



Office of the Public Defender State of Hawai‘i



Testimony of the Office of the Public Defender, State of Hawai‘i to the House Committee on Judiciary

February 4, 2019

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

Chair Lee, Vice Chair San Buenaventura and Members of the Committee:

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

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.

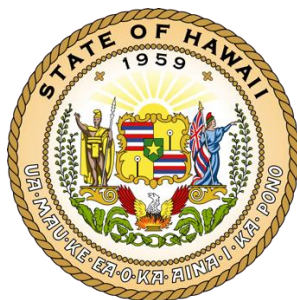
Our current manslaughter statute provides, in pertinent part, “The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be.

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 has 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

Moreover, 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. Thus, H.B. No. 711 is not necessary and would present questions of equal protection under the law.

Thank you for the opportunity to comment on this measure.



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the House Committee on Judiciary (JUD)

In Support of HB711
Tuesday, February 5, 2019, at 2:05 p.m. in Room 325

Dear Chair Lee, Vice Chair San Buenaventura and Honorable Members,

The Hawai'i State Commission on the Status of Women writes in **support** of HB711, which would ban so-called gay and trans “panic” defenses.

Hawai'i has the largest percentage of transgender individuals in the United States. According to the Hawai'i State Department of Health's 2018 Sexual and Gender Minority Health report, this community faces widespread discrimination and challenges in Hawai'i. 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.

We respectfully urge the Committee to pass HB711.

Sincerely,

Khara Jabola-Carolus

LATE



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 5, 2019
Rm. 325, 2:05 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

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

Re: H.B. No.711

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 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.

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 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 H.B. No. 711. 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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

SUSAN BALLARD
CHIEF

JOHN D. MCCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE MK-KK

February 5, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: House Bill No. 711, 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, 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.

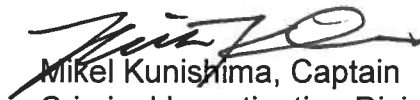
Murder or assaulting anyone because of their sexual orientation or gender identity is not a criminal defense; it is a hate crime.

The Honorable Chris Lee, Chair
and Members
February 5, 2019
Page 2


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

Thank you for the opportunity to testify.

Sincerely,


Mikel Kunishima, Captain
Criminal Investigation Division

APPROVED:



Susan Ballard
Chief of Police



February 1, 2019

House's Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, HI 96813

Hearing: Tuesday, February 5, 2019 – 2:05 p.m.

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

Aloha Chair Lee, Vice Chair San Buenaventura and fellow committee members,

I am writing in STRONG SUPPORT for House Bill 711 on behalf of the LGBT Caucus of the Democratic Party of Hawai'i. 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. 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 as it will help to protect the LGBTQIA community.

Mahalo nui loa,

Michael Golojuch, Jr.
Chair

To: Hawaii State House of Representatives Committee on Judiciary
Hearing Date/Time: Tues., Feb. 5, 2019, 2:05 p.m.
Place: Hawaii State Capitol, Rm. 325
Re: Testimony in strong support of H.B. 711, relating to Criminal Defense

Dear Chair Lee and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of H.B. 711, which seeks to ban the gay and trans “panic” defense.

LGBTQI+ rights and reproductive rights are deeply connected to justice for all. We have long stood with our LGBTQI+ allies in the struggle for full equality — many of whom turn to Planned Parenthood for health care, information, and education. We are committed to building a world where no one experiences discrimination or violence because of their gender identity, gender expression, or sexual orientation.

