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Title: Resolution calling on the New York State Assembly to pass and the Governor to sign the Michael Sandy Act, which limits the admissibility of evidence of a defendant and victim falling under the same protected category in hate crime cases.

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Res. No. 1936

Resolution calling on the New York State Assembly to pass and the Governor to sign the Michael Sandy Act, which limits the admissibility of evidence of a defendant and victim falling under the same protected category in hate crime cases.

By Council Members Dromm, Brewer, Chin, Fidler, James, Lander, Mendez, Palma and Rodriguez

Whereas, Hate crimes continue to plague New York City and State as evidenced by the May 2013 anti-gay murder of Marc Carson, who was shot at point-blank range as he was enjoying an evening in Manhattan with his friends; and

Whereas, According to the Hate Crime in New York State 2011 Annual Report released in October 2012 by the New York State Division of Criminal Justice Services (“DCJS”), there were 554 reported hate crime incidents in New York State during 2011; and

Whereas, Additionally, according to DCJS’s report, the most frequently reported bias motivation for hate crimes against individuals in New York State in 2011 was against gay men, comprising 25.2%; and

Whereas, In 2000, New York State enacted the Hate Crimes Act of 2000, establishing that an individual commits a hate crime when he or she selects the victim based on the victim's actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, disability or sexual orientation; and

Whereas, The Hate Crimes Act of 2000 is important in that it uses enhanced penalties to send a reassuring message to all other self-identified members of the impacted community; and

Whereas, The prosecution of anti-lesbian, gay, bisexual, and transgender ("LGBT") crimes poses its own set of challenges given the complex nature of sexual orientation and society's understanding of it; and

Whereas, These challenges were highlighted in a 2007 trial in which, according to the *New York Times*, the defendants were accused of searching on a website for a gay man to victimize, deciding upon Michael Sandy, luring him to an isolated location, then proceeding to beat and rob him, and ultimately chasing him into traffic on the Belt Parkway where he was fatally struck by a sports utility vehicle; and

Whereas, According to *New York Magazine*, a group of four men was charged with, and went on trial for, various offenses with hate crime enhancements since they had selected their victim based on his sexual orientation; and

Whereas, According to *New York Magazine*, the lawyer for Anthony Fortunato, one of the defendants, claimed that his client was gay, seemingly in an attempt to use his sexual orientation as a shield from a hate crime conviction; and

Whereas, Such evidence is irrelevant to a conviction under the Hate Crimes Act of 2000 and unduly confused jurors into thinking that Fortunato could not have targeted Michael Sandy if Fortunato himself was gay; and

Whereas, According to a 1996 study published by the American Psychological Association linking homophobia with homosexual arousal in that the negative view stems from the homophobe's guilt about his or her own feelings and struggle to suppress them, the perpetrator and the victim sharing the same sexual orientation can actually motivate the perpetrator to commit a hate crime; and

Whereas, Many jurors may not have sufficient knowledge of LGBT issues to understand that Fortunato's struggles with his own purported sexual orientation could have made him more likely to target Michael Sandy; and

Whereas, A.7549, also known as the Michael Sandy Act, currently pending in the New York State Assembly, seeks to amend the criminal procedure law by prohibiting the admissibility of evidence used by defendants to show that they and the victim identify with the same protected category of the Hate Crimes Act; and

Whereas, The Michael Sandy Act prohibits such tactics while allowing the court to make exceptions through separate hearings out of earshot of the jury but only if the judge determines the information is absolutely necessary to evaluate the case; and

Whereas, Although suspects continue to be prosecuted for hate crimes, there is a fear that this dubious defense tactic will continue to be used unless the Michael Sandy Act is passed; now, therefore, be it

Resolved, That the Council of the City of New York calls on the New York State Assembly to pass and the Governor to sign the Michael Sandy Act, which limits the admissibility of evidence of a defendant and victim falling under the same protected category in hate crime cases.

WJH
LS 4862
7/15/13