



The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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April 27, 2022

The Honorable Lisa Baker
Chair, Senate Judiciary Committee
Senate Box 203020
Harrisburg, PA 17120-3020
Room: 173 Main Capitol

RE: Support for Senate Bill ("SB") 854, Prohibiting LGBTQ "Panic" Defense

Dear Chair Baker,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, we write to convey our strong support for SB 854. As you know, if passed, this bill would prohibit the use of the so-called LGBTQ "panic" defense, which currently allows perpetrators of criminal offenses against LGBTQ Pennsylvanians to receive a lesser sentence and, in some cases, avoid being convicted or punished altogether. Since September 13, 2021, SB 854 has been in the Judiciary Committee for consideration. However, to date, the Committee has neither convened a hearing on nor reported on this bill. For the reasons that follow, we respectfully urge the Judiciary Committee to consider SB 854 and take the appropriate measures to move it through Committee, facilitating its passage.

As you are aware, the Commission was established in 2005 by the three branches of Pennsylvania's government to implement the recommendations from a 2003 Pennsylvania Supreme Court study on racial and gender bias in the justice system.¹ The Commission has since expanded its areas of focus to including ending discrimination against LGBTQ Pennsylvanians in our courts and throughout the Commonwealth. To that end, the Commission, through its LGBTQ Rights Committee, is working with the legislature to prohibit LGBTQ Pennsylvanians from being denied housing, employment, or access to public accommodations simply because of their sexual orientation or gender identity. The Committee is also working with the Pennsylvania Department of Human Services to update its regulations to include non-discrimination protections for LGBTQ youth in out-of-home placements. Consistent with these and other Commission initiatives to ensure that LGBTQ Pennsylvanians receive equal protection under the law, we now advocate for the passage of SB 854.

¹ See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

SB 854 is directly responsive to the unnecessary and harmful burdens borne by members of the LGBTQ community. Indeed, although our Commonwealth has made progress toward accepting and protecting LGBTQ individuals, they continue to be the targets of intolerance and violence. According to a report published by the Center for American Progress, more than one in three LGBTQ Americans faced discrimination of some kind in 2020, including more than three in five (62% of) transgender Americans and 43% of LGBTQ people of color.² Equally as troubling is the fact that one out of five lesbian, gay, and bisexual individuals living in the United States will experience a hate crime in their lifetime, while more than one in *four* transgender people will, too.³ In short, for reasons exclusive to their very identity, LGBTQ individuals are disproportionately the victims of discriminatory and violent acts.

Unfortunately, by continuing to permit use of the LGBTQ “panic” defense, Pennsylvania makes that disproportionate treatment all the more likely. The LGBTQ “panic” defense allows perpetrators of criminal offenses against LGBTQ people to receive a lesser sentence or, in some cases, avoid conviction or punishment altogether, by placing the blame for the offense on the victim’s actual or perceived sexual orientation or gender identity.⁴ Because the “panic defense” is not an affirmative, or stand-alone, defense, it is typically paired in court with one of three defenses: insanity or diminished capacity, provocation, or self-defense.

No matter the defense with which it is paired, however, the LGBTQ “panic” defense stigmatizes behavior which, on its own, is not illegal or harmful, but is only considered provocative or dangerous because it came from an LGBTQ individual.⁵ Not only does this partial defense send the wrong *moral* message that violence against LGBTQ people is permissible in certain situations; it also promotes the wrong *scientific* message, too. Nearly 50 years ago, the American Psychiatric Association removed the term “gay panic disorder” from the Diagnostic and Statistical Manual of Mental Disorders (the “DSM”), recognizing the term’s inherent roots in homophobia and transphobia.⁶

The ongoing existence of the LGBTQ “panic” defense is unavoidably tied to the violence and discrimination that LGBTQ individuals continue to face. By passing SB 854, Pennsylvania legislators have the opportunity – and the authority – to better protect the Commonwealth’s LGBTQ citizens. Under our cherished system of federalism, states are granted broad latitude to

² Sharita Gruberg, *Beyond Bostock: The Future of LGBTQ Civil Rights*, Center for American Progress (Aug. 26, 2020), <https://www.americanprogress.org/article/beyond-bostock-future-lgbtq-civil-rights/>.

³ *LGBTQ+ “Panic” Defense*, The LGBTQ+ Bar, <https://lgbtqbar.org/programs/advocacy/gay-trans-panic-defense/> (last visited Apr. 25, 2022) [hereinafter *LGBTQ+ “Panic” Defense*].

⁴ Jordan Blair Woods et al., *Model Legislation for Eliminating the Gay and Trans Panic Defenses*, UCLA School of Law Williams Institute 1, 2 (Sept. 2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Model-Legisl-Gay-Trans-Panic-Defense-Sep-2016.pdf> [hereinafter *Williams Institute Report*].

⁵ *LGBTQ+ “Panic” Defense*, *supra* note 3.

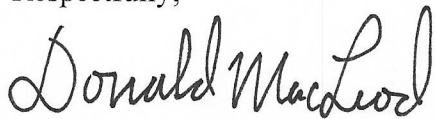
⁶ *Id.*

define the elements of crimes and to exclude certain categories of evidence from being considered by juries in criminal cases.⁷ Generally, the exclusion of such evidence is permissible so long as it occurs for a “valid” reason or, in other words, can be supported by legitimate state policy justifications.⁸ There is little doubt that the justifications for eliminating the LGBTQ “panic” defense are valid. Ridding criminal trials of this partial defense would interrupt the “perpetuation of harmful cultural norms that validate violence against LGBTQ people” and advance the policies expressed in our Commonwealth’s anti-discrimination laws.⁹ It would also preclude the introduction of evidence regarding a victim’s sexuality or gender identity/expression, which is otherwise highly invasive of one’s privacy.

All Pennsylvanians – and vulnerable populations in particular – should receive the benefit of legal protections whose primary focus is ensuring equal treatment under the law. By prohibiting use of the so-called LGBTQ “panic” defense, SB 854 takes an important step toward that goal, recognizing the dignity of LGBTQ Pennsylvanians and the humanity of their diverse perspectives in the process. Passing this important piece of legislation would also allow Pennsylvania to join the other 17 states that have already banned use of the defense, making the Commonwealth a more inviting place for LGBTQ individuals to live.¹⁰

Thank you for your time and consideration. We would welcome the opportunity to provide testimony on SB 854 should the Judiciary Committee convene a hearing thereon. If you have any questions concerning this matter, we would be happy to discuss them with you at your convenience.

Respectfully,



Donald MacLeod
Chair, LGBTQ Rights Committee



Lisette McCormick, Esq.
Executive Director

cc: The Hon. Steven J. Santarsiero, Minority Chair, Senate Judiciary Committee
The Hon. Maria Collett, Prime Sponsor, SB 854
Members of the Senate Judiciary Committee
Pennsylvania Interbranch Commission Members
LGBTQ Rights Committee Members

⁷ *Williams Institute Report*, *supra* note 4, at 17 (quoting *Montana v. Egelhoff*, 518 U.S. 37 (1996)).

⁸ *Montana v. Egelhoff*, 518 U.S. 37, 49 (1996).

⁹ *Williams Institute Report*, *supra* note 4, at 21.

¹⁰ LGBTQ+ “Panic” Defense, *supra* note 3.