

4917--B

2013-2014 Regular Sessions

I N S E N A T E

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Introduced by Sens. HOYLMAN, GIANARIS, AVELLA, CARLUCCI, HASSELL-THOMPSON, KENNEDY, KRUEGER, MONTGOMERY, O'BRIEN, PERALTA, RIVERA, SERRANO, SQUADRON, STAVISKY, TKACZYK -- 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 -- 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, bisexual or transgender is not a disease,
4 disorder, illness, deficiency, or shortcoming. The major professional
5 associations of mental health practitioners and researchers in the
6 United States have 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, bisexual or transgender people, including
13 confusion, depression, guilt, helplessness, hopelessness, shame, social
14 withdrawal, suicidality, substance abuse, stress, disappointment, self-
15 blame, decreased self-esteem and authenticity to others, increased self-

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

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1 hatred, hostility and blame toward parents, feelings of anger and
2 betrayal, loss of friends and potential romantic partners, problems in
3 sexual and emotional intimacy, sexual dysfunction, high-risk sexual
4 behaviors, a feeling of being dehumanized and untrue to self, a loss of
5 faith, and a sense of having wasted time and resources.

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

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

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

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

1 g. The American Medical Association Council on Scientific Affairs
2 prepared a report in 1994 in which it stated: Aversion therapy (a behav-
3 ioral or medical intervention which pairs unwanted behavior , in this
4 case, homosexual behavior, with unpleasant sensations or aversive conse-
5 quences) is no longer recommended for gay men and lesbians. Through
6 psychotherapy, gay men and lesbians can become comfortable with their
7 sexual orientation and understand the societal response to it.

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

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

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

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

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

54 m. Minors who experience family rejection based on their sexual orien-
55 tation face especially serious health risks. In one study, lesbian, gay,
56 and bisexual young adults who reported higher levels of family rejection

1 during adolescence were 8.4 times more likely to report having attempted
2 suicide, 5.9 times more likely to report high levels of depression, 3.4
3 times more likely to use illegal drugs, and 3.4 times more likely to
4 report having engaged in unprotected sexual intercourse compared with
5 peers from families that reported no or low levels of family rejection.
6 This is documented by Caitlin Ryan et al. in their article entitled
7 Family Rejection as a Predictor of Negative Health Outcomes in White and
8 Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics
9 346.

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

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

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

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

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

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

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

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

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

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

1 ADDRESS UNLAWFUL CONDUCT OR UNSAFE SEXUAL PRACTICES; AND (B) DO NOT SEEK
2 TO CHANGE SEXUAL ORIENTATION.

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

11 S 4. This act shall take effect immediately.