

AMENDED IN ASSEMBLY JANUARY 18, 2006

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Jones, Koretz, and Torrico)

February 22, 2005

An act relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Lieber. Crime.

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, 2, or 3 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.

Vote: majority. Appropriation: no. Fiscal committee: 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 perceived
- 5 disability, gender, nationality, race or ethnicity, religion, or
- 6 sexual orientation of the victim, or his or her association with a
- 7 person or group with one or more of these actual or perceived
- 8 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~~ *the victim’s* association
- 18 with a 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.
- 24 (e) “Panic strategies” are those strategies that try to explain a
- 25 defendant’s actions or emotional reactions based upon the
- 26 knowledge or discovery of the fact that the victim possesses one
- 27 or more of the characteristics listed above or associates with a
- 28 person or group with one or more of the those characteristics.

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

7 (g) It is against public policy for a defendant to be acquitted of
8 a charged offense or convicted of a lesser included offense based
9 upon use of a “panic strategy” to play upon an appeal to the
10 societal bias that may be possessed by members of a jury.

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

18 ~~SEC. 3.~~

19 SEC. 2. It is the intent of the Legislature that Judicial Council
20 of California Criminal Jury Instructions No. 200 reflect the
21 legislative policy stated in this act; by defining “bias” as provided
22 in this act.