

Jamie Grace Alexander_FAV_SB554

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Testimony of Jamie Grace Alexander, *Baltimore Transgender Alliance* (SUPPORT SB554)

Homophobia & Transphobia generally means a dislike or prejudice against gay & trans people; but in the case of the panic defense it represents a literal fear. A fear that gay & trans people walk among us, a simple reality in 2020, but also a fear of ones internal response to attraction to a LGBT person.

This fear does not deserve to be prioritized over the lives & wellbeing of my LGBT siblings. I won't waste time arguing today about why hate crimes are inexcusable, & instead shift the focus to the LGBT victims of violence & the source of the panic.

It is necessary to discuss passing, disclosure & coming out when we are unpacking this law that derives from "THE DISCOVERY OR PERCEPTION OF, OR BELIEF ABOUT, ANOTHER PERSON'S SEX, GENDER IDENTITY, OR SEXUAL ORIENTATION" all of the above should be left to the discretion of the LGBT person in order to reduce already disproportionate violence.

"Pushing Back: A Blueprint for Change" a report from Free State Justice summarizing their 2016 Needs Assessment of LGBTQ Marylanders reported that more than half of all respondents have either been harassed themselves or know someone who has been. More than proving that gay & trans people have greater reason for fear than those using the panic defense.

These daily realities on street harassment bleed into intimate relations as the report also states that Black women and transgender individuals are at a higher risk of experiencing criminalization and violence by police upon reporting domestic violence and sexual assault.

Laws like these only further marginalize at risk individuals, take away their right to disclose or not disclose, & victim-blame them. Moreover, this law represents the long standing belief in my community that the government doesn't care whether we live or die.

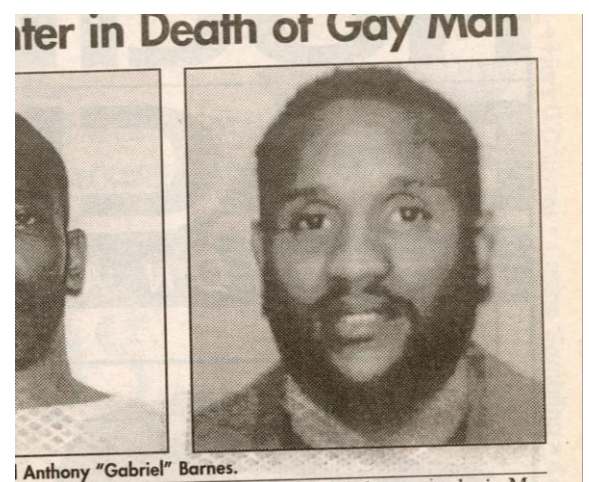
Are gay & trans people not afraid?

October 1996 Anthony "Gabriel" Barnes was murdered by Charles Garney In Prince Georges County, Maryland. Garney admitted to doing so in April 1997. His public defender claimed that his client was pushed to murder when Gabriel tried to "force" him into "deviant" & "unnatural" sex. Despite his admission of guilt, Garney was hung on the charge of manslaughter with a maximum of 10 years & a possibility of parole in only 3. Garneys defender used the same defense as the Mathew Shepherd case & severely reduced his clients sentence.

This injustice is older than I am.

We have a real opportunity to give Gabriel a small justice today

I sincerely hope that the men & women of Annapolis will not panic.



Pushing Back: A Blueprint for Change

Carney Charged With Manslaughter in Death of Gay Man

By WINNIE McCROY
BGP Staff Writer

Urged by a coalition of gay activists in Prince George's County, state's attorney Jack Johnson has brought to justice the confessed killer of a black gay man murdered in Oct. 1996. Charles Carney, confessed killer of Anthony "Gabriel" Barnes, pleaded guilty to charges of voluntary manslaughter, and faces a maximum sentence of ten years.

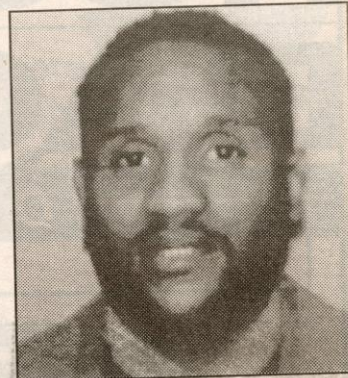
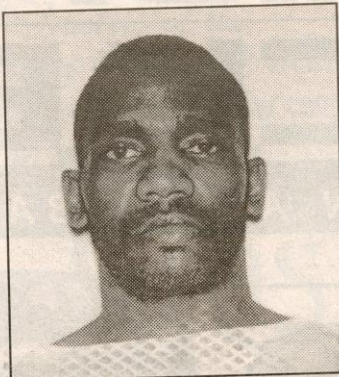
"I've spoken to a number of people from the gay community," said Johnson. "They brought to my attention the very serious concerns. I received more letters about this case than in my history as a state's attorney."

Calling themselves the "Coalition for Justice," the group asked Johnson to pursue further criminal charges against Carney after he admitted in April 1997 to killing Barnes. In his original defense, Carney's attorney, public defender Wendell Bates, claimed that his client was spurred to murder after Barnes attempted to force him into a "deviant" and "unnatural" sexual encounter. This "homosexual panic" defense is similar to that used by Matthew Shepard's alleged killers, who claim they were driven to kill Shepard after he made a pass at them.

"I will not deny I used words to that effect," said Bates. "I had to since Carney did not take the witness stand. He said that [Barnes] tried to force him."

"The anti-gay rhetoric invoked during the trial suggests that murder is an acceptable response to encountering someone who is gay or who allegedly makes homosexual advances," said DC Lesbian Avenger Jennifer Margiotta.

Prosecutor Dorry Ipolito is troubled by assertions that Carney used the "homosexual panic" defense, as Carney never took the stand at all. While she would not say that the jury was motivated by homophobia, she did admit "it was pretty clear to me that it was a murder."



Charles Carney, left, and Anthony "Gabriel" Barnes.

A jury acquitted Carney of first and second-degree murder in May of this year, regardless of his admission of guilt. They hung on the charge of manslaughter.

"When the jury came back with 'not guilty,' to say I was shocked would be the understatement of the year," said Ipolito. "There was a confession by Carney. There were clearly things in Carney's statement that led to [a conviction of] murder."

In his sentencing, Johnson answered the pleas of coalition members, including gay man Brian Scott, a former member of the Prince George's County Human Relations Commission, who demanded that "this confessed killer must be brought to justice."

In early correspondence to members of the coalition, Johnson expressed his disappointment in the jury's decision, and maintained that

see BARNES page A7

BARNES

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the state's attorney's office did everything in its power to convict Carney on first degree murder. In addition, Johnson said that he did not support the homosexual panic defense used in the trial.

"The issues concerning homosexuality...were advanced by the defense, and we tried as hard as we could to overcome those issues," wrote Johnson in a letter dated Oct. 22. "I wish I could rid the world of prejudice, but I cannot. I can assure you that as a human being and as a public servant, I will never make a decision based on a person's race, religion, or sexuality."

