

2019 DRAFTING REQUEST

**Bill**

For: Greta Neubauer (608) 266-0634

Drafter: chanaman

By: Elizabeth

Secondary Drafters:

Date: 3/18/2019

May Contact:

Same as LRB: -3426



Submit via email: YES  
Requester's email: Rep.Neubauer@legis.wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Explicitly eliminate defense of gay or trans panic

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	chanaman 5/28/2019	kfollett 5/28/2019	dwalker 3/21/2019		
/P2			mbarman 5/28/2019		
/1				mbarman 6/3/2019	

FE Sent For: <END>

↳ Not Needed

## **Hanaman, Cathlene**

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**From:** Shimek, Elizabeth  
**Sent:** Wednesday, March 13, 2019 5:21 PM  
**To:** Hanaman, Cathlene  
**Cc:** Johns, Melinda; Wheeler, Elizabeth  
**Subject:** Wisconsin Criminal Law & The "Gay Panic" / "Trans Panic" Defense

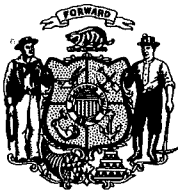
Hi Cathlene (Or Melinda, or Elizabeth – whoever has time for me!)

Rep. Neubauer was wondering if (a) any lawmakers in Wisconsin have previously proposed amending Wisconsin's criminal statutes to explicitly ban the "gay panic" / "trans panic" defense sometimes used when a person is charged with assaulting or killing an LGBT person, and (b) if not, what the best approach would be for changing Wisconsin law to ban this particular defense?

Thanks,  
Elizabeth

**Elizabeth Shimek, JD**  
Research Assistant

**Office of Representative Greta Neubauer**  
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(608) 237-9166  
[Elizabeth.shimek@legis.wisconsin.gov](mailto:Elizabeth.shimek@legis.wisconsin.gov)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2490/P1

CMH:... AMN

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA  
Xref

Gen

1 AN ACT ...; **relating to:** eliminating criminal defense of adequate provocation or  
2 self-defense if the claim is based on the victim's gender identity or sexual  
3 orientation.

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***Analysis by the Legislative Reference Bureau***

Current law provides specific defenses to criminal liability. For instance, a charge of first-degree intentional homicide may be mitigated to second-degree intentional homicide if, at the time of committing the crime, the defendant reasonably believes the victim has done something that adequately provokes the defendant to lack self-control completely. Another defense is the privilege of self-defense under which a person may threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by the other person.

Under this bill, a defendant may not assert adequate provocation or self-defense as a defense if the criminal action in question resulted from the discovery of, knowledge about, or potential disclosure of the victim's gender identity or expression or sexual orientation, including under circumstances in which the victim made a nonforcible romantic or sexual advance toward the defendant.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 SECTION 1. 939.44 (3) of the statutes is created to read:

1            939.44 (3) Provocation is not adequate under this section if it resulted from the  
 2 discovery of, knowledge about, or potential disclosure of the victim's actual or  
 3 perceived gender, gender identity, gender expression, or sexual orientation,  
 4 including under circumstances in which the victim made a nonforcible romantic or  
 5 sexual advance towards the defendant or if the defendant and victim dated or had  
 6 a romantic or sexual relationship.

7            **SECTION 2.** 939.48 (5m) of the statutes is created to read:

8            939.48 (5m) A person is not entitled to claim the privilege of self-defense based  
 9 on the discovery of, knowledge about, or potential disclosure of the victim's actual or  
 10 perceived gender, gender identity, gender expression, or sexual orientation, including  
 11 under circumstances in which the victim made a nonforcible romantic or sexual  
 12 advance to wards the person or if the person and victim dated or had a romantic or  
 13 sexual relationship.

14            (END)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2490/P1

CMH:amn

p2  
HGF

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to create** 939.44 (3) and 939.48 (5m) of the statutes; **relating to:**  
2 eliminating criminal defense of adequate provocation or self-defense if the  
3 claim is based on the victim's gender identity or sexual orientation.

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with use or threat of force or violence

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 13 romantic or sexual relationship.

(END)

*without use or threat of force or violence*



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2490/P2  
CMH:amn&kjf

No  
change

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to create* 939.44 (3) and 939.48 (5m) of the statutes; **relating to:**  
2             eliminating criminal defense of adequate provocation or self-defense if the  
3             claim is based on the victim's gender identity or sexual orientation.

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