

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4343

BY DELEGATES SKINNER, STORCH, MILEY, CAMPBELL,
HAMILTON, WESTFALL, WALTERS, MOORE, FLANIGAN AND
SHOTT

[Introduced February 1, 2016; referred to the
committee on Health and Human Resources then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §47-12-1, §47-12-2, §47-12-3, §47-12-4, §47-12-5, §47-12-6 and §47-12-7,
 3 all relating to the Youth Mental Health Protection Act; legislative findings; purpose;
 4 definitions; prohibition on conversion therapy; referral services; and discipline.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §47-12-1, §47-12-2, §47-12-3, §47-12-4, §47-12-5, §47-12-6 and §47-12-7, all
 3 to read as follows:

ARTICLE 12. YOUTH MENTAL HEALTH PROTECTION ACT.

§47-12-1. Short title.

1 This article may be cited as the Youth Mental Health Protection Act.

§47-12-2. Legislative findings.

1 The Legislature finds and declares the following:

2 (1) Being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or
 3 shortcoming. The major professional associations of mental health practitioners and researchers
 4 in the United States have recognized this fact for nearly forty years.

5 (2) The American Psychological Association convened a Task Force on Appropriate
 6 Therapeutic Responses to Sexual Orientation. The Task Force conducted a systematic review
 7 of peer-reviewed journal literature on sexual orientation change efforts and issued a report in
 8 2009. The Task Force concluded that sexual orientation change efforts can pose critical health
 9 risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness,
 10 hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment,
 11 self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and
 12 blame towards parents, feelings of anger and betrayal, loss of friends and potential romantic
 13 partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual
 14 behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having

15 wasted time and resources.

16 (3) The American Psychological Association issued a resolution on Appropriate Affirmative
17 Responses to Sexual Orientation Distress and Change Efforts in 2009 that states: "The American
18 Psychological Association advises parents, guardians, young people, and their families to avoid
19 sexual orientation change efforts that portray homosexuality as a mental illness or developmental
20 disorder and to seek psychotherapy, social support, and educational services that provide
21 accurate information on sexual orientation and sexuality, increase family and school support, and
22 reduce rejection of sexual minority youth."

23 (4) The American Psychiatric Association published a position statement in March of 2000
24 that states: "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on
25 developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports
26 of 'cures' are counterbalanced by anecdotal claims of psychological harm. In the last four
27 decades, 'reparative' therapists have not produced any rigorous scientific research to substantiate
28 their claims of cure. Until there is such research available, the American Psychiatric Association
29 recommends that ethical practitioners refrain from attempts to change individuals' sexual
30 orientation, keeping in mind the medical dictum to first, do no harm. The potential risks of
31 reparative therapy are great, including depression, anxiety and self-destructive behavior, since
32 therapist alignment with societal prejudices against homosexuality may reinforce self-hatred
33 already experienced by the patient. Many patients who have undergone reparative therapy relate
34 that they were inaccurately told that homosexuals are lonely, unhappy individuals who never
35 achieve acceptance or satisfaction. The possibility that the person might achieve happiness and
36 satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative
37 approaches to dealing with the effects of societal stigmatization discussed. Therefore, the
38 American Psychiatric Association opposes any psychiatric treatment such as reparative or
39 conversion therapy which is based upon the assumption that homosexuality per se is a mental
40 disorder or based upon the a priori assumption that a patient should change his or her sexual

41 homosexual orientation."

42 (5) The American Academy of Pediatrics published an article in 1993 in its journal,
43 Pediatrics, that states: "Therapy directed at specifically changing sexual orientation is
44 contraindicated, since it can provoke guilt and anxiety while having little or no potential for
45 achieving changes in orientation."

46 (6) The American Medical Association Council on Scientific Affairs prepared a report in
47 1994 that states: "Aversion therapy (a behavioral or medical intervention which pairs unwanted
48 behavior, in this case, homosexual behavior, with unpleasant sensations or aversive
49 consequences) is no longer recommended for gay men and lesbians. Through psychotherapy,
50 gay men and lesbians can become comfortable with their sexual orientation and understand the
51 societal response to it."

52 (7) The National Association of Social Workers prepared a policy statement in 1997 that
53 states: "Social stigmatization of lesbian, gay, and bisexual people is widespread and is a primary
54 motivating factor in leading some people to seek sexual orientation changes. Sexual orientation
55 conversion therapies assume that homosexual orientation is both pathological and freely chosen.
56 No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may
57 be harmful."

58 (8) The American Counseling Association Governing Council issued a position statement
59 in April, 1999, that states: "We oppose the promotion of "reparative therapy" as a "cure" for
60 individuals who are homosexual."

