

trans panic repeal.docx.pdf

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**SB46 – Crimes - Mitigation - Race, Color, National Origin, Sex,
Gender Identity, or Sexual Orientation**

FAVORABLE

Professionally, I am the Legislative outreach coordinator for the ACLU of Maryland but today I am here representing the interests of Baltimore's black trans community, whose oppression is upheld by the trans panic defense.

Though the bill has been revised to include several other identity protections, I am here to specifically address the origins & consequences of this defense for my community. First, it is necessary to discuss passing & disclosure when we are unpacking this law. Passing means not being able to immediately identify a persons (LGBT) identity & therefore disclosure would then be the choice to share such personal information.

Disclosure should always be left to the discretion of the LGBT person in order to reduce already disproportionate violence.

This violence can occur intimately or in public depending partially on a persons relationship to passing. However, there is no certain way to end transphobia individually, instead transphobia is a collective problem of our society. Indeed, gender bias bleeds into homophobia & transphobia as easily as parents negatively reinforce feminine traits in their sons & masculine traits in their daughters.

This issue is deep reaching, though its highest consequences are for people like me, black trans women, who stand the most to lose from outing & other phobic violence. 4 years ago the murderer of Mia Henderson, the 26 year old victim of a brutal stabbing, was acquitted using this defense. Her death in 2014 was felt deeply in our community, as was the October 1996 murder of Anthony "Gabriel" Barnes by Charles Garney In Prince Georges county, Maryland.

The panic defense is at the extreme end of transphobia & homophobia & because it is only used long after violence has taken place its only purpose is to legitimize that violence. The real panic is the fear of being discovered in your natural state, that the peace of your passing be disturbed, the unrest in knowing that your offender would suffer less because of who you are.

Maryland Psychological Association -SB46- Crimes -

Uploaded by: Brocato, Barbara

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February 2, 2021

Senator Will Smith, Chair
Judicial Proceedings Committee
Maryland Senate
11 Bladen Street
Miller Senate Office Building, 2 East
Annapolis, MD 21401

Bill: HB0231/SB0046- Crimes - Mitigation - Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation **Position:** **Support**

Dear Chair, Vice-Chair, and Members of the Committee:

The Maryland Psychological Association, (MPA), which represents over 1,000 doctoral level psychologists throughout the state, would like to reiterate its support for HB0231/SB0046 — that a discovery of, or perception of, or believe about, another person's race, color, national origin, sex, gender identity, or sexual orientation does not constitute provocation that will mitigate killing from murder or manslaughter, and also does not mitigate an assault in the first degree or the second degree or another lesser crime, and generally relating to homicide and assault.

The research available indicates that "no evidence indicates that LGBTQ+ persons pose a threat to non-LGBTQ+ person in public (or private) spaces." (Ref. 1). Thus, allowing a defense for violence in court that the perpetrator was provoked by just discovering the person was LGBTQ+ is a violation of the LGBTQ+ persons civil right of a fair trial.

In fact, numerous studies show that LGBTQ+ persons experience a much higher rate of being the target of sexual and other harassment and assault, from school age on (Ref. 1,2); and in fact, according to FBI data are "more likely to be the targets of hate crimes than any other minority group", including Afro American and Jewish persons (Ref. 3). And these victimization disparities have not changed since they were first measured in the 1990's (Ref. 1). Thus, legal procedures which allow perpetrators of violence against LGBTQ+ persons just because of the discovery of their LGBTQ+ status allow a "green light" on this unwarranted persecution of LGBTQ+ persons.

LGBTQ+ persons also experience higher rates of emotional distress, anxiety, depression, self-harm, substance abuse, and suicide. than the general populace, (Ref. 1, 4), and these higher rates of mental health problems are thought to be because of the stigma, prejudice, and physical threat they anticipate and that the data says exists (Ref.2, 4).

(continue on page 2)

Thus, just knowing there is the possibility of a successful legal defense of violence against LGBTQ+ persons just because of their sexual orientation greatly increases their mental health burden, which we know can increase burdens in physical, economic, and social health.

For these civil rights and public health, the Maryland Psychological Association supports the passing of HB0231/SB0046. Please feel free to contact MPA's Executive Director Stefanie Reeves at exec@marylandpsychology.org if we can be of assistance.

Sincerely,

Esther Finglass

Esther Finglass, Ph.D.
President

R. Patrick Savage

R. Patrick Savage, Jr., Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs

Lambda Legal Testimony Maryland Judicial Proceedin

Uploaded by: Buchert, Sasha

Position: FAV

Testimony of Sasha Buchert
Senior Attorney, Lambda Legal
February 2, 2021

Dear Chairman Smith and members of the Committee.

My name is Sasha Buchert and I am a Senior Attorney at Lambda Legal, and I'm testifying in support of Senate Bill 46. 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 2020, there were at least 44 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 the murders in 2019 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 six 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 Vanessa 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 the District of Columbia and in eleven states: California, Connecticut, Illinois, New York State (and City), Rhode Island, Nevada, Maine, Hawaii, New Jersey, Washington State, and Colorado.⁹ Similar legislation has been introduced in Iowa, Minnesota, Pennsylvania, Wisconsin, Texas and New Mexico, Virginia and there is a federal bill that has been

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 B23-0409 <https://lims.dccouncil.us/Legislation/B23-0409> (District of Columbia); 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-PA.pdf?fbclid=IwAR2u6xI09HWlbrN4Bd1IwOkMob6c_AW1iJgL8cG2Rxt5ga8EW4FtbSmzaU (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-qPqKjQh2i7CBuyDCikxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI (New York).

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.

Conclusion

SB 54 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%22search%22%3A%5B%22panic+defense+markey%22%5D%7D&s=1&r=1>

¹¹ <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>
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SB46_LatinoCaucus_FAV.pdf

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TO: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee Members

FROM: Maryland Legislative Latino Caucus (MLLC)

DATE: February 4, 2021

RE: SB46 Crimes – Mitigation – Race, Color, National Origin, Sex,
Gender Identity, or Sexual Orientation.

The MLLC supports SB46 Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation.

