



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

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

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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.