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Ending the “Gay Cure”: Chapter 379 Deletes Discriminatory Language from the Law

Ashley Porter

Code Section Affected

Welfare and Institutions Code § 8050 (amended).
AB 2199 (Lowenthal); 2010 STAT. Ch. 379.

I. INTRODUCTION

On November 14, 1949, six-year old Linda Joyce Glucoft left home to play with a friend and never returned.¹ Fred Stroble, a neighbor, raped and murdered her.² Stroble was a repeat sex offender who had “slipped through the cracks of the justice system” on multiple occasions.³ In the week following Linda’s murder, residents made twenty-five reports of molestation to police in the Los Angeles area, each further fueling the public outcry for action from Sacramento.⁴ The tragedy shocked the community, leading outraged members of the public to push the California State Legislature to pass tougher laws to protect children from sexual predators.⁵

In response, the Legislature looked for ways to understand and treat “sexual psychopaths.”⁶ At the time, psychiatrists categorized homosexuality as a mental disorder linked to sexual deviance, and therefore lawmakers quickly likened gay people to child molesters.⁷ In 1950, Governor Earl Warren signed a bill into law that ordered the Department of Mental Hygiene (DMH), in conjunction with the State’s mental hospitals and universities, to study the causes and cures of sexual deviance—including homosexuality.⁸ Over the next sixty years, the Legislature enacted and amended many sex-offender laws.⁹ However, the implication that homosexuality could be cured remained on the books.¹⁰ Assembly Member Bonnie Lowenthal introduced Chapter 379 as a step toward clarifying this misconception.¹¹

1. Bonnie Lowenthal, ‘Cure’ Gays? No, Fix the Law, L.A. TIMES, Apr. 4, 2010, at A23.
2. Cecilia Rasmussen, *Girl’s Molestation, Murder in 1949 Prompted Tougher Laws*, L.A. TIMES, Aug. 29, 2004, at B1.
3. *Id.*
4. Lowenthal, *supra* note 1.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *See id.* (describing how the language of the law has been slightly changed many times, but “amazingly, it’s still on the books”).
11. *See id.* (explaining we have a duty to blot the language of former Section 8050 out of the law).

II. LEGAL BACKGROUND

Prior to Chapter 379, Welfare and Institutions Code section 8050 included homosexuality as one form of sexual deviance demanding a scientific “cure.”¹² Since lawmakers first passed the bill in 1950, an influx of research has shown that homosexuality does not fit the definition of a mental disorder.¹³

A. *The Development of Prior California Law*

In response to public concern regarding sex crimes, Governor Earl Warren “called a special session of the Legislature to deal with the issue of sexual predators.”¹⁴ Legal experts complained that the state lacked proper resources to address the problem—notably, that it lacked programs to treat sexual deviants.¹⁵ In addition to stricter enforcement and tougher punishments, the Legislature sought to rehabilitate sexual deviants through therapy.¹⁶ With this foundation, lawmakers tackled the issue of sexual deviance with an “academic approach,” and directed “the State’s mental hospitals and its universities to solve the problem.”¹⁷

The special session produced several bills targeting sex offenders and sexual psychopaths.¹⁸ One of the bills, codified under Welfare and Institutions Code section 8050, specifically ordered the DMH “to conduct scientific research into the causes and cures of sexual deviation and . . . homosexuality . . . [as well as] methods for identifying potential sex offenders.”¹⁹ At that time, the American Psychiatric Association (APA) defined homosexuality as a mental disorder.²⁰ Thus, with a new focus on “the role of science in solving the ‘sexual psychopath’ problem,” the Legislature added homosexuality to the list of sexual disorders for the DMH to research.²¹

Since 1950, the Legislature has slightly revised the statute many times.²² Most recently, in 1977, the Legislature amended the law to reflect the DMH’s

12. *Id.*

13. *Sexual Orientation and Homosexuality*, AM. PSYCHOL. ASS’N, <http://www.apa.org/helpcenter/sexual-orientation.aspx> (last visited Mar. 10, 2011) [hereinafter *Sexual Orientation*] (on file with the *McGeorge Law Review*).

