

As Introduced

**124th General Assembly
Regular Session
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S. B. No. 9

SENATORS Spada, Austria

A B I L L

To amend sections 2907.01, 4732.01, 4732.02, 4732.141, 1
and 4732.17 and to enact sections 2907.13, 2907.17, 2
2907.171, 2907.18, 4732.021, 4732.171, 4732.172, 3
4732.173, and 4732.31 of the Revised Code to enact 4
the offense of "sexual exploitation of a mental 5
health client or patient" to prohibit in specified 6
circumstances mental health professionals from 7
engaging in sexual conduct or having sexual contact 8
with their mental health clients or patients, to 9
provide for notice to the regulatory entity with 10
authority over a mental health professional who is 11
charged with or convicted of those activities, to 12
modify the laws regarding the State Board of 13
Psychology, and to modify the laws governing 14
psychologist misconduct. 15

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2907.01, 4732.01, 4732.02, 4732.141, 16
and 4732.17 be amended and sections 2907.13, 2907.17, 2907.171, 17
2907.18, 4732.021, 4732.171, 4732.172, 4732.173, and 4732.31 of 18
the Revised Code be enacted to read as follows: 19

Sec. 2907.01. As used in sections 2907.01 to 2907.37 of the 20

Revised Code:	21
(A) "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.	22 23 24 25 26 27 28
(B) "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.	29 30 31 32
(C) "Sexual activity" means sexual conduct or sexual contact, or both.	33 34
(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.	35 36 37
(E) Any material or performance is "harmful to juveniles," if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply:	38 39 40 41
(1) It tends to appeal to the prurient interest of juveniles;	42 43
(2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;	44 45
(3) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality;	46 47
(4) It contains a display, description, or representation of human bodily functions of elimination;	48 49

(5) It makes repeated use of foul language;	50
(6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;	51 52 53
(7) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.	54 55 56 57
(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:	58 59 60 61 62
(1) Its dominant appeal is to prurient interest;	63
(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;	64 65 66 67
(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;	68 69 70
(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;	71 72 73 74 75
(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of	76 77 78 79

which is a dominant tendency to appeal to prurient or scatological
interest, when the appeal to such an interest is primarily for its
own sake or for commercial exploitation, rather than primarily for
a genuine scientific, educational, sociological, moral, or
artistic purpose.

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(G) "Sexual excitement" means the condition of human male or
female genitals when in a state of sexual stimulation or arousal.

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(H) "Nudity" means the showing, representation, or depiction
of human male or female genitals, pubic area, or buttocks with
less than a full, opaque covering, or of a female breast with less
than a full, opaque covering of any portion thereof below the top
of the nipple, or of covered male genitals in a discernibly turgid
state.

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(I) "Juvenile" means an unmarried person under the age of
eighteen.

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(J) "Material" means any book, magazine, newspaper, pamphlet,
poster, print, picture, figure, image, description, motion picture
film, phonographic record, or tape, or other tangible thing
capable of arousing interest through sight, sound, or touch.

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(K) "Performance" means any motion picture, preview, trailer,
play, show, skit, dance, or other exhibition performed before an
audience.

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(L) "Spouse" means a person married to an offender at the
time of an alleged offense, except that such person shall not be
considered the spouse when any of the following apply:

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(1) When the parties have entered into a written separation
agreement authorized by section 3103.06 of the Revised Code;

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(2) During the pendency of an action between the parties for
annulment, divorce, dissolution of marriage, or legal separation;

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(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient," "mental health professional," and "mental health service" have the same meanings as in section 2305.51 of the Revised Code.

Sec. 2907.13. (A) No mental health professional shall engage in sexual conduct with another who is a mental health client or patient of the mental health professional and is not the spouse of the mental health professional.

(B) No mental health professional shall have sexual contact with another who is a mental health client or patient of the mental health professional and is not the spouse of the mental health professional.

(C) Whoever violates this section is guilty of sexual exploitation of a mental health client or patient.

(1) A violation of division (A) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) or (B) of this section, a violation of division (A) of this section is a felony of the fourth degree.

(2) A violation of division (B) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) or (B) of this section, a violation of division (B) of this section is a felony of the fifth degree.