The MLLC is a bipartisan group of Senators and Delegates committed to supporting legislation that improves the lives of Latinos throughout our state. The MLLC is a crucial voice in the development of public policy that uplifts the Latino community and benefits the state of Maryland. Thank you for allowing us the opportunity to express our support of SB46.

The “panic defense” is a legal strategy that asks a jury to find characteristics about a victim—race, color, sex, national origin, sexual orientation, and gender identity—that are to blame for the defendant’s violent actions. This is also known as the “LGBTQ panic defense.” This practice not only attempts to excuse the defendant’s actions but justifies them by using discriminatory, homophobic, and transphobic tactics.

The U.S. Federal Bureau of Investigation’s (FBI) [2019 Hate Crime Statistics Act \(HCSA\) report](#) indicates that nearly 68% of reported hate crimes are motivated by race or ethnicity. The FBI also reports that 51 hate-motivated murders occurred in 2019, more than double of the 2018 total. Additionally, anti-Latino crime increased to 527 cases, up from 485 in 2018. Hate crimes are underreported, thus, this may not capture the full picture of violence against vulnerable communities, particularly if identities intersect. The “panic defense” places the blame on the victim’s background and identity. It is an unjust approach that must be corrected.

SB46 prohibits the discovery or perception of, or belief about, another person’s race, color, national origin, sex, gender identity, or sexual orientation, whether accurate or not, as legally adequate provocation to mitigate murder to manslaughter or assault in the first degree to assault in the second degree or another lesser offense. The LGBTQ community, people of color, immigrants and anyone who identifies with more than one of these communities seeks impartiality and an equal application of the law. The legislature must remedy this injustice.

The MLLC supports this bill and urges a favorable report on SB46.

PFLAG Written Testimony-SB46-Panic Defense-MGA21-P

Uploaded by: eckstein, mark

Position: FAV



February 4, 2021

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

We are writing in **SUPPORT of SB46**. Any form of “panic” defense is discriminatory and justifies harmful stereotypes, especially surrounding the LGBTQ+ community. This form of defense would not only proclaim LGBTQ+ victim’s lives as somehow less worthy than others, but it would also provide 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. LGBTQ+ victims' lives should be considered just as important in the eyes of the courts.

We urge a **Favorable Report on SB46**. Thank you,

Nicolle Campa She|Her|Hers

Board President

Mark Eckstein He|Him|His

MD Advocacy Co-chair

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Keeping Families Together!

SB0046 2021-02-04 Written Testimony of FreeState J

Uploaded by: Hoffman, C.P.

Position: FAV



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February 4, 2021

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

Testimony of FreeState Justice

IN SUPPORT OF

SB46: Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

To the Chair, Vice Chair, 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 victim's advances provoked the defendant, and that the defendant's homicide or

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).

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, the Maryland judiciary does not track instances in which defenses are raised at every criminal trial, nor do commercial legal databases such as Westlaw or Lexis Nexis. Even if they did, however, these databases would still miss the significant number of cases that never made it to trial. The large percentage of cases that end with a plea bargain means many cases never reach a stage where a panic defense can be recorded on the official record, even if it has been and would continue to be used in private negotiations with the office of the state's attorney.

Due to this, tracking the use of the panic defense has fallen to impartial private individuals, legal practitioners, and academics, primarily through reviews of media reports and reports from legal practitioners.⁹ According to such analyses, there have been at least four cases in which the panic defense has been used in Maryland. Despite the various outcomes in convictions and sentencing, these cases demonstrate that even in Maryland, we have seen the use of this courtroom tactic achieve some degree of success.

<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 See *id.*

***Dykes v. State*, 319 Md. 206 (1990)**

Jon Carlton Dykes killed Dwight Lee Landon in Landon's home in Somerset County, stabbing him over 200 times with two separate knives. Over a two hour interrogation, Dykes offered three separate stories for the killing: 1) that Landon had kidnapped him at gunpoint, taken him to his home, and threatened to sexually assault him, forcing Dykes to kill him in self-defense; 2) that Dykes had voluntarily gone to Landon's house to purchase cocaine, but the two ended up in a knife fight after Dykes walked in on Landon masturbating; and 3) that the two ended up in a knife fight after Dykes walked in on Landon masturbating *and* Landon propositioned him.

At trial, Dykes was convicted of second degree murder. That conviction was later overturned by the Court of Appeals in 1990 on the grounds that the trial judge had not properly instructed the jury on perfect and imperfect self-defense. Per the Court of Appeals, by determining that the defenses of perfect and imperfect self-defense did not apply, the trial judge improperly assumed the jury's role as finder of fact.

Subsequently, on retrial, once again assessing the perpetrator's own various stories of the activities that led up to the killing, Dykes was once again found guilty of second degree murder.

***State v. Lucas*, Circuit Court for Montgomery County #00-6039-11815-3 (2000)**

In June 1999, Robert Paul Lucas entered the Mother Seton Roman Catholic Church in Germantown by force, where he then encountered Monsignor Thomas Wells, ultimately stabbing the priest nearly a dozen times until he was dead. According to the story told by Lucas at trial, Monsignor Wells initially welcomed him to the church and later allegedly made sexual advances, attempting to coerce Lucas into performing oral sex on him. Lucas then claimed that he reacted in a violent panic, before leaving the church with a variety of stolen goods, including over \$800 in cash and the priest's watch.¹⁰

At trial, prosecutors attempted to emphasize that Lucas had not claimed Monsignor Wells had come on to him until months after the killing. Nonetheless, the jury, after

¹⁰ See Susan Levine, "Priest's Killer Tells Court of Struggle," *The Washington Post* (May 31, 2001), available at <https://www.washingtonpost.com/archive/local/2001/05/31/priests-killer-tells-court-of-struggle/1c35ac03-f659-475a-85c7-87919780e523/>.

considering the mitigation evidence and Lucas's own account of the excuse for the killing, convicted Lucas of second degree, rather than first degree, murder.