"We have to look at this case as a violation of civil rights," said Johnson in a recent interview. "It should be unethical and an invalid defense when any of these issues [race, gender, sexual orientation] are raised as a defense to a crime."

In response to this case, Johnson has said that he will support efforts to add sexual orientation to Maryland's hate crimes legislation. In addition, he vowed to discuss the issue at the next board meeting of the office of the state's attorney, in an effort to

enlist their support.

"I looked at it this way—at least I got a conviction, he's serving time, and that brings closure to the family," said Ipolito. "I cried my eyes out—[the papers] made it look like we don't care about gay people. Bernie Nelson, the lead investigator, worked his tail off on this case. He did everything in his power. But the wild card is always the jury. When you go to trial, you are trusting in 12 people. That verdict hurt—it still hurts."

"In my heart of hearts, this hurt to my soul," added Ipolito. "I will bring this case to my grave."

Carney, who was in a Lorton prison for an unrelated vehicle theft when he was brought up on the charges of homicide and manslaughter, will return to Lorton to finish time for his previous offense. He will also receive a one and a half year reprise for time served. After he has served the remainder of his time in Lorton, VA, he will be transferred to Maryland to serve remaining time in either the Maryland House of Corrections at Jessup or the Maryland Penitentiary. He will be eligible for parole in three years.

Lambda Legal_Sasha Buchert_FAV_SB0554

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Position: FAV

Testimony of Sasha Buchert **SUPPORT SB 0554**

Senior Attorney, Lambda Legal

February 11, 2020

Good afternoon Chairman Smith and members of the Committee. My name is Sasha Buchert and I'm a Senior Attorney at Lambda Legal, and I'm testifying in support of SB 0554. Founded in 1973, Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work. Through Lambda Legal's Fair Courts Project, we provide training for judges, court staff and attorneys nationwide on LGBT cultural competency and bias related to gender and sexuality. We have also created a guide designed to help practitioners address bias during jury selection, conduct LGBT inclusive voir dire, and challenge the discriminatory use of peremptory strikes.¹

LGBTQ people, and transgender women of color in particular, move through the world under the constant threat of impending violence. In the words of one transgender woman of color in a recent New York Times article, "it's always in the forefront of our minds, when we're leaving home, going to work, going to school."²

This fear is well-substantiated. In 2019, there were at least 26 reported murders of transgender people, almost all of them transgender women of color.³ Almost all of the murders involve the victims being shot multiple times, and commonly involve beatings and burnings. Two of those murders took place in the Maryland; Zoe Spears a Black transgender woman, was found lying in the street with signs of trauma in Fairmount Heights last June and Ashanti Carmon, also a black transgender woman was fatally shot in Prince George's County and Bailey Reeves, 17, a Black transgender teen, was fatally shot in Baltimore, Maryland, on September 2.⁴

Nationwide, there has also been a troubling increase in hate violence targeting people based on their sexual orientation. The number of hate crime incidents targeting gays, lesbians, and bisexuals in the United States in 2018 increased by nearly 6 percent over the previous year and the number of anti-transgender hate crime incidents increased by 41 percent during that same period, according to the FBI's newly released annual Hate Crime Statistics Report. The report, which covers 2018, the most recent year for which the FBI has released hate crimes data, shows that participating law enforcement agencies throughout the country reported to the FBI a total of 7,120 hate crime incidents for 2018, 55 fewer than the total reported for 2017.

¹ Available at https://www.lambdalegal.org/sites/default/files/publications/downloads/jury-selection_08-31-17.pdf.

² Rick Rojas and Vaness Swales, *18 Transgender Killings This Year Raise Fears of an "Epidemic"* NEW YORK TIMES (Sept. 27, 2019), available at <https://www.nytimes.com/2019/09/27/us/transgender-women-deaths.html>.

³ Sadly, this is not exceptional. There were 26 murders in 2018, 30 in 2017, and 26 in 2016. See Violence Against the Transgender Community in 2019, Human Rights Campaign, available at <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>.

⁴ On June 18, 2019, Zoe Spears, 23, a Black transgender woman, was found lying in the street with signs of trauma in Fairmount Heights, Maryland https://www.washingtonpost.com/local/public-safety/second-transgender-woman-killed-in-same-dc-suburb/2019/06/14/82957314-8eb9-11e9-b08e-cfd89bd36d4e_story.html; Ashanti Carmon, 27, another Black transgender woman was fatally shot on March 30, 2019.

There is a long history of defendants seeking to justify such violence by asserting that it was motivated by the defendant's transphobia, homophobia or other bias against the victim.

Another notable example is that of Islan Nettles, a trans woman of color who was walking home with a friend when she ran into a group of men in New York City. As the groups collided, Dixon began flirting with Nettles, when one of his friends shouted, "That's a guy!" Dixon pushed Nettles, and she pushed back. Dixon said he "got enraged," so he punched her in the face. Nettles fell down and hit her head on the curb, causing a serious brain injury. Dixon swung a second punch "as she lay on the ground," while "driving the side of her head into the pavement." Dixon claimed that he'd felt duped and humiliated by the revelation of his victim's gender identity, which was admissible in court. Dixon was sentenced to 12 years in prison, overriding the DA's recommendation of 17 years.⁵

The defense has also often been used to target people based on their sexual orientation. The defendants in the Matthew Shepard case argued that their violence should be excused because they became "enraged to the point of murder,"⁶ by a supposed sexual advance and, more recently a defendant in Texas testified in his 2015 trial that he killed his neighbor because he became enraged because he thought the victim had propositioned him. A jury found the defendant guilty of criminally negligent homicide, but not guilty of manslaughter and murder and the defendant received a sentence of six months jail time and 10 years of probation.⁷

Maryland has a hate crime statute that applies whenever someone is targeted for their identity.⁸ And just as no one should be targeted as a victim based on bias against their gender identity, sexual orientation or other protected characteristic, those biases should not be the basis for a mental state of mind reducing criminal responsibility. These defenses are incompatible with the intent of Maryland law to provide increased protection to victims of bias-motivated crimes.

Similar legislation has already been passed in eight states: California, Illinois, New York State (and City), Rhode Island, Hawaii, Nevada, Connecticut, Maine and New Jersey.⁹ Similar legislation has been introduced in the District of Columbia, Minnesota, Pennsylvania, Washington, Wisconsin, Texas and

⁵ See James C. McKinley Jr. Man Sentenced to 12 Years in Beating Death of Transgender Woman, *NEW YORK TIMES* (Apr. 19, 2016), available at <https://www.nytimes.com/2016/04/20/nyregion/man-sentenced-to-12-years-in-beating-death-of-transgender-woman.html>.

⁶ See Matthew Shepard Foundation, *Congress Introduces Bill to Outlaw Gay/Trans Panic Defense* (June 5, 2019), available at <https://www.matthewshepard.org/blog/congress-introduces-bill-to-outlaw-gay-trans-panic-defense/>.