Sec. 2907.17. If a mental health professional is indicted or charged and bound over to the court of common pleas for trial for an alleged violation of section 2907.13 of the Revised Code, the

prosecuting attorney handling the case shall send written notice 139
of the indictment or the charge and bind over to the regulatory or 140
licensing board or agency, if any, that has the administrative 141
authority to suspend or revoke the mental health professional's 142
professional license, certification, registration, or 143
authorization. 144

Sec. 2907.171. The failure of the prosecuting attorney to 145
give the notice required by section 2907.17 of the Revised Code 146
does not give rise to a claim for damages against the prosecuting 147
attorney or the county. The failure of the prosecuting attorney to 148
give the notice does not constitute grounds for declaring a 149
mistrial or new trial, for setting aside a conviction or sentence, 150
or for granting postconviction relief to a defendant. 151

Sec. 2907.18. If a mental health professional is convicted of 152
or pleads guilty to a violation of section 2907.13 of the Revised 153
Code, the court shall transmit a certified copy of the judgment 154
entry of conviction to the regulatory or licensing board or 155
agency, if any, that has the administrative authority to suspend 156
or revoke the mental health professional's professional license, 157
certification, registration, or authorization. 158

Sec. 4732.01. As used in sections 4732.01 to 4732.25 of the 159
Revised Code: 160

(A) "Psychologist" means any person who holds himself self 161
out to the public by any title or description of services 162
incorporating the words "psychologic," "psychological," 163
"psychologist," "psychology," or any other terms that imply he the 164
person is trained, experienced, or an expert in the field of 165
psychology. 166

(B) "The practice of psychology" means rendering or offering 167

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. For purposes of this chapter, teaching or research
shall not be 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.

(C) "Psychological procedures" include but are not restricted
to application of principles, methods, or procedures of
understanding, predicting, or influencing behavior, such as the
principles pertaining to learning, conditioning, perception,
motivation, thinking, emotions, or interpersonal relationships;
the methods or procedures of verbal interaction, interviewing,
counseling, behavior modification, environmental manipulation,
group process, psychological psychotherapy, or hypnosis; and the
methods or procedures of administering or interpreting tests of
mental abilities, aptitudes, interests, attitudes, personality
characteristics, emotions, or motivation.

(D) "School psychologist" means any person who holds ~~himself~~
self out to the public by any title or description of services
incorporating the words "school psychologist" or "school
psychology," or who holds ~~himself~~ self out to be trained,
experienced, or an expert in the practice of school psychology.

(E) "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;

(3) Educational or vocational consultation or direct educational services. This does not include industrial consultation or counseling services to clients undergoing vocational rehabilitation.

(F) "Licensed psychologist" means an individual holding a current, valid license to practice psychology issued under section 4732.12 or 4732.15 of the Revised Code.

(G) "Licensed school psychologist" means an individual holding a current, valid license to practice school psychology issued under section 4732.12 or 4732.15 of the Revised Code.

(H) "Certificated school psychologist" means an individual holding a current, valid school psychologist certificate issued under division (M) of section 3319.22 of the Revised Code.

(I) "Mental health professional" and "mental health service" have the same meanings as in section 2305.51 of the Revised Code.

Sec. 4732.02. The governor, with the advice and consent of the senate, shall appoint a state board of psychology consisting of ~~seven~~ nine persons who are citizens of the United States and residents of this state. ~~One member shall not be a psychologist or other health professional~~ Three members shall be patient advocates who are not mental health professionals and who either are parents or other relatives of a person who has received or is receiving mental health services or are representatives of organizations

that represent persons who have received or are receiving mental 230
health services. At least one patient advocate member shall be a 231
parent or other relative of a mental health service recipient and 232
at least one patient advocate member shall be a representative of 233
an organization representing mental health service recipients. 234
Each of the remaining members shall be a licensed psychologist or 235
a licensed school psychologist. The terms of the licensed 236
psychologist and licensed school psychologist members that are in 237
effect on the effective date of this amendment shall continue as 238
under the law in effect prior to the effective date of this 239
amendment. Of the ~~original~~ patient advocate members whose 240
positions are created on the effective date of this amendment, two 241
one shall replace the current member who is not a psychologist or 242
other health professional at the end of that member's term, one 243
shall be appointed for ~~one year terms, one for two years, two for~~ 244
~~three years~~ a term that ends on October 5, 2003, one for four 245
years, and one shall be appointed for five years a term that ends 246
on October 5, 2006. Thereafter, terms of office for all members 247
shall be for five years, commencing on the sixth day of October 248
and ending on the fifth day of October. Each member shall hold 249
office from the date of ~~his~~ appointment until the end of the term 250
for which ~~he~~ the member was appointed. Any member appointed to 251
fill a vacancy occurring prior to the expiration of the term for 252
which ~~his~~ the member's predecessor was appointed shall hold office 253
for the remainder of such term. Any member shall continue in 254
office subsequent to the expiration date of ~~his~~ the member's term 255
until ~~his~~ the member's successor takes office, or until a period 256
of sixty days has elapsed, whichever occurs first. No person shall 257
be appointed to more than two five-year terms in succession. The 258
licensed psychologist and licensed school psychologist members of 259
the board shall be so chosen that they represent the diverse 260
fields of specialization and practice in the profession of 261

psychology and the profession of school psychology. The governor 262
may make such appointments from lists submitted annually by the 263
Ohio psychological association and by the Ohio school 264
psychologists association. A vacancy in an unexpired term shall be 265
filled in the same manner as the original appointment. ~~The~~ 266

