the two-year period during the mental health service relationship between the client or patient and the mental health professional. It specifies that, in a civil assault or battery action of that nature, the plaintiff's consent to the sexual conduct or sexual contact is not a defense to the claim unless the plaintiff was the mental health

professional's spouse or the mental health professional proves the plaintiff was not "emotionally dependent" upon the mental health professional and did not submit because of "therapeutic deception" or a false representation of treatment necessity. The bill also expands two existing criminal offenses that pertain to illegal sexual activities to also prohibit a mental health professional from engaging in sexual conduct or having sexual contact with a mental health client or patient based on a false representation of necessary treatment. It enacts notification provisions regarding the filing of charges alleging that a mental health professional committed either offense in the expanded circumstances or the conviction of a mental health professional of either offense in the expanded circumstances; and modifies the licensing and other laws governing psychologist and school psychologist misconduct and the law governing the State Board of Psychology.

Civil law provisions--existing law

Existing R.C. 2305.03 specifies that, unless a different limitation is prescribed by statute, a civil action may be commenced only within the period of time prescribed in R.C. 2305.03 to 2305.22. Existing R.C. 2305.15 and 2305.16 provide for the "tolling" of the period of limitations that applies to a civil action, for various specified reasons, including the defendant's absence from Ohio, concealment, or imprisonment, and the plaintiff's minority or unsound mental condition.

Existing law provides that an action for assault or battery *must be brought within one year after the cause of the action accrues*. For purposes of this provision, a cause of action for assault or battery accrues upon the later of the following: (1) the date on which the alleged assault or battery occurred, or (2) if the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the date on which the plaintiff learns the identity of that person or the date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person. (R.C. 2305.111.)

Civil law provisions--operation of the bill

Period of limitations for civil assault or battery action based on a mental health professional's sexual activity with a client or patient

The bill enacts a new period of limitations for civil assault or battery actions based on a mental health professional's sexual activity, in specified circumstances, with a client or patient. Under the bill, a civil action for assault or battery must be brought *within two years after the cause of action accrues*, except as provided in the next paragraph, if all of the following apply regarding the action, the cause of the action, and the parties to the action: (1) the action is

brought against a "mental health professional," (2) the assault or battery claim asserted in the action is that, while the plaintiff was a "mental health client or patient" of the mental health professional, the mental health professional engaged in "sexual conduct" with, had "sexual contact" with, or caused one or more other persons to have sexual contact with the plaintiff, and (3) at the time of the sexual conduct or sexual contact described in clause (2), the plaintiff was not the spouse of the mental health professional (see "***Definitions***," below, for definitions of the terms in quotes).

The bill provides that, if the mental health service relationship between the plaintiff in an action for assault or battery that is described in the preceding paragraph and the mental health professional continues after the date on which the cause of action accrues, the two-year period specified in the preceding paragraph *does not begin to run until the date on which that mental health service relationship is terminated by either or both of the parties*. For purposes of this provision, "mental health service relationship" means the relationship between a mental health professional and a mental health client or patient of the mental health professional that exists for purposes of the mental health professional's provision of "mental health services" (see "***Definitions***," below) to the mental health client or patient. (R.C. 2305.115(A), (B), and (D)(2).)

The bill specifies that, unless the provisions described in the preceding two paragraphs apply, an action for assault or battery must be brought as provided in existing R.C. 2305.111, as described above in "***Existing law***." (R.C. 2305.111 and 2305.115(C).)

Restriction on use of defense of "consent" in a civil assault or battery action based on a mental health professional's sexual activity with a client or patient. The bill specifies that, in an action for assault or battery brought against a mental health professional that asserts as a claim that, while the plaintiff was a mental health client or patient of the mental health professional, the mental health professional engaged in sexual conduct with, had sexual contact with, or caused one or more other persons to have sexual contact with the plaintiff, the plaintiff's consent to the sexual conduct or sexual contact is not a defense to the claim unless either of the following applies: (1) at the time of that sexual conduct or sexual contact, the plaintiff was the spouse of the mental health professional, or (2) the mental health professional proves by a preponderance of the evidence that: (a) at the time of the sexual conduct or sexual contact, the plaintiff was not "emotionally dependent" (see below) upon the mental health professional, and (b) the plaintiff did not submit to the sexual conduct or sexual contact because of "therapeutic deception" (see below) by the mental health professional or because the mental health professional falsely represented to the plaintiff that the sexual conduct or

sexual contact was necessary for medical or mental health purposes. (R.C. 2307.63(A).)