⁷ See Jule Compton *Alleged 'Gay Panic Defense' in Texas Murder Trial Stuns Advocates*, *NBC OUT* (May 2, 2018), available at <https://www.nbcnews.com/feature/nbc-out/alleged-gay-panic-defense-texas-murder-trial-stuns-advocates-n870571>.

⁸ Md. Code Ann., Crim. Law § 10-304.

⁹ See Cal. Penal Code § 192 (f)(1); 2019 Conn. Legis. Serv. P.A. 19-27 (S.B. 58) (California);

[https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-](https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf?fbclid=IwAR2u6xI09HWIbrN4Bd1IwOkMob6c_AW1iJgL8cG2RxtE5ga8EW4FtbSmzaU)

[PA.pdf?fbclid=IwAR2u6xI09HWIbrN4Bd1IwOkMob6c_AW1iJgL8cG2RxtE5ga8EW4FtbSmzaU](https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf?fbclid=IwAR2u6xI09HWIbrN4Bd1IwOkMob6c_AW1iJgL8cG2RxtE5ga8EW4FtbSmzaU) (Connecticut)

https://www.capitol.hawaii.gov/session2019/bills/HB711_.HTM (Hawaii); 720 Ill. Comp. Stat. Ann. 5/9-1(c), Ill. Comp.

Stat. Ann. 5/9-2(a) (Illinois); <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1175&item=1&snum=129>

(Maine); <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6080/Text12> (Nevada); R.I. Gen. Laws Ann. § 12-17-

17-19 (Rhode Island); [https://www.nysenate.gov/legislation/bills/2019/A8375?fbclid=IwAR2wA-](https://www.nysenate.gov/legislation/bills/2019/A8375?fbclid=IwAR2wA-qPqKjQh2i7CBuyDCikhxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI)

[qPqKjQh2i7CBuyDCikhxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI](https://www.nysenate.gov/legislation/bills/2019/A8375?fbclid=IwAR2wA-qPqKjQh2i7CBuyDCikhxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI) (New York).

New Mexico, and there is a federal bill that has been reintroduced this year.¹⁰ The American Bar Association has carefully considered this topic and has voted in support of this type of legislation—in fact the Act is based on the model language put forward by the ABA.¹¹

We believe it is responsible to address a few of the arguments that have been made against similar legislation.

- *Eliminating the defense will increase dependence on criminalization and incarceration.*
 - Lambda Legal recognizes that the criminal legal system disproportionately incarcerates and harms people of color and LGBTQ people. We recognize that biases towards people of color are rife throughout the criminal justice system. Our support for a bill that acts to remove the use of bias against LGBTQ people is not an endorsement of the criminal legal system or other biases within it. These cases inevitably receive a lot of media attention, sometimes exactly because of this defense, and permitting it inevitably sends a message that that this violence is culturally understandable and even permissible.
- *Eliminating the defense will limit defenses for LGBT people in domestic violence situations.*
 - A defendant would retain all defenses, they would just not be able to justify their violence on the “discovery of, knowledge about, or the potential disclosure” of their victim’s protected characteristic.
- *A judge can already dismiss the panic defense or with proper instructions to a jury.*
 - Unfortunately, judges and juries are not exempt from overt or implicit bias.

Conclusion

SB 0554 is a necessary step to address an anachronism in our legal system that demeans and devalues the lives of vulnerable people. Allowing this defense dehumanizes LGBTQ people and sends a message to other defendants or would-be assailants and to the public that they can always rely upon this to mitigate any punishment.

The panic defense uses the bias of jurors and the judge to their advantage and it perpetuates anti-LGBT stigma and suggests, as the ABA points out, it runs contrary to our constitutional values as a society, our existing hate crimes statute and it should be eliminated before it can be used again.

We urge the committee to support this legislation and to move quickly.

Thank you,

Sasha Buchert
Senior Attorney
Lambda Legal

¹⁰ <https://www.congress.gov/bill/116th-congress/senate-bill/1721?q=%7B%20search%3A%5B%20panic+defense+markey%5D%7D&s=1&r=1>

¹¹ <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>

PFLAG Metro DC_Mark Eckstein_FAV_SB0554

Uploaded by: Eckstein, Mark

Position: FAV



SB0554: Written Testimony - SUPPORT

February 11, 2020

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

We are writing in **SUPPORT of SB0554: Crimes-Mitigation-Sex, Gender Identity, and Sexual Orientation**. This legislation would no longer allow the discovery, or perception, of one's sexual orientation or gender identity to constitute "legally adequate provocation to mitigate" murder or manslaughter, enabling a lesser charge or reduced sentence. Any form of "panic" defense is discriminatory and justifies harmful stereotypes surrounding the LGBTQ+ community. This form of defense not only proclaims LGBTQ+ victim's lives as somehow less worthy than others, but it provides an excuse for violence against them. The ability to use this form of defense promotes discrimination against an already marginalized and threatened community, proven to be even worse for transgender women of color.

Research from the FBI shows that, in 2017, there were a total of 1,249 hate crimes against the LGBTQ+ community. Statistically, 1 in 5 LGBTQ+ individuals living in the United States will experience some sort of hate crime in their lifetime. Allowing the "panic" defense will only further put their lives in danger. State law should promote and support equality for everyone. No one's identity or expression should be accepted as a legitimate threat to those who would do any type of violence. Everyone should be encouraged to live their lives freely and openly without fear of discrimination. LGBTQ+ victims' lives should be considered just as important in the eyes of the courts.

We urge you to support this bill and make sure every victim gets the equal justice they deserve, regardless of who they are or who they love. We believe that together, we can achieve equality for all.

We urge a **Favorable Report on SB0554**.

Thank you,

Nicolle Campa She | Her | Hers
Metro DC PFLAG
Board President

Mark Eckstein He | Him | His
Metro DC PFLAG
MD Advocacy Chair

www.pflagdc.org

Keeping Families Together!

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Uploaded by: Hoffman, CP

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February 11, 2020

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
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Miller Senate Office Building
Annapolis, MD 21401

Testimony of FreeState Justice

IN SUPPORT OF

SB0554: Crimes - Mitigation - Sex, Gender Identity, or Sexual Orientation

To the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and esteemed members of the Judicial Proceedings Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ Marylanders who could not otherwise be able to afford an attorney.

Despite significant advances in recent years, the LGBTQ community continues to be subjected to discrimination and violence at rates significantly above the state and national averages. From hazing and gaybashing to gruesome homicides, LGBTQ individuals often find themselves the targets of violence simply because of their sexual orientation or gender identity. But while the state of Maryland rightly treats these acts as hate crimes,¹ criminal defendants are nonetheless able to rely on a "queer panic" defense to mitigate their offenses.

The queer panic defense can take many forms, but prototypically claims that a criminal defendant's crimes are excused or justified because "his violent actions were in response to a (homo)sexual advance."² In effect, the defense argues that the

¹ See Crim. Law § 10-301 et seq.

² Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471 at 475 (2008).

victim's advances provoked the defendant, and that the defendant's homicide or assault is justified because a reasonable person would have reacted the same way had they been hit on by a queer person under the same circumstances.

In other cases, especially those involving transgender individuals, violence comes as a result of the defendant's, rather than the victim's, sexual advances. There, defendants claim that discovering the victim's transgender status "was so upsetting to the defendant that he panicked and lost self-control, and therefore he should be acquitted of murder and instead convicted of a lesser offense, such as voluntary manslaughter."³ In many of these cases, the victim allegedly "provoked" the defendant not by making sexual advances on him, but by merely existing as a sexualized object.

Regardless of the specifics, however, the defense is manifestly unjust. It treats LGBTQ individuals as sexual deviants who deserve to die for simply existing, while privileging the feelings of the heterosexual, cisgender individuals who kill them.

More troublingly, in some cases the panic defense has been used as a sham defense where the defendant was well aware of the victim's sexual orientation or gender identity from the beginning. Indeed, this was the case in one of the earliest examples of a gay panic defense being used, the murder of William T. Simpson in Miami during a robbery in 1954.⁴

In other cases, defendants have used possibly sham panic defenses to excuse unrelated crimes, such as in the death of Monsignor Thomas Wells in Germantown, Maryland, in 2000. In that case, the defendant, Robert Paul Lucas, broke into the Mother Seton Catholic Church, where he encountered Wells. According to Lucas, Wells then came onto him and tried to coerce him into performing oral sex on Wells. Lucas did not raise this defense until weeks after his arrest, however; prosecutors argued more plausibly that Lucas had come across Wells while attempting to steal from the church. Regardless of whether Lucas invented his panic defense out of whole cloth, it worked: after considering the mitigation evidence, the jury convicted Lucas of second degree, rather than first degree, murder.⁵

³ Cynthia Lee, *Revisiting the Trans Panic Defense*, 57 AM. CRIM. L. REV. ___ (2020) (forthcoming).

⁴ See "Death in Miami," *The Daily Mirror*, *The Los Angeles Times* (Nov. 20, 2010), available at <https://latimesblogs.latimes.com/thedailymirror/2010/11/death-in-miami.html>.

⁵ See Susan Levine, "Priest's Killer Tells Court of Struggle," *The Washington Post* (May 31, 2001), available at

Unfortunately, panic defenses are not a thing of the past. W. Carsten Andresen, Assistant Professor of Criminal Justice at St. Edward's University, has identified at least 104 cases in which a queer panic defense has been used, though he notes that he is "certain there are hundreds of cases that I have yet to identify."⁶

Although queer panic defenses have been used across the country since at least the 1950s,⁷ Professor Andresen notes that it is difficult to state how frequently the defenses are used because the cases are not tracked in a systemic way, either by the state or federal government. The FBI data on homicides, for instance, does not track the sexual orientation or gender identity of the victim.⁸ Likewise, judicial databases do not track every defense raised at every criminal trial, and, regardless, would miss cases that never made it to trial, in which panic defenses were raised prior to or as part of a plea bargain.

But while we do not know the scope of uses of the panic defense, we do know the scope of violence against LGBTQ Marylanders. According to the Maryland State Police 2017 Hate/Bias Report, of 183 verified hate crimes committed in 2017, 21 were committed based on the victim's sexual orientation, with an additional 12 based on the victim's gender identity.⁹ In 2019, at least three black trans women

<https://www.washingtonpost.com/archive/local/2001/05/31/priests-killer-tells-court-of-struggle/1c35ac03-f659-475a-85c7-87919780e523/>.

⁶ W. Carsten Andresen, "I track murder cases that use the 'gay panic defense,' a controversial practice banned in 9 states," *The Conversation* (Jan. 29, 2020), available at <http://theconversation.com/i-track-murder-cases-that-use-the-gay-panic-defense-a-controversial-practice-banned-in-9-states-129973>.

⁷ See Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471 at 489-521 (2008).

⁸ See W. Carsten Andresen, "I track murder cases that use the 'gay panic defense,' a controversial practice banned in 9 states," *The Conversation* (Jan. 29, 2020), available at <http://theconversation.com/i-track-murder-cases-that-use-the-gay-panic-defense-a-controversial-practice-banned-in-9-states-129973>.

⁹ Maryland State Police, State of Maryland 2017 Hate/Bias Report (Sept. 1, 2018) at 5, available at <http://www.mcac.maryland.gov/resources/2017%20Maryland%20Hate%20Bias%20Report.pdf>.

were killed in Maryland: Ashanti Carmon¹⁰ and Zoe Spears¹¹ in Fairmount Heights, Prince George’s County, and Bailey Reeves in Baltimore.¹²

These deaths, and others like them across the country, have left many LGBTQ Marylanders, especially transgender Marylanders, feeling under attack. And yet, those who would do violence to us are still able to justify that violence by relying on the panic defense in its various forms.

It’s time for Maryland to close this loophole and join the nine states that have already banned the panic defense.

For this reason, FreeState Justice urges a favorable report on Senate Bill 554.

¹⁰ See Tim Fitzsimons, “She did not deserve that’: Trans woman fatally shot in Maryland,” *NBC News* (April 1, 2019), available at <https://www.nbcnews.com/feature/nbc-out/she-did-not-deserve-trans-woman-fatally-shot-maryland-n989751>.

¹¹ See Natalie Delgadillo, “Community Mourns Zoe Spears, Second Trans Woman Killed on Eastern Avenue This Year,” *DCist* (June 17, 2019), available at <https://dcist.com/story/19/06/17/community-mourns-zoe-spears-second-trans-woman-killed-on-eastern-avenue-this-year/>.

¹² See “At vigil for transgender teen killed in Baltimore, LGBTQ community stresses unity in face of violence,” *The Baltimore Sun* (Sept. 6, 2019), available at <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-17-year-old-transgender-teen-killed-20190907-dvsu63crwjf7pmqtiub3rzxl3e-story.html>.

LGBTQ Dem of MoCo_Samantha Jones_FAV_SB0554

Uploaded by: Jones, Samantha

Position: FAV

Testimony Favorable for Senate Bill 554: Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation

Mr. Chair, Madam Vice Chair, and esteemed members of the Judiciary Committee: my name is Samantha Jones and I am the President of the LGBTQ Democrats of Montgomery County. My pronouns are she/her/hers. On behalf of our club, I am submitting this testimony **in full support of Senate Bill 554: Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation**.

This bill will prohibit the use of an appalling legal defense that dehumanizes the LGBTQ victims of homicide and assault for the crimes perpetrated against them. Current state law allows defendants in homicide and assault cases to utilize a panic defense in an attempt to mitigate their charges. Most commonly, panic defenses are used to prove the defendant was *provoked* into violence simply because of their victim's sexual orientation or gender identity, whether real or perceived. In other words, Maryland law lets defendants blame acts of inexcusable violence on their gay, lesbian, bisexual, transgender, non-binary, and other queer-identified victims.

