



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2418/1
CMH:amn

2021 ASSEMBLY BILL 470

July 26, 2021 - Introduced by Representatives NEUBAUER, CABRERA, NOVAK, SNODGRASS, SPREITZER, ANDERSON, ANDRACA, BALDEH, BILLINGS, BOWEN, BROSTOFF, CONLEY, CONSIDINE, EMERSON, GOYKE, HEBL, HESSELBEIN, HONG, MCGUIRE, OHNSTAD, POPE, RIEMER, S. RODRIGUEZ, SHANKLAND, SINICKI, SHELTON, STUBBS, SUBECK and VINING, cosponsored by Senators CARPENTER, AGARD, JOHNSON, LARSON, ROYS and SMITH. Referred to Committee on Judiciary.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 971.15 (2); and *to create* 939.44 (3), 939.48
2 (5m) and 971.15 (2) (b) of the statutes; **relating to:** eliminating criminal
3 defenses of adequate provocation, self-defense, or not guilty by reason of
4 mental disease or defect if the claim is based on the victim's gender identity or
5 sexual orientation.

Analysis by the Legislative Reference Bureau

Current law provides specific defenses to criminal liability. For instance, a charge of first-degree intentional homicide may be mitigated to second-degree intentional homicide if, at the time of committing the crime, the defendant reasonably believes the victim has done something that adequately provokes the defendant to lack self-control completely. Another defense is the privilege of self-defense under which a person may threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by the other person. Under this bill, a defendant may not assert adequate provocation or self-defense as a defense if the criminal action in question resulted from the discovery of, knowledge about, or potential disclosure of the victim's gender identity or expression or sexual orientation, including under circumstances in which the victim made a romantic or sexual advance without use or threat of force or violence toward the defendant.

Under current law, a person is not responsible for criminal conduct if, when the person committed the conduct, he or she was suffering from a mental disease or

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defect so that he or she lacked substantial capacity either to appreciate the wrongfulness of the conduct or to conform his or her conduct to the requirements of law. To raise this defense, a defendant must plead not guilty by reason of mental disease or defect. Then, at the trial, if the defendant is found guilty of the crime, the court must then determine if the person is not responsible for the crime due to mental disease or defect. If the person is found not responsible due to mental disease or defect, the person is committed to the Department of Health Services for treatment for a period that varies depending on the severity of the crime. Under this bill, mental disease or defect does not include a state that is brought on by or results from the discovery of, knowledge about, or potential disclosure of another's gender identity or expression or sexual orientation, including under circumstances in which the other person made a romantic or sexual advance without use or threat of force or violence toward the defendant.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 939.44 (3) of the statutes is created to read:

2 939.44 (3) Provocation is not adequate under this section if it resulted from the
3 discovery of, knowledge about, or potential disclosure of the victim's actual or
4 perceived gender, gender identity, gender expression, or sexual orientation,
5 including under circumstances in which the victim made a romantic or sexual
6 advance without use or threat of force or violence towards the defendant or if the
7 defendant and victim dated or had a romantic or sexual relationship.

8 **SECTION 2.** 939.48 (5m) of the statutes is created to read:

9 939.48 (5m) A person is not entitled to claim the privilege of self-defense based
10 on the discovery of, knowledge about, or potential disclosure of the victim's actual or
11 perceived gender, gender identity, gender expression, or sexual orientation,
12 including under circumstances in which the victim made a romantic or sexual
13 advance without use or threat of force or violence towards the person or if the person
14 and victim dated or had a romantic or sexual relationship.

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1 **SECTION 3.** 971.15 (2) of the statutes is renumbered 971.15 (2) (intro.) and
2 amended to read:

3 971.15 **(2)** (intro.) As used in this chapter, the terms “mental disease or defect”
4 do not include ~~an~~ any of the following:

5 (a) An abnormality manifested only by repeated criminal or otherwise
6 antisocial conduct.

7 **SECTION 4.** 971.15 (2) (b) of the statutes is created to read:

8 971.15 **(2)** (b) A state brought on by or resulting from the discovery of,
9 knowledge about, or potential disclosure of an individual’s actual or perceived
10 gender, gender identity, gender expression, or sexual orientation, including under
11 circumstances in which an individual made a romantic or sexual advance without
12 use or threat of force or violence towards the actor or if the actor and the individual
13 dated or had a romantic or sexual relationship

14 **SECTION 5. Initial applicability.**

15 (1) This act first applies to offenses committed on the effective date of this
16 subsection.

17 **(END)**