



**TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS
IN SUPPORT OF HB 1661**

New Hampshire Senate Committee on
Health and Human Services
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Submitted by:
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GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation through strategic litigation, public policy advocacy, and education. GLAD strongly supports HB 1661, as amended by the House, which prohibits persons licensed to provide professional counseling from engaging in the discredited and harmful practice of seeking to change a minor's sexual orientation or gender identity. The imposition of "conversion therapy," especially on minors, is a remnant of our nation's shameful history of oppression of lesbian, gay, bisexual and transgender people. Its premise is that gay and transgender people are abnormal, who have a mental disorder that must be changed. The New Hampshire legislature has a proud history of eradicating discrimination against LGBT people as well as enacting laws that ensure the health, safety, and welfare of children. The passage of HB 1661 is a critical step necessary to further these goals.

Summary of Points

GLAD submits this testimony to highlight the following points:

(1) The passage of HB 1661 is a significant step New Hampshire can take in creating a better world for all LGBT youth. LGBT youth are still taught to devalue themselves – that being gay is not as good as being straight – because our society has not yet fully eradicated the historical conception that it’s not okay to be lesbian, gay, bisexual, or transgender. The prohibition of “conversion therapy,” which has its roots in the notion that it is not normal to be lesbian, gay, bisexual or transgender, is a powerful step the legislature can take to counter that harmful message.

(2) HB 1661 is necessary to protect the physical and psychological health, welfare and safety of minors in New Hampshire. The practice of conversion therapy has been discredited in the medical community as ineffective in changing sexual orientation or gender identity, and has been shown to be harmful to the psychological and physical well-being of all persons subjected to it – especially minors.

(3) Courts have upheld the constitutionality of bans on conversion therapy as within the state’s well-established power to regulate healthcare and legislate for the welfare of children.

(4) HB 1661 is necessary to enforce professional compliance with the ethical rules established by professional medical and mental health associations.

(5) While “conversion therapy” is damaging to all who are subjected to it, professional associations, legislation in other states, and the federal government all agree that minors are especially vulnerable when subjected to the practice, and require specific protection.

(6) HB 1661 upholds New Hampshire’s proud tradition of upholding religious freedom while combatting discrimination. Nothing in this bill will impact clergy in the ordinary activities of their pastoral responsibilities.

I. Passage of HB 1661 Will Help all LGBT Youth, Not Just Those Who May be Subjected to “Conversion Therapy.”

Although New Hampshire has been among our nation's leaders in establishing legal equality for LGBT people, remnants of discrimination remain and have a particularly harmful impact on LGBT youth. Many LGBT youth in our society still grow up believing that there is something "wrong" with them because of their sexual orientation or gender identity. In New Hampshire, suicide is the second leading cause of death for youth ages 15-24, and the fourth most common cause for youth ages 10-14.¹ Recent national research demonstrates that students who identify as lesbian, gay, bisexual or transgender are 2 to 7 times more likely to attempt suicide.² The harms that come to LGBT youth as a result of negative feelings about their own identities, as well as the prevalence of bullying and harassment by others can be traced in significant part to the underlying notion of abnormality or "otherness." Many LGBT youth still grow up believing that there is "something wrong" with who they are, increasing their risk of adverse mental health outcomes.

Passage of HB 1661 will send a powerful and important message to all people: there is nothing about one's sexual orientation or gender identity that needs to be changed because being gay, lesbian, bisexual or transgender is normal and healthy.

II. "Conversion Therapy" has Been Discredited, is Contrary to Modern Medical Science, and Subjects Minors to Profound Harm.

