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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