

## Here's The Biggest Legal Flaw In California's Sexual Orientation Therapy Ban

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By **Glenn T. Stanton** MAY 7, 2018 The Federalist

California's Assembly Bill 2943 is a malicious and terribly ill-conceived piece of legislation, and it has a very real chance of becoming law. The bill establishes that "sexual orientation change efforts are an unlawful practice under California's" legal code. **Senate Bill 1172**, passed in 2012, outlaws such help for any minor. Summit Ministries, a widely respected national organization teaching a Christian worldview to students, has decided to **cancel its summer classes** in California. Why? Simply because Summit teaches the same sexual ethic **Jesus taught**, which some interpretations of this law will punish.

This bill will be absolute death to essential freedoms of speech, dissent, professional conviction and practice of clinicians, as well as the personal autonomy and self-determination of citizens who desire to be set free from certain unwanted sexual desires. This, of course, is exactly the drafters' motivation, dressed in the shabby clothes of compassion.

There is, however, another extremely disturbing characteristic of such legislation that few have recognized. It has to do with its central phrase and core: *sexual orientation*. The problem is this: *academics and lawyers don't agree on what "sexual orientation" actually is and is not*. The term is infamously ambiguous.

But the Golden State's legislature—and any other legislation on the issue, such as local sexual orientation and gender identity ordinances or similar laws passed in other states—merely assumes it means being either heterosexual or homosexual. It does not. No respected scholar on this topic, regardless of personal conviction or ideology, defines sexual orientation so simplistically.

This becomes profoundly serious when clinicians could face strong punishment, much less the loss of their professional reputation and livelihood, for getting on the wrong side of the state for something that is expressly undefined. Read the text of [AB 2943](#) (or its predecessor [SB 1172](#)) for yourself. There is no definition of the term. *None*. The bills' authors naively assume everyone "knows" it refers to same-sex attraction. But not everyone does, not even close, especially academic and clinical experts who study and publish on the subject.

## No Science Finds Same-Sex Attraction Is Inborn

First, we must recognize that homosexuality is not the *thing* we are led to believe it is. Even after exhaustive, diverse, and very sophisticated efforts, no science has found that same-sex attraction is innate, an actual *thing*, rooted in nature. The "born-that-way" assumption is simply that, an assumption born of political desire and strategy. It has only taken on the veneer of "truth" by confident repetition. Even the hyper-gay-affirming American Psychological Association [admits](#):

There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay or lesbian orientation. Although much research has examined the possible genetic, hormonal, developmental, social and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors.

The "this-is-just-what-I-am" myth collides with reality in breathtaking ways. For example, self-identified lesbians are shown to have [tremendously high](#) unintended pregnancy and abortion rates. There is only one reason for this: so-called lesbians are curiously having lots of baby-making sex.

Few lesbians are actually *lesbians*, as the popular understanding has it. It is the rare self-proclaimed lesbian who stays sexually, emotionally, and romantically attracted to only women for life. They are notorious lane-changers. "Sexual orientation" is far more complex and enigmatic than the California legislature

understands it. There is simply no objective foundation for their certainty. Quite the opposite, actually. Let's look at just a few evidences.

## People Fall in Love Against Their Stated Orientation

Professor **Randall Sell**, a leading scholar in the study of sexual orientation, was asked by PBS's "**Frontline**" to provide their viewers a reliable definition of sexual orientation. He told them, "At present it is clear that researchers are confused as to what they are studying when they assess sexual orientation in their research ...Today's preferred terms and the term 'sexual orientation' itself have a wide variety of definitions in the literature..."

He is not an anomaly. The authors of the most sophisticated and authoritative study on human sexuality in America **explain** (p. 290, 301) that there is no "unambiguous definition" of homosexuality that academics can reliably employ to describe the thing or the person who practices it. Is it determined by sexual desire, behavior, or emotional attraction, or all of them?

These University of Chicago researchers, and many others, contend this question is not simply academic. It matters greatly, and there is no clear answer. "In sum," they note, "homosexuality is fundamentally a multidimensional phenomenon that has manifold meanings and interpretations, depending on context and purpose." Professor Lisa Diamond, another leader in this field, agrees.

She **asserts** something that sounds nonsensical to the average person: "sexual orientation and same-sex sexuality are fundamentally distinct phenomenon." How can this be? She and most scholars working in this field recognize that some people can desire and find pleasure in same-sex *activity* while being fully *oriented* toward the opposite sex. There are those who can only fall in love with members of the opposite sex, but desire and engage in various sexual acts with same-sex partners. Are such people bisexuals, or merely heterosexuals who like certain types of sexual diversity? Scholars tell us this is an extremely legitimate question.

Diamond asks us to consider one instance: the woman who "falls in love" with her best friend and has a long-term physical relationship with her, but finds no

attraction to any other female. Is she gay, heterosexual, or bi? This is why Diamond concludes, in agreement with the University of Chicago scholars, that “[t]here is currently no scientific ... consensus on the exact constellation of experiences that definitively ‘qualify’ an individual as lesbian, gay or bisexual ...” (p. 491, 492).

The lack of clarity on what sexual orientation actually *is* compelled her to publish a journal article solely on the question: “**What Does Sexual Orientation Orient?**” The phrase is so imprecise and un-descriptive that she created her own terms, *sexual-romantic orientation* or *partner orientation*, as “technically more accurate” to actual human experience. This is because “individuals can develop novel sexual desires, even desires that contradict their sexual orientations, as a result of falling in love” (p. 173,174). Thus, this legislation and its assumptions don’t align with the ways many humans actually are.

