

Rethinking “Trans Panic Defense” Policies

The National LGBT Bar Association put forth a [resolution](#) in 2013, urging federal, state and local governments to outlaw the “gay panic” and “trans panic” defense strategies, which attempt to reduce sentencing for a person accused of killing an LGBT person. These strategies are used by defense attorneys to argue that their clients’ crimes were not pre-meditated but a reaction to an unwanted sexual advance from an LGBT person or to the “discovery” of a person’s trans status, thus they warrant lighter sentencing. Such tactics have been in play as mitigating factors in sentencing since the 1960s. Today, California is the first state to have banned them; the National LGBT Bar Association is hopeful that other jurisdictions will follow in its footsteps. On May 31, 2017, the Illinois House of Representatives [approved a Senate bill](#) banning the defense. The bill is expected to be signed into law by Governor Bruce Rauner. A similar [bill](#) was introduced in the District of Columbia in February 2017.

While banning the trans and gay panic defenses seems to move in the direction of justice for LGBT people, legal scholar Cynthia Lee thinks this is the wrong approach.

Lee explains that banning the gay and trans panic defenses does not fundamentally challenge the roots of violence against LGBT people, nor does it eliminate bias in juries. To Lee, these defense strategies ask juries to consider extending empathy to men (predominantly the defendants in these cases) who react violently to alleged unwanted sexual advances from other men or to the discovery the woman they are interested in is transgender, so banning them makes the animating logics behind the crimes invisible. Lee suggests instead that prosecutors should be trained to break down the defense’s

arguments, challenging the inherent homophobia and transphobia embedded in them.

Lee's intervention, then, underscores the role of bias in courtroom decisions and could represent an important step toward denaturalizing violence against LGBT communities. However, this approach must be part of a broader policy initiative that challenges the roots of violence *before* it occurs.

Murder and violence against LGBT people, especially against trans people, is a growing problem in the United States.

As of July 2, there have been fifteen reported murders of trans people, the majority of them young black trans women, in 2017. From [2013-2016](#), there were 74 reported killings of trans people (click on map below for more details on each). Of those, 93% were people of color, 90% were women, and 75% were aged 35 or younger. The New York City Anti-Violence Project has described violence against trans women of color in the U.S. [as an epidemic](#)—contagious and excessively prevalent. But this violence is not new. It is rooted in the long-standing devaluation of the lives of black, female, gender non-conforming, queer, disabled, and poor people in this country. A policy that bans the trans and gay panic defense strategies does not fundamentally disrupt violence against these communities—it only changes the conversation after an LGBT person has been victimized, and it silences and buries embedded biases.

To combat these legacies of violence, organizations should push for policy changes that address the structural inequalities that influence violence, such as the criminalization of sex work, drugs, and non-violent crime in communities of color. Decriminalizing sex work, for its part, would increase safety for trans sex workers. A 2015 Open Society Foundations [report](#) explains, “Fear of arrest and police abuse limits the time and methods that sex workers can use to conduct safety screenings of clients without detection by police.” Because sex work is criminalized and stigmatized, clients and police alike can take advantage of sex workers’ vulnerable status to harass and abuse them. With this change, even trans women who are not sex workers may be protected, because so many are *assumed* to be sex workers (as [Monica Jones was in 2014](#)). Decriminalization of sex work would help proactively rather than reactively value trans lives.

A second cultural shift must seek to lessen the stigma attached to sexual attraction toward trans women.

In June 2015, in the midst of the worst year on record for trans homicides, trans actor and activist Laverne Cox [remarked](#) that men who date trans women are “probably more stigmatized than trans women are.” When straight men are encouraged to reject, rather than desire, trans women, their shame can lead to violence. Cultural shifts, of course, require a number of concurrent and coalescing forces—education, purposeful and positive media representation, and institutional condemnation of violence against trans people—but policies can be enacted to move these shifts along. For instance, where the emergence of [“bathroom bills”](#) has served to stigmatize trans women in particular (and allow for public debate over the alleged risks their bodies pose), policies that preemptively protect trans bathroom access could reduce some of the stigma against trans women. Alongside multiple other interventions in spheres large and small, we might see an aggregation of acceptance.

While banning the trans and gay panic defense strategies may send a message that violence against these communities is unacceptable, it may also enable homophobic and transphobic biases in jurors to prevail in deliberations.

Arguments for hate crime laws draw upon a similar justification: proponents of the designation “hate crime” allege that these laws send a message that crimes enacted out of discrimination or hatred toward a particular group are not condoned. However, [hate crime laws may not reduce violence](#) against marginalized people—there is even evidence that they may *increase* violence in multiply marginalized communities, such as communities of color that are also queer, trans, immigrants, disabled, and so on. Cynthia Lee’s suggestion for prosecutorial training is a step in the right direction to reduce cultural acceptance of trans homicides, though her

criticism of the National LGBT Bar Association's strategy has not halted jurisdictions from attempting to ban the trans and gay panic defense strategies nor spurred the implementation of anti-LGBT bias trainings for prosecutors. National LGBT civil rights organizations and legislators should be concerned about the rise in trans homicides and critically examine the roots of this violence, enacting policies that *proactively* improve the lives of trans people and destigmatize desire for trans women. Their very lives depend on it.

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