What is particularly troubling about this panic defense is that implicitly stigmatizes LGBTQ people, a population that is already especially prone to hate-based violence. The FBI reported that in 2018, hate crimes directed at LGBTQ individuals increased by almost six percent, including a significant 42% increase in crimes directed against transgender individuals.¹ In the wake of the increasing trend of hate-based violence, it is disturbing that juries across the nation continue to acquit or mitigate defendants' charges through the use of an LGBTQ panic defense strategy.

Tragically, some of these hate-based crimes occur right here in Maryland. In 2019 alone, at least three transgender women were murdered in our state. The people who murdered Ashanti Carmon, Bailey Reeves, and Zoe Spears could all potentially legally claim the LGBTQ panic defense in their criminal trials, unless state law changes.

Senate Bill 554 will eliminate the option to use an LGBTQ victim's identity against them in homicide and assault cases, restoring justice for the victim. Nine other states have banned the use of the LGBTQ panic defense, including California, New Jersey, and New York. This year, seven states and the District of Columbia, in addition to Maryland, are considering legislation that would ban this panic defense. Both the American Bar Association and the National LGBT Bar Association favor a ban on the LGBTQ panic defense.²

¹ Federal Bureau of Investigation, *Hate Crimes Statistics, 2018*, <https://ucr.fbi.gov/hate-crime/2018>

² American Bar Association, *ABA Resolution 113A*, <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>; National LGBT Bar Association, *LGBTQ+ Panic Defense*, <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/>.

As Maryland continues to make progressive changes to our criminal justice system, the time has come to fully recognize LGBTQ people as equal citizens under law. Therefore, the LGBTQ panic defense must be eliminated from our statutes.

On behalf of the LGBTQ Democrats of Montgomery County, I respectfully urge the Judiciary Committee to pass Senate Bill 554 and send it to the full Senate for consideration.

Thank you,

Samantha Jones, Esq.
President
LGBTQ Democrats of Montgomery County

LGBT Bar_Darcy Kemnitz_FAV_SB0554

Uploaded by: Kemnitz, Darcy

Position: FAV



Testimony of D’Arcy Kemnitz **SUPPORT SB 554**
Executive Director, The National LGBT Bar Association and Foundation
February 11, 2020

Good afternoon Chairman Smith and members of the Committee. My name is D’Arcy Kemnitz and I’m the Executive Director at The National LGBT Bar Association and Foundation, and I’m testifying in support of SB 554. The LGBT Bar was founded over thirty years ago by a small group of family law practitioners at the height of the HIV/AIDS crisis. We have been leading the effort to ban LGBTQ+ panic defenses across the country. In 2013, we introduced a resolution with the American Bar Association that was unanimously approved to end this heinous defense argument.¹

The LGBTQ+ panic defense, also referred to as the gay panic defense or trans panic defense, is a legal defense strategy that asks a jury to find the victim’s sexual orientation or gender identity to blame for defendant’s violent action. The LGBTQ+ panic defense states that offenses against LGBTQ+ people are blameless due to a “panic” the defendant experiences upon discovering the victim’s gender identity or sexual orientation. Rooted in irrational fears based in homophobia and transphobia, it sends the message that violence against LGBTQ+ people is acceptable and that their lives are worth less due to their gender identity or sexual orientation.

Violence against LGBTQ+ people is all too common. In 2019, at least 26 transgender people were murdered, with three being in Maryland². Hate crimes against LGBTQ+ people have been increasing in recent years. Research show that one in five five lesbian, gay, and bisexual people will experience a hate crime in their life, and one out of four transgender people will.³

This bill would prohibit the LGBTQ+ panic defense to mitigate certain violent crime charges in criminal court. With legislation, that defense would not constitute legally adequate provocation to mitigate a killing from murder to manslaughter or an assault from the first degree to the second degree or a lesser crime.

Traditionally, the LGBTQ+ panic defense has been used in three ways in court:

- **Defense of insanity or diminished capacity:** The defendant alleges that a sexual proposition by the victim, due to their gender identity or sexual orientation, triggered a nervous breakdown in the defendant, causing an LGBTQ+ “panic.”
- **Defense of provocation:** The defense of provocation allows a defendant to argue that the victim’s proposition, sometimes termed as a “non-violent sexual advance,” is sufficiently “provocative” to induce the defendant to kill the victim. Defendants claiming a “provocative” advance stigmatize behavior which, on its own, is not illegal or harmful, but is considered “provocative” when it comes from an LGBTQ+ individual.

¹ <https://lgbtbar.org/wp-content/uploads/2014/02/Gay-and-Trans-Panic-Defenses-Resolution.pdf>

² <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>

³ <https://scholars.org/contribution/understanding-and-handling-hate-crimes-against-gay-bisexual-and-transgender-people>



- **Defense of self-defense:** Defendants claim they believed that the victim, because of their sexual orientation or gender identity/expression, was about to cause the defendant serious bodily harm. This defense is offensive and harmful because it argues that a person’s gender or sexual identity makes them more of a threat to safety. In addition, the LGBTQ+ panic defense is often employed to justify violence when the victim’s behavior falls short of the serious bodily harm standard, or the defendant uses a greater amount of force than reasonably necessary to avoid danger, such as using weapons when their attacker was unarmed.

This defense has appeared in court opinions in about 25 states since the 1960s. Moreso, dozens of murder charges have been acquitted in the U.S. under the LGBTQ+ panic defense, as recent as April 2018, including: Scott Amedure (1995), who was shot in the heart twice due to “gay panic disorder;” Ahmed Dabarran (2001), who was struck over the head a dozen times against claims of unwanted sexual advances; Gwen Araujo (2002), who was beat and strangled when found that she was a transgender woman; Guin “Richie” Phillips (2003), who was strangled to death against claims of unwanted sexual advances; Angie Zapata (2008), who was beat with a fire extinguisher when found she was a transgender woman; Terrance Hauser (2008), who was stabbed 61 times by a neighbor against claims of sexual assault; Francisco Gonzalez Fuentes (2011), who was stabbed to death because his boyfriend was afraid of people knowing he was gay; Marco McMillan (2013), who was choked to death against claims of sexual advances; Ever Orozco (2013), who was stabbed to death after they blew kisses and made other sexual advances; Jennifer Laude (2014), who was choked to death when found out she was a transgender woman; and Daniel Spencer (2015), who was stabbed and murdered by a neighbor who claimed that he acted in self-defense from a rejected advance.⁴

As of now, nine states including California, Connecticut, Hawaii, Illinois, Maine, New Jersey, Nevada, New York, and Rhode Island have all enacted laws to ban this defense. Eight other states, such as Minnesota, Pennsylvania, Texas, Massachusetts, New Mexico, Wisconsin, Washington and the District of Columbia have introduced legislation to ban this defense.⁵ It’s been introduced federally in July of 2018 by Senator Markey (D-MA)⁶ and Congressman Kennedy (D-MA)⁷ and re-introduced in June of 2019^{8,9}.

