

THE LGBTQ+ “PANIC” DEFENSE

WHAT IS THE LGBTQ+ “PANIC” DEFENSE?

The LGBTQ+ “panic” defense is a legal tactic wherein people accused of committing violent crimes shift blame for their alleged actions onto their victim by weaponizing their victim’s LGBTQ+ identity. The LGBTQ+ “panic” defense relies on the homophobic and transphobic idea that an LGBTQ+ identity is so alarming and dangerous that violence inflicted on LGBTQ+ people is justifiable. You may see the LGBTQ+ “panic” defense referred to as the “gay or trans ‘panic’ defense.” Both terms describe the same strategy, but the National LGBTQ+ Bar prefers the more inclusive term “LGBTQ+ ‘panic’ defense” because it recognizes that the defense strategy impacts and endangers everyone in the LGBTQ+ community.

HOW IS THE LGBTQ+ "PANIC" DEFENSE USED?

The LGBTQ+ "panic" defense attempts to justify violence, including murder, so that a judge or jury will reduce a defendant's sentence or even find them not guilty. It is not a standalone defense. Instead, it is a tactic used in the three most common defenses to violent crimes:

• DEFENSE OF DIMINISHED CAPACITY

- **Defendants using this defense argue they did not have the required mental state of a specific crime due to a temporary mental impairment.** When using the LGBTQ+ "panic" defense tactic with this defense, a defendant argues that their victim's LGBTQ+ identity was so upsetting that it triggered a mental breakdown, reducing or eliminating their responsibility for their own actions.
- **Example:** John claims that he became so distressed upon seeing his neighbor, Susan, kiss her wife that he temporarily lost control of his mental capacities and therefore could not control his actions. While out of control, he stabbed Susan to death, but argues that he cannot be found guilty of murder because his temporary mental disturbance, caused by seeing Susan kiss her wife, prevented him from knowing what he was doing or controlling his actions.

• DEFENSE OF PROVOCATION

- **This is sometimes called the heat of passion defense. Defendants using this defense admit** that they intentionally killed or harmed someone, but argue that they cannot be held responsible for their actions because they were reasonably provoked into attacking their victim. When used with the LGBTQ+ "panic" defense, a defendant will claim that discovering or perceiving someone's LGBTQ+ identity was so shocking or alarming that it provoked their violence.
- **Example:** John claims that he became violently alarmed when he learned that his date, Mary, was a transgender woman. John claims that it is reasonable for such a discovery to provoke a heated and violent reaction, therefore he cannot be held responsible for killing Mary.

- **DEFENSE OF SELF-DEFENSE:**

- **Defendants using this defense admit to harming their victim, but argue that the attack was justified** because, immediately before they attacked their victim, the victim acted in a way that caused the defendant to reasonably believe they were in imminent danger of serious bodily harm or death. A defendant who uses the LGBTQ+ “panic” defense in an argument of self-defense claims that their victim’s LGBTQ+ identity is inherently threatening and thus warrants a violent response.
- **Example:** John explains that when Steve, a bisexual man, put his hand on John’s knee and winked at him, John became scared that Steve was about to assault him. John argues that this fear was reasonable because of Steve’s sexual orientation and therefore he was justified in brutally attacking Steve.

HOW SUCCESSFUL IS THE LGBTQ+ “PANIC” DEFENSE?

It can be difficult to track the success of the LGBTQ+ “panic” defense because we rely on local reporting, making it especially hard to find every instance in which it is employed, let alone successful. We know that the defense has been used over a hundred times and that juries across the country have used it to acquit dozens of defendants for violent crimes, including murder.

