



POSITION ON PROPOSED LEGISLATION

BILL: HB 488 - 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;