

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 46

(Senator Lam)

Judicial Proceedings

Rules and Executive Nominations

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

This bill establishes 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, (1) does not constitute legally adequate provocation to mitigate a killing from the crime of murder to manslaughter and (2) is not a defense to the crime of assault in any degree.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Mitigation of Criminal Offenses

To reduce a homicide to manslaughter, there must be not simply provocation in psychosocial fact but one of certain fairly well-defined classes of provocation recognized as being adequate as a matter of law. *Tripp v. State*, 36 Md. App. 459 (1977). If the defense

of mitigation prevails, the homicide is not malicious and the offense is reduced from murder to manslaughter. *Jones v. State*, 37 Md. App. 511 (1977).

A person charged with assault in the first or second degree, reckless endangerment, or causing a prison employee to come into contact with bodily fluid may assert any judicially recognized defense.

A person commits a first-degree assault if the individual (1) intentionally causes or attempts to cause serious physical injury to another person or (2) commits an assault with a firearm. First-degree assault may be reduced to a lesser offense if a defendant can successfully mitigate the necessary intent of first-degree assault.

Gay-trans Panic Defense

According to the LGBT Bar, the “gay/trans 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.” Gay/trans panic defense has been banned in nine states.

Gay/trans panic defense is not an independent defense. Instead, it is used to support traditional criminal law defenses like provocation, diminished capacity, or self-defense to acquit or mitigate charges. Specifically, defendants assert that the discovery or perception of a victim’s sex, general identity, and/or sexual orientation (1) was a sufficiently provocative act that drove them to kill or assault another in the heat of passion; (2) caused them to have a temporary mental breakdown, driving them to act violently; or (3) was the basis of a reasonable belief of immediate danger of serious bodily harm.

The strategy can be compared to the use of the sudden discovery of one’s spouse engaged in intimate extramarital acts as mitigation to the defendant’s subsequent criminal actions. The State statutorily prohibits the use of spousal adultery as mitigation for murder to voluntary manslaughter, even though the killing was provoked by the discovery.

Additional Information

Prior Introductions: HB 488 of 2020, a similar bill as amended, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 554, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 231 (Delegate Palakovich Carr) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Somerset counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; LGBT Bar; American Bar Association; Williams Institute – UCLA School of Law; Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2021
rh/aad Third Reader - April 9, 2021
Revised - Amendment(s) - April 9, 2021

Analysis by: Donavan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510