

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-1062.01 Michael Dohr x4347

HOUSE BILL 20-1307

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HOUSE SPONSORSHIP

Herod and Soper,

SENATE SPONSORSHIP

Tate and Bridges,

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING BANNING THE USE OF A PANIC DEFENSE UNLESS A PARTY  
102 CAN SHOW ITS RELEVANCE TO THE COURT.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill states that generally evidence relating to the discovery of, knowledge about, or potential disclosure of the victim'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 toward the defendant, or if the defendant and victim are or have been involved in an intimate

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

relationship is irrelevant in a criminal case and does not constitute sudden heat of passion in a criminal case. The bill creates a protective hearing if a party claims that such evidence is relevant and wants to use it in a criminal case.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1. Legislative declaration.** The general assembly  
3 hereby finds and declares that it is the right of every crime victim to be  
4 protected from bias-motivated crimes, including crimes against lesbian,  
5 gay, bisexual, and transgender persons. The general assembly further  
6 finds and declares that it is the right of every victim and witness to be  
7 treated with respect and protected from unfair attack on their character  
8 and privacy. So-called "gay panic" and "trans panic" defenses seek to  
9 partially or completely excuse a defendant from full accountability for the  
10 commission of a violent crime on the grounds that the sexual orientation  
11 or gender identity or expression of the victim is sufficient in itself to  
12 arouse the heat of passion in the defendant, or contribute to a valid  
13 provocation or justification for the violent reaction of the defendant, or  
14 cause the defendant to be temporarily insane. In other contexts, a victim's  
15 or witness's gender identity or expression or sexual orientation is used to  
16 attack their credibility and character and invade their privacy, creating  
17 disincentives to testify and impediments to the search for truth and  
18 justice. These tactics appeal to irrational fears and hatred of these persons,  
19 undermining the legitimacy of criminal prosecutions and resulting in  
20 unjustifiable acquittals or sentencing reductions due to bias, fear, shock,  
21 or disgust rather than competent evidence. Continued use of these  
22 anachronistic defenses and appeals to reinforce bias and institutionalize  
23 prejudice at the expense of norms of self-control, tolerance, and

1 compassion, which the law should encourage, and it is an impediment to  
2 a just criminal justice system. Any suggestion of legally sanctioned  
3 discrimination against a person's sexual orientation or gender identity or  
4 expression must end. As the American Bar Association has urged  
5 legislative action to curtail the availability and effectiveness of "gay  
6 panic" and "trans panic" defenses, the general assembly brings forth this  
7 legislation.

8 **SECTION 2.** In Colorado Revised Statutes, 16-8-101.5, **amend**  
9 (2) as follows:

10 **16-8-101.5. Insanity defined - offenses committed on and after**  
11 **July 1, 1995 - definitions.** (2) As used in subsection (1) of this section:

12 (a) "Diseased or defective in mind" does not refer to an  
13 abnormality manifested only by repeated criminal or otherwise antisocial  
14 conduct. EVIDENCE OF KNOWLEDGE OR AWARENESS OF THE VICTIM'S  
15 ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION,  
16 OR SEXUAL ORIENTATION SHALL NOT CONSTITUTE INABILITY TO  
17 DISTINGUISH RIGHT FROM WRONG.

18 (b) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE  
19 SAME MEANING AS IN SECTION 18-1-901 (3)(h.5).

20 ~~(b)~~ (c) "Mental disease or defect" includes only those severely  
21 abnormal mental conditions that grossly and demonstrably impair a  
22 person's perception or understanding of reality and that are not  
23 attributable to the voluntary ingestion of alcohol or any other  
24 psychoactive substance but does not include an abnormality manifested  
25 only by repeated criminal or otherwise antisocial conduct.

26 (d) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS IN  
27 SECTION 18-9-121 (5)(b).

1           **SECTION 3.** In Colorado Revised Statutes, 18-1-704, **amend**  
2 (3)(b) and (3)(c); and **add** (3)(d) and (5) as follows:

3           **18-1-704. Use of physical force in defense of a person -**  
4 **definitions.** (3) Notwithstanding the provisions of subsection (1) of this  
5 section, a person is not justified in using physical force if:

6           (b) He OR SHE is the initial aggressor; except that his OR HER use  
7 of physical force upon another person under the circumstances is  
8 justifiable if he OR SHE withdraws from the encounter and effectively  
9 communicates to the other person his OR HER intent to do so, but the latter  
10 nevertheless continues or threatens the use of unlawful physical force; ~~or~~

11           (c) The physical force involved is the product of a combat by  
12 agreement not specifically authorized by law; OR

13           (d) THE USE OF PHYSICAL FORCE AGAINST ANOTHER IS BASED ON  
14 THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF  
15 THE VICTIM'S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER  
16 EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING UNDER  
17 CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED  
18 NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT,  
19 OR IF THE DEFENDANT AND VICTIM ARE OR HAVE BEEN INVOLVED IN AN  
20 INTIMATE RELATIONSHIP.

