



Office of the Public Defender State of Hawai'i



Testimony of the Office of the Public Defender, State of Hawai'i to the Senate Committee on Judiciary

March 14, 2019

H.B. No. 711 HD1: RELATING TO CRIMINAL DEFENSE

Chair Rhoads and Members of the Committee:

The Office of the Public Defender **opposes** H.B. No. 711 HD1.

This measure would prohibit the accused from claiming discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance sufficient to reduce a charge of murder to a charge of manslaughter unless the other circumstances of a defendant's explanation are already sufficient to reasonably find extreme mental or emotional disturbance.

Our current manslaughter statute provides, in pertinent part, "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.

The added language is simply not necessary. A defendant asserting the affirmative defense of EMED must present a reasonable explanation for the defendant to be under the influence of extreme mental or emotional disturbance. The trier-of-fact always should determine the reasonableness of the accused's explanation from the viewpoint of a reasonable person in the circumstances as the accused believed them to be

This measure would create a "preferred class" of individuals to the exclusion others who might equally be aggrieved as potential victims of manslaughter. The person who is targeted because of disclosure of his/her religion, ethnicity or support of an unpopular political belief could continue to be the victim of extreme mental or emotional disturbance. The law already provides a safeguard against the unwarranted or arbitrary claim of extreme mental or emotional disturbance. Juries (i.e., the trier-of-fact) have always been tasked to determine whether a defendant's conduct was reasonable or unreasonable.

Moreover, currently, an offender can be subject to an extended term of imprisonment if he/she perpetrates a hate crime under H.R.S. § 706-662. This occurs when "[t]he defendant intentionally selected a victim . . . because of hostility toward the actual or perceived race, religion, disability, ethnicity, national

origin, gender identity or expression, or sexual orientation of any person.” Therefore, the law now protects, with enhanced sentences, those of every protected class who are targeted because of their life status.

Thank you for the opportunity to comment on this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 14, 2019
Rm. 016, 9:30 a.m.

To: The Honorable Karl Rhoads, Chair
The Honorable Glenn Wakai Vice Chair
Members of the Senate Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No.711, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 711, H.D.1, prohibits defendants from claiming that discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance sufficient to reduce a charge of murder to a charge of manslaughter unless the other circumstances of a defendant's explanation are already sufficient to reasonably find extreme mental or emotional disturbance. The bill would require the court to instruct the jury to disregard bias and prejudice regarding gender, gender identity, gender expression, or sexual orientation when a defendant's explanation of extreme mental or emotional disturbance includes discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation.

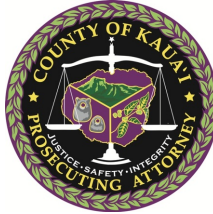
The HCRC supports the intent of H.B. No. 711, H.D.1.

The legislature has recognized the invidious nature of hate motivated crimes, by enacting the state hate crime statute providing for enhanced sentencing where there is proof of bias motivation for a crime, targeting or selection of a victim because of race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation. H.B. No 711, H.D.1, addresses the assertion of a “gay panic,” “trans panic,” “homosexual advance,” or “homosexual rage” defense, in which a defendant testifies that extreme mental or emotional disturbance sufficient to reduce a charge of murder to manslaughter resulted from discovery, knowledge, or disclosure of the victim’s gender, gender identity, gender expression, or sexual orientation.

The HCRC supports the intent of H.B. No. 711, H.D.1. Just as no one should be targeted as a victim based on bias against their actual or perceived gender, gender identity, gender expression, or sexual orientation, nor should those biases be the basis for a mental state of mind reducing criminal responsibility for a killing.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt Like
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
The Thirtieth Legislature
Regular Session of 2019
State of Hawai'i**

February 12, 2019

RE: H.B. 711 H.D. 1: RELATING TO CRIMINAL DEFENSE.

Chair Rhoads, Vice-Chair Wakai, and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the County of Kaua'i is in strong support of this measure.

