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Who Are You Protecting?:
A Feminist Analysis of Gay and Trans Panic Defense Bans, How They Are Defined, and Who
They Protect

by

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Department Honors Thesis in Gender and Women's Studies
Hollins University
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I. Abstract

As of April 2022, sixteen U.S. states ban Gay panic and Trans panic criminal defenses. These state-law prohibitions stemmed from several high-profile murder trials, focusing on the identity of the decedent, including the killings of Matthew Shepard and Latisha King. Between 1970 and 2020, criminal defenses interrogating the gender identity or sexual identity of victims of violence were used at least 104 times, with nearly a third of those cases resulting in reduced criminal charges and penalties.¹ Today, in thirty-four states, the same tactics remain legal. Applying a feminist and outsider legal lens, this study engages in a textual analysis of state legislative ban language and trial orders to explore how identity is defined and conflated in existing state bans and their legal consequences, to frame an argument for novel, comprehensive federal legislation. This study critically challenges ubiquitous connotations of sex and gender in codified state bans, which miss subtly implied Gay panic or Trans panic defenses in practice. Through this examination, the paper remedies these gaps in legislative recommendations for both amending existing state bans to more effectively preclude the usage of the defense, as well as looking at possible language that could be used in creating an effective federal ban.

II. Introduction and Objectives

At E.O. Green Junior High School in Oxnard, California, on February 12, 2008, Brandon McInerney walked into the computer lab and shot classmate Latisha King twice in the back of the head. McInerney would simply walk out of the classroom, while King would die one day later in

¹ Mallory, Christy, Brad Sears, and Luis A. Vasquez. Rep. *Banning the Use of Gay and Trans Panic Defenses*. Williams Institute, April 2021. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gay-Trans-Panic-Apr-2021.pdf>.

the hospital.² Media coverage framed the 15-year-old's death as a failure of gun laws in the greater context of U.S. school shootings, but a second, lesser-known, failure would follow.³ The panic defense that followed, raised in the subsequent prosecution of Brandon McInerney, put his victim's life and identity on trial. This unique failure of the legal system, to protect Latisha King in life or in death, exists at critical intersections of identity, law, policy, history, and contemporary government systems that are both invisible and omnipresent and have only recently been named.

Criminal defenses are a strategy to mitigate the legal responsibility of a person accused of a crime.⁴ These defenses have existed as long as there have been crimes.⁵ While many may be familiar with the defense of insanity, which allows the defendant to admit to their actions but not take responsibility based on mental illness, fewer may be familiar with a panic defense.⁶ Simply put a panic defense operates to eliminate responsibility for the killing of an individual based upon their sexual orientation or gender identity.⁷ It can do this in a variety of ways, that this study explores.

Panic defenses can be studied through a variety of methodologies and fields, but critical to all examinations are the people whose names are obscured by their use in criminal actions. Names including Latisha King, Islan Nettles, Angie Zapata, Brandon Teena, and Matthew Shepard

² Gayle Salamon, *The Life and Death of Latisha King: A Critical Phenomenology of Transphobia* (New York: New Your University Press, 2018) 1; Dubreuil, Jim and Denise Martinez-Ramundo, "Boy Who Shot Classmate at Age 14 Will Be Retried as Adult," *ABC News*, October 4, 2011, <https://abcnews.go.com/US/eighth-grade-shooting-larry-king-brandon-mcinerneyboys/story?id=14666577>.

³ D'Angelo, Alexa. "10 years after Larry King killing, E.O. Green Junior High sees shift in school culture." *VC Star*, June 7, 2018. <https://www.vcstar.com/story/news/education/2018/06/07/larry-king-shooting-10-years-later-e-o-green-junior-high-school-sees-change/630855002/>.

⁴ *Criminal Law* (University of Minnesota Libraries Publishing, 2015). <https://doi.org/10.24926/8668.0501>

⁵ Robinson, Paul H. "Criminal Law Defenses: A Systematic Analysis." *Columbia Law Review* 82, no. 2 (1982): 199-291.

⁶ "Insanity Defense." Legal Information Institute, n.d. https://www.law.cornell.edu/wex/insanity_defense.

⁷ "Gay and Trans Panic Defenses Resolution." The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

represent lives and existences beyond the violence they experienced, and the legal decisions explored herein. All were killed by individuals who allegedly discovered that they were Transgender or Gay. Every criminal defendant charged in these cases argued a panic defense, asserting a legal strategy that reduces criminal responsibility based on the discovery of an individual's gender, sexual orientation, sexual expression, or sexual identity. These arguments, historically and in courtrooms today, assert that such a realization is adequate to provoke a violent rage, causing the death of another.

Because of and in spite of these cases, many states have attempted to reckon with the underlying premise of the legal strategy: the failure that is the usage of Gay Panic or Trans panic defenses. To do so, some states have exercised their legislative authority, creating laws that ban the defense in criminal proceedings. Contemporary coverage of these achievements, presented in the media and to communities, suggest they are a uniform victory for the LGBTQ+ community.⁸

I wanted this to be true. Upon learning the recent history, the legislative developments seemed an obvious conclusion, and both academically and personally I wanted them to be a conclusion. However, the way change is made matters. In my experiences studying and applying a feminist lens to cases and laws at Hollins University as a Gender and Women's Studies Major and at Georgetown Law School as an investigative intern in their Juvenile Justice Clinic, I have done work to develop indigent client defense strategies and interacting with those most affected

⁸ Yurcaba, Jo. "Virginia becomes 12th state to ban gay/trans panic defense." NBC News, April 2, 2021. <https://www.nbcnews.com/feature/nbc-out/virginia-becomes-12th-state-ban-gay-trans-panic-defense-n1262933>; Croft, Jay and Elizabeth Joseph. "New York bans gay and trans 'panic' defenses." CNN, June 30, 2019. <https://www.cnn.com/2019/06/30/us/new-york-cuomo-gay-panic-trans/index.html>; Burness, Alex. "Colorado becomes 11th state to ban LGBTQ 'panic defense.'" The Denver Post, July 13, 2020. <https://www.denverpost.com/2020/07/13/colorado-gay-panic-defense-ban/>.

by the justice system has taught me that the way legal change happens has real consequences. These consequences are visible in cases, archives, and people's lived experiences every day.

From my unique interdisciplinary approach, I hoped these state laws, isolated as they may be, were comprehensive enough to prevent the usage of Gay panic and Trans panic defenses in criminal court proceedings. I wanted the existence of these laws to represent a radical rejection of violence targeting the LGBTQ+ community based on a deeper understanding of LGBTQ+ identities and people. This study arose from my desire to see that recognition memorialized in the text of the laws themselves. So, I set out to examine who exactly these bans are protecting and how they aim to achieve that goal. To do so, I collected and assessed the relevant legislative history and laws in the sixteen states with current bans on Gay panic and Trans panic defenses. These laws are principally crafted from legislation passed in California, which served as the blueprint to many states that followed. In doing so, I was inspired to recenter the people whose narratives and cases inspired the laws, and through textual readings of the cases and statutes, assess the adequacy of these solutions through a feminist legal studies lens.

What I found in applying a feminist lens to these statutes was a more nuanced pattern. My findings also highlights the gaps, or what does not exist in the legislative texts. Both what is and is not present in existing state legislation from this research will aid advocates, interest groups, legislators, and policy drafters imagining laws better informed by feminist and queer theory scholarship, to reflect and serve the diverse needs and identities of LGBTQ+ people, wanting to live without violence.

Ultimately, there are currently no federal laws prohibiting Gay panic and Trans panic defenses, across all jurisdictions. My goal is for this research to culminate in a draft federal bill that fills the gaps and addresses the patterns my research illuminates. In providing these

recommendations, I reframe current laws as a beginning of a more feminist-informed Trans and Gay panic ban discussion, instead of an end to the discussion.

III. Methodology

This study frames relevant cases and legislative ban texts through two methodologies articulated in, legal scholar and professor, Martha Minow's *Archetypal Legal Scholarship: A Field Guide*. First, analysis of state statutes will follow the analytical steps of a "doctrinal restatement."⁹ The restatement this analysis articulates will then, secondly, be the subject of a "recasting project" following Minow's guidelines. The methodology and subsequent analysis will be separated into two distinct categories based upon this: doctrinal restatement and the creation of the recasting project.

A. Doctrinal Restatement

Martha Minow organizes doctrinal restatement into three steps, which require critically reading the text of cases and statutes for sources of organizable principles based upon a singular practice.¹⁰

The first step [(Ia)] in doctrinal restatement will utilize the principles gathered from the literature review and early case law to "organize and reorganize case law into coherent elements, categories, and concepts" based on three principles.¹¹ The following are the original principles that emerged as critical to this work from both the literature review and early case law: 1. the conflation of sex and gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies. Applying these

⁹ Minow, Martha. "Archetypal Legal Scholarship: A Field Guide." *Journal of Legal Education* 63, no. 1 (2013): 65.

¹⁰ *Id.*

¹¹ *Id.*

principles, the cases and legislative bans will be organized into two distinct categories: the first category includes cases and statutes in which sex and gender are conflated or combined, and the second category looks at impacts beyond the trial. Looking beyond the trial will examine plea deals and sentencing time of defendants.

The second step [(Ib)] in analysis will “acknowledge distinction between settled and emerging law” while looking for methods in the same three principles.¹² This process examines relevant cases in states with an existing state law ban at the beginning of trial. This close reading explores if the defense strategy used in trial was impacted or deterred by the ban in practice.

The third and final step of doctrinal restatement [(Ic)], will “identify difference between the majority and the ‘preferred’ or ‘better’ practice.”¹³ In this analysis California, which was the blueprint for many of the Gay panic and Trans panic defense bans in various states, will represent the majority practice.

B. Recasting Project

Minow organizes a recasting project into two steps; in her first step [(IIa)] a common factor is required to be gathered across cases and the second step [(IIb)] is the creation of “a new framework or paradigm that can recognize past, present and future material.”¹⁴

As is done in the doctrinal restatement, I consider the same three principles as ‘common factor[s]’ across texts: the conflation of sex and gender, violence is systemic and cannot be transformed broadly at a single site of action, and systems of violence rely on hetero-patriarchal ideologies of the United States. The doctrinal restatement analysis and conclusions serve as the first step in the recasting project.

¹² Minow, Martha. “Archetypal Legal Scholarship: A Field Guide.” *Journal of Legal Education* 63, no. 1 (2013): 65.

¹³ *Id.*

¹⁴ *Id.* at p. 66.

Following step two, Minow's method requires the creation of a new paradigm to reflect the foregoing findings.¹⁵ With the common factors found and using both the analysis of existing state bans and the analysis of cases in which the defenses were used, I will then create a model for a federal bill banning the usage of Gay panic and Trans panic defenses. The framework of this federal model will acknowledge language used in past models created and utilized for creating bans against Gay panic and Trans panic Defenses. It will also look at past and present cases regarding plea deals and sentencing guidelines, while looking to future possibilities for eradicating the defenses explored throughout this paper. There is currently no federal ban on the usage of the defenses, and in creating a federal ban it will create a standard to be utilized by both the states with existing bans and those without. My recommendation about the preferred practices is based on the three principles, that are utilized throughout the doctrinal restatement and section [(IIa)] of the recasting project: the conflation of sex and gender, violence is systemic and cannot be transformed broadly at a single site of action, and systems of violence rely on hetero-patriarchal ideologies of the United States.

IV. Literature Review

The following literature review identifies prominent legal scholarship and feminist theory relevant to assessing Gay and Trans panic defenses through doctrinal restatement and the recasting project.

A. Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins by Francisco Valdes (January 1996)

¹⁵ Minow, Martha. "Archetypal Legal Scholarship: A Field Guide." *Journal of Legal Education* 63, no. 1 (2013): 66.

Legal scholar Francisco Valdes critiques the beginnings of the Euro-American sex/gender system.¹⁶ The article focuses on the “evolution of historical biases in American law and society that continue to dominate and destabilize sex/gender relations”.¹⁷ The paper unpacks why the terms gender, sex, and sexual orientation have historically been conflated and why this is harmful. Valdes argues that this conflation only benefits a few privileged people while it harms and limits many.¹⁸ The article is broken into three parts: part one focuses on the deconstruction of the conflation of sex, gender, and sexual orientation that stemmed from the Euro-American sex/gender system; part two is a critique of the history of conflation and the more modern consequences that are faced by individuals due to the conflation of sex, gender, and sexual orientation; part three critiques the intersections between androsexism and heterosexism.¹⁹

Relevant to this study, part two emphasizes the harm of conflating identities under the law. Valdes defines sex as being the physical attributes of bodies, such as external genitalia.²⁰ Gender is defined as the personality attributes and societal standards of masculinity and femininity, standards which have been set by societal views of sex.²¹ Sexual orientation is defined as the sexual interests or desires that are directed towards individuals of the same sex, the other sex, or both sexes.²² Utilizing a triangle diagram, Valdes identifies three “legs”: the first leg represents a conflation of sex and gender, the second leg represents a conflation of gender and sexual orientation, and the third leg represents a conflation of sex and sexual orientation.²³ In the

¹⁶ Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996): 161-211.

¹⁷ *Id.* at p. 161.

¹⁸ *Id.* at p. 162.

¹⁹ *Id.*

²⁰ *Id.* at p.164.

²¹ *Id.*

²² *Id.* at p.164-165.

²³ *Id.*

conflation of sex and gender Valdes found that societal beliefs that “persons born with penises are supposed to exhibit a particular social personality and persons born with vaginas another,” are compounded with the legal systems refusal to “ameliorate societal pressure on, and discrimination against, socially gender-atypical persons lead to a conflation of sex and gender both culturally and legally.”²⁴ Valdes connects the conflation of sex and gender to hetero-patriarchal structures, that require an excavation of “sex/gender discontinuities that help to misshape identity and destiny for women, sexual minorities, and sex/gender Others.”²⁵ Valdes notes that it will require feminist and queer legal scholars critiquing both the law and society to reform sex and gender confluations.²⁶ Feminist and queer legal scholars must create the work that directly addresses these issues, and in turn will be able to take care of their communities.

B. The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women by Cynthia Lee and Peter Kwan (December 2014)

Legal scholars Kwan and Lee use the work of Angela Harris to argue that violence against Transgender women by men is a form of gender violence that does not receive attention.²⁷ They focus specifically on the Trans panic defense strategy which is often used to justify the actions of a heteronormative man causing harm or murdering Transgender women. The defense will argue that the defendant was provoked or deceived by the victim leading to him either being acquitted or found guilty of a lesser charge. In 2013 the American Bar Association passed a resolution which worked to combat the effects and usage of Gay panic and Trans panic defenses. While the

²⁴ Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996): 166.

²⁵ *Id.* at p.211.

²⁶ *Id.*

²⁷ Kwan, Peter and Cynthia Lee, "The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women," *Hastings Law Journal* 66, no. 1 (2014): 77-132.

resolution served as a concerted effort to combat bias against Gay and Transgender individuals, Kwan and Lee felt that it did not go far enough.

Kwan and Lee broke their writing into four sections that focused on raising awareness and overviewing the issuance of violence against Transgender people, dissecting the Trans panic defense strategy, examining the motivations behind violence in Trans panic cases, and discussing options for legal actors to combat bias against Transgender individuals. Kwan and Lee believe that the use of raising awareness on the issue of toxic masculinity leading to violence against Transgender people is a more valuable tool than creating a blanket ban of Gay and Trans panic defenses.²⁸ The reading attempts to educate those on the differences between gender and sexuality, language that is not supportive, and the psychological effects of gender dysphoria and how that can affect someone. Kwan and Lee work to show that Transgender people are not a monolith in society. Transgender people hold many intersections of identities whether that be racial, religious, or class identities.

C. The Trans Panic Defense Revisited by Cynthia Lee (Fall 2020)

Legal scholar Cynthia Lee focuses on the Trans panic defense as well as the violence against Transgender women of color.²⁹ In 2018, Trans women of color represented the majority of Transgender people killed that year.³⁰ This number may have been higher, however police officers only record the victim's biological sex and not their gender identity as this information is not included on their driver's license.³¹ In this paper Lee focuses on the discrimination, violence, and harassment experienced by Transgender people in the United States, the Trans panic defense, and

²⁸ Kwan, Peter and Cynthia Lee, "The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women," *Hastings Law Journal* 66, no. 1 (2014): 77-132.

²⁹ Lee, Cynthia. "The Trans Panic Defense Revisited." *The American Criminal Law Review* 57, no. 4 (2020): 1411-1497.

³⁰ *Id.* at p.1414.

³¹ *Id.* at p.1415.

how to properly deal with the effects of Trans panic defenses. Proper data to collect statistics on homicides of Transgender people is not believed to be comprehensive as police reports do not describe Transgender homicide victims by their gender identity but instead by their biological sex. Police reports also continue to deadname Transgender victims of homicide. Between 2013-2018 132 Transgender people were victims of homicide, 119 of those were Transgender female homicide victims, and 114 of them were people of color.³²

Lee discusses the “defense of provocation” or the heat of passion defense.³³ When using this defense, the jury would have to find that the defendant was provoked into a heat of passion. This argument typically works in tandem with the Gay panic defense. Lee points out however that this may not still be the case in today’s #MeToo culture.³⁴ Both the Gay panic and Trans panic defense are related with each other but have different targets. While Gay men are typically the victims involved in Gay panic defenses, Transgender women often make up many of the victims impacted by Trans panic defenses. In these cases, the defendant will attempt to convince the jury that he was deceived by a Transgender woman which in turn caused him to lose control (defense of provocation).³⁵ The requirement of the defendant is only that he would need to convince a jury that the average male would be upset to discover the person whom he was dating was not determined female at birth.

Lee points out that while that argument seems absurd, this argument is a regular form of sensationalized entertainment on shows like Jerry Springer.³⁶ On any given day an individual on the show discovers that the woman he was dating was Transgender. This scene typically involves

³² Lee, Cynthia. "The Trans Panic Defense Revisited." *The American Criminal Law Review* 57, no. 4 (2020): 1421.

³³ *Id.* at p.1425.

³⁴ *Id.* at p.1429.

³⁵ *Id.* at p.1431.

³⁶ *Id.* at p.1431.

physical violence between both parties. In these settings, similar to the drama portrayed on Jerry Springer, a trope of deception and dramatic reveal emerges, often ending in the violent murder and assault of Transgender and Gay people. This common narrative reflects and informs stereotypes that rely on the belief that gender must be performed in a way that confirms either masculinity or femininity.

D. Gender, Violence, Race, and Criminal Justice by Angela Harris (April 2000)

Harris investigates racial violence while giving particular attention to the gender violence amongst men. Her work is broken up into three pieces, the first part draws upon sociological literature, the second part on criminology literature and the third part focuses on the criminal justice systems complicities in gender violence. Harris argues that the ideology of manliness is “made real with violence.”³⁷ When their masculinity is believed to be under attack, some men respond with violence to prove their masculinity. The hierarchies of race and class, however, differentiate the types of masculinity that function for white heterosexual men in comparison to African American men. In the post war era, African American men were and still are perceived as violent and brutish. While these are the foundations of manliness for African American men, it still puts them beneath white men. White men are still viewed as the superior ideal of what masculinity is. Men that are denied access to the superior ideal of masculinity, white and/or Black men, then resort to “hypermasculinity” to further increase their superiority. This sense of superiority is not simply reserved to reducing the position of women, it also serves to reduce the position of homosexual men.

³⁷ Harris, Angela P. "Gender, Violence, Race, and Criminal Justice." *Stanford Law Review* 52, no. 4 (2000): 777-807.

Harris found that when men accounted for why they rape women, their response was often that they feared being humiliated by women, or that they had been humiliated by a woman in terms of their lack of sexual prowess.³⁸ To assert their dominance, they then attempt to reclaim their power through rape. This same type of hypermasculinity translates to the other side of the law where police officers also represent the negative aspects of hypermasculinity. Size and strength requirements for entry into the police department, create a qualification for the need to be able to physically brutalize. Even within the police department there is a separation between the positions that are seen as feminine: those inside the office, completing administrative tasks versus “street cops” who are seen as being masculine.³⁹ These attitudes of hypermasculinity within police departments create a system that is rampant with issues of sexual harassment and domestic violence amongst its employees.

Engendered perceptions of masculinity and femininity are embedded within systems of crime and punishment in the United States’ correctional and policing institutions. Harris argues that it is this hypermasculine culture that entices Black men to join the police department as it allows them to flex their male prowess at the same level as their white male counterparts, without having to directly compete with them.⁴⁰ As a police officer, the competition is between those who are law-abiding versus those who are lawbreakers, allowing them to utilize the “privileges of hegemonic masculinity.”⁴¹ Harris recognizes that to be able to address these issues and disrupt “the cycle of gender violence both inside and outside the state”, it must first be addressed as a race,

³⁸ Harris, Angela P. "Gender, Violence, Race, and Criminal Justice." *Stanford Law Review* 52, no. 4 (2000): 791.

³⁹ *Id.* at p.794.

⁴⁰ *Id.* at p.798.

⁴¹ *Id.*

gender, and criminal justice issue.⁴² When separated from each other, the intersections of identities most affected by the correctional and policing institutions are ignored.

E. Trans Formation: Three Myths Regarding Transgender Identity Have Led to Conflicting Laws and Policies that Adversely Affect Transgender People by Dean Spade (October 2008)

David Spade in this piece identifies three myths that he believes stand out when addressing obstacles surrounding laws and policies excluding and discriminating against Transgender people.⁴³ The three myths are as follows: 1. “Transgender people do not exist”, 2. “Trans people can only be understood or recognized through medical authority”, and 3. “Trans people’s gender-confirming healthcare is not legitimate medicine.”⁴⁴ Spade challenges each myth in ways that illustrate the pervasiveness of these concepts, including in law and lawmaking.

The first myth relies on the belief that Transgender people do not exist until their legal documentation determines that they do. Many of the government agencies which issue IDs refuse to allow individuals to change their gender markers, relying on the belief that the gender assigned at birth is the only one that is legally binding.⁴⁵ This documentation then carries into residential programs which use sex segregation to separate populations. Spade specifically focusses on prison facilities, foster care group homes, and schools.⁴⁶ The second myth focuses on the idea that for Trans people to be ‘legitimate’ they must prove that they have completed medical evaluations and procedures proving them as such.⁴⁷ Spade recognizes that this stems from the economic hardships

⁴² Harris, Angela P. "Gender, Violence, Race, and Criminal Justice." *Stanford Law Review* 52, no. 4 (2000): 777.

⁴³Spade, Dean. “Trans Formation: Three myths regarding transgender Identity Have Led to Conflicting Laws and Policies that Adversely Affect Transgender People.”, *Los Angeles Lawyer* 31, no.7 (2008): 34-39.

⁴⁴ *Id.*

⁴⁵ *Id.* at p. 36.

⁴⁶ *Id.*

⁴⁷ *Id.* at p. 37.

of Transgender people that directly correlates with the discrimination they face. They also do not meet “surgery requirements for gender recognition under certain laws and policies.”⁴⁸ The medical gender reclassification rules at various ID-issuing institutions all have different policies that are inconsistent between states. Even within case law, Spade found that in Courts where cases affirmed Transgender people being covered by anti-discrimination laws, they relied on medical confirmation of their Transgender identities.⁴⁹

While gender confirming surgeries are viewed as necessary much of the time, in myth three, Spade found that gender-confirming medical care is seen as illegitimate.⁵⁰ Insurance companies often reject claims for gender-confirming health care. Lack of access to gender-affirming care has been shown to increase the number of Transgender people who are incarcerated. Spade found that anti-discrimination laws, do not address the three myths he identified. He recommended that it may be necessary to “inquire whether gender performs the labor it is assumed to perform in various regulatory systems.”⁵¹ To move into a system in which these myths do not exist, gender must be removed as system to determine the existence of Transgender individuals under the law.

F. Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground by Aya Gruber (2014)

Focusing on stand-your-ground laws after Trayvon Martin was killed by George Zimmerman, legal scholar Aya Gruber argues that punitive impulse leads those fighting for racial justice to “embrace proposals that augment the very police and prosecutorial power” that they

⁴⁸ Spade, Dean. “Trans Formation: Three myths regarding transgender Identity Have Led to Conflicting Laws and Policies that Adversely Affect Transgender People.”, *Los Angeles Lawyer* 31, no.7 (2008):36-38.

⁴⁹ *Id* at p. 38.

