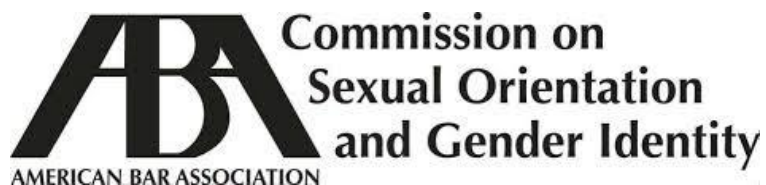




BANNING CONVERSION THERAPY ON MINORS:

*A GUIDE FOR CREATING
TRIBAL AND STATE LEGISLATION*

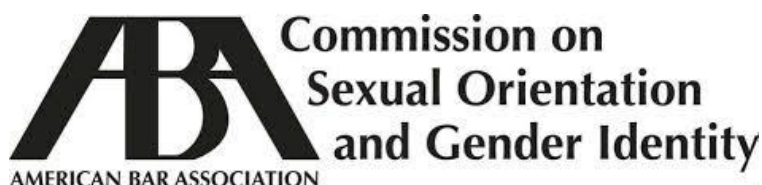


KORI CORDERO, ESQ. AND VANESSA CARLISLE, PHD

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A GUIDE FOR CREATING TRIBAL AND STATE LEGISLATION

February, 2019



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Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book is intended for education and informational purposes only.

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The American Bar Association's Commission on Sexual Orientation and Gender Identity (SOGI) leads the Association's commitment to diversity, inclusion and full and equal participation by lesbian, gay, bisexual and transgender persons in the Association, legal profession, and society. Created in 2007, the SOGI Commission seeks to secure equal treatment in the American Bar Association, the legal profession, and the justice system without regard to sexual orientation or gender identity.

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Table of Contents

Introduction and Background	1
Chapter 1: How to Effectively Use This Resource	9
What This Resource Provides	10
What This Resource Does Not Provide	10
Guide Components.....	11
A Note on Terminology	11
Chapter 2: Preliminary Considerations to Guide Code Development	13
Unit A: Code Development Team Selection and Guidelines	14
How to Organize to Create or Revise Legislation	17
Assembling Your Code Development Team	19
When Assembling Your Code Development Team, DO NOT	20
Unit B: Needs Assessment.....	21
Chapter 2 Additional Resources	22
Chapter 3: Findings and Purposes Sections	23
Unit A: Findings	24
Selected Code and Commentary	25
Exercises	31
Unit B: Purposes	32
Selected Code and Commentary	33
Exercises	37
Unit C: Compelling Interest.....	38
Selected Code and Commentary	39
Chapter 3 Additional Resources	41
Chapter 4: Definitions	45
Unit A: Defining “Conversion Therapy”	46
Selected Code and Commentary	47
Unit B: Health Care Provider.....	51
Selected Code and Commentary	52
Chapter 4: Additional Resources	55
Chapter 5: Prohibiting Conversion Therapy	57
Unit A: Banning “Conversion Therapy“	58
Selected Code and Commentary	59

Unit B: Use of Public Funds	60
Selected Code and Commentary	61
Chapter 5 Additional Resources	63
Chapter 6: Penalties and Sanctions	65
Selected Code and Commentary	67
Chapter 6 Additional Resources	70
Appendix.....	71

Introduction and Background

What is conversion therapy?

Conversion therapy, also called “reparative” or “reorientation” therapy, is an umbrella term for practices aimed at changing a lesbian, gay, bisexual, transgender, queer, or Two-Spirit (“LGBTQ2”) individual’s sexual orientation or gender identity. It is rooted in the belief that being LGBTQ2 is abnormal. Conversion therapy seeks to change an individual’s sexual orientation from gay, lesbian, bisexual, or queer to heterosexual, or straight; it may also be used to influence a transgender, non-binary, genderqueer, Two-Spirit or gender nonconforming person to change their gender identity and expression. Conversion therapy methods vary by location, practitioner, and therapeutic context.

Conversion therapy has been a documented practice in the United States for over a century, dating back to at least 1890. Prior to 1973, when the American Psychiatric Association removed homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders (DSM-II)*, conversion therapies were regularly practiced by licensed therapists, social workers, and other mental health professionals. Through the efforts of both LGBT-rights groups and mental health practitioners who recognized the negative effects of criminalization and stigma against LGBTQ2 people, same-sex attraction was eventually depathologized in the mainstream mental health community. For the past 45 years, the major professional associations of mental health practitioners and researchers in the United States have recognized that being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. Yet, conversion therapy is still practiced today.

Today, conversion therapy is offered by some mental health professionals, but more often via religious groups such as churches, pastoral counselors, religion-affiliated summer camps, and so on. In states that have already banned the use of conversion therapy with minors, pastoral counselors and others who do not claim professional licensure are often still able to operate without penalty.¹ The therapies range from “aversion” methods, which pair unwanted behavior with unpleasant sensations or aversive consequences, to more traditional talk therapy. Survivors

¹ This resource does not recommend creating laws that will potentially conflict with the free exercise of religion; instead the chapters and recommendations in this resource are designed to assist legislators with creating laws that are well within the bounds of settled law and permitted by the United States Constitution.

of aversion methods describe a variety of experiences; they have been induced to feel nausea/vomit, snap a rubber band on their wrist when experiencing homosexual attraction, hold ice or hot coils in their hands while viewing pictures of LGBTQ2 people, and endure isolation in locked rooms. However, talk therapy is currently the most common form of conversion therapy, and is sometimes paired with evidence-based practices like Cognitive Behavioral Therapy or Eye Movement Desensitization and Reprocessing. While conversion therapy most often targets same-sex attraction and behavior, it has been increasingly used to address gender nonconformity among queer, transgender, and non-binary people.

What are the outcomes of conversion therapy?

According to the American Psychiatric Association, there is no rigorous scientific research supporting conversion therapists' claims to "cure" an unwanted sexual orientation through any method.

Overall, even the least invasive forms of conversion therapy pose significant risks to LGBTQ2 individuals, including but not limited to: depression, guilt, helplessness, confusion, hopelessness, shame, social withdrawal, substance abuse, stress, an increase in high-risk behaviors, and suicidality. These and many other negative outcomes have been well documented, and have led many professional mental and medical health organizations to issue statements condemning the use of conversion therapy. Organizations who have issued position statements against the use of conversion therapy include the American Psychological Association, The American Academy of Pediatrics, The American Medical Association on Scientific Affairs, the National Association of Social Workers, and the Pan American Health Organization, a regional office of the World Health Organization, among others.

The American Academy of Child and Adolescent Psychiatry found that the negative outcomes associated with conversion therapy are of special interest to those working with children and young adults, as there is no empirical evidence to support the idea that adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. In other words, while adult conversion therapy usually seeks to change same-sex attraction or behavior, conversion therapy with youth often targets gender identity and expression, assuming that gender nonconformity is a precursor to same-sex attraction. For young

people, conversion therapy has not been shown to produce an outcome of increased heterosexuality, and it poses a risk of significant added harm through family rejection.

According to research by Dr. Caitlin Ryan et al. at the Family Acceptance Project, LGBTQ2 teens who reported higher levels of family rejection, including admission to conversion therapy, 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 sex when compared to LGBTQ2 peers that reported no or low levels of family rejection.

How common is the use of conversion therapy with LGBTQ2 youth?

According to recent estimates from the Williams Institute at the UCLA School of Law, 20,000 LGBTQ2 youth in the U.S. ages thirteen to seventeen will receive conversion therapy from a licensed health care professional before the age of eighteen. Approximately 57,000 youth will undergo the treatment from a religious or spiritual adviser. These are the first estimates of U.S. youth at risk of undergoing conversion therapy before they reach adulthood. Researchers also found that approximately 698,000 LGBTQ2 adults in the U.S. have received conversion therapy at some point in their lives, including about 350,000 who received it as adolescents. Research shows that minors are usually forced or coerced into conversion therapy.

Who supports a ban on the use of conversion therapy on minors?

All major professional psychological associations in the United States, including the American Psychological Association, American Psychiatric Association, and the American Academy of Child and Adolescent Psychiatry have taken public positions against the use of conversion therapy. In addition to the many professional organizations that support banning the use of conversion therapy, three recent public opinion polls in Florida, New Mexico, and Virginia found majority public support for bans on conversion therapy for minors.

Fifteen states and the District of Columbia have passed laws banning licensed practitioners from using conversion therapy with minors. California was the first state to ban the practice in 2012. As of October 2018, 42 municipalities, the majority of them located in states that do not yet have a ban on conversion therapy, passed their own ordinances prohibiting the use

of conversion therapy with minors. Penalties include fines and revocation of professional licensure.

Major legal organizations also support banning conversion therapy. In 2015, the American Bar Association (“ABA”) passed Resolution 112 urging governments to protect minors from being subjected to conversion therapy by state-licensed professionals:

“RESOLVED, That the American Bar Association recognizes that lesbian, gay, bisexual, transgender, and queer (LGBTQ) people have the right to be free from attempts to change their sexual orientation or gender identity;

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to enact laws that prohibit state-licensed professionals from using conversion therapy on minors; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to protect minors, particularly minors in their care, from being subjected to conversion therapy by state-licensed professionals.”

In January 2018, the National Native American Bar Association (“NNABA”) passed Resolution #2018-01 *To Support Legislation Banning Harmful Sexual Orientation and/or Gender “Conversion Therapy” Practices on Children Under the Age of 18.*

“NOW THEREFORE BE IT RESOLVED that NNABA supports and urges federal, state, tribal and local governments to fully protect children under the age of 18 from harmful “conversion therapy” practices by banning licensed professionals and unlicensed counselors from attempting to change the gender identity and/or sexual orientation of minors under the age of 18.”

This resolution is in response to the research showing that conversion therapy is harmful. According to 2008 census data, approximately 32 percent of American Indians and Alaska Natives are under the age of 18.

What are the next steps in protecting minors from the harms of conversion therapy?

Legislation is an important step to consider in order to protect minors from the harms of conversion therapy. The purpose of this resource is to support Legislative Staff and/or Code

Development Teams in developing or revising tribal codes and state statutes that ban the use of conversion therapy on minors.

Why should my jurisdiction create a ban on conversion therapy if such bans do not apply to religious groups attempting conversion therapy on minors?

Licensed medical professionals have the imprimatur of the state and the medical profession. Allowing them to practice conversion therapy sends a devastating message to young people. Additionally, banning licensed medical professionals from conducting conversion therapy on minors can have a huge educational impact and help get the word out to parents and others that these practices are dangerous and cause serious lasting harms. For example, as states and other jurisdictions have begun to create bans, some religious organizations and leaders have begun to examine or create their own stance on the issue. The state of Utah has been working towards new legislation banning conversion therapy on minors. As part of that conversation, the Church of Jesus Christ of Latter-Day Saints (LDS Church) released a statement indicating its belief that it is unethical to focus professional treatment on an assumption that a change in sexual orientation will or must occur.

Where can I find research and resources on conversion therapy?

Each chapter of this publication ends with a list of Additional Resources that will be useful before and during the code development process. Many of these resources are freely available online, so the Additional Resources section also contains URLs for titles listed.

The National Center for Lesbian Rights (“NCLR”) #BornPerfect campaign is a great place to begin background reading and find assistance with your jurisdiction’s code development efforts. The following pages provide a sampling of available resources from the NCLR; several of these are referenced throughout this publication.



Born Perfect: The Campaign to End Conversion Therapy

Resources from The National Center for Lesbian Rights

In June 2014, NCLR launched **Born Perfect: The Campaign to End Conversion Therapy** by passing laws across the country to protect LGBT children and young people, fighting in courtrooms to ensure their safety, and raising awareness about the serious harms caused by these dangerous practices.

Few practices hurt LGBT youth more than attempts to change their sexual orientation or gender identity through conversion therapy, which can cause depression, substance abuse, and even suicide.

But some mental health providers continue to subject young LGBT people to these practices—also known as “reparative therapy,” “ex-gay therapy,” or “sexual orientation change efforts”—even though they have been condemned by every major medical and mental health organization in the country.

NCLR has been working to protect LGBT youth from these practices for more than 20 years, securing legislation protecting youth from these dangerous practices in California in 2012, New Jersey in 2013, Washington, D.C. in 2014, Oregon and Illinois in 2015, Vermont in 2016, Connecticut, Nevada, New Mexico, and Rhode Island in 2017, and Washington state, Maryland, Hawaii, New Hampshire, and Delaware in 2018. Today, we are working with legislators and LGBT leaders in dozens of other states and helping bring similar protections to the rest of the country. We believe that every LGBT child is born perfect and that any young person’s identity as lesbian, gay, bisexual, or transgender should be honored, celebrated, and supported. We are committed to ending these dangerous and stigmatizing practices across the country once and for all—relegating them to the dustbin of history, and ensuring every child knows they were #BornPerfect.

THE FACTS ABOUT CONVERSION THERAPY

Find out more about the dangerous practice of conversion therapy, also known as “reparative therapy,” “ex-gay therapy,” or “sexual orientation change efforts.”

[Learn more.](#)

LAWS & LEGISLATION BY STATE

Get up-to-date information on which states are working with NCLR to pass laws protecting children and young people from conversion therapy.

[Learn more.](#)



Born Perfect: The Campaign to End Conversion Therapy

Resources from The National Center for Lesbian Rights

TOOLKITS, RESOURCES & STATEMENTS

Are you considering legislation? We're here to help. Connect with NCLR, request our toolkit to help end conversion therapy, and explore the many articles, research papers, and policy statements finding that these practices are ineffective and harmful.

[Learn more.](#)

LEGAL CASES

NCLR is working to defend existing state laws from legal challenges by anti-LGBT organization and representing the interests of survivors of these dangerous and discredited practices.

[Learn more.](#)

SURVIVOR STORIES & SURVIVOR NETWORK

While experts estimate that as many as 1 in 3 LGBT people have been subjected to some form of conversion therapy, trauma from these experiences can make it difficult to come forward. Read about the courageous survivors who have, and find the support to use your own voice for good.

[Learn more.](#)

CAMPAIGN SUPPORTERS

A broad range of supporters—including mental health, faith, civil rights, youth advocacy, and reproductive justice organizations—support an end to conversion therapy. Read the national open letters here, and find out how to sign your organization on.

[Learn more.](#)

Chapter 1: How to Effectively Use This Resource

This resource is designed to be used while drafting new or amended tribal codes and state statutes. It was developed to provide a starting point for drafting or revising laws related to banning conversion therapy. The provisions covered may be set out in various parts of a civil or criminal code.

This resource is an overview of the comparative laws and underlying policies impacting the well-being of children as it relates to *conversion therapy*. While this resource has been developed for use by state and tribal legislative bodies, there are few tribal laws on this topic, so much of the discussion is framed by current state laws. However, Native nations have the ability to innovate or reinstate approaches that may not be available to states. So, this resource will pay particular attention to possible approaches for tribal justice systems when divergence is possible.