This bill will prohibit the use of a gay or trans-panic defense in the prosecution of murder cases. This "defense" refers to a legal strategy which asks a jury to determine that a victim's sexual orientation or gender identity expression is to blame for an aggressor's violent actions. It was used most prominently in the 1998 murder of 21-year old college student Matthew Shepard.

Panic defenses are uniquely used to justify crime against LGBTQ+ individuals and is based on exploiting homophobic bias in fact-finders. It sends the message that an LGBTQ+ individual's life is not worth protecting under the law. Similar bans of this defense have already been implemented in California, Illinois and Rhode Island. Our Office urges your committee to pass this Bill and further the effort to add Hawai'i's name to this list and stand in solidarity with our LGBTQ+ community.

Thank you for this opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE MK-KK

March 14, 2019

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 711, H.D. 1, Relating to Criminal Defense

I am Mikel Kunishima, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 711, H.D. 1, Relating to Criminal Defense.

Incidents that result in death are the most serious cases that law enforcement investigates. These death case investigations are time consuming and involve the expenditure of a tremendous amount of resources. In all death cases, the difference between the charges of murder or manslaughter is the state of mind of the perpetrator at the time the offense was committed. In many cases, this determination cannot be completely evaluated until the final conclusion of the investigation.

The HPD supports prohibiting the perpetrator from claiming that the discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance for which there is a reasonable explanation. Thus prohibiting the offense of murder and attempted murder to be reduced to manslaughter or attempted manslaughter.

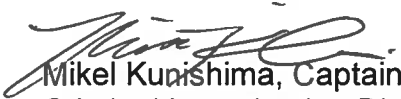
Murder or assaulting anyone because of their sexual orientation or gender identity is not a criminal defense; it is a hate crime.

The Honorable Karl Rhoads, Chair
and Members
March 14, 2019
Page 2

The HPD urges you to support House Bill No. 711, H.D. 1, Relating to Criminal Defense.

Thank you for the opportunity to testify.

Sincerely,


Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:


Susan Ballard
Chief of Police



March 11, 2019

Senate's Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street, Room 016
Honolulu, HI 96813

Hearing: Thursday, March 14, 2019 – 9:30 a.m.

RE: **STRONG SUPPORT for House Bill 711 HD 1**– RELATING TO CRIMINAL DEFENSE

Aloha Chair Rhoads, Vice Chair Wakai and fellow committee members,

I am writing in STRONG SUPPORT for House Bill 711 House Draft 1 on behalf of the LGBT Caucus of the Democratic Party of Hawai'i. HB 711 HD 1 prohibits defendants from claiming that discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance sufficient to reduce a charge of murder to a charge of manslaughter unless the other circumstances of a defendant's explanation are already sufficient to reasonably find extreme mental or emotional disturbance. Requires the court to instruct the jury to disregard bias and prejudice regarding gender, gender identity, gender expression, or sexual orientation when a defendant's explanation of extreme mental or emotional disturbance includes discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation.

The idea that someone could murder a member of the LGBTQIA community and claim their sexual orientation, gender identity and/or expression (SOGIE) was the reason that murdered them and then they get a lesser sentence is abhorrent.

These affirmative defenses are commonly known as "Gay Panic" and "Trans Panic" and are uniquely used to defend violent crimes against the LGBTQIA community. It needs to be noted that these types defenses are not allowed against any other minority. We have passed laws to protect that LGBTQIA community from discrimination but these defenses are still available makes no sense.

Currently California, Rhode Island and Illinois are the only states that bar these types of affirmative defenses, although Connecticut and New York have pending legislation.

The LGBT Caucus of the DPH asks that you support HB 711 HD 1 as it will help to protect the LGBTQIA community.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair

HB-711-HD-1

Submitted on: 3/12/2019 11:16:35 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

HB-711-HD-1

Submitted on: 3/12/2019 6:21:44 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride Work HI	Testifying for Pride at Work Hawaii	Support	No

Comments:

Dear Representatives,

Pride@Work Hawaii supports the passage of HB 711 HD1.

Mahalo for the opportunity to testify.