SB 554 would better protect LGBTQ+ Maryland residents and ensure victims receive the justice they are due. We urge the committee to support this legislation and move quickly.

Thank you,

D’Arcy Kemnitz
Executive Director
The National LGBT Bar Association and Foundation

⁴ <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/>

⁵ <https://lgbtbar.org/programs/advocacy/gay-trans-panic-defense/gay-trans-panic-defense-legislation/>

⁶ <https://www.markey.senate.gov/imo/media/doc/Gay%20Trans%20Panic%20Defense%20Prohibition%20Act.pdf>

⁷ <https://www.congress.gov/115/bills/hr6358/BILLS-115hr6358ih.pdf>

⁸ <https://www.congress.gov/bill/116th-congress/house-bill/3133>

⁹ <https://www.congress.gov/bill/116th-congress/senate-bill/1721>

States Attorney Balt City_Merrick Moise_FAV_SB0554

Uploaded by: Moise, Merrick

Position: FAV



February 10, 2020

Senator William Smith, Jr. and Delegate Luke Clippinger
Chair, Judicial Proceedings and Chair, Judiciary
Miller Senate Office Building and House Office Building
Annapolis, MD 21401

Re: Support for SB554/HB488 Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation.

Dear Chairman Smith, Chairman Clippinger, and Respective Committee Members,

I am submitting this written testimony to offer my support for SB554/HB488 Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation. As the prosecutor for Baltimore City my most important task is to serve justice. Although it is estimated that there are approximately 14.6 million people in the US that identify as lesbian, gay, bisexual, transgender, queer and plus (LGBTQ+), the Federal Bureau of Investigation (FBI) statistics illustrate that this community remains the disproportionate target of crimes simply because of their sexual orientation or identification. Such crimes are defined as hate crimes, yet it remains in Maryland that one can use as defense for violent actions the justification of someone's sexual orientation or identification. In order to change this, my office supports SB488/HB554.

Such arguments as a justification for a violent act against another are termed "The LGBTQ+ panic defense strategy" or the "Gay Panic Defense". This is defined as a legal strategy that asks a jury to find that a victim's sexual orientation or gender identity/expression is to blame for a defendant's violent reaction, including murder. When a defendant uses an LGBTQ+ panic defense, they are claiming that a victim's sexual orientation or gender identity not only explains—but excuses—a loss of self-control and the subsequent assault. By fully or partially acquitting the perpetrators of crimes against LGBTQ+ victims, this defense implies that LGBTQ+ lives are worth less than others.

The issue worsens when one understands that the LGBTQ+ community is at significant risk for hate crimes. In the United States, the estimated adult LGBTQ+ community makes up 4.5 percent, an estimated 14.6 million people. Hate crime statistics from the FBI show, however, that LGBTQ+ people are disproportionately targeted. In 2017, there were 1,249 recorded hate crimes against people for their sexual orientation and gender identity. These hate crimes made up a combined 17.6 percent of motivation in single-bias hate crime incidents—a four percent increase from 2016. Research shows that 1 out of 5 lesbian, gay, and bisexual people living in the United States will experience a hate crime in their lifetime, and 1 out of 4 transgender people will. Allowing for these crimes to be justified will only perpetuate and continue the status quo.

STATE'S ATTORNEY
Marilyn J. Mosby



OFFICE of the STATE'S ATTORNEY for BALTIMORE CITY
120 East Baltimore Street | Baltimore, Maryland 21202

SB488/HB554 ensures that in Maryland an outdated and debunked “gay panic disorder” term (The American Psychiatric Association removed the pseudo disorder from the DSM in 1973) is no longer acceptable, and will ensure that some of our most marginalized and at risk residents know we support them.

Thank you for your consideration.
Sincerely,

A handwritten signature in blue ink that reads "Marilyn J. Mosby". The signature is written in a cursive style with a large, stylized initial "M".

Marilyn J. Mosby
State's Attorney for Baltimore City

SB0554 MD NARAL FINAL

Uploaded by: philip, diana

Position: FAV



SB0554 – Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation

Presented to Honorable Will Smith and Members of the Senate Judicial Proceedings Committee
February 11, 2020 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland **urges the Senate Judicial Proceedings Committee a favorable report on SB0554 – Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation**, sponsored Senator Clarence Lam. Banning the use of the gay and trans bias panic defense positively supports individuals who identify as LGBTQ+ by ensuring that such a defense is not a justifiable reason for perpetrators to receive a lesser charge or sentence in murder or assault cases.

NARAL Pro-Choice Maryland is an advocate for reproductive health, rights, and justice for all Marylanders. Advocating for the betterment of every Marylander regardless of their sexual orientation, gender expression, or gender identity ensures that LGBTQ+ individuals' lives are equal. We at NARAL Pro-Choice Maryland recognize that LGBTQ+ members of the community will only be able to make informed and independent decisions about their own sexual and reproductive lives when allowed the freedom to not be disparaged or harmed. Individuals who identify as LGBTQ+ have faced higher rates of violence compared to their heterosexual and cisgender peers.¹ In 2018, 1445 of the 8819 victims of hate crimes were targeted because of their LGBTQ+ identity, with this number increasing yearly.² The gay and trans bias panic defense invokes the defenses of provocation, self-defense, and diminished capacity by pointing to a victim's sexual orientation or gender identity instead of the unlawful actions of the offender. This type of legal defense re-victimizes LGBTQ+ individuals, and has been used in over 25 states, with the most recent case in Texas in 2018.³ Due to the clear injustice of this legal strategy, the gay and trans panic defense has been eliminated in four states and is under review in five states, as well as at the federal level. Blaming panic based on the perception or belief of one being LGBTQ+ or the possibility of unwanted sexual contact or an attempted pass by the victim reinforces negative stereotypes that LGBTQ+ people are the ones whose behavior is deviant and should be feared.

In supporting the rights of LGBTQ+ individuals by creating an inclusive, understanding, and supportive community, Maryland allows for everyone to thrive in society. This goal can be realized when all people have the resources, as well as the social, political, and economic power to make autonomous decisions about their bodies, and live in safety, with dignity, and in good health. The potential for the gay and trans panic defenses to be used in Maryland is a blatant miscarriage of justice and a clear message to LGBTQ residents that their lives are not equal to those of other victims of violence.

The use of the gay and trans bias panic defense deprives victims, their family, and their community of dignity and justice. SB0554 advances the rights of LGBTQ+ individuals by declaring that such a legal defense is unjustified and should be barred from the courtroom. For these reasons, **NARAL Pro-Choice Maryland urges a favorable committee report on SB0554**. Thank you for your time and consideration.