Tribal law reflects a combination of community values, lifeways, and policy choices, as well as legal standards and processes adopted from the federal and state systems. **The development of tribal law involves careful consideration of both the needs and values of the tribal community and researched and tested innovations in the federal and state law.** The following are examples of the intersection between development of tribal codes and the role of traditional practices and beliefs:

- A commitment to reinforce customs, traditions, and/or generally accepted local practices;
- Use of traditional or alternative restorative justice practices, such as dispute-resolution practices of “peacemaking,” “talking circles,” and/or mediation;
- A commitment to pursue traditional or therapeutic healing practices such as traditional healers and/or “drug courts” or “wellness courts”;
- Recognition of traditional or respected authorities, leaders, or elders; and
- Recognition of the roles, duties, obligations, privileges, and rights of relatives of a certain type (including tribally defined “extended family,” “bands,” “clans,” etc.).

The main goal of this resource is to offer suggestions on how laws banning conversion therapy for minors can be drafted in a way that provides safety and support for children, and incorporates local cultural traditions and values while meeting any requirements of relevant federal laws.

What This Resource Provides

This resource is intended to give Legislative Staff and/or Code Development Teams an overview of comparative codes for the drafting of laws banning conversion therapy for minors. The guide provides commentary on code examples to help in highlighting differences.

What This Resource Does Not Provide

The resource is not a “model” code. None of the code examples should be adopted without a thorough discussion and analysis by the appropriate legislative bodies and their legal counsel. Keep in mind that U.S. laws that impact children or tribal law can change frequently.

The resource does not address *civil* child protection issues or provisions (also known as “civil dependency codes”). While it is certainly possible to include conversion therapy as a type of child abuse, this resource will focus on conversion therapy bans as stand-alone laws that do not necessarily interact with child welfare systems. The Tribal Law and Policy Institute has developed the [*Tribal Legal Code Resource: Civil Dependency and Related Laws—Guide for Drafting or Revising Tribal Civil Dependency and Related Laws*](#)² to assist with law reforms that further a *civil* justice response to child abuse and neglect, which may include conversion therapy if that approach is appropriate for the state or tribal jurisdiction.

The guide is not a replacement for agency or law enforcement protocol development or training. The guide is designed specifically for a Code Development Team and legislative bodies responsible for drafting and enacting codes and legislation that addresses conversion therapy for minors. Government employees and others who work with, or may encounter, abused or victimized children should receive special training on the appropriate responses for working with child victims and child abuse reporting requirements and/or mandatory reporting laws.

² Maureen I. White Eagle, Kori Cordero, and Pat Sekaquaptewa, [*Tribal Legal Code Resource: Civil Dependency and Related Laws—Guide for Drafting or Revising Tribal Civil Dependency and Related Laws*](#). West Hollywood, CA: Tribal Law and Policy Institute, April 2017.

Guide Components

We have divided the code development guide so that each section (and each chapter) can be used separately by a Code Development Team in discussions of amendments to a specific section of its code. This guide can also be used for a complete creation or revision of laws banning conversion therapy for minors.

The guide is comprised of six chapters, and some chapters are divided into multiple units, with each unit discussing an important piece of that particular code section. At the end of each chapter, an Additional Resources section provides articles and websites that can serve as handouts or resources for your Code Development Team to use for particular topic discussions.

Each chapter is divided into two parts and is designed to provide the Code Development Team relevant legal information, policy considerations, and decision-making tools:

Overview	Provides a basic introduction to the topics of the part and an overview of its contents.
Selected Codes and Commentary	Example codes are included in each unit to provide positive options and good examples of code that states, municipalities, or Native nations have adopted. They are presented for discussion purposes and not for wholesale adoption. Each jurisdiction has different needs, resources, and values that require customized codes. The accompanying commentary discusses the code examples—highlighting key differences in the examples and/or key code provisions.

It is helpful to work through this guide with a copy of the jurisdiction’s existing laws. Look for relevant provisions in the civil dependency code and relevant professional licensing rules.

A Note on Terminology

When using this guide, and throughout the drafting process, it is a good idea to keep at least one dictionary by your side. We recommend using one or more of the following:

A general dictionary, such as [*Merriam-Webster’s Collegiate Dictionary*](#)

A law dictionary, such as [*Black’s Law Dictionary*](#)

A law dictionary for nonlawyers, such as [*Law Dictionary for Non-Lawyers*](#) by Daniel Oran

Chapter 2: Preliminary Considerations to Guide Code Development

Before starting the process of developing or revising laws banning conversion therapy for minors, it is important to make some decisions relative to the code drafting process and Code Development Team. This chapter provides some helpful information on selecting the right people to be on the team and provides a few tips learned through others' experiences that may help in developing the best codes for your state or Native nation.

Many jurisdictions have standardized processes for developing and enacting laws, so be sure to learn more about your jurisdiction before attempting to draft or revise laws. This chapter more directly addresses code development in Native nations but may be useful for small states and jurisdictions that use a multidisciplinary approach to code drafting.

Chapter Units

Unit A: Code Development Team Selection and Guidelines

Unit B: Needs Assessment

Unit A: Code Development Team Selection and Guidelines

Much thought should go into selecting your Code Drafting Team, for they will be the first line of drafters and must be willing to commit the time and energy needed for this very demanding project. The following is a suggested list of people/agencies that may be useful in drafting this code:

- Survivors of conversion therapy, including family members
- Government attorney
- Defense attorney
- Prosecutor
- Law enforcement
- Social services, including Child Protection or Indian Child Welfare workers
- Mental health treatment provider
- Medical care personnel, including home health workers
- Domestic violence advocates and treatment providers
- School and daycare personnel
- CASAs or children's advocates
- Education department
- Corrections personnel
- Youth council representative
- Public health workers, i.e., home visiting staff, WIC, nurses
- Defense advocates or attorneys
- Elders
- Cultural leaders and/or traditional leaders
- Judges including personnel in alternative judicial systems
- Community leaders, local politicians, or tribal council members; and/or
- Any state or federal agency involved with professional licensing oversight

A Note for Native Nations

Historically, as Native nations developed post-contact codes and Native courts to dispense justice, a very common practice was to simply adopt, sometimes involuntarily or through coercion, federal or state codes and simply change the name to a tribal name, oftentimes not even making the name switches throughout the document. As time has gone by many of those “change-the-name codes” have proven to be inadequate to address the needs of Native peoples, and current code drafters are increasingly seeking to draft documents that reflect their tribal needs and values.

This history has created a knowledge base that allows the drafters of this resource to make some suggestions for you to consider as you begin the code development process. The suggestions set out in the following text come from the successful efforts of other Native Nations:

The primary work should be done by individuals known throughout the community as “problem solvers.” This work will not successfully reach the goal of producing effective laws on crimes against children if it becomes a process of blaming others for weakness in the current law or approach. The best laws are developed one step at a time by a group that is committed to brainstorming and reviewing possible solutions, both long term and short term, to problems.

There should be equal representation from various governmental agencies and advocacy programs. Equal representation is important. The code development process should not be the “property” of any one agency or group.

The work should be completed in a setting of mutual respect. The setting should be a safe environment in which the group can share, learn, and explore. It is okay to acknowledge differences of opinion, but not in a judgmental manner.

The agenda should be focused upon areas of mutual concern or shared interest. Try to focus on areas of common interest instead of differences. A shared vision, such as meaningful consequences designed to address the needs of the family, the child, and the community, can create confidence and trust.

The participants should be willing to examine not just the way things are, but also be willing to explore ways of improving the law. All participants must be willing to talk about and explore new ways to address the needs of families and children in their community. This is a process in which different people will have differing views, and it is a time when it is possible to listen and learn from each other.

The participants should be willing to be creative and persistent, which is necessary for success. The process will undoubtedly have frustrations and difficult times. Think outside the box.

The participants must be willing to share the burden. This means sharing resources, training, technical assistance, and limited available funding. Alternate the locations of meetings so that the burden of hosting and/or travel does not fall on the same people.

All agencies should be allowed input into drafting prior to finalization of the draft. All tribal agencies involved should have a chance to review the draft code before it is considered completed. Allowing for this input will help to ensure each agency remains committed to the process and eventual implementation.

Consider traditional/cultural strategies and the adaption of those values to modern issues and practices. We are all aware that times have changed. That does not necessarily mean that values have, or should, change. However, we need to do the work of updating the application of those values to today's problems.

Expect to spend a great deal of time together. Try to be aware of applicable cultural practices, including making sure that meals are provided for lengthy meetings. Make sure that everyone is as comfortable as possible. Note that there are now substantial restrictions on the use of federal funds for food. The safest practice is to avoid using federal grant funds for food. If you are considering using federal grant funds, be sure to check with your grant manager.

How to Organize to Create or Revise Legislation

Plan out the process. There are several approaches to organize to start work on legislation. The key is to pick one that your initial team or council thinks will be successful. Some groups have decided to adopt different approaches, including drafting in a “retreat” format, the working group format, or the community draft format. In the “retreat” format the code development team spends several consecutive days working through the entire process to create a working draft. Others have established representative working groups focusing on different areas with a timeline and regular meetings working toward the development of a draft. Another approach is to have a core group create a draft for wider circulation to representative groups and individuals, including a process for community input. Any of these approaches can use a facilitator and all should include a recorder to keep track of the work.

Take your time. This is a very important process and taking the time to do the job right is essential. Rushing the process or cutting short the input process may lead to missed opportunities.

Seek input. The code should be a document that reflects the needs and vision of the community it serves. It is not a stand-alone product and should not be developed as such.

Resources and funding. Funding may determine how you plan your processes, teams, inputs, etc. It is important to ascertain allocation of adequate funding available to assist in the development of the code. In-kind contributions can be important and significant, for instance, providing a meeting place; bringing office supplies (copying, mailing, paper, pens); using part-time staff for research, note keeping, and creating drafts; covering mileage costs or providing transportation; and/or providing a meal.

Researching and gathering resources. There may be existing tribal documents or other written resources that can be used to create and revise tribal codes. Researching and sharing these documents with all team members prior to the convening of the work sessions will be valuable to staying on task and being organized. Examples of existing documents or other written resources

that the team or working group should be provided with include, but are not necessarily limited to:

- Tribal constitution and/or bylaws
- Any existing controlling or impacting tribal/federal/state codes
- All related tribal codes (family/dependency/placement/probate)
- Lay-friendly summary of relevant scientific research
- Any written stories from the community concerning conversion therapy actions involving youth in a cultural context
- Any historical records regarding rearing/disciplining youth, about your Native nation or other Native nations with whom you share cultural or linguistic ties
- Copies of any tribal court opinions related or relevant to youths in the community
- Any existing tribal laws on crimes against children, and
- Any written tribal values statements and vision statements.

Assembling Your Code Development Team

Select Code Development Team members with various backgrounds who have demonstrated interest, expertise, or experience with systems impacted by laws banning conversion therapy. Select, if possible, members of all the disciplines who are involved in child justice systems; those with roles overlapping with identifying, investigating, and processing medical licensing reviews, or civil child neglect are particularly useful.

- Select team members who are “survivors” of conversion therapy, including their family members.
- Make sure the selection process includes elders and political or cultural leaders.
- Design a process that invites broad-based participation in identifying issues and making recommendations. If possible, the process should be one of consensus, as that is more likely to ensure widespread acceptance and is more in keeping with many traditional resolution practices.
- Proceed in phases with set time frames/meeting times, including a study phase in which issues that are important to the community are identified before drafting provisions.
- Assign manageable tasks to team members or subcommittees, to be accomplished within clear time frames.
- Emphasize person-to-person communication. Develop a communication plan that ensures everyone in the work group is kept informed of the process and project status.

If experiencing an impasse or disagreement in the work group, consider having an expert address the issues, presenting a pro and con discussion for consideration.

When Assembling Your Code Development Team, DO NOT . . .

- Select code development members based solely on their positions within the judicial system.
- Overlook the current science on child development and sexual orientation/gender identity.
- Disregard the importance of traditional beliefs, values, approaches, and/or customary law.
- Devote resources to drafting before consensus is reached concerning priority issues and recommendations.
- Be discouraged by lack of participation or lack of progress.
- Delay too long before dividing the work of the team into tasks that can be accomplished within the time frames established.
- Get bogged down in what you cannot accomplish or resources you do not currently have but need or want.
- Let difficult or divisive issues be resolved by forcing a change in the law or maneuvering to avoid public meeting and discussion that would provide a wider range of opinions.

Unit B: Needs Assessment

Fact gathering is necessary before starting the actual work of drafting a new code. The need for legal, historical, cultural, and scientific research is described in the previous section. However, it is also necessary to do some basic fact gathering. The following information may be helpful:

- How many children are in your community?
- How many children are enrolled members of your nation, or may be eligible for enrollment?
- How many of the children are members of other Native nations?
- How many children are children of members, but not eligible for membership?
- What programming is available for LGBTQ2 children, adolescents, and adults, either tribal or community based?

As a starting point, it is important to know what options are available. At this juncture, you may need to remind the team not to get bogged down in feeling bad about any perceived lack of resources. Every community must start somewhere. Part of the process of developing codes will be to raise community awareness of the issues affecting tribal families and children. The team can continue to work on other system improvements after developing the code.

Chapter 2 Additional Resources

National Center for Lesbian Rights, “Ending Conversion Therapy in Child Welfare,” July 2018.

The National Center for Lesbian Rights (“NCLR”) is committed to advancing lesbian, gay, bisexual, and transgender equality through litigation, legislation, policy, and public education across the country. This publication provides useful information on conversion therapy in the child welfare context, including model policies.

Link: http://www.nclrights.org/wp-content/uploads/2018/07/Conversion_Therapy-Child_Welfare-July_2018.pdf

National Center for Lesbian Rights, “Ending Conversion Therapy in Juvenile Justice,” July 2018.

The National Center for Lesbian Rights (NCLR) is committed to advancing lesbian, gay, bisexual, and transgender equality through litigation, legislation, policy, and public education across the country. This publication provides useful information on conversion therapy in the juvenile justice context, including tips for developing juvenile justice policy.

Link: http://www.nclrights.org/wp-content/uploads/2018/07/Conversion_Therapy-Juvenile_Justice-July_2018.pdf

The Trevor Project, “Sexual Orientation Change Efforts and LGBTQ Youth Mental Health Ending Conversion Therapy in Juvenile Justice,” July 2018.

This short fact sheet provides answers to frequently asked questions on the topic of conversion therapy and its impact on minors.

Link: <http://s.bsd.net/trevor/default/page/-/files/resources/SOCE%20Two%20Pager.pdf>

Chapter 3: Findings and Purposes Sections

Most codes banning conversion therapy, and many tribal codes related to minors, include an initial section describing the existing problems that the code will address. This section is often referred to as “findings” and provides the context for the entire code. The legal provisions that follow will then be interpreted in light of these findings.

Many codes, including tribal codes, also have a preliminary section that follows the Findings section, setting out the purposes of the code. Similar to the Findings section, the purposes section sets the guiding principles for the code and may be used by judges to inform how other provisions should be read and applied in real cases. The purposes section also sets out the theory or processes of the new law.

A Note for Native Nations

In Native nations, there is a commitment to custom, tradition, and/or generally accepted local practices and ways of doing things. If applicable, the purposes section should state this and describe the processes (such as traditional or alternative dispute resolution, or therapeutic alternatives like traditional healing and/or peace-making courts). The underlying principles and goals of the law, including general statements of worldview and family values, and preambles describing the value and place of children in the Native community, are generally placed in this section. Expressing your Native nation’s underlying principles and goals in this section may help ensure that your code is interpreted according to your customs and traditions.

Remember, the Findings section of a code provides the contemporary context (problems the code addresses), while the purposes section is forward looking.