21           (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
22 REQUIRES:

23           (a) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE  
24 SAME MEANING AS IN SECTION 18-1-901 (3)(h.5).

25           (b) "INTIMATE RELATIONSHIP" HAS THE SAME MEANING AS IN  
26 SECTION 18-6-800.3.

27           (c) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS IN

1 SECTION 18-9-121 (5)(b).

2 SECTION 4. In Colorado Revised Statutes, **add** 18-1-714 as  
3 follows:

4 **18-1-714. Protective hearing - victim's or witness's gender**  
5 **identity, gender expression, or sexual orientation - definitions.**

6 (1) EVIDENCE OF A VICTIM'S OR WITNESS'S ACTUAL OR PERCEIVED GENDER  
7 IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION OFFERED IN  
8 RELATION TO AN AFFIRMATIVE DEFENSE OR PURSUANT TO RULE 404 OF  
9 THE COLORADO RULES OF EVIDENCE MAY BE ADMISSIBLE ONLY AT TRIAL  
10 AND SHALL NOT BE ADMITTED IN ANY OTHER PROCEEDING EXCEPT AT A  
11 PROCEEDING PURSUANT TO SUBSECTION (2) OF THIS SECTION. AT TRIAL,  
12 EVIDENCE OF A VICTIM'S OR WITNESS'S ACTUAL OR PERCEIVED GENDER  
13 IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION OFFERED IN  
14 RELATION TO AN AFFIRMATIVE DEFENSE OR PURSUANT TO RULE 404 OF  
15 THE COLORADO RULES OF EVIDENCE IS PRESUMED TO BE IRRELEVANT.

16 (2) IN ANY CRIMINAL PROSECUTION, IF EVIDENCE OF A VICTIM'S OR  
17 WITNESS'S ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION,  
18 OR SEXUAL ORIENTATION IS TO BE OFFERED AT TRIAL IN RELATION TO AN  
19 AFFIRMATIVE DEFENSE OR PURSUANT TO RULE 404 OF THE COLORADO  
20 RULES OF EVIDENCE, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

21 (a) A WRITTEN MOTION MUST BE MADE AT LEAST THIRTY-FIVE  
22 DAYS PRIOR TO TRIAL, UNLESS LATER FOR GOOD CAUSE SHOWN, TO THE  
23 COURT AND TO THE OPPOSING PARTIES STATING THAT THE MOVING PARTY  
24 HAS AN OFFER OF PROOF OF THE SPECIFIC FACTUAL RELEVANCY AND  
25 MATERIALITY OF EVIDENCE OF A VICTIM'S OR A WITNESS'S ACTUAL OR  
26 PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL  
27 ORIENTATION;

1           (b) THE WRITTEN MOTION MUST BE ACCOMPANIED BY AN  
2 AFFIDAVIT IN WHICH THE OFFER OF PROOF IS STATED;

3           (c) IF THE COURT FINDS THAT THE OFFER OF PROOF IS SUFFICIENT,  
4 THE COURT SHALL NOTIFY THE OTHER PARTY. IF THE PROSECUTION  
5 STIPULATES TO THE FACTS CONTAINED IN THE OFFER OF PROOF, THE COURT  
6 SHALL RULE ON THE MOTION BASED UPON THE OFFER OF PROOF WITHOUT  
7 AN EVIDENTIARY HEARING. OTHERWISE, THE COURT SHALL SET AN  
8 IN-CAMERA HEARING PRIOR TO TRIAL. IN THE HEARING, TO THE EXTENT  
9 THE FACTS ARE IN DISPUTE, THE COURT MAY ALLOW A PRESENTATION OF  
10 THE OFFER OF PROOF, INCLUDING BUT NOT LIMITED TO THE PRESENTATION  
11 OF WITNESSES.