Pride@Work Hawaii



92-954 Makakilo Dr. #71, Kapolei, HI 96707 Email: RainbowFamily808@gmail.com Ph: (808) 779-9078 Fax: (808) 672-6347

March 12, 2019

**The Honorable Karl Rhoads, Chair with, Vice-Chair
and Members of the Senate Judiciary Committee**

RE: HB 711 HD1 Criminal Defense

STRONG SUPPORT

Aloha Honorable Chair, Vice Chair and Members,

Thank you for hearing HB 711 HD1. Rainbow Family 808 strongly supports HB 711 HD1 for Justice in the cases of murder or attempted murder. As families, we want Justice to reign in Criminal cases for all those murdered in Hawai`i.

In the past, it was not long ago that the deaths of wives was demeaned with the defense of a "Crime of Passion." This gave a free ride for husbands who murdered their wife if he thought that the wife was unfaithful. Please do not allow the injustice of the past, to continue in today's courts. Please vote for Justice provided by HB711 HD1.

Rainbow Family 808 supports HB 711 HD1 and ask that this bill is passed with no bias as to the members who signed their support for the Introduction of said bill. This is a non-partisan issue of the dignity and respect for all human life.

Mahalo for your support"

Sincerely,

**Carolyn Martinez Golojuch
President and Co-Founder
Rainbow Family 808**

HB-711-HD-1

Submitted on: 3/11/2019 10:46:01 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamuela Werner MPH	Individual	Support	No

Comments:

HB-711-HD-1

Submitted on: 3/11/2019 11:30:46 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
deborah cohn	Individual	Support	No

Comments:

Aloha

I strongly support HB711.

HB711 would send a strong message that LGBTQ lives are as valuable as others. A victim should never be blamed for a defendant's violent action and hate.

Mahalo,

Deborah Cohn

HB-711-HD-1

Submitted on: 3/11/2019 11:33:42 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen McKee	Individual	Support	No

Comments:

Aloha,

I stand in strong support for HB711. Victims of assault should not become victims in the courtroom. The use of "gay panic" as a defense for crimes against the LGBT community should not be allowed in our great state.

Mahalo for your support on this issue.

Eileen McKee

HB-711-HD-1

Submitted on: 3/11/2019 2:11:02 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joshua Kay	Individual	Support	No

Comments:

I am in strong support of HB 711 because it would eliminate the possibility that a defendant in a murder case could plead guilty to a lesser charge of manslaughter because of the discovery of a person's sexual orientation or identity being a means of defense.

March 12, 2019

From Hannah Liebreich

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i at criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.¹ Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.² According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.³

Gay and trans panic defenses seek to excuse crimes against the LGBT community that are inexcusable. These types of defenses appeal to irrational fears and hatred of LGBT individuals, thereby undermining the legitimacy of Hawai'i's criminal prosecutions. Also, gay and trans panic defenses are problematic because they reinforce and promote negative stereotypes about the LGBT community as sexual deviants and sexual predators.⁴

The American Bar Association ("ABA") considers gay and trans panic defenses to be remnants of a by-gone era when legalized discrimination and widespread hostility toward lesbian, gay, bisexual, and transgender individuals was the norm.⁵ In 2013, the ABA unanimously approved a resolution calling for state legislatures to eliminate the gay and trans panic defenses through

¹ Jaime M. Grant, et al., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 2 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (reporting that 61% of the 6,450 respondents in the National Transgender Discrimination Survey were the victim of physical assault); Rebecca L. Stotzer, Violence Against Transgender People: A Review of United States Data, 14 AGGRESSION AND VIOLENCE BEHAVIOR 170 (2009) (providing a comprehensive review of data on violence against transgender people); Gregory M. Herek, Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample, 24 J. INTERPERSONAL VIOLENCE 54, 54 (2009) (reporting that approximately 20% of LGB adults reported having experienced a person or property crime based on their sexual orientation).

² Paul Perrone, *Hate Crimes in Hawaii*, (2017) <https://ag.hawaii.gov/cpja/files/2018/03/Hate-Crimes-in-Hawaii-2017.pdf>.

³ HAWAII STATE DEPARTMENT OF HEALTH, HAWAII SEXUAL AND GENDER MINORITY HEALTH REPORT 30 (2018).

