

Assembly Bill No. 1160

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

Passed the Senate August 29, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 1127h to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, Lieber. Crime.

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, the Gwen Araujo Justice for Victims Act, 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 also provide that a party may request that the jury receive an instruction that defines bias as inclusive of bias against the victim or victims based upon disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual orientation, in any criminal trial.

This bill would also require the Office of Emergency Services, to the extent funding becomes available for that purpose, to develop practice manuals, as specified, for district attorneys’ offices explaining how panic strategies are used to encourage jurors to respond to societal bias and providing best practices for preventing bias from affecting the outcome of a trial.

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

SECTION 1. This act shall be known and may be cited as the Gwen Araujo Justice for Victims Act.

SEC. 2. The Legislature hereby finds and declares all of the following:

(a) California law defines a hate crime as a criminal act committed, in whole or in part, because of the actual or perceived

disability, gender, nationality, race or ethnicity, religion, or sexual orientation of the victim, or his or her association with a person or group with one or more of these actual or perceived characteristics.

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

(c) “Bias” includes bias based upon the victim’s actual or perceived disability, gender, nationality, race or ethnicity, religion, or sexual orientation, or the victim’s association with a person or group with one or more of these characteristics.

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

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

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

(g) It is against public policy for a defendant to be acquitted of a charged offense or convicted of a lesser included offense based upon an appeal to the societal bias that may be possessed by members of a jury.

SEC. 3. Section 1127h is added to the Penal Code, to read:

1127h. In any criminal trial or proceeding, upon the request of a party, the court shall instruct the jury substantially as follows:

“Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias includes bias against the victim or

victims, witnesses, or defendant based upon his or her disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual orientation.”

SEC. 4. The Office of Emergency Services shall, to the extent funding becomes available for that purpose, develop practice materials for district attorneys’ offices in the state. The materials, which shall be developed in consultation with knowledgeable community organizations and county officials, shall explain how panic strategies are used to encourage jurors to respond to societal bias against people based on actual or perceived disability, gender, including gender identity, nationality, race or ethnicity, religion, or sexual orientation and provide best practices for preventing bias from affecting the outcome of a trial.

Approved _____, 2006

Governor