14. Lowenthal, *supra* note 1.

15. *Id.*

16. Rasmussen, *supra* note 2.

17. Lowenthal, *supra* note 1.

18. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 1 (Apr. 6, 2010).

19. *Id.* at 2.

20. *See id.* at 2 (explaining that up until 1973, the APA’s Diagnostic and Statistical Manual of Mental Disorders (DSM) listed homosexuality as a mental disorder).

21. *Id.*

22. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 2 (Apr. 6, 2010).

name change to the Department of Mental Health.²³ The rest of the statute, directing research into the causes and cures of sexual deviation and homosexuality, remained part of the law.²⁴

B. The APA and Homosexuality as a Mental Disorder

During the late 1960s and early 1970s, our society faced a movement seeking to liberate the traditional notions of sexual orientation.²⁵ Police harassment of gay-friendly establishments had become commonplace in many big cities and led to growing tension between homosexuals and the police.²⁶ The tension reached a boiling point in June 1969, when police raided the Stonewall Inn, a gay bar in Greenwich Village, sparking mass demonstrations by New York's gay community—an event that came to be known as the “Stonewall Uprising.”²⁷ This event exemplified a more “vocal and assertive” gay community²⁸ that sought increased acceptance by society.²⁹ The APA and outside organizations put pressure on the scientific community to change their treatment of homosexuals.³⁰

On December 15, 1973, the APA Board of Trustees issued a resolution declaring that homosexuality “does not necessarily constitute a [psychiatric] disorder.”³¹ Based on this resolution, the APA removed homosexuality from the Diagnostic and Statistical Manual of Mental Disorders (DSM).³² This act is “recognized as a landmark in the liberation of views and laws in regard to homosexuality.”³³

C. New, Better Research Dispels Traditional Misconceptions

Over the past thirty-five years, “objective, well-designed scientific research has shown that homosexuality, in and of itself, is not associated with mental disorders or emotional or social problems.”³⁴ Additionally, despite popular

23. *Id.*

24. *Id.*

25. Alfred M. Freedman, *Recalling APA's Historic Step*, PSYCHIATRIC NEWS, Sept. 1, 2000, available at <http://www.psychiatricnews.org/pnews/00-09-01/recalling.html> (on file with the *McGeorge Law Review*).

26. *Gay Rights Movement Marks 40 Years Since Stonewall Riots*, AUSTL. BROAD. CORP. NEWS, June 28, 2009, available at <http://www.abc.net.au/news/stories/2009/06/28/2610668.htm> [hereinafter *Gay Rights*] (on file with the *McGeorge Law Review*).

27. *See id.* (explaining that frequent police raids targeting gay bars incited the riots which lasted five nights and sparked the gay rights movement in the U.S.); Freedman, *supra* note 25.

28. Freedman, *supra* note 25.

29. *See Gay Rights*, *supra* note 26 (“[We were] looking for more freedom to be whoever we were.”).

30. Freedman, *supra* note 25.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Sexual Orientation*, *supra* note 13.

thinking, homosexuals do not commit most acts of child molestation.³⁵ In fact, according to the Counter Pedophilia Investigative Unit (CPIU), ninety-one percent of child molesters are heterosexual.³⁶ Research suggests that “a child’s risk of being molested by his or her relative’s heterosexual partner is over one hundred times greater than by someone who might be identifiable as being homosexual.”³⁷ In fact, only two offenders were discovered to be gay or lesbian in a study of 269 cases of sexual abuse against children.³⁸ According to the APA, “[t]here is no evidence to suggest that homosexuals . . . molest children at a higher rate than heterosexuals.”³⁹

III. CHAPTER 379

Chapter 379 amends Welfare and Institutions Code section 8050 by eliminating the requirement that the Department of Mental Health (“Department”) “conduct scientific research into the causes and cures of . . . homosexuality.”⁴⁰ Section 8050 now requires that the Department “plan, conduct and cause to be conducted scientific research into sex crimes against children and into methods of identifying those who commit sexual offenses.”⁴¹