A FEW HIGH-PROFILE EXAMPLES OF THE LGBTQ+ “PANIC” DEFENSE IN ACTION INCLUDE:



Scott Amedure (1995) appeared on Jenny Jones’ talk show to confess to having a crush on Jonathan Schmitz. Days later, Schmitz drove to Amedure’s home and killed him. At trial, Schmitz argued that he wasn’t responsible for his actions due to the “gay panic disorder” he experienced when Amedure revealed his crush on TV. The jury reduced the charge from premeditated murder to second-degree murder. This is an example of the LGBTQ+ “panic” defense successfully bolstering both a provocation defense and a diminished capacity defense.



Ahmed Dabarran (2001) was an Assistant District Attorney in Fulton County, Georgia. He was struck over the head over a dozen times by Rodericus Reshad Reed and died from his injuries. At trial, Reed admitted to killing Dabarran, but claimed he did so to protect himself from unwanted homosexual advances. However, a medical examiner testified that Dabarran was asleep at the time of the murder. The jury acquitted the defendant of the murder despite his confession and the evidence the victim was asleep. This is an example of the LGBTQ+ “panic” defense successfully bolstering a self-defense defense.



Gwen Araujo (2002), a 17-year-old transgender woman, was brutally tortured and then murdered after two men she had a relationship with discovered her gender identity. One of the defendants claimed his horrific violence was caused by the shock of discovering Araujo was transgender. The jury couldn’t reach a verdict, so a second trial was held. In that trial, the jury rejected the defendant’s claim and found him guilty of second-degree murder. This is an example of the LGBTQ+ “panic” defense successfully bolstering a provocation defense.



Daniel Spencer (2015) was murdered by his neighbor, Robert Miller, who stabbed him in the back. Miller claimed that he rejected a sexual advance from Spencer and acted in self-defense when Spencer became agitated. Despite physical evidence disproving Miller’s claim that he was in danger and evidence that the victim was not even LGBTQ+, his conviction was mitigated from murder to criminally negligent manslaughter. Further, the jury recommended that Miller only receive 10 years probation. The judge added the maximum six months jail time, required Miller to complete 100 hours of community service, and made Miller pay less than \$11,000 in restitution to Spencer’s family. Spencer’s family maintained that, to their knowledge, he was not LGBTQ+, demonstrating how the LGBTQ+ “panic” defense harms everyone, including people are not LGBTQ+. This is an example of the LGBTQ+ “panic” defense successfully bolstering a self-defense defense.

WHY DO WE NEED TO USE LEGISLATION TO BAN THE LGBTQ+ “PANIC” DEFENSE?

The LGBTQ+ “panic” defense draws on dangerous historic stigmas around LGBTQ+ identities to justify horrific violence. It is deeply rooted in homophobia and transphobia in validating the notion that victims are somehow responsible for the assaults upon them simply by virtue of being LGBTQ+, and in so doing, directly harms a community that already faces staggering levels of violence. Eliminating the LGBTQ+ “panic” defense does more than ensure justice for LGBTQ+ victims who suffer violent crime: It further sends a clear message inside and outside of the courtroom that LGBTQ+ people deserve equal dignity under the law.

We need legislation because jury instruction does not provide enough protection. Courts often instruct juries to make decisions without bias or prejudice, but these instructions are not a guarantee against bias and do not directly tell a jury that the LGBTQ+ “panic” defense is not a valid excuse for violence. Jury instruction is also insufficient protection because many states still allow removal of LGBTQ+ potential jurors from jury pools simply because of their LGBTQ+ identity, thus denying LGBTQ+ people the right to a jury of their peers. Through legislation, we can ensure that defendants are prevented from raising this homophobic and transphobic argument in court by enshrining a prohibition on the LGBTQ+ “panic” defense in law. Many states have already passed legislation abolishing the LGBTQ+ “panic” defense and more legislation is pending around the country. Even the [American Bar Association](#) (ABA), America's largest voluntary legal association, supports banning the defense through legislation. In 2013, at the urging of the National LGBTQ+ Bar Association, the ABA passed a [resolution](#) urging all legislative bodies to take action against the LGBTQ+ “panic” defense.