The governor may remove any member for malfeasance, 267
misfeasance, or nonfeasance after a hearing in accordance with 268
Chapter 119. of the Revised Code. The governor shall remove, after 269
a hearing in accordance with Chapter 119. of the Revised Code, any 270
member who has been convicted of or pleaded guilty to the 271
commission of a felony offense under any law of this state, 272
another state, or the United States. No person may be appointed to 273
the board who has been convicted of or pleaded guilty to a felony 274
offense under any law of this state, another state, or the United 275
States. 276

Sec. 4732.021. A member of the state board of psychology 277
shall not engage in any conduct involving a conflict of interest 278
with the member's board duties. 279

Sec. 4732.141. (A) ~~(1)~~ On August 31, 1998, and on or before 280
the thirty-first day of August of each even-numbered year 281
~~thereafter~~ beginning in 1998 and until the requirement set forth 282
in division (A)(2) of this section applies, each person licensed 283
under this chapter by the state board of psychology shall have 284
completed, in the preceding two-year period, not less than twenty 285
hours of continuing education in psychology or the number of hours 286
determined under division (D) of this section. ~~Each such~~ 287

(2) On or before the thirty-first day of August of each 288
even-numbered year after the biennium in which this amendment 289
takes effect, each person licensed under this chapter by the state 290
board of psychology shall have completed, in the preceding 291

two-year period, not less than twenty-three hours of continuing education in psychology, including not less than three hours of continuing education in professional conduct and ethics, or the number of hours determined under division (D) of this section.

(3) Each person subject to division (A)(1) or (2) of this section shall certify to the board, at the time of biennial registration pursuant to section 4732.14 of the Revised Code and on the registration form prescribed by the board under that section, that in the preceding two years the person has completed continuing psychology education in compliance with this section. The board shall 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 continuing education.

(B) Continuing psychology education may be applied to meet the requirement of division (A) of this section if both of the following requirements are met:

(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;

(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 in accordance with division (A) of this section.

The state board of psychology may disapprove any program or course that has been approved by the Ohio psychological association, Ohio association of black psychologists, American

psychological association, state board of education, Ohio school 324
psychologists association, or national association of school 325
psychologists. Such program or course may not be applied to meet 326
the requirement of division (A) of this section. 327

(C) Each person licensed under this chapter shall be given a 328
sufficient choice of continuing education programs or courses in 329
psychology, including programs or courses on professional conduct 330
and ethics when required under division (A)(2) of this section, to 331
ensure that the person has had a reasonable opportunity to 332
participate in programs or courses that are relevant to the 333
person's practice in terms of subject matter and level. 334

(D) The board shall adopt rules providing for reductions of 335
the hours of continuing psychology education required by this 336
section for persons in their first registration period. 337

(E) Each person licensed under this chapter shall retain in 338
the person's records for at least three years the receipts, 339
vouchers, or certificates necessary to document completion of 340
continuing psychology education. Proof of continuing psychology 341
education recorded with the Ohio psychological association or the 342
state board of education in accordance with the procedures 343
established pursuant to division (A) of this section shall serve 344
as sufficient documentation of completion. With cause, the board 345
may request the documentation from the person. The board also may 346
request the documentation from persons licensed under this chapter 347
selected at random, without cause. The board may review any 348
continuing psychology education records recorded by the Ohio 349
psychological association or the state board of education. 350

(F) The board may excuse persons licensed under this chapter, 351
as a group or as individuals, from all or any part of the 352
requirements of this section because of an unusual circumstance, 353
emergency, or special hardship. 354

(G) The state board of psychology shall approve one or more continuing education courses of study that assist psychologists and school psychologists in recognizing the signs of domestic violence and its relationship to child abuse. Psychologists and school psychologists are not required to take the courses.