⁴ See Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471,471 (2008), https://lawreview.law.ucdavis.edu/issues/42/2/articles/42-2_lee.pdf.

⁵ AMERICAN BAR ASSOCIATION, https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july2018/panicdefense/.

legislation.⁶ Gay and trans panic defenses are rooted in irrational fears based on homophobia and transphobia, and send the wrong message that violence against LGBT people is acceptable.⁷ This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.⁸ Thank you for your time and consideration.

Sincerely,

Hannah Liebreich

Hannah Liebreich

⁶ American Bar Association, *Gay and Trans Panic Defenses Resolution* (2013), available at <http://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

⁷ JORDAN BLAIR WOODS, BRAD SEARS, & CHRISTY MALLORY, MODEL LEGISLATION FOR ELIMINATING THE GAY AND TRANS PANIC DEFENSES 3 (2016).

⁸ *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

HB-711-HD-1

Submitted on: 3/12/2019 10:15:53 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Katya Katano	Individual	Support	No

Comments:

March 14, 2019
9:30 am
Conference Room 016
State Capitol 415
South Beretania Street

Re: HB 711 HD1 Relating to Criminal Defense

Aloha Chair Karl Rhoads, Vice-Chair Glenn Wakai and honorable members:

I SUPPORT HB711 HD1. This bill will prohibit defendants from claiming that discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance sufficient to reduce a charge of murder to a charge of manslaughter unless the other circumstances of a defendant's explanation are already sufficient to reasonably find extreme mental or emotional disturbance. In addition, it requires the court to instruct the jury to disregard bias and prejudice regarding gender, gender identity, gender expression, or sexual orientation when a defendant's explanation of extreme mental or emotional disturbance includes discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation.

The use of aspects of someone's personhood as a defense strikes against the dignity and value of human beings. The matter of "gay-panic" and "trans-panic" was addressed by the American Bar Association through a promulgation of a resolution in 2013. Legislation banning such defenses were passed in California in 2014, Illinois in 2017, and Rhode Island in 2018. Legislation banning such defenses has been introduced in the District of Columbia in 2017, New Jersey in 2016 and in 2018, Minnesota in 2018, Pennsylvania in 2018, New York in 2014, 2015, 2017, and 2019, and Connecticut in 2019.

I believe Hawai'i can continue its leadership role in recognizing the dignity of all humans by passing HB711 HD1. *Mahalo* for your time and consideration.

Me ke aloha,

Makana Paris
Papakōlea, O'ahu

HB-711-HD-1

Submitted on: 3/12/2019 10:53:37 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R. L. Hughes	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing in support of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence. Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion. According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.

Gay and trans panic defenses seek to excuse crimes against the LGBTQ community that are inexcusable. These types of defenses appeal to irrational fears and hatred of LGBTQ individuals, thereby undermining the legitimacy of Hawai'i's criminal prosecutions. Also, gay and trans panic defenses are problematic because they reinforce and promote negative stereotypes about the LGBTQ community as sexual deviants and sexual predators.

The American Bar Association ("ABA") considers gay and trans panic defenses to be remnants of a by-gone era when legalized discrimination and widespread hostility toward lesbian, gay, bisexual, and transgender individuals was the norm. In 2013, the ABA unanimously approved a resolution calling for state legislatures to eliminate the gay and trans panic defenses through legislation. Gay and trans panic defenses are rooted in irrational fears based on homophobia and transphobia, and send the wrong message that violence against LGBT people is acceptable. This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.

Thank you for your time,

RL Hughes

Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.¹ Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.² According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.³

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¹ Jaime M. Grant, et al., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 2 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (reporting that 61% of the 6,450 respondents in the National Transgender Discrimination Survey were the victim of physical assault); Rebecca L. Stotzer, Violence Against Transgender People: A Review of United States Data, 14 AGGRESSION AND VIOLENCE BEHAVIOR 170 (2009) (providing a comprehensive review of data on violence against transgender people); Gregory M. Herek, Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample, 24 J. INTERPERSONAL VIOLENCE 54, 54 (2009) (reporting that approximately 20% of LGB adults reported having experienced a person or property crime based on their sexual orientation).