IV. ANALYSIS

Chapter 379 eliminates the language of section 8050 of the Welfare and Institutions Code that directs the Department to conduct research into the “causes and cures of homosexuality.”⁴² Supporters claim that Chapter 379 exists to ensure the law reflects modern research and does not include discriminatory language.⁴³ Opponents, on the other hand, argue that homosexuality can be cured, and Chapter 379 denies society the benefits that result from research into the causes and cures of homosexuality.⁴⁴

35. Bruce Maiman, *Law Requires California Doctors to Cure Homosexuality*, EXAMINER.COM (Apr. 5, 2010, 2:54 PM), <http://www.examiner.com/x-15870-Populist-Examiner-y2010m4d5-Law-requires-California-doctors-to-cure-homosexuality?cid=extrss-Populist-Examiner> (on file with the *McGeorge Law Review*).

36. *Id.*

37. Child Welfare Information Gateway, *Gay and Lesbian Adoptive Parents: Resources for Professionals and Parents* (2000), http://www.childwelfare.gov/pubs/f_gay/f_gayb.cfm#fnr5 (on file with the *McGeorge Law Review*).

38. *Id.*

39. *Sexual Orientation*, *supra* note 13.

40. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 1 (Apr. 6, 2010).

41. CAL. WELF. & INST. CODE § 8050 (amended by Chapter 379).

42. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 1 (Apr. 6, 2010).

43. Letter from Mario Guerrero, Gov’t Affairs Dir., Equality California, to Bonnie Lowenthal, Assembly Member, Cal. State Assembly (Mar. 30, 2010) [hereinafter *Guerrero Letter*] (on file with the *McGeorge Law Review*).

44. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 4 (Apr. 6,

A. *The Impact of Chapter 379*

The Legislature enacted Chapter 379 to ensure that the law reflects current science.⁴⁵ The law no longer seeks to prevent sex crimes through the treatment of sexual deviance, but instead focuses on researching sex crimes and sexual offenders themselves.⁴⁶ Although lawmakers did little to enforce the prior law, Chapter 379 functions to align the law with modern scientific research by simply removing the language that directed the Department to research the “causes and cures for homosexuality.”⁴⁷ Chapter 379 has no fiscal impact on the state.⁴⁸ If anything, the law provides nominal savings to the Department by no longer requiring it to research the origins and cures of homosexuality.⁴⁹

B. *Support for Chapter 379: Removing Traditional Notions of Prejudice from the Law*

Equality California, the sponsor of Chapter 379, is a San Francisco-based organization whose mission is to “achieve equality and secure legal protections” for members of the homosexual community.⁵⁰ They argue prior law supported various unsubstantiated concerns about the homosexual community.⁵¹ Some of these concerns include claims that same-sex couples do not make good parents and that gay men tend to sexually abuse children more often than heterosexual men.⁵² Equality California contends the prior law “institute[d] bigotry against the lesbian, gay, bisexual, and transgender [(LGBT)] community[,]” and that Chapter 379 provides a long overdue change to the discriminatory language of the law.⁵³ Other organizations supporting Chapter 379 include the California Mental Health Directors Association, the California Teachers Association, the California Psychiatric Association, and Disability Rights California.⁵⁴ These and other proponents agree that Chapter 379 will ensure the “prejudicial, hostile, and ignorant” notion of a cure for homosexuality is deleted from the law.⁵⁵ This will

2010).

45. Lowenthal, *supra* note 1.

46. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2199, at 1 (Aug. 23, 2010).

47. AB 2199 FACT SHEET, EQUALITY CALIFORNIA, <http://www.eqca.org/site/pp.asp?c=kuLRJ9MRKrH&b=5828243> (last visited Mar. 11, 2011) (on file with the *McGeorge Law Review*).

48. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2199, at 1 (Apr. 23, 2010).