We support H.B. 711 because it will bring justice for LGBTQ+ victims and demonstrate that their lives are worth protecting in a court of law.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,

Laurie Field
Hawaii Legislative Director

HB-711

Submitted on: 2/3/2019 10:06:58 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Joseph Kohn MD | We Are One, Inc. - www.WeAreOne.cc - WAO | Support | No |

Comments:

Strongly support elimination of gender bias.

www.WeAreOne.cc

LATE

HB-711

Submitted on: 2/4/2019 9:10:38 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|-------------------------------------|---------------------------|---------------------------|
| Darlene Ewan | Aloha State Association of the Deaf | Support | No |

Comments:

LATE

HB-711

Submitted on: 2/5/2019 9:10:28 AM
Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Heather Lusk | Hawaii Health and Harm Reduction Center | Support | No |

Comments:

LATE

I am writing to testify **in strong support** of HB 711. I am a concerned citizen, an educator, an advocate for youth, and a member and advocate of many minority and marginalized communities, including the LGBTQ+ community. It concerns me that in 2019, defendants are still allowed to plead the ‘gay or trans panic’ defense to defend actions that are reprehensible.

To date, only the states of California and Illinois have prohibitions against this defense. However we know that this is a defense that has been widely used since the 1960s’, when homosexuality was still viewed by the American Psychiatric Association as a mental disorder. In the years since, the APA and most other reputable associations, as well as the entire medical field, have evolved in their views, as knowledge has become more readily available, and the legal field should evolve with it.

Defense of insanity or diminished capacity, defense of provocation, and defense of self-defense should be reserved for those who it honorably applies to. For a defendant to use these defenses to get away with assault &/or murder toward a population who is already unfairly targeted disproportionately, is unacceptable. Here in Hawaii, there is a history of doing the right thing, even when it may not be understood or comprehended by everyone. We stand up for those who can’t stand up for themselves.

At present, “panic” defenses in our society, are uniquely used to defend violence against the LGBTQ+ community specifically. The victims are unable to speak for themselves, and friends and family are left to stand for them. It’s time we stood with the family and friends who are left behind to pick up the pieces of a devastation no one should have to face.

As recent as April 2018, a gay “panic” defense was used to reduce a murder charge. In cases where juries have been instructed not to listen to a gay or trans “panic” defense, the implicit bias against the LGBTQ+ community is still implored by the defense, thus still potentially influencing the jury’s decision. The only full proof against the use of gay and trans “panic” defenses, is a ban on the defense entirely.

I’m **in strong support** of HB 711, and I hope you will stand with me, the community, and all impacted. Please stand in **strong support** of HB 711 also.

Mahalo for your time.

Causha A. Spellman
(925)565-4611
caushasp@hawaii.edu

LATE

HB-711

Submitted on: 2/5/2019 11:33:50 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---|---------------------------|---------------------------|
| Melodie Aduja | O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i | Support | No |

Comments:

HB-711

Submitted on: 2/1/2019 5:26:33 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| 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.

HB-711

Submitted on: 2/2/2019 9:23:33 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Zahava Zaidoff | Individual | Support | No |

Comments:

Aloha Chair, Co Chair, and members of the committee,

I stand in strong support of the bill which would remove gay panic/trans panic as a viable defense in criminal proceedings.

An individuals personal bias and prejudice should not be affirmed and used as an excuse for committing heinous crimes.

As a Jew who lost most of my family in the Holocaust, I can speak directly to the emotional and generational trauma caused by allowing people to act based on prejudice.

50 years from now, there will be an entirely new generation traumatized by the furtherance of this law. What will people tell their grandchildren? That back in the day being ignorant and hating those who were different than you was an allowable defense?

We have an opportunity to be in the right side of history and to say no to prejudice and bias. Individuals will still have their biases, but either everyone is equal in the eyes of the law or they aren't.

I implore you to move this bill forward.

Thank you for supporting equal rights for all people!

With respect,

Zahava Zaidoff

StressFreeSouls



Tuesday, February 2019
2:05 pm
Conference Room 325
State Capitol
415 South Beretania Street

Re: HB 711 Relating to Criminal Defense

Aloha Chair Chris Lee, Vice-Chair Joy A. San Buenaventura and honorable members:

I **SUPPORT** HB711. 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.

Mahalo for your time and consideration.