12           (d) AN IN-CAMERA HEARING MAY BE HELD DURING TRIAL IF  
13 EVIDENCE FIRST BECOMES AVAILABLE AT THE TIME OF THE TRIAL OR FOR  
14 GOOD CAUSE SHOWN;

15           (e) AT THE CONCLUSION OF THE HEARING, OR BY WRITTEN ORDER  
16 IF NO HEARING IS HELD, IF THE COURT FINDS THAT THE EVIDENCE  
17 PROPOSED TO BE OFFERED REGARDING A VICTIM'S OR A WITNESS'S ACTUAL  
18 OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL  
19 ORIENTATION IS RELEVANT TO A MATERIAL ISSUE TO THE CASE, THE COURT  
20 SHALL ORDER THAT EVIDENCE MAY BE INTRODUCED AND PRESCRIBE THE  
21 NATURE OF THE EVIDENCE OR QUESTIONS TO BE PERMITTED. THE MOVING  
22 PARTY MAY THEN OFFER EVIDENCE PURSUANT TO THE ORDER OF THE  
23 COURT.

24           (f) ALL MOTIONS AND SUPPORTING DOCUMENTS FILED PURSUANT  
25 TO THIS SECTION MUST BE FILED UNDER SEAL AND MAY BE UNSEALED  
26 ONLY IF THE COURT RULES THE EVIDENCE IS ADMISSIBLE AND THE CASE  
27 PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE

1 EVIDENCE CONTAINED IN THE MOTION IS ADMISSIBLE, ONLY THAT PORTION  
2 OF THE MOTION AND SUPPORTING DOCUMENTS PERTAINING TO THE  
3 ADMISSIBLE PORTION MAY BE UNSEALED.

4 (g) THE COURT SHALL SEAL ALL COURT TRANSCRIPTS, DIGITAL OR  
5 OTHER RECORDINGS, AND RECORDS OF PROCEEDINGS, OTHER THAN MINUTE  
6 ORDERS, OF A HEARING HELD PURSUANT TO THIS SECTION. THE COURT  
7 MAY UNSEAL THE TRANSCRIPTS, DIGITAL OR OTHER RECORDINGS, AND  
8 RECORDS ONLY IF THE COURT RULES THE EVIDENCE IS ADMISSIBLE AND  
9 THE CASE PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY  
10 PART OF THE EVIDENCE IS ADMISSIBLE, ONLY THE PORTION OF THE  
11 HEARING PERTAINING TO THE ADMISSIBLE EVIDENCE MAY BE UNSEALED.

12 (3) (a) IN ANY CRIMINAL PROSECUTION, THE COURT MAY, AT ANY  
13 TIME UPON MOTION OF THE PROSECUTION OR ON THE COURT'S OWN  
14 MOTION, ISSUE A PROTECTIVE ORDER PURSUANT TO THE COLORADO RULES  
15 OF CRIMINAL PROCEDURE CONCERNING DISCLOSURE OF INFORMATION  
16 RELATING TO THE VICTIM OR WITNESS. THE COURT MAY PUNISH A  
17 VIOLATION OF A PROTECTIVE ORDER BY CONTEMPT OF COURT.

18 (b) THE VICTIM OR WITNESS WHO WOULD BE THE SUBJECT OF THE  
19 PROTECTIVE ORDER MAY OBJECT TO THE MOTION FOR A PROTECTIVE  
20 ORDER.

21 (4) IF EVIDENCE OF A VICTIM'S OR WITNESS'S ACTUAL OR  
22 PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL  
23 ORIENTATION IS ADMITTED AT TRIAL, THE COURT SHALL INSTRUCT THE  
24 JURY TO NOT ALLOW BIAS OR ANY KIND OF PREJUDICE BASED UPON  
25 GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION TO  
26 INFLUENCE ITS DECISION. IF ADMITTED FOR A LIMITED PURPOSE, THE  
27 COURT SHALL FURTHER INSTRUCT THE JURY AS TO THE LIMITED PURPOSE

1 OR PURPOSES FOR WHICH THE EVIDENCE IS ADMITTED AND FOR WHICH THE  
2 JURY MAY CONSIDER IT.

3 (5) THIS SECTION DOES NOT APPLY WHEN EVIDENCE OF A VICTIM'S  
4 ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR  
5 SEXUAL ORIENTATION IS OFFERED IN A CRIMINAL PROSECUTION FOR  
6 BIAS-MOTIVATED CRIME AS DESCRIBED IN SECTION 18-9-121. IN SUCH  
7 PROSECUTIONS, THE RULES OF EVIDENCE SHALL GOVERN THE  
8 ADMISSIBILITY OF EVIDENCE OF A VICTIM'S ACTUAL OR PERCEIVED GENDER  
9 IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION.

10 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
11 REQUIRES:

12 (a) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE  
13 SAME MEANING AS IN SECTION 18-1-901 (3)(h.5).

14 (b) "INTIMATE RELATIONSHIP" HAS THE SAME MEANING AS IN  
15 SECTION 18-6-800.3.

16 (c) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS IN  
17 SECTION 18-9-121 (5)(b).