⁵⁰ *Id.*

⁵¹ *Id.* at p. 39.

criticize.⁵² Gruber describes ‘punitive impulses’ as the actions leading “progressives to seek solutions to race and gender-based harm through strengthening criminal law’s ability to punish individuals who commit offenses against minorities and women.”⁵³ Gerber cautions against embracing solutions that increase severity within the criminal justice system.⁵⁴ While the application of punitive punishment may seem like the best response to racism or the homophobia referenced within the case law in this research, it actually embraces the same hetero-patriarchal ideologies and beliefs that lead to the initial tragedies. Those conversations about racism, hetero-patriarchal systems, and homophobia lose their importance in exchange for fueling a conversation about the justice system. “...Hegemonic cultural forces flattened the rich discussion of race, hierarchy, and state power, into a simple conversation about lack of efficient crime control.”⁵⁵

While Gruber’s anti-carceral feminist scholarship challenges banning and limiting defenses which give advantage to the carceral state in prosecution, this position is not wholly inconsistent with the objectives of this study. Eliminating transphobic and homophobic strategies embedded in the existing criminal system, to serve communities shaped by the carceral state now, I argue is not at odds with an anti-carceral future. Scholarship and legal developments recognizing the importance of LGBTQ+ protections under the law cannot wait and are not mutually exclusive from abolitionist goals. Consistent with this perspective, this paper will focus only on the improvement of Gay panic and Trans Panic defense bans for a purpose tailored to avoiding

⁵² Gruber, Aya. "Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground." *University of Miami Law Review*, 68, 961 (Summer, 2014). <https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5D6H-8NX0-00CV-H0F1-00000-00&context=1516831>.

⁵³ *Id.* at p. 1014

⁵⁴ *Id.*

⁵⁵ *Id.*

collective harms to LGBTQ individuals and communities , prioritizing consistency and clarity over retribution and punishment.

G. Historic Trajectory of Gay Panic and Trans Panic Defenses

The following component of my literature review traces the trajectory of homosexual panic and its contemporary defenses throughout US history. This history culminates in the creation in the creation of the ABA Resolution on Gay and Trans Panic Defenses.

1. History of Homosexual Panic

In 1921 Edward J. Kempf (1885-1971) coined what became known, to the public and the medical community, as homosexual panic. The term describes the acts of individuals when they, most time male, are brought “into social situations with known or suspected homosexuals.”⁵⁶ They must then confront their own “homoerotic feelings, fantasies, or behaviors”, often in a way that leads to “violence and murder directed toward the assumed homosexual objects.”⁵⁷ The term was added into the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in 1952, and the term was not removed until the second edition of the DSM was produced in 1973, 21 years later. Even then the term was replaced with “sexual orientation disturbance” in 1974.⁵⁸ Different variations would continue to pathologize homosexuality until 1987.

At that point however, the social ramifications of treating homosexuality as a mental illness had already begun. In order to exist as oneself an individual had to be “legitimized” by medical treatment.⁵⁹ The Stonewall riots would go on to begin in 1969, which many believed was the

⁵⁶ Herdt, Gilbert. "Homosexual panic." In *The International Encyclopedia of Human Sexuality*. Edited by Patricia Whelehan, and Anne Bolin. 1st ed. New Jersey: Wiley, 2015.

⁵⁷ *Id.*

⁵⁸ Cabaj, Robert Paul. “Working with LGBTQ Patients.” American Psychiatric Association. N.d. <https://www.psychiatry.org/psychiatrists/cultural-competency/education/best-practice-highlights/working-with-lgbtq-patients>.

⁵⁹ Spade, Dean. “Resisting Medicine/Remodeling Gender.”, *Berkley Women’s Law Journal* 18 (2003): 15-37. <https://digitalcommons.law.seattleu.edu/faculty/592>.

catalyst of the Gay Rights movement.⁶⁰ Homosexual Panic then entered the American Legal system under the guise of the “Homosexual Panic Defense”. The defense itself is used in criminal cases, typically when an individual has been charged with violence, assault or murder, against an LGBTQ+ individual.⁶¹ The Homosexual Panic Defense works in part in two different ways. In this paper, the homosexual panic defense will be referred to as two separate terms known as the Gay panic defense and the Trans panic defense. Both the Trans panic defense and the Gay panic defense are two separate issues and two separate terms, but both rely on the blaming of the victims for the actions of the individual who committed the crime. They both also rely on the concept of Homosexual Panic to describe the actions of the individual committing the crime. Homosexual Panic disorder is used as a mental illness, to invoke an insanity defense or diminished capacity defense.⁶² With this defense, the defendant admits to their actions but does not accept responsibility based on mental illness.⁶³ This defense is not the same as a diminished capacity defense. With an insanity defense, legal competency to stand trial needs to be determined before insanity can be established as a defense.⁶⁴ The Supreme Court of the United States has set no precedent on how to determine diminished capacity, and the litmus test therefore varies from state to state.⁶⁵

⁶⁰ “Stonewall Riots: The Beginning of the LGBT Movement.” The Leadership Conference on Civil and Human Rights, June 2009. <https://civilrights.org/2009/06/22/stonewall-riots-the-beginning-of-the-lgbt-movement/>.

⁶¹ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

⁶² *Id.*

⁶³ “Insanity Defense.” Legal Information Institute, n.d. https://www.law.cornell.edu/wex/insanity_defense.

⁶⁴ *Id.*

⁶⁵ “U.S. Supreme Court Sides with Kansas Over Insanity Defense.” American Bar Association, July 2020. https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/summer/us-supreme-court-sides-with-kansas/.

As of 2021, sixteen states have statutory bans on both Gay and Trans panic defenses. California was the first state to produce a ban after bill AB 2501 was passed and signed by the Governor in 2014. Since then, states including Colorado, Maryland, Connecticut, and the District of Columbia have all passed similar bills banning the use of Gay and or Trans panic defenses in criminal cases. Many of these bills are in keeping with the language of the American Bar Association's (ABA) 2013 Resolution on Gay and Trans Panic Defenses.

The resolution created by the ABA calls for legislative action to “curtail the availability and effectiveness of the ‘Gay panic’ and ‘Trans panic’ defenses.”⁶⁶ Both of these defenses look to justify the murder and assault of individuals based upon their sexual orientation or gender identity.⁶⁷ The report itself draws upon the high-profile murders of Jorge Mercado, Matthew Shepard, Angie Zapata, and Latisha King all cases in which the victims were blamed for their death when the defendants used, Gay panic and Trans panic defenses throughout their trials. Mercado, Shepard, Zapata, and King were all brutally murdered by defendants who would go on to use a legal defense, which blamed them for their own deaths. Many states have dedicated their own bills banning the use of Gay panic and Trans panic defenses to individuals whose lives were taken due to senseless violence.

In each state, the laws while worded the same, function differently. In this chapter the operative laws, the history of homosexual panic disorder, Gay and Trans panic, increasing rates of murders of Transgender people, and the ABA 2013 Resolution on Gay and Trans Panic Defenses will be explored.

⁶⁶ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

⁶⁷*Id.*

2. Homosexual Panic Disorder

Homosexual Panic was first coined by Edward Kempf in the 1923 to describe what he considered to be a psychological disorder. The term referred to the panic that resulted from an internal struggle usually male who when “brought into social situation with known or suspected homosexuals, are then forced to confront homoerotic feelings, fantasies, or behaviors which sometimes provoked extreme reactions, including violence and murder directed toward the assumed homosexual objects.”⁶⁸ Kempf believed that when an individual found someone of the same sex attractive “they felt helpless, passive and anxious.”⁶⁹ The term first appeared in the American Psychiatric Association DSM Manual in 1952.

The term homosexual panic became much more popularized during the lavender scare in the federal government during the 1950s and 1960s. Gay and Lesbian individuals working within the government were interrogated and pushed out of their jobs. The belief being, that homosexual individuals were more susceptible to communism and treason, as they could easily be blackmailed into giving state secrets. It is during this time however that the Gay liberation movement began, which saw many LGBTQ people enter the mainstream and fight for equality. Frank Kameny fought back against the effects of the lavender scare and sued the United States government in the Supreme Court.

While the 1960s marked the beginning of the Gay liberation movement, the 1980s marked the beginning of the HIV/AIDS epidemic which again increased the popularity of the term homosexual panic. The epidemic fueled a new and “increasing stigma against homosexuals and

⁶⁸ Herdt, Gilbert. "Homosexual panic." In *The International Encyclopedia of Human Sexuality*. Edited by Patricia Whelehan, and Anne Bolin. 1st ed. New Jersey: Wiley, 2015.

⁶⁹ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

homosexuality.”⁷⁰ At the height of the HIV/AIDS epidemic from 1981-1987, African Americans represented 25.5% of people with AIDS.⁷¹ By the end of 2000, the African American community made up 44.9% of people with AIDS.⁷² Homophobia within the Black community created a space where one could not be open in their sexual identities. This led young queer men to engage in “riskier sexual behaviors”, which inherently fueled the spread of AIDS.⁷³ While the Black community had fewer resources to combat the HIV/AIDS epidemic, the condemnation of homosexuality impacted the response to the crises as well. Many within the church and the Black community “thought of homosexuality as a cultural phenomenon of white people and AIDS as a disease of Gay white men.”⁷⁴ Due to these beliefs, the AIDS epidemic was largely unspoken and ignored in the Black community, keeping in alignment with Anne Allen Shockley’s notion of “play it, but don’t say it”⁷⁵:

That's the line that capsulizes the general stance of the Black community on sexual identity and orientation. If you're a Lesbian, you can have as many women as you want. If you're a Gay man, you can have all the men you want. But just don't say anything about it or make it political.⁷⁶

To African Americans, the actions of queer Black women and men are acceptable only if they could not be seen. This places queer Black people on the outskirts of the Black community, marginalized from the larger community. With this, it allows for the whole Black community to

⁷⁰ Altman, Dennis. “Legitimation through Disaster: AIDS and the Gay Movement.” In *AIDS: The Burdens of History*, edited by Elizabeth Fee and Daniel M. Fox, 302-314. Berkley: University of California Press, 1988.

⁷¹ “HIV and AIDS --- United States, 1981—2000.” *Morbidity and Mortality Weekly Report* 50, no. 21 (2001):430-434.

⁷² *Id.*

⁷³ Lewis, Gregory B. "Black-White Differences in Attitudes toward Homosexuality and Gay Rights." *Public Opinion Quarterly* 67, no. 1 (2003): 59-78.

⁷⁴ *Id.*; Icard, Larry D. “Black Gay Men and Conflicting Social Identities: Sexual Orientation Versus Racial Identity.” *Journal of Social Work & Human Sexuality* 4, no.1-2 (1986): 86.

⁷⁵ Gomez, Jewelle and Barbara Smith. “Talking about It: Homophobia in the Black Community.” *Feminist Review* 34, (1990): 49.

⁷⁶ *Id.*

ignore the consequences of their actions against the Black queer community. It allowed the community to ignore any type of discrimination that the growing queer community might face. Both the lavender scares of the 1960s and the HIV/AIDS epidemic of the 1980s fueled the fears that many people held about Gay, Lesbian, and Transgender people.⁷⁷

The panic and fear surrounding homosexual individuals, however, is often found within cultural and family structures. Especially in the Black community, where large amounts of violence are directed towards queer people. Respectability politics created a separation in the Black community between those who practiced the “hegemonic articulations of gender, class, and sexuality”, and those who were outside the realm of the heteronormative views.⁷⁸ Cathy Cohen describes this as secondary marginalization, the “process of exclusion of a subgroup of a marginalized community that functions outside the normative rules that determine community membership and power.”⁷⁹ Queer African American, Gay and Lesbian individuals operate outside of the normative and as a result are considered to be disloyal to the cause. Conservative black churches and nationalists condemn homosexuality as being a threat to the whole existence of the black community.⁸⁰ Claiming to protect the African American family structure, Rev. Adam Clayton Powell, Sr., pastor of Abyssinian Baptist Church, launched a public campaign against homosexuality.⁸¹ It was believed by him that homosexuality was a “social trend” that was attacking

⁷⁷Adkins, Judith. “These People Are Frightened to Death”: Congressional Investigation and the Lavender Scare.” *Prologue Magazine* 48, no. 2 (2016).

<https://www.archives.gov/publications/prologue/2016/summer/lavender.html>.

⁷⁸ Higginbotham, Evelyn Brooks. “African-American Women’s History and the Metalanguage of Race.” *Signs: Journal of Women in Culture and Society* 17, no. 2 (1992): 251-274.

⁷⁹ Armstrong, Amanda. “Today’s Boundaries of Blackness: Is Secondary Marginalization Still Applicable to the AIDS Crisis in 2008?” *URC Student Scholarship* (2008).

https://scholar.oxy.edu/handle/20.500.12711/1184_

⁸⁰ White, E. Frances. “Black Feminist Intervention.” In *Dark Continent of Our Bodies: Black Feminism & Politics of Respectability*, 25-80. Temple University Press, 2001.

⁸¹ Harris, Paisley. “Gatekeeping and Remaking: The Politics of Respectability in African American Women’s History and Black Feminism.” *Journal of Women’s History* 15, no. 1 (2003): 212-220.

the African American family structure, with the males leaving their wives for men and women deciding to engage in relations with other women, never marrying.⁸² These campaigns created a society in which queer African Americans were marginalized by white people for being Black, and then secondarily marginalized by the very community from which they were from.

3. Respectability Politics and Secondary Marginalization

Respectability politics created a separation in the Black community between those who practiced the “hegemonic articulations of gender, class, and sexuality”, and those who were outside the realm of the heteronormative views.⁸³ Cathy Cohen describes this as secondary marginalization, the “process of exclusion of a subgroup of a marginalized community that functions outside the normative rules that determine community membership and power.”⁸⁴ Queer African American and Gay and Lesbian individuals operate outside of the normative and as a result are considered to be disloyal to the cause. Conservative Black churches and Black nationalists condemn homosexuality as being a threat to the whole existence of the black community.⁸⁵ Claiming to protect the African American family structure, Rev. Adam Clayton Powell, Sr., pastor of Abyssinian Baptist Church, launched a public campaign against homosexuality.⁸⁶ It was believed by him that homosexuality was a “social trend” that was attacking the African American family with the males leaving their wives for men and women deciding to engage in relations with

⁸² Powell, Adam Clayton. *Against the Tide: An Autobiography*. New York, 1938.

⁸³ Higginbotham, Evelyn Brooks. “African-American Women’s History and the Metalanguage of Race.” *Signs: Journal of Women in Culture and Society* 17, no. 2 (1992): 251-274.

⁸⁴ Armstrong, Amanda. “Today’s Boundaries of Blackness: Is Secondary Marginalization Still Applicable to the AIDS Crisis in 2008?” *URC Student Scholarship* (2008).
<https://scholar.oxy.edu/handle/20.500.12711/1184>

⁸⁵ White, E. Frances. “Black Feminist Intervention.” In *Dark Continent of Our Bodies: Black Feminism & Politics of Respectability*, 25-80. Temple University Press, 2001.

⁸⁶ Harris, Paisley. “Gatekeeping and Remaking: The Politics of Respectability in African American Women’s History and Black Feminism.” *Journal of Women’s History* 15, no. 1 (2003): 212-220.

other women, never marrying.⁸⁷ These campaigns created a society in which queer African Americans were marginalized by white people for being Black, and then secondarily marginalized by the very community from which they were from.

To separate themselves from “deviant sexuality”, African Americans historically have denied homosexuality within the community, encouraging homophobic beliefs in Black churches.⁸⁸ In an essay reviewing *Homosexuality and the Black Church*, Angelique Harris argues that homosexuality itself is not where homophobia is rooted in the African American community and churches. Harris believes that homophobia in the Black community comes from sexuality or “deviant sexuality” itself and the oppression that African Americans faced from white people about issues of sexuality. Respectability politics encouraged members of the African American community to be pious and to abide by the heteronormative family model, a man and a woman married with children. The perceived loss of these ideals was alarming to some within the African American community. In a time in which the overall community faced stigmatization and marginalization by white people, the queer men and women with the African American community were and continue to be marginalized by their community. Cheryl Clarke argues that it is “exceedingly painful for us to face public denunciation from black folk—the very group who should be championing our liberation.”⁸⁹

Queer black men serve as a juxtaposition to the idea of what masculinity is in the African American community. Since to be considered masculine, you must be heterosexual this “prompt[s]

⁸⁷ Powell, Adam Clayton. *Against the Tide: An Autobiography*. New York, 1938.

⁸⁸ Harris, Paisley. “Gatekeeping and Remaking: The Politics of Respectability in African American Women’s History and Black Feminism.” *Journal of Women’s History* 15, no. 1 (2003): 212-220.

⁸⁹ Clarke, Cheryl. “The Failure to Transform: Homophobia in the Black Community.” In *Home Girls: A Black Feminist Anthology*. Edited by Barbara Smith. New York: Kitchen Table/Women of Color (2001):207.

the hypermasculinization of behavior among males to avoid being labeled a ‘fag’ or ‘queer’.”⁹⁰ The respectability politics surrounding masculinity require homophobia, as hypermasculinity is a system that values “male physical strength, aggression, violence, competition, and dominance that despises the death of these characteristics as weak and feminine.”⁹¹ Heterosexual men then practice hypermasculinity as a way to separate themselves from what is considered to be “weak and feminine”, both internalizing homophobia as well as outwardly expressing it. Creating a phenomenon known as the “Down Low”, in which Black men who know that they are Gay, “do not profess their sexual identity” or those who considered themselves to be heterosexual, but only have sex with men.⁹² These men stand between the line of expressing their sexual identity, while also performing as hypermasculine men. In his study, *We Wear the Mask: African American Contemporary Gay Male Identities* Edward Brown II (2005), describes how black men separate their racial identity from their sexual identity.

Said differently, many contemporary African American Gay men believe that they must be homophobic and divide their sexual identity from their black male identity in order to be accepted and to maintain a high ranking in the hierarchy of men. It is through this logic that statements like, "I can't stand no faggot ass nigger" can be heard from the mouth of a black Gay man, even in an all-Gay environment.⁹³

Within the African American community, the importance that is placed on masculinity as a result of respectability politics is similar to the importance of femininity. Feminine queer black women, while seen as “deviant” are still able to present themselves to the public as being within the lines of what is considered to be respectable. Those wearing dresses, skirts, and makeup, faced

⁹⁰ Ward, Elijah G. “Homophobia, hypermasculinity and the US black church.” *Culture, Health & Sexuality* 7, no. 5 (2005): 496. doi: 10.1080/13691050500151248.

⁹¹ *Id.*

⁹² Brown, Edward. “We Wear the Mask: African American Contemporary Gay Male Identities.” *Journal of African American Studies* 9, no. 2 (2005): 29-38. doi: 10.1007/s12111-005-1020-x

⁹³ *Id.*

less of the “hostility and misunderstanding” from the Black community, than nonfeminine Lesbians.⁹⁴ Black queer women are referred to as “Gay, queer, funny, or a bull dagger”, which Anne Allen Shockley says are “embedded deeply within the overall homophobic attitude of the Black Community, a phenomenon stemming from social, religious, and ‘biological’ convictions.”⁹⁵

Within the Black community, fear and stigma impact both those who identify as Gay, Lesbian, Bisexual, and Transgender, but it simultaneously affects other individuals in how they respond to people who deviate from the heteronormative ideologies. For many, homosexual panic comes from the separation from what is considered to be normal. “...homosocial desire finds itself rent by the putative “sameness” of homosexuality, which, by short-circuiting the approved wiring of desire, threatens to upset the homosocial flows of power.”⁹⁶ Within all communities, many fear losing that power which comes from being within the majority.

While secondary marginalization is used to describe the effects of respectability politics on queer Black people, it also describes the effects of Gay panic and Trans panic defenses on victims. With the use of these defenses, they are both secondarily marginalized and also secondarily victimized. The defense itself requires the “jury to find the victim’s sexual orientation or gender identity blameworthy for the defendant’s actions.”⁹⁷ The victim experiences secondary marginalization from the usage of their sexual orientation or gender identity to further discredit

⁹⁴ Moore, Mignon R. “Lipstick or Timberlands? Meanings of Gender Presentation in Black Lesbian Communities.” *Signs* 32, no. 1 (2006): 117. doi:10.1086/505269.

⁹⁵ Shockley, Ann Allen. “The Black Lesbian in American Literature: An Overview.” In *Home Girls: A Black Feminist Anthology*. Edited by Barbara Smith. New York: Kitchen Table/Women of Color (1983):84.

⁹⁶ Valente, Joseph. “Thrilled by His Touch: Homosexual Panic and the Will to Artistry in *A Portrait of the Artist as a Young Man*.” *James Joyce Quarterly* 50, no. 1 (2012): 223-244. doi:10.1353/jjq.2012.0101.

⁹⁷ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

their identity and experiences. They are then secondarily victimized when the blame is publicly placed on the individual for their sexual orientation or gender identity. Often this marginalization and victimization occurs after the death of victim, making the victim both an individual symbol of this and a collective one. These forces operate on both the deceased and those living in the Gay community.

4. Gay Panic and Trans Panic

While Homosexual Panic describes the overall term regarding panic against Gay, Lesbian, Transgender, and Bisexual individuals; Gay panic and Trans panic are the terms most often used to describe the bans created in many states as well as the defenses used in courtrooms. The terms are separate as often the whole term does not effectively describe the involved individuals. Gay Panic is the theory used by the defendant that "...the victim's sexual orientation excuses, mitigates, or justifies violence."⁹⁸ This is often used to explain the actions for when "...a heterosexual male defendant charged with murdering a Gay male may claim that he panicked when the victim made a sexual advance."⁹⁹ Trans Panic is the theory used by the defendant where they argue "...that the victim's gender identity excuses, mitigates, or justifies violence."¹⁰⁰ For the remainder of this paper, when discussing the defenses that are used, Gay panic and Trans panic will be used. Gay will serve to describe both Lesbian and Bisexual individuals as well. The American Bar Association does not officially recognize either Gay panic or Trans panic defenses as freestanding defenses.¹⁰¹ Both serve as theories to explain traditional criminal defenses such as, "insanity and

⁹⁸ "Gay and Trans Panic Defenses Resolution." The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

diminished capacity, provocation leading to heat of passion, and self defense.”¹⁰² While used as theories, they are still very real arguments used to lessen culpability in the assault and murders of Gay and Transgender people.

5. American Bar Association’s 2013 Resolution on Gay and Trans Panic Defenses

The American Bar Association’s (ABA) mission is to be a “national representative of the legal profession.”¹⁰³ The ABA works to set guidelines and professional standards for the legal ethics of both lawyers and judges.¹⁰⁴ Prior to the 2013 American Bar Association’s Resolution on Gay and Trans Panic Defenses, no states had taken legislative action against the usage of the defense in court. By the time the resolution was passed by the House of Delegates, at least seven individuals: Scott Amedure, Jorge Steven Mercado, Angie Zapata, Latisha King, Matthew Shepard, Gwen Araujo, and Islan Nettles, had been killed by individuals who used either a Gay panic or Trans panic defense.¹⁰⁵

¹⁰² “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹⁰³“Consumer FAQs.” The American Bar Association, n.d. https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumerfaqs/.

¹⁰⁴*Id.*

¹⁰⁵ People v. Schmitz, 231 Mich. App. 521, 586 N.W.2d 766, 1998 Mich. App. LEXIS 257 (Court of Appeals of Michigan September 11, 1998, Decided). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3VB3-55D0-0039-42GX-00000-00&context=1516831>; “Suspect charged with murder in slaying of gay teen in Puerto Rico.” CNN, November 18, 2009. <https://www.cnn.com/2009/CRIME/11/18/puerto.rico.gay.teen.slain/index.html>.; Whaley, Monte. “Andrade gets life plus 60 years for death of transgender woman.” The Denver Post, May 8, 2009. <https://www.denverpost.com/2009/05/08/andrade-gets-life-plus-60-years-for-death-of-transgender-woman/>.; Shapiro, Emily and Robert Zepeda. “Matthew Shepard: The legacy of a gay college student 20 years after his brutal murder.” ABC News, October 26, 2018.; McKinley, James. “Man Sentenced to 12 Years in Beating Death of Transgender Woman.” The New York Times, April 19, 2016. <https://www.nytimes.com/2016/04/20/nyregion/man-sentenced-to-12-years-in-beating-death-of-transgender-woman.html>.

The Resolution passed by the ABA “urges federal, tribal, state, local and territorial governments to take legislative action to curtail the availability and effectiveness of the ‘Gay panic’ and ‘Trans panic’ defenses, which seek to partially or completely excuse crimes such as murder and assault on the grounds that the victim’s sexual orientation or gender identity is to blame for the defendant’s violent reaction.”¹⁰⁶ The ABA recommended the following legislative actions:

- (a) Requiring courts in any criminal trial or proceeding, upon the request of a party, to instruct the jury not to let bias, sympathy, prejudice, or public opinion influence its decision about the victims, witnesses, or defendants based upon sexual orientation or gender identity; and
- (b) Specifying that neither a non-violent sexual advance, nor the discovery of a person’s sex or gender identity, constitutes legally adequate provocation to mitigate the crime of murder to manslaughter, or to mitigate the severity of any non-capital crime.¹⁰⁷

While the resolution laid out a clear plan on how to curtail the usage of Gay and Trans panic defenses, they simply could only encourage states to take their own legislative actions to prevent the usage of Gay panic and Trans panic defenses. As of May 2022, only 16 States had banned the use of Gay panic and Trans panic defenses.

