



Legislation Text

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Res. No. 510

Resolution calling upon the New York State Legislature to pass, and Governor to sign, S.50/A.5001, which would prohibit gay and transgender panic defenses in criminal proceedings.

By Council Members Dromm, The Speaker (Council Member Johnson), Menchaca, Torres, Van Bramer and Constantinides

Whereas, In criminal proceedings, defenses known as “gay panic” and “trans panic” provide individuals who violently assault or murder persons who identify as lesbian, gay, bisexual, or transgender (LGBT) with reasonable justifications for their criminal conduct under the theories of provocation, insanity/diminished capacity, and self-defense; and

Whereas, According to an American Bar Association report, such defenses, which allow perpetrators to claim that their psychological fear of homosexuality, or “homosexual panic disorder,” led them to kill an LGBT person, have been discredited, particularly in light of the removal of “homosexual panic disorder” from the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* in 1973; and

Whereas, The legal field has not caught up with advances in the medical field, as persons who kill an LGBT individual continue to invoke variations of the defense, especially provocation, in criminal proceedings, according to the same American Bar Association report; and

Whereas, The gay and trans panic defenses permit perpetrators to receive a lesser sentence and, in some cases, avoid conviction and punishment by placing the blame for homicide squarely on the victim’s sexual orientation or gender identity, according to a study from the Williams Institute at University of California, Los Angeles (UCLA) School of Law; and

Whereas, LGBT people have historically faced disproportionately high rates of violence because of

their sexual orientation or gender identity; and

Whereas, The gay and trans panic defenses are deeply rooted in homophobia, transphobia, and anti-gay stereotypes, and these defenses may play on jurors' innate biases towards the LGBT community and impact their decision-making, according to research from the American Psychological Association and *Journal of Forensic Psychology Practice*; and

Whereas, The gay and trans panic defenses have appeared in court opinions in nearly one-half of the states, including New York, since the 1960s, according to the study from the Williams Institute; and

Whereas, In 2013, the American Bar Association unanimously approved a resolution calling for federal, state, local, and territorial governments to abolish gay and trans panic defenses through legislation; and

Whereas, California and Illinois are the only states in the country to pass legislation prohibiting gay and trans panic defenses in court since the American Bar Association adopted the resolution; and

Whereas, In February 2018, Governor Andrew Cuomo included in his executive budget an amendment banning gay and trans panic defenses, which the New York State Legislature stripped from the budget before it was adopted into law; and

Whereas, In 2013, James Dixon murdered Islan Nettles, a transgender women, on a New York City street because of her gender identity and was sentenced to twelve years in prison on manslaughter charges, which advocates argued was a lenient prison sentence because of the trans panic defense; and

Whereas, The gay and trans panic defenses are not codified under the Penal Law of New York State but are invoked, albeit rarely, as a reasonable explanation or excuse when using New York State's extreme emotional disturbance defense to murder in the second degree; and

Whereas, The discovery of someone's sexual orientation or gender identity, even when accompanied by an unwanted, non-violent sexual advance, is never a reasonable explanation or excuse for violence; and

Whereas, S.50, introduced by State Senator Brad Holyman, and companion bill A.5001, introduced by State Assemblyperson Daniel O'Donnell, would prohibit the use of gay and trans panic defenses in court; and

Whereas, The gay and trans panic defenses have no place in criminal proceedings and run afoul of New York's hate crime legislation adopted nearly two decades ago, which increased criminal penalties for specified offenses that are motivated by bias against LGBT people and other protected classes; and

Whereas, New York City is celebrated as the birthplace of the LGBT civil rights movement and continues to be a progressive leader by increasing protections for LGBT individuals through legislation and executive action; and, now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and Governor to sign, S.50/A.5001, which would prohibit gay and transgender panic defenses in criminal proceedings.

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