

Senate Judiciary Committee

Matthew Schelzi 271-3266

HB 315, prohibiting provocation based on the defendant's religion, race, creed, sexual orientation, national origin, political beliefs or affiliation, sex, or gender identity.

Hearing Date: April 18, 2023

Time Opened: 1:39 p.m.

Time Closed: 1:54 p.m.

Members of the Committee Present: Senators Carson, Abbas, Whitley and Chandley

Members of the Committee Absent: Senator Gannon

Bill Analysis: This bill prohibits provocation based on the defendant's religion, race, creed, sexual orientation, national origin, political beliefs or affiliation, sex, or gender identity.

Sponsors:

Rep. Filiault

Rep. Toll

Rep. Kuttab

Sen. Perkins Kwoka

Who supports the bill: In total, **68** individuals signed in, in support of HB 315. The full sign in sheets are available upon request to the Legislative Aide, Matthew Schelzi.

Who opposes the bill: None.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Shaun Filiault said the bill seeks to abolish the gay panic defense and allow New Hampshire to join 16 other jurisdictions that have abolished the practice. He said the gay panic defense is a common law partial defense to murder. He said it is a provocation defense in which the defendant argues that he was so overcome by the victims same-sex temptations that he was unable to control his conduct and kill the victim in the heat of passion. He believed this defense turns the law on its head because it engages in victim blaming. It gives the perception that gay lives are not as valuable because there is no straight panic defense. He said as a society we can do better. He noted since 2013 the American Bar Association has recommended that all jurisdictions abolish the gay panic defense. He said the gay panic defense has been used nationally. A Virginia jury acquitted a man who killed a gay man simply because he flirted with the killer. He said between 2000 and 2019, 101 defendants have

invoked the gay panic defense, six have been acquitted and forty-two have had their charges downgraded from murder to manslaughter. He said this defense has worked, but it shouldn't as it plays on hatred and bias. He said the amended version expands the provocation defense to other demographics and identities.

Representative Katelyn Kuttub said she supports this bill. She listed numerous cases around the country where the gay panic defense was used. She said similar legislation has been enacted in 16 other states and she believes New Hampshire should join them.

Justin Bagoyo, a law student, said currently a defendant can use their hostility towards a certain group of people as a defense for a provocation to get a lesser charge. He noted this is not a reasonable defense because it lets citizens set their own standards for the use of deadly force. He said this defense is extremely offensive and demeaning to the victims. He said New Hampshire and Massachusetts are the only two states in New England that still have the gay panic defense. He said passing this legislation protects people like him, as a gay man, and it will give him piece of mind that elected officials agree that all lives matter and all people are equal under the law. He urged the Committee to support HB 315.

Sam Hawkins, Public Policy Assistant at NAMI NH, said they are in support of the bill as amended. He noted that sexual and gender minorities are almost three times as likely to be the victim of a violent crime. He said the CDC has acknowledged the impact of violence on LGBTQ health. The CDC has said that gay, lesbian or bisexual youth are 140% more likely to skip at least one day of school each month out of fear for their safety, and that 10% of these students were threatened or injured at school. He noted that violence has a significant impact on an individual's mental health. He urged the Committee to support the bill.

Senator Carson said she is troubled to see the statistics from the CDC that gay, lesbian or bisexual students are 140% more likely to skip a day of school each month out of fear for their safety. She asked how this bill will stop the LGBTQ community from being attacked.

Mr. Hawkins said that he doesn't believe the violence towards these individuals would be directly impacted by the bill, but other avenues would need to be addressed.

Senator Carson said that women have always had to be careful of where they go, and women have laws to protect them, but violence still happens. She didn't know if this bill would help the community from violence. She asked how we can stop the attacks in the first place.

Mr. Hawkins believed that is a culture issue, and that people need to know they are protected and safe.

Senator Whitley stated that the purpose of a criminal code is to serve as a deterrent. She said the elimination of the gay panic defense is another tool to deter violence if the perpetrators know they won't get any leniency. She believed this would be one tool to reduce violence.

Mr. Hawkins said he would agree with that summation.

Summary of testimony presented in opposition: None.

Neutral Information Presented: None.

mjs

Date Hearing Report completed: April 19, 2023