Chapter Units

Unit A: Findings

Unit B: Purposes

Unit C: Compelling Interest

Unit A: Findings

Most conversion therapy codes, and many tribal codes related to minors, include an initial section describing the existing problems that the code will address. This section is often referred to as “findings” and provides the context for the entire code.

Although you may not be developing a comprehensive code section—more likely creating or amending a few sections of your civil code that relate to medical licensing or child victims—the legislation developed may be well served by a Findings section. Among other things, a Findings section can provide additional guidance to staff about how you want them to approach their work and it can educate others on the topic and need for legislation.

One of the first steps is to assess and describe the problems:

- *What problems exist and what problems are going to be addressed by the legislation?*
 - *What is conversion therapy?*
 - *How is it harmful?*
- *What is the current nature and negative impact of conversion therapy neglect in the jurisdiction and community?*
- *What victim rights should be protected and what services, if any, should be provided?*
- *Answers to these questions may be included in the Findings section.*

The legal provisions that follow will then be interpreted in light of these findings.

Findings: Provides the context for the entire code. Describes the problems that exist and what problems will be addressed by the legislation.

Selected Code and Commentary

Vermont Acts

Act 138

Sec. 1. FINDINGS

In recognition that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, illness, deficiency, or shortcoming, the General Assembly finds:

(1) Vermont has a compelling interest in protecting the physical and psychological well-being of children, including lesbian, gay, bisexual, and transgender youth, and in protecting its children against exposure to serious harms.

(2) A 2015 report published by the U.S. Substance Abuse and Mental Health Service's Administration states "conversion therapy . . . is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations . . . [m]ost importantly, it may put young people at risk of serious harm."

(3) The American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the American School Counselor Association, and the National Association of Social Workers, together representing more than 477,000 health and mental health professionals, have all taken the position that homosexuality is not a mental disorder and thus there is no need for a "cure."

The example provided is part of Vermont's Enacted Acts. This section is succinct while still demonstrating that the findings are rooted in research and contemporary medical authority.

The Vermont Act cites a report from the U.S. Substance Abuse and Mental Health Service's Administration, the American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, and the American Psychological Association. These organizations and professional associations have found that conversion therapy is harmful and that homosexuality is not a mental disease, so there is no need for a cure.

Nevada Revised Statutes

Chapter 629

Section 1. 1. The Legislature hereby finds that:

(a) For the past several decades, there has been a growing consensus among medical and mental health professionals that conversion therapies, which involve any practices or treatments that seek to change the sexual orientation or gender identity of a patient, also known as reparative therapies or sexual orientation change efforts:

(1) Have been based on developmental theories whose scientific validity is questionable;

(2) Have relied on anecdotal reports of cures that have not been tested, substantiated or verified by any rigorous scientific research or peer-reviewed studies; and

- (3) Have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of the patient, especially children under 18 years of age because they are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.*
- (b) A significant number of well-known and well-respected professional and scientific organizations have publicly denounced or disavowed conversion therapies because of the highly doubtful effectiveness and highly probable harmfulness of such therapies. Such organizations include, without limitation, the American Psychological Association, American Psychiatric Association, American Psychoanalytic Association, American Counseling Association Governing Council, American Medical Association Council on Scientific Affairs, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American School Counselor Association, National Association of Social Workers and Pan American Health Organization.*
- (c) Such organizations have determined that conversion therapies may be particularly harmful or destructive to children because such therapies:*
- (1) Aggravate and intensify harmful or destructive feelings, including, without limitation, confusion, depression, guilt, shame, stress, loneliness, helplessness, hopelessness, pointlessness, disappointment, self-blame, self-hatred, low self-esteem, marginalization, dehumanization, hostility, anger, betrayal or loss of faith, belief, interest, concern or motivation; and*
- (2) Increase the risk of harmful or destructive behaviors, including, without limitation, social withdrawal, isolation, substance abuse, suicide, deception, high-risk sexual behaviors and unlawful behaviors.*

The example provided is part of Nevada's Revised Statutes. This Findings section discredits conversion therapy and cites its damaging qualities.

The Nevada Revised Statutes begin by discussing the growing consensus among medical and mental health professionals that conversion therapies are not effective nor scientifically valid. The statute then cites a significant number of organizations and their consensus that conversion therapies are harmful and destructive.

California Business and Professions Code (Enacted on September 30, 2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

Section 1.

The Legislature finds and declares all of the following:

- (a) Being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.*
- (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:

“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 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/her sexual homosexual orientation.”

(e) The American School Counselor Association’s position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: “It is not the role of the professional school counselor to attempt to change a student’s sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources.”

(f) *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.”*

(g) *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.”*

(h) *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.”*

(i) *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.”*

(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.*

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.”

(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 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.”

(m) 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.

(n) California 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 sexual orientation change efforts.

(o) Nothing in this act is intended to prevent a minor who is 12 years of age or older from consenting to any mental health treatment or counseling services, consistent with Section 124260 of the Health and Safety Code, other than sexual orientation change efforts as defined in this act.

This example is part of the State of California’s Business and Professions Code. Currently the most thorough Findings section, this Findings section presents comprehensive research findings from many relevant agencies and organizations.

California was the first state to enact a law banning conversion therapy and many other states have used this Findings section as a model. California’s Findings section is not state-specific, but relies on research and evidence that is national in scope.

Oglala Sioux Tribe Law and Order Code
Chapter 4. Child and Family Code, Wakanyeja Na Tiwahe Ta Wooke
Part A General and Dependency Provisions
Section 403—Children’s and Family Rights³

§403.1 Wakanyeja Ta Wowasake (Traditional Children’s Rights)

(a) All children have the rights set out in subsection (b), and all decisions concerning children shall be made in consideration and furtherance of these rights. By definition, these rights are in the best interests of the children.

(b) All children have a right to:

- (1) a mother (Ina);*
- (2) a father (Ate);*
- (3) identify with the traditional way of life (Lakol wicoh’an);*
- (4) learn and speak his or her language (Lakol Iyapi);*
- (5) a family (Tiwahe na tiospaye);*
- (6) know their relatives (Wotakuye);*

³ The Oglala Sioux Tribe Law and Order Code is on file with the Tribal Law and Policy Institute.

- (7) know the traditional laws, customs, and ceremonies of the people; and*
- (8) live according to and to practice the traditional laws, customs, and ceremonies that govern the people.*

§403.2 *Tiwahe Na Tiospaye Ta Wowasake (Traditional Family Rights)*⁴

(a) Largely because of their primary role in taking care of the children, tiwahe and tiospaye groups also have certain rights as set out in subsection (b). By definition, these rights are in the best interests of the tiwahe and tiospaye, and in turn they are therefore in the best interests of the children for whom the groups care.

(b) Tiwahe and tiospaye have a right, and corresponding responsibilities, to:

(1) Wicozani – to make choices and decisions to live a healthy and prosperous life according to the traditional laws, customs, and ceremonies;

(2) Igluhapi – to make choices and decisions to establish economic, political, educational and cultural self sufficiency, and to maintain privacy according to the traditional laws, customs, and ceremonies;

(3) Woose Gluhapi - to live and function according to the traditional laws, customs, and ceremonies; and to protect and nurture such laws, customs and ceremonies;

(4) Woitanacan - to select and designate leaders to serve the people and to promote the common good according to the traditional laws, customs, and ceremonies; and

(5) Woilake - to select and designate such official officers and workers as the tiospaye deem necessary to serve the people and to promote the common good according to the traditional laws, customs, and ceremonies.

In these sections, the Oglala Sioux Tribe provides an important discussion on custom and tradition. Using Lakota terms, the code provides an understanding of family and kinship in Lakota culture. The code highlights traditional laws that should be used to govern decisions affecting children by defining traditional children's rights and traditional family rights. While not a formal Findings section on conversion therapy, this kind of finding may be useful to include for Native nations that wish for traditional law to inform the interpretation of a law banning conversion therapy.

⁴ The Oglala Sioux Tribe Law and Order Code is on file with the Tribal Law and Policy Institute.

Exercises

The following exercises are meant to guide you in writing this section of your code.

STEP 1: Examine the Current Situation

- Are there customs, traditions, and/or values or current practices that dictate how the jurisdiction should deal with harm to children or handle victims' needs?
- Describe the findings or evidence that supports enacting a ban on conversion therapy on minors.

STEP 2: Establish a Vision for the Future

- How will your new or revised law address the problems identified in the last section?
- What is the purpose of the new or revised law?
- What beliefs, values, or traditions are important to incorporate into guiding principles for the law?
- Is there a certain approach to investigation that may help protect child victims?

STEP 3: Drafting Law

Use your answers to Steps 1 and 2 to draft the key points for this section of your code.

Be sure to consider:

- Statistical or other information that demonstrate need for law.
- Other purposes, reasons, or proposed accomplishments of legislation.
- Unique approaches to investigation or punishment.
- For Native nations, consider general tribal beliefs or customs related to children of importance to law.
- For Native nations, consider tribal responsibility to child victims and to the community.
- For Native nations, consider how any state or federal laws may interact with your approach.

Unit B: Purposes

Many codes, including tribal codes, also have a preliminary section that follows the Findings section, setting out the purposes of the code. Similar to the Findings section, the purposes section sets the guiding principles for the code and may be used by judges to inform how other provisions should be read and applied in real cases. The purposes section also sets out the theory or processes of the new law. For example, if the purpose of the code is to deter licensed professionals from conducting conversion therapy on minors, the purposes section may state that the code will penalize conversion therapy as a medical licensing violation.

Be sure to read the introduction to this resource for an in-depth discussion of research findings related to the harmful impacts of conversion therapy.

Purposes Section: Sets the guiding principles for the code and may be used by judges to inform how other provisions should be read and applied in real cases. The purposes section also sets out the theory or processes of the new law.

A Note for Native Nations

In Native nations, there is also a commitment to custom, tradition, and/or generally accepted local practices and ways of doing things. If applicable, the purposes section should state this and describe the processes (such as traditional or alternative dispute resolution, or therapeutic alternatives like traditional healing and/or peace-making courts). The underlying principles and goals of the law, including general statements of worldview and family values and preambles describing the value and place of children in the Native community, are generally placed in this section. Expressing your Native nation's underlying principles and goals in this section may help ensure that your code is interpreted according to your customs and traditions.

Selected Code and Commentary

Zuni Tribal Code (section enacted April 5, 2006)

Title IX Zuni Children's Code

Chapter 1. General Provisions

Section 9-1-1 Title

This Code is known as the Zuni Children's Code

Section 9-1-2 Purpose, Construction and Severability

A. *It is the purpose of this Children's Code to:*

1. *Recognize that the young people are the Zuni Pueblos most important resource and that their welfare is paramount;*
2. *Secure for each child before the Court the care and guidance that is in the best interest of the child and consistent with the customs, cultural values and laws of the Pueblo of Zuni;*
3. *Whenever possible preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted member of the community;*
4. *Protect the peace, safety and security of the Pueblo of Zuni and its community members;*
5. *Foster cooperative intergovernmental relations between the Pueblo of Zuni and the state of New Mexico and other states and tribes, with regard to the welfare of children and families; and*
6. *Protect the rights of Zuni parents and the sovereign and traditional right of the Zuni Pueblo to determine the best interest of children and families.*

B. Construction

This Code may be liberally interpreted to fulfill its purpose.

C. Severability

If any part or application of this code is held invalid, the remaining provisions shall not be affected.

This example is part of the Zuni Pueblo's Children's Code (tribal dependency code). While this example is not specific to conversion therapy, it is a great example of how a jurisdiction can tailor a Purposes section to reflect community values regarding children.

The Zuni Code is taken from the Zuni Pueblo's juvenile code. Its purposes section indicates that young people are the pueblo's most important resource. It also indicates that a purpose of the code is to protect the peace, safety, and security of the community and its members. Finally, it states that preserving a child's right to a cultural and spiritual identity will be accomplished whenever possible.

Seattle Charter (Enacted on January 1, 2016)

Title 14. Human Rights

14.21.020 - Purpose

This [Chapter 14.21](#) is an exercise of police power of the City for the public safety, health, and welfare; and its provisions shall be liberally construed to accomplish that purpose. The purpose of this [Chapter 14.21](#) is to protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, from exposure to the serious harms caused by conversion therapy.

The example provided is part of Seattle, Washington's General Charter, and it states the purpose is to protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth. The Purposes section explicitly states that the law is an exercise of the City's police power for the sake of preserving public safety, health, and welfare. It instructs that the law be liberally interpreted to accomplish the purpose.

Illinois Public Acts (Enacted on January 1, 2016)

Public Act 099-0411

Section 5. Legislative Findings. The General Assembly finds and declares the following:
(Section Omitted).

Section 10. Purpose.

The purpose of this act is to protect lesbian, gay, bisexual, and transgender youth from sexual orientation change efforts, also known as conversion therapy.

Illinois issued their ban on conversion therapy on minors in a Public Act, a code that stands alone independently from any of their other codes. This is one way a jurisdiction might choose to enact this ban without having to edit or change existing codes.

The Purposes section simply indicates that the law is designed to protect lesbian, gay, bisexual, and transgender youth from conversion efforts.

Nevada Revised Statutes

Chapter 29

Legislative digest

The purpose of this bill is to protect the well-being of children who are under 18 years of age by prohibiting such licensed health care professionals from providing children with conversion therapies, which are any practices or treatments that seek to change the sexual orientation or gender identity of the children. In section 1 of this bill, the Legislature finds and declares that there is a legitimate and compelling need to protect the well-being of children from the harmful and destructive effects of conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.

This example is from the Nevada Revised Statutes. Unlike other jurisdictions, Nevada’s Purposes section is stated in a preamble to the actual statute. This is an example of how a jurisdiction can state the purpose of enacting the ban, without putting it in the plain text of the statute.

Nevada’s digest explicitly states the purpose of the bill is to protect the well-being of children under 18 by prohibiting health care professionals from providing conversion therapy. The digest then cites back to the Nevada’s Legislature’s findings that conversion therapy is dangerous and can cause serious harm to minors.

Oglala Sioux Tribe Law and Order Code
Chapter 4. Child and Family Code, Wakanyeja Na Tiwahe Ta Woose
Part A General and Dependency Provisions
Section 401—Background and General Matters

§401.4 Purpose and Construction⁵

The Child and Family Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Oglala Sioux Tribe;*
- (2) To preserve the unity of the tiwahe and tiospaye, separating the child from his or her parents, tiwahe and/or tiospaye, only when necessary;*
- (3) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child;*
- (4) To prevent the neglect, abandonment, and/or abuse of children;*
- (5) To secure the rights and ensure fairness to the children, parents, guardians, custodians and other parties who come before the OST Children and Family Court under the provisions of this Code;*
- (6) To provide procedures for intervention in, and/or transfer from, state court regarding Indian children or for intervention in, and/or transfer from, other tribal courts regarding Indian children to the OST Children and Family Court;*
- (7) To recognize and reinforce the tribal customs and traditions of the Oglala Lakota Oyate regarding child-rearing;*
- (8) To preserve and strengthen children’s cultural and ethnic identities; and*
- (9) To provide services and cultural support to children and families to strengthen and rebuild the Oglala Lakota Nation.*

The purposes section of the Oglala Sioux’s code highlights the importance of providing for the welfare, care and protection of children and families, but also to preserve the unity of the “tiwahe” (family) and “tiospaye” (extended family). Their stated purposes are also to preserve and strengthen children’s cultural identities and recognize and reinforce the customs and traditions of the Native nation. While not specific to banning conversion therapy, this code is

⁵ The Oglala Sioux Tribe Law and Order Code is on file with the Tribal Law and Policy Institute.

provided as an example of creating a purposes section that is a cultural match, one that can provide the practical and cultural context of the law.