61 (9) The American Psychoanalytic Association issued a position statement in June, 2012,
62 on attempts to change sexual orientation, gender, identity, or gender expression that states: "As
63 with any societal prejudice, bias against individuals based on actual or perceived sexual
64 orientation, gender identity or gender expression negatively affects mental health, contributing to
65 an enduring sense of stigma and pervasive self-criticism through the internalization of such
66 prejudice. Psychoanalytic technique does not encompass purposeful attempts to 'convert,'

67 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression.
68 Such directed efforts are against fundamental principles of psychoanalytic treatment and often
69 result in substantial psychological pain by reinforcing damaging internalized attitudes."

70 (10) The American Academy of Child and Adolescent Psychiatry published an article in
71 2012 in its journal, Journal of the American Academy of Child and Adolescent Psychiatry, that
72 states: "Clinicians should be aware that there is no evidence that sexual orientation can be altered
73 through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult
74 homosexuality can be prevented if gender nonconforming children are influenced to be more
75 gender conforming. Indeed, there is no medically valid basis for attempting to prevent
76 homosexuality, which is not an illness. On the contrary, such efforts may encourage family
77 rejection and undermine self-esteem, connectedness and caring, important protective factors
78 against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual
79 orientation are effective, beneficial or necessary, and the possibility that they carry the risk of
80 significant harm, such interventions are contraindicated."

81 (11) The Pan American Health Organization, a regional office of the World Health
82 Organization, issued a statement in May, 2012 that states: "These supposed conversion
83 therapies constitute a violation of the ethical principles of health care and violate human rights
84 that are protected by international and regional agreements." The organization also noted that
85 reparative therapies "lack medical justification and represent a serious threat to the health and
86 well-being of affected people."

87 (12) Minors who experience family rejection based on their sexual orientation face
88 especially serious health risks. In one study, lesbian, gay, and bisexual young adults who
89 reported higher levels of family rejection during adolescence were 8.4 times more likely to report
90 having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more
91 likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual
92 intercourse compared with peers from families that reported no or low levels of family rejection.

93 This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor
 94 of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults
 95 (2009), 123 Pediatrics 346.

96 (13) West Virginia has a compelling interest in protecting the physical and psychological
 97 well-being of minors, including lesbian, gay, bisexual, and transgender youth and in protecting its
 98 minors against exposure to serious harms caused by sexual orientation change efforts.

§47-12-3. Purpose.

1 The purpose of this article is to protect lesbian, gay, bisexual, and transgender youth from
 2 sexual orientation change efforts, also known as conversion therapy.

§47-12-4. Definitions.

1 For the purposes of this article:

2 "Mental health provider" means a clinical psychologist licensed under article twenty-one,
 3 chapter thirty of this code; a school psychologist licensed under article twenty-one, chapter thirty
 4 of this code; a psychiatrist licensed under article three, chapter thirty of this code; a clinical social
 5 worker or social worker licensed under article thirty, chapter thirty of this code; a marriage and
 6 family therapist or associate marriage and family therapist licensed under article thirty-one,
 7 chapter thirty of this code; a professional counselor or clinical professional counselor licensed
 8 under article thirty-one, chapter thirty of this code; or any students, interns, volunteers, or other
 9 persons assisting or acting under the direction or guidance of any of these licensed professionals.

10 "Sexual orientation change efforts" or "conversion therapy" means any practices or
 11 treatments that seek to change an individual's sexual orientation, including efforts to change
 12 behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or
 13 feelings towards individuals of the same sex. "Sexual orientation change efforts" or "conversion
 14 therapy" does not include counseling or mental health services that provide acceptance, support,
 15 and understanding of a person without seeking to change sexual orientation or mental health
 16 services that facilitate a person's coping, social support, and gender identity exploration and

17 development, including sexual orientation neutral interventions to prevent or address unlawful
18 conduct or unsafe sexual practices, without seeking to change sexual orientation.

§47-12-5. Prohibition on conversion therapy.

1 A mental health provider may not engage in sexual orientation change efforts with a
2 person under the age of eighteen under any circumstances.

§47-12-6. Referral services related to conversion therapy.

1 Under any circumstances a mental health provider may not refer any current or former
2 client or patient to any individual, within this state or within any other state, for the purpose of
3 engaging in sexual orientation change efforts. This prohibition includes referrals to any individual
4 practicing or engaging in sexual orientation change efforts in person or by telephone, electronic
5 communication, or any other form of direct or indirect communication with a client or patient.

§47-12-7 Discipline.

1 Any sexual orientation change efforts attempted on a person under the age of eighteen
2 by a mental health provider or any referral made by a mental health provider to a third party
3 practicing sexual orientation change efforts constitutes unprofessional conduct. Mental health
4 providers found to have engaged in a sexual orientation change effort or found to have referred
5 a current or former client or patient under the age of eighteen to an individual for the purpose of
6 engaging in sexual orientation change efforts shall be subject to discipline by the licensing entity
7 or disciplinary review board with competent jurisdiction.

NOTE: The purpose of this bill is to prohibit mental health providers from engaging in, or referring a patient to, sexual orientation conversion therapy when such person is under eighteen years of age.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.