State v. Allen, Circuit Court for Charles County #08-K-02-000161 (2002), Allen v. State, Court of Special Appeals No. 02268 (2004)

In October 2001, Jeffrey Allen met John Butler in a gay cruising area in Washington, DC, before traveling with him to Butler's cabin in Charles County, where he stabbed him multiple times ultimately killing him. After meeting for the first time, the pair had sex and may have engaged in recreational drug use. The next morning, Allen became upset when Butler was not getting up quickly enough to take him home. After Allen stated he would take Butler's keys and drive himself home, Butler got up and approached Allen to calm him down. At this point, Allen grabbed a kitchen knife and stabbed Butler multiple times, killing him, and took the car. Allen subsequently crashed Butler's car into a ditch, after which time he presented himself to the police.

Despite the facts of the case suggesting a consensual sexual relationship turning violent, Allen raised a panic defense at trial. This instant case again shows an admitted murderer using the excuse of the gay panic defense as the decedent cannot present contradictory evidence. The defense was ultimately unsuccessful, and Allen was found guilty of first degree murder.

State v. Gonzalez, Circuit Court for Montgomery County # 05-6038-14591-4 (2005), Gonzalez v. State, Court of Special Appeals No. 2003 (2008)

On the night of October 30, 2005, Tomas Gonzalez met Dung Tri Dao after a night out of heavy drinking. According to Gonzalez, the two went to a restaurant, where they drank further, before Gonzalez blacked out. Gonzalez testified that when he came to, Dao was pulling down his pants. Gonzalez claims the two then struggled, and he ultimately hit Dao with a nearby rock. Forensic evidence suggested that Dao had been hit repeatedly in the head with the rock, including after he was already on the ground. After the incident, Gonzalez made his way to a nearby gas station, where he asked the attendant to call 911.

At trial, Gonzalez testified that he had panicked as a result of believing his life was at risk and that Dao was planning to rape him. His attorney sought to introduce statements made to the gas station attendant as excited utterances to establish his panicked state, but the Circuit Court excluded them, while permitting Gonzalez to present a defense of self-defense. The jury ultimately convicted Gonzalez of intentional manslaughter, rather than second degree murder. The conviction was subsequently upheld by the Court of Special Appeals.

***State v. Harton*, Circuit Court for Howard County #13-K-05-044768 (2007)**

Two married women known to have been close friends in a clinical psychology doctoral program at Loyola College spent a spring break evening in a drinking spree when Melissa Burch Harton strangled the other with her bare hands dumping Natasha Bacchus' half-clothed body by a local pool before dawn. During questioning, the killer presented various stories to the police including an imagined abduction by a half-dozen men and a fictitious affair with an abusive man. After several hours, Harton admitted to the killing yet claimed the death by strangulation was accidental.

Harton's counsel claimed successfully before the jury that Harton was only defending herself against Bacchus attack that may have been motivated by a sexual advance, unrequited lesbian affection, a deep fear of abandonment, or even a secret hatred. While prosecutors attempted to press for a first-degree conviction, defense lawyers argued for a full acquittal, and the jury ultimately convicted Harton of involuntary manslaughter.

After the two week trial, Harton said to the press, "I'm so relieved, I now will have a life to live."¹¹ Sentenced to ten years, after two years and 177 days time served, Harton pled guilty to involuntary manslaughter, which is not considered to be a violent crime, and was freed as a judge suspended the remainder of her sentence.

Violence Against LGBTQ+ Marylanders

While we cannot fully quantify 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.¹² In 2019, at least three black trans women were killed

¹¹ Amit R. Paley, "Md. Woman Convicted of Killing Female Friend," *The Washington Post* (Feb 11, 2006), available at <https://www.washingtonpost.com/archive/local/2006/02/11/md-woman-convicted-of-killing-female-friend/fdd1b5c2-e61c-45e1-baf1-db2d8d84cff2/>.

¹² 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>.

in Maryland: Ashanti Carmon¹³ and Zoe Spears¹⁴ in Fairmount Heights, Prince George's County, and Bailey Reeves in Baltimore.¹⁵ In 2020, they were joined by Johanna Metzger, who was killed in Baltimore in April.¹⁶

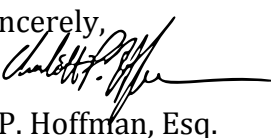
These deaths, and others like them across the country, have left many LGBTQ+ Marylanders, especially transgender Marylanders, feeling under attack. And yet, those who would do violence to us are still able to justify that violence by relying on the panic defense in its various forms.

The shocking level of violence against the LGBTQ community continues, and it is vital that Maryland acts now to prevent those who would hurt us from using our identity as their excuse. Passing this bill into law keeps killers from using their own alleged “panic” as justification for their violence. The “panic” defenses, even if not widely documented, is widely used, and undermines the human dignity and self-worth of LGBTQ Marylanders.

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 SB46.

Sincerely,



C.P. Hoffman, Esq.

¹³ 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>.

¹⁴ 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/>.

¹⁵ 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>.

¹⁶ See Michelle Siegel, “Transgender Woman Stabbed to Death in Baltimore,” *The Washington Blade* (Apr. 17, 2020), *available at* <https://www.washingtonblade.com/2020/04/17/transgender-woman-stabbed-to-death-in-baltimore/>.

Lam_FAV_SB0046b.pdf

Uploaded by: Lam, Clarence

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 Audit and Evaluation Committee

Joint Committee on Fair Practices and
State Personnel Oversight

Vice Chair

Baltimore County Senate Delegation

Chair

Howard County Senate Delegation



Miller Senate Office Building
11 Bladen Street, Room 420
Annapolis, Maryland 21401
410-841-3653 · 301-858-3653
800-492-7122 Ext. 3653
Clarence.Lam@senate.state.md.us

THE SENATE OF MARYLAND

ANNAPOLIS, MARYLAND 21401

Support SB 46: Crimes – Mitigation – Race, Color, National Origin, 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 “LGBTQ+ panic defense,” to mitigate charges of murder to manslaughter or justify 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. Perpetrators use this defense to explain and excuse loss of self-control.
- 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, fuel hate crimes/violence, and disproportionately target vulnerable people.
- Dozens of murder charges have been acquitted in the U.S. using this defense; it has appeared in court opinions in 25 states since the 1960’s; it instills fear in the LGBTQ community and prevents victims, families and friends, from getting the justice they deserve.
- Defendants may use a similar defense, “bias rage” defense or “hot blooded response” defense, to try to justify or mitigate the consequences of violent actions, or hate crimes, against members of a different racial, ethnic, or national identity, with similar effects.