In the ABA Resolution, Gay panic and Trans panic are separated into two separate categories. Both, as previously defined, are defenses shifting blame based on either a victim’s gender identity or their sexual orientation. Both blame the victim and claim that their actions resulted in “an understandable and excusable loss of self-control.”¹⁰⁸

Importantly, there are several ways the law can effectuate this idea in practice. Gay panic and Trans panic defenses are raised as insanity and diminished capacity, provocation, or self-

¹⁰⁶ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

defense. When using an insanity or diminished capacity defense, homosexual panic disorder is usually the mental illness underlying the claim of insanity. While the diagnosis is no longer recognized by the DSM, there are variations of the insanity defense that still use homosexual panic disorder. The second possible framing of a panic defense is provocation, in which the defendant claims diminished responsibility based on the instigation of another. When using a Gay panic defense, the defendant argues that the sexual advances of the victim, were a source of instigation “sufficiently provocative to induce the defendant to kill.”¹⁰⁹ When using provocation to strengthen a Trans panic defense, the defendant may argue that the “discovery of the victim’s biological sex, usually after the defendant and victim have engaged in consensual sexual relations” induced the defendant’s violence.¹¹⁰

Drawing upon examples from the cases of Jorge Mercado, Matthew Shepard, Emile Bernard, Angie Zapata, and Latisha King the ABA resolution offered clear examples of how Gay panic and Trans panic defenses are used in court. In these cases, the victims were blamed for having been Gay, Lesbian, or Transgender. Each of the defendants argued that if the victims had not been Gay or made sexual advances, then they would not have been killed. The police investigators of the cases even placed the blame on the victims for the “lifestyles” they chose to live.¹¹¹ The defenses rely on the antiquated biases and views of the defendants, those investigating, but most importantly the jury. The negative responses and history with Gay, Lesbian, Bisexual, and Transgender individuals in the past fuel the ability for a jury to accept an argument that an individual’s gender, sexuality, or the lifestyle they live is reasonable cause for their murder. In

¹⁰⁹ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

response to the use of the defense and the success that it has seen in courts and cases, the American Bar Association proposed a set of actions to respond to Gay panic and Trans panic defenses.

The 2013 ABA Resolution on Gay Panic and Trans Panic defenses concluded with the following instructions to combat the effects of Gay panic and Trans panic defenses: “(1) ensure that any party during a criminal trial may ask that the court instruct the jury to makes it decision free from bias or prejudice and to disregard any appeals to societal bias or prejudice; and (2) eliminate non-violent sexual advances or the discovery of a person’s gender identity as sufficient for adequate provocation.”¹¹² The first proposed response was anti-bias jury instructions to “reduce the risk of improper bias.”¹¹³ The ABA instructed legislatures to give jury instructions to “advise jurors of their duty to apply the law without improper bias or prejudice.”¹¹⁴ The model language the ABA recommended included a model jury instruction: “Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes bias against the victim or victims, witnesses, or defendant based upon his or her disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual orientation.”¹¹⁵ The instructions recommended by the ABA offer some acknowledgment, but ultimately lack force. They fail to explain to a jury what gender, gender identity, or sexual orientation are; equates bias with sympathy; and leaves jurors to eliminate their own bias without articulating how. “Bias includes bias” is the kind of confusing, circular logic that criminal jury instructions rely on.¹¹⁶

¹¹² “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Thompson, Mikah. “Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom.” Michigan State Law Review, January 15, 2019. <https://ssrn.com/abstract=3316402>

The second proposed action would be the total elimination of the use of Gay panic and Trans panic as “adequate provocation.”¹¹⁷ The ABA recommended that legislatures “specify that neither a non-violence sexual advance, nor the discovery of a person’s sex or gender identity, constitutes legally adequate provocation to mitigate the severity of any non-capital crime.”¹¹⁸ This action is in keeping with many of the states that already had bans on the usage of Gay panic and Trans panic defenses as of 2022. The model language the ABA recommended to be used in court or legislation is as follows:

Version 1

(1) A non-violent sexual advance does not constitute legally adequate provocation for the purpose of mitigating a killing from the crime of murder to the crime of manslaughter even though the killing was provoked by that advance.

(2) The discovery of a person’s sex or gender identity does not constitute legally adequate provocation for the purposes of mitigating a killing from the crime of murder to the crime of manslaughter even though the killing was provoked by that discovery.

Version 2

(1) Sufficient provocation to support ‘sudden quarrel’ or ‘heat of passion’ does not exist if the defendant’s actions are related to discovery of, knowledge about, or the potential disclosure of one or more of the following characteristics or perceived characteristics: disability, gender nationality, race or ethnicity, religion, or sexual orientation, regardless of whether the characteristic belongs to the victim or the defendant. This limitation applies even if the defendant dated, romantically pursued, or participated in sexual relations with the victim.

(2) Sufficient provocation to support ‘sudden quarrel’ or ‘heat of passion’ does not exist if the defendant’s actions are related to discovery of, knowledge about, or the potential disclosure of the victim’s association with a person or group with one or more of the characteristics, or perceived characteristics, in paragraph (1).

¹¹⁷ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹¹⁸ *Id.*

(3) For the purposes of this section, “gender” means sex, and includes a person’s gender identity and gender-related appearance and behavior whether stereotypically associated with the person’s assigned sex at birth.¹¹⁹

Many of the state bans which have already been passed feature language like what is found in the ABA resolution. Version 2 of the model language includes a definition that implies that “gender means sex”, when it does not.¹²⁰ Gender refers to the expectations in society of how an individual is supposed to act, dress, and appear based their sex. Sex is the male or female label assigned by the doctor at birth based upon the genitalia an individual has.¹²¹ Gender and sex do not mean the same things, as they both represent more complex structures than can be represented by the conflation of the two terms. Gender identity would be the more appropriate term to use in banning the usage of Gay panic and Trans panic defenses as it is the only term which recognizes an individual’s choice in how they represent themselves. The first version of the recommended model language by the ABA in eliminating the use of Gay panic and Trans panic as “adequate provocation”, does not go far enough in the language that is used to explain what sex or gender identity means. While the second version conflates the meaning of sex and gender to represent an inadequate representation of the individuals the language and ban is supposed to represent. The ABA focuses on eliminating the ability to argue that an individual’s sexual orientation and gender identity does not “trigger in another person a medical or psychological panic” that would be able to legally constitute adequate provocation.¹²² However, the language used in the ABA does not

¹¹⁹ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

¹²⁰ Salamon, Gayle. *The Life and Death of Latisha King: A Critical Phenomenology of Transphobia*. Sexual Cultures. New York University Press, 2018.

¹²¹ Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996): 161-211

¹²² “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

represent the inclusion that they plan to require of the court systems and legislation when protecting LGBTQ individuals.

From this review of literature, surveying the history and theory relevant to Trans panic and Gay panic defense, three central themes emerge: 1. the conflation of sex and gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies. These are the core principles the following doctrinal restatement considers in the existing legal landscape.

V. Analysis

A. Doctrinal Restatement

Following Martha Minow's method of doctrinal restatement, the principles identified in the literature review are now the lens that will be used to compare settled to emerging law.¹²³ In this analysis, early cases are settled law; state legislative bans are emerging law. Following the principles drawn from the literature review and the historical trajectory of Gay panic and Trans panic defenses, focus will be given to: 1. If state law and cases separate or conflate sex and gender, 2. the phase(s) of the criminal process governed, and 3. whether the greater context of hetero-patriarchy is acknowledged. These three principles will structure analysis leading to the second portion of this project focus on the recasting of the distinctions between settled and emerging law, through best practices.

1. Emerging Law

In the following sections, existing state legislative bans will be analyzed for the following principles gathered from the literature review and existing state laws: 1. the conflation of sex and

¹²³ Minow, Martha. "Archetypal Legal Scholarship: A Field Guide." *Journal of Legal Education* 63, no. 1 (2013): 65-69.

gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies of the United States. California, the first enacted ban, will be analyzed first as it serves as the majority practice of current Gay panic and Trans panic legislation.

a) California (AB 2501, 2014)

California was the first state, in 2014, to pass a bill barring criminal defendants from using Trans panic or Gay panic as a defense in criminal court. The bill was encouraged following the murders of teenagers, Latisha King in 2011 and Gwen Araujo in 2002. In each of these cases the defendants involved all received lesser convictions with some only serving as little as five years in prison. Following the 2002 trials of those involved in the brutal murder of Gwen Araujo, the state legislature “added a requirement that juries must be instructed against basing their verdict on personal bias against a victim.”¹²⁴ However, this legislative action did not outright ban criminal defense strategies based upon the victim’s gender expression or sexuality.

The ban passed by the California Assembly in a vote of 50-10 and was signed by then Governor Jerry Brown.¹²⁵ The bill works to ban the use of Gay panic and Trans panic defenses by redefining what it means to be in a “sudden quarrel or heat of passion”. The bill determined that provocation was not reasonable if the provocation resulted from the:

...discovery of, knowledge, about, or potential disclosure of the victim’s actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an

¹²⁴ Molloy, Parker Marie. “California Becomes First State to Ban Gay, Trans 'Panic' Defenses.” *ADVOCATE*, September 29, 2014. <https://www.advocate.com/crime/2014/09/29/california-becomes-first-state-ban-Gay-Trans-panic-defenses>.

¹²⁵ Garcia, Michelle. “California Takes a Stand Against Gay and Trans Panic Defenses in Criminal Cases.” *ADVOCATE*, August 28, 2014. <https://www.advocate.com/crime/2014/08/28/california-takes-stand-against-Gay-and-Trans-panic-defenses-criminal-cases>.

unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.¹²⁶

The language in this bill defines gender as being an individual's gender identity and the way in which one appears when expressing their gender and behaviors. Regardless of whether their appearance or behaviors are in keeping with perceived gender norms or not. The language utilized here noticeably ignores the category of sex all together and focuses only on gender. In doing this it removes the hetero-patriarchal belief that an individual should be defined based upon the genitalia they were born with. Section 1. Section 192 of the Penal Code was amended to include the following provisions:

(f) (1) For purposes of determining sudden quarrel or heat of passion pursuant to subdivision (a), the provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual relationship. Nothing in this section shall preclude the jury from considering all relevant facts to determine whether the defendant was in fact provoked for purposes of establishing subjective provocation. (2) For purposes of this subdivision, "gender" included a person's gender identity and gender-related appearance and behavior regardless of whether that appearance or behavior is associated with the person's gender as determined at birth.¹²⁷

The added provisions clearly outline that any defenses related to a victim's sexual identity, gender, sexual orientation, gender, gender identity, or gender expression would not be considered reasonable for a "establishing subjective provocation." This is an important caveat, as many cases involving the use of a Gay panic or Trans panic defense rely on the use of a victim's sexual identity, gender, sexual orientation, gender, gender identity, or gender expression as the provocation of an

¹²⁶ "California AB-2501 Voluntary Manslaughter." California Legislative Information, September 27, 2014. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2501.

¹²⁷ *Id.*

individual committing murder. This caveat directly names the violence experienced by both Gay and Transgender individuals.

Since the passing of the ban, California has seen no outright uses of the ban in criminal cases. However, throughout this paper the use of the defense in inconspicuous ways will be further explored. With California being the first state to enact bans against the Gay panic and Trans panic defenses, the legislature that was passed created a blueprint for the states that would follow suit in drafting and passing their own bills.

b) Illinois (SB 1761, 2017)

Illinois was the second state to enact its own Gay and Trans panic defense ban in 2017, three years after the enactment of California's ban. Legislative action in Illinois followed the killings of Terrance Hauser and David Coungeris in 2008 and 2009, respectively.¹²⁸ Joseph Biedermann, stabbed Terrance Hauser over 60 times, in March 2008, after what he claimed was self-defense against Hauser threatening to "sexually assault and kill him."¹²⁹ The jury acquitted Biedermann after a trial in which his defense attorney, Sam Adam Jr., argued that Biedermann was defending himself against a sexual assault.¹³⁰ In 2009, Timothy Bailey-Woodson was charged with first-degree murder in the death of David Coungeris. Through a plea deal Bailey-Woodson plead guilty and was sentenced to 25 years.¹³¹ This sentence was only 5 years more than the minimum sentence that the conviction carries, of 20 years.¹³² In both of these cases, the defendant asserted he was

¹²⁸ "Illinois to Become Second State to Ban 'Gay Panic Defense'," NBCNews.com (NBCUniversal News Group, December 29, 2017), <https://www.nbcnews.com/feature/nbc-out/illinois-become-second-state-ban-gay-panic-defense-n833441>.

¹²⁹ *Id.*

¹³⁰ Zorn, Eric. "Murder Defendant Gambles -- and Wins," Chicago Tribune, July 17, 2009, <https://www.chicagotribune.com/news/ct-xpm-2009-07-17-0907160827-story.html>.

¹³¹ "Activists to Copy Illinois 'Gay Panic Defense' Ban Elsewhere," CBS News Chicago, December 28, 2017, <https://www.cbsnews.com/chicago/news/illinois-gay-panic-defense-ban/>.

¹³² "Felony-Murder in Illinois," Restore Justice, n.d., <https://restorejustice.org/learn/felony-murder/>.

acting in self-defense or fear, to the sexual advances of the victims, conveying the victims' sexual identity in the process.

Illinois' ban on Gay and Trans panic defenses, directly outlines that these types of defenses would no longer be allowed under bill SB 1761. Section 5. The Criminal Code of 2012 Sections 9-1 and 9-2 were amended to include the following provision:

(b) Serious provocation is conduct sufficient to excite an intense passion in a reasonable person Provided, however, that an action that does not otherwise mitigate first degree murder cannot qualify as a mitigating factor for first degree murder because of the discovery, knowledge, or disclosure of the victim's sexual orientation as defined in section 1-103 of the Illinois Human Rights Act.¹³³

Section 1-103 of the Illinois Human Rights Act defines sexual orientation as follows:

(O-1) Sexual Orientation. "Sexual Orientation" means actual or perceived heterosexuality, homosexuality, Bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult.¹³⁴

The wording of Illinois' ban against the use of a victim's sexual orientation as a source of provocation sufficient to reach a standard of reasonableness, is similar to California's ban. Illinois strays however in their definition of sexual orientation. Section 1-103 of the Illinois Human Rights Act conflates both sexual orientation and gender identity. Sexual orientation is an individual's emotional, romantic, or sexual attraction to other individuals.¹³⁵ Gender identity is how an individual feels inside and how they express those feelings.¹³⁶ Clothing, behaviors, and appearance

¹³³ "Illinois SB 1761," Illinois General Assembly, n.d., <https://ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0460>.

¹³⁴ "775 ILCS 5/ Illinois Human Rights Act.," Illinois General Assembly, n.d., <https://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=077500050HArt.%2B1&ActID=2266&ChapterID=64&SeqStart=100000&SeqEnd=600000>.

¹³⁵ "Sexual Orientation and Gender Identity Definitions," Human Rights Campaign, n.d., <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

¹³⁶ *Id.*

are all ways individuals display their gender identity.¹³⁷ This language differs from California's statute and focuses specifically on sexual orientation as the protected status against attack in a criminal court case.

Much is absent in comparison to California's law. Trans panic is not present or defined.

c) Rhode Island (H 7066, 2018)

Rhode Island introduced bill, H 7066 in 2018. The operative legal restrictions are comprehensive as to trial defenses: prohibiting the defense of provocation, the defense of diminished capacity, and self-defense strategies. Section 1. Chapter 12-17 of the General Laws was amended to include the following sections:

12-17-17. Restrictions on the defense of provocation.

For purposes of determining sudden quarrel or heat of passion, the provocation was not objectively reasonable if it resulted solely from the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted non-forcible romantic or sexual advance toward the defendant, or if the defendant and victim dated or had a romantic relationship.

12-17-18. Restrictions on the defense of diminished capacity.

A defendant does not suffer from reduced mental capacity based solely on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstance in which the victim made an unwanted non-forcible romantic or sexual advance toward the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.

12-17-19. Restrictions on the defense of self-defense.

A person is not justified in using force against another based solely on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted non-forcible romantic or sexual advance toward the defendant, or if the defendant and victim dated or had a romantic or sexual relationship. SECTION 2. This act shall take effect upon passage. This act would restrict the use of a victim's gender or sexual orientation as a defense by any defendant claiming provocation,

¹³⁷ "Sexual Orientation and Gender Identity Definitions," Human Rights Campaign, n.d., <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

diminished capacity or self-defense and would prohibit the court from allowing such information into evidence.¹³⁸

The language used in Rhode Island’s legislative action against the use of Gay and Trans panic defenses mirrors that of that California, placing restrictions on the defense of provocation. However, at the time in 2018 when the bill was passed, Rhode Island was the first state to also restrict diminished capacity and self-defense frameworks.

The bill does not offer a definition of sexual orientation or gender, as done by other states with bans on Gay and Trans panic defenses. Similarly, the distinction between categories of identity provide greater context for the purpose of the law are absent.

d) Colorado (SB 20-221, 2020)

Colorado introduced bill SB 20-211 in June of 2020 following the brutal killings of Angie Zapata in 2008 and Matthew Shepard in 1998. Aaron McKinney and Russell Henderson killed Matthew Shepard, after they pretended to be Gay to make Shepard feel more comfortable.¹³⁹ The two eventually kidnapped and beat Shepard before tying him to a fence and leaving him to die in the freezing temperatures.¹⁴⁰ Shepard would die a couple of days later after having remained in a coma in a hospital in Colorado.¹⁴¹ In court attorneys for McKinney argued that Shepard made aggressive sexual advances towards him, that in turn lead to his death. McKinney was convicted in the death of Matthew Shepard. An agreement between the Shepard Family, attorneys, and

¹³⁸ “Rhode Island 2018 -- H7066” (States of Rhode Island General Assembly, n.d.), <http://webserver.rilin.state.ri.us/BillText18/HouseText18/H7066aa.htm>.

¹³⁹ Marsden, Jason. “The Murder of Matthew Shepard.” WyoHistory.org, November 8, 2014. <https://www.wyohistory.org/encyclopedia/murder-matthew-shepard>.

¹⁴⁰ Garber, Megan. “Remembering Matthew Shepard in Today’s Climate of Hate.” The Atlantic, November 12, 2018. <https://www.theatlantic.com/entertainment/archive/2018/11/matthew-shepards-belongings-enter-smithsonian/575599/>

¹⁴¹ Shapiro, Emily and Robert Zepeda. “Mathew Shepard: The Legacy of a Gay College Student 20 Years after His Brutal Murder.” ABC News, October 26, 2018. <https://abcnews.go.com/US/matthew-shepard-legacy-gay-college-student-20-years/story?id=58242426>.

prosecutors left McKinney with a sentencing of two consecutive life sentences, instead of the death penalty.¹⁴² Henderson took a plea agreement prior to trial, of two life sentences.¹⁴³ While Matthew Shepard experienced violence in Wyoming, he later died due to his injuries in a hospital in Colorado. Since the time of his death, between the two states, Colorado has been the only one to introduce and pass legislature which bans the use of Gay panic and Trans panic defenses.

In 2008, Allen Andrade killed Angie Zapata, after he discovered that she was a Transgender woman. The two had gone on a date with each other and then afterwards after having looked at photographs around Zapata's apartment he questioned her about being Transgender. He then proceeded to forcible grab Zapata to examine her "...genitalia, and proceeded to beat her with his fists and a fire extinguisher."¹⁴⁴ Andrade used Zapata's Transgender identity as his defense in trial, to explain how we was provoked into killing her. He was eventually found to be guilty, by the jury, of both a hate crime and first-degree murder and sentenced to life in prison¹⁴⁵. Supporters of the bill, both republican and democrat, wanted to prevent the chance of the defense used by Andrade resulting in different outcome where the defendant was given a lesser charge or acquitted.

Colorado Senate Bill 20-221, introduced in 2020, contained the following sections which restricted the use of Gay panic and Trans panic defenses "unless a party can show its relevance to the court"¹⁴⁶:

¹⁴² Shapiro, Emily and Robert Zepeda. "Mathew Shepard: The Legacy of a Gay College Student 20 Years after His Brutal Murder." ABC News, October 26, 2018. <https://abcnews.go.com/US/matthew-shepard-legacy-gay-college-student-20-years/story?id=58242426>.

¹⁴³ *Id.*

¹⁴⁴ "The Angie Zapata Murder: Violence Against Transgender People Resource Kit," GLAAD, n.d., <https://www.glaad.org/resourcekits/angiezapata>.

¹⁴⁵ "6.9 Gay and Trans Panic Defense Bill Reintroduced," One Colorado, June 9, 2020, <https://one-colorado.org/new/Gay-and-Trans-panic-defense-bill-reintroduced/>.

¹⁴⁶ "Colorado Senate Bill 20-221" (Colorado General Assembly, n.d.), https://www.leg.colorado.gov/sites/default/files/2020a_1420_signed.pdf.

16-8-101.5. Insanity defined – offenses committed on and after July 1, 1995 – definitions. (2) As used in subsection (1) of this section:

(a) “Diseased or defective in mind” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct. EVIDENCE OF KNOWLEDGE OR AWARENESS OF THE VICTIM’S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION SHALL NOT CONSTITUTE INABILITY TO DISTINGUISH RIGHT FROM WRONG.

18-1-704. Use of physical force in defense of a person – definitions.

(3) Notwithstanding the provisions of subsection (1) of this section, a person is not justified in using physical force if:

...(d) THE USE OF PHYSICAL FORCE AGAINST ANOTHER IS BASED ON THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM’S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING BUT NOT LIMITED TO UNDER CIRCUMSTANCE IN WHICH THE VICTIM MADE AN UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT. NOTHING IN THIS SUBSECTION (3)(d) PRECLUDES THE ADMISSION OF EVIDENCE, WHICH IS OTHERWISE ADMISSIBLE, OF A VICTIM’S OR WITNESS’S CONDUCT, BEHAVIOR, OR STATEMENTS.

18-1-901. Definitions. (3)(h.5) “GENDER IDENTITY” AND “GENDER EXPRESSION” MEAN A PERSON’S GENDER-RELATED IDENTITY AND GENDER-RELATED APPEARANCE OR BEHAVIOR WHETHER OR NOT THAT GENDER-RELATED IDENTITY, APPEARANCE, OR BEHAVIOR IS ASSOCIATED WITH THE PERSON’S ASSIGNED SEX AT BIRTH.

18-3-103. Murder in the second degree – definitions. (3) (c) FOR PURPOSES OF DETERMINING SUDDEN HEAT OF PASSION PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, A DEFENDANT’S ACT DOES NOT CONSTITUTE AN ACT PERFORMED UPON A SUDDEN HEAT OF PASSION IF IT RESULTS SOLELY FROM THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM’S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING BUT NOT LIMITED TO UNDER CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT.

18-3-202. Assault in the first degree. (2) (e) FOR PUPOSES OF DETERMINING SUDDEN HEAT OF PASSION PURUSNAT TO SUBSECTION (2)(a) OF THIS SECTION, A DEFENDANT’S ACT DOES NOT CONSTITUTE AN ACT PERFORMED UPON A SUDDEN HEAT OF PASSION IF IT RESULTS SOLELY FROM THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM;S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING BUT NOT LIMITED TO UNDER CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT.

18-3-202. Assault in the second degree. (2) (d) FOR PUPOSES OF DETERMINING SUDDEN HEAT OF PASSION PURUSNAT TO SUBSECTION (2)(a) OF THIS SECTION, A DEFENDANT’S ACT DOES NOT CONSTITUTE AN ACT PERFORMED UPON A SUDDEN HEAT OF PASSION IF IT RESULTS SOLELY FROM THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM;S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING BUT NOT LIMITED TO UNDER CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT.¹⁴⁷

Colorado Senate Bill 20-22 went far in banning Gay panic and Trans panic defenses, respectively. The language used in the bill itself, addresses protecting “Lesbian, Gay, Bisexual, Transgender, and queer persons.”¹⁴⁸ A significant evolution in the legal language and terminology, as compared to the earlier California model. Colorado’s bill clearly outlines who the bill is designed to protect. While it also uses the terms gender, gender identity, gender, expression, and sexual orientation it clearly defines what these terms mean, and the distinctions are memorialized for lawyers, judges, juries, and all involved parties.

