

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Lieber

February 22, 2005

An act to amend Section 192 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Lieber. Crime: ~~manslaughter~~.

Existing law provides that a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, as specified. Existing law, Judicial Council of California Criminal Jury Instruction No. 200, provides that is the duty of the trier of fact not to let "bias, sympathy, prejudice, or public opinion" influence its decision.

This bill would state legislative findings and declarations regarding the influence of a defendant's bias against the victim upon the trier of fact in a criminal proceeding and defendants' use of panic strategies based upon discovery or knowledge of an actual or perceived characteristic of their victim to decrease criminal culpability for crime.

This bill would state legislative intent that before a defendant who seeks to employ a panic strategy and to introduce evidence consistent with or supporting that defense introduces such evidence, the court will make a determination whether that evidence should be excluded, as specified.

This bill would also state legislative intent that Judicial Council of California Criminal Jury Instructions define "bias" to include bias based upon a victim's actual or perceived disability, gender,

nationality, race or ethnicity, religion, or sexual orientation, or association with a person or group with one or more of these characteristics.

~~Existing law defines manslaughter as the unlawful killing of a human being without malice and it is accomplished either voluntarily, involuntarily, or with a vehicle, as defined. Voluntary manslaughter is described as killing upon a sudden quarrel or heat of passion.~~

~~This bill would prohibit a finding of “sudden quarrel” or “heat of passion” if the defendant’s actions resulted from the discovery, knowledge, or potential disclosure of a particular characteristic or association, as specified, which belongs to either the victim or defendant.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION. 1. The Legislature hereby finds and declares all of*
 2 *the following:*

3 *(a) California law defines a hate crime as a criminal act*
 4 *committed, in whole or in part, because of the actual or*
 5 *perceived disability, gender, nationality, race or ethnicity,*
 6 *religion, or sexual orientation of the victim, or his or her*
 7 *association with a person or group with one or more of these*
 8 *actual or perceived characteristics.*

9 *(b) It is the right of every person regardless of actual or*
 10 *perceived disability, gender, nationality, race or ethnicity,*
 11 *religion, or sexual orientation, or association with a person or*
 12 *group with these actual or perceived characteristics, to be secure*
 13 *and protected from fear, intimidation, and physical harm caused*
 14 *by the actions of violent groups and individuals.*

15 *(c) "Bias" includes bias based upon the victim’s actual or*
 16 *perceived disability, gender, nationality, race or ethnicity,*
 17 *religion, or sexual orientation, or his or association with a*
 18 *person or group with one or more of these characteristics.*

19 *(d) It is against public policy for juries to render decisions*
 20 *tainted by bias based upon the victim’s actual or perceived*
 21 *disability, gender, nationality, race or ethnicity, religion or*
 22 *sexual orientation, or his or her association with a person or*
 23 *group with one or more of these characteristics.*

1 (e) “Panic strategies” are those strategies that try to explain a
 2 defendant’s actions or emotional reactions based upon the
 3 knowledge or discovery of the fact that the victim possesses one
 4 or more of the characteristics listed above or associates with a
 5 person or group with one or more of the those characteristics.

6 (f) The Legislature is concerned about the use of societal bias
 7 in criminal proceedings and the susceptibility of juries to such
 8 bias. The use of so-called “panic strategies” by defendants in
 9 criminal trials opens the door for bias against victims based on
 10 one or more of the characteristics listed above or an association
 11 with a person or group with one or more of those characteristics.

12 (g) It is against public policy for a defendant to be acquitted of
 13 a charged offense or convicted of a lesser included offense based
 14 upon use of a “panic strategy” to play upon the societal bias that
 15 may be possessed by members of a jury.

16 SEC. 2. It is the intent of the Legislature that before a
 17 defendant who seeks to employ a strategy such as the gay or
 18 trans panic defense and to introduce evidence consistent with or
 19 supporting that defense introduces such evidence, the court will
 20 make a determination whether that evidence should be excluded
 21 pursuant to Section 352 of the Evidence Code, taking into
 22 consideration “bias” as defined in this act.