The bill defines the terms "emotionally dependant" and "therapeutic deception," as they are used in this provision, as follows (R.C. 2307.63(B)):

(1) "Emotionally dependent" means that the emotional condition of a mental health client or patient of a mental health professional and the treatment provided by the mental health professional to the client or patient are of such a nature that the mental health professional knows or has reason to know that the client or patient is unable to withhold consent to one or more of the following: (a) engaging in sexual conduct with the mental health professional, or (b) having sexual contact with the mental health professional or having sexual contact caused by the mental health professional with one or more other persons.

(2) "Therapeutic deception" means a representation by a mental health professional that one or more of the following is consistent with or part of the treatment for a mental health client or patient of the mental health professional: (a) the client or patient engaging in sexual conduct with the mental health professional, or (b) the client or patient having sexual contact with the mental health professional or having sexual contact caused by the mental health professional with one or more other persons.

Criminal law provisions

Existing law--sexual battery

Existing law prohibits a person from engaging in "sexual conduct" (see "***Definitions***," below) with another, not the spouse of the offender, when: (1) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (2) the offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired, (3) the offender knows that the other person submits because the other person is unaware that the act is being committed or because the other person mistakenly identifies the offender as the other person's spouse, (4) the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person, (5) the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person, (6) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in, but is not enrolled in and does not attend, a school for which the State Board of Education prescribes minimum standards, and the other person is enrolled in or attends that school, (7) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an

institution of higher education, and the other person is a minor who is enrolled in or attends that institution, or (8) the other person is a minor, and the offender is the other person's athletic or other type of coach or instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person. A violation of the prohibition is the offense of "sexual battery," a felony of the third degree. (R.C. 2907.03.)

Existing law--sexual imposition

Existing law prohibits a person from having "sexual contact" (see "***Definitions***," below) with another, not the spouse of the offender, causing another, not the spouse of the offender, to have sexual contact with the offender, or causing two or more other persons to have sexual contact when: (1) the offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard, (2) the offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired, (3) the offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact, or (4) the other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person. A person cannot be convicted of a violation of this prohibition solely upon the victim's testimony unsupported by other evidence. A violation of the prohibition is the offense of "sexual imposition." Sexual imposition generally is a misdemeanor of the third degree, but if the offender previously has been convicted of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or the former offense of felonious sexual penetration, sexual imposition is a misdemeanor of the first degree. (R.C. 2907.06.)

Operation of the bill--expansion of sexual battery and sexual imposition

The bill expands the offenses of sexual battery and sexual imposition so that they also prohibit a "mental health professional" from engaging in "sexual conduct," having "sexual contact," or causing sexual contact with a "mental health client or patient" of the mental health professional, who is not the mental health professional's spouse, if the mental health professional induces the client or patient to submit by falsely representing to the client or patient that the sexual conduct or sexual contact is necessary for mental health treatment purposes (see "***Definitions***," below, for definitions of the terms in quotes). Specifically, the bill does the following:

(1) Expands the offense of sexual battery to also prohibit a person from engaging in sexual conduct with another, not the spouse of the offender, when the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the client or patient to submit by falsely representing to the client or patient that the sexual conduct is necessary for mental health treatment purposes. The existing penalties for the offense apply to a violation of the new prohibition. (R.C. 2907.01(N) and 2907.03(A)(10).)

(2) Expands the offense of sexual imposition to also prohibit a person from having sexual contact with another, not the spouse of the offender, causing another, not the spouse of the offender, to have sexual contact with the offender, or causing two or more other persons to have sexual contact, when the offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to that person that the sexual contact is necessary for mental health treatment purposes. The existing penalties for the offense apply to a violation of the new prohibition. (R.C. 2907.01(N) and 2907.06(A)(5).)

The bill does not change any of the other existing sex offenses that prohibit a person from engaging in sexual conduct or having sexual contact with another when other specified circumstances apply (for example, the offenses of rape, unlawful sexual conduct with a minor, and gross sexual imposition). Under existing law and under the bill, each of those offenses applies to a mental health professional who engages in sexual conduct or has sexual contact with his or her mental health client or patient *if the other circumstances specified in the particular offense (e.g., the use of force, the victim is under a specified age, the administration of an intoxicant, etc.) also are satisfied relative to the activities in question and the persons involved*.

