

# ELIMINATION OF LGBTQ PANIC DEFENSES FOR CRIMINAL ACTS

**Bias-motivated crimes have occurred with alarming frequency across the United States. In particular, hate crimes targeting the LGBTQ community have increased over the last several years, with nearly 1 in 5 hate crimes motivated by anti-LGBTQ bias.<sup>1</sup> Incomplete data collection and underreporting mean that these troubling statistics are likely much worse than indicated.**

Despite a growing awareness of anti-LGBTQ violence, courtrooms across the country have permitted the perpetrators of these crimes to mitigate responsibility for their actions by use of so-called LGBTQ “panic defenses,” often referred to as gay and trans panic defenses.

In 1998 one of the men who murdered gay college student, Matthew Shepard, offered this defense when he was charged with luring Shepard from a bar, beating and robbing him, and leaving him critically injured tied to a fence. He argued that Shepard made a sexual

advance towards him, which caused him such emotional distress that he suffered from temporary insanity and could not be held accountable. Nearly two decades later, in the first case to charge a defendant for murder of a transgender person under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act the defendant asserted a similar claim. Seventeen year old Mercedes Williamson was murdered by her romantic partner who told police that he “blacked out” when he discovered she was transgender. The court rejected this defense in both cases.

## WHAT ARE LGBTQ PANIC DEFENSES?

Defendants offering this strategy to courts and juries argue that the victim instigated the attack by making a non-forcible romantic or sexual advance towards them. Defendants argue that they cannot be held wholly responsible for the violence because the advance caused them to enter a state of temporary insanity, the advance provoked violence, or the advance made them fear for their physical safety. When used successfully, these defenses may allow defendants to escape punishment for their crimes, either by having their charges or sentences reduced, or convictions avoided altogether.

The tactic relies heavily on stereotypes grounded in anti-LGBTQ prejudice to justify violence against LGBTQ individuals, and at present, has been used in nearly one-half of the states.<sup>2</sup> While no state officially recognizes LGBTQ panic defenses as freestanding defenses to criminal liability, the arguments have been permitted in courtrooms across the country since the 1950s to bolster claims of insanity, self-defense, and provocation.<sup>3</sup>

## USE OF THE DEFENSES IN COURT:

As discussed above, these so-called defenses can be used in a number of ways.

**Insanity:** When used in conjunction with a defense of insanity or diminished capacity, LGBTQ panic claims argue that the defendant suffered a temporary mental breakdown as a result of an unwanted sexual advance from an LGBTQ victim or upon discovery of the victim’s sexual orientation or gender identity.<sup>4</sup>

**Self-Defense:** When used in conjunction with a self-defense claim, LGBTQ panic claims argue that a defendant had reason to believe that the victim’s sexual orientation and/or gender identity placed them in danger of serious bodily harm.

**Provocation:** When used in conjunction with provocation, LGBTQ panic defenses argue that the victim’s non-violent sexual advance was sufficiently provocative to induce the defendant to kill in the “heat of passion”.<sup>5</sup>

In each of these instances, jurors are asked to find that the victim’s sexual orientation or gender identity contributed to the defendant’s violent behavior. In doing so, they excuse harm done to LGBTQ individuals and send the message that violence committed against a person as a result of their sexual orientation or gender identity is acceptable.

## STATE LEGISLATIVE ACTION: ONLY A HANDFUL OF STATES HAVE PROHIBITED SO-CALLED LGBTQ “PANIC DEFENSES.”

Only eight states - California, Connecticut, Hawaii, Illinois, Maine, New York, Nevada, and Rhode Island - have enacted legislation banning the use of LGBTQ panic claims as legal defenses in the courtroom. Out of the eight, five of these bans were initiated in 2019.

Several others, including the District of Columbia, Massachusetts, Minnesota, New Jersey, New Mexico, Pennsylvania, Texas, and Washington, have introduced bills to prohibit this defense.

It is imperative that states continue to enact measures banning the use of LGBTQ panic defenses in the courtroom to end the legitimization of violence against LGBTQ people and ensure that all victims of violent crimes, regardless of sexual orientation or gender identity, and their families receive equal justice.