

Agenda
Eau Claire County
Committee on Judiciary and Law Enforcement
Tuesday, September 18, 2018 – 6:45 PM
Courthouse – Room 1278

1. Call to Order
2. Public Comment
3. File No. 18-19/057 Resolution on Conversion Therapy with Amendment No.1 – discussion/action
4. Adjourn

Posted: 09/14/18

Copy: Committee Members
Media

Note: Upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 715-839-4710 (FAX) 8391669 or (TDD) 715-839-4735 or by writing to the ADA Coordinator, Human Resources Department, Eau Claire County Courthouse, 721 Oxford Ave., Eau Claire, Wisconsin 54703

FACT SHEET
Resolution No. 18-19/057

1. The Human Services Board members took action on August 15, 2018 to unanimously (10-0) approve Resolution No. 18-19/057 recognizing and supporting the efforts of Wisconsin, the Federal Government, cities and villages in Eau Claire County regarding Conversion Therapy.

2. We further recognize Eau Claire County to regulate conversion therapy and prohibit paid conversion therapy by mental health professionals to persons under the age of 18.

3. We understand that this resolution will be reviewed/discussed/approved at the County Board of Supervisors level. Following that meeting, Eau Claire County will provide the resolution to the Wisconsin Counties Association.

Respectfully submitted,



Jackie Krumenauer
Administrative Specialist II
Department of Human Services

FACT SHEET

TO FILE NO. 18-19/057

Techniques and Methods used by conversion therapy: In the past, some practitioners used severe methods to “cure” individuals from being LGBTQ including institutionalization and electroconvulsive shock therapy. Hypnosis, aversion therapy, and group therapy are the core techniques used in conversion therapy today, although they are not the only techniques used. Conversion therapy can also involve violent role play, reenactment of past abuses, exercises involving nudity and intimate touching, inducing nausea or vomiting, orgasmic reconditioning, satiation therapy, feminizing/masculinizing patients, and instilling religious guilt/self-hatred.

The harm of Conversion Therapy: The reported risks of conversion therapy include: depression, guilt, helplessness, shame, social withdrawal, suicidality, substance abuse, increased self-hatred, sexual dysfunction and high-risk sexual behaviors. The rate of suicide attempts is 4 times greater for LGB youth and 2 times greater for questioning youth than that of straight youth. In a national study, 40% of transgender adults reported having made a suicide attempt. 92% of these individuals reported having attempted suicide before the age of 25. LGB youth who come from rejecting families are 8.4 times as likely to have attempted suicide.

[Above information is taken directly from The Trevor Project, IMPACT, Mayo Clinic, the Family Acceptance Project, the National Center for Transgender Equality, American Counseling Association, National Association of Social Workers, American Journal of Public Health, and the CDC]

* 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.

* Conversion therapy has been rejected by every mainstream medical and mental health organization, including the American Psychological Association, American Psychiatric Association, American College of Physicians, American Medical Association, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, American Counselor Association, American School Health Association, National Association of Social Workers, the Pan American Health Organization, and the World Health Organization.

Note attached corporation counsel opinion “Power to Regulate Conversion Therapy”. This opinion is provided solely for county board supervisors. Other governmental entities should consult their own legal counsel.

The following are resources / links are for more information regarding conversion therapy:

<https://www.tolerance.org/magazine/fall-2012/therapy-of-lies>

American Academy of Child and Adolescent Psychiatry, *The AACAP Policy on “Conversion Therapies” (2018)*, available

at https://www.aacap.org/AACAP/Policy_Statements/2018/Conversion_Therapy.aspx.

<http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>

Fiscal Impact: None.

Respectfully Submitted,

Gerald Wilkie

Ordinance/18-19/057 Fact

4 - REQUESTING AND SUPPORTING THE EFFORTS OF WISCONSIN, THE
 5 FEDERAL GOVERNMENT, CITIES AND VILLAGES IN EAU CLAIRE
 6 COUNTY TO REGULATE CONVERSION THERAPY AND PROHIBIT PAID
 7 CONVERSION THERAPY BY MENTAL HEALTH PROFFESIONALS TO
 8 PERSONS UNDER THE AGE OF 18-

9 WHEREAS, contemporary science recognizes that being lesbian, gay, bisexual or
 10 transgender is part of the natural spectrum of human identity and is not a disease, disorder or
 11 illness; and;

12
 13 WHEREAS, "conversion therapy" is defined as any practices or treatments offered or
 14 rendered to consumers for a fee, including psychological counseling, that seeks to change a
 15 person's sexual orientation or gender identity, including efforts to change behaviors or gender
 16 expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals
 17 of the same gender; and