The history of "conversion therapy" is a disgraceful chapter in our mistreatment of lesbian, gay, bisexual and transgender people. The practice of "conversion therapy" dates to the mid-twentieth century when homosexuality was considered to be a mental disorder and homosexual conduct was criminalized. Mental health professionals sought to "cure"

¹ New Hampshire Department of Health and Human Services. 2011 New Hampshire State Health Profile. Retrieved at <http://www.dhhs.nh.gov/dphs/documents/2011statehealthprofile.pdf>

² Ann P. Haas, Ph.D., et al., "Suicide and Suicide Risk in Lesbian, Gay, Bisexual and Transgender Populations: Review and Recommendations," *Journal of Homosexuality*, Volume 58, Issue 1, 2011.

homosexuality by a variety of techniques, which included horrific aversive therapies such as electroshock, pornography exposure, touch therapy, nausea-inducing drugs, and even lobotomies and castration. Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association in 1973. Nonetheless, some practitioners have continued to practice “conversion therapy,” most often under the guise of “talk therapy” aimed at eradicating same-sex desire and orientation.

Today there is a consensus among the medical and mental health professional groups that any such practices are ineffective and unethical and subject patients to significant harm. As referenced in HB 1661, the American Psychological Association concludes that conversion therapy “may pose serious risk of harm,” such as “confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, and suicidality.”³ The American Psychiatric Association states that “the potential risks of reparative therapy are great, including depression, anxiety, and self-destructive behavior.”⁴ In addition, the American Academy of Child and Adolescent Psychiatry has determined that there is “no evidence that sexual orientation can be altered through therapy,” and that there is no medically valid basis for attempting to prevent homosexuality, which is not an illness.”⁵ The legislature should enact HB 1661 in order to protect children and adolescents from those licensed health care professionals who subject minors to harm through a practice that has proven not to work, inflicts well-documented and

³ American Psychological Association. Report of the American Psychological Association Task Force on Appropriate Therapeutic Response to Sexual Orientation, 79, 50. Washington, DC, (2009). Retrieved from <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

⁴ Just the Facts Coalition. Just the Facts about Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel, 6-7. Washington, DC: American Psychological Association, 2008. Retrieved from www.apa.org/pi/lgbt/publications/justthefacts.html.

⁵ For a list of similar statements by medical and mental health organizations, see Human Rights Campaign, The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity, <http://www.hrc.org/resources/entry/the-lies-and-dangers-of-reparative-therapy> (last visited July 12, 2013).

profound suffering, and is far outside the bounds of any ethical or acceptable medical practice today.

III. Courts Have Upheld the Authority of States to Regulate the Harmful Practice of Conversion Therapy.

This legislation falls squarely within the state’s well-established power to regulate healthcare and legislate for the welfare of children. Moreover, New Hampshire recognizes the protection of minors within its jurisdiction as a compelling state interest.⁶

The two federal appeals courts that have addressed this type of legislation have upheld the state’s authority to regulate the practice of healthcare and in particular to ban harmful conversion therapy. In *Pickup v. Brown* and *Welch et al. v. Brown et al*, the U.S. Court of Appeals for the Ninth Circuit ruled that a California law prohibiting state-licensed therapists from trying to change the sexual orientation or gender expression of a patient under 18 years old could be enforced.⁷ Similarly, in *King v. Governor of N.J.*, the U.S. Court of Appeals for the Third Circuit affirmed that a New Jersey law prohibiting conversion therapy was constitutional.⁸ The New Hampshire legislature clearly has the authority to pass this law to regulate the practice of healthcare, particularly in the area of the welfare of children.

IV. HB 1661 is the method best suited to regulate the harmful practice of conversion therapy.

The regulation of “conversion therapy” is best effected through the law. Statements by licensing boards and professional organizations can set professional norms but state law provides a significantly stronger backbone of protection for youth who may be subjected to “conversion

⁶ See *In re R.A.*, 153 N.H. 82 (2012); *In re Sandra H.*, 150 N.H. 634 (2004)

⁷ See *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014).

⁸ See *King v. Governor of N.J.*, 767 F.3d 216 (3d Cir. 2014). \

therapy.” Though every reputable medical and mental health association has discredited “conversion therapy” as harmful, the practice persists.⁹

Psychologists, clinical social workers, pastoral psychotherapists, mental health counselors and family therapists licensed to practice in the state of New Hampshire are to treat their patients in accordance with the ethical mandates of state law and their respective professional licensing associations.¹⁰ Professional licensing boards include the American Counseling Association, American Association of Pastoral Counselors, National Association of Social Workers, American Mental Health Counselors Association, American Association for Marriage and Family Therapists.¹¹ Though each of these associations that has made a statement on “conversion therapy” has declared the practice contrary to its ethical values, the harmful practice persists.¹²

HB 1661 will allow the New Hampshire Department of Health and Human Services to impose criminal and private rights of action against professionals who engage in or offer “conversion therapy” to the youth of New Hampshire. These civil and criminal ramifications will

⁹ *The Lies and Dangers of Efforts to change Sexual Orientation or Gender Identity*, Human Rights Campaign, <http://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>.