What Does SB 46 Do?

- SB 46 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 race, color, national origin, 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, as amended, to indicate that such a defense is not a defense to the crime of assault in any degree.
- 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 and threatened racial, ethnic or national groups.

How Does SB 46 Help?

- It prevents violent offenders from using these discriminatory tactics in court to manipulate bias that may exist among judges and juries about sexual orientation or gender, racial, ethnic, or national identities, 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, persecuted groups, and our community, that discovery or perception of sexual orientation, or gender, racial, ethnic, or national identity, is never an excuse or mitigating circumstance for violent behavior.

Sponsor Amendment: There is one technical sponsor amendment, which clarifies the language pertaining to assault, but does not materially change the bill. (*Amendment SB0046/1533261/1*)

Additional Background Information:

- Similar LGBTQ+ legislation has passed or been introduced across the country:
 - Similar legislation has been passed in twelve jurisdictions: California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Maine, Nevada, New Jersey, New York, Rhode Island, and Washington. Minnesota, 2018
 - Similar legislation has been introduced in: Minnesota, Pennsylvania, Wisconsin, Texas, New Mexico, Massachusetts, Iowa, Nebraska, Florida, Oregon, and Virginia.
 - A federal bill similar to this proposed legislation will be reintroduced this year.
- Hate crime incidents targeting gays, lesbians, and bisexuals in the US in 2018 increased by nearly 6% over the previous year; anti-transgender hate crime incidents increased by 41% during that same period. (*Source: FBI's 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; nearly 60% are committed against people of color.
- 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.

Supportive Organizations:

Office of the Attorney General, FreeState Justice, The National LGBT Bar Association, American Civil Liberties Union (ACLU) Foundation of Maryland, Maryland State's Attorneys' Association, Maryland Legislative Latino Caucus, Maryland Legislative Asian American and Pacific Islander Caucus, Baltimore Transgender Alliance, Maryland Psychological Association, PFLAG Metro DC, Maryland Office of the Public Defender, LGBTQ Democrats of Montgomery County, States Attorney's Office City of Baltimore, NARAL Pro-choice Maryland

SB0046-153326-01.pdf

Uploaded by: Lam, Clarence

Position: FAV



SB0046/153326/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

28 JAN 21
16:07:28

BY: Senator Lam

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 46

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “**Mitigation**” insert “**and Defense**”; and strike beginning with “does” in line 9 down through “crime” in line 11 and substitute “**is not a defense to the crime of assault in any degree**”.

AMENDMENT NO. 2

On page 2, strike beginning with “**DOES**” in line 18 down through “**CRIME**” in line 21 and substitute “**IS NOT A DEFENSE TO THE CRIME OF ASSAULT IN ANY DEGREE**”.

STATEMENT OF SUPPORT - SB-0046 Bias or Panic Defen

Uploaded by: Lund, Eric

Position: FAV



SB 46 Bias or Panic Defense Bill

**Judicial Proceedings Committee
February 4, 2021**

Position: SUPPORT

We, the board of directors of Annapolis Pride, support SB 46 – Repeal of The Bias or Panic Defense Bill.

In a democracy all law, be it local, state, or federal, should be applied equally to all its citizens. But the “panic defense” essentially says that violence is more acceptable when applied to LGBTQ+ people.

Recent FBI data reports that sexual identity ranks third amongst bias and hate crimes just behind race and religion. They also indicate a rising trend in LGBTQ+ bias in the past few years.

The “panic defense” strategy says that something inherent in the victim justified the violence brought upon them. Historically this strategy has focused on anti LGBTQ+ hate crimes in order to justify lighter sentencing for perpetrators of violent crimes. It essentially codifies prejudice as acceptable. It is no less equivalent to saying if a woman is assaulted it is because of how she is dressed, or a person of color appears threatening because they were jogging through a white neighborhood.

It is with these scenarios in mind that we also support the inclusion of the other protected groups (such as race, religion, national origin, etc.) within the language so that such legal strategy can not be used against any victims of hate crime regardless of its form or motivation.

The potential for the panic defenses to be used in Maryland with the full blessing of the law is a blatant miscarriage of justice and would send the unmistakable message to LGBTQ citizens and other minority groups that their suffering and lives are not equal to those of other victims of violence.

Thus, we respectfully urge this committee to issue a **favorable report for SB 46.**

ANNAPOLIS PRIDE BOARD OF DIRECTORS

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Joe Toolan

Favorable Testimony for SB 46 (Mink).pdf

Uploaded by: Mink, Kristin

Position: FAV

FAVORABLE TESTIMONY FOR SB 46

Crimes - Mitigation - Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

Bill Sponsor: Sen. Lam
Committee: Judiciary Committee

Person Submitting: Kristin Mink
Position: FAVORABLE

My name is Kristin Mink, and I am a lifelong Maryland resident. I am submitting this testimony in favor of SB 46.

Just over a year ago, my then-3-year-old, who we'd always known as a boy, started informing us that she is a girl. She'll be 5 in March and has not wavered. She no longer brings up pre-COVID preschool classmates who "said I am a boy, but I am not a boy," and now that her hair has grown long, everyone who meets her assumes she is a girl. Now, she is happy and carefree. She loves sparkly leggings and monster trucks. She rescues worms on the sidewalk, and insists we carry stink bugs carefully outside. She is very protective of her younger sibling.

And she has no idea that there are people today who would argue that her very existence as the person she is should be legal justification for someone to assault or even murder her.



So-called trans and gay panic, or LGBTQ+ panic, is a viable defense strategy in 39 states, including Maryland. That's the idea that a defendant was so disgusted to learn the victim was gay or trans that they lost control of themselves and aren't responsible for the assault or murder they committed. It's a legal strategy which asks a jury to find that a victim's gender identity or sexual orientation is to blame for the violence done to them.