Exercises

The following exercises are meant to guide you in writing this section of your code.

STEP 1: Examine the Current Situation

- Are there customs, traditions, and/or values or current practices that dictate how the jurisdiction should deal with harm to children or handle victims' needs?
- Describe the Code Development Team's goal for the ban on conversion therapy code.

STEP 2: Establish a Vision for the Future

- What is the purpose of the new or revised law?
- What beliefs, values, or traditions are important to incorporate into guiding principles for the law?
- Is there a certain approach to investigation that may help protect child victims?

STEP 3: Drafting Law

Use your answers to Steps 1 and 2 to draft the key points for this section of your code.

Be sure to consider:

- For Native nations, consider general tribal beliefs or customs related to children of importance to law.
- For Native nations, consider Tribal responsibility to child victims and to the community.
- For Native nations, consider how any state or federal laws may interact with your approach.

Unit C: Compelling Interest

Some jurisdictions have a clause on “compelling interest” as part of their conversion therapy code. Similar to the Purposes section of a code, this section can state why a jurisdiction has created a conversion therapy ban.

Selected Code and Commentary

Rhode Island General Laws

Title 23

Section 1.

(16) Rhode Island 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.

This example is part of Rhode Island General Laws. The state lists its compelling interest in protecting minors, including LGBT youth, from the harms caused by conversion therapy.

Nevada Revised Statutes

Chapter 29

Section 1

2. The Legislature hereby declares that there is a legitimate and compelling need to protect the well-being of children who are under 18 years of age from the harmful and destructive effects of conversion therapies by prohibiting certain licensed health care professionals from providing children with conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children, who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.

This example is part of the Nevada Revised Statutes and is quite thorough compared to other jurisdictions. The code begins with its legitimate and compelling interest in protecting the well-being of children under 18 from the harm of conversion therapy. The statute states that those therapies have a high potential to cause harm and are not medically or clinically effective. The section concludes by stating that children are more vulnerable to the potential trauma caused by conversion therapies.

California Business and Professions Code (Enacted on September 30,2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

California 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 sexual orientation change efforts.

This example is from the California Business and Professions Code. California does not have a specific Purposes section but the compelling interest section implicitly states the purpose of the law. The code states that California has a compelling interest in protecting lesbian, gay, bisexual, and transgender teens from exposure to harms from conversion therapy attempts.

Annotated Code of Maryland (Enacted on May, 15, 2015)

Maryland Health Occupations

Section 1-212.1

WHEREAS, Maryland has a compelling interest in protecting the physical and psychological well-being of minors, including LGBT youth, and in protecting minors against exposure to serious harm caused by sexual orientation change efforts; now, therefore,

This example is from the Annotated Code of Maryland and states that Maryland has a compelling interest in protecting lesbian, gay, bisexual, and transgender teens from exposure to harms from conversion therapy attempts.

Chapter 3 Additional Resources

Mallory, Christy, and Taylor N.T. Brown. **[“Conversion Therapy and LGBT Youth,”](#)** The Williams Institute, UCLA School of Law. January 2018.

The Williams Institute is a think tank at the UCLA School of Law that conducts rigorous, independent research on Sexual Orientation and Gender Identity Law. The cited report was published at the beginning of 2018 and provides information on conversion therapy in the law as it stands today. The report includes a brief history on conversion therapy, professional and public perspectives, and a brief summation of current laws banning conversion therapy.

Link: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf>

Glassgold, Judith M., PsyD, Jack Drescher, MD, Jack Drescher, MD, Beverly Greene, PhD, Robin Lin Miller, PhD, and Roger L. Worthington. **[“Appropriate Therapeutic Responses to Sexual Orientation,”](#)** American Psychological Association. 2009.

The American Psychological Association launched a task force to create this resource from 2009. It includes a brief history of sexual orientation change efforts prior to launching into a more in-depth look at how effective sexual orientation change efforts have actually been. The report articulates the ethical concerns and the shifts in psychotherapy for adults who were exposed to these efforts as minors. The report concludes with observations on the social context of sexual orientation change efforts for children, adolescents, and their families. This resource is often cited in the Findings section of codes banning conversion therapy on minors.

Adelson, Stewart L., MD. **[“Practice Parameter on Gay, Lesbian, or Bisexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents,”](#)** Journal of the American Academy of Child and Adolescent Psychiatry, vol. 51, no. 9 (July 4, 2012): 957-74.

This resource provides scientific research on various facets of sexual orientation for children and adolescents. The article draws together biological, psychologic, and social aspects to create a picture of sexual orientation and gender development over the past decade, tracking society’s movement towards acceptance and continued issues with intolerance. The article is intended to create clinical competence for those caring for children or adolescents growing up to be gay, lesbian, bisexual, gender variant, or transgender, in a reflection of what is currently known as the best clinical practices. It is cited in the Findings section of many state codes.

Link: [https://www.jaacap.org/article/S0890-8567\(12\)00500-X/fulltext](https://www.jaacap.org/article/S0890-8567(12)00500-X/fulltext)

Ryan, Caitlyn, David Huebner, Rafael M. Diaz, and Jorge Sanchez. **[“Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay and Bisexual Young Adults,”](#)** Pediatrics, vol. 123, no. 1 (January 2009).

This resource was created to produce quantitative scales to assess reactions by parents and caregivers when young adults were lesbian, gay, or bisexual. The study concludes that higher rates of family rejection were significantly associated with poorer health outcomes. This study is often cited in the Findings sections of state codes banning conversion therapy for minors.

Link: <https://tinyurl.com/yczr6yc7>

Laemmle, Julia. “California’s Conversion: A Ban on Minor Conversion Therapy and Effect on Others,” *Indiana Journal of Law and Society*, vol. 2, no. 1 (2013).

This article explores a brief history of conversion therapy including a testimonial. It looks at the legal realm of adolescent rights and parental rights before dissecting the California law banning conversion therapy. The breakdown of the California law could be useful in designing another jurisdiction’s law.

Link: www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1022&context=ijlse

The American Academy of Nursing, “Position Statement on Reparative Therapy” (2015).

This short publication is an official position statement against reparative therapy, also known as conversion therapy, from the American Academy of Nursing.

Link: [www.nursingoutlook.org/article/S0029-6554\(15\)00125-6/pdf](http://www.nursingoutlook.org/article/S0029-6554(15)00125-6/pdf)

American College of Physicians, “Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians” (2015).

In this position paper, the American College of Physicians examines the health disparities experienced by the LGBT community and makes a series of recommendations to achieve equity for LGBT individuals in the health care system. These recommendations include enhancing physician understanding of how to provide culturally and clinically competent care for LGBT individuals, addressing environmental and social factors that can affect their mental and physical well-being, and supporting further research into understanding their unique health needs.

Link: <https://www.ncbi.nlm.nih.gov/pubmed/25961598>

American Counseling Association, *Ethical Issues Related to Conversion or Reparative Therapy* (2013).

By Joy S. Whitman, Harriet L. Glosoff, Michael M. Kocet and Vilia Tarvydas

American Counseling Association members have consulted ACA staff and leaders regarding the practice of conversion therapy and the 2005 Code of Ethics. For this reason, the ACA Ethics Committee is sharing its formal interpretation of specific sections of the ACA Code of Ethics concerning the practice of conversion therapy and the ethics of referring clients for this practice.

Committee members individually considered a hypothetical scenario that was based on actual questions posed to the members and staff. The Ethics Committee then met to reach a consensus opinion.

Link: www.Counseling.org/news/updates/2013/01/16/Ethical-Issues-Related-to-Conversion-or-Reparative-Therapy

American Psychiatric Association, “Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)” (2000).

In December 1998, the Board of Trustees issued a position statement that 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/her homosexual orientation. In doing so, the APA joined many other professional organizations that either oppose or are critical of “reparative” therapies. The position statement expands and elaborates upon the statement issued by the Board of Trustees in order to further address public and professional concerns about therapies designed to change a patient’s sexual orientation or sexual identity. It augments rather than replaces the 1998 statement.

Link: <https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2000-therapies-change-sexual-orientation.pdf>

World Psychiatric Association, “WPA Position Statement on Gender Identity and Same-Sex Orientation, Attraction, and Behaviors” (2016).

This short publication is an official position statement from the World Psychiatric Association on gender identity and sexual orientation.

Link: http://www.wpanet.org/detail.php?section_id=7&content_id=1807

Substance Abuse and Mental Health Services Administration, “Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth” (2015).

This report presents therapeutic practices related to youth, and sexual orientation and gender identity. These practices are based on research, clinical expertise, and expert consensus. The report makes the case for eliminating the use of conversion therapy among youth.

Link: <https://www.store.samhsa.gov/product/Ending-Conversion-Therapy-Supporting-and-Affirming-LGBTQ-Youth/SMA15-4928>

NCLR and The Trevor Project have developed a comprehensive toolkit for state legislators and LGBT leaders working to advance legislation protecting LGBT children from conversion therapy. For access, contact BornPerfect@NCLRights.org.

Chapter 4: Definitions

There are a few key terms that should be clearly defined in the appropriate sections of any code that seeks to ban “conversion therapy” practices. When enacting any ban, the *behavior* or *action* being prohibited must be clearly defined. Likewise, *who* is prohibited must be clearly defined. Generally, the Definitions section of a code restricting “conversion therapy” may appear in the following places:

- If it’s a stand-alone code or act, the definitions should be included in the code or act itself.
- If it’s a subsection of another code (such as a licensing regulation), the definitions should likely be included wherever the other definitions related to that code already are (typically the first part of the code chapter or subsection).

There may be some codes that include the definitions within the ban itself instead of in a separate section or subsection on definitions. However, this approach would likely result in a code that is lengthy and difficult to read, so it is not recommended.

Each jurisdiction is unique, so it is difficult to recommend precise terms and definitions. Indeed, because each jurisdiction is unique, differences in definitions may be a good indication of legislation tailored to the community.

This chapter will discuss the more commonly used terms and highlight things to consider when crafting definitions for these terms.

Chapter Units

Unit A: Defining “Conversion Therapy”

Unit B: Defining “Health Care Provider”

Unit A: Defining “Conversion Therapy”

As mentioned earlier, when enacting any ban, the behavior or action being prohibited must be clearly defined. There are multiple approaches to banning conversion therapy and several terms that can be used. The best approach will depend on how the other sections of the code are drafted.

Generally, there are two approaches that can be taken when defining or creating a ban on conversion therapy. One involves a separate definitions or terms section and the second involves one larger code with the definitions included within the code itself.

- For codes that have a short general ban on “conversion therapy” or “reparative therapy,” the definition of the term used is very important and should be as expansive or clear as possible.
- For codes that have an expansive ban in the code itself, the definition or term used is less important, because the prohibited behavior is already included in the code.

Regardless of how the code is drafted, the most important consideration is whether, as a whole, the code and its legally codified terms clearly includes sexual orientation and gender identity as protected from change efforts. Be careful to avoid any implication that therapies designed to change a minor’s gender identity are not included within the ban. A minor’s sexual orientation and gender identity should be protected from any kind of change efforts by a licensed professional.

Selected Code and Commentary

Rhode Island General Laws

Title 23

(1) “Conversion therapy” means any practices or treatments that seek to change an individual’s sexual orientation or gender identity, including efforts 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 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.

(i) “Conversion therapy” shall include any practice by any licensed professional that seeks or purports to impose change of an individual’s sexual orientation or gender identity, practices which attempt or purport to change behavioral expression of an individual’s sexual orientation or gender identity or attempt or purport to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex;

(ii) “Conversion therapy” shall not include practices which:

(A) Provide acceptance, support, and understanding of an individual’s sexual orientation, gender identity, or gender expression and the facilitation of an individual’s coping, social support, and identity exploration and development, including interventions to prevent or address unlawful conduct or unsafe sexual practices; or

(B) Provide acceptance, support, or understanding of an individual’s gender expression or the facilitation of an individual’s coping, social support, and identity exploration and development.

The example provided is a part of Rhode Island’s general laws. This is a great example of how a jurisdiction can create a thorough definition by breaking down each aspect of how it defines conversion therapy.

Rhode Island’s law begins by defining conversion therapy as any practice that seeks to change an individual’s sexual orientation or gender identity. This section also states that conversion therapy does not include counseling that provides assistance, support, and understanding. In the next subheading, the definition of conversion therapy is expanded to include any practice by a licensed professional who seeks to change things related to one’s sexual orientation or gender identity.

The final subheading states that conversion therapy shall not include certain practices. These practices are further divided into two subheadings. The first category is practices that provide acceptance, support and understanding of an individual’s sexual orientation or seek to halt or prevent unlawful conduct and unsafe sexual practices. The other category is counseling that provides acceptance, support, or understanding of an individual’s gender expression or facilitates an individual’s coping, social support, and identity exploration and development.

California Business and Professions Code (Enacted on September 30,2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

(b) (1) "Sexual orientation change efforts" means any practices by mental health providers that seek to change an individual's sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

(2) "Sexual orientation change efforts" does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

The example provided is part of California's Business and Professions code. It is a great example of how a jurisdiction can define "sexual orientation change efforts" and express what it does not mean.

The California Business and Professions code begins by defining "sexual orientation change efforts" as any practice by mental health providers who seek to change an individual's sexual orientation. Then it expands upon that definition by expressing that the definition includes efforts to change behaviors, gender expressions, or feelings towards individuals of the same sex. Then, the law says that sexual orientation change efforts do not include psychotherapies that attempt to provide support, acceptance, and understanding, and do not seek to change sexual orientation.

Please note: It is not advisable to use "sexual orientation change efforts" as the only prohibited activity. Be sure to include gender identity and be careful to avoid any implication that therapies designed to change a minor's gender identity are not included.

Connecticut

Public Act No. 17-5

Section 1.

(1) "Conversion therapy" means any practice or treatment administered to a person under eighteen years of age that seeks to change the person's sexual orientation or gender identity, including, but not limited to, any effort to change gender expression or to eliminate or reduce sexual or romantic attraction or feelings toward persons of the same gender. "Conversion therapy" does not include counseling intended to (A) assist a person undergoing gender transition, (B) provide acceptance, support and understanding to the person, or (C) facilitate the person's coping, social support or identity exploration and development, including, but not limited to, any therapeutic intervention that is neutral with regard to sexual orientation and seeks to prevent or address unlawful conduct or unsafe sexual practices, provided such counseling does not seek to change the person's sexual orientation or gender identity.

The example provided is from a Connecticut Public Act. It provides a good example of how a jurisdiction can define conversion therapy and include what it is not to be interpreted as.

The Connecticut act begins by defining conversion therapy as any practice or treatments given to a person, under 18, that attempt to change the person's sexuality or gender identity. It expands upon this definition by including any effort to change gender expression or reduce romantic attraction towards a person of the same sex, as conversion therapy. The act then states that conversion therapy is not counseling that assists people undergoing gender transition, provides acceptance, support, and understanding, or facilitates a person's coping or identity development. This includes therapeutic intervention that is neutral about sexual orientation.

City of Miami Ordinance
File Number: 16-01057

Sec. 37-13. Conversion Therapy.