23 SEC. 3. It is the intent of the Legislature that Judicial Council
 24 of California Criminal Jury Instructions No. 200 reflect the
 25 legislative policy stated in this act, by defining “bias” as
 26 provided in this act.

27 SECTION 1. Section 192 of the Penal Code is amended to
 28 read:

29 192. Manslaughter is the unlawful killing of a human being
 30 without malice. It is of three kinds:

- 31 (a) Voluntary upon a sudden quarrel or heat of passion.
- 32 (1) A defendant is acting upon “sudden quarrel” or “heat of
 33 passion” only when sufficiently provoked by actions of the
 34 victim, or actions that the defendant can reasonably attribute to
 35 the victim, that would cause a similar reaction from an ordinarily
 36 reasonable person.
- 37 (2) Sufficient provocation to support “sudden quarrel” or “heat
 38 of passion” does not exist if the defendant’s actions are related to
 39 discovery of, knowledge about, or the potential disclosure of one
 40 or more of the following characteristics, or perceived

1 characteristics: disability, gender, nationality, race or ethnicity,
2 religion, or sexual orientation, regardless of whether the
3 characteristic belongs to the victim or the defendant. This
4 limitation applies even if the defendant dated, romantically
5 pursued, or participated in sexual relations with the victim.

6 ~~(3) Sufficient provocation to support “sudden quarrel” or “heat
7 of passion” does not exist if the defendant’s actions are related to
8 discovery of, knowledge about, or the potential disclosure of the
9 victim’s association with a person or group with one or more of
10 the characteristics, or perceived characteristics, in paragraph (2).~~

11 ~~(4) For the purposes of this section, “gender” means sex, and
12 includes a person’s gender identity and gender-related
13 appearance and behavior whether or not stereotypically
14 associated with the person’s assigned sex at birth.~~

15 ~~(b) Involuntary—in the commission of an unlawful act, not
16 amounting to felony; or in the commission of a lawful act which
17 might produce death, in an unlawful manner, or without due
18 caution and circumspection. This subdivision shall not apply to
19 acts committed in the driving of a vehicle.~~

20 ~~(e) Vehicular—~~

21 ~~(1) Except as provided in Section 191.5, driving a vehicle in
22 the commission of an unlawful act, not amounting to felony, and
23 with gross negligence; or driving a vehicle in the commission of
24 a lawful act which might produce death, in an unlawful manner,
25 and with gross negligence.~~

26 ~~(2) Except as provided in paragraph (3), driving a vehicle in
27 the commission of an unlawful act, not amounting to felony, but
28 without gross negligence; or driving a vehicle in the commission
29 of a lawful act which might produce death, in an unlawful
30 manner, but without gross negligence.~~

31 ~~(3) Driving a vehicle in violation of Section 23140, 23152, or
32 23153 of the Vehicle Code and in the commission of an unlawful
33 act, not amounting to felony, but without gross negligence; or
34 driving a vehicle in violation of Section 23140, 23152, or 23153
35 of the Vehicle Code and in the commission of a lawful act which
36 might produce death, in an unlawful manner, but without gross
37 negligence.~~

38 ~~(4) Driving a vehicle in connection with a violation of
39 paragraph (3) of subdivision (a) of Section 550, where the
40 vehicular collision or vehicular accident was knowingly caused~~

1 ~~for financial gain and proximately resulted in the death of any~~
2 ~~person. This provision shall not be construed to prevent~~
3 ~~prosecution of a defendant for the crime of murder.~~

4 ~~This section shall not be construed as making any homicide in~~
5 ~~the driving of a vehicle punishable which is not a proximate~~
6 ~~result of the commission of an unlawful act, not amounting to~~
7 ~~felony, or of the commission of a lawful act which might produce~~
8 ~~death, in an unlawful manner.~~

9 ~~“Gross negligence,” as used in this section, shall not be~~
10 ~~construed as prohibiting or precluding a charge of murder under~~
11 ~~Section 188 upon facts exhibiting wantonness and a conscious~~
12 ~~disregard for life to support a finding of implied malice, or upon~~
13 ~~facts showing malice, consistent with the holding of the~~
14 ~~California Supreme Court in People v. Watson, 30 Cal. 3d 290.~~