Juries across the country have acquitted or reduced the sentences of dozens of perpetrators who have used this strategy. Allowing this defense, as Maryland does today, legalizes transphobic and homophobic violence. It sends a clear message that an LGBTQ+ person's life is not equal within a court of law.

And there is no psychological or legal justification for allowing it. Back in 1973, the American Psychological Association debunked so-called "gay panic disorder" and removed it from the DSM. In 2013, the American Bar Association unanimously approved a resolution calling for an end to it. Since then, 11 states and the District of Columbia have passed bans like the one you have before you. I am asking for Maryland to join them. (continued)

Let me be clear. My child's existence, trans existence, LGBTQ+ existence, is a fact of life, not an act of violence. Yet, as a transgender person, my sweet girl has a one in four chance of being the victim of a hate crime in her lifetime, and in our state, the perpetrator can blame it on her gender identity.

I urge the committee to deliver a favorable report on SB 46, to send a clear message that in Maryland, a person's sexual orientation or gender identity — as well as their race, color, national origin, and sex — is *not* a valid reason to harm them. Thank you.

Panic Defense Support Letter.pdf

Uploaded by: Moon, David

Position: FAV



MARYLAND LEGISLATIVE ASIAN AMERICAN
AND PACIFIC ISLANDER CAUCUS
MARYLAND GENERAL ASSEMBLY

DELEGATE KRISSELDA VALDERRAMA
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SENATOR CLARENCE K. LAM, M.D., M.P.H.
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CO-CHAIRS

DELEGATE LILY QI
TREASURER

SENATOR SUSAN C. LEE
DELEGATE KUMAR P. BARVE

To: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Judicial Proceedings Committee Members

FROM: Maryland Legislative Asian-American and Pacific-Islander (AAPI) Caucus

DATE: February 1, 2021

RE: SB46 Crimes - Mitigation - Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

POSITION: Support

Dear Chair Smith,

The Maryland Legislative Asian-American and Pacific-Islander Caucus is made up of Senators and Delegates in the General Assembly who seek to represent the interests of the Asian-American and Pacific-Islander (AAPI) communities in Maryland. As the fastest-growing racial minority group in the US, it is crucial that the legislative goals of AAPI folks are well-represented in Maryland public policy. Thank you for allowing the Caucus the opportunity to express our support of SB46.

SB46 would prohibit the use of the “panic defense” to mitigate certain violent crime charges in criminal court proceedings in Maryland. The panic defense is a legal strategy that asks a jury to find that characteristics about the victim are to blame for the defendant’s violent action. Under this legislation, using a victim’s sexual orientation, gender identity, sex, race, color, or national origin as a defense would not constitute legally adequate provocation to mitigate a killing from murder to manslaughter or an assault from first degree assault to second degree assault or a lesser crime.

Historically used to defend violence against LGBTQ+ folks and people of color, the panic defense is discriminatorily rooted in antiquated ideas about race. The panic defense affirms these long-standing prejudices and it is indefensible.

This year, the spread of COVID-19 has given rise to an unfair association between the virus and Asian-American bodies and the [surge in hate crimes](#) has been a consequence of such bias. It is inexcusable that the panic defense could allow a court of law to justify and legitimize such violence against members of the AAPI community.

SB46 must be passed now to protect the AAPI community and ensure that victims of racially-charged violence receive justice.

The Maryland Legislative AAPI Caucus supports this bill and urges a favorable report on SB46.

SB46 Support bcsao.pdf

Uploaded by: Mosby, Marilyn

Position: FAV



SUPPORT SB46

February 4, 2021

Senator William Smith, Jr.
Chair, Judicial Proceedings
Miller Senate Office Building
Annapolis, MD 21401

Re: Support for SB46/HB231 Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

Dear Chairman Smith and Respective Committee Members,

I am submitting this written testimony to offer my support for SB46/HB231 Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation. This bill prohibits the discovery or perception of, or belief about, another person's race, color, national origin, sex, gender identity, or sexual orientation, whether accurate or not, as legally adequate provocation to mitigate murder to manslaughter or assault in the first degree to assault in the second degree or another lesser offense. As the prosecutor for Baltimore City my most important task is to serve justice for all, regardless of race, color, national origin, sex, gender identity, or sexual orientation.

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 SB46/HB231.

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.

Additionally, the FBI's 2019 Hate Crimes Statistics report highlights the Uniform Crime Reporting (UCR) Program's latest compilation about bias-motivated incidents throughout the nation. The 2019 data, submitted by 15,588 law enforcement agencies, provides information about the offenses, victims, offenders, and locations of hate crimes. According to the report, there were 7,103 single-bias incidents involving 8,552 victims. A percent distribution of victims by bias type shows that 57.6% of victims were targeted because of the offenders' race/ethnicity/ancestry bias; 20.1% were targeted because of the offenders' religious bias; 16.7% were victimized because of the offenders' sexual-orientation bias; 2.7% were targeted



because of the offenders' gender identity bias; 2.0% were victimized because of the offenders' disability bias; and 0.9% were victimized because of the offenders' gender bias. There were 211 multiple-bias hate crime incidents, which involved 260 victims. This bill will ensure that crimes such as these are not justified with a defense that will only perpetuate and continue the status quo.

SB46/HB231 ensures that a defense based on race, color, national origin, sex, gender identity, and sexual orientation 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, reading "Marilyn J. Mosby". The signature is written in a cursive style with a large, stylized "M" and "J".

Marilyn J. Mosby
State's Attorney for Baltimore City

SB0046 MD NARAL SUPPORT.pdf

Uploaded by: Philip, Diana

Position: FAV



SB0046 – Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation
Presented to Hon. Will Smith and Members of the Senate Judicial Proceedings Committee
February 4, 2021 11:00 a.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee **a favorable report on SB0046 – Crimes – Mitigation – Sex, Gender Identity, or Sexual Orientation**, sponsored by 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. SB0046 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 SB0046**. 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>

HRC Testimony for MD SB 0046 - LGBTQ Panic Defens

Uploaded by: Rahaman, Narissa

Position: FAV



Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

February 1, 2021

Re: SUPPORT for SB 0046, Testimony from the Human Rights Campaign in support of the bill to ban the LGBTQ “panic defense”

Dear Chair Smith and Members of the Committee:

The Human Rights Campaign (HRC), on behalf of its more than three million members and supporters nationwide, thanks you for the opportunity to submit testimony on SB 0046, a vital measure that will ensure victims of violent crimes and their families obtain equal justice regardless of their sexual orientation or gender identity. We urge you to swiftly pass this important legislation.