(a) Definitions. Unless otherwise expressly stated, the following terms shall, for the purpose of this Section, have the meanings indicated in this Section:

Conversion Therapy, also referred to as Reparative Therapy, means any counseling, practice, or treatment performed with the goal of changing a person's sexual orientation or gender identity including, but not limited to, efforts to change behaviors, gender expression, or to reduce or eliminate sexual or romantic attraction or feelings toward a person of the same gender. Conversion Therapy does not include counseling that:

- (1) Provides support to a person undergoing gender transition; or*
- (2) Provides acceptance, support, or understanding of a person, or facilitates a person's coping, social support, identity exploration, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, if such counseling is not conducted with the goal of changing the person's sexual orientation or gender identity.*

The example provided is part of the Miami City Ordinance. It provides an example of how a jurisdiction can explicitly define conversion therapy.

The Miami code begins by stating that the definitions listed below shall be interpreted as such unless expressly stated otherwise. The code defines conversion therapy as also being known as reparative therapy. Moreover, it defines that therapy as counseling with the goal of changing a person's sexual orientation or gender identity.

Lastly, the code states that conversion therapy is not meant to include counseling that provides support for people undergoing gender transition or provides acceptance, support, or understanding of an individual's identity. This includes sexual orientation neutral interventions that seek to prevent unlawful or harmful conduct.

New York City Administrative Code
Title 20: Consumer Affairs
Chapter 5. Unfair Trade Practice
Subchapter 19: Conversion Therapy Prohibitions

§ 20-824 Definitions.

For the purposes of this subchapter, the term “conversion therapy” means any services, offered or provided to consumers for a fee, that seek to change a person’s sexual orientation or seek to change a person’s gender identity to conform to the sex of such individual that was recorded at birth.

The example provided is a part of the New York City Administrative Code. This code provides a great example of how a jurisdiction can define conversion therapy succinctly. In addition, this code distinguishes conversion therapy as something involving payment.

This code begins by defining conversion therapy as a service that is offered or provided to consumers for a fee. This therapy must seek to change a person’s sexual orientation or attempt to change a person’s gender identity to conform to the recorded sex at birth.

Unit B: Health Care Provider

For this section of the code, it is important to clearly define the type of person who is prohibited from attempting conversion therapy on a minor. As mentioned in the introduction of this resource, it is important that any ban on conversion therapy is drafted within the bounds of constitutional limits. As such, any conversion therapy ban can generally focus on licensed medical professionals acting in their professional capacity. Depending on the jurisdiction and community culture, the terms used may vary drastically. This unit will highlight some of the more commonly used terms for “health care provider” and their definitions. The following chart provides a brief overview of the kinds of professionals impacted in some jurisdictions that ban conversion therapy on minors.

State	Professionals impacted by the ban
California	Psychiatric surgeon/physician, psychologist, psychological assistant/intern/trainee, licensed marriage/family therapist, registered marriage/family therapist/intern/trainee, licensed educational psychologist, credentialed school psychologist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, registered clinical counselor/intern/trainee, designated mental health professional
Connecticut	Occupational therapist, alcohol/drug counselor, registered nurse, advanced practice registered nurse, behavioral analyst, psychologist, marriage/family therapist, clinical/master social worker, professional counselor, genetic counselor, pharmacist, hypnotist
Hawaii	Teacher, professional counselor, psychiatric physician, physician assistant, psychologist, social worker, mental health counselor, marriage/family therapist
Maryland	Licensed/certified counselor, any other practitioner certified by the practitioner’s board to provide counseling
Nevada	Psychiatrist, homeopathic physician, psychiatric physician, social worker, registered nurse holding a master’s in psychiatric nursing, marriage/family therapist or clinical professional, any person who provides counseling services as part of his or her training
Washington	Licensed counselors and agencies certified by the health department or relevant department Does not apply to non-licensed counselors, speech that does not constitute performing conversion therapy by licensed health care providers, or religious practices or counseling under religious denomination, church, or organization
D.C.	Mental health professionals
Seattle	Mental health counselors/associates, marriage and family therapists/associates, social workers/associates, physicians, psychologists, psychotherapists, certified chemical dependency professionals/trainees, counselors, certified counselors, certified advisers

Selected Code and Commentary

California Business and Professions Code (Enacted on September 30,2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

(a) “Mental health provider” means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, intern, or trainee, a licensed marriage and family therapist, a registered marriage and family therapist, intern, or trainee, a licensed educational psychologist, a credentialed school psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, a registered clinical counselor, intern, or trainee, or any other person designated as a mental health professional under California law or regulation.

The example provided is from the California Business and Professions code. It provides a great example of how to define mental health providers, and thereby who this law should impact.

The California code cites a mental health provider as a physician and surgeon specializing in psychiatry. In addition, mental health providers are also psychologists, psychological assistants, interns, or trainees, licensed marriage family therapists, registered marriage and family therapists, interns or trainees, licensed education psychologists, credentialed school psychologists, licensed clinical social workers, associate clinical social workers, licensed professional clinical counselors, registered clinical counselors, interns, trainees, or other people designated as a mental health professional under California’s law.

Hawaii Code

Title 25. Professions

§436b

(a) No person who is licensed to provide professional counseling, including but not limited to a physician specializing in the practice of psychiatry, physician assistant, psychologist, social worker, mental health counselor, marriage and family therapist, or a person who performs counseling as part of the person’s professional training for any of these professions, shall:

[sections omitted]

Hawaii Code

Title 18. Education

§302A

Sexual orientation change efforts prohibited. (a) No teacher shall engage in sexual orientation change efforts on a student under eighteen year of age.

The example provided is part of the Hawaii code. It provides a good example of how a jurisdiction can create a succinct list of professionals who are affected by the law without defining medical health professional.

The Hawaii code does not include an explicit definition for a health professional. Instead, the Hawaiian law simply places a list of those affected by the law immediately above the law. This list includes physicians specializing in the practice of psychiatry, physician assistants, psychologists, social workers, mental health counselors, marriage and family therapists, or anyone who performs counseling as part of their professional training.

The example also shows how a jurisdiction might involve other professions in its ban on conversion therapy, and how to place those professions in the code without a Definitions section.

The Hawaii code has a section following the Findings section that bans any teachers from engaging in sexual orientation change efforts.

Nevada Revised Statutes

Chapter 629

(b) “Psychotherapist” means:

- 1. A psychiatrist licensed to practice medicine in this state pursuant to chapter 630;*
- 2. A homeopathic physician, advanced practitioner of homeopathy or homeopathic assistant licensed or certified pursuant to chapter 630A or NRS;*
- 3. A psychiatrist licensed to practice medicine in this state pursuant to chapter 633;*
- 4. A psychologist licensed to practice in this State pursuant to chapter 641 of NRS;*
- 5. A social worker licensed in this state as an independent social worker or a clinical social worker pursuant to chapter 641B of NRS;*
- 6. A registered nurse holding a master’s degree in the field of psychiatric nursing and licensed to practice professional nursing in this State pursuant to Chapter 632 of NRS.*
- 7. A marriage and family therapist or clinical professional counselor licensed in this State pursuant to chapter 641A of NRS; or*

A person who provides counseling services as part of his or her training for any of the professions listed in subparagraphs (1) to (7), inclusive.

The example provided is part of the Nevada Revised Statutes. This code is a great example of a how a jurisdiction might define a psychotherapist and thereby who is affected by the law.

The Nevada statutes provide a numbered list of professionals who are considered psychotherapists. Each profession includes a citation to the area of Nevada law certifying that the individual is registered in that field. The professions include a psychiatrist, a homeopathic physician, a psychologist, a social worker, a registered nurse with a master’s degree in psychiatry, a marriage and family therapist, a clinical professional counselor, or anyone else who provides counseling services.

Connecticut

Public Act No. 17-5

(2) “Health care provider” means a licensed practitioner of the healing arts, as defined in section 20-1 of the general statutes, an occupational therapist licensed pursuant to chapter 376a of the general statutes, an alcohol and drug counselor licensed pursuant to chapter 376b of the general statutes or certified pursuant to section 20-74s of the general statutes, a registered nurse or advanced practice registered nurse licensed under chapter 378 of the general statutes, a nurse’s aide registered pursuant to chapter 378a of the general statutes, a board certified behavior analyst, as defined under chapter 382a of the general statutes, a psychologist licensed pursuant to chapter 383 of the general statutes, a marriage and family therapist licensed pursuant to chapter 383a of the general statutes, a clinical social worker or master clinical social worker licensed pursuant to chapter 383b of the general statutes, a professional counselor licensed pursuant to chapter 383c of the general statutes, a genetic counselor licensed pursuant to chapter 383d of the general statutes, a pharmacist licensed pursuant to chapter 400j of the general statutes, a hypnotist registered with the Department of Consumer Protection pursuant to chapter 400m of the general statutes or any person licensed, certified or registered under comparable provisions of law outside of the state but providing professional services under such license, certification or registration in the state.

The provided example is part of a Connecticut Public Act. It provides a great example of how a jurisdiction can provide a definition for “health care provider.”

The Connecticut Public Act uses the term “health care provider” in its Definitions section. This code defines “health care provider” by providing a list in paragraph form of various provisions, with citations to the area of Connecticut law under which individuals are registered. These professions are licensed practitioner of the healing arts, occupational therapist, alcohol and drug counselor, registered nurse, nurse’s aide, board certified behavior analyst, psychologist, marriage and family therapist, clinical social worker, professional counselor, genetic counselor, pharmacist, and hypnotist.

Chapter 4: Additional Resources

Human Rights Campaign. “[The Lies and Dangers of ‘Conversion Therapy,’](#)” Human Rights Campaign. Accessed July 16, 2018.

The Human Rights Campaign is a leading advocate in eliminating conversion therapy across the globe. The introduction of this web page provides a simple definition for conversion therapy. The article then details some more nuanced conversion therapy methods and effects.

Link: <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>

Vider, Stephen, and Davis S. Byers. “[A Half-Century of Conflict Over Attempts to ‘Cure’ Gay People,](#)” *Time Magazine*. February 12, 2015.

Steven Vider is a Postdoctoral Fellow in the History of Sexuality at Yale University and David S. Byers is a clinical social worker and PhD candidate at the Smith College School for Social Work. Together they co-authored this piece that investigates the history of conversion therapy. It provides detailed definitions of conversion therapy and how that definition has changed through the years.

Link: <http://time.com/3705745/history-therapy-hadden/>

“[GLAAD Media Reference Guide - In Focus: ‘Conversion Therapy,’](#)” GLAAD. October 26, 2016. Accessed July 16, 2018.

GLAAD is an organization that seeks to promote LGBT acceptance within the media narrative. This is a guide to how to use terms associated with conversion therapy in an appropriate and respectful way.

Link: <https://www.glaad.org/reference/exgays>

Dustman, Renee. “[Define a Qualified Healthcare Professional,](#)” AAPC - Advancing the Business of Healthcare. January 14, 2015. Accessed July 16, 2018.

The AACPC is an organization that curates resources and communications for professional and companies engaged in American healthcare. This link leads to an article by the organization that defines what a medical health professional is. It includes a commonly used definition from the American Medical Association as a starting base for its own definition.

Link: <https://www.aapc.com/blog/28964-define-a-qualified-healthcare-professional/>

“Types of Mental Health Professionals,” Mental Health America. March 30, 2016. Accessed July 16, 2018.

Mental Health America is a non-profit that is dedicated to promoting mental health leadership, innovation, and advocacy. This resource provides a list of various mental health professionals and include definitions for each individual profession.

Link: <http://www.mentalhealthamerica.net/types-mental-health-professionals>

NCLR and The Trevor Project have developed a comprehensive toolkit for state legislators and LGBT leaders working to advance legislation protecting LGBT children from conversion therapy. For access, contact BornPerfect@NCLRights.org.

Chapter 5: Prohibiting Conversion Therapy

When enacting any ban, the *behavior* or *action* being prohibited must be clearly defined.

Likewise, *who* is prohibited must be clearly defined. This can be accomplished by simply using consistent terms with codified definitions.⁶ Or, the code itself can list and explain the banned behavior and whom the ban applies to.

Regardless of how the code is drafted, the most important consideration is whether the code and its legally codified terms clearly include sexual orientation and gender identity as protected from change efforts. Be careful to avoid any implication that therapies designed to change a minor's gender identity are not included within the ban. A minor's sexual orientation and gender identity should be protected from any kind of change efforts by a licensed professional.

Some codes have taken the additional step of banning the use of public funds for attempting conversion therapy. This approach is discussed in Unit B of this chapter.

This chapter will highlight different approaches to banning conversion therapy practices.

Chapter Units

Unit A: Banning "Conversion Therapy"

Unit B: Use of Public Funds

⁶ Please see Chapter 4 of this resource for more information on this approach.

Unit A: Banning “Conversion Therapy”

As mentioned earlier, when enacting any ban, the behavior or action being prohibited must be clearly defined. There are multiple approaches to banning conversion therapy and several terms that can be used. The best approach will depend on how the other sections of the code are drafted.

Generally, there are two approaches that can be taken when defining or creating a ban on conversion therapy. One involves a separate definitions or terms section and the second involves one larger code with the definitions included within the code itself.

Regardless of how the code is drafted, the most important consideration is whether the code and its legally codified terms clearly include sexual orientation and gender identity as protected from change efforts. Be careful to avoid any implication that therapies designed to change a minor’s gender identity are not included within the ban. A minor’s sexual orientation and gender identity should be protected from any kind of change efforts by a licensed professional.

Selected Code and Commentary

California Business and Professions Code (Enacted on September 30, 2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

Article 15. Sexual Orientation Change Efforts

865. *For the purposes of this article, the following terms shall have the following meanings:*

(a) "Mental health provider" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, intern, or trainee, a licensed marriage and family therapist, a registered marriage and family therapist, intern, or trainee, a licensed educational psychologist, a credentialed school psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, a registered clinical counselor, intern, or trainee, or any other person designated as a mental health professional under California law or regulation.

(b) (1) "Sexual orientation change efforts" means any practices by mental health providers that seek to change an individual's sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

(2) "Sexual orientation change efforts" does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

865.1. *Under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age.*

The example is from California. The Definitions section has been discussed in Chapter 4 of this resource but are included here for reference. The actual ban is found in Article 15 Section 865.1, which prohibits mental health providers from engaging in sexual orientation change efforts with a minor.

Terms and legal definitions are key to this approach. "Sexual orientation change efforts" is the banned activity, so the definition of this term will determine the scope of the ban. Here, sexual orientation, gender expressions, and same sex attractions are included within the term, and therefore within the ban. (Sec 865(b)(1).) In an attempt to create even more clarity, California has clearly stated the kind of, impliedly positive, psychotherapies that are **not** included in the ban. (Sec 865(b)(2).)

Likewise, the term "mental health provider" is key and is defined in earlier sections of the code. (Sec 865(a).)

Unit B: Use of Public Funds

As part of a ban on conversion therapy, jurisdictions can prohibit the use of public funds for such practices. This approach will vary across jurisdictions and must be drafted with the jurisdiction's governance and funding systems in mind.

Selected Code and Commentary

Connecticut

Public Act No. 17-5

Section 4

(NEW) (Effective from passage) No public funds, as defined in section 9-601 of the general statutes, shall be expended for the purpose of practicing conversion therapy, referring a person to a health care provider for conversion therapy, referring any individual to any person engaged in trade or commerce for conversion therapy, health benefits coverage for conversion therapy, or a grant or contract with any entity to conduct conversion therapy or refer any person to a health care provider for conversion therapy or to a person engaged in trade or commerce to provide conversion therapy.