¹⁰ N.H. Code Admin. R. Mhp 501.02 (2015).

¹¹ *Id.* at (a)

¹² *Ethical issues related to conversion or reparative therapy*, (Jan. 16, 2013), <https://www.counseling.org/news/updates/2013/01/16/ethical-issues-related-to-conversion-or-reparative-therapy>. (Practicing “conversion therapy” violates the counselors ethical duties to promote the welfare of clients, act within their boundaries of competence and impermissibly perpetuates the historical and social misdiagnosis of homosexuality as an illness- “Any professional who engages in conversion therapy is not offering the professional standard of care “); National Committee on Lesbian, Gay, and Bisexua Issues, “*Reparative*” and “*Conversion*” Therapies for Lesbians and Gay Men, National Association of Social Workers (Jan. 21, 2000), <http://www.naswdc.org/diversity/lgb/reparative.asp>. (“conversion” and “reparative” therapies are an infringement to the guiding principles inherent to social worker ethics and values” by violating social workers duties to help people achieve self-actualization, and duty to refrain from practicing, condoning or collaborating in discrimination based on sexual orientation.); *AMCHA Statement on Reparative or Conversion Therapy*, American Mental Health Counselors Association, (July 10, 2014), <http://www.amhca.org/news/226127/>. (“conversion” and “reparative” therapies are harmful, so “AMHCA supports initiatives that will curb harmful practices that have documented iatrogenic effects, and will thus help ensure the overall health and safety of LGBT youth.”).

provide the legal structure necessary to enforce the already stated ethics of professionals in the state, and ensure youth are not subjected to an antiquated, harmful practice.

V. While medical consensus indicates “conversion therapy” is harmful to all people, it is within the state’s discretion to establish protections specifically for minors.

It is within the state’s discretion to enact HB 1661, which is narrowly tailored to protect minors from the harms of “conversion therapy.” Medical consensus indicates that there is no evidence “conversion therapy” is helpful for any population, and there is considerable evidence is harmful to all who are subjected to it; especially minors.¹³ Recognizing the particular vulnerability of youth, the federal government has issued a statement specifically condemning the use of “conversion therapy” on minors.¹⁴ Including New Hampshire, fifteen states have passed or are currently considering legislation similar to HB 1661, specifically tailored to protect minors. HB 1661 comports with professional consensus, other states’ actions and federal agreement that minors need special protections from the harmful effects of “conversion therapy.”

VI. HB 1661 respects New Hampshire’s values of religious freedom and anti-discrimination.

The prohibitions in this bill covers only mental health professionals licensed by the state, and those person who engage in the commercial practice or advertisement of “conversion therapy,” neither of which overlap with a clergy’s pastoral responsibilities to counsel and advice a member of his congregation consistent with church teachings. Arguments to contrary are

¹³ *The Lies and Dangers of Efforts to change Sexual Orientation or Gender Identity*, *supra*; see also Caitlin Ryan & Robert A. Rees, Family Acceptance Project, Supportive Families, Healthy Children: Helping Latter-day Saint Families with Lesbian, Gay, Bisexual & Transgender Children (2012), available at <http://www.theldsfamilyfellowship.org/wp-content/uploads/2013/09/FAP-LDS-Booklet-pst.pdf>.

¹⁴ *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth*, U.S. Department of Health and Human Services: Substance Abuse and Mental Health Services Administration, (Oct. 15, 2015), <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>.

simply fear tactics to prevent New Hampshire from stating, as a government entity, its values when it comes to acceptance and inclusion of all people in our state.