

# HOUSE BILL REPORT

## EHB 1687

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**As Passed House:**  
February 12, 2020

**Title:** An act relating to limiting defenses based on victim identity.

**Brief Description:** Limiting defenses based on victim identity.

**Sponsors:** Representatives Stanford, Doglio, Macri, Hansen, Orwall, Appleton, Jinkins, Ormsby, Valdez and Davis.

**Brief History:**

**Committee Activity:**

Public Safety: 2/15/19, 2/19/19 [DP].

**Floor Activity:**

Passed House: 2/12/20, 90-5.

**Brief Summary of Engrossed Bill**

- Prohibits a criminal defendant from using certain defenses 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.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 8 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham.

**Staff:** Kelly Leonard (786-7147).

**Background:**

In a criminal case, the prosecution must prove every element of the crime charged beyond a reasonable doubt. There are a variety of circumstances where a defendant's conduct may

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have caused the alleged harm, but where he or she is not criminally culpable based on recognized legal defenses.

*Self-Defense.* The use of force is lawful when used by a person who reasonably believes that he or she is about to be injured or by someone lawfully aiding a person who he or she reasonably believes is about to be injured, in preventing or attempting to prevent an offense against the person. It is also lawful when used in preventing or attempting to prevent a malicious trespass or other malicious interference with real or personal property.

If the use of force resulted in a death, then the justifiable homicide law applies. A person is justified in committing homicide when it is done in the lawful defense of himself or herself, or his or her spouse, parent, child, sibling, or any other person in his or her presence or company. The person must have reasonably believed that the person slain intended to commit a felony or great personal injury, and there must have been imminent danger of such harm being accomplished. Homicide is also justifiable when committed in the actual resistance of an attempt to commit a felony upon the person or in his or her presence, or upon or in a dwelling or other place of abode in which he or she is present.

In either circumstance, the person using the force may employ only such force and means as a reasonably prudent person would use under the same or similar conditions, taking into consideration all of the facts and circumstances known to the person at the time of the incident. The force used may not be more than is necessary. The prosecution has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful.

*Diminished Capacity.* Most crimes require some degree of culpability as an element of the crime. There are four kinds of culpability defined in the criminal code: intent, knowledge, recklessness, and criminal negligence. The first three kinds of culpability—intent, knowledge, and recklessness—involve a "state of mind." The defense of diminished capacity arises when a defendant claims that a mental illness or disorder deprived him or her of the ability to form the requisite state of mind to commit the crime.

To justify a jury instruction on diminished capacity, a defendant must satisfy three elements: (1) the crime charged must include a particular mental state as an element; (2) the defendant must present evidence of a mental disorder; and (3) expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged.

### **Summary of Engrossed Bill:**

A defendant is not justified in using force, nor can he or she claim 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 the defendant and victim dated or had a romantic or sexual relationship.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill provides that learning someone's gender or sexual orientation is not justification for attacking them, which is sometimes referred to as the "gay panic" or "trans panic" defense.

Unfortunately, there are documented cases in other states where defendants have tried to use these defenses. In one notable case, a person received a lesser conviction for homicide based on claiming "gay panic." It is unclear whether the defenses have been successfully used in Washington. It is hard to document because of the nature of the plea bargaining process.

While it seems easy to express support for lesbian, gay, bisexual, and transgender (LGBT) people conceptually, it is hard for some people to do so in their own lives and interactions. Transgender people in particular experience fear. In one instance, a woman was being harassed and catcalled by men as she walked down the street. When those men discovered she was transgender, the tone changed and they started threatening her. They threatened to rape and murder her. Luckily, a passing motorcyclist stopped and helped. In another instance, a victim was able to get away only because she was skilled in self-defense tactics. These are relatively common experiences that make it difficult to build trusting relationships, and this is only made worse by these kinds of legal defenses. People who are LGBT know that someone could claim "panic" and would therefore be excused for violence.

For some reason, hate crimes are on the rise in Washington. The state has a hate crime rate that is twice the national average. "Panic" defenses place the blame for these crimes onto the victim and rob them of dignity. These defenses rely on the biases of judges and jurors.

California and other states have banned the use of these defenses, and Washington should follow suit. The American Bar Association has also voted in favor of legislation to ban these defenses. Supporting this measure is a way to support the dignity of all people in Washington. Even if someone does not ideologically support LGBT people, they can still abhor violence and support this bill. No one is justified in attacking another person based on the discovery of his or her gender or sexual orientation.

(Opposed) None.

**Persons Testifying:** Representative Stanford, prime sponsor; Dana Savage, QLaw Bar Association; Elayne Wylie, Gender Justice League; and David Ward, Legal Voice.

**Persons Signed In To Testify But Not Testifying:** None.