

4917--A

2013-2014 Regular Sessions

I N   S E N A T E

May 1, 2013

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Introduced by Sens. HOYLMAN, GIANARIS, KENNEDY, KRUEGER, MONTGOMERY, PERALTA, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to prohibiting mental health professionals from engaging in sexual orientation change efforts with a patient under the age of eighteen years and expanding the definition of professional misconduct with respect to mental health professionals

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative findings and intent. The Legislature hereby  
2 finds and declares all of the following:  
3     a. Being lesbian, gay, or bisexual is not a disease, disorder,  
4 illness, deficiency, or shortcoming. The major professional associations  
5 of mental health practitioners and researchers in the United States have  
6 recognized this fact for nearly 40 years.  
7     b. The American Psychological Association convened a Task Force on  
8 Appropriate Therapeutic Responses to Sexual Orientation. The task force  
9 conducted a systematic review of peer-reviewed journal literature on  
10 sexual orientation change efforts, and issued a report in 2009. The task  
11 force concluded that sexual orientation change efforts can pose critical  
12 health risks to lesbian, gay, and bisexual people, including confusion,  
13 depression, guilt, helplessness, hopelessness, shame, social withdrawal,  
14 suicidality, substance abuse, stress, disappointment, self-blame,  
15 decreased self-esteem and authenticity to others, increased self-hatred,  
16 hostility and blame toward parents, feelings of anger and betrayal, loss  
17 of friends and potential romantic partners, problems in sexual and  
18 emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 feeling of being dehumanized and untrue to self, a loss of faith, and a  
2 sense of having wasted time and resources.

3 c. The American Psychological Association issued a resolution on  
4 Appropriate Affirmative Responses to Sexual Orientation Distress and  
5 Change Efforts in 2009, which states: The American Psychological Associ-  
6 ation advises parents, guardians, young people, and their families to  
7 avoid sexual orientation change efforts that portray homosexuality as a  
8 mental illness or developmental disorder and to seek psychotherapy,  
9 social supports, and educational services that provide accurate informa-  
10 tion on sexual orientation and sexuality, increase family and school  
11 support, and reduce rejection of sexual minority youth.

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

37 e. The American School Counselor Association's position statement on  
38 professional school counselors and lesbian, gay, bisexual, transgen-  
39 dered, and questioning (LGBTQ) youth states: It is not the role of the  
40 professional school counselor to attempt to change a student's sexual  
41 orientation/gender identity but instead to provide support to LGBTQ  
42 students to promote student achievement and personal well-being. Recogn-  
43 izing that sexual orientation is not an illness and does not require  
44 treatment, professional school counselors may provide individual student  
45 planning or responsive services to LGBTQ students to promote self-accept-  
46 tance, deal with social acceptance, understand issues related to coming  
47 out, including issues that families may face when a student goes through  
48 this process and identify appropriate community resources.

49 f. The American Academy of Pediatrics in 1993 published an article in  
50 its journal, Pediatrics, stating: Therapy directed at specifically  
51 changing sexual orientation is contraindicated, since it can provoke  
52 guilt and anxiety while having little or no potential for achieving  
53 changes in orientation.

54 g. The American Medical Association Council on Scientific Affairs  
55 prepared a report in 1994 in which it stated: Aversion therapy (a behav-  
56 ioral or medical intervention which pairs unwanted behavior, in this

1 case, homosexual behavior, with unpleasant sensations or aversive conse-  
2 quences) is no longer recommended for gay men and lesbians. Through  
3 psychotherapy, gay men and lesbians can become comfortable with their  
4 sexual orientation and understand the societal response to it.

5 h. The National Association of Social Workers prepared a 1997 policy  
6 statement in which it stated: Social stigmatization of lesbian, gay and  
7 bisexual people is widespread and is a primary motivating factor in  
8 leading some people to seek sexual orientation changes. Sexual orien-  
9 tation conversion therapies assume that homosexual orientation is both  
10 pathological and freely chosen. No data demonstrates that reparative or  
11 conversion therapies are effective, and, in fact, they may be harmful.

12 i. The American Counseling Association Governing Council issued a  
13 position statement in April of 1999, and in it the council states: We  
14 oppose 'the promotion of 'reparative therapy' as a 'cure' for individ-  
15 uals who are homosexual.