Notification to licensing entity regarding charges or conviction

The bill specifies that, if a "mental health professional" is indicted or charged and bound over to the court of common pleas for trial for allegedly committing either sexual battery or sexual imposition in the expanded circumstances enacted by the bill, as described above, the prosecuting attorney handling the case must send written notice of the indictment or the charge and bind over to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's license, certification, registration, or authorization. The failure of a prosecuting attorney to give this notice does not give rise to a claim for damages against the prosecuting attorney or the county and does not constitute grounds for declaring a mistrial or new trial, for setting aside a conviction or sentence, or for granting postconviction relief to a defendant.

If a mental health professional is convicted of or pleads guilty to either sexual battery or sexual imposition in the expanded circumstances enacted by the bill, as described above, the court must transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the mental health professional's license, certification, registration, or authorization. (R.C. 2907.17, 2907.171, and 2907.18.)

Licensing, regulation, and discipline of psychologists and school psychologists

R.C. Chapter 4732. regulates the practices of psychology and school psychology in Ohio. It establishes the State Board of Psychology, provides for the licensing of "psychologists" and "school psychologists" (see "***Definitions***," below), establishes rules and prohibitions related to the practice of their profession, including rules for mandatory continuing education, and provides for the enforcement of those rules and prohibitions. (See **COMMENT**.)

State Board of Psychology membership; removal from office

Existing law. Existing law requires the Governor, with the advice and consent of the Senate, to appoint the State Board of Psychology, to consist of seven persons who are United States citizens and Ohio residents. One member cannot be a psychologist or other health professional. Each of the remaining members must be a licensed psychologist. Terms of office are five years, commencing on October 6 and ending on October 5. No person may be appointed to more than two five-year terms in succession. The psychologist members of the board must be chosen so that they represent the diverse fields of specialization and practice in the profession of psychology. The Governor may make such appointments from lists submitted annually by the Ohio Psychological Association and by the Ohio School Psychologists Association. A vacancy in an unexpired term shall be filled in the same manner as the original appointment. The Governor may remove any member for malfeasance, misfeasance, or nonfeasance after a hearing in accordance with the Administrative Procedure Act. (R.C. 4732.02.)

The Board elects a President and Secretary from its members to serve one-year terms, and a majority of the Board constitutes a quorum. Board members receive a statutorily fixed amount for each day employed in the discharge of their official duties, and their necessary expenses while engaged in those duties. The Board's principal office is in Columbus, but it may meet or conduct business at any place in the state. The Board may empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes. It must meet at least twice annually and at other times as it determines; special meetings may be called by the President and must be called by the Secretary upon the written request of two members. The Board must make such rules as are

necessary to conduct its business and may employ such assistants and clerical help as are necessary to administer and enforce the law governing psychologists and school psychologists. (R.C. 4732.03, 4732.05, and 4732.06--not in the bill.)

Operation of the bill. The bill modifies the membership of the State Board of Psychology by increasing the total membership to nine, and by eliminating the existing requirement that one of the members not be a psychologist or other health professional and replacing that provision with a requirement that three members must be patient advocates who are not "mental health professionals" (see "***Definitions***," below) and who either are parents or other relatives of a person who has received or is receiving "mental health services" (see "***Definitions***," below) or are representatives of organizations that represent persons who have received or are receiving mental health services. At least one patient advocate member must be a parent or other relative of a mental health service recipient and at least one patient advocate member must be a representative of an organization that represents mental health service recipients. The bill also modifies existing law by specifying that each of the six non-patient advocate members of the Board must be a licensed psychologist (existing law) or a licensed school psychologist (under the bill). The terms of the licensed psychologist and licensed school psychologist members that are in effect on the bill's effective date will continue as under existing law.

The bill specifies that, of the three patient advocates to be appointed to the Board under this provision, one is to replace the current Board member who is not a psychologist or other health professional at the end of that member's term, one is to be appointed as a new member for a term that ends on October 5, 2003, and one is to be appointed as a new member for a term that ends on October 5, 2006. Thereafter, as under existing law, all terms are to be for five years commencing on October 6 and ending on October 5. The Governor still makes all appointments under the bill, with the advice and consent of the Senate and all members still must be United States citizens and Ohio residents. To reflect its provision that specifically authorizes the appointment of licensed school psychologists to the Board, the bill revises an existing provision regarding qualifications of licensed psychologist members so that it provides that the licensed psychologist *and licensed school psychologist Board members* must be so chosen that they represent the diverse fields of specialization and practice in the profession of psychology *and the profession of school psychology*. (R.C. 4732.02, first paragraph, and Section 3 of the bill.)