18
 19 WHEREAS, conversion therapy does not include counseling that provides assistance to a
 20 person undergoing gender transition, or counseling that provides acceptance, support, and
 21 understanding of a person or facilitates a person's coping, social support, and identity exploration
 22 and development, including sexual-orientation-neutral interventions to prevent or address
 23 unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change
 24 an individual's sexual orientation or gender identity; and

25
 26 WHEREAS, conversion therapy has been rejected by every mainstream medical and
 27 mental health organization, including the American Psychological Association, American
 28 Psychiatric Association, American Medical Association, American Academy of Pediatrics,
 29 American Academy of Child and Adolescent Psychiatry, American Counselor Association,
 30 American School Health Association, National Association of Social Workers and the Pan
 31 American Health Organization; and

32
 33 WHEREAS, this resolution is adopted to promote the health, safety and welfare of the
 34 people of the County of Eau Claire, especially the physical and psychological well-being of
 35 minors, including lesbian, gay, bisexual and transgender youth, and to protect them against the
 36 exposure to serious harms caused by conversion therapy; and

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 38 WHEREAS, it is well documented that the prevailing opinion of the medical and
 39 psychological community is that conversion therapy has not been shown to be effective and that it
 40 creates a potential risk of serious harm to those who experience it; and

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 42 WHEREAS, the Therapeutic Fraud Prevention Act, which bans conversion therapy
 43 nationwide, has been introduced in the 114th United States Congress and the 115th United States
 44 Congress. 14 states and 44 counties, municipalities and communities, including Madison &
 45 Milwaukee in Wisconsin, have passed legislation making the practice of conversion therapy for
 46 minors illegal, with six additional states proposing similar legislation which is pending; and

47
 48
 49 WHEREAS, in the recently completed Wisconsin legislative session, Assembly Bills 349
 50 and 261 seeking to prohibit mental health providers from engaging in conversion therapy of minors

1 in Wisconsin were introduced. However, neither of these bills made it out of committee and
2 conversion therapy remains unregulated by the State of Wisconsin; and
3

4 WHEREAS, the Eau Claire City/County Healthy Communities recently recognized that
5 the top three indicators for concern for youth in Eau Claire County are anxiety, youth
6 sad/hopelessness and youth suicide.
7

8 NOW, THEREFORE, BE IT RESOLVED that the Eau Claire County Board of
9 Supervisors requests and supports the efforts of the State of Wisconsin, the Federal Government,
10 cities and villages in Eau Claire County to regulate conversion therapy and support bills or
11 ordinances introduced in the Senates or Assembly's and local cities and villages that would
12 regulate and prohibit paid conversion therapy by mental health professionals to persons under the
13 age of 18.
14

15 BE IT FUTHER RESOLVED, that elected representatives at the state, federal and local
16 level representing Eau Claire County receive copies of this resolution. In addition, Eau Claire
17 County shall provide this resolution to the Wisconsin Counties Association, requesting their
18 advocacy to regulate conversion therapy and prohibit paid conversion therapy by mental health
19 professionals to persons under the age of 18.
20

21 Marcia Gali Neuman

21 Ann Goss

22 K.A. Cunk

22 Deanne Robertson

23 Donald D. Mowry

23 Lorraine Neenan

24 Sydia Berboon

24 Jandra McKinney

25 Paul D. Manluci

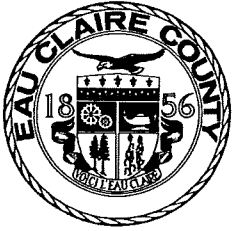
25 Valerie Bates

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30
31 Human Services Board

32 KRZ/yk

33 Dated this 15th day of August, 2018.
34

ORDINANC/18-19/057



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Keith R. Zehms

OCC 6.18.2

OPINION TO: Supervisor Jerry Wilkie
FROM: Keith Zehms, Corporation Counsel *Keith*
DATE: June 7, 2018
SUBJECT: Power to Regulate Conversion Therapy

Question Presented

Does Eau Claire County have the legal authority to regulate or prohibit conversion therapy? The answer is “no”.

