

CHAPTER 340
FORMERLY
SENATE BILL NO. 65

AN ACT TO AMEND TITLES 24 AND 29 OF THE DELAWARE CODE RELATING TO CONVERSION THERAPY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The General Assembly finds and declares all of the following:

(1) 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 individuals who are lesbian, gay, or bisexual, 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.

(2) 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.”

(3) The American Psychiatric Association published a position statement in March of 2000 in which it stated the following:

“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. . .

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. . .

Therefore, [the American Psychiatric Association] opposes any psychiatric treatment, such as ‘reparative’ or ‘conversion’ therapy, that is based upon the assumption that homosexuality per se is a mental disorder or is based on the a priori assumption that a patient should change his or her sexual homosexual orientation.”

(4) The American School Counselor Association’s 2014 position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: “[T]he professional school counselor works with all students through the stages of identity development and understands this may be more difficult for LGBTQ youth. 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 (APA, 2009). School counselors provide support to LGBTQ students to promote academic achievement and personal/social development. Professional school counselors are committed to the affirmation of all youth regardless of sexual orientation, gender identity and gender expression and work to create safe and affirming schools.”

(5) 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.”

(6) The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it stated: “[A]version 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.”

(7) The National Association of Social Workers prepared a policy statement in 2000 in which it stated: “[P]roponents of reparative and conversion therapies, such as the most commonly cited group NARTH, claim that their processes are supported by scientific data; however, such scientific support is replete with confounded research methodologies . . . [Reparative and conversion therapies] cannot and will not change sexual orientation. Aligned with the American Psychological Association’s (1997) position, NCLGB [National Committee on Lesbian, Gay, and Bisexual Issues, NASW] believes that such treatment potentially can lead to severe emotional damage.”

(8) 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.”

(9) 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.

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.”

(10) 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 that 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, which are 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.”

(11) The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012 and in it the organization states: “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.”

(12) The American Association of Sexuality Educators, Counselors, and Therapists issued a statement in 2017 stating: “The American Association of Sexuality Educators, Counselors, and Therapists (AASECT) takes the position that having non-heterosexual sexual orientation, that being transgender and that being gender non-conforming, are not mental disorders. We oppose any ‘reparative’ or conversion therapy that seeks to ‘change’ or ‘fix’ a person’s sexual orientation, gender identity or gender expression. AASECT does not believe that non-heterosexual sexual orientation or being transgender or gender non-conforming 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 non-consensual. 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, transgender gender identity and gender non-conforming expressions are ‘disordered.’ Reparative therapy has been shown to be a negative predictor of psychotherapeutic benefit.”

(13) 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.”

(14) Children 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.

(15) Delaware has a compelling interest in protecting the physical and psychological well-being of children, including lesbian, gay, bisexual, and transgender children, and in protecting its children against exposure to serious harms caused by conversion therapy.

Section 2. Amend § 1702, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1702. Definitions.

The following definitions apply to this chapter unless otherwise expressly stated or implied by the ~~context~~ context:

(3) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual’s sexual orientation or gender identity.

c. Counseling that facilitates an individual’s coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual’s sexual orientation or gender identity.

Section 3. Amend § 1731, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1731. Unprofessional conduct and inability to practice medicine.

(a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by

the restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses. The Board shall permanently revoke the certificate to practice medicine in this State of a person who is convicted of a felony sexual offense.

(b) "Unprofessional conduct" includes ~~but is not limited to~~ any of the following acts or omissions:

(22) Wilful failure to report to the Board when required by § 1731A of this title; ~~and~~

(23) Wilful failure to comply with § 1769B of this ~~title~~-title;

(24) Engaging in conversion therapy with a child; and

(25) Referring a child to a provider in another jurisdiction to receive conversion therapy.

Section 4. Amend § 1902, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1902. Definitions.

(g) "Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, as "sexual orientation" and "gender identity" are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not mean any of the following:

(1) Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

(2) Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual's sexual orientation or gender identity.

(3) Counseling that facilitates an individual's coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual's sexual orientation or gender identity.

Section 5. Amend § 1922, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1922. Disciplinary proceedings; appeal.

(a) Grounds. — The Board may impose any of the following sanctions (subsection (b) of this section) singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein, except that the license of any licensee who is convicted of a felony sexual offense shall be permanently revoked:

(10) Has failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; or

(11) Has failed to report to the Division of Professional Regulation as required by § 1930 of this ~~title~~-title;

(12) Has engaged in conversion therapy with a child; or

(13) Has referred a child to a provider in another jurisdiction to receive conversion therapy.

Section 6. Amend § 3002, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(2) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual’s sexual orientation or gender identity.

c. Counseling that facilitates an individual’s coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual’s sexual orientation or gender identity.

Section 7. Amend § 3009, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3009. Grounds for discipline.

(a) A person licensed under this chapter is subject to the disciplinary sanctions set forth in § 3011 of this title if, after a hearing, the Board finds that the licensee has:

(11) Engaged in conversion therapy with a child.

(12) Referred a child to a provider in another jurisdiction to receive conversion therapy.

Section 8. Amend § 3502, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3502. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(2) “Conversion therapy” means any practice or treatment that seeks to change an individual’s sexual orientation or gender identity, as “sexual orientation” and “gender identity” are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. “Conversion therapy” does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual's sexual orientation or gender identity.

c. Counseling that facilitates an individual's coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual's sexual orientation or gender identity.

Section 9. Amend § 3510, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3510. Licensing or registration under special conditions; interstate practice of psychology.

(d) A person practicing psychology in this State, under this section, may not engage in conversion therapy with a child or refer a child to a provider in another jurisdiction to receive conversion therapy.

Section 10. Amend § 3514, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3514. Grounds for refusal, revocation or suspension of licenses and registrations.

(a) A practitioner licensed or registered under this chapter shall be subject to disciplinary actions set forth in § 3516 of this title, if, after a hearing, the Board finds that the psychologist or psychological assistant:

(11) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto;

or

(12) Failed to report to the Division of Professional Regulation as required by § 3518A of this ~~title~~
title;

(13) Has engaged in conversion therapy with a child; or

(14) Has referred a child to a provider in another jurisdiction to receive conversion therapy.

Section 11. Amend § 3902, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3902. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(3) "Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, as "sexual orientation" and "gender identity" are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. "Conversion therapy" does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual's sexual orientation or gender identity.

c. Counseling that facilitates an individual's coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual's sexual orientation or gender identity.

Section 12. Amend § 3915, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3915. Grounds for discipline; procedure.

(a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in § 3916 of this title if, after a hearing, the Board finds that the practitioner has:

(9) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto;

(10) Failed to report to the Division of Professional Regulation as required by § 3919 of this ~~title~~, title;

(11) Engaged in conversion therapy with a child;

(12) Referred a child to a provider in another jurisdiction to receive conversion therapy.

Section 13. Amend § 9003, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9003. Powers, duties and functions.

(a) The Department of Services for Children, Youth and Their Families shall have the following powers, duties and functions:

(b)(1) For purposes of this subsection, "conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, as "sexual orientation" and "gender identity" are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. For purposes of this subsection, "conversion therapy" does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual's sexual orientation or gender identity.

c. Counseling that facilitates an individual's coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual's sexual orientation or gender identity.

(2) The Department may not engage in conversion therapy with a child or recommend that a child receive conversion therapy.

Approved July 23, 2018