

**Testimony of GLAD Attorney Mary L. Bonauto in Support of L.D. 912
Joint Standing Committee on Labor, Commerce, Research and Economic
Development
February 14, 2018**

Thank you Chairperson Volk, Representative Fecteau, and honorable members of the Joint Standing Committee on Labor, Commerce, Research, and Economic Development. I am Mary Bonauto, a Portland resident, and long-time lawyer at the New England-wide legal organization GLBTQ Legal Advocates & Defenders (GLAD). GLAD supports LD 912, which prohibits licensed health care professionals and counselors from engaging in the discredited and harmful practice of seeking to change a minor's sexual orientation or gender identity.

I am here to present on the bill and why it is necessary to protect the health, welfare and safety of young people who are or may be lesbian, gay, bisexual or transgender, to answer any questions, and to assist you going forward in any way I can. Today I will do 3 things: 1) introduce the topic and the structure of the bill, 2) address the harms caused to young persons and families by conversion therapy and the utter inefficacy of such treatments, and 3) address some of the issues we've heard from those opposing the bill and others like it, including issues about litigation.

Introduction and Bill Structure

So-called "conversion therapy" (or reparative therapy or sexual orientation change efforts) is a remnant of our nation's history of oppression of lesbian, gay, bisexual and transgender people. Its premise is that a same-sex sexual orientation, as well as a gender

identity that is different from the sex a person is assigned at their birth, is a mental illness or disorder that must and can be changed or cured.

That view is contrary to the medical consensus on a number of levels. For an individual to have a same-sex sexual orientation or a gender identity different from the sex assigned at birth is part of a spectrum of natural, positive, human sexuality and identity. Medical authorities have stated time and again that being LGBT is not an illness¹ and does not affect your ability to work, love, have a family and be a productive part of society. The task of young people is to explore and develop their identities, not have one forced on them that is at odds with who they are.

After extensive study, major medical and professional associations have found no scientific validity for conversion therapy, and that neither sexual orientation nor gender identity can be made to change. Simply put, such treatments are ineffective, and damaging to young people and often to their families as well. Some of our leading medical, mental health and counseling organizations will be here today, and their national bodies oppose conversion therapy for these precise reasons.

To these ends, the bill does the following:

- It defines *what is prohibited*: “conversion therapy” on a person under age 18, and also what kinds of counseling are not conversion therapy. The definition and prohibition are repeated throughout the bill as to each regulated profession. It also defines “sexual orientation” consistent with the Maine Human Rights Act to include “gender identity.” So it sums up that *minors are protected* from being

¹ Homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association in 1973 and gender identity, finally and completely, in 2012 (vote) and 2013 (publication).

subjected to counseling aimed at changing their sexual orientation or gender identity.

- It addresses *who is prohibited* from providing conversion therapy to minors, namely certified school psychologists and guidance counselors; nurses; doctors; physician assistants; psychologists; psychological examiners; alcohol and drug counselors and aides; social workers; pharmacists and pharmacy technicians; professional counselors; marriage and family therapists; pastoral counselors; speech-language pathologists and assistants; and audiologists. Each of these is licensed a licensed or certified professional. Sections 2 (Dept. of Education) and 5-22 (all other regulated professions).
- It establishes grounds for *discipline of regulated professionals* who administer conversion therapy to a minor in violation of this prohibition, which is effected by the relevant department or board that issued the professional's license or certification, including but not limited to suspension or revocation. Sections 2, 5-22.
- It establishes as an *unfair trade practice* the advertising, offering or administering of conversion therapy to minors under the Maine Unfair Trade Practices Act.

After all, people reasonably assume that when a professional is licensed by the State, that provider won't do something harmful to them or their child. This means you can't make fraudulent promises in exchange for money. A therapist can't say they will change the sexual orientation or gender identity of a young person because that will not happen due to any intervention or manipulation. The conversion therapists can no more stop a young person from being gay than a doctor can make me 6 inches taller or left handed. This bill asks for the State to

put a stop to the unethical and damaging mistreatment of children and exploitation of their families.