Facts

Conversion therapy is defined as psychiatric therapy aimed at changing a person’s sexual orientation. Segen’s Medical Dictionary (2011). The practice of conversion therapy can take many forms, often involving aversive conditioning such as the inducement of nausea or paralysis while showing the patient homoerotic images. American Psychological Association, *Appropriate Therapeutic Responses to Sexual Orientation*, 34 (2009). There is a lack of evidence of the effectiveness of conversion therapy. However, there is evidence showing the potential risk of serious harm from conversion therapy. The American Academy of Pediatrics states conversion therapy can provoke guilt and anxiety while having little to no potential for achieving changes in sexual orientation. American Academy of Pediatrics, *Homosexuality and Adolescence*, 92 Pediatrics 631 (1993). The American College of Physicians cites research done at San Francisco State University that shows the detrimental effect of familial attitudes and rejection on LGBT youth. 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). LGBT youth who face rejection by their families are more likely to attempt suicide, become depressed, and use illegal drugs. *Id.* The American Psychiatric Association also lists the risks of conversion therapy, including depression, anxiety, self-destructive behavior, and self-hatred. American Psychiatric Association, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000). SAMHSA also published a detailed report on ending

conversion therapy due to the harmful effects it can have. Substance Abuse and Mental Health Services Administration, *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015).

While Wisconsin currently allows conversion therapy, there are instances of conversion therapy being considered fraudulent. California currently has a bill seeking to declare conversion therapy a fraudulent business practice. (AB-2943 Unlawful business practices: sexual orientation change efforts, CA 2017-2018.) Further, the court in *Ferguson v. JONAH*, held the JONAH conversion therapy to be fraudulent and unconscionable consumer fraud. 136 A.3d 447 (N.J. Super. Ct. App. Div. 2014). It is of note that the Supreme Court rejected appeals on the conversion bans both California and New Jersey instituted.

Only a few states have taken steps to prohibit conversion therapy, in some cases causing cities to adopt their own regulations in an attempt to prohibit the practice. While conversion therapy remains legal in Wisconsin, the Milwaukee Common Council voted in March, 2018, to ban paid therapists from performing conversion therapy on anyone younger than 18. Milwaukee Municipal Code § 75-19 (2).

There is no evidence that conversion therapy is being practiced in Eau Claire County.

Discussion

The purpose of this opinion is to determine whether conversion therapy can be regulated by the state of Wisconsin, or cities, counties and health departments in Wisconsin.

(1) State Authority

The 10th Amendment of the U.S. Constitution allows states any powers not prohibited and not already delegated to the United States by the Constitution. States are thus granted the power to establish and enforce laws that protect the welfare, safety, and health of the public. As no current regulations on conversion therapy exist at the federal level, it is within Wisconsin's authority to pass laws prohibiting certain applications of conversion therapy. In fact, eleven states currently ban conversion therapy in various forms, and a pending bill in California seeks to take the ban further by declaring conversion therapy a fraudulent business practice. Unlawful business practices: sexual orientation change efforts, AB-2943.

In the recently completed Wisconsin legislative session, Assembly Bills 349 and 261 seeking to prohibit mental health providers from engaging in conversion therapy of minors in Wisconsin were introduced. However, neither of these bills made it out of committee and conversion therapy remains unregulated by the State of Wisconsin.

(2) *City Authority*

Wis. Stat. § 62.11 (5) grants the city council, “ the power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means.” As stated above, both the Attorney General and the court in *Metro. Milwaukee Ass’n of Commerce, Inc.* reiterates the ability of cities to legislate for the purposes of health, safety, and welfare of the public by exercising their police power. Wis. Op. Att’y Gen. No. 1-17 ¶ 11 (citing *Metro. Milwaukee Ass’n of Commerce, Inc.*, 798 N.W.2d at 304. However, if conversion therapy would be considered a matter of state-wide concern, it should be noted that a four part test must be met before the city could regulate or prohibit it. *Anchor Savings and Loan Association v. Madison EOC*, 355 N.W.2d 234 (1984).

The test asks: 1) whether the legislature has expressly withdrawn the power of municipalities to act; 2) whether the ordinance logically conflicts with the state legislation; 3) whether the ordinance defeats the purpose of the state legislation; or 4) whether the ordinance goes against the spirit of the state legislation. *Id.* at 237-239. As the legislature has not yet come to a decision on conversion therapy, and has not withdrawn the power of municipalities to act in regulating or prohibiting it, the city would be able to pass the four part test.