18 **SECTION 5.** In Colorado Revised Statutes, 18-1-901, **add**  
19 (3)(h.5) as follows:

20 **18-1-901. Definitions.** (3) (h.5) "GENDER IDENTITY" AND  
21 "GENDER EXPRESSION" MEAN A PERSON'S GENDER-RELATED IDENTITY AND  
22 GENDER-RELATED APPEARANCE OR BEHAVIOR WHETHER OR NOT THAT  
23 GENDER-RELATED IDENTITY, APPEARANCE, OR BEHAVIOR IS ASSOCIATED  
24 WITH THE PERSON'S ASSIGNED SEX AT BIRTH.

25 **SECTION 6.** In Colorado Revised Statutes, 18-3-103, **add** (3)(c)  
26 and (5) as follows:

27 **18-3-103. Murder in the second degree - definitions.**



1 (3) (c) FOR PURPOSES OF DETERMINING SUDDEN HEAT OF PASSION  
2 PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, A DEFENDANT'S ACT  
3 DOES NOT CONSTITUTE AN ACT PERFORMED UPON A SUDDEN HEAT OF  
4 PASSION IF IT RESULTS SOLELY FROM THE DISCOVERY OF, KNOWLEDGE  
5 ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM'S ACTUAL OR  
6 PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL  
7 ORIENTATION, INCLUDING UNDER CIRCUMSTANCES IN WHICH THE VICTIM  
8 MADE AN UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE  
9 TOWARD THE DEFENDANT OR IF THE DEFENDANT AND VICTIM ARE OR HAVE  
10 BEEN INVOLVED IN AN INTIMATE RELATIONSHIP.

11 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
12 REQUIRES:

13 (a) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE  
14 SAME MEANING AS IN SECTION 18-1-901 (3)(h.5).

15 (b) "INTIMATE RELATIONSHIP" HAS THE SAME MEANING AS IN  
16 SECTION 18-6-800.3.

17 (c) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS IN  
18 SECTION 18-9-121 (5)(b).

19 **SECTION 7.** In Colorado Revised Statutes, 18-3-201, **add** (1.6),  
20 (1.7), and (3) as follows:

21 **18-3-201. Definitions.** As used in sections 18-3-201 to 18-3-204,  
22 unless the context otherwise requires:

23 (1.6) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE  
24 SAME MEANING AS IN SECTION 18-1-901 (3)(h.5).

25 (1.7) "INTIMATE RELATIONSHIP" HAS THE SAME MEANING AS IN  
26 SECTION 18-6-800.3.

27 (3) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS IN

1 SECTION 18-9-121 (5)(b).

2 **SECTION 8.** In Colorado Revised Statutes, 18-3-202, **add** (2)(e)  
3 as follows:

4 **18-3-202. Assault in the first degree.** (2) (e) FOR PURPOSES OF  
5 DETERMINING SUDDEN HEAT OF PASSION PURSUANT TO SUBSECTION (2)(a)  
6 OF THIS SECTION, A DEFENDANT'S ACT DOES NOT CONSTITUTE AN ACT  
7 PERFORMED UPON A SUDDEN HEAT OF PASSION IF IT RESULTS SOLELY FROM  
8 THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE OF  
9 THE VICTIM'S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER  
10 EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING UNDER  
11 CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED  
12 NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT  
13 OR IF THE DEFENDANT AND VICTIM ARE OR HAVE BEEN INVOLVED IN AN  
14 INTIMATE RELATIONSHIP.

15 **SECTION 9.** In Colorado Revised Statutes, 18-3-203, **add** (2)(d)  
16 as follows:

17 **18-3-203. Assault in the second degree.** (2) (d) FOR PURPOSES  
18 OF DETERMINING SUDDEN HEAT OF PASSION PURSUANT TO SUBSECTION  
19 (2)(a) OF THIS SECTION, A DEFENDANT'S ACT DOES NOT CONSTITUTE AN  
20 ACT PERFORMED UPON A SUDDEN HEAT OF PASSION IF IT RESULTS SOLELY  
21 FROM THE DISCOVERY OF, KNOWLEDGE ABOUT, OR POTENTIAL DISCLOSURE  
22 OF THE VICTIM'S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY,  
23 GENDER EXPRESSION, OR SEXUAL ORIENTATION, INCLUDING UNDER  
24 CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED  
25 NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT  
26 OR IF THE DEFENDANT AND VICTIM ARE OR HAVE BEEN INVOLVED IN AN  
27 INTIMATE RELATIONSHIP.

1           **SECTION 10. Safety clause.** The general assembly hereby finds,  
2 determines, and declares that this act is necessary for the immediate  
3 preservation of the public peace, health, or safety.