### There Are More Orientations than Gay, Straight, and Bi

The next question we must ask is whether gay, straight, and bi are the only sexual orientations on the stage of human experience. This legislation assumes they are, but legal scholars and gender theorists contend they are not. Let’s consider just two others.

Polyamorists, those desiring “many loves” at one time, hold that theirs is absolutely an orientation. The folks at **Loving More®**, the largest poly-support organization in the United States, contend the “evidence seems to be that some people are just not wired for monogamy and need more than one love to feel complete as a person.”

Columbia Law School’s Elizabeth Emens agrees. She **contends** with great seriousness that one’s predilection for polyamory should be legally accepted and protected as a sexual orientation, because this is simply who polys are. Ann Tweedy, a professor at Hamline University School of Law, stands with Emens. In an **article** crisply titled “Polyamory as a Sexual Orientation,” she argues polyamorists should not be excluded from employment and housing protections

just because it is currently a “disfavored sexual preferences.” This, of course, would also be true of polygamists who claim monogamy is deeply contrary to who and what they are.

Without defining orientation, how can such law assert that it excludes or includes polyamory and polygamy? This brings up another important question that legislatures, city councils, and the LGBT movement at large fail to consider. Must a sexual orientation always be socially acceptable? *Salon* published a provocative [article](#) (they have since [taken it down](#) from their site) by a man who introduces himself this way:

I’ve been stuck with the most unfortunate of sexual orientations, a preference for a group of people who are legally, morally and psychologically unable to reciprocate my feelings and desires. It’s a curse of the first order, a completely unworkable sexuality, and it’s mine. Who am I? ... I’m a pedophile.

This man recognizes his orientation as one he absolutely cannot, should not, and will never act on. It is dangerous. But, to him, it is an orientation all the same, as he has never felt any other kind of desire. He is not an [anomaly](#) among such people.

Now we can imagine a sea of eyes rolling at the supposed ridiculousness of their claim. But under what definition of “orientation” should pedophilia or other paraphilias be excluded? Certainly not because they are repulsive and illegal. No current definition makes that qualification, and weren’t both seen as true of same-sex behavior not so long ago? Did it become an orientation only *after* it was mainstreamed?

These are also serious and legitimate questions. And it’s not just the pedophiles themselves claiming that attraction to children is an orientation. A leading and well-respected scholar on paraphilias, with academic appointments at five different universities and institutions, contends in the [Archives of Sexual Behavior](#) that pedophilia is indeed a legitimate “sexual age orientation,” as he terms it.

We Can’t Define an Orientation as What We Accept Today

Those who follow this topic closely might remind us that the newest version of the Diagnostic Statistical Manual (DSM-V) disagrees. The DSM has long listed pedophilia as an orientation, but has recently changed that designation. But it's not that simple. They did it, not because of careful scientific consideration, but due to internal politics.

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A professor in the school of psychiatry and behavioral sciences at Johns Hopkins, writing in *The Journal of the American Academy of Psychiatry and the Law*, **explains** that for important clinical reasons “removing the term [from the DSM-V] in response to public criticism would be a mistake.” He contends that “experiencing ongoing sexual attractions to prepubescent children is, in essence, a form of sexual orientation ...” and that it is essential for clinicians to distinguish between the psychiatric and criminal aspects of this orientation.

Most of us are likely uncomfortable classing pedophilia as an orientation. But that is only because we've been carefully trained, with great political and social pressure, to think that designating something as a sexual orientation is to deem it positive and healthy. But we cannot say that a sexual orientation is only what we find acceptable. That's far too convenient and relativistic.

If the state of California holds that polyamory, polygamy, pedophilia, or any other kind of paraphilia are not genuine orientations, its officials must prove it by the definition its legislature employs. It cannot, because they provide *no* definition or explanation whatsoever for the term, and therefore no one—not legislators, law enforcement, clinicians, or clients themselves—can be clear what sexual orientation is and is not.

### **This Has Terrible Consequences for Hurting People**

It is nothing short of legislative malpractice, and the height of madness, when the full weight of law rests on what a clinician can and cannot do with a client's

unwanted sexual desires without the slightest bit of clarification of what this includes or excludes. Consider just some very real-life complexities here.

**Could a clinician who refuses to see a patient struggling with pedophilia claim it would be against the law to help him change that orientation?**

Suppose a same-sex-attracted person found he desires frequent anonymous and unprotected sex, sado-masochism, or some other troubling sexual activity, and he seeks help to change these behaviors for his own safety and personal dignity. Or what if a married man with a family wants to dampen or bridle his same-sex attractions for the sake of his children, wife and family?

Consider a Buddhist monk seeking help sublimating his sexual desires for the sake of his religious vows. He could get such help if that desire is heterosexual, but not if he is same-sex attracted. What about an asexual client seeking to develop a fulfilling sexual life? They could not be redirected from that “orientation.”

What about the bisexual who wants to live life on only one side of the street? Could a clinician who refuses to see a patient struggling with pedophilia claim it would be against the law to help him change that orientation?

The answers here are clear. None of these people could find the help they seek in California, as this law would explicitly outlaw “practices that seek to change an individual’s sexual orientation ... or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex” including “efforts to change behaviors.”

Beyond the vitally important issues of freedom of thought, speech, dissent, and patient self-determination, the fact that this legislation doesn’t even define its central point condemns it as a total train wreck for law enforcement, clinicians, and needy patients. It should utterly embarrass every legislator sworn to serve the public good by crafting and passing responsible law.

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