



Statement Opposing the Limitation of the Extreme Emotional Disturbance Defense

S.2987 (Hoylman) / A.2707 (O'Donnell) seeks to limit the availability of the extreme emotional disturbance defense in certain cases. Specifically, the bill proposes to prohibit defenses in which an accused person's extreme emotional distress is based on the perceived or actual sexual or gender identity of the complainant or the deceased. This defense has been referred to as the "Gay and Trans Panic Defense".

As defenders, we represent hundreds of LGBTQ+ people every year in their criminal cases. We have witnessed the struggles, stigmatization and marginalization that people in these communities -- especially transgender and gender non-conforming people of color -- face throughout their lives, which often funnel them into the criminal legal system in the first place. We acknowledge the ongoing crisis of violence directed towards transgender women of color. Alarming rates of violence, including murder, continue unabated. And we recognize that at the core of the use of this defense in this way is abhorrent homophobia and transphobia.

We, however, oppose eliminating the defense. Increased dependence on criminalization and incarceration, and on the tools of the state used to lock more people in cages, will not bring an end to discrimination and violence against LGBTQ+ people. By eliminating this defense, we will be providing the state with yet another tool to incarcerate more people. Notably, it is at the hands of actors in the criminal legal system -- including the police, prosecutors, and corrections - - that LGBTQ+ communities experience some of the most extreme violence.

The elimination of this defense will not liberate LGBTQ+ communities, nor will it act as a deterrent or result in less violence against LGBTQ+ people. It will, however, result in the incarceration of more people for longer periods of time. What will liberate these communities is investing in resources and support to keep them safe. Community investment is a better way to support these communities: investing in economic opportunity so people are not forced to engage in dangerous and criminalized economies in order to survive; investing in appropriate housing options and safer shelters so homeless people are not vulnerable to violence on the street; and shifting the culture of police departments so trans women can walk outside without fear of being profiled or harassed by the police.

Circumstances where people are harmed because they are vulnerable, oppressed, or marginalized justifiably give rise to a public outcry. Statutes designed to prohibit certain defenses undermine the ability of defendants to present a defense and are not an appropriate means to correct these deep-rooted societal issues. Such limitations dramatically impinge on our clients' rights to confront their accusers and mount a defense. Evidence at trial, whether presented by the



prosecution or the defense, must be adapted, limited, and shaped to comport with constitutional requirements of due process. Limiting the constitutional right of the accused to mount a defense results in coerced guilty pleas, false convictions, and convictions for more serious crimes than legally justified by the circumstances. Additionally, it is a common misconception that this defense is a complete defense. This is far from the truth. This defense is one that, if used successfully, only reduces a person's prison sentence, it does not prevent a conviction or a prison sentence entirely.

As defenders and advocates against mass incarceration, it is our obligation to keep as many people out of jail as possible and protect them from the overreaching power of the state. We must think critically about the far-reaching impact of eliminating any defense, and resist those efforts regardless of how repugnant the underlying concept of the defense may be.