The Human Rights Campaign is America’s largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ people and realize a world that achieves fundamental fairness and equality for all. As an advocate for LGBTQ individuals, HRC believes that a perpetrator’s realization of a victim’s actual or perceived sexual orientation or gender identity should never be available as a legal defense for violent crimes.

So-called LGBTQ “panic defenses,” sometimes called “gay and transgender panic defenses,” allow a criminal defendant to justify violent crimes on the purported grounds that the defendant’s shock at discovering the victim’s sexual orientation or gender identity caused the defendant’s violent reaction. These panic defenses are typically used to bolster other defenses like provocation or diminished capacity and, if successful, lessen a defendant’s charge or sentence. These panic defenses legitimize dangerous prejudices against LGBTQ individuals and characterize their very existence as “reasonable grounds” for violence. In essence, the availability of these so-called “defenses” sends the harmful message that the lives of LGBTQ people are worth less than the lives of others.

While it might be tempting to dismiss these defenses as relics from a less tolerant era, they have been used to drastically reduce the sentences of violent perpetrators as recently as April 2018.¹ The continued use of these defenses is especially alarming in the face of a rise in hate-motivated crimes against LGBTQ individuals. The National Coalition of Anti-Violence Programs recently reported that hate-motivated homicides of LGBTQ individuals has steadily increased since 2012 and has increased 86% between 2016 and 2017.² According to the latest Federal Bureau of Investigation statistics, over 19% of all hate crimes reported in 2019 were based on the victim's sexual orientation or gender identity.³ Additionally, HRC recorded more violent deaths of transgender and gender non-conforming people in 2020 than in any year since we began tracking this violence in 2013.⁴

In 2013, the American Bar Association (ABA) passed a resolution declaring that “an individual’s sexual orientation or gender identity does not trigger in another person a medical or psychological panic, does not constitute legally adequate provocation, and does not make a person more threatening.”⁵ The ABA urged legislatures to prohibit the use of LGBTQ panic defenses in order to prevent discrimination against and protect LGBTQ individuals.

In short, LGBTQ panic defenses send the destructive message that LGBTQ victims are less worthy of justice and their attackers justified in their violence. Their continued availability in state courts is a direct attack on the dignity and safety of LGBTQ residents.

Thank you for the opportunity to submit testimony in favor of this critical bill to help ensure justice for LGBTQ victims of violence.

Sincerely,



Sarah Warbelow
Legal Director
Human Rights Campaign

¹ Julie Compton, *Alleged ‘gay panic defense’ in Texas murder trial stuns advocates*, NBC News (May 2, 2018), <https://www.nbcnews.com/feature/nbc-out/alleged-gay-panic-defense-texas-murder-trial-stuns-advocates-n8705711>.

² Nat’l Coal. of Anti-Violence Programs, *A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender and Queer Hate Violence Homicides in 2017* 6-7 (2018).

³ Federal Bureau of Investigation, *2019 Hate Crime Statistics: Victims* (2020), *available at* <https://ucr.fbi.gov/hate-crime/2019/topic-pages/victims>

⁴ Human Rights Campaign Found., *An Epidemic of Violence: Fatal Violence Against Transgender and Gender Non-Conforming People in the United States in 2020* (2020).

⁵ Am. Bar Ass’n, Resolution 113A 14 (2013).

Trans Panic Defense Testimony - RGR.pdf

Uploaded by: Roshong, Riley

Position: FAV



YouTube: [rileygraceroshong](https://www.youtube.com/rileygraceroshong) | Twitch: [rileygraceroshong](https://www.twitch.tv/rileygraceroshong) | Twitter: [@rileygroshong](https://twitter.com/rileygroshong) | Medium: [@rileygroshong](https://medium.com/@rileygroshong)

According to the [LGBTQ Bar](#), the LGBTQ+ “panic” defense is “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. It is not a free-standing defense to criminal liability, but rather a legal tactic used to bolster other defenses. 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.”

Countless legal scholars have come out against the LGBTQ+ “panic” defense. In 2008, Professor Cynthia Lee published a paper titled “[The Gay Panic Defense](#)” in the George Washington University Law Review Journal. There, she argued that “gay panic arguments are problematic because they reinforce and promote negative stereotypes about gay men as sexual deviants and sexual predators,” as well that they “capitalize on an unconscious bias in favor of heterosexuality, which is prevalent in today’s heterocentric society.”

In 2020, Professor Lee published a follow-up paper titled “[The Trans Panic Defense Revisited](#)” in the George Washington University Law Review. There, Professor Lee extended the discussion of the “panic” defense to how it affected transgender individuals in general and trans women of color in particular. She explains that “[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.” Similarly to how the gay “panic” defense relied on negative stereotypes about gay men, Professor Lee argues that this does the same with trans women by “inappropriately validat[ing] bias against transgender individuals when we live in a pluralistic society that should be tolerant and accepting of all individuals.” Professor Lee concludes claiming “education alone is insufficient to ensure that juries reject the trans panic defense” and that legislative bans are necessary to redress the defense.

For other scholarship arguing the detriment of the LGBTQ+ “panic” defense, see the following publications: “[\(Trans\)Forming the Provocation Defense](#)” by Morgan Tilleman, the Journal of Criminal Law & Criminology at Northwestern University School of Law, 2010; “[The Trans Panic Defense: Masculinity, Heteronormativity, and the Murder of Transgender Women](#)” by Cynthia Lee, Hastings Law Journal, 2014; “[‘Don’t Talk to Me About Deception’: The Necessary Erosion of the Trans* Panic Defense](#)” by Ameer Wooda & Vanessa R. Panfil, Albany Law Review, 2015; and “[Excusing Murder? Conservative Jurors’ Acceptance of the Gay-Panic Defense](#)” by Salerno et. al., American Psychological Association Journal of Psychology, Public Policy, and Law, 2015.

