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Bill would restrict 'trans panic' defense in R.I. courts | Audio

At issue is the notion that a victim's sexual orientation or gender identity can provoke violence, and can be used as a legal defense for people who have beaten or killed a member of the LGBTQ community.

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PROVIDENCE, R.I. — In Rhode Island, gay or trans panic, or the notion that a victim's sexual orientation or gender identity provokes violence, is a legal defense for people who have beaten or murdered a member of the LGBTQ community.

A bill (H7066) introduced in the Rhode Island House of Representatives in January seeks to eliminate this defense in the state's courtrooms, joining legislatures in Illinois and California.

Defense attorneys have employed this tactic in at least 23 states since the 1960s, [according to the Williams Institute, a think tank at the UCLA School of Law](#). It's led to lesser sentences and in some cases, acquittal, according to the institute's research.

The defense is used to "partially, or completely, excuse crimes like murder and assault on the grounds that the victim's sexual orientation or gender identity is to be blamed for the defendant's violent reaction," according to a resolution drafted by the [American Bar Association in 2013 urging states to pass laws blocking this kind of defense](#).

"These defenses enshrine in the law the notion that LGBT lives are worth less than others," the ABA wrote in the report released with its resolution.

The Rhode Island bill, which is identical to the already enacted California legislation, would restrict "use of a victim's gender or sexual orientation" in claims of provocation, diminished capacity or self defense and prohibit the court from allowing this information into evidence.

What sponsor Rep. Kenneth Marshall, a Bristol Democrat, calls "common sense" legislation, others are characterizing as an overstep by lawmakers into territory that should be reserved for judges and jurors. These opposing viewpoints collided at a [House Judiciary Committee hearing on Jan. 30](#) when Rep. Justin Price, a Republican from Richmond, went head to head with Samson Hampton, a volunteer with Rhode Island's Transgender, Gender Non-Conforming and Intersex Support Network.

Price said he was speaking on behalf of the "heterosexual community" in his rebuke of the bill that he said would "essentially eliminate any defense that my sexual preference has."

“I guess what I’m saying is if someone presents themselves as a certain gender and it goes to a certain point and then the other gendered heterosexual gets mentally freaking unstable about this thing, like finding out that he’s been kissing someone that he doesn’t realize he’s been kissing ... that’s legitimate,” Price said.

He added: “Like all of a sudden you think you’re with a woman and then all of a sudden that woman has a ... it’s not a woman. It’s disturbing. It’s very disturbing to heterosexual men,” Price said.

Price continued down this path, even after Chairman Cale Keable asked, “Are you sure you want to ask a question?”

Hampton, a transgender man, gave the same response to each of Price’s inquiries and hypothetical scenarios: “It does not give you the right to kill me.”

In an interview with The Journal, Price said the bill was not about gender or killing people. It is about trying to eliminate full disclosure of evidence in a criminal case to the courts and potential jurors.

“To make a good sound decision, about any gender, any persuasion, the jury needs to know all the details,” he said.

[\[Audio\]](#)

Public Defender Michael DiLauro raised similar concerns when testifying against the bill during the Jan. 30 hearing.

“It inhibits the introduction of evidence that could very well be relevant to the determination of the truth or not the truth in a particular case,” DiLauro said.

Also during his testimony, DiLauro said he had never heard of the “gay panic” defense. He had not read the American Bar Association’s memo, he said. Price, too, said he had not heard of the defense nor had he discussed it with any gay or transgender constituents.

In an interview with The Journal, Marshall questioned why DiLauro spoke at all, since he was not informed on the issue.

“He’s there saying ‘I don’t know about this, I don’t know about that’ ... then why are you there testifying?” Marshall asked.

DiLauro and Price both said the legislation addresses a problem that does not exist in Rhode Island. Activists say they are missing the point.

“I am hoping and praying we never have to use this bill in this state. But the reality of LGBT violence is real and Rhode Island is not exempt from it,” Hampton said in testimony. “Transgender people should not be subjected to violence, and often death, because of their

very existence.”

The term “homosexual panic” first emerged in the 1920s, coined by Edward J. Kempf, a clinical psychiatrist. It referred to psychological disorder born of “a panic that resulted from the internal struggle of a patient’s ‘societal fear of homosexuality,’” the ABA resolution states. The diagnosis stuck, until 1973 when the American Psychiatric Association discredited the idea.

The legal system, however, has not yet caught up, according to the ABA.

William Shepherd, the chair of the ABA’s criminal justice section who wrote the resolution, points to the case of Larry King. In 2008 King, an openly gay 15-year-old boy, was shot twice in the back of his head at his California middle school. He had asked the shooter — 14-year-old Brandon McInerney — to be his Valentine the day before he was killed. King wore makeup and high heels.

At trial, McInerney’s attorney used the gay panic defense, arguing that “Larry’s words and wardrobe were responsible for his death.” The trial ended with a hung jury. Later prosecutors dropped a hate crime charge and McInerney pleaded guilty to a charge of second-degree murder. He was sentenced to 21 years in prison.

The defense has not been used in Rhode Island courts. But enacting this protection would be a proactive step in the move for equal rights for the LGBTQ community, said Anthony Michael Kreis, a lawyer who drafted the Illinois legislation. In effect, this defense blames the victim for his or her own death or injury, Kreis said.

Kreis said Price’s comments on gender “exemplify the need for this law.”

“He’s saying that discovering someone’s gender identity is a legitimate provocation for committing murder,” Kreis said.

Kreis dismissed DiLauro and Price’s concerns about lawmakers interfering with business best left with a judge.

“It’s the prerogative of the legislature to safeguard civil rights whenever they can — not punting things to the judiciary just because it might be politically easier,” he said. “It’s the wrong move.”

For Nika Lomazzo this bill is deeply personal. Lomazzo is a transgender woman and activist running for Rep. John Lombardi’s seat in the House. The “panic” defense is something she thinks of every day — whether she’s walking around the city, at work, or out dancing with friends.

To her, it feels like Price is “giving people permission, galvanizing people to assault and or potentially murder a trans person.”

“The biggest fear I have as a trans person, the thought that rushes through your head is ‘What are they going to do with me? Are they going to snap? How are they going to use my gender against me?’” she said.

No one, she said, is running around dressing in women’s clothing trying to “trick” people into thinking they are a woman. That trope, Lomazzo said, shows how little experience people opposed to this law have engaging with the trans community.

“My advice to Rep. Price is read a book. Google the gender binary,” Lomazzo said.

His response? “Read the bill. It has nothing to do with killing people.”

The bill has been held for further study.

[\[ABA Resolution August 12-13, 2013\]](#)

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