

Testimony of Nicholas Kapoor
On Senate Bill 58 An Act Concerning Gay and Transgender Panic Defense
Before the Judiciary Committee
March 29, 2019

Chairman Stafstrom, Chairman Winfeld, Ranking Member Rebimbas, Ranking Member Kissel and distinguished members of the Judiciary Committee, my name is Commissioner Nicholas Kapoor and I urge you today to support Senate Bill 58 – An Act Concerning Gay and Transgender Panic Defense. I serve as a Commissioner on the Commission on Human Rights and Opportunities.

In 1999, Matthew Shepard was beaten and tortured in Laramie, Wyoming. He died from this attack. Matthew Shepherd was a college student at the University of Wyoming. He was 21 years old. His attackers, Aaron McKinney and Russell Henderson were put on trial for his murder. Their defense attorney, Jason Tangeman, admitted in his opening statement that his clients did in fact “beat Shepard and left him for dead” however such actions were not unreasonable because Shepherd made sexual advances at them and sent the killers into a “fit of uncontrollable homicidal rage.”¹ This is the gay panic defense and it has no place in our society.

I believe that the foremost responsibility of government is to protect its citizens. One way in which a government can protect its citizens is to not allow inane and prejudicial defenses of accused defendants seeking leniency for attacking LGBTQ+ citizens. Tomei, et al. lay out a comprehensive overview of the gay panic defense, “Gay panic refers to a heterosexual individual losing control and violently responding to unwanted sexual advances from a gay man. In court, the defendant may argue he was provoked by the gay advance or became temporarily insane as a result.”² Williams also succinctly states this legal tool, the gay panic defense is “a defense used to mitigate or excuse the killing of another person based on that person's actual or perceived sexual orientation or sexual identity.”³

The study conducted by Tomei, et al. found in an experiment that “participants higher in homonegativity assigned higher victim blame, lower defendant responsibility, and more lenient

¹ Williams, Joseph R. 2015. “‘I Don’t Like Gays, Okay?’: Use of the ‘Gay Panic’ Murder Defense in Modern American Courtrooms; the Ultimate Miscarriage of Justice.(Wrongful Convictions: Understanding and Addressing Criminal Injustice).” *Albany Law Review* 78 (3).

This article is extremely comprehensive in nature and is a great tool to anyone who would like to learn more about the gay panic defense and its atrocious reputation.

² Tomei, Jenna, Cramer, Robert J, Boccaccini, Marcus T, Panza, Nancy Ryba, and Tomei, Jenna. 2017. “The Gay Panic Defense: Legal Defense Strategy or Reinforcement of Homophobia in Court?” *Journal of Interpersonal Violence*, June, <https://doi.org/10.1177/0886260517713713>.

³ Williams, 2015.

verdicts in the gay panic conditions.” This implies that those who have personal beliefs that are negative in nature toward homosexual people believe that a particular homosexual person making an advance should be blamed more than the person who attacks that homosexual person. This is completely backwards. No one should be able to physically harm someone else because the knowledge that a person is gay made a potential attacker “snap” and become “temporarily insane.”

Moreover, in our society today young people express their sexual orientation and gender identity more freely than ever before. LGBTQ+ people, like myself, are proud to be members of the community and should in no way, shape, or form be hindered from expressing themselves. Just because someone is an LGBTQ+ person does not mean they should make advances that are unwanted. However, if they do, it is not justified for someone to attack this person and use the gay panic defense to get away with it. A physical attack is a physical attack. We have exceptions in law that allow physical attacks to be lawful – self-defense is an example. The gay panic defense should not be a lawful exception for defending attacking another person. Also, the gay panic defense dilutes and weakens the validity of a real and relevant insanity defense.

I am shocked by the low number of states that have adopted a ban against this legal defense. According to *The LGBT Bar*⁴ only three states (California, Illinois, and Rhode Island) have outlawed this weak and discriminatory defense. A bill in Congress has been introduced to eradicate the gay and transgender panic defense nationwide, but as is the case with many pieces of federal legislation, it is stalled. And similar to many important issues of public policy, when Congress will not act, the states must.

Jay Michaelson asked in an article in *The Daily Beast* in 2018, “Is it ever reasonable to kill someone because you find out they are gay or transgender?”⁵ The unequivocal answer to that question is no. The Connecticut General Assembly, with this bill, has the ability to definitively answer this question for the Connecticut Judicial System.

And so, I strongly urge you to support Senate Bill 58 to enhance the protections of the LGBTQ+ community in Connecticut, make justice more equitable and our lives safer in all of our communities.

⁴ <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/>

⁵ Jay Michaelson. 2018. “Will States Finally Dump the ‘Gay Panic’ and ‘Trans Panic’ Defenses in 2018? Is It Ever Reasonable to Kill Someone Because You Find Out They Are Gay or Transgender? It’s a Legal Defense in Many States-but Activists Are Campaigning to Eliminate It This Year.” *The Daily Beast*, January 2, 2018.