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## **Bill aims to block `panic defense'**

PROPOSAL IS NAMED FOR TRANSGENDER TEEN

By Yomi S. Wronge

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The Bay Area men convicted last year of murdering a Newark transgender teen a they panicked upon learning that the beauty they had been intimate with was bio male.

Using that ``panic defense," their attorneys called it merely a manslaughter, but j rejected that argument. Now a civil rights group wants the California Legislature what they see as victim-blaming in hate-crime cases.

Named in honor of the 17-year-old who was beaten and strangled in October 200 Gwen Araujo Justice for Victims Act would amend jury instructions to state that so-called ``panic defenses" is inconsistent with California's comprehensive hate c

Hate crimes are criminal acts (or attempted acts) against an individual or group b their actual or perceived race, color, religion, ancestry, national origin, sexual or gender or disability.

Panic defenses are almost exclusively used in crimes against victims who are -- c to be -- gay, lesbian, bisexual or transgender.

``Having the panic defense be accepted by juries is an affront to the strong stanc taken against intolerance," said Assemblywoman Sally Lieber, D-San Jose, who the bill. ``There shouldn't be another young person like Gwen that loses their life their life then devalued in a courtroom."

But Gerald Uelmen, a professor at Santa Clara University School of Law who w the O.J. Simpson defense team, said he would find a jury instruction like that pre the current version of AB 1160 ``almost incomprehensible."

``What's a jury supposed to do with that?" Uelmen said. ``The jury doesn't deter policy, just decides facts. And to say you should decide facts differently if a part theory of defense is raised, I just think that's not an appropriate way to instruct a

Araujo was killed after four men she knew -- two of whom she had been sexuall with -- discovered she was anatomically male.

Their defense attorneys claimed the men flew into a rage after discovering they had been "tricked" into having sex with a biological male. They called the killing a crime of passion and urged jurors to cut childhood friends Michael Magidson, Jason Cazares and a break -- reduce the charge from murder to manslaughter -- for doing what any person would do under the same circumstances.

A fourth man involved, Jaron Nabors, pleaded guilty to voluntary manslaughter and testified against the others.

In September, a jury found Magidson and Merel guilty of second-degree murder that carry a maximum of 15 years to life in prison.

But the jury deadlocked over Cazares. The Newark resident has since pleaded guilty to voluntary manslaughter. All three defendants are scheduled to be formally sentenced on September 27.

Throughout the trial, Araujo's family and supporters decried what they saw as victim blaming on the part of the defense. AB 1160 is meant to rectify what advocates say is an often-used tactic by those charged with violent hate crimes.

"The claim is that when they discovered a person was gay or transgender they panicked and that somehow justifies their violence," said Geoff Kors, executive director of the California Advocates for Lesbian, Gay, Bisexual & Transgender Equality, an advocacy group that sponsored the bill.

There are no solid statistics on how many defendants use the panic defense, but a recent estimate there have been about 200 cases in the past decade.

The two men convicted of the 1998 murder of Matthew Shepard, a gay Wyoming student, tried to use a gay panic defense, but a judge rejected it.

Even when the panic defense is used unsuccessfully, as in the Araujo case, advocates say it taps into jurors' potential biases and sends a message that it is OK to have a violent reaction to learning someone is gay or transgender.

"I don't think that's an idea most Californians agree with, and clearly not only here but many of our state laws run contrary to that idea," said Brad Sears, executive director of the Charles R. Williams Project on Sexual Orientation and the Law at the UCLA School of Law.

AB 1160 passed the Assembly Public Safety Committee by a 4-2 vote Tuesday and now faces several hurdles before it lands on the governor's desk.

This is the second incarnation of AB 1160. The first, introduced last February, aimed to block defendants charged with a hate crime from invoking a heat-of-passion or crime of passion defense at all. But it quickly died amid opposition from Campaign for California Families, a conservative lobbying group, supporters of the bill said.

Not everyone is on board with the latest version, either.

Jay Boyarsky, supervising deputy district attorney in charge of hate crime prosecutions, said the bill is "a disservice to the victims and the public."

Santa Clara County, called the bill ``redundant" because judges already have discretion to allow or not allow panic defenses.

Judges also already instruct jurors to check their personal biases at the door when entering a case. Further, if a defendant is charged with a hate crime, jurors receive instructions on what constitutes such an offense.

``I think the goals are laudable," Boyarsky said of AB 1160. ``It's despicable to see attorneys engage in victim blaming during a trial . . . However, passing a law to regulate this type of courtroom behavior strikes me as problematic."