



Testimony of D'Arcy Kemnitz **SUPPORT HB 488**  
Executive Director, The National LGBT Bar Association and Foundation  
February 11, 2020

Good afternoon Chairman Clippinger 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 HB 488. 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.<sup>1</sup>

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 Maryland<sup>2</sup>. 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.<sup>3</sup>

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.

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

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

<sup>3</sup> <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.<sup>4</sup>

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.<sup>5</sup> It’s been introduced federally in July of 2018 by Senator Markey (D-MA)<sup>6</sup> and Congressman Kennedy (D-MA)<sup>7</sup> and re-introduced in June of 2019<sup>8,9</sup>.

HB 488 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

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

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

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

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

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

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