This bill also went further in comprehensively identifying the strategic mechanisms of the defense. Colorado describes what would be heat of passion in assault in the first and second degree,

¹⁴⁷ “Colorado Senate Bill 20-221” (Colorado General Assembly, n.d.), https://www.leg.colorado.gov/sites/default/files/2020a_1420_signed.pdf.

¹⁴⁸ *Id.*

murder in the second degree, and use of force in defense of a person. In all of these provisions, the knowledge of, discovery of or the possible disclosure of a victim’s “actual or perceived gender, gender identity, gender expression, or sexual orientation”, are excluded and do not constitute “heat of passion.”¹⁴⁹ This same information is also determined to not be justifiable under the insanity defenses, broadly limiting the forms the defense may take in practice.

e) Connecticut (SB 58, 2019)

Connecticut banned the use of Gay and Trans panic defenses in a bill signed by Governor Ned Lamont in June of 2019. Similarly, to Colorado, the brutal killing of Matthew Shephard was noted as being the inspiration behind the passing of this bill. Connecticut Bill SB 58 contained the following sections which banned the use of Gay panic and Trans panic defenses:

... (2) No defendant may claim as a defense under this section that such mental disease or defect was based solely on the discovery of, knowledge about or potential disclosure of the victim’s actual or perceived sex, sexual orientation or gender identity or expression, including under circumstances in which the victim made an unwanted, nonforcible, romantic or sexual advance toward the defendant or if the defendant and victim dated or had a romantic relationship

(c) As used in this section, (1) the terms mental disease or defect do not include [(1)] (A) an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or [(2)] (B) pathological or compulsive gambling, and (2) “gender identity or expression” means gender identity or expression, as defined in section 53a-181i.

Sec. 2. Section 53a-16 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

In any prosecution for an offense, justification, as defined in sections 53a-17 to 53a-23, inclusive, shall be a defense. Justification as a defense does not include provocation that resulted solely from the discovery of, knowledge about or potential disclosure of the victim’s actual or perceived sex, sexual orientation or gender identity or expression, including under circumstances in which the victim made an unwanted, nonforcible, romantic or sexual advance toward the

¹⁴⁹ “Colorado Senate Bill 20-221” (Colorado General Assembly, n.d.), https://www.leg.colorado.gov/sites/default/files/2020a_1420_signed.pdf.

defendant, or if the defendant and victim dated or had a romantic relationship. As used in this section, “gender identity or expression” means gender identity or expression, as defined in section 53a-181i.

Sec. 3. Section 53a-18 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2019*):

(b) No person is justified in using force upon another person which would otherwise constitute an offense based solely on the discover of, knowledge about or potential disclosure of he victim’s actual or perceived sex, sexual orientation or gender identity or expression, including under circumstances in which the victim made an unwanted, nonforcible, romantic or sexual advance toward the defendant, or if the defendant and victim dated or had a romantic relationship.¹⁵⁰

Connecticut’s Bill outlined the same wording that was similar to what was used in California’s bill. Bill SB 58 addresses justification, use of force, and the use of insanity defenses in relation to Gay panic and Trans panic defenses. The bill addresses the protecting of an individual’s “actual or perceived sex, sexual orientation or gender identity or expression”, however it does not directly address Gay, Transgender, Bisexual people, or Lesbians by name as was done in Colorado.¹⁵¹ The bill falls short in this area which can allow for interpretation on what is meant by sex, sexual orientation, and gender identity or expression, without the proper definitions defining these terms.

f) The District of Columbia (B23-0409, 2021)

The District of Columbia passed bill B23-0409 banning ‘Gay panic’ and ‘Trans panic’ defenses in May of 2021. DC was the first city in the United States to pass a bill banning the defenses. The bill has since become known as the Bella Evangelista and Tony Hunter Panic Defense Prohibition and Hate Crimes Response Amendment Act of 2020. One of the namesakes of the bill, Bella Evangelista, was killed in August 2003 by Antonie Jacobs. After engaging in a sexual relationship with Evangelista, Jacobs then realized that she was Transgender and proceeded

¹⁵⁰ “Connecticut Senate Bill 58” (Connecticut General Assembly, n.d.), <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf>.

¹⁵¹ *Id.*

to shoot and kill her.¹⁵² Tony Hunter was killed by Robert Hannah in 2008 after he claims that Hunter had suggestively touched him.¹⁵³ Washington, DC bill B23-0409 contained the following sections which banned the use of Gay panic and Trans panic defenses:

To amend the Human Rights Act of 1977 to clarify the definition of place of public accommodation; to amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to expand the offense of defacement of certain symbols or display of certain emblems; to amend the Bias-Related Crime Act of 1989 to provide civil enforcement authority to the Attorney General against persons who commit bias-related crimes or, through certain acts, interfere or attempt to interfere with an individual's exercise of constitutional or District rights, or deprive an individual of equal protection, to provide subpoena authority and to specify appropriate relief; and to amend Chapter 1 of Title 23 of the District of Columbia Official Code to limit the scope of the defense are based on the victim's actual or perceived gender identity, gender expression, or sexual orientation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Bella Evangelista and Tony Hunter Panic Defense Prohibition and Hate Crimes Response Amendment Act of 2020".

Sec. 5. Chapter 1 of Title 23 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

'§ 23-115. Limits on defenses that justify, excuse, or mitigate a defendant's conduct on the basis of a victim's gender identity, gender expression, or sexual orientation.'

(b) A new section 23-115 is added to read as follows:

'§ 23-115. Limits on defenses that justify, excuse, or mitigate a defendant's conduct on the basis of a victim's gender identity, gender expression, or sexual orientation.

'(a) In any prosecution, criminal proceeding, or criminal trial, when applicable to the offense charged, for the purposes of proving:

'(1) Heat of passion caused by adequate provocation, a defendant's provocation was not objectively adequate if it was based on discovery of, knowledge about, or the potential disclosure of the victim's actual or perceived gender identity, gender expression, or sexual orientation;

¹⁵² Sonoma, Serena. "D.C. Poised to Become First U.S. City to Ban LGBTQ+ Panic Defense," them., December 17, 2020, <https://www.them.us/story/washington-dc-first-us-city-to-ban-lgbtq-panic-defense>.

¹⁵³ *Id.*

‘(2) Insanity, the defendant did not lack substantial capacity if the mental disease or defect at issue was based on discovery of, knowledge about, or the potential disclosure of the victim’s actual or perceived gender identity, gender expression, or sexual orientation; or

‘(3) Self-defense, defense of others, or defense of property, the defendant was not justified in using force if the basis for their belief in imminent danger was based on discovery of, knowledge about, or the potential disclosure of the victim’s actual or perceived gender identity, gender expression, or sexual orientation.

‘(b) Notwithstanding subsection (a) of this section, the defense may present evidence of prior trauma to the defendant for the purposes of excusing or justifying the defendant’s conduct or mitigating the severity of the offense.¹⁵⁴

The language of the statute passed by the District of Columbia is similar to those used in other states with bans on Gay panic and Trans panic defenses in several parts. The statutes directly address gender identity, gender expression, and sexual orientation, which does appreciate more than one singular identity. However, it fails to directly use terms such as Gay, Transgender, Lesbian, and Bisexual which would have outwardly addressed the individuals this bill is intended to protect. The statute fails to include language defining gender identity, gender expression, or sexual orientation. The failure to define these terms is a noticeable deviation from the standards set by California’s bill banning the usage of the defenses.

The failure to define terms may also limit the bill’s effectiveness. Absent definitions or a greater context, advocates, juries, and judges do not receive uniform guidance. This leaves the critical understanding of these distinctions up to the discretion of those involved in each trial, possibly limiting the consistency of interpretations.

g) Hawaii (HB 711, 2019)

The state of Hawaii was the sixth state legislature to pass a resolution on the use of Gay and Trans panic defenses. Hawaii State legislature bill HB 711 contained the following sections which banned the use of Gay panic and Trans panic defenses:

¹⁵⁴ “D.C. ACT 23-560.” Council of the District of Columbia, January 11, 2021. https://lims.dccouncil.us/downloads/LIMS/43128/Signed_Act/B23-0409-Signed_Act.pdf.

SECTION 1. Section 707-702, Hawaii Revised Statutes, is amended by a subsection (2) to read as follows:

(2) In a prosecution for murder or attempted murder in the first and second degree it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be; provided that an explanation that is not otherwise reasonable shall not be determined to be reasonable because of the defendant's discovery, knowledge, or disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the other person made an unwanted nonforcible romantic or sexual advance toward the defendant, or in which the defendant and he other person dated or had a romantic relationship. If the defendant's explanation included the discovery of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, the court shall instruct the jury to disregard biases or prejudices regarding the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation in reaching a verdict.¹⁵⁵

The language used in the resolution passed by the Hawaii state legislature is similar to that used initially by California and in states previously discussed. The statute similarly, to others directly address gender identity, gender expression, and sexual orientation, but fails to use terms such as Gay, Transgender, Lesbian, and Bisexual which would have directly addressed the individuals this bill is intended to protect. While the language is similar to other statutes passed in states, Hawaii fails to include definitions for the terms gender identity, gender expression, and or sexual orientation. The description of the legislature provides the following instructions for the court in regard to the jury: "...to instruct the jury to disregard bias and prejudice if a defendant's explanation includes the discovery of a victim's gender, gender identity or expression, or sexual

¹⁵⁵ "Hawaii HB 711." Hawaii House of Representatives, n.d.
https://www.capitol.hawaii.gov/session2019/bills/HB711_.HTM

orientation.”¹⁵⁶ Jury instructions were not directly explored in any of the actual language of the statutes provided in the ban that was signed into law.

h) Maine (HP 1175, 2019)

The State of Maine quietly signed into law a bill prohibiting the usage of Gay and Trans panic defenses in April 2019. The bill prevents the knowledge of the discovery of, or the disclosure of an individual’s “actual or perceived gender, gender identity, gender expression or sexual orientation” to be used when determining if the defendant is of a “culpable” mental state, provocation, or uses of force.¹⁵⁷ The 129th Maine Legislature passed LD 1632, which contained the following sections prohibiting the use of Gay panic and Trans panic defenses:

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 17-A MRSA §38, as enacted by PL 1981, c. 324, §14, is amended by adding at the end a new paragraph to read:

An actor does not suffer from an abnormal condition of the mind based solely on the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the actor or in which the actor and victim dated or had a romantic or sexual relationship.

Sec. 2. 17-A MRSA §108, sub-§3 is enacted to read:

A person is not justified in using force against another based solely on the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the person or in which the person and victim dated or had a romantic or sexual relationship.

Sec. 3. 17-A MRSA §201, sub-§4, as amended by PL 2001, c. 383, §8 and affected by §156, is further amended to read:

¹⁵⁶ “Hawaii HB 711.” Hawaii House of Representatives, n.d.

https://www.capitol.hawaii.gov/session2019/bills/HB711_.HTM

¹⁵⁷ “Maine HP 1175.” Maine House of Representatives, April 25, 2019.

<https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP1175&item=1&snum=129>.

4. For purposes of subsection 3, provocation is adequate if:

A. It is not induced by the person; and

B. It is reasonable for the person to react to the provocation with extreme anger or extreme fear, provided that evidence demonstrating only that the person has a tendency towards extreme anger or extreme fear is not sufficient, in and of itself, to establish the reasonableness of the person's reaction.

For purposes of determining whether extreme anger or extreme fear was brought about by adequate provocation, the provocation was not adequate if it resulted solely from the discovery of, knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance toward the person or in which the person and victim dated or had a romantic or sexual relationship.¹⁵⁸

The bill was signed and passed into law with little reporting. The language used was very similar to bills signed in California, Connecticut, and the District of Columbia. While the bill prohibits the use of an insanity defense or a provocation defense to be used, after the discovery, knowledge of or the disclosure of an individual's sexual orientation, gender, gender identity or gender expression, it also implies that provocation defenses rely on historical narratives of masculinity allowing men to react in a violent way. The State of Maine did not offer any less protections than has been seen in previous states, however it also did not offer any more protections than have been previously seen. Jury instruction, Transgender, Gay, Lesbian, Bisexual was still language not mentioned in the body of the bill itself. The bill also does not define gender, gender identity or gender expression, as was done in California.

¹⁵⁸ "Maine HP 1175." Maine House of Representatives, April 25, 2019.
<https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP1175&item=1&snm=129>.

i) Maryland (HB 231SB 46, 2021)

In July of 2021, Maryland became the fifteenth state to ban the usage of Gay and Trans panic defenses, without the signature of Republican Governor, Larry Hogan.¹⁵⁹ Maryland was the first and remains the only state where the legislation has passed without the signature of the governor. Maryland House Bill 231 was passed by the Maryland Legislature which contained the following sections prohibiting the use of Gay panic and Trans panic defenses:

Crimes – Mitigation and Defense – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

FOR the purpose of establishing that a certain discovery or perception of, or belief about, another person’s race, color, national origin, sex, gender identity, or sexual orientation does not constitute certain provocation to mitigate a killing from the crime of murder to manslaughter; establishing that a certain discovery or perception of, or belief about, another person’s race, color, national origin, sex, gender identity, or sexual orientation ~~does not constitute certain provocation to mitigate an assault from the crime of assault in the first degree to assault in the second degree or another lesser crime~~ is not a defense to the crime of assault in any degree; and generally relating to homicide and assault.

Article – Criminal Law

2-207.

(c) THE DISCOVER OR PERCEPTION OF, OR BELIEF ABOUT, ANOTHER PERSON’S RACE, COLOR, NATIONAL ORIGIN, SEX, GENDER IDENTITY, OR SEXUAL ORIENTATION, WHETHER OR NOT ACCURATE, DOES NOT CONSTITUTE LEGALLY ADEQUATE PROVOCATION TO MITIGATE A KILLING FROM THE CRIME OF MURDER TO MANSLAUGHTER.

3-209.

¹⁵⁹ Haug, Oliver. “Maryland Becomes 15th State to Ban Anti-LGBTQ+ “Panic” Defense.” them, April 14, 2021. <https://www.them.us/story/maryland-lgbtq-panic-defense-ban-Trans-name-change-legislation>.

- (A) [A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A person charged with a crime under § 3-202, § 3-203, or § 3-205 of this subtitle may assert any judicially recognized defense.
- (B) **THE DISCOVERY OR PERCEPTION OF, OR BELIEF ABOUT, ANOTHER PERSON’S RACE, COLOR, NATIONAL ORIGIN, SEX, GENDER IDENTITY, OR SEXUAL ORIENTATION, WHETHER OR NOT ACCURATE, ~~DOES NOT CONSTITUTE LEGALLY ADEQUATE PROVOCATION TO MITIGATE AN ASSAULT FROM THE CRIME OF ASSAULT IN THE FIRST DEGREE TO ASSAULT IN THE SECOND DEGREE OR ANOTHER LESSER CRIME~~ IS NOT A DEFENSE TO THE CRIME OF ASSAULT IN ANY DEGREE...**¹⁶⁰

The Maryland Legislature established that the discovery, “perception of” or the belief of an individual’s “...race, color, national origin, sex, gender identity, or sexual orientation” would not legally be adequate to determine provocation to lessen the charge of murder to manslaughter.¹⁶¹ The bill did not discuss the use of an insanity defense or the justification for use of force as has been discussed in other bills passed by various State legislatures.

j) Nevada (SB 97, 2019)

Nevada was the fourth State to ban the use of Gay and Trans panic defenses, behind California, Rhode Island, and Illinois. Nevada Senate Bill 97 was passed following the murder of Giovanni Melton, who was shot a killed by his father Wendell Melton, due to his dislike of his son being Gay.¹⁶² As of February 2022, he had been released from jail and allowed to wait for his trial on house arrest due to a diagnosis of asthma which would increase his risk of harm from COVID-19.¹⁶³ The family of Giovanni Melton is still awaiting justice. Uniquely, Nevada Senate Bill 97

¹⁶⁰ “Maryland HB 231” Maryland State Legislature, May 30, 2021. <https://mgaleg.maryland.gov/2021RS/bills/hb/hb0231T.pdf>

¹⁶¹ *Id.*

¹⁶² Brammer, John Paul. “Nevada Father Murdered Son for Being Gay, Former Foster Mom Claims.” NBC News, November 6, 2017. <https://www.nbcnews.com/feature/nbc-out/nevada-father-murdered-son-being-gay-former-foster-mom-claims-n817906>

¹⁶³ Murphy, Vanessa. “I-Team Only on 8: Charged with murder, out of jail.” 8NewsNow, February 8, 2021. <https://www.8newsnow.com/i-team/i-team-only-on-8-charged-with-murder-out-of-jail/>

contains the following sections prohibiting the use of Gay panic and Trans panic defenses, offering a small amount of justice, in the context of the larger systemic framework of violence affecting Gay and Transgender people:

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

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

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

*2. A person is not justified in using force against another person based on the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim, including, without limitation, under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.*¹⁶⁴

Under the amendments passed by the State of Nevada, in the death of Giovanni Melton, Wendell Melton would not be allowed to use his fears of his son being Gay to allege provocation, or to justify the force led that to his death. While the bill touches on use of force and provocation, it does not address the discovery or knowledge of an individual's sexual orientation or gender identity as justification for an insanity defense. The bill utilizes the model put forth in the ABA's 2013 Resolution on Gay and Trans Panic defenses, but fails to offer definitions for gender identity, gender expression, sexual orientation, or gender. The language used also fails to mention any

¹⁶⁴ "Nevada SB 97." Nevada State Legislature, January 24, 2019. https://www.leg.state.nv.us/Session/80th2019/Bills/SB/SB97_EN.pdf.

instruction for the jury if a victim's sexual orientation, gender identity, or gender expression is mentioned in a way that attempts to justify the actions of the defendant.

k) New Jersey (A1796, 2020)

New Jersey was the ninth state to pass a ban on the usage of Gay panic and Trans panic defenses in court. In 2011 Wilfredo Sanchez and Pedro Garcia, were convicted in the murder and dismemberment of Francisco Gonzalez Fuentes.¹⁶⁵ On appeal Sanchez attempted to use the Gay panic defense and argued that the jury should have been instructed to convict him on lesser charges such as manslaughter.¹⁶⁶ The appeal was denied even prior to the ban against the use of the defense in 2020. The New Jersey Legislature passed the bill (A1796) which contained the following sections prohibiting the use of Gay panic and Trans panic defenses:

An Act concerning homicide committed in the heat of passion and amending N.J.S.2C:11-4.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:11-4 is amended to read as follows:

2C:11-4. Manslaughter. a. Criminal homicide constitutes aggravated manslaughter when:

(1) The actor recklessly causes death under circumstances manifesting extreme indifference to human life; or

(2) The actor causes the death of another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2. Notwithstanding the provision of any other law to the contrary, the actor shall be strictly liable for a violation of this paragraph upon proof of a violation of subsection b. of N.J.S.2C:29-2 which resulted in the death of another person. As used in this paragraph, "actor" shall not include a passenger in a motor vehicle.

b. Criminal homicide constitutes manslaughter when:

(1) It is committed recklessly; or

¹⁶⁵ Bichao, Sergio. "NJ Killer Who Scattered Chopped-Up Body All Over Town Loses Gay-Panic Appeal." New Jersey 101.5, August 19, 2016. <https://nj1015.com/nj-killer-who-scattered-chopped-up-body-all-over-town-loses-Gay-panic-appeal/>.

¹⁶⁶ *Id.*

(2) A homicide which would otherwise be murder under [section] N.J.S.2C:11-3 is committed in the heat of passion resulting from a reasonable provocation.

¹[For purposes of determining the heat of passion under this paragraph, a provocation is not objectively reasonable if it is based on the] The¹ discovery of, knowledge about, or potential disclosure of the homicide victim's actual or perceived gender identity or expression, or affectional or sexual orientation, ¹[including] which occurred¹ under ¹any¹ circumstances ¹, including but not limited to circumstances¹ in which the victim made an unwanted, non-forcible romantic or sexual advance toward the actor, or if the victim and actor dated or had a romantic or sexual relationship ¹, shall not be reasonable provocation pursuant to this paragraph¹ . As used herein, the ¹[term] terms¹ "gender identity or expression" ¹and "affectional or sexual orientation"¹ shall have the same meaning as in ¹[subsection rr. of]¹ section 5 of P.L.1945, c.169 (C.10:5-5) ¹], and "affectional or sexual orientation" shall have the same meaning as in subsection hh. of that section¹].

c. Aggravated manslaughter under paragraph (1) of subsection a. of this section is a crime of the first degree and upon conviction thereof a person may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 10 and 30 years. Aggravated manslaughter under paragraph (2) of subsection a. of this section is a crime of the first degree. Manslaughter is a crime of the second degree. (cf: P.L.2001, c.412, s.1).¹⁶⁷

The language utilized in this bill is similar to that of other states in determining what is considered to be ‘heat of passion’ and what constitutes as adequate provocation. However, the bill defers from the model set by California and does not offer definitions for sexual orientation, gender identity or gender expression. While the terms are utilized in the text, failing to include definitions of the terms is harmful as it leads to conflation and a misunderstanding of what is meant by the terms.

1) New York (A08375, 2019)

New York was the seventh state to pass a ban on the usage of Gay panic and Trans panic defenses. The New York ban was introduced following the 2013 murder of Islan Nettles, who had

¹⁶⁷ “New Jersey A1796.” New Jersey State Legislature, January 21, 2020. <https://legiscan.com/NJ/text/A1796/2018>.

been beaten to death on the street by James Dixon¹⁶⁸. In a bargain between the District Attorney's Office and James Dixon, in exchange for pleading guilty to manslaughter, Dixon was sentenced to 12 years, a sentence the family of Islan Nettles believed was not enough¹⁶⁹. The impact of the victim's identity on sentencing would elude the limits of many Gay panic and Trans panic bans, which focus solely on trial defense strategy.

The New York State legislature passed bill A08375 which contained the following sections banning Gay panic and Trans panic defenses:

Section 1. Paragraph (a) of subdivision 1 of section 125.25 of the penal law, as amended by chapter 791 of the laws of 1967, is amended to read as follows:

(a) (i) The defendant acted under the influence of extreme emotional disturbance for which there was reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime. (ii) It shall not be a "reasonable explanation or excuse" pursuant to subparagraph (i) of this paragraph when the defendant's conduct resulted from the discovery, knowledge or disclosure of the victim's sexual orientation, sex, gender, gender identity, gender expression or sex assigned at birth; or

§ 2. Paragraph (a) of subdivision 3 of section 125.26 of the penal law, as added by chapter 765 of the laws of 2005, such subdivision as renumbered by chapter 482 of the laws 2009, is amended to read as follows:

(a) (i) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, aggravated manslaughter in the first degree, manslaughter in the first degree or any other crime except murder in the second degree. (ii) It shall not be a "reasonable explanation or excuse" pursuant to subparagraph (i) of this paragraph when the defendant's conduct resulted from

¹⁶⁸ Gold, Michael. "Gay Panic' Defenses Are Banned in N.Y. Murder Cases." The New York Times, June 19, 2019. <https://www.nytimes.com/2019/06/19/nyregion/Gay-panic-ny.html>.

¹⁶⁹ McKinley, James. "Man Sentenced to 12 Years in Beating Death of Transgender Woman." The New York Times, April 19, 2016. <https://www.nytimes.com/2016/04/20/nyregion/man-sentenced-to-12-years-in-beating-death-of-transgender-woman.html>.

the discovery, knowledge or disclosure of the victim’s sexual orientation, sex, gender, gender identity, gender expression or sex assigned at birth; or

§ 4. This act shall take effect immediately.¹⁷⁰

While New York’s ban on the usage of Gay panic and Trans panic defenses prevents the use of the “discovery, knowledge or disclosure of the victim’s sexual orientation, sex, gender, gender identity, gender expression or sex assigned at birth”¹⁷¹ as a reasonable explanation for an emotional disturbance nor may it count as a defense to the “prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime”¹⁷². It does not prohibit invoking the defense to prosecution for murder in the second degree. It also did not mention Gay, Lesbian, Transgender, or Bisexual individuals, or distinguish between these identities. The bill also does not offer any definitions for these terms, or for sex, gender, sexual orientation or gender expression.

The bill does not abrogate the sentencing for defendants like James Dixon in the future at trial. The bill itself makes no mention of sentencing guidelines, or the reduction of charges to lesser crimes.

m) Oregon (SB 704, 2021)

Oregon was the fourteenth state to pass a ban on the use of Gay panic and Trans panic defenses. While in Oregon there has been no evidence of the defense being used in court, many law makers and advocates of the bill believe that it was necessary.¹⁷³ The purpose of the bill was to continue to prevent its use and to serve as a symbol to other states producing their own bills.

