

Amendment No. 129

Senate Amendment to Senate Bill No. 97	(BDR 15-559)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No Preamble: Amend Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION	Initial and Date		SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>
Receded <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BAW



Date: 4/4/2019

S.B. No. 97—Prohibits use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim.
(BDR 15-559)



SENATE BILL NO. 97—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA YOUTH LEGISLATURE)

PREFILED JANUARY 24, 2019

Referred to Committee on Judiciary

SUMMARY—Prohibits use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim. (BDR 15-559)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; prohibiting the use in a criminal case of certain defenses based on the sexual orientation or gender identity or expression of the victim; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that if a person commits certain crimes because of the actual or perceived sexual orientation or gender identity or expression of a victim: (1) the person who committed the crime is subject to an additional penalty; (2) unless a greater penalty is provided by law, the person who committed the crime is guilty of a gross misdemeanor; and (3) a person injured by the crime may bring a civil action against the person who committed the crime. (NRS 41.690, 193.1675, 207.185) Existing law also requires the Director of the Department of Public Safety to establish a program for reporting crimes that is designed to collect, compile and analyze statistical data about crimes that manifest evidence of prejudice based on sexual orientation or gender identity or expression. (NRS 179A.175)

This bill provides that: (1) for the purpose of determining the existence of an alleged state of passion in a defendant or the alleged provocation of a defendant by a victim, the alleged state of passion or provocation shall be deemed not to be objectively reasonable if it resulted from the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim; **and** (2) ~~if a defendant does not suffer from reduced mental capacity based on the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim; and (3)~~ a person is not justified in using force against another person based on the discovery of, knowledge about or potential disclosure of the actual or perceived sexual orientation or gender identity or expression of the victim.

WHEREAS, The American Bar Association has urged legislative action to curtail the availability and effectiveness of the “gay panic” and “trans panic” defenses, which seek to partially or completely excuse a defendant from full accountability for the commission of a violent crime on the grounds that the sexual

1 orientation or gender identity or expression of the victim is sufficient to arouse a
2 state of passion in the defendant ~~and~~ or serve as valid provocation or justification for
3 the violent reaction of the defendant ; ~~for reduce the mental capacity of the~~
4 ~~defendant~~ and

5 WHEREAS, “Gay panic” and “trans panic” legal defenses, which continue to be
6 raised in criminal cases in courts across the United States, are surprisingly long-
7 lived, historical artifacts and remnants of a time when widespread public antipathy
8 was the norm for lesbian, gay, bisexual and transgender persons; and

9 WHEREAS, “Gay panic” and “trans panic” defenses characterize sexual
10 orientation or gender identity or expression as objectively reasonable excuses for
11 loss of self-control and thereby illegitimately mitigate the responsibility of a
12 defendant for harm done to lesbian, gay, bisexual and transgender persons; and

13 WHEREAS, “Gay panic” and “trans panic” defenses appeal to irrational fears
14 and hatred of lesbian, gay, bisexual and transgender persons, thereby undermining
15 the legitimacy of criminal prosecutions and resulting in unjustifiable acquittals or
16 sentencing reductions; and

17 WHEREAS, The use of “gay panic” and “trans panic” defenses is entirely
18 incompatible with the express intent of Nevada law to provide increased protection
19 to victims of bias-motivated crimes, including crimes committed against lesbian,
20 gay, bisexual and transgender persons; and

21 WHEREAS, Continued use of these anachronistic defenses reinforces and
22 institutionalizes prejudice at the expense of norms of self-control, tolerance and
23 compassion, which the law should encourage, and marks an egregious lapse in the
24 march toward a more just criminal justice system; and

25 WHEREAS, To end the antiquated notion that the lives of lesbian, gay, bisexual
26 and transgender persons are worth less than the lives of other persons and to reflect
27 a modern understanding of lesbian, gay, bisexual and transgender persons as equal
28 to other persons under the law, the use of “gay panic” and “trans panic” defenses
29 must end; now, therefore,

30
31 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
32 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
33

34 **Section 1.** Chapter 193 of NRS is hereby amended by adding thereto a new
35 section to read as follows:

36 *1. For the purpose of determining the existence of an alleged state of*
37 *passion in a defendant or the alleged provocation of a defendant by a victim, the*
38 *alleged state of passion or provocation shall be deemed not to be objectively*
39 *reasonable if it resulted from the discovery of, knowledge about or potential*
40 *disclosure of the actual or perceived sexual orientation or gender identity or*
41 *expression of the victim, including, without limitation, under circumstances in*
42 *which the victim made an unwanted nonforcible romantic or sexual advance*
43 *towards the defendant, or if the defendant and victim dated or had a romantic or*
44 *sexual relationship.*

45 ~~*2. [A defendant does not suffer from reduced mental capacity based on the*~~
46 ~~*discovery of, knowledge about or potential disclosure of the actual or perceived*~~
47 ~~*sexual orientation or gender identity or expression of the victim, including,*~~
48 ~~*without limitation, under circumstances in which the victim made an unwanted*~~
49 ~~*nonforcible romantic or sexual advance towards the defendant, or if the*~~
50 ~~*defendant and victim dated or had a romantic or sexual relationship.*~~

51 ~~*— 3— A person is not justified in using force against another person based on*~~
52 ~~*the discovery of, knowledge about or potential disclosure of the actual or*~~
53 ~~*perceived sexual orientation or gender identity or expression of the victim,*~~

1 *including, without limitation, under circumstances in which the victim made an*
2 *unwanted nonforcible romantic or sexual advance towards the defendant, or if*
3 *the defendant and victim dated or had a romantic or sexual relationship.*