16 j. The American Psychoanalytic Association issued a position statement  
17 in June 2012 on attempts to change sexual orientation, gender, identity,  
18 or gender expression, and in it the association states: As with any  
19 societal prejudice, bias against individuals based on actual or  
20 perceived sexual orientation, gender identity or gender expression nega-  
21 tively affects mental health, contributing to an enduring sense of stig-  
22 ma and pervasive self-criticism through the internalization of such  
23 prejudice. Psychoanalytic technique does not encompass purposeful  
24 attempts to 'convert,' 'repair,' change or shift an individual's sexual  
25 orientation, gender identity or gender expression. Such directed  
26 efforts are against fundamental principles of psychoanalytic treatment  
27 and often result in substantial psychological pain by reinforcing damag-  
28 ing internalized attitudes.

29 k. The American Academy of Child and Adolescent Psychiatry in 2012  
30 published an article in its journal, Journal of the American Academy of  
31 Child and Adolescent Psychiatry, stating: Clinicians should be aware  
32 that there is no evidence that sexual orientation can be altered through  
33 therapy, and that attempts to do so may be harmful. There is no empir-  
34 ical evidence adult homosexuality can be prevented if gender nonconform-  
35 ing children are influenced to be more gender conforming. Indeed, there  
36 is not medically valid basis for attempting to prevent homosexuality,  
37 which is not an illness. On the contrary, such efforts may encourage  
38 family rejection and undermine self-esteem, connectedness and caring,  
39 important protective factors against suicidal ideation and attempts.  
40 Given that there is no evidence that efforts to alter sexual orientation  
41 are effect, beneficial or necessary, and the possibility that they carry  
42 the risk of significant harm, such interventions are contraindicated.

43 l. The Pan American Health Organization, a regional office of the  
44 World Health Organization, issued a statement in May of 2012 and in it  
45 the organization states: These supposed conversion therapies constitute  
46 a violation of the ethical principles of health care and violate human  
47 rights that are protected by international regional agreements. The  
48 organization also noted that reparative therapies lack medical justi-  
49 fication and represent a serious threat to the health and well-being of  
50 affected people.

51 m. Minors who experience family rejection based on their sexual orien-  
52 tation face especially serious health risks. In one study, lesbian, gay,  
53 and bisexual young adults who reported higher levels of family rejection  
54 during adolescence were 8.4 times more likely to report having attempted  
55 suicide, 5.9 times more likely to report high levels of depression, 3.4  
56 times more likely to use illegal drugs, and 3.4 times more likely to

1 report having engaged in unprotected sexual intercourse compared with  
2 peers from families that reported no or low levels of family rejection.  
3 This is documented by Caitlin Ryan et al. in their article entitled  
4 Family Rejection as a Predictor of Negative Health Outcomes in White and  
5 Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics  
6 346.

7 n. New York has a compelling interest in protecting the physical and  
8 psychological well-being of minors, including lesbian, gay, bisexual,  
9 and transgender youth, and in protecting its minors against exposure to  
10 serious harms caused by sexual orientation change efforts.

11 S 2. The education law is amended by adding a new section 6509-d to  
12 read as follows:

13 S 6509-D. ADDITIONAL DEFINITION OF PROFESSIONAL MISCONDUCT; MENTAL  
14 HEALTH PROFESSIONALS. 1. FOR THE PURPOSES OF THIS SECTION:

15 A. "MENTAL HEALTH PROFESSIONAL" MEANS A PERSON SUBJECT TO THE  
16 PROVISIONS OF ARTICLE ONE HUNDRED FIFTY-THREE, ONE HUNDRED FIFTY-FOUR OR  
17 ONE HUNDRED SIXTY-THREE OF THIS TITLE; OR ANY OTHER PERSON DESIGNATED AS  
18 A MENTAL HEALTH PROFESSIONAL PURSUANT TO LAW, RULE OR REGULATION.

19 B. "SEXUAL ORIENTATION CHANGE EFFORTS" (I) MEANS ANY PRACTICE BY A  
20 MENTAL HEALTH PROFESSIONAL THAT SEEKS TO CHANGE AN INDIVIDUAL'S SEXUAL  
21 ORIENTATION, INCLUDING, BUT NOT LIMITED TO, EFFORTS TO CHANGE BEHAVIORS,  
22 GENDER IDENTITY, OR GENDER EXPRESSIONS, OR TO ELIMINATE OR REDUCE SEXUAL  
23 OR ROMANTIC ATTRACTIONS OR FEELINGS TOWARDS INDIVIDUALS OF THE SAME SEX  
24 AND (II) SHALL NOT INCLUDE COUNSELING FOR A PERSON SEEKING TO TRANSITION  
25 FROM ONE GENDER TO ANOTHER, OR PSYCHOTHERAPIES THAT: (A) PROVIDE ACCEPT-  
26 ANCE, SUPPORT AND UNDERSTANDING OF PATIENTS OR THE FACILITATION OF  
27 PATIENTS' COPING, SOCIAL SUPPORT AND IDENTITY EXPLORATION AND DEVELOP-  
28 MENT, INCLUDING SEXUAL ORIENTATION-NEUTRAL INTERVENTIONS TO PREVENT OR  
29 ADDRESS UNLAWFUL CONDUCT OR UNSAFE SEXUAL PRACTICES; AND (B) DO NOT SEEK  
30 TO CHANGE SEXUAL ORIENTATION.

