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SAMPLE LEGISLATION TO PROTECT YOUTH FROM CONVERSION THERAPY

INTRODUCTION

This document is meant to provide lawmakers and advocates with sample state legislation appropriate to protect both children and adults from the harmful practice of conversion therapy. Conversion therapy is a set of dangerous and discredited practices that falsely claim to be able to change a person's sexual orientation, change their gender identity or expression, or lessen their same-sex sexual attraction. These practices have been rejected by all mainstream medical and mental health organizations, and there is no credible evidence that they are effective.

The language provided herein draws from best practices in both the jurisdictions which have passed laws to protect youth from conversion therapy and the more than 20 states that have introduced similar legislation. This sample language also draws from the Therapeutic Fraud Prevention Act, a federal bill that takes a fraud-based approach to regulate conversion therapy. Footnotes are provided throughout this document to explain how this language might be adapted to state law; and additional legislative approaches are provided in an optional section which follows the base legislation.

While this document provides a basis from which to consider drafting appropriate legislation to regulate conversion therapy, any legislation introduced will need to be modified to work in concert with state law. We urge you to contact experts at the National Center for Lesbian Rights and the Human Rights Campaign who can help with this process and provide technical assistance. To discuss this with our attorneys, please contact Samantha Ames (sames@NCLRrights.org) or Alison Gill (alison.gill@HRC.org).

When citing this Sample Legislation, we suggest using the following citation:

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SAMPLE LEGISLATION

AN ACT concerning the protection of minors from attempts to change sexual orientation, gender identity, or gender expression.¹

BE IT ENACTED by the [LEGISLATIVE BODY] of the State of [STATE]:

SECTION 1. SHORT TITLE.

This act shall be known and may be cited as the “Youth Mental Health Protection Act”.

SECTION 2.² LEGISLATIVE FINDINGS.

The Legislature finds and declares that:

- a. Contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness;
- b. The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources;
- c. The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: “[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth”;
- d. The American Psychiatric Association published a position statement in March of 2000 in which it stated:
 1. “Psychotherapeutic modalities to convert or ‘repair’ homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of ‘cures’ are counterbalanced by anecdotal claims of psychological harm. In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals’ sexual orientation, keeping in mind the medical dictum to first, do no harm”;

¹ This description of the bill will need to be modified if the optional sections described herein are included.

² Please note that not all states allow for legislative findings or titles in bills. If you live in a state that does not allow either of these components, sections 1 and/or 2 may need to be removed. Legislative findings are important because they show how conversion therapy is a dangerous and discredited practice. If legislative findings are not possible, you should consider other mechanisms for entering this information into the legislative record.



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2. "The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed"; and
3. "Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his or her sexual homosexual orientation";
- e. The American Academy of Pediatrics in 1993 published an article in its journal, *Pediatrics*, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation";
- f. The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it stated: "Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it";
- g. The National Association of Social Workers prepared a 1997 policy statement in which it stated: "Social stigmatization of lesbian, gay, and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful";
- h. The American Counseling Association Governing Council issued a position statement in April of 1999, and in it the council states: "We oppose 'the promotion of "reparative therapy" as a "cure" for individuals who are homosexual";
- i. The American School Counselor Association issued a position statement in 2014 which states that: "It is not the role of the professional school counselor to attempt to change a student's sexual orientation or gender identity. Professional school counselors do not support efforts by licensed mental health professionals to change a student's sexual orientation or gender as these practices have been proven ineffective and harmful";
- j. The American Psychoanalytic Association issued a position statement in June 2012 on attempts to change sexual orientation, gender identity, or gender expression, and in it the association states: "As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice"; and

"Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes";



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- k. The American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal, *Journal of the American Academy of Child and Adolescent Psychiatry*, stating: “Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated”;
- l. The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in 2012 stating: “These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements.” The organization also noted that reparative therapies “lack medical justification and represent a serious threat to the health and well-being of affected people”;
- m. The American Association of Sexuality Educators, Counselors, and Therapists issued a statement in 2014 stating: “[S]ame sex orientation is not a mental disorder and we oppose any ‘reparative’ or conversion therapy that seeks to ‘change’ or ‘fix’ a person’s sexual orientation. AASECT does not believe that sexual orientation is something that needs to be ‘fixed’ or ‘changed.’ The rationale behind this position is the following: Reparative therapy (for minors, in particular) is often forced or nonconsensual. Reparative therapy has been proven harmful to minors. There is no scientific evidence supporting the success of these interventions. Reparative therapy is grounded in the idea that non-heterosexual orientation is ‘disordered.’ Reparative therapy has been shown to be a negative predictor of psychotherapeutic benefit”;
- n. The American College of Physicians wrote a position paper in 2015 stating: “The College opposes the use of ‘conversion,’ ‘reorientation,’ or ‘reparative’ therapy for the treatment of LGBT persons. . . . Available research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons”;
- o. Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlin Ryan et al. in their article entitled *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults* (2009) 123 *Pediatrics* 346; and
- p. [STATE] has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.

