



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of HB 231
Crimes – Mitigation – Race, Color, National Origin, Sex, Gender
Identity, or Sexual Orientation**

This bill 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.

Eleven states have enacted laws to prohibit the use of this defense.¹ In Maryland, this bill passed the Judiciary Committee unanimously in 2020 and passed the full House in a vote of 131 to 1 before running out of time because of the abbreviated session.

LGBTQ+ Victims

The panic defense has especially been used against LGBTQ+ individuals. Dozens of murder charges have been acquitted in the U.S. under the gay and trans panic defense and the defense has appeared in court opinions in approximately 25 states since the 1960’s.²

According to the “panic defense”, those charged with offenses against LGBTQ+ individuals are blameless due to “panic” caused by discovering the victim’s gender identity or sexual orientation. The defense is rooted in irrational fears based on homophobia and transphobia.

A 2013 American Bar Association Resolution supporting elimination of the gay and trans panic defense recounted that:

¹ California, Colorado, Connecticut, Hawaii, Illinois, Maine, New Jersey, Nevada, New York, Rhode Island, and Washington

² “Model Legislation for Eliminating the Gay and Trans Panic Defenses,” 2016, The Williams Institute.

When Matthew Shepard, age 21, made a pass at two men in a gay bar, he should have expected to be beaten, pistol-whipped, tied to a fence, and left to die. When Emile Bernard was stabbed, beaten and blinded after coming on to a hitchhiker, his assailant claimed he could not be guilty since the victim “was asking for trouble” by making sexual advances. These are actual defenses, offered by real defendants, in United States courts of law that have succeeded in mitigating or excusing real crimes, even today.³

Violence against LGBTQ+ individuals is too common. In 2019, at least 27 transgender people were killed in America—three of these killings occurred in Maryland.⁴ Moreover, hate crimes committed against LGBTQ+ people are increasing in recent years.⁵

Victims Who are People of Color

Hate crimes against people of color are also on the rise in the U.S.⁵ Nearly 60% of hate crimes are motivated by bias against race, ethnicity, or ancestry. African Americans are the largest group of victims of hate crimes, although hate crimes against Hispanics have been rising quickly in recent years and those attacks are increasingly targeting people instead of property.

Prohibiting the use of this defense to mitigate violent crime in Maryland, will better safeguard our residents and help ensure that victims receive the justice they are due.

³ American Bar Association, Resolution 113A, Adopted August 2013.

⁴ <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>

⁵ FBI hate crime database, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses>