

SENATE BILL 2668
By Henry

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 11 relative to repressed memory condition and the statute of limitations for civil actions in cases of repressed memory.

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

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 11, is amended by adding Sections 2 through 7 of this act as a new part.

SECTION 2. The general assembly hereby finds and declares that the treatment of persons for repressed memory condition is an area of mental health treatment that is subject to controversy among mental health practitioners as to its scientific validity and efficacy. The general assembly also recognizes that the use of such treatment without full disclosure and careful standards of practice may lead to abuse of the patient and allegations that the mental health care provider has created or suggested the memories of earlier abuse to the patient. The general assembly hereby enacts this act to reform the mental health system in this state by enacting measures aimed at truth and responsibility in the mental health treatment of persons with repressed memory condition.

SECTION 3. As used in this act, unless the context otherwise requires:

- (1) "Immediate Family Member" means a client's spouse, parent, stepparent, or child.
- (2) "Informed consent" means consent by a patient, client, or recipient of mental health services to mental health treatment for the condition of repressed memory based on a full, fair, and truthful disclosure of known and reasonably foreseeable benefits, risks, and hazards of the proposed treatment and of alternative treatments. Informed consent

allows the patient, client, or recipient or the legal guardian of such patient, client, or recipient the opportunity to exercise a free and independent judgment by reasonably balancing the probable risks of the treatment for repressed memory condition against the probable benefits.

(3) "Mental Health Care Provider" means a psychiatrist, psychologist, psychiatric nurse, clinical social worker, marriage and family therapist, or professional counselor licensed pursuant to this title, or an unlicensed psychotherapist, or a certified school psychologist.

SECTION 4. Any person engaged in the practice of religious ministry shall not be required to comply with the provisions of this act; except that such person shall not hold himself or herself out to the public by any title incorporating the terms used by licensed mental health care providers unless that person has been licensed pursuant to state law.

SECTION 5. (a) The general assembly hereby finds and declares that mental health patients and clients have a right to be fully and fairly informed of the risks and hazards and relative benefits of all proposed mental health treatments and of alternative treatments before undergoing treatment for repressed memory condition.

(b) Prior to treating or providing any mental health services to any client for repressed memory condition, every mental health care provider shall inform or ensure that all clients receive a nontechnical explanation of the nature and purpose of the mental health treatment procedures, including all forms of psychotherapy, proposed to the client or recipient of mental health services. Such nontechnical explanation shall include at a minimum the following information:

(1) A brief description of the proposed treatment plan;

(2) A statement of whether the proposed treatment has been proven by reliable and valid scientific methods to be safe and effective and a list of citations to any scientific journals reporting that the proposed treatment has been proven by reliable and valid scientific methods to be safe and effective. Valid and scientific methods include

but are not limited to treatment outcome research comparing the proposed treatment to alternative treatments and to control groups where no treatment was provided.

(3) A brief and truthful discussion of the known and reasonably foreseeable risks, hazards, and relative benefits of the proposed treatment in comparison to alternative treatments.

(c) The mental health care provider shall document and affirm that the informed consent discussion was conducted and that the client agrees to the proposed treatment plan by the affixing of signatures of the mental health care provider and the client on an informed consent form that meets the requirements of Section 6. If the client is a minor or a person otherwise incapable of rendering informed consent, disclosure shall be made to the parent or legal guardian, if applicable, and informed consent shall be obtained from the parent or legal guardian, if applicable.

(d) If there is a break or disruption in the treatment of a client who has previously given informed consent to the treatment for repressed memory condition of at least ninety (90) days and the client returns to treatment, prior to treating the client or providing any mental health services to such client for repressed memory condition, the mental health care provider shall give another nontechnical explanation and disclosure regarding the mental health treatments in compliance with subsection (b) and shall obtain informed consent of the client using another informed consent form that meets the requirements of Section 6.

SECTION 6.

(a) An informed consent form for the treatment of repressed memory condition shall include at a minimum the following:

(1) A brief description of the proposed treatment plan;

(2) Citations to scientific journals demonstrating that the proposed treatment has been proven by reliable and valid scientific research studies to be reasonably safe and effective. Reliable and valid scientific research studies include but are not limited to

treatment outcome research comparing the proposed treatment to alternative treatments and to control groups where no treatment was provided;

(3) A brief and truthful discussion of the known and reasonably foreseeable risks, hazards, and relative benefits of the proposed treatment in comparison to alternative treatments;

(4) A list of alternative treatments with a brief and truthful description of the benefits and risk of each;

(5) The signatures of the mental health care provider and client signifying mutual agreement to the proposed treatment plan.

(b) The informed consent form shall be substantially in the following form:

Informed Consent Form for Mental Health Services
For Repressed Memory Condition

In the State of Tennessee, consumers of services offered by mental health care providers for the treatment of repressed memory condition have the right:

1. To expect that a mental health care provider who is licensed by the state of Tennessee has met the minimal qualifications of training and experience required by state law;
2. To receive only treatments proven by reliable and valid scientific methods to be reasonably safe and effective;
3. To be given only assessment instruments proven by reliable scientific methods to be reasonably safe, reliable, and valid;
4. To full, fair, and truthful disclosure of known and reasonably foreseeable benefits, risks, and hazards of any proposed treatment and of alternative treatment;
5. To report complaints to the Board of _____ (Relevant licensing board listed here with address and telephone number), if the mental health care provider is licensed by the state of Tennessee;
6. To be informed of the cost of professional services before receiving the services; and

7. To privacy and freedom from discrimination as defined by law.

Informed Consent:

Confidentiality. The information you provide will be held in confidence except as required by law. Your mental health care provider has a duty to share otherwise confidential information in the following situations:

1. If the provider has reason to believe you are a victim or a perpetrator of child abuse or child sexual abuse;
2. The situation is life threatening, that is, if the provider believes there is a serious threat of imminent, serious harm to you or others;
3. A court or duly authorized agent of the state has ordered your records released.

Assessment. Based on our initial conversations, the provider suggests the use of the following assessment instruments:

These instruments have been proven safe, reliable, and valid assessment instruments. I am required by law to provide you with a list of scientific citations to professional association journals reporting the results for each test.

TEST I

TEST II

Treatment - Safety and Effectiveness. Based on our initial conversations and the results of testing, the provider suggests the following treatment plan:

These treatments have been proven safe and effective, compared to alternative treatments and control (no treatment) groups by reliable and valid scientific investigations. I am required by law to list scientific citations to professional association journals reporting the safety and effectiveness for each proposed treatment.

TREATMENT I

TREATMENT II

Treatment - Risks and Benefits. I am required by law to discuss the known and reasonably foreseeable risks and benefits of the proposed treatments. Based on the treatment plan I have recommended, these risks and benefits include: _____

Treatment - Alternative Treatments. I am required by law to discuss the known and reasonably foreseeable risks and benefits of alternative treatments also proven safe and effective, if any, as well as no treatment for your condition as I have diagnosed it. Based on the treatment plan I have recommended, these alternative treatments include: _____

Consent:

I have read this form and have discussed its contents with the mental health care provider. I understand this form and agree to the assessments and treatments I have discussed with the provider. I understand that changes in my condition may require a change in treatments or more testing and that a new informed consent discussion and signature may be required at that time. I understand that the decision to enter treatment or to leave treatment is mine.

Patient (Print Name) _____

Signed _____ Date _____

Mental Health Care Provider (Print Name) _____

Signed _____ Date _____

SECTION 7. (a) Any mental health care provider who fails to comply with the mandatory disclosure requirements of Section 5 or fails to use the informed consent form specified in Section 6 with respect to any client is liable to such client or to an immediate family member of the client in an amount equal to the sum of:

- (1) Any actual damage sustained by such person as a result of such failure;

(2) Any additional damages the court may allow;

(3) In the case of any successful action to enforce such liability, the costs of the action, together with such reasonable attorney fees as may be determined by the court.

(b) An action to enforce any liability created by the provisions of this article may be brought in any court of competent jurisdiction in this state within two (2) years after the date of the last therapy session with the mental health care provider.

SECTION 8.

(a) Notwithstanding any other statute of limitations to the contrary, or any other provision of law that can be construed to reduce the statutory period set forth in this section, any civil action based on a sexual assault or a sexual offense against a child shall be commenced within six (6) years after a disability has been removed for a person under disability, as such term is defined in subsection (d) of this section, or within six (6) years after a cause of action accrues, whichever occurs later, and not thereafter. Nothing in this section shall be construed to extend the statutory period with respect to vicarious liability.

(b) For the purpose of this section, "sexual assault" means subjecting another person of any age to sexual contact, as defined in §39-13-501(6) or sexual penetration, as defined in §39-13-501(7).

(c) For the purposes of this section, "sexual offense against a child" shall include all offenses listed in §37-1-602(2)(B) and (C).

(d) For the purpose of this section, "person under disability" means any person who is a minor under eighteen (18) years of age, a mental incompetent, or a person under other legal disability and who does not have a legal guardian.

(e) The provisions of this section shall not be construed to extend or suspend the statute of limitations or statute of repose applicable to a claim alleging negligence in the course of providing professional services in the practice of medicine. This subsection (e) shall not be construed to preclude pursuing a civil action pursuant to this section alleging a sexual offense based on a legal theory other than negligence in the course of providing professional services in

the practice of medicine, unless the sexual assault forms the basis for a claim of such negligence.

SECTION 9. This act shall take effect July 1, 1996, the public welfare requiring it and Section 8 of this act shall apply to causes of action accruing on or after such date.