



TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF H.1190 AND S.62

Massachusetts Joint Committee on Children, Families and Persons with Disabilities

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 H.1190 and S.62, which prohibit licensed health care professionals from engaging in the discredited and harmful practice of seeking to change a minor's sexual orientation or gender identity. So-called "conversion therapy" is a remnant of our nation's shameful history of oppression of lesbian, gay, bisexual and transgender people. Its premise is that homosexuality is abnormal behavior and a mental disorder that must therefore be changed. The Massachusetts 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 H.1190 and S.62 is a critical step necessary to further these goals.

Summary of Points

GLAD submits this testimony to highlight the following points:

(1) H.1190 and S.62 are necessary to protect the health and welfare of minors in Massachusetts. So-called "conversion therapy" has been proven ineffective, is contrary to modern medicine, and subjects young people to the risk of suicide and other serious

psychological harms. Massachusetts should join California, Connecticut, Illinois, Nevada, New Jersey, New Mexico, Oregon, Vermont and the District of Columbia in leading the nation forward toward abolition of this antiquated practice.

(2) The passage of H.1190 and S.62 is also a significant step that Massachusetts can take to create a better world for those LGBT youth who will never be subjected to “conversion therapy.” Many LGBT youth still grow up believing that there is “something wrong” with who they are, increasing their risk of adverse mental health outcomes. 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.

(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. These bans do not infringe on the free speech rights of therapists. It is well established in case law that the fact that healthcare, such as psychotherapy, may involve speech does not limit the state’s right to protect minors from harm in the healthcare context. Moreover, H.1190 and S.62 bar treatment only—the *practice* of “conversion therapy”— and do not otherwise restrict speech by health care practitioners.

I. “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” homosexuality by a variety of techniques, which included horrific aversive therapies such as

electroshock, 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 or a person’s gender identity that is different from their sex designated at birth.

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. For example, 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.”¹ The American Psychiatric Association states that “the potential risks of reparative therapy are great, including depression, anxiety, and self-destructive behavior.”² 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.”³ The legislature should enact H.1190 and S.62 in order to protect children and adolescents from those licensed health care professionals who subject minors to

¹ 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>.

² 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 <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>.

³ 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>.

harm through a practice that has proven not to work, inflicts well-documented and profound suffering, and is far outside the bounds of any ethical or acceptable medical practice today.

II. Passage of H.1190 and S.62 Will Help all LGBT Youth, Not Just Those Who May be Subjected to “Conversion Therapy.”

Although Massachusetts 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. Recent national research demonstrates that students who identify as lesbian, gay, bisexual or transgender are 2 to 7 times more likely to attempt suicide.⁴ In Massachusetts, high school students who identify as lesbian, gay, or bisexual are almost five times more likely than their heterosexual peers to have attempted suicide in the past year (an astounding 25% of LGB students).⁵ In addition, LGB youth are more likely than their peers to experience bullying or physical violence at school and are over three times more likely to have skipped school because of feeling unsafe.⁶

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.” LGBT youth devalue themselves, and are devalued by others, because our society has not yet fully eradicated the

⁴ 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.

⁵ Health & Risk Behaviors of Massachusetts Youth Executive Summary, 2015, Retrieved at <http://www.mass.gov/eohhs/docs/dph/behavioral-risk/youth-health-risk-report-2015.pdf>.

⁶ *Id.*

historical conception that it's not okay to be lesbian, gay, bisexual, or transgender. Passage of H.1190 and S.62 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.

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

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 v. Brown* (consolidated on review), 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 and did not infringe upon therapists' rights to free speech or the rights of parents to direct the upbringing of their children. *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014). In a subsequent decision, *Welch v. Brown*, 2016 U.S. App. LEXIS 17867 (9th Cir. Cal. 2016), the Ninth Circuit once again considered a challenge to California's conversion therapy law and rejected claims that the law violated the religion clauses of the United States Constitution. On May 1, 2017, the U.S. Supreme Court denied the therapist petitioner's request to review that ruling. *Welch v. Brown*, 2017 U.S. LEXIS 2900 (2017). 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. See *King v. Governor of N.J.*, 767 F.3d 216 (3^d Cir. 2014). The Massachusetts legislature clearly has the authority to pass this law to regulate the practice of healthcare, particularly in the area of the welfare of children. There is no legal authority to the contrary.

Conclusion

H.1190 and S.62 are narrowly tailored to prevent a well-documented risk of harm to minors and to eradicate a purported healthcare practice that is contrary to medical science and based on discredited views of sexual orientation and gender identity. GLAD strongly supports H.1190 and S.62.