



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4718 (as passed by the House)  
Sponsor: Representative Laurie Pohutsky  
House Committee: Criminal Justice  
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 3-12-24

## **CONTENT**

**The bill would amend Chapter VIII (Trials) of the Code of Criminal Procedure to specify that the discovery of a victim's actual or perceived gender identity, gender expression, or sexual orientation could not be considered a justification in the commission of a crime.**

Specifically, for purposes of determining if a crime were committed because of a sudden quarrel or in a heat of passion, 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 person and victim had a dating relationship or sexual relationship, would not be objectively reasonable provocation.

"Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

A person would not suffer from reduced mental capacity and could not assert a defense under Section 20a of Chapter VIII based on 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 person and victim had a dating relationship or sexual relationship. (Section 20a prescribes the uses of insanity as a defense to a felony.)

Notwithstanding the provisions of any other law of the State, a person would not be justified in using force against another person based on 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 person and victim had a dating relationship or sexual relationship.

Proposed MCL 760.21d

## **BACKGROUND**

Generally, "gay or transgender panic defense" is a legal strategy that relies on the notion that a criminal defendant should be excused or justified in his or her violent actions due to loss of control as a response to an unwanted sexual advance. This strategy has been used to reduce a charge based on a defense of insanity or diminished capacity, defense of provocation, or a defense of self-defense. This strategy appeared in cases as early as 1960, in which criminal

defense attorneys representing male defendants who were charged with murdering male victims began using "gay panic" to mitigate the defendant's charges.<sup>1</sup>

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local courts.

Fiscal Analyst: Michael Siracuse

---

<sup>1</sup> Lee, Cynthia. "*The Gay Panic Defense*", 42 U.C. Davis L. Rev. 471 (2008).

SAS\S2324\s4718sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.