¹⁷⁰ “New York A08375.” New York State Assembly, June 15, 2019.

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08375&term=2019&Summary=Y&Text=Y.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ VanderHart, Dirk. “Oregon lawmakers vote to ban ‘LGBTQ panic defense’ by accused murderers.” OPB, May 13, 2021. <https://www.opb.org/article/2021/05/13/oregon-lawmakers-vote-to-ban-lgbtq-panic-defense-by-accused-murderers/>.

The 81st Oregon Legislative Assembly passed Senate Bill 704 which contained the following sections banning the use of Gay panic and Trans panic defenses:

SECTION 1. ORS 163.135 is amended to read:
163.135. (1) It is an affirmative defense to murder in the second degree for purposes of ORS

163.115 (1)(a) that the homicide was committed under the influence of extreme emotional disturbance if the disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act and if there is a reasonable explanation for the disturbance. The reasonableness of the explanation for the disturbance must be determined from the standpoint of an ordinary person in the actor's situation under the circumstances that the actor reasonably believed them to be. Extreme emotional disturbance does not constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

(2)(a) The defendant may not introduce in the defendant's case in chief expert testimony regarding extreme emotional disturbance under this section unless the defendant gives notice of the defendant's intent to do so.

(4) The discovery of knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation, including but not limited to circumstances in which the victim made a romantic or sexual advance that was unwanted but did not involve force toward the defendant, does not constitute a reasonable explanation for an extreme emotional disturbance under this section.

(5) As used in this section, "gender identity" has the meaning given that term in ORS 166.155.

Section 1 of Oregon's legislative ban on the usage of Gay panic and Trans panic defenses defines what would be considered to be an extreme emotional disturbance. The ban on the usage of Gay panic and Trans panic defenses added lines (4) and (5) which prevent the "discovery of knowledge about or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression or sexual orientation", in circumstances of non-forceful unwanted romantic or sexual advances, from being utilized as reasonable explanations for extreme emotional disturbance. The language utilized here is similar to what has been seen in previously analyzed

legislation as they prevent the knowledge of or the disclosure of a victims, gender, or sexual orientation from being utilized to justify and explain extreme emotional disturbances. This section was also amended to include a definition for the term gender identity. Section 2 contained the following amended statements:

SECTION 2. ORS 161.215 is amended to read:

161.215. **(1)** Notwithstanding ORS 161.209, a person is not justified in using physical force upon another person if:

[(1)] **(a)** With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person [; *or*].

[(2)] **(b)** The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force [; *or*].

[(3)] **(c)** The physical force involved is the product of a combat by agreement not specifically authorized by law.

(d) The person would not have used physical force but for the discovery of the other person’s actual or perceived gender, gender identity, gender expression or sexual orientation. (2) As used in this section, “gender identity” has the meaning given that term in ORS 166.155.

The bill goes far in banning the use of physical force or emotional disturbance in response to the discovery of another individuals “actual or perceived gender, gender identity, gender expression or sexual orientation.”¹⁷⁴ The bill itself makes no clear mention of Gay or Transgender individuals and chooses to focus on the categories of gender, gender identity, gender expression, and sexual orientation.

¹⁷⁴ “Oregon SB 704.” Oregon State Legislature, n.d.
<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0704/Introduced>.

n) **Vermont (H128, 2021)**

Vermont's ban was signed into action by Republican Governor Bill Lee, which was in stark contrast to the actions of his party, where in many states they were considering anti-LGBTQ+ legislation at the time. The passing of this bill was a partisan act from both sides of the House. The General Assembly of the State of Vermont passed House Bill 704 which contained the following sections banning the use of Gay panic and Trans panic defenses:

§ 6566. DEFENSE BASED ON VICTIM IDENTITY PROHIBITED

In a prosecution or sentencing for any criminal offense, the following shall not be used as a defense to the defendant's criminal conduct, to establish a finding that the defendant suffered from diminished capacity, to justify the defendant's use of force against another, or to otherwise mitigate the severity of the offense:

(1) evidence of the defendant's discovery of, knowledge about, or the potential disclosure of the crime victim's actual or perceived sexual orientation or gender identity, including under circumstances in which the victim made a nonforcible, noncriminal romantic or sexual advance toward the defendant; or

(2) evidence of the defendant's perception or belief, even if inaccurate, of the gender, gender identity, or sexual orientation of a crime victim.¹⁷⁵

The language of the bill did not elaborate as deeply as other states had done, and does not include definitions of the terms gender, gender identity or sexual orientation as was done by California. However, the bill was clear in preventing the use of an individual's sexual orientation or gender identity from being used to establish diminished capacity, use of force, or to lessen the severity of the offense. Preventing the usage of sexual orientation or gender identity to lessen the severity of the offense, is not language that had been used frequently in other state bans. In many of the other bans this was not a feature that was discussed.

¹⁷⁵ "Vermont H128." Vermont State Legislature, 2021. <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT018/ACT018%20As%20Enacted.pdf>.

o) Virginia (HB 2132, 2021)

Virginia was the twelfth state to pass a ban on the usage of Gay panic and Trans panic defenses. As in many other states, legislator and author of the bill, Danica Roem, cited the killings of Gwen Araujo and Matthew Shepard as motivation to legislate. As a Transgender woman, Roem expressed that the passing of this bill was necessary for her own protection and the protection of her constituents and community.¹⁷⁶ As the first southern state to pass a ban on the usage of Gay panic and Trans panic defenses, Virginia and Roem have created a standard for other southern states to follow their practices. The General Assembly of the State of Virginia passed House Bill 2132 which contained the following operative sections banning the use of Gay panic and Trans panic defenses:

*“§ **18.2-37.1**. Certain matters not to constitute defenses.*

A. Another person's actual or perceived sex, gender, gender identity, or sexual orientation is not in and of itself, or together with an oral solicitation, a defense to any charge of capital murder, murder in the first degree, murder in the second degree, or voluntary manslaughter and is not in and of itself, or together with an oral solicitation, provocation negating or excluding malice as an element of murder.

B. Nothing in this section shall be construed to prevent a defendant from exercising his constitutionally protected rights, including his right to call for evidence in his favor that is relevant and otherwise admissible in a criminal prosecution.

*§ **18.2-57.5**. Certain matters not to constitute defenses.*

A. Another person's actual or perceived sex, gender, gender identity, or sexual orientation is not in and of itself, or together with an oral solicitation, a defense to any charge brought under this article.

B. Nothing in this section shall be construed to prevent a defendant from exercising his constitutionally protected rights, including his right to call for

¹⁷⁶ Yurcaba, Jo. “Virginia becomes 12th state to ban gay/trans panic defense.” NBC News, April 2, 2021. <https://www.nbcnews.com/feature/nbc-out/virginia-becomes-12th-state-ban-gay-trans-panic-defense-n1262933>.

*evidence in his favor that is relevant and otherwise admissible in a criminal prosecution.*¹⁷⁷

Virginia’s ban employs similar language to other states such as, banning the use of the discovery of an individual’s “perceived sex, gender, gender identity, or sexual orientation” to be used in defense of a charge of “capital murder, murder in the first degree, murder in the second degree, or voluntary manslaughter.”¹⁷⁸ It also, uniquely, prevents “oral solicitation” from being used to explain provocation, as well as notes that the creation of this ban on the usage of Gay panic and Trans panic defenses, does not prevent a defendant from utilizing their “constitutionally” protected rights.¹⁷⁹

p) Washington (HB 1687, 2020)

Washington was the tenth state to pass a ban on the usage of Gay panic and Trans panic defenses. The bill is named after Nikki Kuhnhausen, who was seventeen when she was killed by David Bogdanov after he discovered that she was Transgender.¹⁸⁰ Bogdanov was found guilty of second-degree murder and malicious harassment, which is considered a hate crime. He was sentenced to 234 months for second-degree murder and twelve months for malicious harassment.¹⁸¹ The 66th Legislature of the State of Washington passed House Bill 1687 which contained the following sections banning the use of Gay panic and Trans panic defenses:

“NEW SECTION. Sec. 1. A new section is added to chapter 9A.08 RCW to read as follows:

¹⁷⁷ “Virginia H2132.” Virginia State Legislature, March 31, 2021. <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0460>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ “Transgender teen’s murder launches nationwide movement, inspires new law.” CBS News, December 18, 2021. <https://www.cbsnews.com/news/nikki-kuhnhausen-david-bogdanov-Transgender-teens-murder-new-law/>

¹⁸¹ Robbins, Becca. “Bogdanov sentenced to nearly 20 years in murder of Nikki Kuhnhausen.” The Columbian, September 9, 2021. <https://www.columbian.com/news/2021/sep/09/bogdanov-sentenced-to-20-years-in-murder-of-nikki-kuhnhausen/>.

A defendant does not suffer from diminished capacity based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or in which the defendant and victim dated or had a romantic or sexual relationship.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.08 RCW to read as follows:

A person is not justified in using force against another based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or in which the defendant and victim dated or had a romantic or sexual relationship.

NEW SECTION. Sec. 3. This act may be known and cited as the Nikki Kuhnhausen act.¹⁸²

Washington State's ban focuses directly on diminished capacity and use of force. The language used in the ban however is very similar to that used on other states with the focus being directly on gender, gender identity, gender expression, and sexual orientation. Within this however, the ban does not go far in addressing all the ways in which Gay panic and Trans panic defenses are used. Provocation was not addressed, and neither was the lessening of charges justified by an individual's identity. In the case of Nikki Kuhnhausen, the defendant David Bogdanov claimed self-defense in her killing. The bill itself makes no clear statement on self-defense, however it does prevent any use of force against an individual based upon the discovery of, the knowledge of, or the disclosure of an individual's gender, gender identity, gender expression, or sexual orientation.

2. **Settled Law**

The following sections will include an analysis of two cases from California in which a Gay panic or Trans panic defense was utilized by the defendant. They will be analyzed for the

¹⁸² "Washington HB 1687." Washington State Legislature, 2020. <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1687.PL.pdf?q=20220429091028>.

following principles gathered from the literature review and echoed in emerging state law: 1. the conflation of sex and gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies of the United States. Following the guidelines set by Martha Minow, the distinction between the settled law, outlined above, will be acknowledged with the emerging law from the following cases.¹⁸³ In the following cases, these themes are identified, so patterns between the settled cases and emerging law can be compared on the same principles.

a) *People v. Balassa (2020)*¹⁸⁴

In August 2014 Joaquin Balassa, a 28-year-old trained mixed martial artist, spent the evening with Jose Fajardo and Guy Koukal. Fajardo and Koukal were a married couple, in their early 50s whom met Balassa 6 months prior at the home improvement store in which the defendant worked. On the evening of August 2014, Balassa, Fajardo and Koukal, and Louis the roommate of the defendant went out for drinks. They returned to the home of the defendant and continued drinking there. Another friend named Mario joined the group upon their return to the home. While still drinking at home the defendant Balassa entered his private bedroom with Fajardo and Koukal, and then returned to the main part of the house around 20 minutes later. Mario left the apartment as he was not comfortable partying with just men and wanted women to be present. Luis who was sleeping on the sofa saw Koukal go into the defendant's bedroom to sleep and the defendant was playing beer pong with Fajardo in the kitchen. He would later be awoken by a loud argument between the defendant and Fajardo. Louis later testified in court that he saw Fajardo attempt to

¹⁸³ Minow, Martha. "Archetypal Legal Scholarship: A Field Guide." *Journal of Legal Education* 63, no. 1 (2013): 65-69.

¹⁸⁴ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, OpinionFiled). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

kiss the defendant before the defendant punched him in the face knocking him unconscious. Louis testified that the defendant continued punching Fajardo in his face and stomach, even preventing Louis from pulling him off the victim. Louis, did not see what happened next as he made his way to a gas station where he was able to report to parked officers that a fight had occurred at the apartment he had been in. The officers responded to the report and knocked on Balassa's apartment door, the defendant greeted them at the door and asked that they "hold on."¹⁸⁵

After obtaining a key from the apartment manager, the two officers and a sheriff's deputy entered the apartment which they described as 'bloody' when they saw Jose Fajardo dead in the living room and Guy Koukal dead in the bathtub.¹⁸⁶ They found the defendant in his bedroom clothed, but wet pretending to be sleep. The defendant was handcuffed and removed from the apartment, once inside of the patrol car the defendant threatened to kill the officers and slipped his handcuffed hands in front him. Once they arrived at the police station the defendant gave a statement in which he adamantly denied having had any involvement in the deaths of Jose Fajardo and Guy Koukal.

In April 2016, the defendant and appellant Joaquin Balassa was found guilty of "willful deliberate and premeditated murder."¹⁸⁷ He was sentenced to two consecutive life terms without the possibility of parole. In his appeal submitted in 2020, before the Fifth Appellate District of California, Balassa made the following six claims:

¹⁸⁵ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

¹⁸⁶ *Id.*

¹⁸⁷ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

He argue[d] that the prosecutor improperly used his exercise of his constitutional rights against him at trial, resulting in the violation of his right to due process; that the trial court committed error in its instruction to the jury pursuant to CALCRIM No. 571 (imperfect self-defense); and that the trial court erred in failing to instruct the jury with CALJIC No. 5.10 (resisting attempt to commit felony). Defendant also argues that cumulatively, these errors were prejudicial. Finally, defendant claims that one of the two multiple-murder special-circumstance findings must be reversed as duplicative, and that the parole revocation restitution fine imposed under section 1202.45 must be stricken because his sentence does not include the possibility of parole.¹⁸⁸

In addressing the Defendant's claim that his Constitutional rights had been exercised against him, the court ruled in favor of the People, the appellee and rejected the defendants claim "of reversible error."¹⁸⁹ The defendant initially gave a statement to police officers denying involvement in the murders of Fajardo and Koukal. However, after speaking with the officers for a little while longer he would move to invoke his rights granted to him under *Miranda v. Arizona* (1966), and refused to give any further statements.¹⁹⁰ At the trial he would later testify that he killed both Fajardo and Koukal in self-defense after he woke to find himself being raped, a statement the prosecutor found to contradict his initial statement given to police. The defendant argued on appeal that the prosecutor used his "post invocation silence against him", in violation of the defendants Fifth and Sixth Amendment rights, to remain silent and to counsel. He argued that the actions of the prosecution violated the ruling found in *Doyle v. Ohio* (1976.)¹⁹¹

¹⁸⁸ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

¹⁸⁹ *Id.*

¹⁹⁰ *Miranda v. Ariz.*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 1966 U.S. LEXIS 2817, 10 Ohio Misc. 9, 36 Ohio Op. 2d 237, 10 A.L.R.3d 974 (Supreme Court of the United States June 13, 1966, Decided). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G470-003B-S2VW-00000-00&context=1516831>.

¹⁹¹ *Doyle v. Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91, 1976 U.S. LEXIS 66 (Supreme Court of the United States June 17, 1976). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9W40-003B-S24Y-00000-00&context=1516831>.

The People argued that the defendant had “forfeited his claim under *Doyle* because trial counsel failed to object.”¹⁹² The Court found that neither argument was relevant in this case, and therefore “any error is harmless on this record.”¹⁹³ Regarding the defendant’s refusal of a DNA collections under his Fourth Amendment rights, the Court found that the prosecutor did not err in “using his exercise of that right against him.”¹⁹⁴ The Court made this ruling after determining that it was “not clear from the record that defendant’s initial lack of cooperation was related to an invocation or attempted invocation of rights under the *Fourth Amendment*.”¹⁹⁵ From the defendant’s actions prior to the need for the DNA test the Court believed that the prosecutor was providing evidence that the defendant was uncooperative, not that his response to the request for a DNA test was the issue.

The defendant argued that an error was made in the instruction given to the jury. The trial court instructed the jury with “respect to complete, or perfect, self-defense” on CALCRIM No. 505 as follows:¹⁹⁶

“The defendant is not guilty of murder or manslaughter if he was justified in killing someone in self defense. The defendant acted in lawful self defense if, number one, the defendant reasonable believed that *he was in imminent danger of being killed or suffering great bodily injury or was in imminent danger of being raped*. Two, the defendant reasonable believed the immediate use of deadly force was necessary to defend against that danger. And, three, the defendant used no [more] force than was reasonably necessary to defend against that danger.”¹⁹⁷

¹⁹² *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at p.13.

¹⁹⁵ *Id.* at p. 11.

¹⁹⁶ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

¹⁹⁷ *Id.*

The trial court also instructed the jury “with respect to imperfect self-defense” pursuant to CALCRIM No. 571 as follows¹⁹⁸:

“A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person, because he acted in imperfect self defense. If you conclude the defendant acted in complete self defense, his action was lawful, and you must find him not guilty of any crime. The difference between complete self defense and imperfect self defense depends on whether the defendant’s belief [in] the need to use deadly force was reasonable. The defendant acted in imperfect self defense, if, once, the defendant actually believed that *he was in imminent danger of being killed or suffering great bodily injury*. And, two, the defendant actually believed that the immediate use of deadly force was necessary to defend against the danger. But, number three, at least one of those beliefs was unreasonable.¹⁹⁹

The defendant argues that when the trial court instructed the jury on imperfect self-defense, they failed to include in the instructions that “...he acted in imperfect self-defense if he actually believed he was in imminent danger of being raped.”²⁰⁰ The defendant argued that without the reference to rape, it symbolized that great bodily injury was not inclusive of rape. Based upon the evidence provided, the Court found that the jury was not misled by the omission of the word rape from the imperfect self-defense instructions. The Court ruled similarly and found that the trial court did not make an error in the instruction given to the jury with “respect to complete, or perfect, self-defense” on CALCRIM No. 505.²⁰¹

The defendant received a modified judgement, as the court found that “one of the two multiple-murder special-circumstance findings” and the “parole revocation restitution fine

¹⁹⁸ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

imposed” were both stricken.²⁰² The defendant’s sentencing however remained the same, and the defendant would continue serve his life sentence. Joaquin Miquel Balassa is serving the remainder of his life sentence at Avenal State Prison.

b) *People v. Merel (2009)*

On October 4, 2002, Gwen (Lida) Araujo was brutally beaten, murdered and buried by Jaron Nabors, Jason Cazaras, Jose Merel, and Michael Magidson. At the time seventeen-year-old Araujo had been friendly with the men for an extended period and had sexual relationships with some of the men.²⁰³ Throughout the summer of 2002, Araujo spent a lot of time at the home that Jose Merel shared with his brothers Paul and Emmanuel. They were often joined by the other co-defendants Jason Cazaras, Michael Magidson, Jaron Nabors, and Nicole Brown, Paul Merel’s romantic partner. Throughout the summer the group questioned the sexual orientation of Araujo, both Brown and Paul “noticed that Lida moved like a man in ‘drag’.”²⁰⁴ At the time of these conversations Magidson, Merel and Cazaras, and Nabors were all present and were said not to have been upset by this information.²⁰⁵ Prior to her death, Merel told Nabors that Araujo had performed oral sex on him and that they had engaged in anal intercourse, due to Araujo having

²⁰² *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

²⁰³ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²⁰⁴ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²⁰⁵ *Id.*

been on her menstrual cycle at the time.²⁰⁶ Magidson, also told Nabors and Merel that him and Araujo had engaged in oral sex as well as anal intercourse. The group began to question if Araujo had lied about “whether she was actually a man or a woman.”²⁰⁷ When Paul Merel confirmed that he had vaginal intercourse with Lida, the groups suspicions subsided a little. However, they still had a conversation in which the group discussed “men who dressed as woman and ‘l[ed] men into sex.”²⁰⁸ The group agreed that this was a circumstance in which someone could be killed.

On the evening prior to October 4, 2002, Jaron Nabors, Jason Cazaras, Jose Merel, and Michael Magidson went out to both a bar and a night club which they left at around 1:30 a.m. On their way back to the Merel home, where they hoped Araujo would be, they all agreed that they “could ask her whether she was a man or a woman.”²⁰⁹ Both Araujo and Brown were present when they arrived. The four men Magidson, Merel, Cazaras, and Nabors were drinking and playing dominoes, when an intoxicated Araujo interfered with the game. The following describes the conversation had between the group and Araujo:

...Merel stood up and put his fingers across her throat, then ran his fingers through the front part of her hair. She asked what he was doing, and he said in a demanding tone, “We want to know why everybody—you want everybody to fuck you in the ass,” then asked in the same tone, “Are you a woman or sloppy ass nigga?” Lida looked at Merel and Magidson, and asked, “How can you ask me that?” All four men asked her why she would not answer the question, in an effort to get her to answer, and asked if she was a man or a woman. Merel’s tone of voice was loud and angry. Magidson leaned over Lida and asked her to “let [him] feel” so he would know if she was a woman or a man. Lida appeared upset and told Magidson she would not let him molest her. Someone suggested Lida and Magidson should go into the bathroom alone, and they did so. On the way to the

²⁰⁶ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

bathroom, Lida said she wanted to go outside for a cigarette, and Nabors told her she had “do this” first, and pushed the front door closed.²¹⁰

Outside the bathroom Merel grew increasingly angry in a conversation about Araujo’s sex that had been assigned at birth. “I swear if it’s a man, I’m going to fucking kill him.”²¹¹ Merel knocked on the bathroom door to receive an updated from Magidson, to which he responded that Araujo would not let him feel her. It was soon decided that as a woman, Araujo would be more likely to allow Brown to feel her. While Brown and Araujo were in the bathroom together, Magidson and Nabors went outside to have a conversation where Magidson expressed that he believed Araujo was a man. Magidson angered at this, began to apply pressure to Nabors’s throat to mimic what would be done to Araujo to not make a mess when killing her.²¹² Once back inside the house, Brown ran out the bathroom and announced to the group that she had felt that Araujo had a penis and therefore was a man.

Cazares went back into the bathroom with Araujo and closed the door. Merel, who was outside, began banging on the door attempting to be let in. Merel upset went into the bedroom of his brother Emmanuel, who also lived with him, “crying and saying, “I can’t be fuckin’ Gay.”²¹³ The bathroom door opened and Merel attempted to enter the bathroom, Cazares blocked his ability to enter. When Araujo exited the bathroom, “Magidson pulled her to the floor and moved her underwear to the side, revealing testicles.”²¹⁴ Magidson then began to choke Araujo with his arms. Emmanuel attempted to help Araujo and push her out the door but was stopped by Magidson and

²¹⁰ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

Nabors. Cazares also attempted to prevent Magidson from choking Araujo, however he would continue to choke her at least another three times. Nicole Brown testifies that she saw Magidson punch Araujo in the face once during this time as well. On her knees Araujo begged Merel and Magidson to stop attacking her, pleading that she had a family. Merel would leave the room, to return with canned food, which he used to strike her “on top of the head...hard enough to dent the can.”²¹⁵ Merel would again leave the room to go to the kitchen to grab a frying pan which he again used to strike her at the crown of her head, causing her to fall to the ground. Nabors and Cazares, drove to the home of Cazares to get “three shovels and a pick axe.”²¹⁶ Upon returning to the Merel home, they entered the home to discover Araujo conscious and sitting on the couch. Araujo would be struck again by Magidson causing her to fall unconscious. The group would then use a rope to tie her wrists and ankles and wrapped her in a blanket. Magidson in his testimony said that he “had not been sure whether or not Lida was dead until ‘he’ – referring to someone else – had hit her with a shovel a couple of times.”²¹⁷ Magidson, Merel, Nabors, and Cazares buried Araujo in Silver Fork Campground in Kyburz, California.

Jaron Nabors was the first to go to trial and received a plea deal which allowed him to plead guilty to voluntary manslaughter, in exchange for his testimony against the other involved individuals. Nabors was sentenced to eleven years with credit for time served, he was released in 2016. Jason Cazares, Jose Merel, and Michael Magidson were tried together two times, with the first ending in a mistrial. In the second trial, defendant-appellants Jose Merel and Michael

²¹⁵ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²¹⁶ *Id.*

²¹⁷ *Id.*

Magidson were found guilty of second-degree murder and sentenced to fifteen years to life in prison, the jury deadlocked for a second time on a sentence for Cazares. Jason Cazares would later plead no contest to manslaughter, which allowed him to avoid admitting guilt. He was later sentenced to six years in prison, he was released in July 2012. In their appeal, Jose Merel and Michael Magidson, argued that the trial court committed an “instructional error and that the prosecutor acted improperly.”²¹⁸ The California Court of Appeal affirmed the decision of the Alameda County Superior Court.