¹ Jamie M. Grant, *et al.* Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. (2011)

² Federal Bureau of Intelligence (2018). <https://ucr.fbi.gov/hate-crime/2018/tables/table-1.xls>

³ Dart, T. (2018, May 12). After decades of 'gay panic defence' in court, US states slowly begin to ban tactic. <https://www.theguardian.com/us-news/2018/may/12/gay-panic-defence-tactic-ban-court>

SB0554 MD NARAL FINAL

Uploaded by: philip, diana

Position: FAV



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February 11, 2020 1:00 p.m.

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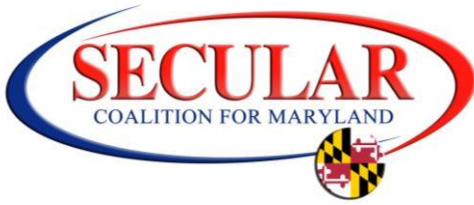
² Federal Bureau of Intelligence (2018). <https://ucr.fbi.gov/hate-crime/2018/tables/table-1.xls>

³ Dart, T. (2018, May 12). After decades of 'gay panic defence' in court, US states slowly begin to ban tactic. <https://www.theguardian.com/us-news/2018/may/12/gay-panic-defence-tactic-ban-court>

Secular Coalition of MD_FAV_SB0554

Uploaded by: Secular, Marland

Position: FAV



[Secular Coalition for Maryland](http://secular.org) Secular Coalition for
America <http://secular.org>

February 11, 2020

The Honorable William C. Smith, Jr.
Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: *SUPPORT SB554 Crimes - Mitigation - Sex, Gender Identity, or Sexual Orientation*

Chairman and Members of the Committee:

In an ideal world a bill like this would not be needed. A person's motivation for committing a crime is potentially exculpatory if that motivation is actual, and not imaginary, self-defense. The discovery or perception of, or belief about, another person's sex, gender identity, or sexual orientation, even if it is accurate, cannot properly constitute legally adequate provocation to mitigate a killing from the crime of murder to manslaughter or an assault from the crime of assault in the first degree to assault in the second degree or another lesser crime.

Unfortunately, some people hold strong biases against victims of crimes based on such personal attributes of the victim, and historically these biases have sometimes inappropriately influenced the judgements of judges or juries in criminal court. Insofar as this a problem it becomes necessary to clarify this issue in the law as this bill does.

The Secular Coalition for Maryland supports and encourages passage of this bill.

MGA_Sen Lam_FAV_SB554

Uploaded by: Senator Lam, Senator Lam

Position: FAV

CLARENCE K. LAM, M.D., M.P.H.
Legislative District 12
Baltimore and Howard Counties

Education, Health, and Environmental Affairs
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

Chair

Joint Committee on Fair Practices and
State Personnel Oversight

Chair

Howard County Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Miller Senate Office Building
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Clarence.Lam@senate.state.md.us

Support SB 554: Crimes - Mitigation - Sex, Gender Identity, or Sexual Orientation

The Issue:

- In cases of assault or murder of a member of the LGBTQ community, a defendant may use a discriminatory defense strategy sometimes called “gay or trans panic defense,” or more appropriately “LGBTQ+ panic defense,” to mitigate charges of murder to manslaughter or first degree assault to second degree assault.
- This defense tactic asserts the victim’s sexual orientation, gender identity or gender expression is to blame for a defendant’s violent reaction and, therefore, a lesser charge or penalty is warranted.
- When a perpetrator uses an LGBTQ+ panic defense, they are claiming that a victim’s sexual orientation or gender identity not only explains—but excuses—a loss of self-control and the subsequent assault.
- By fully or partially acquitting the perpetrators of crimes against LGBTQ+ victims, this defense implies that LGBTQ+ lives are worth less than others.
- Such defense strategies encourage discriminatory attitudes about members of the LGBTQ community, and fuel hate crimes and violence, that disproportionately target vulnerable members of our community.
- Unfortunately, this tactic has been used to mitigate the charges or sentences of hundreds of defendants, instilling a fear of violence among members of the LGBTQ community, and preventing LGBTQ victims and their families and friends from getting the justice they deserve.

What Does SB 554 Do?

- SB 554 prohibits the use an LGBTQ+ panic defense to mitigate penalties and charges for violence committed against members of the LGBTQ+ community, or those perceived to be part of this community:
 - Subsection (c) of section 2-207 of the criminal code would be added to indicate that “the discovery or perception of, or belief about, another person’s sex, gender identity, or sexual orientation, whether or not accurate, does not constitute legally adequate provocation to mitigate a killing from the crime of murder to manslaughter.”
 - Similarly, subsection (b) of section 3-209 would be modified with this same provision pertaining to mitigating the crime of first degree assault to second degree assault.

- The language of section 2-207 pertaining to murder charges already includes language, similar to the language and provisions proposed in this bill, to protect a spouse who is discovered by her partner having sex with someone else.. The same protections should be extended to the LGBTQ community.

How Does SB 554 Help?

- It prevents violent offenders from using discriminatory tactics in court to manipulate bias that may exist among judges and juries about sexual orientation and gender identity, to reduce penalties and charges.
- It sends a message to defendants, would-be assailants, their attorneys, and the public that they cannot rely on this defense to mitigate punishment for such acts.
- It will reassure members of the LGBTQ community, their friends and family, and our community, that discovery or perception of someone's sexual orientation or gender identity is never an excuse or mitigating circumstance for violent behavior.

Additional Background Information:

- Similar legislation has passed or been introduced across the country:
 - Similar legislation has already been passed in eight states: California, Illinois, New York, Rhode Island, Hawaii, Nevada, Connecticut, Maine, and New Jersey.
 - Similar legislation has been introduced in: the District of Columbia, Minnesota, Pennsylvania, Washington, Wisconsin, Texas, and New Mexico.
 - There is a federal bill that will be reintroduced this year that is also similar to this proposed legislation.
- The number of hate crime incidents targeting gays, lesbians, and bisexuals in the US in 2018 increased by nearly 6% over the previous year and the number of anti-transgender hate crime incidents increased by 41% during that same period, according to the FBI's newly released annual Hate Crime Statistics Report.
- According to the *State of Maryland 2018 Hate/Bias Report*, published by the State Police, 23 of the verified 100 incidents reported to law enforcement in 2018 related to gender identity and sexual orientation.
- Similar legislation pertaining to spouses who commit adultery was enacted:
 - In 1997, Delegate Joan Pitkin introduced the same provision to section 2-207 (HB754) to ensure that a crime of murder could not longer be reduced to a lesser charge or penalty simply because the defendant found his spouse committing adultery.
 - A loophole in Maryland law dating back to Colonial times allowed violent offenders to be tried on lesser charges and serve lighter sentences. A similar loophole exists today pertaining to violent behavior toward members of the LGBTQ community.
 - In 1997, Delegate Pitkin made the argument that antiquated and discriminatory treatment and beliefs, about women primarily, allowed violent spouses to get away with murder. A similar situation exists today for the LGBTQ community.
- One of the most recognized cases that employed the LGBTQ+ panic defense was that of Matthew Shepard. In 1998, Matthew Shepard, a 21-year-old college student, was beaten to death by two men. The men attempted to use the LGBTQ+ defense to excuse their actions. Despite widespread public protest, the defense is still being used today. Unfortunately, this is just one example among many since then of this type of crime and the discriminatory defense tactic that has been used to justify it.