It follows that Wisconsin cities are able to create a regulation prohibiting or placing restrictions on conversion therapy by exercising police power. The restriction of conversion therapy could be easily argued as a furtherance of public well-being. However, any ban on conversion therapy should be limited to only prohibit paid conversion therapy by mental health professionals to persons under the age of 18. Any ban more restrictive is likely to face scrutiny for restricting both free speech and free exercise of religion rights

(3) *County Authority*

Wis. Stat. § 59.03 provides counties the power to exercise any organizational or administrative power, as long as that power is not pre-empted by the Wisconsin Constitution or any act of legislature which uniformly affects every county. Wis. Stat. § 59.04 allows the provisions in Wis. Stat. Ch. 59 to be liberally construed, but the county does not have powers as broad as those of cities or towns. Wis. Op. Att’y Gen. No. 1-17 ¶9. A recent opinion by the Wisconsin Attorney General clarifies that county boards have only the powers expressly conferred or necessarily implied by statute. Wis. Op. Att’y Gen. No. 1-17 ¶ 13. Specifically, the county’s powers in respect to health and human services issues are enumerated in Wis. Stat. § 59.53 and do not expressly confer or imply the power to ban the practice of conversion therapy. The Attorney General further clarifies that the county board’s power to enact ordinances to preserve the public peace and good order under Wis. Stat. § 59.54 (6) does not encompass a broad authority. Wis. Op. Att’y Gen. No. 1-17 ¶ 7. Wis. Stat. § 59.54 (6) cannot be interpreted broadly to bypass the enumerated provisions in Wis. Stat. § 59.53 as the detailed scheme of powers in Wis. Stat. § 59.53 would become surplusage if Wis. Stat. § 59.53 (6) could convey the same authority. Wis. Op. Att’y Gen. No. 1-17 ¶ 7 (*citing State ex rel. Kalal v. Circuit Court for Dane Cty.*, 681 N.W.2d 110, 124 (Wis. 2004)).

Cities and villages are able to legislate for the purposes of the health, safety, and welfare of the public by exercising their police power. Wis. Op. Att’y Gen. No. 1-17 ¶ 11 (*citing Metro. Milwaukee Ass’n of Commerce, Inc. v. City of Milwaukee*, 798 N.W.2d 287, 304 (Wis. App. 2011)). Counties are not granted police power, and therefore Eau Claire County does not have the authority to adopt an ordinance banning conversion therapy. As mentioned above, the county is limited to powers expressly conferred or necessarily implied by statute and the power to ban conversion therapy either in the interest of public health or welfare is not a power expressly conferred or implied. Wis. Op. Att’y Gen. No. 1-17 ¶ 13. An ability to restrict or regulate conversion therapy is not implied or conferred by statute, nor is it listed in the enumerated provisions relating to health and human services or social services. Therefore, the county does not have the power to ban or regulate conversion therapy.

(4) *City-County Health Department Authority*

The City-County Board of Health has the power to adopt regulations for its own guidance and for the governance of the local health department that it considers necessary to protect and improve public health. Wis. Stat. § 251.04 (3). However, these regulations may not conflict, or be less stringent, than state statutes and rules of the state health department. *Id.* Wis. Stat. § 251.04 (6)-(7) requires the board of health to advocate for the provision of reasonable and necessary public health services, and assure that measures

are taken to provide an environment in which individuals can be healthy. Neither Wis. Stat. Ch. 146 nor Ch. 251 specifically allow for the City-County Health Department to prohibit types of mental health treatment, or imply that the prohibition of conversion therapy would be considered as providing an environment to promote health.

Bouvier Law Dictionary defines public health as the implementation of the conditions required to protect and improve health among individuals by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences. The Wolters Kluwer Bouvier Law Dictionary Desk Edition, Public Health. The CDC considers mental health integral to overall health and well-being, and recommends it be treated with the same urgency as physical health. Centers for Disease Control and Prevention, *The Role of Public Health in Mental Health Promotion* (2005). The CDC goes on to state the challenges for public health are to identify risk factors, increase awareness about mental disorders and the effectiveness of treatment, remove the stigma associated with receiving treatment, eliminate health disparities, and improve access to mental health services for all persons. *Id.* Conversion therapy causes an increased risk of suicidal tendencies, drug use, depression, and anxiety.

The Wisconsin statutes provide the City-County Health Department has authority over issues that impact public health and public health services. There is a strong argument to be made that prohibiting paid conversion therapy to minors will protect the public health of a vulnerable section of the LGBTQ community, and would therefore be within the City-County Health Department's authority to regulate.

Conclusion

Based on the above it is my opinion that the State of Wisconsin and cities within Wisconsin have the authority to regulate conversion therapy. Further it is my opinion that the City-County Board of Health may have the authority to regulate conversion therapy. Finally it is my opinion that Eau Claire County does not have the legal authority to regulate conversion therapy. However, the Eau Claire County Board of Supervisors could adopt a resolution requesting the State of Wisconsin regulate conversion therapy or supporting any bills introduced in the State Senate or Assembly that would regulate conversion therapy.

cc: Nick Smiar, County Board Chair
Kathryn A. Schauf, County Administrator