Me ke aloha,

Makana Paris
Papakōlea, O'ahu

HB-711

Submitted on: 2/1/2019 5:11:50 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Ann S Freed | Individual | Support | No |

Comments:

Aloha Chair Lee, Vice Chair San Buenaventura and members, a resounding YES. The “shocking” discovery that someone is differently gendered can never be an excuse for violence of any kind.

Mahalo plenty for hearing this bill.

Ann S. Freed

Mililani, HI

HB-711

Submitted on: 2/2/2019 12:29:46 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mike Golojuch | Individual | Support | No |

Comments:

I strongly support this measure to stop to ban "Gay Panic" & Trans Panic."

Mike Golojuch, Sr.

From: David Smoot, House District 26

HAWAII STATE HOUSE OF REPRESENTATIVES

COMMITTEE ON JUDICIARY

Testimony supporting House Bill 711

Tuesday, February 5, 2019

2:05 PM

House Conference Room 325

Aloha Chairman Chris Lee, Vice-Chair Joy A San Buenaventura and Committee members.

I'm David Smoot of District 26, and I'm testifying in strong support of HB711 "Relating to Criminal Defense", titled "Murder; Manslaughter; Affirmative Defense; Extreme Mental or Emotional Disturbance; Gender; Sexual Orientation; Gay Panic Defense; Prohibition".

First, I believe the public supports justice and fair trials. People of alternative sexual orientation or gender identity are not inherently a public safety threat, so "gay panic" is an unreasonable murder defense.

If the primary opposition to this bill is to rationalize the murder of homosexuals, I suggest that that is not in the public's best interest.

Other defenses like mental illness and self-defense are available for defendants to present to the court when appropriate.

As a gay man, I have seen the look of shock and panic when people learn of my sexual orientation. But rational people soon realize that my existence is not a threat. Panic doesn't justify murder.

I urge you to vote to advance HB711 to the floor.

Thank you for the opportunity to show my support for HB711.

Sincerely,
David Smoot

HB-711

Submitted on: 2/3/2019 11:23:03 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

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

Comments:

Aloha,

I strongly support HB711 regarding "gay panic" and "trans panic" used as an affirmative defense. It is long over due that these defenses go away.

Mahalo for your support on this very important issue.

Deborah Cohn

HB-711

Submitted on: 2/3/2019 11:23:04 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

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

Comments:

Aloha,

I strongly support House Bill 711, regarding "Gay Panic" and "Trans Panic" used as an affirmative defense. It is long overdue that these false claims of defense go by the wayside.

Mahalo for your support on this issue.

Eileen McKee

HB-711

Submitted on: 2/4/2019 10:42:52 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Lynn Onderko | Individual | Support | No |

Comments:

HB-711

Submitted on: 2/4/2019 11:31:23 AM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jina Rabago | Individual | Support | No |

Comments:

HB-711

Submitted on: 2/4/2019 12:41:33 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Jen Jenkins | Individual | Support | No |

Comments:

I strongly support HB711 as a support to transgender and LGB people in Hawai'i.

HB-711

Submitted on: 2/4/2019 1:59:42 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Mandi deSouza | Individual | Support | No |

Comments:

I support HB711 in support of my friends and loved ones who are LGBTQ+ and have ever been fearful of disclosing their orientation out of fear for their safety and lives.

LATE

HB-711

Submitted on: 2/4/2019 5:01:04 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Anthony Miranda | Individual | Support | No |

Comments:

LATE

HB-711

Submitted on: 2/5/2019 1:20:55 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| maddalynn ashton | Individual | Support | No |

Comments:

My name is Maddalynn Seseapasara, a proud transgender woman, I am in support of HB711

LATE

HB-711

Submitted on: 2/5/2019 2:30:03 PM

Testimony for JUD on 2/5/2019 2:05:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Shalani Placencia | Individual | Support | No |

Comments:

My name is Shalani Placencia and I am a proud Hawaiian transwoman who supports HB711.