



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