The example is from a Connecticut Public Act. This code provides an example of how a jurisdiction can ban the use of public funds for a number of potential activities involving conversion therapy.

The Connecticut code bans the use of public funds for the purpose of practicing conversion therapy. This code also bans the use of public funds for referring someone to a health care provider for conversion therapy and referring an individual to any person in trade or commerce for conversion therapy. The code includes a ban on public funds to be used for health benefits coverage for conversion therapy, to contract with an entity to conduct conversion therapy, to refer someone to conversion therapy, or someone engaged in the commerce to provide conversion therapy.

Rhode Island General Laws

Title 23

23-94-4. 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.

This code provides an example of how a jurisdiction can ban the use of state funds, and funds from other agencies, to be expended for activities related to conversion therapy.

The Rhode Island code not only bans the use of state funds, but also bans the use of funds belonging to any municipality, agency, or political subdivision of Rhode Island. Rhode Island's code bans the use of these funds for conducting conversion therapy, referring someone to conversion therapy, health benefits coverage for conversion therapy, or a grant or contract with any entity that conducts or refers people for conversion therapy.

***Annotated Code of Maryland
Health Occupations***

Section 1-212.1

(D) No state funds may be used for the purpose of:

- 1. Conducting, or referring an individual to receive conversion therapy;*
- 2. Providing health coverage for conversion therapy; or*
- 3. Providing a grant to or contracting with any entity that conducts or refers an individual to receive conversion therapy*

This is a great example of how a jurisdiction can create a well-organized, and easy to understand ban on the use of state funds in relation to conversion therapy.

The Maryland code utilizes a list format to categorize what state funds cannot be used for. The code begins by stating that state funds cannot be used to conduct or refer an individual to receive conversion therapy. Then, the code bans the use of state funds to provide health coverage for conversion therapy. Lastly, Maryland bans the use of state funds to provide grants or to contract with any entity that conducts or refers an individual to receive conversion therapy.

Chapter 5 Additional Resources

George, Marie-Amélie. “Expressive Ends: Understanding Conversion Therapy Bans,” *Alabama Law Review*.

The Alabama Law Review published this article on conversion therapy bans. The text explains why conversion therapy is so dangerous. Moreover, it includes guidance on types of bans and the effectiveness of those measures.

Brudney, Victor. “The First Amendment and Commercial Speech,” *Boston College Law Review*.

The Boston College Law Review published this article on the First Amendment and advertising. Although this is not explicitly related to conversion therapy, it includes legal guidance to the constitutionality of prohibiting or regulating certain types of advertisements.

US Legal, Inc. “Public Funds Law and Legal Definition.” Accessed July 17, 2018.

The US Legal website includes definitions from the American legal system. This link provides a general definition of public funds and what they entail.

Link: <https://definitions.uslegal.com/p/public-funds/>

Mental Health America. “The Federal and State Role in Mental Health.” April 26, 2016. Accessed July 18, 2018.

Mental Health America is a non-profit dedicated to addressing mental health in the United States. If a jurisdiction bans the use of public funds to promote or operate facilities that use conversion therapy, this webpage details the appropriate ways for states and the federal government to promote legitimate mental health services.

Link: <http://www.mentalhealthamerica.net/issues/federal-and-state-role-mental-health>

NCLR and The Trevor Project have developed a comprehensive toolkit for state legislators and LGBT leaders working to advance legislation protecting LGBT children from conversion therapy. For access, contact BornPerfect@NCLRights.org.

Chapter 6: Penalties and Sanctions

If a defendant is found guilty of violating a civil or criminal code, the court can impose sanctions (penalties) on the defendant. Sanctions are used to provide an incentive for obedience to the law, as well as punishment for disobeying the law. The code provides the possible penalties to be imposed. For purposes of this resource, civil sanctions are most appropriate for a civil licensing regulation.

A Note for Native Nations

Jurisdiction in Indian country is quite complex, be sure to consult a licensed attorney when drafting a penalty or sanctions section. While it may be difficult to enforce a penalty or sanction, particularly if the offender is a non-member or non-Indian, there may be alternative approaches to consider. For example, Native nations that do not maintain their own medical licensing board might consider a civil law ban that results in a fine and the filing of a report to relevant state licensing boards.

Keep in mind that different governments operate from different philosophical perspectives. So, the tribal code-writing committee may choose to discuss the primary purposes of punishment from the tribal community's perspective. Discussing the following questions will help illuminate the tribal "philosophy."

Point of Discussion: Holding individuals accountable

- What is/are the primary goal/s of sanctions? Punishment, safety, and/or rehabilitation?
- How can sanctions ensure the safety of victims?
- What sanctions fit our traditions?

While discussion of criminal law is outside the scope of this resource, tribal code drafters considering a *criminal* law banning conversion therapy on minors should consult The Indian Civil Rights Act (["ICRA"](#)). ICRA limits the sanctions imposed by a tribal court to sentences not

exceeding one year in jail and/or a fine of up to \$5,000 or both, unless certain conditions are met. If a person is convicted of more than one crime (e.g., domestic violence and kidnapping), up to one year for each offense is allowed.⁷ TLOA amended ICRA, increasing tribal court authority to incarcerate for up to three years and/or fine up to \$15,000 for one offense.⁸

ICRA *does not* impose any limitations on:

- Probation
- Restitution
- Public apology/personal apology
- Banishment
- Shaming
- Restriction on firearms
- Other remedies not related to incarceration or fines

⁷ [25 U.S.C. § 1302\(7\)\(B\).](#)

⁸ [25 U.S.C. § 1302\(7\)\(C\).](#)

Selected Code and Commentary

Connecticut Public Acts (May 10, 2017)

Public Act No. 17-5

Section 3.

(b) A violation of subsection (a) of this section shall be considered an unfair or deceptive trade practice pursuant to section 42-110b of the general statutes and shall be subject to the same enforcement, liabilities and penalties as set forth in sections 42-110a to 42-110q, inclusive, of the general statutes.

Connecticut General Assembly

Chapter 735A: Unfair Trade Practices

Sec. 42-110p.

(a) Dissolution, suspension or forfeiture of corporate franchise for violation of injunction. Upon petition by the Attorney General, the superior court for the judicial district of Hartford may, in its discretion, order the dissolution or suspension or forfeiture of the franchise of any corporation which violates the terms of any injunction issued under section 42-110m.

(b) In any action brought under section 42-110m, if the court finds that a person is willfully using or has willfully used a method, act or practice prohibited by section 42-110b, the Attorney General, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five thousand dollars for each violation. For purposes of this subsection, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 42-110b.

The example provided is a Connecticut Public Act. Connecticut indicates that it will impose a civil sanction on offenders who use conversion therapy. This is a good example of how a jurisdiction can interweave acts and sanctions to create a more complex and dynamic enforcement system.

Connecticut's Public Act indicates that if someone violates the act, it will be considered an unfair trade practice. Under a different body of the law, the Connecticut General Assembly, an offender can then face the dissolution, suspension, or forfeiture of a corporate franchise. In addition, under the petition of the court, the state may recover a civil penalty of up to \$5,000 if an offender willfully (intentionally) violated the act.

California Business and Professional Code (Enacted on September 30,2010)

Division 2. Healing Arts [500-4999.129]

Chapter 1. General Provisions [500-865.2]

Article 15. Sexual Orientation Change Efforts

865.2. Any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject a mental health provider to discipline by the licensing entity for that mental health provider.

The example provided is part of California's Business and Professional Code. While California's code does not provide explicit guidance on how to penalize offenders, it provides a good example of how a jurisdiction can construct civil sanctions to involve other relevant bodies. This method creates responsibility amongst multiple entities for eliminating conversion therapy for minors.

California indicates that offenders will be subject to discipline by the licensing entity for the mental health provider. Once California identifies that an individual has violated the law, it then requires that the licensing body step in and evaluate how to punish the offender.

Seattle Charter (January 1, 2016)

Title 14. Human Rights

14.21.050 Enforcement

D. Civil Violations. The violation or failure to comply with any provision of the Chapter 14.21 shall constitute a civil violation and shall be enforced under the citation provisions set forth in this Section 14.21.050 by the direct.

J. Penalties. The Following penalties shall be assessed for violations of any provision of this Chapter 14.21

a. \$500 for the first violation; and

b. \$1,000 for each subsequent violation

The example provided is from the Seattle Charter and codified under the Human Rights Title. This is a great example of how a jurisdiction can create a multi-tiered civil penalty for offenders.

The Seattle Charter first classifies the failure to comply with the prohibition on conversion therapy for minors as a civil violation. The code then indicates that the first violation will result in a \$500 fine. Following the first violation, all subsequent violations will result in a \$1,000 fine.

New York City Administrative Code (Enacted on February 6, 2016)

Title 20. Consumer Affairs

Chapter 5. Unfair Trade Practices

Subchapter 19. Conversion Therapy Prohibited

§20-826 Enforcement. Any person who violates section 20-825 of this subchapter or any of the regulations promulgated thereunder is liable for a civil penalty not to exceed \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. A proceeding to recover any such civil penalty shall be commenced by the service of a notice of violation returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city designated to conduct such proceedings. For the purposes of this section, each instance a person is found to have violated section 20-825 shall be considered a separate violation, except that multiple violations section 20-825 with regards to the same consumer shall be considered a single violation.

The example provided is from the New York City Administrative Code and codified under the section titled, Unfair Trade Practices. This sanction system provides a great example of how a jurisdiction can create a multi-tiered penalty system that includes explicit instructions on how to separate or combine violations.

The New York City Administrative Code creates a maximum civil penalty of \$1,000 for a first-time offender. A second violation warrants a \$5,000 penalty. Each subsequent violation results in a \$10,000 penalty. Moreover, the code specifies that an offense against the same consumer will be considered a single violation. In other words, if a consumer claims a single offender committed multiple offenses against them, the offender is only considered to have committed a single violation.

Chapter 6 Additional Resources

Movement Advancement Project. “[Conversion Therapy Laws](#).”

The Movement Advancement Project is an independent think tank doing rigorous research, insight and analysis that help speed equality for LGBT people. This map shows the states that have enacted bans on conversion therapy. The table format includes a column that shows how the states have chosen to punish the act.

Link: http://www.lgbtmap.org/equality-maps/conversion_therapy/

NCLR and The Trevor Project have developed a comprehensive toolkit for state legislators and LGBT leaders working to advance legislation protecting LGBT children from conversion therapy. For access, contact BornPerfect@NCLRights.org.

Appendix

AMERICAN BAR ASSOCIATION**COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
COMMISSION ON YOUTH AT RISK****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association recognizes that lesbian, gay, bisexual,
2 transgender, and queer (LGBTQ) people have the right to be free from attempts to change
3 their sexual orientation or gender identity;

4
5 FURTHER RESOLVED, That the American Bar Association urges all federal, state,
6 local, territorial and tribal governments to enact laws that prohibit state-licensed
7 professionals from using conversion therapy on minors; and

8
9 FURTHER RESOLVED, That the American Bar Association urges all federal, state,
10 local, territorial and tribal governments to protect minors, particularly minors in their
11 care, from being subjected to conversion therapy by state-licensed professionals.

REPORT

The American Bar Association (“ABA”) has a long history of advocating for the rights of those discriminated against on the basis of race, gender, national origin, disability, age, sexual orientation, and gender identity/expression. The ABA has been a leader in opposing and eradicating bigotry and prejudice against LGBTQ⁹ people. It has adopted policies urging the repeal of laws that criminalize private, consensual sexual conduct between consenting adults (1973); condemning hate crimes, including those based on sexual orientation, and urging prosecution of the perpetrators (1987); and calling on the governments of countries with discriminatory laws, regulations, and practices to repeal them and ensure the safety and equal protection under law of all LGBTQ people (2014).

I. Conversion Therapy Causes Serious Harms to LGBTQ People and Especially to LGBTQ Children and Youth

A. The Practices of Conversion Therapy

The practices used in conversion therapy are sometimes referred to as reparative therapy, ex-gay therapy, or sexual orientation change efforts (“SOCE”). In the past, some mental health professionals resorted to extreme measures such as forced institutionalization, forced medication, castration, and electroconvulsive shock therapy to try to stop people from being LGBTQ.¹⁰

According to a 2009 report of the American Psychological Association (the “APA”), the techniques therapists have used to try to change sexual orientation and gender identity include inducing nausea, vomiting, or paralysis while showing the patient homoerotic images; providing electric shocks; having the individual snap an elastic band around the wrist when aroused by same-sex erotic images or thoughts; using shame to create aversion to same-sex attractions; orgasmic reconditioning; and satiation therapy.¹¹

Other techniques have included trying to make patients’ behavior more stereotypically feminine or masculine, teaching heterosexual dating skills, and using hypnosis to try to redirect desires and arousal—all based on the scientifically discredited premise that being LGBTQ is a psychological defect or a disorder that calls for eradication.¹² The current practice guidelines for the National Association for Research & Therapy of Homosexuality (NARTH), which is a group of therapists who endorse and practice conversion therapy in the United States, encourage its members to

⁹ The term “LGBTQ” refers to lesbian, gay, bisexual, transgender, and queer individuals. “Queer” is an umbrella term sometimes used by LGBTQ people to refer to the entire LGBT community; genderqueer.”

¹⁰ See, e.g., David B. Cruz, *Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and Law*, 72 S. Cal. L. Rev. 1297, 1304-05 (1999); Robert J. Cramer, et al, *Weighing the Evidence: Empirical Assessment and Ethical Implications of Conversion Therapy*, 18 Ethics & Behavior 93-114 (2008).

¹¹ Judith Glassgold et al., Am. Psychological Ass’n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 22 (2009), available at <https://www.apa.org/pi/LGBT/resources/therapeutic-response.pdf>.

¹² See *id.*; see generally Timothy F. Murphy, *Redirecting Sexual Orientation: Techniques and Justifications*, 29 J. Sex Research 501 (1992).

consider techniques that include hypnosis, behavior and cognitive therapies, sex therapies, and psychotropic medication, among others.¹³

Today, while some counselors still use aversive conditioning, the techniques most commonly used include a variety of behavioral, cognitive, psychoanalytic, and other practices that try to change or reduce same-sex attraction or alter a person's gender identity. These methods are as equally devoid of scientific validity as the techniques relied upon in the past and pose similarly serious dangers to patients—especially to minors, who are often forced or coerced into undergoing them by their parents or legal guardians, and who are at especially high risk of being harmed. The use of conversion therapy on children and adolescents poses particular ethical problems because minors cannot effectively refuse or resist treatment wanted by their parents or other authorities.