The bill also specifies that, in addition to the current authority of the Governor to remove a Board member for malfeasance, misfeasance, or nonfeasance after a hearing under the Administrative Procedure Act, the Governor *must remove*, after a hearing under that Act, any Board member who has been

convicted of or pleaded guilty to the commission of a felony under any law of Ohio, another state, or the United States. Further, it specifies that no person may be appointed to the Board who has been convicted of or pleaded guilty to a felony offense under any law of Ohio, another state, or the United States. (R.C. 4732.02, second paragraph.)

The bill prohibits a Board member from engaging in any conduct involving a conflict of interest with the member's Board duties. While the bill does not expressly provide a penalty for violating this prohibition, two avenues appear to exist to enforce this prohibition. First, as discussed above, the Governor has the authority to remove a board member for misfeasance, malfeasance, and nonfeasance. Second, it is possible that the board member could be criminally charged for dereliction of duty, which is a misdemeanor of the second degree. (R.C. 4732.021 and R.C. 2921.44(E) and (F)--not in the bill.)

Continuing education for psychologists and school psychologists

Existing law. Existing law provides that, on August 31, 1998, and on or before August 31 of each even-numbered year thereafter, each person licensed as a psychologist or school psychologist by the State Board of Psychology (i.e., a "licensed psychologist" or a "licensed school psychologist" under definitions contained in R.C. 4732.01) must have completed, in the preceding two-year period, not less than 20 hours of continuing education in psychology or the number of hours determined under "hour-reduction rules" adopted by the Board for persons in their first registration period as described below (hereafter, "CPE"). Each such person must certify to the Board, at the time of biennial registration pursuant to law and on the registration form prescribed by the Board, that in the preceding two years the person has completed CPE in compliance with law. The Board must adopt rules establishing the procedure for a person to certify to the Board and for properly recording with the Ohio Psychological Association or the State Board of Education completion of the CPE.

Existing law specifies that CPE may be applied to meet the above-described requirement if: (1) it is obtained through a program or course approved by the State Board of Psychology, the Ohio Psychological Association, the Ohio Association of Black Psychologists, or the American Psychological Association or, in the case of a licensed school psychologist or a licensed psychologist with a school psychology specialty, by the State Board of Education, the Ohio School Psychologists Association, or the National Association of School Psychologists, and (2) completion of the program or course is recorded with the Ohio Psychological Association or the State Board of Education in accordance with rules adopted by the State Board of Psychology as described above. The State Board of Psychology may disapprove any program or course that has been

approved by any of the other specified entities; in such a case, the program or course may not be applied to meet the above-described requirement.

Each person licensed as a psychologist or school psychologist must be given a sufficient choice of CPE programs or courses in psychology to ensure that the person has had a reasonable opportunity to participate in programs or courses that are relevant to the person's practice in terms of subject matter and level. The State Board of Psychology must adopt rules providing for reductions of the hours of CPE required for persons in their first registration period. The Board may excuse persons licensed as a psychologist or school psychologist, as a group or as individuals, from all or any part of the CPE requirements because of an unusual circumstance, emergency, or special hardship. The Board must approve one or more CPE courses of study that assist psychologists and school psychologists in recognizing the signs of domestic violence and its relationship to child abuse, but psychologists and school psychologists are not required to take the courses. (R.C. 4732.141.)

Operation of the bill. The bill *increases to 23 hours* the number of CPE hours that each licensed psychologist or school psychologist must complete in each two-year reporting period. It specifies that, on or before August 31 of each even-numbered year *after the biennium in which the bill takes effect*, each licensed psychologist and each licensed school psychologist must have completed, in the preceding two-year period, not less than 23 hours of CPE, or the number of hours determined under the "hour-reduction rules" adopted by the Board for persons in their first registration period. It also specifies that *the 23 hours must include not less than three hours of CPE in professional conduct and ethics*. Related to this expansion and new topic, the bill modifies existing law to specify that each person licensed as a psychologist or school psychologist must be given a sufficient choice of CPE programs or courses in psychology, *including programs or courses on professional conduct and ethics* when required under the bill, to ensure that the person has had a reasonable opportunity to participate in programs or courses that are relevant to the person's practice in terms of subject matter and level. The bill retains the other provisions of existing law related to CPE that are described above. (R.C. 4732.141.)