31 2. IT SHALL BE PROFESSIONAL MISCONDUCT FOR A MENTAL HEALTH PROFES-  
32 SIONAL TO ENGAGE IN SEXUAL ORIENTATION CHANGE EFFORTS UPON ANY PATIENT  
33 UNDER THE AGE OF EIGHTEEN YEARS, AND ANY MENTAL HEALTH PROFESSIONAL  
34 FOUND GUILTY OF SUCH MISCONDUCT UNDER THE PROCEDURES PRESCRIBED IN  
35 SECTION SIXTY-FIVE HUNDRED TEN OF THIS SUBARTICLE SHALL BE SUBJECT TO  
36 THE PENALTIES PRESCRIBED IN SECTION SIXTY-FIVE HUNDRED ELEVEN OF THIS  
37 SUBARTICLE.

38 S 3. The education law is amended by adding a new section 6531-a to  
39 read as follows:

40 S 6531-A. ADDITIONAL DEFINITION OF PROFESSIONAL MISCONDUCT; MENTAL  
41 HEALTH PROFESSIONALS. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

42 A. "MENTAL HEALTH PROFESSIONAL" MEANS A PERSON SUBJECT TO THE  
43 PROVISIONS OF ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE.

44 B. "SEXUAL ORIENTATION CHANGE EFFORTS" (I) MEANS ANY PRACTICE BY A  
45 MENTAL HEALTH PROFESSIONAL THAT SEEKS TO CHANGE AN INDIVIDUAL'S SEXUAL  
46 ORIENTATION, INCLUDING, BUT NOT LIMITED TO, EFFORTS TO CHANGE BEHAVIORS,  
47 GENDER IDENTITY, OR GENDER EXPRESSIONS, OR TO ELIMINATE OR REDUCE SEXUAL  
48 OR ROMANTIC ATTRACTIONS OR FEELINGS TOWARDS INDIVIDUALS OF THE SAME SEX;  
49 AND (II) SHALL NOT INCLUDE COUNSELING FOR A PERSON SEEKING TO TRANSITION  
50 FROM ONE GENDER TO ANOTHER, OR PSYCHOTHERAPIES THAT: (A) PROVIDE ACCEPT-  
51 ANCE, SUPPORT AND UNDERSTANDING OF PATIENTS OR THE FACILITATION OF  
52 PATIENTS' COPING, SOCIAL SUPPORT, AND IDENTITY EXPLORATION AND DEVELOP-  
53 MENT, INCLUDING SEXUAL ORIENTATION-NEUTRAL INTERVENTIONS TO PREVENT OR  
54 ADDRESS UNLAWFUL CONDUCT OR UNSAFE SEXUAL PRACTICES; AND (B) DO NOT SEEK  
55 TO CHANGE SEXUAL ORIENTATION.

1       2. IT SHALL BE PROFESSIONAL MISCONDUCT FOR A MENTAL HEALTH PROFES-  
2       SIONAL TO ENGAGE IN SEXUAL ORIENTATION CHANGE EFFORTS UPON ANY PATIENT  
3       UNDER THE AGE OF EIGHTEEN YEARS, AND ANY MENTAL HEALTH PROFESSIONAL  
4       FOUND GUILTY OF SUCH MISCONDUCT UNDER THE PROCEDURES PRESCRIBED IN TITLE  
5       TWO-A OF ARTICLE TWO OF THE PUBLIC HEALTH LAW SHALL BE SUBJECT TO THE  
6       PENALIZES PRESCRIBED IN SECTION TWO HUNDRED THIRTY-A OF THE PUBLIC  
7       HEALTH LAW, AS ADDED BY CHAPTER SIX HUNDRED SIX OF THE LAWS OF NINETEEN  
8       HUNDRED NINETY-ONE.

9       S 4. This act shall take effect immediately.