The defendants argued that the trial court erred in failing to instruct the jury on voluntary manslaughter. The jury was instead on instructed CALJIC No. 8.42 which states the following:

To reduce unlawful killing from murder to manslaughter upon the grounds of sudden quarrel or heat of passion, the provocation must be of the character and degree as naturally would excite and arouse the passion, and the assailant must act under the influence of that sudden quarrel or heat of passion. The heat of passion which will reduce...a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinarily reasonable person in [the] same circumstances. A Defendant is not permitted to set up his own standard of conduct to justify or excuse himself because his passions were aroused, unless the circumstances in which the Defendant was placed and [the] facts that confronted him were such as would have aroused the passion of the ordinarily reasonable person faced with the same situation. Legally adequate provocation may occur in a short, or over a considerable period of time. *The question to be answered is whether or not at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause an ordinarily reasonable person of average disposition to [act] rashly, and without deliberation and reflection, and from passion rather than from judgment.* If there was a provocation, whether of short or long duration, but of a nature not normally sufficient to arouse passion, or if a sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed the provocation and

²¹⁸ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

had all the elements of murder as I defined it, the mere fact of a slight or remote provocation will not reduce the offense to manslaughter.²¹⁹

The defendants asked the trial court to edit the italicized portions to “insert the word ‘liable’ between ‘disposition and ‘to act,’ or else to substitute for the word ‘would,’ either ‘could’ or ‘sufficient to cause’.”²²⁰ The editing of the language used in the instruction would create the inquiry for the jury to question “whether the defendant’s reason was so disturbed or obscured by passion as to make an ordinarily reasonable person *liable* to act rashly, not whether such a person *would* act rashly.”²²¹ As was found in *People v. Coad* (1986), based upon CALJIC No. 8.42, the jury decides “whether a reasonable person in the circumstances would have *acted* out of passion rather than judgement.”²²² The trial court here agreed with this sentiment and further found that “the law does not forgive or condone as reasonable the act chosen.”²²³ The California Court of Appeal concluded that the jury was properly instructed on the law in the trial court and that the prosecutor had acted properly throughout the trial. All judgments found in the lower court were affirmed. In October 2016, Jose Merel was granted parole after having served 14 years in state prison. As of September 2019, Michael Magidson was denied parole for 5 years, with a tentative

²¹⁹ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

²²⁰ *Id.*

²²¹ *Id.*

²²² *People v. Coad*, 181 Cal. App. 3d 1094, 226 Cal. Rptr. 386, 1986 Cal. App. LEXIS 1676 (Court of Appeal of California, First Appellate District, Division Two May 21, 1986). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-K430-003D-J3B7-00000-00&context=1516831>.

²²³ *People v. Jose Antonio Merel & Michael William Magidson*, 2009 Cal. App. Unpub. LEXIS 3780, 2009 WL 1314822 (Court of Appeal of California, First Appellate District, Division Four May 12, 2009, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7VPX-YTV1-2R6J-2081-00000-00&context=1516831>.

date for a parole suitability hearing set for September 2024. Michael William Magidson remains incarcerated at Valley State Prison.

3. Distinctions Between Settled and Emerging Law

In this textual analysis of language used in *Balassa* and *Merel* attention will be given to the language used by the defense, and all involved throughout the course of the case. The language used in settled and emerging law will be analyzed using the following three principles: the conflation of sex and gender, violence is systemic and cannot be transformed broadly at a single site of action, and systems of violence rely on hetero-patriarchal ideologies of the United States. The language used by the defense will be used as an example to show how certain terms, and sayings have a history that is shown to be discriminatory towards Gay, Lesbian, and Transgender individuals. These comments and the way certain terms are used, however are not banned by many of the State bans on Gay panic and Trans panic defense as they do not outrightly discriminate against an individual based upon their sex, gender, or sexual orientation. The language used by the detective interviewing the defendant will show the need for clear instructions and education to be given to not only the jury, but also the detectives involved in their line of questioning.

a) Language Used in *Balassa* and *Merel*

Language utilized in cases involving Gay panic and Trans panic defenses often rely on hetero-patriarchal ideologies that are both violent and reductionist.²²⁴ In *Balassa* and *Merel*, the violence and reductionist tactics are done to both intimidate the victim at the time of their death, but also to reduce a victim to stereotypical ideologies, rooted in homophobia and hetero-patriarchal

²²⁴ Andresen, W. Carsten. "Research Note: Comparing the Gay and Trans Panic Defenses." *Women & Criminal Justice* 32, no. 1-2 (August 27, 2021): 219–41. <https://doi.org/10.1080/08974454.2021.1965067>.

ideologies after their death, during trial.²²⁵ This analyzation of the language shows the harm placed upon the victims, when language comes from these systems for the purpose of utilizing a Gay panic or Trans panic defenses in a criminal court both explicitly and inexplicitly.

The sexual orientation of the victims did not come up often throughout the Court Opinion given by Justice Meehan. The defendant in *Balassa* did not directly use a Gay panic or Trans panic defense, instead he focused on the idea that the victims had AIDS, and that he believed that at least one of the victims had raped him. In his testimony, the defendant testified that “he felt shock, panic and fear and that he was concerned Koukal had AIDS.”²²⁶ The defendant would go on to testify that it was during the second interaction with the victim Guy Koukal, that he retaliated and “possibly squeezed Guy’s throat” and “hit Guy as hard as he could.”²²⁷ Following leaving Koukal unconscious in the bathroom, the defendant testified that he went on to attack Fajardo in the living room, he testified that he may have told the victim “[D]on’t you ever fucking put your tongue down my throat,” referring to a previous incident where Fajardo attempted to kiss him.²²⁸ The testimony did not focus heavily on the sexual orientation of the two individuals, but emphasized the alleged sexual assault that the defendant centered in his own testimony.

For years during the height of the HIV/AIDS epidemic, many believed that it was an illness reserved specifically for Gay men. It is because of this that HIV and AIDS both have a

²²⁵ Lee, Cynthia. "The Trans Panic Defense Revisited." *The American Criminal Law Review* 57, no. 4 (2020): 1411-1497.

²²⁶ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed).
<https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-M1NS-00000-00&context=1516831>.

²²⁷ *Id.*

²²⁸ *Id.*

discriminatory meaning in relation to Gay men.²²⁹ At the height of the HIV/AIDS epidemic in the 80s, the Reagan administration treated the epidemic as a laughable matter. In a 1982 interview with the then press secretary, Larry Speakes, journalist Lester Kinsolving, attempted to ask questions about the President's response to what had become known as the "Gay plague."²³⁰ Kinsolving was met with laughter from the Press Secretary and other individuals in the room²³¹. At this point nearly 1,000 individuals, mostly Gay men, had died from AIDS.²³² This response and lack of care for individuals affected by the epidemic was not relegated only to the Press Secretary, his response reflected many of the views of United States citizens at the time. The term "Gay plague" carried a stigma and homophobic views that still persist. It continues nearly 40 years later, prevalent in the testimony of defendant Joaquin Balassa. The defendant asserting his fear of AIDS was not a mistake, it is a pretext for the same Gay panic defense. Illness becomes a proxy for attacking the victim's gender, gender identity, gender expression, or sexual orientation.

California's ban on the usage of Gay panic and Trans panic defenses was signed into action by the Governor on September 27, 2014, nearly a month after the killing of Guy Koukal and Jose Fajardo. The trial of Joaquin Balassa would not begin for almost another two years, making it impossible for the defense to be able to use a clear Gay panic defense, as it had been banned at the time. California Assembly Bill No. 2501, prevented the "discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation" as reasonable determining factors of provocation, for a sudden quarrel or

²²⁹ Ayala, George and Andrew Spieldenner. "HIV Is a Story Written on the Bodies of Gay and Bisexual Men." *American Journal of Public Health* 111, no. 7 (2021); 1240-1242. <https://doi.org/10.2105/AJPH.2021.306348>.

²³⁰ Lopez, German. "The Reagan administration's unbelievable response to the HIV/AIDS epidemic." VOX, Dec 1, 2016. <https://www.vox.com/2015/12/1/9828348/ronald-reagan-hiv-aids>.

²³¹ *Id.*

²³² *Id.*

heat of passion.²³³ The ban itself makes no mention about the usage of language or pretext that is similarly discriminatory.

The ban also makes no effort to prevent language that is discriminatory from being used by those investing cases. While being interviewed in the police station, a detective said the following statement to the defendant Joaquin Balassa: “There’s been some – some things being said that maybe there was some — some Gay stuff that tried to go no. Maybe someone tried to wake you up in the middle of the night with some Gay stuff. We don’t know. That’s why we wanna talk to you.”²³⁴ While this was the only time that the detective mentioned the victim’s sexual orientation, it again happened in a discriminatory way. The detective used the term “Gay stuff” to almost reason with the defendant, as if this was enough provocation as to what led to the deaths of two Gay men. This statement was presented to a jury as part of the prosecution’s argument; however, it still pulls on the discriminatory history and beliefs of Gay people, similarly to the defendant stating that he believed the victim had AIDS. Both comments compounded with each other can create a silent argument using a Gay panic defense, without using language that directly implies the defense.

Balassa uses a defense tactic that works in stark contrast with the defense methods used in *People v. Merel* (2009) where the defense outrightly used a Trans panic defense. When analyzing this case attention will be given to the language used by the defense, the prosecutor, the Court, and witnesses. While in the appeal, Justice Rivera made note of the usage of female pronouns, respecting that Araujo identified as female. In the initial trial this was not the case as the prosecutor

²³³ “California AB-2501 Voluntary Manslaughter,” California Legislative Information, September 27, 2014, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2501.

²³⁴ *People v. Balassa*, 2020 Cal. App. Unpub. LEXIS 1281, 2020 WL 897957 (Court of Appeal of California, Fifth Appellate District February 25, 2020, Opinion Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y93-BTD1-JW09-MINS-00000-00&context=1516831>.

referred to her with male pronouns throughout the trial and used the name given to her at birth. The actions of Justice Rivera show the attempt of Justices to “conduct themselves in a manner that is sensitive to the victims and their families.”²³⁵ Araujo’s mother, Sylvia Guerrero, after the first trial would go on to say that Gwen Amber Rose Araujo, was never Eddie, and she “feel[s] so disrespected for her every time I hear that name.”²³⁶ ‘Outing’ is the “act of exposing an individual’s sexual orientation and/or gender identity.”²³⁷ The action often relies on hetero-patriarchal beliefs that an individual’s genitalia or sex determined at birth are a correct marker for gender identity or sexual orientation.

In 2000, the United States Court of Appeals for the Third Circuit ruled in *Sterling v. Borough of Minersville* that the “threat to disclose” an individual’s sexual orientation was in violation of protected privacy rights granted by the United States Constitution.²³⁸ Nicole Brown not only threatened to expose the sexual orientation of Gwen Araujo, but she also followed through with the action in a way that led to her death. There is no way to say if Nicole Brown’s actions had not happened that Araujo may not have been killed, however her silence and the disclosure of Araujo’s sexual orientation did allow her tragic death to happen. Gwen Araujo never had the opportunity to disclose her own sexual orientation or gender identity, she was outed first by Nicole Brown on the night she was murdered and again in the courtroom.

²³⁵ Andresen, W. Carsten “Research Note: Comparing the Gay and Trans Panic Defenses.” *Women & Criminal Justice* 32, no. 1-2 (August 27, 2021): pp. 219-241, <https://doi.org/10.1080/08974454.2021.1965067>.

²³⁶ Gilonna, John M. “Slaying Victim’s Mother Now Speaks Out Against Hate Crime.” *Los Angeles Times*, October 5, 2003. <https://web.archive.org/web/201509222205837/http://articles.latimes.com/2003/oct/05/local/me-araujo5>.

²³⁷ Schwartz, Arielle P. “Why Outing Can Be Deadly.” National LGBTQ Task Force, n.d. <https://www.thetaskforce.org/why-outing-can-be-deadly/>

²³⁸ *Sterling v. Borough of Minersville*, 232 F.3d 190, 2000 U.S. App. LEXIS 27855 (United States Court of Appeals for the Third Circuit November 6, 2000, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:41M3-S8V0-0038-X1D2-00000-00&context=1516831>.

The usage of the name Eddie in court serves as an outing of Gwen's identity for a second time, both of which she did not have a say in. The first time Gwen was 'outed', in the bathroom by Nicole Brown led to her death. It was an action that was rooted in hetero-patriarchal ideologies and violence. The usage of her deadname utilizes a tactic to similar to what was used in *Balassa*. The usage of a deadname has a discriminatory and damaging history. To the public a name falls within heteronormative ideals about masculinity or femininity. Masculine names are typically believed to belong to male presenting individuals while feminine names are typically reserved for female presenting individuals. When a Transgender person chooses the name they want to be seen in the world as, it should be the only identity that other individuals on the outside should know. The prosecutor relied on a dead name, and the conflation of gender and gender identity to argue his case. Here in the trial of Merel and Magidson it serves as a reminder that Araujo was not assigned female at birth, it also presents this information to the jury as though it pertained to the case itself. Araujo's gender identity was the center of each of the defendant's trials however, no one attempted to protected her or that identity over the course of the trials. Araujo was outed twice both by a peer and the law, both symbolize and represent the evidence of the violence that can occur, but also the removal of agency given to the victim when the unchecked language utilized places them on trial and not the defendant.

b) Language Distinctions Between Emerging Law and Settled Law

While the California state ban focuses on the usage of the Gay Panic and Trans Panic defenses in the courtroom, it fails to address the application of the ban to the conduct of those involved throughout the entirety of an investigation. The historical narrative and history surrounding the use of language such as "Gay stuff", the belief that HIV/AIDS is specific to Gay people, and the usage of 'deadnames' and 'outing', is marred by discrimination and societal fears.

Without making updates to state bans to consider the discriminatory and harmful history in the United States to Gay and Transgender individuals, they are preventing only one layer of the usage of Gay Panic and Trans Panic defenses. Additions should be added to existing state bans to address the language used by all parties involved in a case both inside and outside of the court room.

c) Sentencing in *Balassa* and *Merel*

In *People v. Balassa* (2020), the defendant Joaquin Balassa was convicted of first-degree murder and sentenced to life in prison without the possibility of parole. In the state of California, this is the highest conviction that he could have received. For all intense and purposes, under the eyes of the law and for Guy Koukal and Jose Fajardo this was justice. Or at least the only kind that could be provided by California’s Gay Panic and Trans Panic defense ban. It is because the ban worked in this case, that it makes it strikingly obvious the ways that it did not function the same in *People v. Merel* (2009), or for the individuals involved in the killing of Gwen Araujo.

Of the five individuals involved in the killing of Gwen Araujo, only four were ever sentenced to prison. Nicole Brown never faced charges for her own involvement in the killing of the seventeen-year-old. Jaron Nabors, Jason Cazaras, Jose Merel, and Michael Magidson received sentences that ranged from 6 years to life in prison without the possibility of parole. As of 2022, Michael Magidson is the only individual to remain incarcerated for his involvement in the 2002 death of Gwen Araujo. In the initial trial Magidson, Merel, and Cazaras were all charged with first-degree murder and added hate crime enhancements.²³⁹ In the state of California murder in the first degree “shall be punished by death, imprisonment in the state prison for life without the possibility

²³⁹ Zamora, Jim Herron. “Newark / Teen's Death a Crime of Passion, Defense Says.” SFGATE, January 20, 2012, <https://www.sfgate.com/bayarea/article/NEWARK-Teen-s-death-a-crime-of-passion-defense-2645355.php>.

of parole, or imprisonment in the state prison for a term of 25 years to life.”²⁴⁰ After the previous trial ending in a mistrial, the search for justice seemed fraught. At this point Jaron Nabors had already accepted a plea deal in exchange for his testimony against the other men involved. A plea deal which allowed him to plea down to the lesser charge of voluntary manslaughter. California Penal code defines voluntary manslaughter as the “unlawful killing of a human being without malice...upon a sudden quarrel or heat of passion.”²⁴¹ It is punishable by state imprisonment for 3, 6, or 11 years.²⁴² Jaron Nabors received the lower end of the maximum amount of time he could possibly have been incarcerated for. At the time of his sentencing in 2003, he had received a year’s worth of credit for time served and was expected to be released in five years.

d) Sentencing Distinctions Between Emerging Law and Settled Law

California’s state ban on Gay panic and Trans panic defenses makes no mention of plea deals, neither do the statutes in 16 other states. In an analysis done of 99 cases in which the 101 defendants had killed a Gay man or a Trans woman, 34.65% pled guilty in a plea deal.²⁴³ A plea bargain is most often an agreement between prosecutors and defendants which ultimately end in reduced charges for the defendant, in exchange for testifying against another individual or the ability to avoid trial all together. The Bureau of Justice Statistics believes that nearly 90 to 95 percent of federal and state court cases end in plea deals.²⁴⁴ Jason Cazares and Jaron Nabors both

²⁴⁰“California Penal Code.” California Legislative Information, 1872.

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=1.&article.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Andresen, W. Carsten. “Research Note: Comparing the Gay and Trans Panic Defenses.” *Women & Criminal Justice* 32, no. 1-2 (August 27, 2021): pp. 219-241, <https://doi.org/10.1080/08974454.2021.1965067>.

²⁴⁴ Devers, Lindsey. “Plea and Charge Bargaining: Research Summary.” U.S. Department of Justice, Bureau of Justice Statistics, January 24, 2011. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.

reached plea deals which granted them both no less than seven years in state prison. A plea deal allows for defendants who may have received harsher sentences in a trial to plead down to lesser sentences. A wide range of discretion is allotted to prosecutors when making plea deals, which makes it hard to mitigate the chances of this happening.

On August 17, 2013, Islan Nettles was beaten to death in the streets of Harlem by James Dixon. He said that he fell in to a “blind fury” due to his friends having had teased him after he flirted with Nettles, a Transgender woman.²⁴⁵ Islan Nettles died a week later after having been ruthlessly beaten on the sidewalk. Nearly three years later in 2015, after having been initially indicted on first-degree manslaughter and assault charges which carried a maximum sentence of 25 years, Dixon was allowed to accept a plea deal. The plea deal would reduce his sentencing in exchange for pleading guilty to second-degree manslaughter and first-degree assault.²⁴⁶ Manhattan Supreme Court Justice Robert Stolz rejected the initial plea deal from the District Attorney’s Office of 17 years, and instead reduced the plea to 12 years.²⁴⁷ For the people whom it mattered most, a 12-year sentence was not enough. Nettle’s mother let the court know that the sentencing was not fair, “He can go home after those 12 years and see his family”, the sentencing represented no form of justice for her nor the community or people it was supposed to protect.²⁴⁸

²⁴⁵ Wang, Yanan. “The Island Nettles killing: What the trial means to a Transgender community anxious for a reckoning.” *The Washington Post*, April 4, 2016. <https://www.washingtonpost.com/news/morning-mix/wp/2016/04/04/the-islan-nettles-killing-what-the-trial-means-to-a-Transgender-community-anxious-for-a-reckoning/>.

²⁴⁶ Lee, Cynthia. “The Trans Panic Defense Revisited.” *The American Criminal Law Review* 57, no. 4 (2020): 1411-1497.

²⁴⁷ Cunningham, Sylvia. “James Dixon Pleads Guilty to Manslaughter of Transgender Woman Islan Nettles.” *NBC News*, April 4, 2016. <https://www.nbcnews.com/news/nbcblk/james-dixon-pleads-guilty-manslaughter-Transgender-woman-islan-nettles-n550426>.

²⁴⁸ L’Heureux, Catie. “Transgender Woman’s Killer Sentenced to 12 Years.” *The CUT*, April 19, 2016. <https://www.thecut.com/2016/04/Transgender-woman-islan-nettles-james-dixon.html>.

Plea deals allow defendants to circumvent the law without having to directly argue a Gay panic or Trans panic defense in front of a jury, when in fact that was the cause of the victim's death. In the *Trans Panic Defense Revisited* Cynthia Lee points out that the actual number of cases that use a Gay panic or Trans panic defense is unknown since most result in a guilty plea.²⁴⁹ Plea deals represent many state convictions, but "plea negotiations are shrouded in secrecy."²⁵⁰ If not for court opinions found in appeals or victims' families fighting for extensive media coverage, many of these victims and instances of the usage of Gay panic and Trans panic defenses would be unheard of. Plea deals represented the majority of the way both federal and state cases end, yet they are unmentioned in the blueprint of California's state ban or in the other states with bans on Gay panic and Trans panic defenses. Sentencing represents the only form of penalty that equates to justice in the eyes of the law and many times the families of the victims in instances of murder. A plea deal circumvents this justice and is not protected under current bans in states. The bans themselves are not effective in eradicating the use of the defense in court, but it is also not effective in preventing the lessening of charges through the usage of plea deals.

4. **Doctrinal Restatement Conclusions**

Applying the foregoing patterns in cases and legislation, Minow instructs legal scholarship utilizing doctrinal restatement, may then articulate a "preferred" or "better" practice."²⁵¹ Through this methodology, gaps have been discovered within settled law and emerging law banning Gay panic and Trans panic defenses.

²⁴⁹ Lee, Cynthia. "The Trans Panic Defense Revisited." *The American Criminal Law Review* 57, no. 4 (2020): 1411-1497.

²⁵⁰ *Id.*

²⁵¹ Minow, Martha. "Archetypal Legal Scholarship: A Field Guide." *Journal of Legal Education* 63, no. 1 (2013): 65-69.

California, Colorado, Connecticut, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington each have a law banning the use of “Gay panic” and “Trans panic” defenses. The bans all protect those basic foundations of a Gay panic or Trans panic defense: preventing the discovery of or knowledge of an individual’s gender, sexual or sexual orientation from being considered as adequate provocation, as well as preventing the usage of the defenses in regard to self-defense claims and heat of passion claims. While the emerging law works to prevent the usage of the defense, the settled law as shown in the analyzed court cases – contains issues and factors not yet considered by the bans in any state. The settled law of court cases shows a lack of knowledge on the history of Gay panic and Trans panic defenses, which has led to gaps in how sex and gender are conflated, how they are defined, and how individuals are victimized based on their sexual orientation or gender identity.

In summary, these gaps track the initial research principles compared across settled and emerging laws: 1. the conflation of sex and gender is the norm in the majority of current state law bans, 2. violence is systemic and cannot be transformed broadly at a single site of action though few laws consider sites beyond trial for transformation, and 3. systems of violence rely on hetero-patriarchal ideologies but few statutes offer broader context to situate these intersecting oppressions. A preferred process to the existing landscape would address each gap clearly. Therefore, these summary conclusions reflecting the present gaps in state laws can only be remedied through further legislative action.

B. Recasting Project

In *Archetypal Legal Scholarship: A Field Guide*, Minow introduces a recasting project as a method to analyze, critique, and revise existing law through legal scholarship. Minow conveys

two steps to the process of recasting project: (a) “gather more than one ‘line’ of cases across doctrinal fields, categories, or historical developments, and show why they belong together or expose unjustified discrepancies”, and (b) “offer a new framework or paradigm that can recognize past, present and future material.”²⁵² The first step, has already been completed throughout the doctrinal restatement analysis. The restatement relied on three principles when analyzing 1. the conflation of sex and gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies, across past and present Gay panic and Trans panic defense bans. These principles found three areas not yet addressed by existing laws: language, sentencing/plea deals outside the culpability phase of trial, and the effects of historical narratives on witnesses and outing. These three factors will be utilized in a new paradigm recommendation, consistent with step two of the recasting project.

1. Recommendations for New Framework

A new paradigm recommendation for a bill banning the usage of Gay panic and Trans panic defenses will be based on the three areas not yet addressed by existing laws: language, sentencing/plea deals outside the culpability phase of trial, and the effects of historical narratives on witnesses and outing.

The 2013 American Bar Association (ABA) resolution on Gay panic and Trans panic defenses, the model legislation for eliminating the Gay and Trans panic defenses created by the Williams Institute at UCLA School of Law, and the text of Senate bill S. 1137 – Gay and Trans Panic Defense Prohibition Act of 2021 will serve as additional sources on how to address this

²⁵² Minow, Martha. “Archetypal Legal Scholarship: A Field Guide.” *Journal of Legal Education* 63, no. 1 (2013): 65-69.

paradigm. Using these best practice conclusions as an outlines, the law can be recast and reimagined in a new statute.

The model bill will amend Title 18 of the United States Code, which serves as the criminal code of the United States federal government, to include a prohibition on the usage of Gay panic and Trans panic defenses. This model bill will address the gaps that I have found in state bans throughout the course of my research.