Sec. 4732.17. (A) The state board of psychology may refuse to issue a license to any applicant, may issue a reprimand, or suspend or revoke the license of any licensed psychologist or licensed school psychologist, on any of the following grounds:

(1) Conviction of a felony, or of any offense involving moral turpitude, in a court of this or any other state or in a federal court;

(2) Using fraud or deceit in the procurement of the license to practice psychology or school psychology or knowingly assisting another in the procurement of such a license through fraud or deceit;

(3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals;

(4) Willful, unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of psychology or school psychology;

(6) Using any controlled substance or alcoholic beverage to an extent that such use impairs the person's ability to perform the work of a psychologist or school psychologist with safety to the public;

(7) Subject to section 4732.28 of the Revised Code, violating any rule of professional conduct promulgated by the board;

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(8) Practicing in an area of psychology for which the person 384
is clearly untrained or incompetent; 385

(9) An adjudication by a court, as provided in section 386
5122.301 of the Revised Code, that the person is incompetent for 387
the purpose of holding the license. Such person may have the 388
person's license issued or restored only upon determination by a 389
court that the person is competent for the purpose of holding the 390
license and upon the decision by the board that such license be 391
issued or restored. The board may require an examination prior to 392
such issuance or restoration. 393

(10) Waiving the payment of all or any part of a deductible 394
or copayment that a patient, pursuant to a health insurance or 395
health care policy, contract, or plan that covers psychological 396
services, would otherwise be required to pay if the waiver is used 397
as an enticement to a patient or group of patients to receive 398
health care services from that provider; 399

(11) Advertising that the person will waive the payment of 400
all or any part of a deductible or copayment that a patient, 401
pursuant to a health insurance or health care policy, contract, or 402
plan that covers psychological services, would otherwise be 403
required to pay; 404

(12) Notwithstanding division (A)(10) and (11) of this 405
section, sanctions shall not be imposed against any licensee who 406
waives deductibles and copayments: 407

(a) In compliance with the health benefit plan that expressly 408
allows such a practice. Waiver of the deductibles or copays shall 409
be made only with the full knowledge and consent of the plan 410
purchaser, payer, and third-party administrator. Such consent 411
shall be made available to the board upon request. 412

(b) For professional services rendered to any other person 413
licensed pursuant to this chapter to the extent allowed by this 414

chapter and the rules of the board.

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(B) ~~Before~~ Except as provided in section 4732.171 of the
Revised Code, before the board may deny, suspend, or revoke a
license under this section, or otherwise discipline the holder of
a license, written charges shall be filed with the board by the
secretary and a hearing shall be had thereon in accordance with
Chapter 119. of the Revised Code.

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Sec. 4732.171. On receipt of a complaint that any of the
grounds listed in division (A) of section 4732.17 of the Revised
Code exist, the state board of psychology may suspend the license
of the licensed psychologist or licensed school psychologist prior
to holding a hearing in accordance with chapter 119. of the
Revised Code if it determines, based on the complaint, that there
is an immediate threat to the public.

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After suspending a license pursuant to this section, the
board shall notify the licensed psychologist or licensed school
psychologist of the suspension in accordance with section 119.07
of the Revised Code. If the individual whose license is suspended
fails to make a timely request for an adjudication under Chapter
119. of the Revised Code, the board shall enter a final order
permanently revoking the individual's license.

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Sec. 4732.172. (A) Except as provided in division (B) of this
section, if, at the conclusion of a hearing required by section
4732.17 of the Revised Code, the state board of psychology
determines that a licensed psychologist or licensed school
psychologist has engaged in sexual conduct or had sexual contact
with the licensed psychologist's or licensed school psychologist's
patient or client in violation of any prohibition contained in
Chapter 2907. of the Revised Code, the board shall do one of the
following:

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(1) Suspend the licensed psychologist's or licensed school psychologist's license; 445
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(2) Permanently revoke the licensed psychologist's or licensed school psychologist's license. 447
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(B) If it determines at the conclusion of the hearing that neither of the sanctions described in division (A) of this section is appropriate, the board shall impose another sanction it considers appropriate and issue a written finding setting forth the reasons for the sanction imposed and the reason that neither of the sanctions described in division (A) of this section is appropriate. 449
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Sec. 4732.173. Any finding made, and the record of any sanction imposed, by the state board of psychology under section 4732.17, 4732.171, or 4732.172 of the Revised Code is a public record under section 149.43 of the Revised Code. 456
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Sec. 4732.31. (A) The state board of psychology shall provide access to the following information through the internet: 460
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(1) The names of all licensed psychologists and licensed school psychologists; 462
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(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; 464
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(3) Written findings made under division (B) of section 4732.172 of the Revised Code. 472
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(B) Division (A)(2) of this section does not apply to a 474
suspension of the license of a psychologist or school psychologist 475
that is an automatic suspension imposed under section 4732.14 of 476
the Revised Code. 477

Section 2. That existing sections 2907.01, 4732.01, 4732.02, 478
4732.141, and 4732.17 of the Revised Code are hereby repealed. 479

Section 3. Of the three patient advocates who are not mental 480
health professionals and who are required to be appointed to the 481
State Board of Psychology under section 4732.02 of the Revised 482
Code, as amended by this act, one shall replace the current member 483
who is not a psychologist or other health professional at the end 484
of that member's term and two shall be appointed as new members in 485
accordance with that section. 486