- As to health care providers, any such Unfair Trade Practices action for administering prohibited conversion therapy is ***not governed by the pre-litigation screening process*** in the Maine Health Security Act. Sections 1, 4.
- ***Maine Care reimbursement is prohibited*** for administration of conversion therapy. Section 3.
- Note that ***clergy are exempt*** from regulation consistent with the existing exemption for clergy who provide counseling as part of their religious duties and in connection with a particular place of worship. ***Such clergy are not exempt from the Maine Unfair Trade Practices Act if they offer conversion therapy to minors who are not a part of their place of worship in exchange for monetary compensation.*** Section 1.

Harms and Inefficacy of Conversion Therapy

You may hear testimony framed in the language of science, of studies, but beware. The organizations testifying are far outside of the mainstream medical community. The “American College of Pediatricians” is a small advocacy group, not a professional medical group. ACP broke off from the American Academy of Pediatrics, AAP, when the latter said same sex couples should be able to adopt and raise children together.²

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. For many years thereafter, mental health professionals sought to “cure”

² Jack Turban, The American College of Pediatricians is an Anti-LGBT Group, Psychology Today, May 8, 2017, available at: <https://www.psychologytoday.com/blog/political-minds/201705/the-american-college-pediatricians-is-anti-lgbt-group>

homosexuality by a variety of techniques, which included horrific aversive therapies such as electroshock, nausea-inducing drugs, and even lobotomies and castration.

We have come a long way from those days, but discrimination and stigma remain, as do the attempts to cure someone who is not broken. The opponents of L.D. 912 say they are only interested in talk therapy, but that therapy is no less damaging than the physically abusive tactics of earlier years.

For one, the State has a particular duty to shield youth from harm – for the interest of them and for society. The state’s role as *parens patrie* should be benevolent, affirm youth health and well-being in accord with the established medical consensus, and should protect youth from fringe practices that have proven to be harmful.

Organizations like the American Psychological Association have conducted reviews of studies and relevant literature and found direct evidence of harm to youth. Among other things,

- The therapy warps a young person’s sense of themselves, saddling them with shame and disgust for themselves, and then self-blame when their efforts to change inevitably fail. Children try so hard to change and please their parents, since they are generally having this “therapy” at their parents’ request, but when they can’t change, they internalize that failure, and become depressed and suicidal. Remember, too, that identity development is a key job of adolescence, and this therapy tells them their core identity is wrong.

- Being sent to conversion therapy tells the young person that their family does not accept or support them as they are.³ This is what psychologists refer to as the devastating phenomenon of “family rejection,” which makes LGBT young people 8.4 times more likely to attempt suicide and increases other risks, too, compared to youth who don’t experience family rejection.⁴ No matter how well intentioned the parents are, when your own family objects to you and tries to change you, the wounds are deep.
- The opponents of this bill are clear that they are looking for someone to blame if a child is gay or transgender, and the blame typically falls on one or both parents, and possibly siblings as well. Blaming the parents drives a wedge between a child and the parents. Often, they will tell a boy or young man to have limited or no contact with his mother. This is destructive to families, and further isolates a young person from those who love him or her the most. A Hampden therapist has submitted a letter to you describing this phenomenon.
- Similarly, in an unfair trade practices case tried in New Jersey, known as *Ferguson v. JONAH*, the conversion therapy model assumed a constellation of additional ‘precipitating factors’ can cause homosexuality, including an overly

³ Caitlin Ryan, David Huebner, Rafael M. Diaz & George Sanchez, Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay and Bisexual Young Adults, 123 PEDIATRICS 346 (Jan. 1, 2009).

⁴ Caitlin Ryan, David Huebner, Rafael M. Diaz & George Sanchez, Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay and Bisexual Young Adults, 123 PEDIATRICS 346 (Jan. 1, 2009).

close relationship with a different-sex parent, poor sibling relationships, and other family dysfunction. That is what the opponents say here, too.

- Several of the plaintiffs were told during therapy to violently hit pillows that were effigies of their mothers. One of the plaintiffs in that case, Benji Unger, testified at trial about having had a good relationship with his mother, but it began to change when his therapist told him that “one of the reasons why a person develops ‘same sex attraction’ [SSA] or becomes gay is because we are too old to be attached to our mothers. And vice versa.” He followed the therapist’s advice to detach from her, meaning he “didn’t talk to [her] for three months” even while living with her, and he then moved out and stopped talking to her at all. He described developed “a lot of anger toward my mother and resentment” as well as “constant blaming of my mother [for his same sex attractions]. And I was getting very angry with her and I was getting frustrated. . . I was going through all of this because of my mother who I thought loved me tremendously, but was causing me all this pain.”⁵

Although there is much, much more that could be said about the practice of conversion therapy as revealed by survivors and exposure in litigation, 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.

