

By Ms. Gardner of Holliston, petition of Barbara Gardner, other members of the General Court and others relative to criminal penalties for sexual misconduct by mental health professionals and health professionals. Criminal Justice.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety-One.

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AN ACT RELATIVE TO CRIMINAL PENALTIES FOR SEXUAL MISCONDUCT BY MENTAL HEALTH PROFESSIONALS AND HEALTH PROFESSIONALS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 21B of chapter 233 of the General Laws,  
2 as appearing in the 1988 Official Edition, is hereby amended by  
3 inserting after the word "sixty-five", in line 6, the words: — sec-  
4 tions one to eight of chapter two hundred and twenty-nine A.

1 SECTION 2. Chapter 265 of the General Laws is hereby  
2 amended by inserting after section 21 the following four  
3 sections: —

4 Section 21A. For purposes of this section, "Mental health  
5 professional", includes a licensed, unlicensed, or in-training:

6 (1) psychiatrist or other physician providing psychotherapy, (2)  
7 social worker, (3) psychologist, (4) psychiatric nurse, (5) allied  
8 mental health and human service professionals, (6) any other  
9 person licensed or unlicensed, rendering or offering to render  
10 professional services for the purpose of treating, diagnosing or  
11 assessing mental or emotional disorders or distress, modifying  
12 behaviors, or alleviating problems pertaining to interpersonal  
13 relationships, work and life adjustment, and personal effectiveness  
14 which are caused by mental or emotional disorders or distress.

15 Whoever, being a mental health professional, has natural or  
16 unnatural sexual intercourse with a patient or client during the

17 period that a professional relationship exists between the mental  
18 health professional and the patient or client shall be punished by  
19 imprisonment in the state prison for not more than ten years.  
20 Consent shall not be a defense in a prosecution under this section.

21 Whoever commits a second or subsequent offense under this  
22 section shall be punished by imprisonment in the state prison for  
23 not more than twenty years. A mental health professional who  
24 violates this section with a single patient or client shall be punished  
25 by imprisonment in the state prison for not more than ten years.

26 Section 21B. Whoever, being a mental health professional, as  
27 defined in section 21A, has indecent sexual contact with a patient  
28 or client during the period that a professional relationship exists  
29 between the mental health professional and the patient or client  
30 shall be punished by imprisonment in the state prison for not more  
31 than five years or by imprisonment in a jail or a house of correction  
32 for not more than two and one-half years. Consent shall not be  
33 a defense in a prosecution under this section. A mental health  
34 professional who violates this section with a single patient or client  
35 shall not be punished by a sentence that exceeds the maximum  
36 sentence for a single offense.

37 Indecent sexual contact shall mean intentional touching by the  
38 mental health professional, or by the patient or client with the  
39 cooperation or consent of the mental health professional, of the  
40 genitals, anus, or the immediately surrounding areas, including  
41 the groin, inner thighs and buttocks, or the breasts, or the clothing  
42 covering any of these areas, other than in accordance with  
43 practices generally recognized as legitimate by the mental health  
44 professions.

45 Section 21C. For purposes of this section, "health profes-  
46 sional", includes a licensed, unlicensed, registered, unregistered,  
47 or an in-training physician, osteopath, dentist, chiropractor,  
48 nurse, acupuncturist, podiatrist, physician assistant, emergency  
49 medical technician, body work therapist, home health care  
50 worker, allied health professionals as defined in section twenty-  
51 three A of chapter one hundred and twelve, or any other  
52 professional who provides health services.

53 A health professional who has natural or unnatural sexual  
54 intercourse with a patient or client, during a medical procedure

55 or examination, shall be punished by imprisonment in a state  
56 prison for not more than ten years. Consent shall not be a defense  
57 under this section.

58 Whoever commits a second or subsequent offense under this  
59 section, shall be imprisoned in state prison for not more than  
60 twenty years. A health professional who violates this section with  
61 a single patient or client shall be punished by imprisonment in  
62 a state prison for not more than ten years.

63 Section 21D. Whoever, being a health professional, as defined  
64 in section 21C, has indecent sexual contact with a patient or client  
65 during a medical procedure or examination shall be punished by  
66 imprisonment in a state prison for not more than five years or  
67 by imprisonment in a house of correction for not more than two  
68 and one-half years. Consent shall not be a defense in a prosecution  
69 under this section. A health professional who violates this section  
70 with a single patient or client shall not be punished by a sentence  
71 that exceeds the maximum sentence for a single offense.

72 Indecent sexual contact shall mean intentional touching by the  
73 health professional, or by the patient or client with the  
74 cooperation or consent of the health professional, of the genitals,  
75 anus, or the surrounding areas, including the groin, inner thighs  
76 and buttocks, or the breasts, or the clothing covering any of these  
77 areas, other than in accordance with practices generally  
78 recognized as legitimate by the health professions.

1 SECTION 3. Section 24C of said chapter 265, as appearing in  
2 the 1988 Official Edition, is hereby amended by striking out the  
3 first paragraph and inserting in place thereof the following  
4 paragraph: —

5 That portion of the records of a court or any police department  
6 of the commonwealth or any of its political subdivisions, which  
7 contains the name of the victim in an arrest, investigation,  
8 complaint or indictment for rape or assault with intent to rape  
9 under section thirteen B, twenty-two, twenty-two A, twenty-three,  
10 twenty-four or twenty-four B of chapter sixty-five for drugging  
11 a person for the purpose of sexual intercourse under section three  
12 of chapter two hundred and seventy-two, or for mental health  
13 professional sexual abuse of patients, under paragraph (1) of

14 chapter two hundred and twenty-nine A, shall be withheld from  
15 public inspection, except with the consent of a justice of such court  
16 where the complaint or indictment is or would be prosecuted. If  
17 a justice of such court grants consent for public inspection, he shall  
18 state in writing the reasons for allowing such inspection.