
Public Safety Committee

HB 1687

Brief Description: Limiting defenses based on victim identity.

Sponsors: Representatives Stanford, Doglio, Macri, Hansen, Orwall, Appleton, Jinkins, Ormsby, Valdez and Davis.

Brief Summary of Bill

- Prohibits a criminal defendant from using certain defenses 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 towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.

Hearing Date: 2/11/19

Staff: Kelly Leonard (786-7147).

Background:

In a criminal case, the prosecution must prove every element of the crime charged beyond a reasonable doubt. There are a variety of circumstances where a defendant's conduct may have caused the alleged harm, but where he or she is not criminally culpable based on recognized legal defenses.

Self-Defense. The use of force is lawful when used by a person who reasonably believes that he or she is about to be injured or by someone lawfully aiding a person who he or she reasonably believes is about to be injured, in preventing or attempting to prevent an offense against the person. It is also lawful when used in preventing or attempting to prevent a malicious trespass or other malicious interference with real or personal property.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If the use of force resulted in a death, then the justifiable homicide law applies. A person is justified in committing homicide when it is done in the lawful defense of himself or herself, or his or her spouse, parent, child, sibling, or any other person in his or her presence or company. The person must have reasonably believed that the person slain intended to commit a felony or great personal injury, and there must have been imminent danger of such harm being accomplished. Homicide is also justifiable when committed in the actual resistance of an attempt to commit a felony upon the person or in his or her presence, or upon or in a dwelling or other place of abode in which he or she is present.

In either circumstance, the person using the force may employ only such force and means as a reasonably prudent person would use under the same or similar conditions, taking into consideration all of the facts and circumstances known to the person at the time of the incident. The force used may not be more than is necessary. The prosecution has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful.

Diminished Capacity. Most crimes require some degree of culpability as an element of the crime. There are four kinds of culpability defined in the criminal code: intent, knowledge, recklessness, and criminal negligence. The first three kinds of culpability—intent, knowledge, and recklessness—involve a "state of mind." The defense of diminished capacity arises when a defendant claims that a mental illness or disorder deprived him or her of the ability to form the requisite state of mind for the crime.

To justify a jury instruction on diminished capacity, a defendant must satisfy three elements: (1) the crime charged must include a particular mental state as an element; (2) the defendant must present evidence of a mental disorder; and (3) expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged.

Summary of Bill:

A defendant is not justified in using force, nor can he or she claim diminished capacity, 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 towards the defendant, or if the defendant and victim dated or had a romantic or sexual relationship.

Appropriation: None.

Fiscal Note: Requested on February 6, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.