B. Medical and Child Welfare Experts Have Condemned Conversion Therapy as Ineffective, Unsafe, and Completely Out-of-Step with the Current Scientific Understanding of Sexual Orientation and Gender Identity

The nation's leading medical and mental health organizations have concluded that attempts to change a person's sexual orientation or gender identity lack any scientific basis and present significant risks of physical and mental harm to patients who undergo them. For example, the APA has warned that sexual orientation change efforts can pose critical health risks, including "confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, [and] suicidality," among other negative consequences.¹⁴ In particular, the APA determined that "[t]he potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior."¹⁵ And the American Academy of Child and Adolescent Psychiatry found 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."¹⁶

Other professional organizations with similar policy statements include the American Academy of Pediatrics, American Association for Marriage and Family Therapy, American Counseling Association, American Medical Association, American Psychiatric Association, American Psychoanalytic Association, American School Counselor Association, American School Health Association, National Association of Social Workers, and the Pan American Health Organization (a regional office of the World Health Organization). These organizations have stated that sexual orientation change efforts (1) are unnecessary and offer no therapeutic benefit because they attempt to "cure" something that is not an illness and requires no treatment, (2) are contrary to the modern

¹³ See NARTH Institute, <http://www.narth.com/main-issues/born-that-way-theory/> (last visited Apr. 4, 2015).

¹⁴ Glassgold et al., *supra* note 11, at 50.

¹⁵ Am. Psychiatric Ass'n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000), available at www.Psychiatry.org/File%20Library/Advocacy%20and%20Newsroom/Position%20Statements/ps2000_ReparativeTherapy.pdf.

¹⁶ Am. Acad. of Child & Adolescent Psychiatry, *Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51 J. Am. Acad. Child & Adolescent Psychiatry 957 (2012), available at www.Guideline.gov/Content.aspx?id=38417#Section420.

scientific understanding of sexual orientation, (3) are ineffective, and (4) carry a risk of serious harm to patients.¹⁷

Many survivors report that the conversion therapy was ineffective and succeed only in causing them great pain and anxiety. For example, one man who underwent sexual orientation change efforts beginning when he was six years old because his parents were concerned that he was “too feminine” explains that he “was made to feel by doctors that there was something wrong with him” and “was made to feel shame and engage in a fruitless labor that left him sad and broken.”¹⁸ Another survivor reports that his experiences with conversion therapy as a teenager drove him “to the brink of suicide” and led to “depression, periods of homelessness, and drug abuse.”¹⁹

Sadly, other young people who have undergone conversion therapy have not survived. The recent tragic death by suicide of Leelah Alcorn, a transgender teenage girl who was forced to undergo conversion therapy by her parents, further underscores the urgent need to protect LGBTQ youth from these dangerous and discredited practices.²⁰ Statutory prohibitions on conversion therapy protect young people like her from being subjected to these harmful practices and protect families from the terrible pain of discovering that they have been defrauded and

misled by licensed therapists who abuse their state licenses to harm vulnerable families and children.²¹

¹⁷ Am. Acad. of Pediatrics, *Homosexuality and Adolescence*, 92 Pediatrics 631 (1993), available at <http://pediatrics.aappublications.org/content/92/4/631.full.pdf+html>; Am. Ass’n for Marriage and Family Therapy, *2015 Policy on Social and Family Policies* (2015), available at www.AAMFT.org/imis15/content/about_aamft/position_on_couples.aspx; Am. Counseling Ass’n, *Ethical Issues Related to Conversion or Reparative Therapy* (2013), available at www.Counseling.org/news/updates/2013/01/16/Ethical-Issues-Related-to-Conversion-or-Reparative-Therapy; Am. Med. Ass’n, *Health Care Needs of Gay Men and Lesbians in the United States*, 275 J. Am. Med. Ass’n 1354 (1996), available at http://www.hawaii.edu/hivandaids/Health_Care_Needs_of_Gay_Men_and_Lesbians_in_the_United_States.pdf; Am. Psychiatric Ass’n, *supra* note 15; Am. Psychoanalytic Ass’n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at <http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender>; Am. Sch. Counselor Ass’n, *The Professional School Counselor and LGBTQ Youth* (2014), available at http://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf; Am. Sch. Health Ass’n, *Quality Comprehensive Sexuality Education* (2007); Nat’l Ass’n of Soc. Workers, “Reparative” or “Conversion” Therapies for Lesbians and Gay Men (2000), available at www.NASWDC.org/diversity/lgb/reparative.asp; Pan Am. Health Org.: Regional Office of the World Health Organization, “Cures” for an Illness That Does Not Exist: Purported Therapies Aimed at Changing Sexual Orientation Lack Medical Justification and Are Ethically Unacceptable (2012), available at www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703.

¹⁸ See #BornPerfect: Survivor Stories & Survivor Network, National Center for Lesbian Rights, <http://www.nclrights.org/bornperfect-survivor-stories-and-survivor-network/> (last visited Apr. 8, 2015) (on file with organization).

¹⁹ *Id.*

²⁰ Sharon Coolidge, *Transgender Teen: ‘My Death Needs to Mean Something,’* Cincinnati.com, (Dec. 31, 2014, 2:03 PM), <http://www.cincinnati.com/story/news/2014/12/30/transgender-teen-death-needs-mean-something/21044407/>; see also Shannan Wilber, *NCLR Statement on the Loss of Leelah Alcorn* (Jan. 2, 2015), <http://www.nclrights.org/press-room/press-release/nclr-statement-on-the-loss-of-leelah-alcorn/>.

²¹ See Wilber, *supra* note 20.

C. Conversion Therapy Is Particularly Dangerous for Minors

Conversion therapy constitutes a particularly grave health risk for LGBTQ youth.²² As documented by Dr. Caitlin Ryan's research through the Family Acceptance Project, conversion therapy often occurs within the context of other rejecting behaviors and attitudes within the family.²³ As Ryan explains, "[p]arents who reject their LGBT children are typically motivated by trying to help, not hurt them,"²⁴ which makes parents vulnerable to false and misleading claims by therapists that treatment can change a child's sexual orientation or gender identity. Ryan's research found that "[m]any families respond to their LGBT and gender-diverse children by isolating them, preventing access to support, sending them to clergy and providers to try to change their LGBT identity and using religion to condemn or deny their LGBT identity."²⁵ Parents are "often surprised and even shocked to learn that their gay children experience these reactions as rejection and abuse."²⁶ This is an enormous source of familial conflict, and puts children at risk of psychological stress, loss of hope, depression, and poor self-esteem.²⁷

Family conflict over a youth's sexual orientation and gender identity places youth at high risk of serious, long-term negative impacts on their health and well-being. As documented by Ryan and others, there is a strong correlation between family acceptance and lasting positive impacts on a young person's health and well-being. Conversely, LGBTQ youth who are rejected by their families because of their sexual orientation or gender expression/identity are at a dramatically increased risk of significant negative health outcomes, including serious depression, substance abuse, HIV infection, and suicide attempts.²⁸

According to Ryan's research, gay, lesbian, and bisexual young adults who experienced high levels of family rejection in adolescence based on their sexual orientation—of which conversion therapy is one form—are 8.4 times more likely to report having attempted suicide and 5.9 times more likely to report high levels of depression than peers from families reporting no or low levels of rejection.²⁹ Transgender youth are at even higher risk of depression and suicide attempts—45% of transgender

²² See generally 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>. As many as one in three LGBTQ youth have been subjected to conversion therapy. Decl. of Caitlin Ryan in Support of Equality California's Amicus Brief at 5, *Welch v. Brown*, 907 F. Supp. 2d 1102 (E.D. Cal. 2012), *rev'd sub nom. Pickup v. Brown*, 728 F.3d 1042 (9th Cir. 2013) and *rev'd sub nom. Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014) (No. 2:12-CV-02484-WBS-KJN); see also *Coalition LGBT Advocate Letter against Conversion Therapy*, National Center for Lesbian Rights (2014), <http://www.nclrights.org/wp-content/uploads/2014/06/Conversion-Therapy-LGBT-Advocate-Letter.pdf> ("Youth forced to undergo 'therapy' that attempts to fix an identity that is purportedly broken does nothing but increase the already disproportionate risks LGBT youth face.").

²³ See Ryan & Rees, *supra* note 22.

²⁴ Caitlin Ryan, *Parents Don't Have to Choose between Their Faith and Their LGBT Kids*, Wash. Post, Jan. 7, 2015, http://www.washingtonpost.com/national/religion/parents-dont-have-to-choose-between-their-faith-and-their-LGBT-kids-commentary/2015/01/07/e3ec4a9c-96bc-11e4-8385-866293322c2f_story.html.

²⁵ *Id.*

²⁶ Rees & Ryan, *supra* note 22, at 8.

²⁷ *Id.* at 9.

²⁸ Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, J. of Am. Acad. of Pediatrics 346, 350-51 (2009).

²⁹ *Id.*

people between the ages of 18 and 24 report at least one suicide attempt—and exposure to conversion therapy only heightens suicidality.³⁰

Moreover, while family acceptance of LGBTQ youth is increasing, the younger age at which youth are identifying at LGBTQ has created a heightened window of vulnerability, exposing more children to the risk of family rejection at earlier ages. In its 2006 study, the National Gay and Lesbian Task Force reported that 50% of gay teens experienced a negative reaction from their parents when they came out.³¹ Notably, in its 2009 investigation of conversion therapies, the APA noted that it undertook that study in part based upon “concerns about the resurgence of individuals and organizations that actively promoted the idea of homosexuality as a developmental defect or a spiritual and moral failing and that advocated psychotherapy and religious ministry to alter homosexual feelings and behaviors.”³²

Family rejection is also a significant factor leading to homelessness and entrance into the child welfare and juvenile justice systems, where LGBTQ youth are at risk of being subjected to efforts to change their sexual orientation or gender identity.³³ According to one study, 26% of LGBTQ teens were kicked out of their homes when they disclosed their sexual orientation to their parents.³⁴ This contributes to an epidemic of homelessness among this population. According to the United States Interagency Council on Homelessness, an estimated 20-40% of homeless youth are LGBTQ, more than double the number of LGBTQ people in the general population.³⁵ Similarly, LGBTQ youth are also dramatically overrepresented in the juvenile justice system and those who enter the juvenile justice system are “twice as likely to have experienced family conflict, child abuse, and homelessness as other youth.”³⁶

³⁰ Jaime M. Grant et al., *National Transgender Discrimination Survey* (2011).

³¹ Nicholas Ray, *Lesbian, Nat'l Gay & Lesbian Task Force Policy Institute & Nat'l Coal. for the Homeless, Gay, Bisexual, and Transgender Youth: An Epidemic of Homelessness 2* (2006). The most recent social science research indicates that gay and lesbian youth are becoming aware of their same-gender attractions at approximately age nine for boys, and at age ten for girls. See Wesley Ware, Juvenile Justice Project of La., *Locked Up & Out: Lesbian, Gay, Bisexual, & Transgender Youth in Louisiana's Juvenile Justice System* 14 (2010), available at <http://jjpl.org/site/wp-content/uploads/2011/07/locked-up-and-out.pdf>.

³² Judith Glassgold et al., Am. Psychological Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 12 (2009), available at <https://www.apa.org/pi/LGBT/resources/therapeutic-response.pdf>.

³³ Ray, *supra* note 31, at 2; see also Nat'l Ctr. for Lesbian Rights, *LGBTQ Youth in the Foster Care System* 1 (2006), available at <http://nwnetwork.org/wp-content/uploads/2012/08/2006-NCLR-LGBTQ-Youth-in-the-Foster-Care-System.pdf>.

³⁴ Nat'l Ctr. for Lesbian Rights, *LGBTQ Youth in the Foster Care System*, *supra* note 33, at 1; see also Nat'l Ctr. for Lesbian Rights, *LGBTQ Youth in the Juvenile Justice System* 1-2 (2006), available at <http://www.nclrights.org/legal-help-resources/resource/lgbtq-youth-in-the-juvenile-justice-system-fact-sheet/>. LGBTQ youth routinely experience harassment and abuse within the child welfare system from staff, foster parents, and other foster youth peers. See also Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 Nev. L.J. 101, 121 (2006), available at <http://www.equityproject.org/pdfs/Fedders%20-%20Coming%20Out%20for%20Kids.pdf>.

³⁵ *LGBTQ Youth Homelessness in Focus*, United States Interagency Council on Homelessness, http://usich.gov/issue/lgbt_youth/lgbtq_youth_homelessness_in_focus/ (last visited April 6, 2015).

³⁶ Jerome Hunt & Aisha Moodie-Mills, Center for American Progress, *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBTQ Youth in the Juvenile Justice System* 2 (June 29, 2012), available at http://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.

In addition to being at heightened risk of ending up in the child welfare and juvenile justice systems, LGBTQ youth are at heightened risk of being subjected to attempts—both by therapists and others—within those systems. Community organizations and state agencies designed to assist youth who have been rejected by their families are often not trained to provide culturally competent care and assistance to LGBTQ youth. As the Center for American Progress documented in its 2012 report, programs such as “foster care [placements], health centers, and other youth-serving institutions[] are often ill-prepared or unsafe for gay and transgender youth due to institutional prejudice, lack of provider and foster-parent training, and discrimination against gay and transgender youth by adults and peers.”³⁷ While no hard data exists, many juvenile justice advocates and youth who have been in the juvenile justice system report that LGBTQ youth are often pressured to change their sexual orientation or gender identity, including by judges, therapists, and other staff.³⁸

II. Legal Protections from Conversion Therapy

Despite being overwhelmingly rejected by the medical community, currently only three jurisdictions in the United States protect families from mental health professionals—licensed and authorized to practice by the state—engaging in efforts to change a young person’s sexual orientation or gender identity.³⁹

In 2012, California became the first state to prohibit state-licensed mental health professionals from practicing conversion therapy on minors.⁴⁰ New Jersey followed in 2013.⁴¹ Most recently in 2014, the District of Columbia became the third jurisdiction to pass such a law. The D.C. Council approved the bill unanimously on December 2, 2014, and Mayor Vincent Gray signed the bill into law on December 22, 2014.⁴² These laws prohibit state-licensed therapists from engaging in scientifically discredited and dangerous practices that try to change a young person’s sexual orientation or gender identity.

The prohibitions in California, the District of Columbia, and New Jersey describe the practice of conversion therapy as “sexual orientation change efforts” (SOCE), which is the scientific term used by the American Psychological Association and other groups that have warned patients about these dangerous practices. These laws provide that state-licensed mental health providers may not engage in sexual orientation change efforts with a patient under the age of eighteen.

The legal definition of SOCE encompassed by these bills includes any practices by mental health providers that seek to change an individual’s sexual orientation or gender identity. This includes

³⁷ *Id.*

³⁸ See Katayoon Majd et al., Legal Servs. for Children, Nat’l Juvenile Defender Ctr. & Nat’l Ctr. for Lesbian Rights, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), available at http://www.equityproject.org/pdfs/hidden_injustice.pdf.

³⁹ See Cal. Bus. & Prof. Code §§ 865-865.2 (West); D.C. Code § 7-1231.14a; N.J. Stat. Ann. §§ 45:1-54-55 (West). According to the Movement Advancement Project, 83% of the LGBTQ population resides in states with no laws protecting minors from conversion therapy. See Conversion Therapy Laws, Movement Advancement Project, http://www.LGBTmap.org/equality-maps/conversion_therapy (last visited Apr. 4, 2015).

⁴⁰ See Cal. Bus. & Prof. Code §§ 865-865.2 (West).

⁴¹ See N.J. Stat. Ann. §§ 45:1-54-55 (West).

⁴² D.C. Code §§ 7-1231.02(25A), 7-1231.14a; see also Conversion Therapy for Minors Prohibition Amendment Act of 2013, D.C. Act 20-530 (2014).

efforts to change behaviors or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex. The laws also state that SOCE do not include therapies that provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, including sexual orientation-neutral efforts to prevent or address unlawful conduct or unsafe sexual practices. They specifically exempt therapy designed to aid a person in a transition from one gender to another.