49. *Id.*

50. EQUALITY CALIFORNIA, About EQCA, <http://www.eqca.org/site/pp.asp?c=kuLRJ9MRKrH&b=4025493> (last visited Mar. 11, 2011) (on file with the *McGeorge Law Review*).

51. Guerrero Letter, *supra* note 43.

52. *Id.*

53. *Id.*

54. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 4 (Apr. 6, 2010).

55. Letter from Randall Hagar, Dir. of Gov't Affairs, Cal. Psychiatric Ass'n, to Bonnie Lowenthal, Assembly Member, Cal. State Assembly (Apr. 8, 2010) (on file with the *McGeorge Law Review*).

thereby help to eliminate the stigma that the concept of a “gay cure” propagates against the LGBT community.⁵⁶

Assembly Member Bonnie Lowenthal, author of Chapter 379, insists it is not enough to simply not enforce an archaic law.⁵⁷ Although the Department conducted little research into the causes and cures of homosexuality required under former law, the language of the law itself evinced prejudice against homosexuality.⁵⁸ Lowenthal argued that in order to provide equality for the homosexual community, the Legislature needed to delete the discriminatory language of the law.⁵⁹ Lowenthal analogized prior law to race restrictions on property deeds—restrictions the Legislature had previously removed from the code.⁶⁰ Similarly, Chapter 379 amends section 8050 by repealing language in the law suggesting that homosexuality is a mental disorder.⁶¹

C. Opposition to Chapter 379: Research into a “Gay Cure” as Legitimate Science

Despite strong support for Chapter 379 throughout scientific and mental health communities, there are organizations that oppose Chapter 379. Opponents argue the language in the old law protects children “against sexual abuse by predators.”⁶² The Parents and Friends of Ex-Gays and Gays (PFOX) claims that research into the causes of homosexuality is a “legitimate form of science” because researchers have yet to definitively establish the “cause” of homosexuality.⁶³ PFOX argues that because no evidence exists of a “gay gene,” there must be some other explanation for the “causes of homosexual behavior.”⁶⁴ They also claim that research can find an explanation for such behavior—research that will stop under Chapter 379.⁶⁵ PFOX suggests Chapter 379 eliminates an important area of research that could benefit both homosexuals and children.⁶⁶

The Traditional Values Coalition of California (TVC), another opponent of Chapter 379, claims Chapter 379 is proof that “homosexual advocates do not want the state to study ways to help people leave the homosexual lifestyle.”⁶⁷ The

56. *Id.*

57. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 2199, at 2 (June 23, 2010).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 1.

62. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 4 (Apr. 6, 2010).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. TVC Target List, TRADITIONAL VALUES COALITION, http://www.traditionalvalues.org/ca/ca_leg.php

TVC views Chapter 379 as an example of a pattern of deception created by supporters to convince society that people can be “born gay.”⁶⁸ Opponents urge that “we should not fear what science has to say in this area,” but instead allow full research into the “causes and cures of homosexuality.”⁶⁹

V. CONCLUSION

Prior to Chapter 379, Welfare and Institutions Code section 8050 directed the Department to research the causes of homosexuality, in hopes of finding a cure.⁷⁰ Chapter 379 eliminates language in the law that supporters argue “perpetuat[ed] a number of unfounded concerns” regarding the homosexual community and children.⁷¹ According to Assembly Member Lowenthal, “the code section this bill . . . amend[ed] not only reflect[ed] misguided and out-of-date science, it enshrine[ed] bigotry and false stereotypes in law.”⁷² By amending an “archaic law” ordering mental health officials to conduct research into finding a cure for homosexuality, Chapter 379 produces a long overdue reform of the law that “reflects science and values that were sadly absent in 1950.”⁷³

(last visited Mar. 11, 2011) (on file with the *McGeorge Law Review*).

68. *Id.*

69. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 4 (Apr. 6, 2010).

70. AB 2199 Fact Sheet, *supra* note 47.

71. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2199, at 3 (Apr. 6, 2010).

72. *Id.* at 1.

73. AB 2199 Fact Sheet, *supra* note 47; Lowenthal, *supra* note 1.

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