SECTION 3. CONVERSION THERAPY DEFINED.

As used in this section, “conversion therapy” means any practices or treatments that seek to change an individual’s sexual orientation or gender identity, including efforts to



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change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

SECTION 4. VIOLATIONS AND ENFORCEMENT.

- a. A person who is licensed to provide professional counseling under [CITE TO RELEVANT STATE LAW], including, but not limited to, a psychiatrist, licensed practicing psychologist, certified social worker, licensed clinical social worker, licensed social worker, licensed marriage and family therapist, certified psychoanalyst,³ or a person who performs counseling as part of the person's professional training for any of these professions, shall not engage in conversion therapy with a person under 18 years of age.
- b. Any conversion therapy practiced by a licensed professional, as defined in section 4(a), on a patient under 18 years of age shall be considered unprofessional conduct and shall subject them to discipline by the relevant licensing entity.
- c. The Department of Health⁴ shall have concurrent authority to initiate proceedings for violations of this section. The department shall promulgate rules in accordance with this section.

SECTION 5. SEVERABILITY.

If some provisions of this act, or certain applications of those provisions, are found to be unconstitutional, the remaining provisions, or the remaining applications of those provisions, will continue in force as law.

SECTION 6. This act shall take effect immediately.⁵

OPTIONAL SECTIONS

VULNERABLE ADULTS⁶ (ALTERNATIVE SECTION 4)

SECTION 4. VIOLATIONS AND ENFORCEMENT.

- a. A person who is licensed to provide professional counseling under [CITE TO RELEVANT STATE LAW], including, but not limited to, a psychiatrist, licensed practicing psychologist, certified social worker, licensed clinical social worker, licensed social worker, licensed marriage and family therapist, certified psychoanalyst, or a person who performs counseling as part of the person's professional training for any of these professions, shall not engage in conversion therapy with a person under 18 years of age or a vulnerable adult, as defined in [CITE TO RELEVANT STATE LAW].

³ This language will vary from state to state based on what medical and mental health professionals are required to have state-issued licenses.

⁴ The agency responsible for enforcing this provision will vary by state and may have a different name.

⁵ Depending on the state, this law should either take effect immediately or in accordance with the standard timeline for legislation to go into effect in a state.

⁶ This optional section is only appropriate if a state has laws already defining a "vulnerable adult" or equivalent term for the purposes of healthcare decision-making.



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- b. Any conversion therapy practiced by a licensed professional, as defined in section 4(a), on a patient under 18 years of age or a vulnerable adult shall be considered unprofessional conduct and shall subject them to discipline by the relevant licensing entity.
- c. The Department of Health⁷ shall have concurrent authority to initiate proceedings for violations of this section. The department shall promulgate rules in accordance with this section.

CONSUMER FRAUD

SECTION [X]. UNFAIR OR DECEPTIVE ACTS AND PRACTICES RELATED TO CONVERSION THERAPY.

- a. It shall be unlawful for any person to –
 - 1. provide conversion therapy to any individual if such person receives monetary compensation in exchange for such services; or
 - 2. advertise for the provision of conversion therapy where such advertising claims –
 - A. to change another individual's sexual orientation or gender identity;
 - B. to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; or
 - C. that such efforts are harmless or without risk to individuals receiving such therapy.
- b. A violation of subsection (a) shall be considered an unfair or deceptive act or practice,⁸ as defined in [CITE TO RELEVANT STATE LAW], and shall be subject to the same enforcement, liabilities, and penalties as set forth in [CITE TO RELEVANT STATE LAW].

STATE FUNDS

SECTION [X]. PROHIBITION ON STATE FUNDING FOR CONVERSION THERAPY.

No state funds, nor any funds belonging to a municipality, agency, or political subdivision of this state, shall be expended for the purpose of conducting conversion therapy, referring a person for conversion therapy, health benefits coverage for conversion therapy, or a grant or contract with any entity that conducts conversion therapy or refers individuals for conversion therapy.

⁷ The agency responsible for enforcing this provision will vary by state and may have a different name.

⁸ This language will vary based on the prohibited activities in the state consumer fraud law. Because consumer fraud laws vary widely between states, this section may not be appropriate in some states.