

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2983

FISCAL
NOTE

BY DELEGATES PORTERFIELD AND BIBBY

[Introduced February 11, 2019; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §47-12-1, §47-12-2, §47-12-3, and §47-12-4, all relating to therapeutic rights
3 of minors with regard to treatment by licensed therapists intended to change the sexual
4 attractions or sexual behaviors of a minor, or a minor's self-declared gender identity; listing
5 prohibited practices; providing criminal penalties; specifying that certain practices are
6 unethical and subject licensed therapists to professional discipline, including the possibility
7 of revocation of the therapist's license; and providing certain protections of minor client
8 rights.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. THERAPEUTIC RIGHTS OF MINORS.

§47-12-1. Definitions.

1 As used in this article:

2 "Licensed therapist" means:

3 (A) A mental health professional such as a physician or osteopathic physician engaged in
4 the practice of psychiatry or mental health therapy licensed under §30-3-1 et seq. or §3-14-1 et
5 seq. of this code;

6 (B) A psychologist or psychology resident qualifying to engage in the practice of
7 psychology or mental health therapy licensed under §30-21-1 et seq. of this code;

8 (C) An advanced practice registered nurse or advanced practice registered nurse intern
9 specializing in psychiatric mental health nursing licensed under §30-7-1 et seq. of this code;

10 (D) A clinical social worker or certified social worker licensed under §30-30-1 et seq. of
11 this code;

12 (E) A marriage and family therapist or associate marriage and family therapist licensed
13 under §30-31-1 et seq. of this code; and

14 (F) A clinical mental health counselor or associate clinical mental health counselor
15 licensed under §30-31-1 et seq. of this code.

16 “Minor” means a person under the age of 18.

17 “Professional licensing board” means a board that licenses a licensed therapist.

§47-12-2. Practices subject to criminal punishment.

1 (a) Any person, including, but not limited to, a licensed therapist, who engages in any of
2 the practices listed in subsection (b) of this section for the intended purpose of attempting to
3 change the sexual attractions or sexual behaviors of a minor, or a minor’s self-declared gender
4 identity, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
5 correctional facility for at least five years and no more than 10 years, and fined at least \$10,000
6 but not more than \$50,000:

7 (b) Practices punishable by subsection (a) of this section are:

8 (1) Castration;

9 (2) Electroshocking of the genitals; and

10 (3) Performing a lobotomy.

11 (c) Any person, including, but not limited to, a licensed therapist, who engages in any of
12 the practices listed in subsection (d) of this section for the intended purpose of attempting to
13 change the sexual attractions or sexual behaviors of a minor, or a minor’s self-declared gender
14 identity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for one
15 year, and fined at least \$1,000 but not more than \$5,000.

16 (d) Practices punishable by subsection (c) of this section are:

17 (1) Electroshocking body parts other than the genitals;

18 (2) Penetrating fingers with needles;

19 (3) Tying down hands and placing blocks of ice on the hands;

20 (4) Wrapping heat coils around the hands;

21 (5) Subjecting an individual to ice baths;

22 (6) Injecting drugs to induce vomiting;

23 (7) Physically restraining the minor;

24 (8) Any other aversion techniques that involve inflicting physical pain or suffering on the
25 minor; and

26 (9) Verbal abuse, bullying, deliberate humiliation, or deliberate shaming.

27 (e) A licensed therapist who engages in any of the practices identified in subsections (b)
28 and (d) of this section is also subject to professional discipline, including revocation of the
29 therapist's license, by the applicable professional licensing board or body that issued or has
30 jurisdiction over the therapist's license.

§47-12-3. Unethical practices.

1 (a) In addition to the practices identified in §47-12-2 of this code, the following are unethical
2 practices for licensed therapists:

3 (1) Using manipulation, coercion, or punishment to achieve a specific sexual attraction,
4 sexual behavior, or gender identity outcome for a minor;

5 (2) Violating the sexual boundaries of a minor, including using nudity in therapy sessions;

6 (3) Urging a minor client to disregard, or discouraging a minor client from following, the
7 minor client's personal beliefs about religion, faith, or sexuality, or urging a minor client to engage
8 in behaviors contrary to those beliefs; or

9 (4) Explicitly or implicitly guaranteeing a change in feelings of sexual attraction, sexual
10 behaviors, or gender identity perception as a result of therapy.

11 (b) A licensed therapist who engages in any of the practices identified in subsection (a) of
12 this section is subject to professional discipline, including the possibility of revocation of the
13 therapist's license, by the applicable professional licensing board or body that issued or has
14 jurisdiction over the therapist's license.

§47-12-4. Protection of minor client rights.

1 (a) Every minor has the right to voluntarily consult with, and seek and receive professional
2 assistance from, a licensed therapist regarding:

3 (1) Feelings of sexual attraction;

4 (2) Sexual behaviors;
5 (3) Gender identity issues, and
6 (4) Emotional issues that may be relevant to such attractions, behaviors, or gender identity
7 issues.

8 (b) The minor's right to professional consultation and assistance under subsection (a) of
9 this section is subject to:

10 (1) Any requirement under applicable law, including §49-2-803 of this code, that a therapist
11 must report a particular matter or information to law-enforcement authorities; and

12 (2) The consent or authorization of the minor's parent or legal guardian under any
13 applicable section of this code.

14 (c)(1) If a licensed therapist believes, or in the course of therapy comes to believe, that a
15 minor client has been or probably has been brought to the therapist for therapy involuntarily, under
16 threat or coercion, or otherwise against the minor client's will, the licensed therapist may inquire
17 with the minor client regarding all circumstances relevant to that question.

18 (2) If the licensed therapist concludes that the minor client has been or probably has been
19 brought to therapy involuntarily, under threat or coercion, or otherwise against the minor client's
20 will, the licensed therapist may terminate therapy regardless of whether the minor's parent or legal
21 guardian agrees that therapy should be terminated. The licensed therapist is not subject to liability
22 or to professional discipline for the decision to terminate therapy.

NOTE: The purpose of this bill is to provide therapeutic rights to minors with regard to treatment by licensed therapists intended to change the sexual attractions or sexual behaviors of minors, or the self-declared gender identity minors.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.