⁵ Testimony of Benji Unger, *Ferguson v. JONAH* (Jews Offering New Alternatives for Healing), Unofficial Trial Transcript, available at <http://files.eqcf.org/cases/ferguson-v-jonah-unofficial-trial-transcripts/> June 3, 2015, pp. 249-251, For case information and documents, see <https://www.splcenter.org/seeking-justice/case-docket/michael-ferguson-et-al-v-jonah-et-al>

- 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.”⁶
- The American Psychiatric Association states that “the potential risks of reparative therapy are great, including depression, anxiety, and self-destructive behavior.”⁷
- 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.”⁸
- The American Academy of Pediatrics, in a recent report on bullying, discussed the grave and potentially life-long harm from bullying that attacks a young person’s core identity. If bullying by a schoolmate is so profoundly harmful, manipulation and

⁶ 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>.

⁷ 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>.

⁸ 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, available at: <http://www.hrc.org/resources/entry/the-lies-and-dangers-of-reparative-therapy>.

denigration of a child from a trusted adult in a purportedly therapeutic and trusting relationship is far more so.⁹

Although conversion therapy proponents also claim that childhood sexual abuse is a primary cause of being gay (having same sex attractions) or a gender identity different from their assigned birth sex, medical experts disagree. To the extent this is an accusation about LGBT people, it is a vile and debunked stereotype as there is no more (?) evidence of children being molested by their LGBT parents or their parents' LGBT friends and acquaintances than by others.¹⁰

Medical practitioners in the fields of child and adolescent psychiatry, sexual abuse, and the effects of trauma, as well as organizations like the International Society for Traumatic Stress Studies (an international professional organization dedicated to addressing issues related to traumatic stress) say there is no credible medical or scientific evidence that sexual abuse changes a person's sexual orientation, and no mainstream medical or psychiatric organization in the U.S. takes that position.¹¹ While sexual assault and sexual abuse certainly require treatment, the accepted protocols for such victims *never* call for conversion therapy.

⁹ Mark A. Schuster, Laura M. Bogart, Did the Ugly Duckling Have PTSD? Bullying, Its Effects, and the Role of Pediatricians, 131 Pediatrics, March 2013, available at: <http://pediatrics.aappublications.org/content/131/1/e288>

¹⁰ Dr. Gregory Herek, a long time researcher on sexuality, summarized the studies at http://psychology.ucdavis.edu/rainbow/html/facts_molestation.html

¹¹ See, e.g., Brief of Amici Curiae Medical Professionals & the International Society for Traumatic Stress Studies in Support of Affirmance, King v. Governor of New Jersey, 3d Cir., No. 13-4429 (March 6, 2014).

Let me turn to the efficacy of these therapies, because just as they are harmful, they are ineffective. The Surgeon General of the United States said so as early as 2001 and the Substance Abuse and Mental Health Services Administration so concluded in a 2015 report.¹² There are simply no credible studies showing that people can change their sexual orientation or gender identity.¹³ The APA and other organizations have found no reliable evidence that conversion therapy accomplishes its objectives.

Real life examples demonstrate that many of those who have supposedly changed their orientation have not. Earlier this month, Josh Weed, who had come out at age 13 but thought he had left his homosexuality behind him, announced with his wife Lolly Weed that they were divorcing. This celebrated Mormon couple wrote that their marriage was beautiful, but contained an undercurrent of pain, with the holes in their souls growing larger by the year. He daydreamed about suicide and saw his LGBTQ friends struggle with the same impulses, while she felt her self-esteem erode over the years.¹⁴

¹² The Surgeon General's Call to Promote Sexual Health and Responsible Sexual Behavior (2001); Ending Conversion Therapy, discussed at <https://www.samhsa.gov/newsroom/press-announcements/201510150630>

¹³ The last credentialed medical experts have also apologized for holding out any hope for conversion therapy. In a 2012 letter to the editor of the Archives of Sexual Behavior, psychiatry giant Robert L. Spitzer apologized for publishing a 2003 study of highly religious individuals who said their sexual orientation had changed. Spitzer noted the research design made it impossible to answer that question and that he had offered false hope that "highly motivated individuals" could change as a result of these practices. Benedict Carey, Psychiatry Giant Apologizes for Backing Gay 'Cure,' NY Times, May 18, 2012, available at <http://www.nytimes.com/2012/05/19/health/dr-robert-l-spitzer-noted-psychiatrist-apologizes-for-study-on-gay-cure.html>.