License denial, suspension, or revocation, issuance of reprimands, or other sanctions

Existing law. Existing law identifies numerous grounds upon which the State Board of Psychology may refuse to issue a license to an applicant for a psychologist's or school psychologist's license, may issue a reprimand, or may suspend or revoke the license of any licensed psychologist or school psychologist. A few of the grounds are: (1) *conviction of a felony or an offense involving moral turpitude*, (2) using fraud or deceit in the procurement of the person's license or

knowingly assisting another in the procurement of such a license through fraud or deceit, (3) willful, unauthorized communication of information received in professional confidence, (4) being negligent in the practice of psychology or school psychology, (5) using any controlled substance or alcoholic beverage to an extent that the use impairs the person's ability to perform the work of a psychologist or school psychologist with safety to the public, and (6) violating any rule of professional conduct promulgated by the Board, generally.

Before the Board may deny, suspend, or revoke a license as described in the preceding paragraph, or otherwise discipline the holder of a license, the Board's Secretary must file written charges with the Board, and the Board must conduct a hearing under the Administrative Procedure Act (the APA). (R.C. 4732.17.)

Operation of the bill--suspension or revocation prior to a hearing. The bill enacts an exception to the existing provision that prohibits the State Board of Psychology from denying, suspending, or revoking a license, or otherwise disciplining a license holder unless the Board's Secretary files written charges and unless a hearing has been held under the APA. Under the bill's exception, on the receipt of a complaint that alleges the existence of any of the existing grounds upon which the Board may refuse to issue a license, may issue a reprimand, or may suspend or revoke a license, as described above, *the Board may suspend the license* of the licensed psychologist or licensed school psychologist *prior to holding a hearing* under the APA *if it determines, based on the complaint, that there is an immediate threat to the public.* After suspending a license under this provision, the Board must notify the subject psychologist or school psychologist of the suspension in accordance with the APA. If the individual whose license is suspended fails to make a timely request for an adjudication under the APA, the Board must enter a final order permanently revoking the person's license. (R.C. 4732.17(B) and 4732.171.)

Operation of the bill--sanctions and findings regarding sexual misconduct. The bill specifies that, if the State Board of Psychology conducts an APA hearing regarding written charges filed by the Board's Secretary alleging misconduct and potential disciplining of the holder of a license, and if, at the conclusion of the hearing, the Board determines that the licensed psychologist or licensed school psychologist has engaged in "sexual conduct" or had "sexual contact" with the psychologist's or school psychologist's patient or client in violation of the Sex Offenses Law, except as described in the next sentence, the Board must either suspend or permanently revoke the psychologist's or school psychologist's license. If the Board determines at the conclusion of the hearing that neither suspension nor permanent revocation is appropriate, it must impose another sanction it considers appropriate and issue a written finding setting forth

the reasons for the sanction imposed and the reason that neither suspension nor permanent revocation is appropriate. (R.C. 4732.172.)

Access to findings and record of sanctions

The bill specifies that any finding made, and the record of any sanction imposed, by the State Board of Psychology under the existing or new provisions described above in "***License denial, suspension, or revocation, issuance of reprimands, or other sanctions***" is a public record under the existing Public Records Law (R.C. 4732.173).

Internet access to certain information

The bill requires the State Board of Psychology to provide access to the following information through the Internet: (1) the names of all licensed psychologists and licensed school psychologists, (2) the names of all licensed psychologists and licensed school psychologists who have been reprimanded by the Board for misconduct, the names of all psychologists or school psychologists who have current licenses but whose licenses are under an active suspension imposed for misconduct, the names of all former licensed psychologists and licensed school psychologists whose licenses have been suspended or revoked for misconduct, and the reason for each reprimand, suspension, or revocation, and (3) in relation to misconduct involving illegal "sexual conduct" or "sexual contact" with a patient or client, if the Board imposes a sanction other than a license suspension or permanent revocation, written findings setting forth the reasons for the sanction imposed and the reason that neither suspension nor revocation was appropriate. The bill's Internet provisions described above in clause (2) do not apply to a suspension of the license of a psychologist or school psychologist that is an "automatic suspension" imposed under existing R.C. 4732.14 (not in the bill) because of nonrenewal of the license. The bill does not define the term "Internet." (R.C. 4732.31.)

Definitions

As used in the bill:

"Mental health client or patient" means an individual who is receiving "mental health services" from a "mental health professional" or organization (R.C. 2305.115(D), 2307.63(B), 2907.01(N) and, by reference, R.C. 2305.51--not in the bill).

