

A CEREMONIAL RESOLUTION

23-344

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 1, 2020

To commit to furthering equality and combatting hate crimes for all District residents in light of the District of Columbia's prohibition of the LGBTQ+ panic defense and to honor the memory of Matthew Shepard.

WHEREAS, B23-0409, the "Bella Evangelista and Tony Hunter Panic Defense Prohibition and Hate Crimes Response Amendment Act of 2020", will be brought to the full Council for a vote on December 1, 2020;

WHEREAS, B23-0409 will, *inter alia*, limit the scope of the defenses of heat of passion caused by adequate provocation, insanity, self-defense, defense of others, and defense of property if certain elements of the defense are based on the victim's actual or perceived gender identity, gender expression, or sexual orientation;

WHEREAS, in the 1998 murder of Matthew Shepard – a 21-year old college student at the University of Wyoming in Laramie, Wyoming – the defendants attempted to use the provocation defense to justify their torture and murder of Shepard. Fortunately, in the state of Wyoming, irresistible impulse is not a defense allowed under the statutory insanity defense construct. The LGBTQ+ panic defense was deemed inadmissible, not due to the illegitimacy of the LGBTQ+ panic defense, but instead due to Wyoming's statutory insanity defense construct;

WHEREAS, had Matthew Shepard not been murdered in 1998, December 1, 2020, would have been his 44th birthday;

WHEREAS, a defendant may allege to have found the same-sex sexual advances or victim's identity or expression so offensive or frightening that they were provoked into reacting, were acting in self-defense, were of diminished capacity, or were temporarily insane, and that this circumstance should be exculpatory or mitigating;

WHEREAS, the LGBTQ+ panic defense legal strategy asks a judge or jury to find that a victim's sexual orientation, gender identity, or expression is to blame for the defendant's violent reaction, including murder, and is rooted in homophobia and transphobia and legitimizes and excuses violent and lethal behavior against members of the LGBTQ+ community;

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WHEREAS, by a defendant's request to be acquitted of crimes against LGBTQ+ victims because of the victims' sexual orientation, gender identity, or gender expression, these defenses imply that LGBTQ+ lives are worth less than others' or worthy of being feared. As long as the LGBTQ+ "panic" defense is available to a defendant, prejudices against LGBTQ+ District residents are normalized and justified;

WHEREAS, in the United States, the LGBTQ+ community makes up an estimated 3.5% of the total population, yet the LGBTQ+ community is vastly overrepresented in hate crime statistics. In 2017, sexual orientation ranked as the third highest "motivator" for hate crime incidents at 17% of total attacks – a 4% percent increase from 2016 – behind race (51%) and religion (18%). In 2017, there were 1,249 recorded hate crimes against people for their sexual orientation and gender identity;

WHEREAS, over the course of lesbian, gay, or bisexual people's lifetimes, one in five will experience a hate crime, and one in four transgender people will as well. Those individuals who experience the intersection of homophobia, transphobia, and racism face a higher likelihood. Between 2013 and 2017, of the 102 known transgender people killed in hate crimes in the United States, 75 were Black or African American;

WHEREAS, bias-motivated crimes are especially harmful to a victim's mental health. Victims of crimes that are bias-motivated are more likely to experience post-traumatic stress, safety concerns, depression, anxiety, and anger than are victims of crimes that are not motivated by bias. Furthermore, bias-motivated crimes affect not only the specific person victimized, as they send messages to members of the victim's community that they are unwelcome and unsafe;

WHEREAS, because of the unique harms caused by bias-motivated crimes, the federal government and many states have enacted laws that treat these crimes differently than offenses committed without bias. However, so far only 11 jurisdictions have legislated against "panic" defenses to defendants accused of bias-motivated crimes. Since 2014, LGBTQ+ panic defense as a legal strategy has been banned in California, Illinois, Rhode Island, Connecticut, Hawaii, Maine, Nevada, New York, New Jersey, Washington, and Colorado;

WHEREAS, on June 5, 2019, Senator Edward Markey (D-MA) and Congressman Joe Kennedy III (D-MA) introduced S.1721 and H.R.3133, respectively, the Gay and Trans Panic Defense Prohibition Acts of 2019, in the United States Senate and House of Representatives, which would end the use of the LGBTQ+ panic defense;

WHEREAS, the LGBTQ+ panic defense remains legally admissible in 39 states;

WHEREAS, according to the current research of W. Carsten Andresen, a criminal justice scholar at St Edward's University in Austin, Texas, in 104 cases identified nationwide, defense attorneys who enter LGBTQ+ panic defenses reduced a defendant's murder charge 32% of the time;

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WHEREAS, Professor Andresen’s research further found that offenders in these cases killed the victims in particularly violent ways, most often using a knife or their hands to kill and only using firearms about 26% of the time;

WHEREAS, with the passage of B23-0409, those who commit violence against members of the LGBTQ+ community will no longer be able to escape criminal liability for their violent acts, and that LGBTQ+ District residents will enjoy the full protection of the law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Furthering Equality and the Prohibition of the LGBTQ+ Panic Defense Ceremonial Recognition Resolution of 2020”.

Sec. 2. The Council of the District of Columbia recognizes the important step of eliminating the LGBTQ+ panic defense to protect vulnerable communities and further the safety of LGBTQ+ persons in the District.

Sec. 3. This resolution shall take effect immediately.