

SUBJECT TO RESOLUTION COMMITTEE REVIEW

AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 232
(N-21)

Introduced by: New York, Medical Student Section, Minority Affairs Section,
GLMA: Health Professionals Advancing LGBTQ Equality,
American Academy of Psychiatry and the Law, American Psychiatric
Association, California, American Academy of Child and Adolescent
Psychiatry, American Association of Geriatric Psychiatry

Subject: Ban the Gay/Trans (LGBTQ+) Panic Defense

Referred to: Reference Committee B

Whereas, The gay/trans panic (to be more inclusive will use “LGBTQ+ panic”) defense strategy is a legal strategy that uses a victim’s sexual orientation or gender identity/expression as an excuse for a defendant’s violent reaction, seeking to legitimize and even to excuse violent and lethal behavior (1); and

Whereas, The LGBTQ+ panic defense strategy gives defendants three options of defense: 1) insanity or diminished capacity, 2) provocation, 3) self-defense (3); and

Whereas, To claim:

- insanity, defendants claim that the sexual orientation or gender of the victim is enough to induce insanity (1);
- provocation, defendants claim “victim’s proposition, sometimes termed a “non-violent sexual advance” was sufficiently “provocative” to induce the defendant to kill the victim”(1);
- self-defense, “defendants claim they believed that the victim, because of their sexual orientation or gender identity/expression, was about to cause the defendant serious bodily harm (3)”; and

Whereas, Studies have shown that jurors with higher homonegativity and religious fundamentalism ratings assigned higher victim blame, lower defendant responsibility, and more lenient verdicts in the “LGBTQ+ panic” conditions (5,6,7); and

Whereas, “Gay panic disorder” was removed from the DSM in 1973 because the APA recognized that no such condition exists; and

Whereas, Many murder sentences have been reduced or defendants have been acquitted using the LGBTQ+ panic defense strategy such as in the Matthew Shepard case, to successfully mitigate a charge from murder to criminally negligent manslaughter as recently as 2018 (1); and

Whereas, The LGBTQ community makes up 3.5% of the US population yet, sexual orientation is the motivator of 17% of hate crime attacks with one in four transgender people becoming the victim of a hate crime in their lifetime (4, 5); and

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Whereas, the LGBTQ+ panic defense has only been banned in 11 states as of February 2021, with legislation having been introduced in 12 more states (1, 2); and

Whereas, NY State passed a law in June 2019 banning the gay/trans (LGBTQ+) panic defense, and MSSNY should have policy to support this law and prevent the risk for a setback in protections for LGBTQ+ people; and

Whereas, At least 44 Transgender or Gender Non-Conforming persons have been killed in the US during the year 2020, the highest total since HRC started tracking in 2013 (9); and

Whereas, There is not a race panic defense for a reason, and similar reasoning must disallow a gay/trans (LGBTQ+) panic defense; therefore be it

RESOLVED, That our American Medical Association seek a federal law banning the use of the so-called "gay/trans (LGBTQ+) panic" defense in homicide, manslaughter, physical or sexual assault cases (Directive to Take Action); and be it further

RESOLVED, That our AMA publish an issue brief and talking points on the topic of so called "gay/trans (LGBTQ+) panic" defense, that can be used by our AMA in seeking federal legislation, and can be used and adapted by state and specialty medical societies, other allies, and stakeholders as model legislation when seeking state legislation to ban the use of so-called "gay/trans (LGBTQ+) panic" defense to mitigate personal responsibility for violent crimes such as assault, rape, manslaughter, or homicide. (Directive to Take Action)

Fiscal Note: Modest - between \$1,000 - \$5,000

Received: 10/13/21

AUTHOR'S STATEMENT OF PRIORITY:

Transgender people, our patients, specifically transgender women of color, are at an extremely high risk of dying by homicide. Last year a record number of deaths were recorded in the US (46- an underestimate given the under reporting of transgender identity). By mid-April, there are 15 known homicides of transgender people as reported by HRC. If this pace continues for 2021, another record will be broken on pace for over 50 homicides this year. AMA must act now to protect transgender people, and to send a clear message to all of our transgender patients and our LGBTQ+ patients, that we see them, value them, support them, and fight for them. This resolution must be heard at the AMA – it was extracted in June from the "not for consideration list" for further consideration and is being resubmitted with support from seven additional organizations. This is a critically important resolution that needs to be moved forward by the AMA so that model legislation can be shared and to provide justice for transgender people.

