

SENATE BILL NO. 97—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA YOUTH LEGISLATURE)

PREFILED JANUARY 24, 2019

Referred to Committee on Judiciary

SUMMARY—Prohibits use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim. (BDR 15-559)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to crimes; prohibiting the use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that if a person commits certain crimes because of the
2 actual or perceived sexual orientation or gender identity or expression of a victim:
3 (1) the person who committed the crime is subject to an additional penalty; (2)
4 unless a greater penalty is provided by law, the person who committed the crime is
5 guilty of a gross misdemeanor; and (3) a person injured by the crime may bring a
6 civil action against the person who committed the crime. (NRS 41.690, 193.1675,
7 207.185) Existing law also requires the Director of the Department of Public Safety
8 to establish a program for reporting crimes that is designed to collect, compile and
9 analyze statistical data about crimes that manifest evidence of prejudice based on
10 sexual orientation or gender identity or expression. (NRS 179A.175)

11 This bill provides that: (1) for the purpose of determining the existence of an
12 alleged state of passion in a defendant or the alleged provocation of a defendant by
13 a victim, the alleged state of passion or provocation shall be deemed not to be
14 objectively reasonable if it resulted from the discovery of, knowledge about or
15 potential disclosure of the actual or perceived sexual orientation or gender identity
16 or expression of the victim; (2) a defendant does not suffer from reduced mental
17 capacity based on the discovery of, knowledge about or potential disclosure of the
18 actual or perceived sexual orientation or gender identity or expression of the victim;
19 and (3) a person is not justified in using force against another person based on the
20 discovery of, knowledge about or potential disclosure of the actual or perceived
21 sexual orientation or gender identity or expression of the victim.



1 WHEREAS, The American Bar Association has urged legislative
2 action to curtail the availability and effectiveness of the “gay panic”
3 and “trans panic” defenses, which seek to partially or completely
4 excuse a defendant from full accountability for the commission of a
5 violent crime on the grounds that the sexual orientation or gender
6 identity or expression of the victim is sufficient to arouse a state of
7 passion in the defendant, serve as valid provocation or justification
8 for the violent reaction of the defendant or reduce the mental
9 capacity of the defendant; and

10 WHEREAS, “Gay panic” and “trans panic” legal defenses, which
11 continue to be raised in criminal cases in courts across the United
12 States, are surprisingly long-lived, historical artifacts and remnants
13 of a time when widespread public antipathy was the norm for
14 lesbian, gay, bisexual and transgender persons; and

15 WHEREAS, “Gay panic” and “trans panic” defenses characterize
16 sexual orientation or gender identity or expression as objectively
17 reasonable excuses for loss of self-control and thereby illegitimately
18 mitigate the responsibility of a defendant for harm done to lesbian,
19 gay, bisexual and transgender persons; and

20 WHEREAS, “Gay panic” and “trans panic” defenses appeal to
21 irrational fears and hatred of lesbian, gay, bisexual and transgender
22 persons, thereby undermining the legitimacy of criminal
23 prosecutions and resulting in unjustifiable acquittals or sentencing
24 reductions; and

25 WHEREAS, The use of “gay panic” and “trans panic” defenses is
26 entirely incompatible with the express intent of Nevada law to
27 provide increased protection to victims of bias-motivated crimes,
28 including crimes committed against lesbian, gay, bisexual and
29 transgender persons; and

30 WHEREAS, Continued use of these anachronistic defenses
31 reinforces and institutionalizes prejudice at the expense of norms of
32 self-control, tolerance and compassion, which the law should
33 encourage, and marks an egregious lapse in the march toward a
34 more just criminal justice system; and

35 WHEREAS, To end the antiquated notion that the lives of lesbian,
36 gay, bisexual and transgender persons are worth less than the lives
37 of other persons and to reflect a modern understanding of lesbian,
38 gay, bisexual and transgender persons as equal to other persons
39 under the law, the use of “gay panic” and “trans panic” defenses
40 must end; now, therefore,



1 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
2 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
3

4 **Section 1.** Chapter 193 of NRS is hereby amended by adding
5 thereto a new section to read as follows:

6 *1. For the purpose of determining the existence of an alleged*
7 *state of passion in a defendant or the alleged provocation of a*
8 *defendant by a victim, the alleged state of passion or provocation*
9 *shall be deemed not to be objectively reasonable if it resulted from*
10 *the discovery of, knowledge about or potential disclosure of the*
11 *actual or perceived sexual orientation or gender identity or*
12 *expression of the victim, including, without limitation, under*
13 *circumstances in which the victim made an unwanted nonforcible*
14 *romantic or sexual advance towards the defendant, or if the*
15 *defendant and victim dated or had a romantic or sexual*
16 *relationship.*

17 *2. A defendant does not suffer from reduced mental capacity*
18 *based on the discovery of, knowledge about or potential disclosure*
19 *of the actual or perceived sexual orientation or gender identity or*
20 *expression of the victim, including, without limitation, under*
21 *circumstances in which the victim made an unwanted nonforcible*
22 *romantic or sexual advance towards the defendant, or if the*
23 *defendant and victim dated or had a romantic or sexual*
24 *relationship.*

25 *3. A person is not justified in using force against another*
26 *person based on the discovery of, knowledge about or potential*
27 *disclosure of the actual or perceived sexual orientation or gender*
28 *identity or expression of the victim, including, without limitation,*
29 *under circumstances in which the victim made an unwanted*
30 *nonforcible romantic or sexual advance towards the defendant, or*
31 *if the defendant and victim dated or had a romantic or sexual*
32 *relationship.*



