

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REREVISÉD

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 20-1324.01 Conrad Imel x2313

SENATE BILL 20-221

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Senate Committees

State, Veterans, & Military Affairs

House Committees

Public Health Care & Human Services

HOUSE
3rd Reading Unamended
June 12, 2020

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.**

HOUSE
2nd Reading Unamended
June 11, 2020

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>.)

SENATE
3rd Reading Unamended
June 10, 2020

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

SENATE
2nd Reading Unamended
June 10, 2020

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.

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

1 tolerance, and compassion, which the law should encourage, and it is an
2 impediment to a just criminal justice system. Any suggestion of legally
3 sanctioned discrimination against a person's sexual orientation or gender
4 identity or expression must end. As the American Bar Association has
5 urged 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 BUT NOT LIMITED TO
17 UNDER CIRCUMSTANCES IN WHICH THE VICTIM MADE AN UNWANTED
18 NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE DEFENDANT.
19 NOTHING IN THIS SUBSECTION (3)(d) PRECLUDES THE ADMISSION OF
20 EVIDENCE, WHICH IS OTHERWISE ADMISSIBLE, OF A VICTIM'S OR WITNESS'S
21 CONDUCT, BEHAVIOR, OR STATEMENTS.

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

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

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

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

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

5 **18-1-714. Protective hearing - victim's, defendant's, or**
6 **witness's gender identity, gender expression, or sexual orientation -**
7 **definitions.** (1) EVIDENCE OF A VICTIM'S, DEFENDANT'S, OR WITNESS'S
8 ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR
9 SEXUAL ORIENTATION OFFERED IN RELATION TO AN AFFIRMATIVE DEFENSE
10 OR PURSUANT TO RULE 404 OF THE COLORADO RULES OF EVIDENCE MAY
11 BE ADMISSIBLE ONLY AT TRIAL AND SHALL NOT BE ADMITTED IN ANY
12 OTHER PROCEEDING EXCEPT AT A PROCEEDING PURSUANT TO SUBSECTION
13 (2) OF THIS SECTION. AT TRIAL, EVIDENCE OF A VICTIM'S, DEFENDANT'S, OR
14 WITNESS'S ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION,
15 OR SEXUAL ORIENTATION OFFERED BY ANY PARTY IN RELATION TO AN
16 AFFIRMATIVE DEFENSE OR PURSUANT TO RULE 404 OF THE COLORADO
17 RULES OF EVIDENCE IS PRESUMED TO BE IRRELEVANT.

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

24 (a) A WRITTEN MOTION MUST BE MADE AT LEAST THIRTY-FIVE
25 DAYS PRIOR TO TRIAL, UNLESS LATER FOR GOOD CAUSE SHOWN, TO THE
26 COURT AND TO THE OPPOSING PARTIES STATING THAT THE MOVING PARTY
27 HAS AN OFFER OF PROOF OF THE SPECIFIC FACTUAL RELEVANCY AND

1 MATERIALITY OF EVIDENCE OF A VICTIM'S, DEFENDANT'S, OR A WITNESS'S
2 ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR
3 SEXUAL ORIENTATION;

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

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

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

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

27 (f) ALL MOTIONS AND SUPPORTING DOCUMENTS FILED PURSUANT

1 TO THIS SECTION MUST BE FILED UNDER SEAL AND MAY BE UNSEALED
2 ONLY IF THE COURT RULES THE EVIDENCE IS ADMISSIBLE AND THE CASE
3 PROCEEDS TO TRIAL. IF THE COURT DETERMINES THAT ONLY PART OF THE
4 EVIDENCE CONTAINED IN THE MOTION IS ADMISSIBLE, ONLY THAT PORTION
5 OF THE MOTION AND SUPPORTING DOCUMENTS PERTAINING TO THE
6 ADMISSIBLE PORTION MAY BE UNSEALED.

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

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

25 (b) THE PERSON WHO WOULD BE THE SUBJECT OF THE PROTECTIVE
26 ORDER MAY OBJECT TO THE MOTION FOR A PROTECTIVE ORDER.

27 (4) IF EVIDENCE OF A VICTIM'S, DEFENDANT'S, OR WITNESS'S

1 ACTUAL OR PERCEIVED GENDER IDENTITY, GENDER EXPRESSION, OR
2 SEXUAL ORIENTATION IS ADMITTED AT TRIAL, THE COURT SHALL INSTRUCT
3 THE JURY TO NOT ALLOW BIAS OR ANY KIND OF PREJUDICE BASED UPON
4 GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION TO
5 INFLUENCE ITS DECISION. IF ADMITTED FOR A LIMITED PURPOSE, THE
6 COURT SHALL FURTHER INSTRUCT THE JURY AS TO THE LIMITED PURPOSE
7 OR PURPOSES FOR WHICH THE EVIDENCE IS ADMITTED AND FOR WHICH THE
8 JURY MAY CONSIDER IT.

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

16 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
17 REQUIRES:

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

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

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

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

26 **18-1-901. Definitions.** (3) (h.5) "GENDER IDENTITY" AND
27 "GENDER EXPRESSION" MEAN A PERSON'S GENDER-RELATED IDENTITY AND

1 GENDER-RELATED APPEARANCE OR BEHAVIOR WHETHER OR NOT THAT
2 GENDER-RELATED IDENTITY, APPEARANCE, OR BEHAVIOR IS ASSOCIATED
3 WITH THE PERSON'S ASSIGNED SEX AT BIRTH.

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

6 **18-3-103. Murder in the second degree - definitions.**

7 (3) (c) FOR PURPOSES OF DETERMINING SUDDEN HEAT OF PASSION
8 PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, A DEFENDANT'S ACT
9 DOES NOT CONSTITUTE AN ACT PERFORMED UPON A SUDDEN HEAT OF
10 PASSION IF IT RESULTS SOLELY FROM THE DISCOVERY OF, KNOWLEDGE
11 ABOUT, OR POTENTIAL DISCLOSURE OF THE VICTIM'S ACTUAL OR
12 PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL
13 ORIENTATION, INCLUDING BUT NOT LIMITED TO UNDER CIRCUMSTANCES IN
14 WHICH THE VICTIM MADE AN UNWANTED NONFORCIBLE ROMANTIC OR
15 SEXUAL ADVANCE TOWARD THE DEFENDANT.

16 (5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
17 REQUIRES:

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

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

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

24 **SECTION 7.** In Colorado Revised Statutes, 18-3-201, **add** (1.6),
25 (1.7), and (3) as follows:

26 **18-3-201. Definitions.** As used in sections 18-3-201 to 18-3-204,
27 unless the context otherwise requires:

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

3 (1.7) "INTIMATE RELATIONSHIP" HAS THE SAME MEANING AS IN
4 SECTION 18-6-800.3.

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

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

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

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

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

1 UNWANTED NONFORCIBLE ROMANTIC OR SEXUAL ADVANCE TOWARD THE
2 DEFENDANT.

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