RELEVANT AMA POLICY

Preventing Anti-Transgender Violence H-65.957

Our AMA will: (1) partner with other medical organizations and stakeholders to immediately increase efforts to educate the general public, legislators, and members of law enforcement using verified data related to the hate crimes against transgender individuals highlighting the disproportionate number of Black transgender women who have succumbed to violent deaths: (2) advocate for federal, state, and local law enforcement agencies to consistently collect and report data on hate crimes, including victim demographics, to the FBI; for the federal

government to provide incentives for such reporting; and for demographic data on an individual's birth sex and gender identity be incorporated into the National Crime Victimization Survey and the National Violent Death Reporting System, in order to quickly identify positive and negative trends so resources may be appropriately disseminated; (3) advocate for a central law enforcement database to collect data about reported hate crimes that correctly identifies an individual's birth sex and gender identity, in order to quickly identify positive and negative trends so resources may be appropriately disseminated; (4) advocate for stronger law enforcement policies regarding interactions with transgender individuals to prevent bias and mistreatment and increase community trust; and (5) advocate for local, state, and federal efforts that will increase access to mental health treatment and that will develop models designed to address the health disparities that LGBTQ individuals experience.

Citation: Res. 008, A-19

Access to Basic Human Services for Transgender Individuals H-65.964

Our AMA: (1) opposes policies preventing transgender individuals from accessing basic human services and public facilities in line with ones gender identity, including, but not limited to, the use of restrooms; and (2) will advocate for the creation of policies that promote social equality and safe access to basic human services and public facilities for transgender individuals according to ones gender identity.

Citation: Res. 010, A-17

Support of Human Rights and Freedom H-65.965

Our AMA: (1) continues to support the dignity of the individual, human rights and the sanctity of human life, (2) reaffirms its long-standing policy that there is no basis for the denial to any human being of equal rights, privileges, and responsibilities commensurate with his or her individual capabilities and ethical character because of an individual's sex, sexual orientation, gender, gender identity, or transgender status, race, religion, disability, ethnic origin, national origin, or age; (3) opposes any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age and any other such reprehensible policies; (4) recognizes that hate crimes pose a significant threat to the public health and social welfare of the citizens of the United States, urges expedient passage of appropriate hate crimes prevention legislation in accordance with our AMA's policy through letters to members of Congress; and registers support for hate crimes prevention legislation, via letter, to the President of the United States.

Citation: CCB/CLRPD Rep. 3, A-14; Reaffirmed in lieu of: Res. 001, I-16; Reaffirmation: A-17

References:

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2. The LGBTQ+ "Panic" Defense Map. LGBTQ Bar Association. Downloaded 18 February 2021 at: <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/gay-trans-panic-defense-legislation/>
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4. Federal Bureau of Investigation, U.S. Dep't of Justice. "Table 5, Offenses, Known Offender's Race by Bias Motivation, 2007." Hate Crime Statistics, 2007d (released Oct. 2008). www.fbi.gov/ucr/hc2007/table_05.htm (accessed Jan. 11, 2009).
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6. Michalski N D and Nunez N. When is Gay Panic Accepted? Exploring Juror Characteristics and Case Type as Predictors of a Successful Gay Panic Defense. *Journal of Interpersonal Violence*; first published online 22 April 2020. Downloaded at: <https://journals-sagepub-com.proxy.library.stonybrook.edu/doi/pdf/10.1177/0886260520912595>
7. Tomei J, etl al. The Gay Panic Defense: Legal Defense Strategy or Reinforcement of Homophobia in Court. *Journal of Interpersonal Violence*; 2020 Nov;35(21-22):4239-4261
8. Salerno, J. M., Najdowski, C. J., Bottoms, B. L., Harrington, E., Kemner, G., & Dave, R. (2015). Excusing murder? Conservative jurors' acceptance of the gay-panic defense. *Psychology, Public Policy, and Law*, 21(1), 24-34
9. An Epidemic of Violence: Fatal Violence Against Transgender and Gender Nonconforming People in the United States in 2020. Human Rights Campaign, 2021. Downloaded 18 February 2021 at: <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/FatalViolence-2020Report-Final.pdf?mtime=20201119101455&focal=none>