² Paul Perrone, *Hate Crimes in Hawaii*, (2017) <https://ag.hawaii.gov/cpja/files/2018/03/Hate-Crimes-in-Hawaii-2017.pdf>.

³ HAWAII STATE DEPARTMENT OF HEALTH, HAWAII SEXUAL AND GENDER MINORITY HEALTH REPORT 30 (2018).

⁴ See Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471,471 (2008), https://lawreview.law.ucdavis.edu/issues/42/2/articles/42-2_lee.pdf.

⁵ AMERICAN BAR ASSOCIATION, https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july2018/panicdefense/.

⁶ American Bar Association, *Gay and Trans Panic Defenses Resolution* (2013), available at <http://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

⁷ JORDAN BLAIR WOODS, BRAD SEARS, & CHRISTY MALLORY, MODEL LEGISLATION FOR ELIMINATING THE GAY AND TRANS PANIC DEFENSES 3 (2016).

⁸ Cf. *Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) ("Hawai'i has a compelling state interest in prohibiting discrimination . . .").

From: [KAKOU](#)
To: [JDCTestimony](#)
Subject: HB711 HD1
Date: Tuesday, March 12, 2019 10:00:16 AM

KAKOU



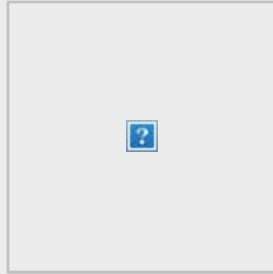
Dear Senators,

HB 711 prohibits defendants from claiming that discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation resulted in extreme mental or emotional disturbance sufficient to reduce a charge of murder to a charge of manslaughter unless the other circumstances of a defendant's explanation are already sufficient to reasonably find extreme mental or emotional disturbance., and requires the court to instruct the jury to disregard bias and prejudice regarding gender, gender identity, gender expression, or sexual orientation when a defendant's explanation of extreme mental or emotional disturbance includes discovery, knowledge, or disclosure of a victim's gender, gender identity, gender expression, or sexual orientation.

The idea that someone could murder a member of the LGBTQIA community and claim their sexual orientation, gender identity and/or expression (SOGIE) was the reason that murdered them and then they get a lesser sentence is abhorrent.

These affirmative defenses are commonly known as "Gay Panic" and "Trans Panic" and are uniquely used to defend violent crimes against the LGBTQIA community. It needs to be noted that these types defenses are not allowed against any other minority. We have passed laws to protect that LGBTQIA community from discrimination but these defenses are still available makes no sense.

Mahalo,
Tyler Dos Santos-Tam
801 South St #4625, HONOLULU, HAWAII, 96813



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Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.¹ Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.² According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.³

Gay and trans panic defenses seek to excuse crimes against the LGBTQ community that are inexcusable. These types of defenses appeal to irrational fears and hatred of LGBTQ individuals, thereby undermining the legitimacy of Hawai'i's criminal prosecutions. Also, gay and trans panic defenses are problematic because they reinforce and promote negative stereotypes about the LGBTQ community as sexual deviants and sexual predators.⁴

The American Bar Association ("ABA") considers gay and trans panic defenses to be remnants of a by-gone era when legalized discrimination and widespread hostility toward lesbian, gay, bisexual, and transgender individuals was the norm.⁵ In 2013, the ABA unanimously approved a resolution calling for state legislatures to eliminate the gay and trans panic defenses through legislation.⁶ Gay and trans panic defenses are rooted in irrational fears based on homophobia and transphobia, and send the wrong message

¹ Jaime M. Grant, et al., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 2 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (reporting that 61% of the 6,450 respondents in the National Transgender Discrimination Survey were the victim of physical assault); Rebecca L. Stotzer, Violence Against Transgender People: A Review of United States Data, 14 AGGRESSION AND VIOLENCE BEHAVIOR 170 (2009) (providing a comprehensive review of data on violence against transgender people); Gregory M. Herek, Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample, 24 J. INTERPERSONAL VIOLENCE 54, 54 (2009) (reporting that approximately 20% of LGB adults reported having experienced a person or property crime based on their sexual orientation).

