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## The Trans Panic Defense Revisited

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## THE TRANS PANIC DEFENSE REVISITED

Cynthia Lee

### ABSTRACT

*Violence against transgender individuals in general, and trans women of color in particular, is a significant problem today. When a man is charged with murdering a transgender woman, a common defense strategy is to assert what is called the trans panic defense. The trans panic defense is not a traditional criminal law defense. Nor, despite its name, is it recognized as a stand-alone defense. Rather, trans panic is a defense strategy associated with the provocation or heat of passion defense. A murder defendant asserting trans panic will claim that the discovery that the victim was a transgender female—an individual thought to be male when born who identifies as a woman—provoked him into a heat of passion, causing him to lose his self-control. If the jury finds that the defendant was actually and reasonably provoked into a heat of passion, it can acquit him of murder and find him guilty of a lesser offense.*

*This Article starts by discussing the problem of violence against transgender individuals in the United States today. It then focuses upon a particular manifestation of this violence—cases in which a man kills a transgender woman with whom he was intimate or to whom he was attracted, is arrested and charged with murder, and then asserts a trans panic defense.*

*Next, this Article offers several reasons why the trans panic defense strategy is deeply problematic. First, the trans panic defense appeals to negative stereotypes about transgender individuals. Second, it legitimizes the enforcement of norms of masculinity and heterosexuality through violence. Third, it inappropriately validates bias against transgender individuals when we live in a pluralistic society that should be tolerant and accepting of all individuals.*

*The Article then addresses the normative question of what should be done to rectify the harms rendered when a defendant charged with murder asserts a trans panic defense. In the past, the Author was reluctant to support proposals to legislatively ban the trans panic defense. She felt that the best way to defeat the trans panic defense was not to ban it, but to allow it to be aired and then have a strong prosecutor explain to the jury why it should be rejected. She also argued that it was critically important to eradicate the underlying structures of masculinity that encourage violence against transgender women to reduce the risk of such violence taking place and to undermine the effectiveness of the trans panic defense. She opined that the best way to achieve these goals was to educate both the public and the jury about the difficulties transgender individuals face just trying to exist in society and make the existence of bias against transgender individuals salient to the jury.*

*While the Author still believes in the importance of education, she now feels education alone is insufficient to ensure that juries reject the trans panic defense. The Article explains the Author's shift in position and concludes by examining recently enacted legislative bans on the trans panic defense and offering concrete suggestions on how legislative reform in this arena could be strengthened.*