First, I recommend the creation of a federal bill prohibiting the usage of Gay panic and Trans panic defenses. Current state bans lack definitions and fail to appreciate distinctions in identity. A federal ban represents a bar that the states cannot go below, if the federal bar is high – then the state laws must match that. I recommend the usage of a federal bill to create federal laws which are able to prevent the action of ‘outing’ an individual for being Gay or Transgender. This course of action may receive the most push back, as it runs a fine line between violating an individual’s Constitutional First Amendment rights to free speech. As found by the Supreme Court of the United States in *Matal v. Tam* (2017), the United States government cannot prevent hate speech no matter how disparaging it may seem.²⁵³ In this instance however, *Sterling v. Borough of Minersville* (2000), found that ‘outing’ an individual by a government actor was a violation of an individual’s constitutionally granted rights to privacy.²⁵⁴ Both of these cases used together will build the framework for a provision to be included in Gay panic and Trans panic defenses, that

²⁵³ *Matal v. Tam*, 137 S. Ct. 1744, 198 L. Ed. 2d 366, 2017 U.S. LEXIS 3872, 85 U.S.L.W. 4389, 45 Media L. Rep. 1849, 122 U.S.P.Q.2D (BNA) 1757, 26 Fla. L. Weekly Fed. S 686, 2017 WL 2621315 (Supreme Court of the United States June 19, 2017, Decided). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5NTV-D8X1-F04K-F1MK-00000-00&context=1516831>.

²⁵⁴ *Sterling v. Borough of Minersville*, 232 F.3d 190, 2000 U.S. App. LEXIS 27855 (United States Court of Appeals for the Third Circuit November 6, 2000, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:41M3-S8V0-0038-X1D2-00000-00&context=1516831>.

punishes individuals found to have ‘outed’ a victim who is murdered or assaulted based upon their gender identity, gender expression, or sexual orientation.

Secondly, I recommend the separation of the terms Gay panic and Trans panic, as they are two distinctly different circumstances. The conflation of the terms Gay and Trans represent a misguided education of the differences between sex, gender, and sexual orientation. The conflation of the two terms allows for confusion, which leads to defendants being able to circumvent existing laws. Building on this separation of the terms, the jury needs to be further educated on the history of LGBTQ individuals in the United States as well as trained on the biases they may hold based upon this history. Joaquin Balassa in his trial did not outrightly use a Gay panic defense, but he relied on antiquated views of Gay people to present his defense to the jury. While a ban cannot change the beliefs and convictions of an individual, it can educate them on the modern facts and knowledge about LGBTQ individuals.

This education is not meant to stop just at the jury, it will also be applied to the judges, prosecutors, and investigators involved in these cases. As was evident in previously mentioned cases, the historical narratives regarding Gay and Trans people have created biases within all involved parties in cases. It is these eternalized biases that stick with a detective when he tries to sympathize with the defendant in an investigation and mentions that he knows some “Gay stuff” might have happened. It is these eternalized biases and misconceptions that leads a prosecutor to misunderstand the importance of avoiding a plea deal when the family wants more. It is the same lack of education that leaves a judge feeling as though reducing the time offered in a plea deal, as a source of justice for a victim’s family. It is because of this that a provision was included to mitigate the offering of plea deals offered to individuals found to have committed a murder or assault based upon the discovery or revelation of an individual’s gender, sexual identity, or sexual

orientation. A plea deal, while not a lessening of sentence always, is still a lessening of culpability as it allows the defendant to strike a deal with the prosecutor that may result in the lessening of their sentencing. In the suggested federal bill that I have created, a provision will be included for the mitigation of plea deals being offered to individuals charged in the assault or murder of an individual based on the discovery or knowledge of an of an individual's gender, sexual identity, or sexual orientation.

The final provision added to the federal bill was the requirement that the Attorney General create an annual report detailing prosecutions in Federal court involving capital and noncapital crimes committed against LGBTQ individuals that were motivated by the victim's gender, gender identity or expression, or sexual orientation. This final piece of the legislation is the most important because it is the first step in documenting the atrocities that are happening in Gay and Transgender communities, but it also sends the message to those communities that they matter. It sends a message to the individuals who justify their actions, on the discovery or disclosure of an individual's sex, gender, sexual orientation, sexual identity, or sexual expression, that their views and beliefs are no longer the norm. This message breaks down the systems of violence relying on hetero-patriarchal ideologies. Gay panic and Trans panic defense bans are meant to protect Gay and Transgender people, and until we enact federal comprehensive legislation preventing the usage of the defense, the ban only continues function as a band aid on the larger issues fueling the defense. The draft bill incorporating the conclusions and considerations here, appear in Appendix A.

VI. Global Conclusions and Future Action

Utilizing Martha Minow's legal scholarship method of doctrinal restatement, this study of Gay and Trans panic bans selected and considered three principles: 1. the conflation of sex and

gender, 2. violence is systemic and cannot be transformed broadly at a single site of action, and 3. systems of violence rely on hetero-patriarchal ideologies. Through these categories, existing state legislative bans and case law could then be explored through a feminist legal lens, to find common patterns and trends inconsistent with feminist legal theory and literature. Informed by these conclusions in the doctrinal restatement, this study recast future legislation. This recasting project allowed for both Gay panic and Trans panic bans to be reimaged, to create a new paradigm of federal legislation. Importantly, this feminist theory-informed paradigm included, more precise language, sentencing/plea deal-phase protections, and the effects of historical narratives on witnesses and outing in the greater narrative and context of discriminatory violence. These novel developments have not been previously acknowledged in state bans, or in the blueprint ban of California. All three ideas rest on the principle that these defenses do not exist solely at the point of trial. Defenses exist before and over the course of an investigation, after a case in chief through sentencing instruction, at every phase of negotiations and plea deals, and most broadly in the greater societal context of discriminatory violence.

Ultimately, data must be collected, disclosed, tracked, and consolidated on the impact of these legal recommendations and existing law. Throughout the research for this project, I have discovered a lack of Federal data tracking the usage of Gay panic and Trans panic defenses and criminal charges. This information could be effective in illuminating how exactly the defenses and bans function in practice. The present lack of data and disclosure confirms arguments made by legal scholars Cynthia Lee and Peter Kwan, that the violence against Transgender women by men is a form of gender violence that does not receive attention.²⁵⁵ Lee and Kwan argue that change must be “aimed at raising public awareness of the structures of masculinity that make appeals to

²⁵⁵ Kwan, Peter and Cynthia Lee, "The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women," *Hastings Law Journal* 66, no. 1 (2014): 77-132.

Gay and Trans panic arguments persuasive.”²⁵⁶ Quality data tracking on the usage of Gay panic and Trans panic defenses would increase awareness of systemic gendered violence and the conflation of sex and gender. This development focuses not on punishment, as Aya Gruber critiques of defense bans generally, but on crime victim visibility and public education.

The conflation of sex and gender is not a new phenomenon specific only to Gay panic and Trans panic defenses. This history of the “union of androsexism and heterosexism in Euro-American culture and this union’s culmination in hetero-patriarchy” tracks this contemporary legal history.²⁵⁷ Legal scholar Francisco Valdés argues that the historical privilege ascribed to masculine men and heterosexual relationships relies on hetero-patriarchal beliefs. It is these beliefs that work to delegitimize the experiences of Transgender and Gay people, in the usage of these defenses. Reducing the conflation of sex and gender requires these patriarchal structures to be interrupted. The first and most important step is the legitimization of Gay and Transgender individual’s experiences and lives. Dean Spade dispels the pervasive belief that Transgender individuals only exist in relation to the medical model and hetero-patriarchal ideologies of sex and gender. Gay panic and Trans panic defense bans must start by addressing the systems which fail to protect the lives of the citizens, they are designed to protect. Untangling the socio-legal and medical histories that underly these defenses, in a new law that re-centers Gay and Transgender histories, challenges the hetero-patriarchal belief systems discriminatory violence perpetuates.

These recommendations together begin to legitimize and make visible the experiences of Gay and Transgender people. Murdered and assaulted, then blamed based on their identity, these are people the law should protect in life and in death. The draft bill represents this comprehensive

²⁵⁶ Kwan, Peter and Cynthia Lee, "The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women," *Hastings Law Journal* 66, no. 1 (2014): 81.

²⁵⁷ Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996).

study and research evidencing that Gay panic and Trans panic defenses are worthy of critique, even in their advancement, and consideration. This study repositions future legislative initiatives in a feminist lens, to impact and reflect safer futures for LGBTQ+ people, without conflating and erasing who they are as a matter of law. To answer, who do these current laws protect, this study finds it could and should be many more lives than at present.

VII. APPENDIX A – Model Bill

S. 1150

To amend title 18, United States Code, prohibit Gay panic and Trans panic defenses.

A BILL

To amend title 18, of the United States Code, to prohibit Gay panic and Trans panic defenses.

*Be it enacted by the Senate and House of Representative of the United States of America
in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Gay Panic and Trans Panic Defense Eradication Act”.

SEC.2.FINDINGS.

Congress finds that –

(1) “the American Bar Association has urged the Federal Government to take legislative action to curtail the availability and effectiveness of the “Gay panic” and “Trans panic” defenses, which seek to partially or completely excuse crimes such as murder and assault on the grounds that the sexual orientation or gender identity of the victim is provocation enough for the violent reaction of the defendant”;²⁵⁸

(2) Gay panic and Trans panic legal defense, which continue to be used in criminal court proceedings throughout the United States rely on antiquated ideas of gender, sex, sexuality, and sexual orientation, they rely on a history that placed Lesbian, Gay, Bisexual, Transgender, and queer individuals (from here on referred to as “LGBTQ”) on the margins of society;

(3) Gay panic and Trans panic are uniquely distinct terms and defenses, Gay is defined as the sexual or romantic attraction to someone of the same sex, Transgender defines an individual whose gender identity differs from the sex the individual was designated at birth, the term “Gay and Trans panic”, represented a simplification and a conflation of individuals identities;

(4) Gay panic and Trans panic defenses use the discovery, knowledge of, or concealment of individual’s sexual orientation and/or their gender identity as an “objectively

²⁵⁸ “S.1137 Gay and Trans Panic Defense Prohibition Act of 2021.” 117th Congress (2021-2022), Congress.gov, n.d. <https://www.congress.gov/bill/117th-congress/senate-bill/1137/text>.

reasonable excuse for loss of self-control, and thereby illegitimately mitigate the responsibility of a perpetrator for harm done to LGBTQ individuals”²⁵⁹, the discovery of this information does not provide “sufficient provocation to support ‘sudden quarrel’ or ‘heat of passion’;

(5) Gay panic and Trans panic defenses rely on biases and prejudices against LGBTQ individuals, the defenses undermine our justice systems and “undermining the legitimacy of Federal criminal prosecutions and resulting in unjustifiable acquittals or sentencing reductions”²⁶⁰;

(6) Gay panic and Trans panic defenses are hard to track due to high occurrence of plea deals offered to defendants who have committed crimes on the grounds that their sexual orientation or gender identity was enough provocation for the violent response of the defendant, plea deals offered to defendants who commit crimes such as murder and assault based on the ground listed prior circumvents existing state laws banning the usage of Gay panic and Trans panic defenses;

(7) “continued use of these anachronistic defenses reinforces and institutionalizes prejudice at the expense of norms of self-control, tolerance, and compassion, which the law should encourage, and marks an egregious lapse in the march of the United States toward a more just criminal justice system”²⁶¹;

(8) the language used in Federal criminal court rooms, must represent language indicative of the United States movements towards equality and just systems,

(9) “Sufficient provocation to support “sudden quarrel” or “heat of passion” does not exist if the defendant’s actions are related to discovery of, knowledge about, or the potential disclosure of one or more of the following characteristics or perceived characteristics: disability, gender nationality, race or ethnicity, religion, or sexual orientation, regardless of whether the characteristic belongs to the victim or the defendant. This limitation applies even if the defendant dated, romantically pursued, or participated in sexual relations with the victim”²⁶²;

(10) the ‘outing’ of Gay or Transgender individuals, the forced exposing of an individual’s sexual orientation and/or gender identity, is a violation of an individual’s constitutional rights, forced outing leading to the death of an individual will be punishable by law by up to six years in prison,

(11) instructions regarding sensitivity, LGBTQ language definitions, and anti-bias training must be provided to jurors, judges, prosecutors, and defense teams in criminal cases

²⁵⁹ “S.1137 Gay and Trans Panic Defense Prohibition Act of 2021.” 117th Congress (2021-2022), Congress.gov, n.d. <https://www.congress.gov/bill/117th-congress/senate-bill/1137/text>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>

resulting in the murder or assault of an individual “motivated by the victim’s gender, gender identity or expression, or sexual orientation”²⁶³; and

(12) to put an end to antiquated beliefs of what it means to be LGBTQ and that LGBTQ lives are less worthy than others and “to reflect modern understanding of LGBTQ individuals as equal citizens under law”²⁶⁴, Gay panic and Trans panic defenses must be eradicated.

SEC. 3. PROHIBITION ON GAY PANIC AND TRANS PANIC DEFENSES.

(a) IN GENERAL. --- Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

“§ 28. Prohibition on Gay panic and Trans panic defenses

(a) PROHIBITION. – No nonviolent sexual advance, perception or discovery of the gender, gender identity or expression, or sexual orientation of an individual “may be used to excuse or justify the conduct of an individual or lessen the degree or sentencing reserved to the offense.

(b) RESTRICTIONS. – based upon the aforementioned prohibition a defendant does not suffer from reduced mental capacity and is not justified in the use force based on the knowledge about, or the potential disclosure or non-disclosure of the victim’s “actual or perceived gender, gender identity, gender expression, or sexual orientation” , including in “circumstances where the victim made unwanted but nonforcible romantic or sexual advances towards the defendant”, and if the defendant and victim had prior romantic or sexual relations or had dated²⁶⁵.

“(c) REPORT. —The Attorney General shall submit to Congress an annual report that details prosecutions in Federal court involving capital and noncapital crimes committed against LGBTQ individuals that were motivated by the victim’s gender, gender identity or expression, or sexual orientation”²⁶⁶, this report must include the sentencing time of the defendant and tell if a plea deal was utilized by the prosecutor.

²⁶³ “S.1137 Gay and Trans Panic Defense Prohibition Act of 2021.” 117th Congress (2021-2022), Congress.gov, n.d. <https://www.congress.gov/bill/117th-congress/senate-bill/1137/text>.

²⁶⁴ *Id.*

²⁶⁵ Mallory, Christy, Brad Sears, and Jordan Blair Woods. “Model Legislation for Eliminating the Gay and Trans Panic Defenses.” The Williams Institute: UCLA School of Law, September 2016. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Model-Legisl-Gay-Trans-Panic-Defense-Sep-2016.pdf>.

²⁶⁶ “S.1137 Gay and Trans Panic Defense Prohibition Act of 2021.” 117th Congress (2021-2022), Congress.gov, n.d. <https://www.congress.gov/bill/117th-congress/senate-bill/1137/text>.

VIII. APPENDIX B – Colorado Section.

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that it is the right of every crime victim to be protected from bias-motivated crimes, including crimes against Lesbian, Gay, Bisexual, Transgender, and queer persons. The general assembly further finds and declares that it is the right of every victim and witness to be treated with respect and protected from unfair attack on their character and privacy. So-called “Gay panic” and “Trans panic” defenses seek to partially or completely excuse a defendant from full accountability for the commission of a violent crime on the grounds that the sexual orientation or gender identity or expression of the victim is sufficient in itself to arouse the heat of passion in the defendant, or contribute to a valid provocation or justification for the violent reaction of the defendant, or cause the defendant to be temporarily insane. In other contexts, a victim’s or witness’s gender identity or expression or sexual orientation is used to attack their credibility and character and invade their privacy, creating disincentives to testify and impediments to the search for truth and justice. These tactics appeal to irrational fears and hatred of their persons, undermining the legitimacy of criminal prosecutions and resulting in unjustifiable acquittals or sentencing reductions due to bias, fear, shock or disgust rather than competent evidence. Continued use of these anachronistic defenses and appeals to reinforce bias and institutionalize prejudice at the expense of norms of self-control, tolerance, and compassion, which the law should encourage, and it is an impediment to a just criminal justice system. Any suggestion of legally sanctioned discrimination against a person’s sexual orientation or gender identity or expression must end. As the American Bar Association has urged legislative action to curtail the availability and effectiveness of “Gay panic” and “Trans panic” defenses, the general assembly brings forth this legislation.²⁶⁷

²⁶⁷ “Colorado Senate Bill 20-221” (Colorado General Assembly, n.d.), https://www.leg.colorado.gov/sites/default/files/2020a_1420_signed.pdf.

IX. APPENDIX C – Relevant Terms

The words defined below will appear throughout the paper when discussing cases and the way these terms function in the legal system. This selection of terms will also include a list of pejorative terms. While they are offensive in modern language, the law has not always recognized this, and to provide a full textual analysis the evolution of the legal language must be acknowledged. In this paper these terms will only be included by the usage of direct quotes. To interrogate the cases, laws, and legislations discussed in this study, these are the key contemporary legal terms relevant to my analysis:

Sex

This term describes the assigned label that an individual is given at birth determined by medial factors, including an individual’s hormones, chromosomes, and genitals.²⁶⁸ Most individuals are assigned male or female.²⁶⁹ Sex is often the term used to describe biological features.²⁷⁰ “Assigned male at birth” or “assigned female at birth” are terms which better acknowledge that someone else is assigning sex at birth.²⁷¹

Sexuality

This term describes an individual’s sexual behaviors, what attracts them, their likes and dislikes, their kinks and preferences.²⁷² Sexuality is more than who an individual is attracted to, it is what that individual enjoys and how they enjoy it, this includes both other individuals and activities.²⁷³

Gender

This term describes the expectations society and individuals have about the behaviors, thoughts, and characteristics that are typically assigned to an individual’s assigned sex.²⁷⁴ Gender are the cultural expectations assigned to men and women about how they are expected to behave,

²⁶⁸ Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996): 161-211.

²⁶⁹ “Sex and Gender Identity.” Planned Parenthood, n.d.

<https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>.

²⁷⁰ Finlayson, Lorna. *An Introduction to Feminism*. Cambridge Introductions to Philosophy. Cambridge University Press, 2016.

²⁷¹ “Sex and Gender Identity.” Planned Parenthood, n.d.

<https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>.

²⁷² “Sexuality: A Few Definitions.” Brook, n.d. <https://www.brook.org.uk/your-life/sexuality-a-few-definitions/#S>.

²⁷³ *Id.*

²⁷⁴ Finlayson, Lorna. *An Introduction to Feminism*. Cambridge Introductions to Philosophy. Cambridge University Press, 2016.

dress, and communicate.²⁷⁵ Gender is not to be confused with sex, which is the label assigned at birth based upon the genitals an individual has.

Gender Identity

This term describes how an individual feels inside and how they express those feelings.²⁷⁶ Clothing, behaviors, and appearance are all ways individuals display their gender identity.²⁷⁷ An individual's gender identity can be the same or different from their sex that was assigned at birth.²⁷⁸

Gender Expression

This word describes the external appearances of an individual's gender identify.²⁷⁹ This is usually expressed through clothing choices or behaviors including tone of voice and an individual's movements.²⁸⁰ These behaviors which may or may not conform to socially defined behaviors include behaviors and actions that are usually associated with being feminine or masculine.²⁸¹

Sexual Orientation

This word describes an individual's emotional, romantic, or sexual attraction to other individuals.²⁸²

Gay

This word is used to describe individuals who engage in romantic, physical, and/or emotional relationships with people of the same sex²⁸³. Gay is sometimes used as the preferred term when describing men as well for some Lesbian women who prefer to identify as Gay women.²⁸⁴

²⁷⁵ Smith, Bonnie G. *Women's Studies: The Basics*. Second ed. Routledge, 2019.

²⁷⁶ "Sex and Gender Identity." Planned Parenthood, n.d.

<https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>.

²⁷⁷ *Id.*

²⁷⁸ "Gender Identity." Legal Information Institute, June 2020.

https://www.law.cornell.edu/wex/gender_identity.

²⁷⁹ "Sexual Orientation and Gender Identity Definitions." Human Rights Campaign, n.d.

<https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

²⁸⁰ "Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools." American Psychological Association & national Association of School Psychologists, 2015.

<https://www.apa.org/about/policy/orientation-diversity>.

²⁸¹ "Sexual Orientation and Gender Identity Definitions." Human Rights Campaign, n.d.

<https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

²⁸² Kang, Miliann, Donovan Lessard, Laura Heston, and Sonny Nordmarken. *Introduction to Women, Gender, Sexuality Studies*. Amherst, Massachusetts: UMass Amherst, 2017.

²⁸³ Defining LGBTQ." THE CENTER: The Lesbian, Gay, Bisexual & Transgender Community Center, n.d. <https://Gaycenter.org/about/lgbtq/>.

²⁸⁴ *Id.*

Lesbian

This word is used to describe women who engage in romantic, physical, and/or emotional relationships with other women.²⁸⁵ Some Lesbians also may prefer to identify as Gay.²⁸⁶

Bisexual

This word is used to describe individuals romantically, physically, and/or emotionally attracted to individuals of the same gender or individuals of another gender.²⁸⁷

Transgender

This word describes individuals whose gender identity and/or gender expression does not align with what was “assigned to them at birth.”²⁸⁸

Homosexual

This is a term formally used to describe individuals attracted to someone of the same sex.²⁸⁹ This term is offensive due to its clinical history in which it was used to suggest that attraction to individuals of the same sex was a mental illness²⁹⁰. This term was discredited by the American Psychological Association and the American Psychiatric Association in the 1973.²⁹¹

Bias

This term describes the personal and sometime unreasoned judgement of an individual by another individual.²⁹²

Homosexual Panic

This a term that was first coined by Edward J. Kempf in the book *Psychopathology* (1920). Kempf defined homosexual panic as “panic due to the pressure of uncontrollable perverse sexual cravings.”²⁹³

²⁸⁵ Humm, Maggie. “L.” In *The Dictionary of Feminist Theory*, 2nd ed., 142–55. Edinburgh University Press, 2003. <http://www.jstor.org/stable/10.3366/j.ctv2f4vg6k.16>.

²⁸⁶ Defining LGBTQ.” THE CENTER: The Lesbian, Gay, Bisexual & Transgender Community Center, n.d. <https://Gaycenter.org/about/lgbtq/>.

²⁸⁷ Kang, Miliann, Donovan Lessard, Laura Heston, and Sonny Nordmarken. *Introduction to Women, Gender, Sexuality Studies*. Amherst, Massachusetts: UMass Amherst, 2017.

²⁸⁸ *Id.*

²⁸⁹ Griffin, Gabriele. “homosexuality.” In *A Dictionary of Gender Studies*.: Oxford University Press, <https://www.oxfordreference.com/view/10.1093/acref/9780191834837.001.0001/acref-9780191834837-e-194>.

²⁹⁰ “GLAAD Media Reference Guide - LGBTQ Terms.” GLAAD, n.d. <https://www.glaad.org/reference/terms>.

²⁹¹ Drescher, Jack. “Out of DSM: Depathologizing Homosexuality.” *Behavior Sciences* 5, no. 4 (2015): 565-575. <https://doi.org/10.3390/bs5040565>

²⁹² “Bias Definition & Meaning.” Merriam-Webster, n.d. <https://www.merriam-webster.com/dictionary/bias>.

²⁹³ Dynes, Wayne R., Warren Johansson, William A. Percy, and Stephen Donaldson. “Homosexual Panic.” Essay. In *Encyclopedia of Homosexuality*. Abingdon, Oxon: Routledge, 2015. <https://www.taylorfrancis.com/books/mono/10.4324/9781315670195/encyclopedia-homosexuality-wayne-dynes>, 942.

Jury Instructions

This term describes the instructions that are written by the judge and given to the jury during jury deliberation.²⁹⁴

Murder

The act of murder happens when an individual unlawfully kills another human being.²⁹⁵ Many states have different degrees of murder.²⁹⁶ Common Law defines murder as the killing of another individual being with malice aforethought.²⁹⁷ The Model Penal Code defines murder as purposefully or knowingly killing another individual.²⁹⁸

Capital Murder

Capital Murder is a felony murder charge that in many states is punishable by death.

First Degree Murder

This term describes willful, deliberate, and premeditated murder. Premeditated describes the action of an individual planning out the killing of another individual before it occurs.

Second Degree Murder

This term defines murder that is not premeditated, or murder that is caused by an individual's reckless conduct that shows a lack of concern for human life.²⁹⁹

Third Degree Murder

This term defines the unintentional result in an individual's death while committing a dangerous action.

Manslaughter

The act of manslaughter is the killing of another individual in a way that is determined to be less culpable than murder.³⁰⁰ Manslaughter is broken up into the following categories under common law:

Voluntary Manslaughter

The act of voluntary manslaughter is the intentional killing of another individual in the heat of passion and in response to an adequate provocation.³⁰¹

²⁹⁴ "Jury Instructions." Legal Information Institute, June 2020.

https://www.law.cornell.edu/wex/jury_instructions.