¹⁴ <https://slate.com/human-interest/2018/02/josh-and-lolly-weeds-account-of-why-their-mixed-orientation-marriage-failed-is-remarkable.html>

Similarly, the ex-gay ministry known as EXODUS International closed in 2013 after the group had operated for 37 years. Executive Director Alan Chambers began leading the group in 2001 after a previous director resigned for trying to connect with men at gay bars. Twelve years later, although he had married a woman, he admitted his orientation had not changed, acknowledged his partnership with another of the men leading the group, and apologized to gay people for this claimed treatment. He and many former participants in EXODUS had the same experience.¹⁵

Certainly, if an adult wants to be an “ex-gay” by changing their *behavior*, they are free to live their lives that way. But we shouldn’t pretend their *orientation* has changed. And as to both sexual orientation and gender identity, not all the factors for why someone is gay or transgender are known. What is known, however, is that both form early and are extremely resistant to change.

Brief Comments on Testimony Opposing L.D. 912

Finally, I want to offer a few thoughts on testimony I’ve seen from those opposing L.D. 912.

There seems to be concern that if a parent (or child) is concerned about the child’s gender identity or sexual orientation, can they still see a therapist or will they run afoul of this law? Of course they can see a therapist. The law specifies that therapists can:

- help provide counseling or treatment to assist an individual with gender transition;

¹⁵ Jonathan Merritt, *The Downfall of the Ex-Gay Movement*, Atlantic Magazine, October 6, 2015, available at: <https://www.theatlantic.com/politics/archive/2015/10/the-man-who-dismantled-the-ex-gay-ministry/408970/>

- provide counseling intended to provide acceptance, support and understanding to the individual; and
- provide counseling to facilitate coping, social support, and identity exploration and development, as long as the therapy is **neutral as to sexual orientation and gender identity**.

These safe harbor provisions were built into the law first in California, where local and then national practitioners and organizations were involved in the definitions. The idea was to allow the space for individuals to deal with conflicts between their identity and religious beliefs, and with identity development, as long as it didn't try to change the young persons' sexuality or identity.

Some of the testimony I've read says this bill bans talk, and what is the harm of talk? That's simple. Taking that assertion at face value, talk can be harmful. Bullying is talk, harassment is talk. And even if conversion therapy is talk alone, it is harmful.

I have seen a few references to parental rights and decision-making and whether this bill interferes with parental rights. No, it doesn't. The fundamental rights of parents do not include endangering their children by forcing them to undergo medical practices that have been rejected by the scientific community as discredited and harmful. As things stand, the law already protects against other forms of child endangerment; this bill makes it clear to parents that so-called "conversion therapy" is a dangerous and discredited practice that has no legitimate purpose. I believe parents would not subject their children to this practice if they knew how harmful it was. In fact, I hope this bill

will protect parents, put them on notice about the safety issues, and prevent them from being taken advantage of by practitioners of harmful conversion therapy practices.

There is always the question of whether this bill interferes with the free speech or religious freedom of therapists. It doesn't. I have followed some of the lawsuits in other jurisdictions, like Mr. Pickup's in California. The bill regulates only professional therapy, which is a form of medical treatment that is highly regulated to protect the public's health and safety. We expect the state to regulate potentially dangerous medical treatments, and this is no exception.

In addition, this bill does not restrict any protected First Amendment speech. It prohibits discredited treatments by state-licensed mental health care professionals. It does not apply to clergy or to individuals who provide religious instruction. It also does not prevent anyone from publishing, discussing, or advocating any viewpoints or beliefs regarding sexual orientation or anything else.

In sum, I urge this committee to support L.D. 912 and to protect children and adolescents from those licensed health care professionals who would otherwise subject minors to harm through a practice that has proven not to work, but rather to inflict well-documented and profound suffering, and is far outside the bounds of any ethical or acceptable medical practice today.

Thank you very much for your time and consideration.