Also according to the [LGBTQ Bar](#), the LGBTQ+ “panic” defense has been banned in: California, Illinois, Rhode Island, Nevada, Connecticut, Maine, Hawaii, New York, New Jersey, Washington, Colorado, and the District of Columbia. Legislation has also been introduced to ban the LGBTQ+ “panic” defense in: Minnesota, Pennsylvania, Texas, Massachusetts, New Mexico, Wisconsin, Iowa, and Virginia. In July of 2018, The Gay and Trans Panic Defense Prohibition Act of 2018 was introduced by Senator Markey (D-MA) in the United States Senate and by Congressman Kennedy (D-MA) in the United States House of Representatives. The bill was reintroduced in the House and the Senate in June of 2019.

In light of this evidence, banning the use of a person’s gender identity or sexual orientation is necessary to ensure both the safety of LGBTQ+ and other minority individuals, as well as to ensure that their murderers are properly prosecuted and to uphold the standard that these are not socially acceptable justifications for taking the life of another human being. As such, I write in support of this bill and ask for a favorable report of HB 231.

Sincerely,

Riley Grace Roshong

SB46_HB231 Panic Defense.docx.pdf

Uploaded by: Schablein, Jared

Position: FAV

SB46 Crimes - Mitigation - Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

Bill Sponsor: Senator Clarence Lam

Committee: Judiciary

Organization Submitting: Lower Shore Progressive Caucus

Person Submitting: Dr. Nicole Hollywood, LSPC

Position: FAVORABLE

I am submitting this testimony in favor of SB46 on behalf of the Lower Shore Progressive Caucus. The Caucus is a political and activist organization on the Eastern Shore, unaffiliated with any political party, committed to empowering working people by building a Progressive movement on the Lower Eastern Shore.

Research shows that one out of five lesbian, gay, bisexual, and/or pansexual individuals living in the United States will experience a hate crime in their lifetime. The rate is even higher for transgender individuals where one in four will be a victim of hate. Further, the FBI reports that anti-LGBTQ bias attacks have been steadily on the rise in recent years.

The LGBTQ+ panic defense is a legal strategy where a victim's sexual orientation or gender identity/expression is blamed for causing a state of violent temporary insanity that resulted in a plaintiff committing an assault or murder. In these instances, a judge and jury are asked to consider the LGBTQ+ "panic" to be a mitigating factor that lessens the severity and culpability of a violent criminal act.

Despite all the progress that has occurred in Maryland to drive equality forward, the LGBTQ+ panic defense remains a valid legal strategy. Meanwhile, 11 states and the District of Columbia have recognized that the LGBTQ+ panic defense is outdated, insensitive, and unconscionable and formally banned its practice through the passage of legislation. It is time for Maryland to follow suit and show reverence for the lives of all residents.

SB46 would end the panic defense as a strategy to mitigate violent crimes during criminal proceedings and extend that definition to include race, color, and national origin. It would send a powerful message to all Marylanders that homophobia, transphobia, racism, and xenophobia are inexcusable and have no home in the Free State.

The Lower Shore Progressive Caucus supports this bill and recommends a **FAVORABLE** report in committee.

HB0231 SB0046 Testimony.pdf

Uploaded by: Schlehofer, Michele

Position: FAV



Media Contact: Mark DeLancey
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LEGISLATIVE TESTIMONY

Bill: HB 0231/SB 0046 Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

Organization: PFLAG Salisbury Inc., PO Box 5107, Salisbury Maryland 21802

Submitted by: Michèle Schlehofer, Legislative Chair

Position: **FAVORABLE**

SALISBURY PFLAG SUPPORTS HB 0231/ SB 0046

I am submitting this testimony in FAVOR of HB 0231 / SB 0046 on behalf of PFLAG Salisbury, the Salisbury, Maryland Chapter of PFLAG National. This legislation would make it illegal to use the LGBTQ+ (lesbian, gay, bisexual, transgender, or queer) “panic defense” as a legal strategy to reduce a sentence.

The “panic defense” is when a victim’s sexual orientation or gender identity/expression is blamed for causing a state of temporary insanity that resulted in committing assault or murder. It is designed to reduce jury perceptions of a defendant’s culpability for having committed a violent act.

According to the National LGBT Bar, panic defense strategies are rooted in homophobia and transphobia; not actual insanity. Panic disorder is not a legitimate psychosis: “Gay Panic Disorder” was removed from the Diagnostic and Statistical Manual of Mental Disorders in 1973.

Panic defense strategies imply that simply being LGBTQ+ is enough to justify violent attacks on victims. It implies that LGBTQ+ lives are of diminished value and less worthy of protecting from violent crime.

In order to move equality forward and ensure dignity of all citizens, Maryland must discontinue panic defense. HB 0231 / SB 0046 would send a powerful message to all Marylanders that homophobia, transphobia, racism, and xenophobia are inexcusable and have no home in the Free State. PFLAG Salisbury supports the bill and recommends a **FAVORABLE** report in committee.

SB 46_FAV_ACLU_Spielberger.pdf

Uploaded by: Spielberger, Joe

Position: FAV



**Testimony for the Senate Judicial Proceedings Committee
February 4, 2021**

**SB 46 – Crimes – Mitigation – Race, Color, National Origin, Sex,
Gender Identity, or Sexual Orientation**

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

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The ACLU of Maryland supports SB 46, 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 LGBTQIA+ "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 LGBTQIA+ 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 46.

SB46 (Race, Color, National Origin Not Mitigation)

Uploaded by: Williams, Carrie

Position: FAV



State of Maryland
Office of the Attorney General

January 29, 2021

TO: The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee

FROM: Carrie J. Williams, Assistant Attorney General

RE: Attorney General's Support for SB 46

The Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 46. Senate Bill 46 provides that the discovery or perception of a person's gender identity, sexual orientation, sex, or racial identity cannot mitigate murder to manslaughter and is not a defense to assault in any degree.