III. Litigation Involving Conversion Therapy

A. Litigation Defending Laws Protecting Minors from Conversion Therapy

Two federal courts of appeals have upheld state laws prohibiting licensed mental health professionals from subjecting minor patients to conversion therapy against challenges arguing that such laws violate the First Amendment or the right of parents to control their children's upbringing. These courts have concluded that these statutes are a valid exercise of the state's power to regulate the medical profession and to protect public health and safety. Comparable to other laws that protect the public against ineffective and unsafe treatment by licensed professionals, these laws ensure that state-licensed mental health providers cannot subject minor patients to dangerous, ineffective, and discredited practices. Further, they ensure that those providers cannot defraud and mislead vulnerable parents—who count on the law to regulate medical professionals—into unknowingly placing their children at risk of such serious harms. These state statutes are grounded in existing state licensing protocols and administrative mechanisms that regulate licensed mental health professionals.

i. *Pickup v. Brown*: Upholding California SB 1172

State and federal courts have upheld prohibitions against conversion therapy and allowed state regulation of its practitioners. In *Pickup v. Brown*, the Ninth Circuit upheld a California law prohibiting licensed mental health practitioners from providing conversion therapy to children under the age of eighteen.⁴³ The law was supported by a large and diverse group of prominent mental health professional organizations and social services providers, including the California Psychological Association, the California Division of the American Association for Marriage and Family Therapy, the National Association of Social Workers, and others.⁴⁴ Nevertheless, a small group of therapists and parents wishing to provide conversion therapy to their minor patients and children challenged the law.

In response to constitutional claims raised by the challengers, the Ninth Circuit found that “[p]ursuant to its police power, California has authority to regulate licensed mental health providers’ administration of therapies that the legislature has deemed harmful.”⁴⁵ Because the California prohibition regulated treatment, not protected speech, and the legislature had determined, based upon the overwhelming consensus of medical authority, that conversion therapy

⁴³ 740 F.3d 1208 (9th Cir.), *cert. denied*, 134 S. Ct. 2871 (2014) and *cert. denied sub nom. Welch v. Brown*, 134 S. Ct. 2881 (2014).

⁴⁴ See, e.g., Brief of Amici Curiae American Association for Marriage and Family Therapy – California Division et al. Supporting Defendants-Appellees Urging Affirmance, *Pickup v. Brown*, 740 F.3d 1208, 1227 (9th Cir.), *cert. denied*, 134 S. Ct. 2871 (2014), and *cert. denied sub nom. Welch v. Brown*, 134 S. Ct. 2881 (2014) (No. 12-17681).

⁴⁵ *Pickup*, 740 F.3d at 1229.

is ineffective and unsafe, the state had the authority to prevent licensed therapists from using the practice on minor children.⁴⁶

ii. *King v. Christie*: Upholding New Jersey AB 3371

The Third Circuit came to similar conclusions in *King v. Christie*, upholding a New Jersey law that prohibited state-licensed therapists from trying to change the sexual orientation or gender identity of minor patients.⁴⁷ The court upheld New Jersey’s prohibition on conversion therapy as a permissible restriction on professional speech. The court found that mental health providers’ communications with their patients in the course of providing treatment constituted professional speech, and that restrictions on that speech trigger intermediate scrutiny under the First Amendment.⁴⁸ The court ruled that New Jersey’s prohibition on this type of professional speech easily passed review under intermediate scrutiny because

It is not too far a leap in logic to conclude that a minor client might suffer psychological harm if repeatedly told by an authority figure that her sexual orientation—a fundamental aspect of her identity—is an undesirable condition. Further, if [conversion therapy] counseling is ineffective—which, as we have explained, is supported by substantial evidence—it would not be unreasonable for a legislative body to conclude that a minor would blame herself if her counselor’s efforts failed.⁴⁹

Given the “substantial evidence” of harm presented to state legislators, the court found that their concern about conversion therapy—and thus, the regulation—was valid.⁵⁰

B. Affirmative Litigation

In early 2015, a New Jersey Superior Court concluded that “any expert opinion based on the initial premise that homosexuality is a mental disorder or abnormal is unreliable and . . . barred.”⁵¹ The lawsuit charged that a pro-conversion therapy organization, Jews Offering New Alternatives for Healing (“JONAH”), its founder, and a counselor violated New Jersey’s Consumer Fraud Act by claiming that their counseling services could cure clients of being gay. The court excluded experts from testifying that homosexuality is a disorder, finding that “the generally accepted scientific theory is that homosexuality is not a mental disorder and not abnormal” given the removal of homosexuality from the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) and the “countless organizations [that] have followed the [American Psychiatric Association’s] lead in

⁴⁶ *Id.*

⁴⁷ *King v. Christie*, 767 F.3d 216 (3d Cir. 2014).

⁴⁸ *Id.* at 233

⁴⁹ *Id.* at 239.

⁵⁰ *Id.*

⁵¹ *Ferguson v. JONAH*, No. L-5473-12, slip op. at 27 (N.J. Super. Ct. Feb. 5, 2015).

removing homosexuality from its listings of mental disorders.”⁵² The court went on to rule that professional claims that being LGBTQ is a curable mental disorder constitute consumer fraud.⁵³

C. Criminal Cases

Criminal charges have been brought in some cases where the mistreatment conversion therapy survivors have experienced rises to the level of criminal conduct.

i. Jeff White

Criminal charges are pending in cases of alleged sexual abuse by practitioners of conversion therapy, such as a case involving allegations by Jeff White against his former school, the Bethel Baptist School in Walls, Mississippi. White’s parents sent their son to Bethel Baptist because the school claimed that they could cure their son of his homosexuality.⁵⁴ White, now an adult, says that one of his teachers would regularly schedule “appointments” with White each Wednesday in his classroom or an office and would force him to have oral or anal sex because of his sexual orientation.⁵⁵ “He would rape me because I was gay and because it would make me hate men and make me change,” White said.⁵⁶ White endured this abuse from 1996 to 1999.⁵⁷ White is now the executive director of the Mississippi Gulf Coast Rainbow Center, the first LGBTQ center in the state.

ii. Matthew Fenner

In December 2014, a grand jury indicted five members of a church in Spindale, North Carolina for felony charges related to the attack and beating of a fellow church member, Matthew Fenner, who identifies as gay.⁵⁸ The charges result from at least three instances where church members attacked Fenner in attempts to change his sexual orientation.⁵⁹ In a January 2013 incident, Fenner was threatened with confinement for two days, slapped, strangled and verbally assaulted to “free” him from “homosexual demons.”⁶⁰ Fenner said that as many as fifteen to twenty college-age men assaulted him, screaming and shaking him, punching his chest and grabbing his head while telling

⁵² *Id.* at 23, 26.

⁵³ See *Ferguson v. JONAH*, No. L-5473-12 (N.J. Super. Ct. Feb. 10, 2015) (order granting plaintiffs’ motion for partial summary judgment).

⁵⁴ Cavan Sieczkowski, *Man Claims Church Teacher Raped Him as a Gay Cure*, The Huffington Post (Sept. 3, 2014, 6:59 PM), http://www.huffingtonpost.com/2014/09/03/church-teacher-rape-gay-cure_n_5760782.html.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Evelyn Schlatter, Southern Poverty Law Center, *North Carolina Church Members Indicted for Kidnapping and Assaulting Gay Man*, Salon (Dec. 13, 2014, 10:00 AM), http://www.salon.com/2014/12/13/north_carolina_church_members_indicted_for_kidnapping_and_assaulting_gay_man_partner/.

⁵⁹ Matt Comer, *Anti-Gay N.C. Church Members Indicted on Felony Kidnapping, Assault Against Gay Man*, qnotes (Dec. 10, 2014, 12:29 PM), <http://goqnotes.com/33138/anti-gay-n-c-church-members-indicted-on-felony-kidnapping-assault-against-gay-man/>.

⁶⁰ Schlatter, *supra* note 58.

him to repeat certain phrases.⁶¹ “I honestly thought I was going to die,” said Fenner.⁶² “My head was like being flung back, my vision was going brown and black. I couldn't breathe and I'm sitting here thinking if I don't get out of this, I'm probably going to die.”⁶³

The church, the Word of Faith Fellowship (WOFF), has faced numerous accusations of abuse and cult-like behavior over three decades, including other allegations of abusive attempts at conversion therapy that spurred a Department of Justice hate crime investigation in 2012.⁶⁴

In sum, the trend of litigation in this area underscores how discredited the practice of conversion therapy has become. Federal and state courts and law enforcement agencies now acknowledge that conversion therapy on minors can be regulated as a harmful practice by state governments, that false claims that a person's sexual orientation or gender identity can be changed are actionable under state consumer protection laws, and that in some instances extreme efforts to change a person's sexual orientation or gender identity can constitute criminal conduct.

IV. Conclusion

The purpose of this resolution is to put the American Bar Association on record as recognizing the basic right of LGBTQ people to be free from harmful and ineffective “treatments” to change the core of who they are. It calls on lawyers to take action to protect LGBTQ people from these dangerous and discredited practices through legislation, litigation, and diplomacy and to support those engaging in these efforts. Before we can be truly equal, the very right of LGBTQ people to exist must be made law.

Respectfully submitted,
Jim Holmes, Chair
ABA Commission on Sexual Orientation and Gender Identity
August 2015

⁶¹ *Id.*

⁶² *WNC Church Members Indicted on Assault, Kidnapping Charge*, WSPA (Jan. 6, 2015, 6:36 PM), <http://www.wspa.com/story/27588131/wnc-church-members-indicted-on-assault-kidnapping-charge>.

⁶³ *Id.*

⁶⁴ Schlatter, *supra* n. 62.

GENERAL INFORMATION FORM

Submitting Entity: ABA Sexual Orientation and Gender Identity Commission (“SOGI”)

Submitted By: Jim Holmes, Chair, SOGI

1. Summary of Resolution(s). The proposed Resolution is to put the American Bar Association on record as recognizing that lesbian, gay, bisexual, transgender, and queer (LGBTQ) people have the right be free from attempts to change their sexual orientation or gender identity, which have been condemned as ineffective and harmful by every major medical and mental health association in the country. Moreover, it would also put the ABA on record as supporting the safety, development, and affirmation of all LGBTQ young people, which furthers the ABA’s goals of promoting the human rights protections for all persons, irrespective of who they are or who they love. Finally, it would put the ABA on record as urging all federal, state, territorial, and local legislative bodies and governmental agencies to enact laws protecting minors from being forced or coerced into conversion therapy at the hands of state-licensed mental health professionals.
2. Approval by Submitting Entities. The Commission on Sexual Orientation and Gender Identity vote to support this recommendation and resolution on April 14, 2015 via teleconference.
3. Has this or a similar resolution been submitted to the House or Board previously? No
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Previously, the ABA recognized through its 2014 Resolution that LGBT people have a human right to be free from discrimination, threats, and violence based on their LGBT status. Through this 2014 Resolution, the ABA condemned all laws, regulations, rules, or practices that discriminate individuals on the basis of LGBT identity. Moreover, the ABA’s 2014 Resolution urged the governments of other nation-states to repeal any discriminatory laws, rules, regulations, or practices prejudicial to LGBT individuals or denied LGBT people the safety and equal protection of the law.

This 2015 Resolution therefore buttresses the goals and initiatives of the ABA’s 2014 Resolution because conversion therapy denigrates the psychological well-being and personal dignity of LGBTQ people. Conversion therapy falsely purports to claim that there is something fundamental pathological, deviant, and abhorrent about being LGBT. Modern science firmly recognizes that being LGBT is not a mental disorder. This 2015 Resolution, asking the ABA to denounce conversion therapy, therefore supports the ABA’s prior efforts aimed at eradicating discrimination, prejudice, and violence directed at LGBT people.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? Non-applicable.
6. Status of Legislation. Thus, the National Center for Lesbian Rights (NCLR) has helped pass legislation in three jurisdictions in the United States: (1) California – 2012; (2) New Jersey – 2013; and (3) Washington D.C. – 2014. Legislation is pending in the following states across

the United States that would protect LGBTQ youth from conversion therapy: Arizona, Colorado, Connecticut, Florida, Illinois Iowa, Massachusetts, Minnesota, Nevada, New York, Ohio, Oregon, Pennsylvania, Texas, Vermont, Washington, and West Virginia.

Resolution H.Con.Res. 36 was introduced in the U.S. House on April 14, 2015. The Resolution Expresses the sense of Congress that conversion therapy, including efforts by mental health practitioners to change an individual's sexual orientation, gender identity, or gender expression, is dangerous and harmful and should be prohibited from being practiced on minors. The Resolution was assigned to the House Energy and Commerce Committee.

H.R. 2450: was introduced by Rep. Ted Lieu (DCA) in the U.S. House on May 19, 2015. The bill would prohibit, as an unfair and deceptive act or practice, commercial sexual orientation conversion therapy.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. If this recommendation and resolution are approved by the House of Delegates, the sponsors will use that approval to help work with advocacy organizations across the United States to promote the foundational goal that all LGBTQ people deserve to be free from the coercive practices and pressures of conversion therapy. The approval of this recommendation and resolution will greatly enhance the ABA's ability to educate the public about the dangerous and discredited practices of conversion therapy. In particular, the ABA will be able to increase its influence on the legal profession across the United States, underscoring the importance of sexual and gender equality and justice for all individuals.
8. Cost to the Association. (Both direct and indirect costs) The adoption of this recommendation and resolution may result in minor indirect costs associated with staff time devoted to receiving and reviewing reports on conversion therapy, meetings with lawyers, advocates, and policymakers from LGBT legal advocacy organizations to develop and implement comprehensive training materials about the dangers of conversion therapy, and disseminating this literature to interested individuals and groups.
9. Disclosure of Interest. (If applicable) There are no conflicts of interest.
10. Referrals. This recommendation and resolution is in the process of being referred to all Sections and Divisions.
11. Contact Name and Address Information.

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The proposed Resolution is to put the American Bar Association on record as recognizing that lesbian, gay, bisexual, transgender, and queer (LGBTQ) people have the right be free from attempts to change their sexual orientation or gender identity, which have been condemned as ineffective and harmful by every major medical and mental health association in the country, and as supporting legislation, regulation, and litigation to bring an end to conversion therapy, including laws protecting minors from being subjected to conversion therapy by state-licensed mental health professionals

2. Summary of the Issue that the Resolution Addresses

This proposed Resolution addresses the discredited and dangerous practice of conversion therapy, which exposes LGBTQ people to harmful, unethical, and fraudulent attempts to pathologize their sexual and gender identities. These practices are especially dangerous for LGBTQ youth, who experience them as family rejection. LGBTQ youth who are subjected to conversion therapy are at high risk of serious, lasting harms, including depression, substance abuse, and suicide attempts.

3. Please Explain How the Proposed Policy Position will address the issue

The proposed Resolution would put the ABA on record as: supporting the efforts of lawmakers and policy makers to protect LGBTQ people from conversion therapy through appropriate laws and regulations; supporting the efforts of attorneys, legal organizations, and prosecutors to bring appropriate tort, consumer protection, and criminal cases to vindicate the rights of those harmed by these practices; and supporting the efforts of the United States to put an end to conversion therapy through legislation, agency action, and diplomacy.

4. Summary of Minority Views

Not aware of any minority views at this time.