ACLU_Spielberger_FAV_SB0554

Uploaded by: Spielberge, Joe

Position: FAV



**Testimony for the Senate Judicial Proceedings Committee
February 11, 2020**

**SB 554 – Crimes – Mitigation – Sex, Gender Identity, or Sexual
Orientation**

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

FAVORABLE

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WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland supports SB 554, which would prohibit an individual from using a defense of discovery of, or belief about a person’s sex, gender identity, or sexual orientation to mitigate the severity of the crime of first-degree murder or first-degree assault.

The LGBTQ “panic defense” arises out of homophobic and transphobic stigmas that justify horrific violence based on someone’s gender, sexual orientation, or identity. It is not an affirmative legal defense, but is instead used to strengthen another defense, typically in one of three ways:

- (1) Insanity or diminished capacity (an individual’s identity caused the offender to panic and violently attack them),
- (2) Provocation (an individual’s nonviolent sexual advance was sufficiently triggering for the offender to panic and violently attack them), or
- (3) Self-defense (an individual was about to cause serious bodily harm because of their identity).

The LGBTQ community is already disproportionately represented in hate crime statistics, and additional hate crimes go unreported due to fear of discrimination, harassment, and being outed to one’s family and friends.

When an individual accused of a violent crime asserts a “panic defense,” they are saying that the victim’s identity justifies their actions to some extent. The legal system’s continued acknowledgment of this defense gives credence to the doctrine’s homophobic and transphobic roots.

Nobody should be targeted for violence because of who they are. Equality under the law should apply to victims of hate crimes as well. Because court rules and judges’ instructions and discretion are still subject to implicit bias against the LGBTQ community, correcting this injustice requires legislation.

For the foregoing reasons, we urge a favorable report on SB 554.

OPD INFO SB 554

Uploaded by: Flores, Ricardo

Position: INFO



POSITION ON PROPOSED LEGISLATION

BILL: SB 554 - Mitigation - Sex, Gender Identity, or Sexual Orientation
POSITION: INFORMATION
DATE: February 11, 2020

Whether certain facts or circumstances affect a given person to such a degree that their subjective consciousness is overridden by what is referred to as a “heat of passion,” and whether they then act in accord with that passion, is traditionally entrusted to the “trier of fact:” the judge or jury who are closest to the totality of evidence and arguments for and against the accused.

This area of the law can be referred to as the doctrine of “legally adequate provocation,” and is typically used, almost always unsuccessfully, to attempt to avoid conviction on a more serious offense. Legally adequate provocation requires provocation “calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason.” *Girouard v. State*, 321 Md. 532, 539, 583 A.2d 718, 722 (1991) (quoting *Carter v. State*, 66 Md. App. 567, 572, 505 A.2d 545, 548 (1986)). Most higher level or first degree crimes have a specific and focused level of *mens rea*, or intent component, while lesser included or lower degree offenses will typically have a *mens rea* of more general character. Legally adequate provocation argues that the mental cloud created by a heat of passion negatives any specific or calculated reasoning and thus makes a lower, more general level of intent crime more fitting to the facts.

In practice, deciding whether something constitutes legally adequate provocation is broken down into five factors that each must be satisfied:

- there must have been adequate provocation;
- the killing must have been in the heat of passion;

- it must have been a sudden heat of passion, i.e. the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
- there must have been a causal connection between the provocation, the passion, and the fatal act; and
- the individual to provoke the rage must also be the victim.

The defendant bears the burden of generating the issue of legally adequate provocation for consideration by a trier of fact. The State must then prove any one of the factors was not present beyond a reasonable doubt. In a cursory review of over 40 recent Maryland appellate cases where the issue of provocation was raised, not one successful use of the doctrine appears to have been indicated.

We recognize and decry the reality of abuse and irrational discrimination towards the LGBTQ+ community, both historical and contemporary, along with other marginalized and oppressed groups, but as legislators weigh this bill, it should be recognized that in our system of justice, it is the triers of fact, particularly juries made up of our peers, who have always had the legitimate role and power – and are best situated – to decide what society is prepared to accept as legally adequate under any given set of circumstances.



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DATE: February 11, 2020

Whether certain facts or circumstances affect a given person to such a degree that their subjective consciousness is overridden by what is referred to as a “heat of passion,” and whether they then act in accord with that passion, is traditionally entrusted to the “trier of fact:” the judge or jury who are closest to the totality of evidence and arguments for and against the accused.

This area of the law can be referred to as the doctrine of “legally adequate provocation,” and is typically used, almost always unsuccessfully, to attempt to avoid conviction on a more serious offense. Legally adequate provocation requires provocation “calculated to inflame the passion of a reasonable man and tend to cause him to act for the moment from passion rather than reason.” *Girouard v. State*, 321 Md. 532, 539, 583 A.2d 718, 722 (1991) (quoting *Carter v. State*, 66 Md. App. 567, 572, 505 A.2d 545, 548 (1986)). Most higher level or first degree crimes have a specific and focused level of *mens rea*, or intent component, while lesser included or lower degree offenses will typically have a *mens rea* of more general character. Legally adequate provocation argues that the mental cloud created by a heat of passion negatives any specific or calculated reasoning and thus makes a lower, more general level of intent crime more fitting to the facts.

In practice, deciding whether something constitutes legally adequate provocation is broken down into five factors that each must be satisfied:

- there must have been adequate provocation;
- the killing must have been in the heat of passion;

- it must have been a sudden heat of passion, i.e. the killing must have followed the provocation before there had been a reasonable opportunity for the passion to cool;
- there must have been a causal connection between the provocation, the passion, and the fatal act; and
- the individual to provoke the rage must also be the victim.

The defendant bears the burden of generating the issue of legally adequate provocation for consideration by a trier of fact. The State must then prove any one of the factors was not present beyond a reasonable doubt. In a cursory review of over 40 recent Maryland appellate cases where the issue of provocation was raised, not one successful use of the doctrine appears to have been indicated.

We recognize and decry the reality of abuse and irrational discrimination towards the LGBTQ+ community, both historical and contemporary, along with other marginalized and oppressed groups, but as legislators weigh this bill, it should be recognized that in our system of justice, it is the triers of fact, particularly juries made up of our peers, who have always had the legitimate role and power – and are best situated – to decide what society is prepared to accept as legally adequate under any given set of circumstances.



POSITION ON PROPOSED LEGISLATION

BILL: SB 554 - Mitigation - Sex, Gender Identity, or Sexual Orientation
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OPD INFO SB 554

Uploaded by: Shapiro, Melanie

Position: INFO



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