² Paul Perrone, *Hate Crimes in Hawaii*, (2017) <https://ag.hawaii.gov/cpja/files/2018/03/Hate-Crimes-in-Hawaii-2017.pdf>.

³ HAWAI'I STATE DEPARTMENT OF HEALTH, HAWAI'I SEXUAL AND GENDER MINORITY HEALTH REPORT 30 (2018).

⁴ See Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471,471 (2008), https://lawreview.law.ucdavis.edu/issues/42/2/articles/42-2_lee.pdf.

⁵ AMERICAN BAR ASSOCIATION, https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july2018/panicdefense/.

⁶ American Bar Association, *Gay and Trans Panic Defenses Resolution* (2013), available at <http://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

that violence against LGBT people is acceptable.⁷ This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.⁸

⁷ JORDAN BLAIR WOODS, BRAD SEARS, & CHRISTY MALLORY, MODEL LEGISLATION FOR ELIMINATING THE GAY AND TRANS PANIC DEFENSES 3 (2016).

⁸ *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

HB-711-HD-1

Submitted on: 3/12/2019 9:18:57 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Niesen	Individual	Oppose	No

Comments:

Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing in support of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence. Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion. According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.

Gay and trans panic defenses seek to excuse crimes against the LGBTQ community that are inexcusable. These types of defenses appeal to irrational fears and hatred of LGBTQ individuals, thereby undermining the legitimacy of Hawai'i's criminal prosecutions. Also, gay and trans panic defenses are problematic because they reinforce and promote negative stereotypes about the LGBTQ community as sexual deviants and sexual predators.

The American Bar Association ("ABA") considers gay and trans panic defenses to be remnants of a by-gone era when legalized discrimination and widespread hostility toward lesbian, gay, bisexual, and transgender individuals was the norm. In 2013, the ABA unanimously approved a resolution calling for state legislatures to eliminate the gay and trans panic defenses through legislation. Gay and trans panic defenses are rooted in irrational fears based on homophobia and transphobia, and send the wrong message that violence against LGBT people is acceptable. This committee should pass

HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.

HB-711-HD-1

Submitted on: 3/12/2019 9:40:44 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kay	Individual	Support	No

Comments:

I'm writing in support of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence. Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion. According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.

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Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.¹ Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.² According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.³

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⁴ See Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471,471 (2008), https://lawreview.law.ucdavis.edu/issues/42/2/articles/42-2_lee.pdf.

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that violence against LGBT people is acceptable.⁷ This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.⁸

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⁸ *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

HB-711-HD-1

Submitted on: 3/12/2019 11:32:35 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Natalie Landis	Individual	Support	Yes

Comments:

Aloha Chair, Vice Chair, and committee members.

I am testifying as an individual member of the LGBT+ community, as well as a student at University of Hawaii at Manoa in strong support of HB711.

As public servants, I implore you to do the right thing and protect your LGBT+ citizens by passing this bill to remove the legal defense of gay or trans panic.

Mahalo for your time.

Natalie Landis

Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

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Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

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that violence against LGBT people is acceptable.⁷ This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.⁸

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⁸ *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

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This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.¹ Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.² According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.³

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that violence against LGBT people is acceptable.⁷ This committee should pass HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.⁸

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⁸ *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

HB-711-HD-1

Submitted on: 3/13/2019 8:52:57 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Talia Schwartz	Individual	Support	No

Comments:

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing **in support** of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

This legislation is vital because lesbian, gay, bisexual, and transgender (LGBT) people have historically faced and continue to suffer disproportionately high rates of violence.[\[1\]](#) Data collected from 2002-2017, in Hawai'i, indicates that sexual orientation was the second highest cause of hate crimes, after race and before religion.[\[2\]](#) According to a 2018 Hawai'i Department of Health study, forty percent of transgender youth said they have been bullied on school property or online in the last year, compared to 23 percent of cisgender youth.[\[3\]](#)

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[1] Jaime M. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 2* (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (reporting that 61% of the 6,450 respondents in the National Transgender Discrimination Survey were the victim of physical assault); Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 *Aggression and Violence Behavior* 170 (2009) (providing a comprehensive review of data on violence against transgender people); Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample*, 24 *J. Interpersonal Violence* 54, 54 (2009) (reporting that approximately 20% of LGB adults reported having experienced a person or property crime based on their sexual orientation).