The defense of provocation, commonly referred to as the "hot blooded response" defense, applies where a defendant alleges that he killed or assaulted someone in the "heat of passion" following a provocation. *Whitehead v. State*, 9 Md. App. 7, 10 (1970). The defense is generated where a defendant can show: 1) adequate provocation; 2) that the killing or assault was in the "heat of passion"; 3) that the heat of passion followed the provocation closely; and 4) the "heat of passion" was causally connected to the provocation. "Hot blooded response" is not a complete defense; rather, it mitigates murder to manslaughter and first-degree assault to second-degree assault.

The success of the "hot blooded response" defense often depends upon whether the defendant can prove adequate provocation. Senate Bill 46 makes clear that the discovery or perception of a person's gender identity, sexual orientation, sex, or racial identity is not sufficient provocation to invoke the "hot blooded response" defense.

There is precedent for defining inadequate provocation. In the past, the General Assembly has amended Criminal Law § 2-207 to state that discovering one's spouse engaged in sexual intercourse with another is not adequate provocation to mitigate murder to manslaughter. Just as discovering a spouse's infidelity does

not excuse murder or assault, neither does the discovery or perception of gender identity, sexual orientation, or other characteristic of a person.

The discovery or perception of a person's racial, sexual, or gender identity can never be adequate provocation for murder or a defense to assault. Senate Bill 46 ensures that no criminal defendant will ever successfully argue otherwise. The Attorney General urges a favorable report on Senate Bill 46.

cc: Members of the Committee

BPD SB 46.pdf

Uploaded by: Wirzberger, Michelle

Position: FAV



BALTIMORE POLICE DEPARTMENT



Brandon M. Scott
Mayor

Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the Senate Judicial Proceedings Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: Senate Bill 46 Crimes – Mitigation – Race, Color, National Origin, Sex, Gender Identity, or Sexual Orientation

DATE: February 4, 2021

POSITION: SUPPORT

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee, please be advised that the Baltimore Police Department (BPD) **supports** Senate Bill 46.

Senate Bill 46 prevents a victim's gender identity and other protected identities from being used to mitigate criminal charges against the accused perpetrator(s) of violence. This bill advances equity for marginalized populations, many of whom have built strong communities in Baltimore City.

Transgender and gender nonconforming people are individuals whose gender identities, expressions, and or lived experiences differ from or transcend the sex they were assigned at birth.¹ Members of this marginalized population face anti-transgender bias, stigma, and systemic exclusion that lead to increased risk of exposure to violence.² At times, this violence against transgender people is motivated by perpetrators' anti-trans bias. Unless Senate Bill 46 becomes law, perpetrators of violence against transgender people will continue to use the discovery of a person's gender identity to mitigate certain criminal charges. In effect, learning that a person is transgender could deem violence against her a lesser crime and therefore lessen the consequences for the perpetrator.

A victim's membership in a vulnerable population should not justify lesser charges against her alleged assailant. All members of Baltimore's diverse communities deserve equal protection under the law, and an equitable system of criminal justice.

BPD wholeheartedly supports that vision and has been diligent and intentional in its efforts to ensure that all members of the LGBTQ community are treated fairly, equitably and with dignity in all interactions they may have with BPD officers. To that end, we have updated departmental policies and training to ensure all members of the Department understand how to interact with transgender and gender nonconforming people and, just as important, to fully investigate all claims of crimes that have been perpetrated against members of the

¹ <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/FatalViolence-2020Report-Final.pdf?mtime=20201119101455&focal=none>

² <https://transgender.or.ke/wp-content/uploads/2019/01/Violence-Against-Transgende-People.pdf>

community, with special attention paid to allegations of hate/bias incidents. If you are interested, you can review our policy # 720 entitled Interactions with LGBTQ Individuals at: <https://www.powerdms.com/public/BALTIMOREMD/documents/349766>. We have trained the entire department on these new standards and as such, it will go into effect within the next few weeks.

Therefore, the Baltimore Police Department respectfully requests a **favorable** report on Senate Bill 46.

SB 46 - FAV - Support w Amend.pdf

Uploaded by: Patashnick, Gavin

Position: FWA



Maryland State's Attorneys' Association

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Brian DeLeonardo
President

Steven I. Kroll
Coordinator

DATE: February 4, 2021

BILL NUMBER: SB 46

POSITION: Support with Amendments

The Maryland State's Attorney Association (MSAA) supports SB 46 with amendments.

SB 46 bars the discovery or belief of someone's race, color, sexual orientation or sexual identity as legally adequate provocation to mitigate the crimes of murder or assault. The proposed amendment bans the utilization of this sentiment as a defense altogether for assault.

Any attempt to use racist beliefs or reactions rooted in bigotry as a defense to any crime should be met with the highest level of opposition. Clearly, playing upon prejudicial attitudes for the express purpose of justifying a crime is abhorrent. Unfortunately, this tactic has been used successfully in the State of Maryland to mitigate a crime or nullify a juror. This legislation halts this practice and should be roundly supported in all levels of the legal community.

The proposed amendment strengthens the objective of this legislation by eliminating the defense altogether in instances involving assault. The reason is based in practicality, as the degree of seriousness for murder and assault are rooted in different manners of intent. The degree of seriousness for a murder is, with few exceptions, based upon the intent of the killing by a suspect. In other words, the "why" of the death drives the degree, rather than the death itself. In instances involving assault, the degree of seriousness is reflected in the extent of the injury, again with limited exceptions. A minor injury will not typically rise to the level of a first degree regardless of the intent of the suspect. In short, the use of a prejudicial sentiment to mitigate an assaultive crime has no real practical effect as the degree of seriousness is predicated upon the intent to cause a serious injury, rather than the reason for causing it. A defendant would therefore be free to utilize this defense in the same manner as complete defenses, such as self-defense or defense of others, which again, should not be granted safe harbor.

For these reasons the MSAA requests a favorable report on SB 46 with the proposed amendments.