



Testimony of the Boston Bar Association

Before the Joint Committee on Children, Families and Persons with Disabilities in Support of H.140, An Act Relative to Abusive Practices to Change Sexual Orientation and Gender Identity in Minors

Presented by Attorney Elizabeth Roberts

March 5, 2019

House Chair Khan, Senate Chair Chang-Diaz, and members of the Joint Committee on Children, Families and Persons with Disabilities, I am submitting testimony on behalf of the Boston Bar Association, in my capacity as a member of the Family Law Section Steering Committee.

The BBA is pleased to have the opportunity to offer this written testimony in support of House Bill 140 (H.140) An Act Relative to Abusive Practices to Change Sexual Orientation and Gender Identity in Minors.

The BBA has a long history of defending principles of non-discrimination and equal protection. We recognize, as attorneys, that lesbian, gay, bisexual, transgender, and queer (LGBTQ) young people should enjoy the fundamental human right to be free from harmful and ineffective “treatments” intended to change their innate sexual orientation or gender identity. Currently, fifteen states, including New York, New Hampshire, Vermont, and Connecticut, have passed legislation barring the use of

conversion therapy on minors. We hope that Massachusetts will join these states in protecting the rights of LGBTQ youth by passing H.140.

The legislation would ban “licensed professionals” from engaging in or advertising for “sexual orientation and gender identity change efforts,” often referred to as conversion or reparative therapy, on minors. Medical and child welfare experts agree that this so-called therapy does not align with current scientific understandings of sexual orientation and gender identity and is both ineffective and unsafe. The American Psychological Association, American Medical Association, American Academy of Pediatrics, National Association of Social Workers, and the Pan American Health Organization, among many others, have all issued policy statements condemning the practice. These statements make clear that conversion therapy is unnecessary as it attempts to “cure” something that is not an illness or disorder, is ineffective in bringing about the “change” sought, and poses a high risk of seriously harming patients, especially minors.

Furthermore, the American Bar Association has urged “governments to enact laws that prohibit state-licensed professionals from using conversion therapy on minors,” based on the recognition that LGBTQ people should enjoy the basic right “to be free from attempts to change their sexual orientation or gender identity.”

The use of conversion therapy typically occurs within the context of familial rejecting behaviors and attitudes, and, no matter the parents’ intentions in seeking this treatment, will typically be read by the youth as a rejection of their sexual orientation

and/or gender identity—that is to say, a repudiation of who they are as human beings. Many studies have shown that LGBTQ minors who face this type of rejection are at a much higher risk of negative health and social outcomes. These youths experience significantly higher rates of depression, substance use, suicide attempts, as well as homelessness and entrance into the child welfare and juvenile justice systems. Adults would still be free to choose conversion therapy, no matter how ill-advised, for themselves. But given the substantial likelihood of serious psychological and social harm to minors who are subjected to conversion therapy, it is essential that they are protected from the imposition of this misguided treatment at the direction of their parents or guardians. The BBA urges passage of this legislation to protect Massachusetts youth and children from these abusive practices.

In the face of arguments by opponents of the ban that it may violate the First Amendment, similar bans in other jurisdictions have repeatedly been upheld as a valid exercise of the state’s power. For example, in *Pickup v. Brown*, the Ninth Circuit upheld the law prohibiting the use of conversion therapy on minors, holding 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.”¹ In the end, regulations like those at issue in California, and H.140 before the Committee today, do not regulate protected speech but rather protect vulnerable young people

¹ 740 F.3d 1208,1229 (9th Cir.), *cert. denied*, 134 S. Ct. 2871 (2014) and *cert. denied sub nom. Welch v. Brown*, 134 S. Ct. 2881 (2014).

from treatments deemed ineffective and unsafe by the overwhelming consensus of medical and child welfare experts.

Similarly, the Third Circuit, in *King v. Christie*, upheld the New Jersey ban on the use of conversion therapy on minors, finding that it was a permissible restriction on professional speech.² The Court held that the valid New Jersey ban easily passed review under an intermediate scrutiny standard, as it was reasonable to conclude a minor client might suffer harm from the use of the practice, given the “substantial evidence” of the likelihood of such harm presented to state legislators. Ultimately, the existing case law makes clear that the bills before the Committee are valid exercises of the Commonwealth’s power to regulate medical professionals and protect public health and safety.

The youth and families of Massachusetts deserve assurance that minors will not face harmful or abusive treatment when seeking assistance from licensed professionals. We believe this bill will, by ensuring the medical and psychological treatment for minors follows the highest ethical standards, offer necessary protection of the rights and interests of LGBTQ youth and families.

² 767 F.3d 216 (3d Cir. 2014).