²⁹⁵ "Murder." Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/murder>.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ "Second Degree Murder." Legal Information Institute, n.d.

https://www.law.cornell.edu/wex/second_degree_murder.

³⁰⁰ "Manslaughter." Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/manslaughter>.

³⁰¹ *Id.*

Involuntary Manslaughter

The act of involuntary manslaughter is negligently causing the death of another individual.³⁰²

Homicide

This term describes the action when one individual causes the death of another individual.³⁰³ Not all homicides are murder, some killings are considered manslaughter.³⁰⁴

Justifiable Homicide

This term describes the action of killing another individual under circumstances of justification. Justifiable homicide occurs when “a person, *without any fault on his part in provoking or bringing on the difficulty*” kills another individual to protect themselves from death.³⁰⁵

Defenses

The following terms describe the legal defenses in criminal law that are relevant to the contents of this paper:

Defense of Provocation

This defense describes the “provocation” that causes an individual to be “disturbed or obscured by passion” which can provoke individuals to act rashly or without thought, relying only on passion to drive their actions.³⁰⁶

Self Defense

This defense describes the use of force by an individual to protect themselves from injury by another individual.³⁰⁷

Insanity Defense

With this defense the defendant, admits to their actions but does not accept responsibility based on mental illness.³⁰⁸ This defense is not the same as a diminished capacity defense. With an insanity defense legal competency to stand trial needs to be determined before, insanity can be established as a defense.³⁰⁹

Gay Panic Defense

A defense “wherein defendants argue that the victim’s gender identity excuses, mitigates, or justifies violence.”³¹⁰

³⁰² “Manslaughter.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/manslaughter>.

³⁰³ “Homicide.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/homicide>.

³⁰⁴ “Justifiable Homicide.” Legal Information Institute, June 2020.

https://www.law.cornell.edu/wex/justifiable_homicide.

³⁰⁵ *Id.*

³⁰⁶ “Provocation.” Legal Information Institute, June 2020. <https://www.law.cornell.edu/wex/provocation>.

³⁰⁷ “Self-Defense.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/self-defense>.

³⁰⁸ “Insanity Defense.” Legal Information Institute, n.d. https://www.law.cornell.edu/wex/insanity_defense.

³⁰⁹ *Id.*

³¹⁰ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

Trans Panic Defense

“A theory in which the defendant argues that the victim’s sexual orientation excuses, mitigates, or justifies violence.”³¹¹

³¹¹ “Gay and Trans Panic Defenses Resolution.” The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>

X. Works Cited

- “Activists to Copy Illinois 'Gay Panic Defense' Ban Elsewhere.” CBS News Chicago, December 28, 2017. <https://www.cbsnews.com/chicago/news/illinois-gay-panic-defense-ban/>.
- Altman, Dennis. “Legitimation through Disaster: AIDS and the Gay Movement.” In *AIDS: The Burdens of History*, edited by Elizabeth Fee and Daniel M. Fox, 302-314. Berkley: University of California Press, 1988.
- Adkins, Judith. “These People Are Frightened to Death”: Congressional Investigation and the Lavender Scare.” *Prologue Magazine* 48, no. 2 (2016). <https://www.archives.gov/publications/prologue/2016/summer/lavender.html>.
- Andresen, W. Carsten. “Research Note: Comparing the Gay and Trans Panic Defenses.” *Women & Criminal Justice* 32, no. 1-2 (August 27, 2021): 219–41. <https://doi.org/10.1080/08974454.2021.1965067>.
- Armstrong, Amanda. “Today?s Boundaries of Blackness: Is Secondary Marginalization Still Applicable to the AIDS Crisis in 2008?” *URC Student Scholarship* (2008). https://scholar.oxy.edu/handle/20.500.12711/1184_
- Ayala, George and Andrew Spieldenner. “HIV Is a Story Written on the Bodies of Gay and Bisexual Men.” *American Journal of Public Health* 111, no. 7 (2021); 1240-1242. <https://doi.org/10.2105/AJPH.2021.306348>.
- “Bias Definition & Meaning.” Merriam-Webster, n.d. <https://www.merriam-webster.com/dictionary/bias>.
- Bichao, Sergio. “NJ Killer Who Scattered Chopped-Up Body All Over Town Loses Gay-Panic Appeal.” New Jersey 101.5, August 19, 2016. <https://nj1015.com/nj-killer-who-scattered-chopped-up-body-all-over-town-loses-Gay-panic-appeal/>.
- Brammer, John Paul. “Nevada Father Murdered Son for Being Gay, Former Foster Mom Claims.” NBC News, November 6, 2017. <https://www.nbcnews.com/feature/nbc-out/nevada-father-murdered-son-being-Gay-former-foster-mom-claims-n817906>.
- Brown, Edward. “We Wear the Mask: African American Contemporary Gay Male Identities.” *Journal of African American Studies* 9, no. 2 (2005): 29-38. Doi: 10.1007/s12111-005-1020-x
- Cabaj, Robert Paul. “Working with LGBTQ Patients.” American Psychiatric Association, n.d. <https://www.psychiatry.org/psychiatrists/cultural-competency/education/best-practice-highlights/working-with-lgbtq-patients>.

- “California AB-2501 Voluntary Manslaughter.” California Legislative Information, September 27, 2014.
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2501.
- “California Penal Code.” California Legislative Information, 1872.
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=1.&article.
- Clarke, Cheryl. “The Failure to Transform: Homophobia in the Black Community.” In *Home Girls: A Black Feminist Anthology*. Edited by Barbara Smith. New York: Kitchen Table/Women of Color (2001):207.
- “Colorado becomes 11th state to ban LGBTQ “panic defense.” The Denver Post, July 13, 2020.
<https://www.denverpost.com/2020/07/13/colorado-gay-panic-defense-ban/>.
- “Colorado Senate Bill 20-221.” Colorado General Assembly, n.d.
https://www.leg.colorado.gov/sites/default/files/2020a_1420_signed.pdf.
- “Connecticut Senate Bill 58.” Connecticut General Assembly, n.d.
<https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf>.
- “Consumer FAQs.” The American Bar Association, n.d.
https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/.
- Criminal Law* (University of Minnesota Libraries Publishing, 2015).
- Croft, Jay and Elizabeth Joseph. “New York bans gay and trans ‘panic’ defenses.” CNN, June 30, 2019. <https://www.cnn.com/2019/06/30/us/new-york-cuomo-gay-panic-trans/index.html>.
- Cunningham, Sylvia. “James Dixon Pleads Guilty to Manslaughter of Transgender Woman Islan Nettles.” NBC News, April 4, 2016. <https://www.nbcnews.com/news/nbcblk/james-dixon-pleads-guilty-manslaughter-transgender-woman-islan-nettles-n550426>.
- D’Angelo, Alexa. “10 years after Larry King killing, E.O. Green Junior High sees shift in school culture.” VC Star, June 7, 2018.
<https://www.vcstar.com/story/news/education/2018/06/07/larry-king-shooting-10-years-later-e-o-green-junior-high-school-sees-change/630855002/>.
- “D.C. ACT 23-560.” Council of the District of Columbia, January 11, 2021.
https://lims.dccouncil.us/downloads/LIMS/43128/Signed_Act/B23-0409-Signed_Act.pdf.
- “Defining LGBTQ.” THE CENTER: The Lesbian, Gay, Bisexual & Transgender Community Center, n.d. <https://gaycenter.org/about/lgbtq/>.

- Devers, Lindsey. "Plea and Charge Bargaining: Research Summary." U.S. Department of Justice, Bureau of Justice Statistics, January 24, 2011. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
- Drescher, Jack. "Out of DSM: Depathologizing Homosexuality." *Behavior Sciences* 5, no. 4 (2015): 565-575. <https://doi.org/10.3390/bs5040565>
- Doyle v. Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91, 1976 U.S. LEXIS 66 (Supreme Court of the United States June 17, 1976). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9W40-003B-S24Y-00000-00&context=1516831>.
- Dubreuil, Jim and Denise Martinez-Ramundo, "Boy Who Shot Classmate at Age 14 Will Be Retried as Adult," *ABC News*, October 4, 2011, <https://abcnews.go.com/US/eighth-grade-shooting-larry-king-brandon-mcinerneyboys/story?id=14666577>.
- Dynes, Wayne R., Warren Johansson, William A. Percy, and Stephen Donaldson. "Homosexual Panic." Essay. In *Encyclopedia of Homosexuality*. Abingdon, Oxon: Routledge, 2015. <https://www.taylorfrancis.com/books/mono/10.4324/9781315670195/encyclopedia-homosexuality-wayne-dynes>.
- "Felony-Murder in Illinois." Restore Justice, n.d. <https://restorejustice.org/learn/felony-murder/>.
- Finlayson, Lorna. *An Introduction to Feminism*. Cambridge Introductions to Philosophy. Cambridge University Press, 2016.
- Garcia, Michelle. "California Takes a Stand Against Gay and Trans Panic Defenses in Criminal Cases." *ADVOCATE*, August 28, 2014. <https://www.advocate.com/crime/2014/08/28/california-takes-stand-against-gay-and-trans-panic-defenses-criminal-cases>.
- "Gay and Trans Panic Defenses Resolution." The National LGBTQ+ Bar Association. American Bar Association, August 2013. <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.
- "Gender Identity." Legal Information Institute, June 2020. https://www.law.cornell.edu/wex/gender_identity.
- Gilonna, John M. "Slaying Victim's Mother Now Speaks Out Against Hate Crime." *Los Angeles Times*, October 5, 2003. <https://web.archive.org/web/20150922205837/http://articles.latimes.com/2003/oct/05/local/me-araujo5>.
- "GLAAD Media Reference Guide - LGBTQ Terms." GLAAD, n.d. <https://www.glaad.org/reference/terms>.

- Gold, Michael. "Gay Panic' Defenses Are Banned in N.Y. Murder Cases." *The New York Times*, June 19, 2019. <https://www.nytimes.com/2019/06/19/nyregion/Gay-panic-ny.html>.
- Gomez, Jewelle and Barbara Smith. "Talking about It: Homophobia in the Black Community." *Feminist Review* 34, (1990): 49.
- Griffin, Gabriele. "homosexuality." In *A Dictionary of Gender Studies*.: Oxford University Press, <https://www.oxfordreference.com/view/10.1093/acref/9780191834837.001.0001/acref-9780191834837-e-194>.
- Gruber, Aya. "Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground." *University of Miami Law Review*, 68, 961 (Summer, 2014). <https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5D6H-8NX0-00CV-H0F1-00000-00&context=1516831>.
- Harris, Angela P. "Gender, Violence, Race, and Criminal Justice." *Stanford Law Review* 52, no. 4 (2000): 791.
- Harris, Paisley. "Gatekeeping and Remaking: The Politics of Respectability in African American Women's History and Black Feminism." *Journal of Women's History* 15, no. 1 (2003): 212-220.
- Haug, Oliver. "Maryland Becomes 15th State to Ban Anti-LGBTQ+ "Panic" Defense." *them*, April 14, 2021. <https://www.them.us/story/maryland-lgbtq-panic-defense-ban-Trans-name-change-legislation>.
- "Hawaii HB 711." Hawaii House of Representatives, n.d. https://www.capitol.hawaii.gov/session2019/bills/HB711_.HTM
- Herd, Gilbert. "Homosexual panic." In *The International Encyclopedia of Human Sexuality*. Edited by Patricia Whelehan, and Anne Bolin. 1st ed. New Jersey: Wiley, 2015. https://hollins.idm.oclc.org/login?url=https://search.credoreference.com/content/entry/wileyhs/homosexual_panic/0?institutionId=2601
- Higginbotham, Evelyn Brooks. "African-American Women's History and the Metalanguage of Race." *Signs: Journal of Women in Culture and Society* 17, no. 2 (1992): 251-274.
- "HIV and AIDS --- United States, 1981—2000." *Morbidity and Mortality Weekly Report* 50, no. 21 (2001):430-434.
- "Homicide." Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/homicide>.
- "Homosexual Panic." American Psychological Association, n.d. <https://dictionary.apa.org/homosexual-panic>.

- Humm, Maggie. "L." In *The Dictionary of Feminist Theory*, 2nd ed., 142–55. Edinburgh University Press, 2003. <http://www.jstor.org/stable/10.3366/j.ctv2f4vg6k.16>.
- Icard, Larry D. "Black Gay Men and Conflicting Social Identities: Sexual Orientation Versus Racial Identity." *Journal of Social Work & Human Sexuality* 4, no.1-2 (1986): 86.
- "Illinois SB 1761." Illinois General Assembly, n.d. <https://ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0460>.
- "Illinois to Become Second State to Ban 'Gay Panic Defense'." NBCNews.com. NBCUniversal News Group, December 29, 2017. <https://www.nbcnews.com/feature/nbc-out/illinois-become-second-state-ban-gay-panic-defense-n833441>.
- "Insanity Defense." Legal Information Institute, n.d. https://www.law.cornell.edu/wex/insanity_defense.
- "Jury Instructions." Legal Information Institute, June 2020. https://www.law.cornell.edu/wex/jury_instructions.
- "Justifiable Homicide." Legal Information Institute, June 2020. https://www.law.cornell.edu/wex/justifiable_homicide.
- Kang, Miliann, Donovan Lessard, Laura Heston, and Sonny Nordmarken. *Introduction to Women, Gender, Sexuality Studies*. Amherst, Massachusetts: UMass Amherst, 2017.
- Larry D. "Black Gay Men and Conflicting Social Identities: Sexual Orientation Versus Racial Identity." *Journal of Social Work & Human Sexuality* 4, no.1-2 (1986): 83-93.
- Lee, Cynthia. "The Trans Panic Defense Revisited." *The American Criminal Law Review* 57, no. 4 (2020): 1411-1497.
- Lewis, Gregory B. "Black-White Differences in Attitudes toward Homosexuality and Gay Rights." *Public Opinion Quarterly* 67, no. 1 (2003): 59-78.
- L'Heureux, Catie. "Transgender Woman's Killer Sentenced to 12 Years." The CUT, April 19, 2016. <https://www.thecut.com/2016/04/transgender-woman-islan-nettles-james-dixon.html>.
- Lopez, German. "The Reagan administration's unbelievable response to the HIV/AIDS epidemic." VOX, Dec 1, 2016. <https://www.vox.com/2015/12/1/9828348/ronald-reagan-hiv-aids>.
- "Maine HP 1175." Maine House of Representatives, April 25, 2019. <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP1175&item=1&snum=12>.

- Mallory, Christy, Brad Sears, and Luis A. Vasquez. Rep. *Banning the Use of Gay and Trans Panic Defenses*. Williams Institute, April 2021. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gay-Trans-Panic-Apr-2021.pdf>
- “Manslaughter.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/manslaughter>.
- Marsden, Jason. “The Murder of Matthew Shepard.” WyoHistory.org, November 8, 2014. <https://www.wyohistory.org/encyclopedia/murder-matthew-shepard>.
- Maryland HB 231” Maryland State Legislature, May 30, 2021. <https://mgaleg.maryland.gov/2021RS/bills/hb/hb0231T.pdf>.
- McKinley, James. “Man Sentenced to 12 Years in Beating Death of Transgender Woman.” The New York Times, April 19, 2016. <https://www.nytimes.com/2016/04/20/nyregion/man-sentenced-to-12-years-in-beating-death-of-transgender-woman.html>.
- Minow, Martha. “Archetypal Legal Scholarship: A Field Guide.” *Journal of Legal Education* 63, no. 1 (2013): 65-69.
- Molloy, Parker Marie. “California Becomes First State to Ban Gay, Trans 'Panic' Defenses.” *ADVOCATE*, September 29, 2014. <https://www.advocate.com/crime/2014/09/29/california-becomes-first-state-ban-gay-trans-panic-defenses>.
- Moore, Mignon R. “Lipstick or Timberlands? Meanings of Gender Presentation in Black Lesbian Communities.” *Signs* 32, no. 1 (2006): 113-139. doi:10.1086/505269
- “Murder.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/murder>.
- Murphy, Vanessa. “I-Team Only on 8: Charged with murder, out of jail.” 8NewsNow, February 8, 2021. <https://www.8newsnow.com/i-team/i-team-only-on-8-charged-with-murder-out-of-jail/>.
- “New Jersey A1796.” New Jersey State Legislature, January 21, 2020. <https://legiscan.com/NJ/text/A1796/2018>.
- “Nevada SB 97.” Nevada State Legislature, January 24, 2019. https://www.leg.state.nv.us/Session/80th2019/Bills/SB/SB97_EN.pdf.
- “Oregon SB 704.” Oregon State Legislature, n.d. <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0704/Introduced>.
- People v. Coad*, 181 Cal. App. 3d 1094, 226 Cal. Rptr. 386, 1986 Cal. App. LEXIS 1676 (Court of Appeal of California, First Appellate District, Division Two May 21,

1986). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-K430-003D-J3B7-00000-00&context=1516831>.

People v. Schmitz, 231 Mich. App. 521, 586 N.W.2d 766, 1998 Mich. App. LEXIS 257 (Court of Appeals of Michigan September 11, 1998, Decided). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3VB3-55D0-0039-42GX-00000-00&context=1516831>.

“Provocation.” Legal Information Institute, June 2020.
<https://www.law.cornell.edu/wex/provocation>.

Powell, Adam Clayton. *Against the Tide: An Autobiography*. New York, 1938.

“Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools.” American Psychological Association & national Association of School Psychologists, 2015. <https://www.apa.org/about/policy/orientation-diversity>.

“Rhode Island 2018 -- H7066.” States of Rhode Island General Assembly, n.d.
<http://webserver.rilin.state.ri.us/BillText18/HouseText18/H7066aa.htm>.

Robbins, Becca. “Bogdanov sentenced to nearly 20 years in murder of Nikki Kuhnhausen.” *The Columbian*, September 9, 2021.
<https://www.columbian.com/news/2021/sep/09/bogdanov-sentenced-to-20-years-in-murder-of-nikki-kuhnhausen/>.

Salamon, Gayle. *The Life and Death of Latisha King: A Critical Phenomenology of Transphobia*. Sexual Cultures. New York University Press, 2018.

Schwartz, Arielle P. “Why Outing Can Be Deadly.” National LGBTQ Task Force, n.d.
<https://www.thetaskforce.org/why-outing-can-be-deadly/>

“Second Degree Murder.” Legal Information Institute, n.d.
https://www.law.cornell.edu/wex/second_degree_murder.

“Self-Defense.” Legal Information Institute, n.d. <https://www.law.cornell.edu/wex/self-defense>.

“Sex and Gender Identity.” Planned Parenthood, n.d.
<https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity>.

“Sexuality: A Few Definitions.” Brook, n.d. <https://www.brook.org.uk/your-life/sexuality-a-few-definitions/#S>.

“Sexual Orientation and Gender Identity Definitions.” Human Rights Campaign, n.d.
<https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

- Shapiro, Emily and Robert Zepeda. "Mathew Shepard: The Legacy of a Gay College Student 20 Years after His Brutal Murder." ABC News, October 26, 2018.
<https://abcnews.go.com/US/matthew-shepard-legacy-gay-college-student-20-years/story?id=58242426>.
- Shockley, Ann Allen. "The Black Lesbian in American Literature: An Overview." In *Home Girls: A Black Feminist Anthology*. Edited by Barbara Smith. New York: Kitchen Table/Women of Color (1983): 84.
- Smith, Bonnie G. *Women's Studies: The Basics*. Second ed. Routledge, 2019.
- Sonoma, Serena. "D.C. Poised to Become First U.S. City to Ban LGBTQ+ Panic Defense." them., December 17, 2020. <https://www.them.us/story/washington-dc-first-us-city-to-ban-lgbtq-panic-defense>.
- Spade, Dean. "Resisting Medicine/Remodeling Gender.", *Berkley Women's Law Journal* 18 (2003): 15-37. <https://digitalcommons.law.seattleu.edu/faculty/592>.
- Spade, Dean. "Trans Formation: Three myths regarding transgender Identity Have Led to Conflicting Laws and Policies that Adversely Affect Transgender People.", *Los Angeles Lawyer* 31, no.7 (2008): 34-39.
- Sterling v. Borough of Minersville*, 232 F.3d 190, 2000 U.S. App. LEXIS 27855 (United States Court of Appeals for the Third Circuit November 6, 2000, Filed). <https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:41M3-S8V0-0038-X1D2-00000-00&context=1516831>.
- "Stonewall Riots: The Beginning of the LGBT Movement." The Leadership Conference on Civil and Human Rights, June 2009. <https://civilrights.org/2009/06/22/stonewall-riots-the-beginning-of-the-lgbt-movement/>.
- "Suspect charged with murder in slaying of gay teen in Puerto Rico." CNN, November 18, 2009. <https://www.cnn.com/2009/CRIME/11/18/puerto.rico.gay.teen.slain/index.html>.
- "S.1137 Gay and Trans Panic Defense Prohibition Act of 2021." Congress.gov, n.d. <https://www.congress.gov/bill/117th-congress/senate-bill/1137/text>.
- "The Angie Zapata Murder: Violence Against Transgender People Resource Kit." GLAAD, n.d. <https://www.glaad.org/resourcekits/angiezapata>.
- Thompson, Mikah. "Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom." *Michigan State Law Review*, January 15, 2019. <https://ssrn.com/abstract=3316402>

- “Transgender teen’s murder launches nationwide movement, inspires new law.” CBS News, December 18, 2021. <https://www.cbsnews.com/news/nikki-kuhnhausen-david-bogdanov-Transgender-teens-murder-new-law/>
- “U.S. Supreme Court Sides with Kansas Over Insanity Defense.” American Bar Association, July 2020. https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/summer/us-supreme-court-sides-with-kansas/.
- Valdes, Francisco. "Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender & Sexual Orientation to Its Origins." *Yale Journal of Law & the Humanities* 8, no. 1 (1996): 161-211.
- Valente, Joseph. "Thrilled by His Touch: Homosexual Panic and the Will to Artistry in *A Portrait of the Artist as a Young Man*." *James Joyce Quarterly* 50, no. 1 (2012): 223-244. doi:10.1353/jjq.2012.0101.
- VanderHart, Dirk. “Oregon lawmakers vote to ban ‘LGBTQ panic defense’ by accused murderers.” OPB, May 13, 2021. <https://www.opb.org/article/2021/05/13/oregon-lawmakers-vote-to-ban-lgbtq-panic-defense-by-accused-murderers/>.
- “Virginia H2132.” Virginia State Legislature, March 31, 2021. <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0460>.
- Wang, Yanan. “The Island Nettles killing: What the trial means to a transgender community anxious for a reckoning.” *The Washington Post*, April 4, 2016. <https://www.washingtonpost.com/news/morning-mix/wp/2016/04/04/the-island-nettles-killing-what-the-trial-means-to-a-transgender-community-anxious-for-a-reckoning/>.
- Ward, Elijah G. “Homophobia, hypermasculinity and the US black church.” *Culture, Health & Sexuality* 7, no. 5 (2005): 496. doi: 10.1080/13691050500151248.
- “Washington HB 1687.” Washington State Legislature, 2020. <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1687.PL.pdf?q=20220429091028>.
- Whaley, Monte. “Andrade gets life plus 60 years for death of transgender woman.” *The Denver Post*, May 8, 2009. <https://www.denverpost.com/2009/05/08/andrade-gets-life-plus-60-years-for-death-of-transgender-woman/>.
- White, E. Frances. “Black Feminist Intervention.” In *Dark Continent of Our Bodies: Black Feminism & Politics of Respectability*, 25-80. Temple University Press, 2001.
- Yurcaba, Jo. “Virginia becomes 12th state to ban gay/trans panic defense.” NBC News, April 2, 2021. <https://www.nbcnews.com/feature/nbc-out/virginia-becomes-12th-state-ban-gay-trans-panic-defense-n1262933>

Zamora, Jim Herron. "Newark / Teen's Death a Crime of Passion, Defense Says." SFGATE, January 20, 2012. <https://www.sfgate.com/bayarea/article/NEWARK-Teen-s-death-a-crime-of-passion-defense-2645355.php>.

Zorn, Eric. "Murder Defendant Gambles -- and Wins." Chicago Tribune, July 17, 2009. <https://www.chicagotribune.com/news/ct-xpm-2009-07-17-0907160827-story.html>.

"6.9 Gay and Trans Panic Defense Bill Reintroduced." One Colorado, June 9, 2020. <https://one-colorado.org/new/gay-and-trans-panic-defense-bill-reintroduced/>.

"775 ILCS 5/ Illinois Human Rights Act." Illinois General Assembly, n.d. <https://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=077500050HArt.%2B1&ActID=2266&ChapterID=64&SeqStart=100000&SeqEnd=600000>.