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[5] American Bar Association, https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/july2018/panicdefense/.

[6] American Bar Association, *Gay and Trans Panic Defenses Resolution* (2013), available at <http://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>.

[7] Jordan Blair Woods, Brad Sears, & Christy Mallory, *Model Legislation for Eliminating the Gay and Trans Panic Defenses* 3 (2016).

[8] *Cf. Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177, 181, 415 P.3d 919, 923 (Ct. App. 2018) (“Hawai'i has a compelling state interest in prohibiting discrimination . . .”).

HB-711-HD-1

Submitted on: 3/13/2019 11:57:23 AM

Testimony for JDC on 3/14/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Soren Ruppelius	Individual	Support	No

Comments:

Individual Testimony

Prepared for the Senate Committee on Judiciary

In Support of HB711

Dear Chair Rhoads, Vice Chair Wakai, and Honorable Members,

I'm writing in support of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant.

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HB711 and bring Hawai'i to the forefront of protections for its LGBTQ residents and visitors.

HB-711-HD-1

Submitted on: 3/13/2019 12:15:53 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Smith	Individual	Support	No

Comments:

LATE

HB-711-HD-1

Submitted on: 3/13/2019 3:42:24 PM
Testimony for JDC on 3/14/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cherise Braxton-Brooks	Individual	Support	No

Comments:

I'm writing in support of HB711, which would ban gay and trans panic defenses in Hawai'i's criminal proceedings. Gay and trans panic defenses are based on the unfounded grounds that the sexual orientation or gender identity of the victim is sufficient provocation for the violent reaction of a defendant. Allowing an individual to try to use this as an excuse for violence is disgusting, as disgusting as allowing someone to use a persons race as an excuse for their committing violence against that person. Hawaii is better than that! As someone who has lived here for several years, votes here, and who has come to love this community, I can not stay silent with regards to how our LGBTQ population is discriminated against. Please abolish this antiquated defense! Thank you!

HB-711-HD-1

Submitted on: 3/13/2019 8:33:35 PM

Testimony for JDC on 3/14/2019 9:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Milholen	Individual	Support	No

Comments:

KIM COCO IWAMOTO, ESQ.

PO Box 235191
Honolulu, HI 96823
kimcoco@kimcoco.com

COMMITTEE ON JUDICIARY
Hearing on Thursday, March 14, 2019
9:30 AM in Conference Room 016

LATE

Testimony in STRONG SUPPORT for HB711 HD1d

Dear Chair Rhoads and Committee Members,

During the height of homophobia in America, criminal defense attorneys used the bigotry of jurists to help their clients get reduced sentences for murdering gay victims. Then on appeal, homophobic judges upheld these tactics as legitimate “affirmative defense” arguments, now referred to as the “gay panic” defense. This judicial authority is referred to as “case law”, which can only be overturned by a higher court or through legislation.

Until then, public defenders have a fiduciary duty to exhaust all defenses available to their clients, regardless of how despicable a defense may be - anything less could be considered malpractice. There may be no affirmative defense more despicable than the “gay panic” defense - which presupposes that simply becoming aware of someone being gay could justify murdering him. In jurisdictions where this “case law” defense has been legislatively outlawed, public defenders and other criminal defense attorneys no longer have the duty to use it to pander to the homophobic bias of their jurists.

Today, the Hawaii Legislature has the opportunity to amend the affirmative defense section of our criminal code to reflect our societal progress toward equality and equal protection. Please remove the obligation the Honolulu Public Defenders Office has to oppose HB 711 today and continue perpetuating the bigotry embedded in the “gay panic” defense.

Thank you for your consideration,

