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Calif. Advances Bill Aimed at Stopping 'Gay Panic' Defense

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California has advanced legislation that would ban the use of a “gay panic” or “trans panic” defense to escape murder charges, with the State Assembly approving it this week and

Larry King (left) and Brandon McInerney sending it on to the Senate.

State law currently defines killings arising from a “sudden quarrel” or committed in the “heat of passion” as voluntary manslaughter rather than murder. The bill approved by the Assembly adds the following language: “for purposes of determining sudden quarrel or heat of passion, the provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or potential disclosure of the victim’s or defendant’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 if the defendant and victim dated or had a romantic or sexual relationship.”

Panic defenses have come up in some high-profile trials in California. In the 2011 trial of teenager Brandon McInerney for the slaying of gay schoolmate Larry King, defense attorneys employed what some saw as a gay panic defense, noting King’s flirtation with McInerney. A mistrial was declared, with jurors unable to agree on a first-degree murder, second-degree murder, or voluntary manslaughter verdict. McInerney subsequently agreed to plead guilty to second-degree murder and voluntary manslaughter, for which he was sentenced to 21 years in prison. A panic defense was also used in the trial of the men who killed Gwen Araujo, a young woman beaten to death in 2002 by assailants who had discovered she was transgender. Two men were convicted of second-degree murder in the Araujo case and sentenced to life in prison, while two others pleaded guilty to lesser charges and served shorter sentences.

After Araujo’s murder, California lawmakers considered legislation that would prohibit the use of panic defenses, but it was amended to only require the court to instruct jurors that their verdict should not be influenced by bias against a victim. It was passed by the legislature and

signed into law by Gov. Arnold Schwarzenegger in 2006.

The current bill is authored by Assembly member Susan Bonilla and sponsored by Equality California, a statewide LGBT rights group. It also has the backing of California attorney general Kamala Harris. The Assembly approved it Wednesday by a vote of 50-18, with 11 members abstaining. The bill now moves to the State Senate, where it has been assigned to the Rules Committee.

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