"Mental health professional" has two meanings in the bill. For the provisions described above under "***Licensing, regulation, and discipline of psychologists and school psychologists***," "mental health professional" means an

individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide "mental health services" for compensation, remuneration, or other personal gain. For the provisions of the bill described above under "***Civil law provisions***" and "***Criminal law provisions***," "mental health professional" also includes an individual who is not licensed, certified, or registered under the Revised Code, or otherwise authorized in this state, but who regularly provides or purports to provide mental health services for compensation or remuneration at an established place of business. (R.C. 2305.115(D), 2307.63(B), 2907.01(N), and 4732.01(I) and, by reference, R.C. 2305.51--not in the bill.)

"Mental health service" means a service provided to an individual or group of individuals involving the application of medical, psychiatric, psychological, counseling, social work, or nursing principles or procedures to either of the following: (1) the assessment, diagnosis, prevention, treatment, or amelioration of mental, emotional, psychiatric, psychological, or psychosocial disorders or diseases, as described in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association, or (2) the assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease (R.C. 2305.115(D), 2907.01(N), and 4732.01(I) and, by reference, R.C. 2305.51--not in the bill).

"Psychologist" means any person who holds himself or herself out to the public by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," or any other terms that imply the person is trained, experienced, or an expert in the field of psychology. Related to this, "the practice of psychology" means rendering or offering to render to individuals, groups, organizations, or the public any service involving the application of psychological procedures to assessment, diagnosis, prevention, treatment, or amelioration of psychological problems or emotional or mental disorders of individuals or groups; or to the assessment or improvement of psychological adjustment or functioning of individuals or groups, whether or not there is a diagnosable pre-existing psychological problem. Practice of psychology includes the practice of school psychology. Teaching or research is not regarded as the practice of psychology, even when dealing with psychological subject matter, provided it does not otherwise involve the professional practice of psychology in which patient or client welfare is directly affected. (R.C. 4732.01(A) and (B)--unchanged by the bill.)

"School psychologist" means any person who holds himself or herself out to the public by any title or description of services incorporating the words "school psychologist" or "school psychology," or who holds himself or herself out to be

trained, experienced, or an expert in the practice of school psychology. Related to this, "practice of school psychology" means rendering or offering to render to individuals, groups, organizations, or the public any of the following services: (1) evaluation, diagnosis, or test interpretation limited to assessment of intellectual ability, learning patterns, achievement, motivation, or personality factors directly related to learning problems in an educational setting, (2) counseling services for children or adults for amelioration or prevention of educationally related learning problems, or (3) educational or vocational consultation or direct educational services (this does not include industrial consultation or counseling services to clients undergoing vocational rehabilitation). (R.C. 4732.01(D) and (E)--unchanged by the bill.)

"Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. (R.C. 2305.115(D), 2307.63(B), and 2907.01(A)--unchanged by the bill.)

"Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person (R.C. 2305.115(D), 2307.63(B), and 2907.01(B)--unchanged by the bill).

COMMENT

The bill changes portions of the existing law regarding the State Board of Psychology, the licensing of psychologists and school psychologists, the rules and prohibitions related to the practice of their profession, and the enforcement of those rules and prohibitions, but, except as described above in "***Criminal provisions***," it does not modify the law related to the regulatory board with authority over psychiatrists (the State Medical Board under R.C. Chapter 4731.), the licensing of psychiatrists, the rules and prohibitions related to the practice of psychiatry, or the enforcement of those rules and prohibitions. A few provisions of existing law related to the practice of psychiatry, not in the bill, address issues similar to those addressed in the bill related to the practice of psychology and school psychology. For example: (a) R.C. 4731.22(G) permits the State Medical Board to suspend without a prior hearing the license issued to a person under R.C. Chapter 4731. if it determines that any ground for suspension specified in existing R.C. 4731.22(B) is present and that the person's continued practice presents a danger of immediate and serious harm to the public, (b) R.C. 4731.22(I)

provides that the certificate to practice issued to a person under R.C. Chapter 4731., and the person's practice in Ohio, are automatically suspended as of the date the person is convicted of or pleads guilty to, in Ohio or another jurisdiction, certain specified offenses, including various homicide offenses, rape, sexual battery, and gross sexual imposition, etc., with the suspension becoming a permanent revocation if the person does not timely request an adjudication under the Administrative Procedure Act, and (c) R.C. 4731.281 requires continuing medical education for persons who hold a certificate to practice medicine under R.C. Chapter 4731.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-30-01	p.	91
Reported, S. Judiciary on Criminal Justice	06-28-01	p.	777
Passed Senate (32-0)	06-28-01	p.	781
Reported, H. Criminal Justice	---		---

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