

THE LGBTQ+ PANIC DEFENSE PROHIBITION ACT OF 2023

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GRADUATE STUDENT PRESENTATION

"Functionally it is criminalized existence. Practically, in frenzy, Dominant group creates specialized laws to penalize minorities. " - Alok V, Advocate

H.R.4432 - LGBTQ+ Panic Defense Prohibition Act of 2023

118th Congress (2023-2024) | [Get alerts](#)

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Sponsor: [Rep. Pappas, Chris \(D-NH-1\)](#)
(Introduced 06/30/2023)

Committees: House - Judiciary

Latest Action: House - 06/30/2023 Referred to the House Committee on the Judiciary. ([All Actions](#))



Congressman
Pappas (D-NH) in
the U.S. House of
Representatives



Senator Markey
(D-MA) in the U.S.
Senate



S.2279 - LGBTQ+ Panic Defense Prohibition Act of 2023

118th Congress (2023-2024) | [Get alerts](#)

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Sponsor: [Sen. Markey, Edward J. \(D-MA\)](#)
(Introduced 07/12/2023)

Committees: Senate - Judiciary

Latest Action: Senate - 07/12/2023 Read twice and referred to the Committee on the Judiciary. ([All Actions](#))



The LGBTQ+ Panic Defense Prohibition Act of 2023

A bill to amend title 18, United States Code, to prohibit panic defenses based on sexual orientation or gender identity or expression.

The Bill contain three sections:

1. SECTION 1. Short title.
2. SECTION 2. Findings.
3. SECTION 3. Prohibition on panic defenses based on sexual orientation or gender identity or expression.

<https://lgbtqbar.org/programs/advocacy/gay-trans-panic-defense/>

118TH CONGRESS
1ST SESSION

H. R. 4432

To amend title 18, United States Code, to prohibit defenses based on sexual orientation or gender identity or expression.

IN THE HOUSE OF REPRESENTATIVES
JUNE 30, 2023

Mr. PAPPAS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit defenses based on sexual orientation or gender identity or expression.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “LGBTQ+ Panic Defense Prohibition Act of 2023”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the American Bar Association has urged the Federal Government to take legislative action to curtail the availability and effectiveness of the legal defenses that seek to partially or completely excuse crimes such as murder and assault on the grounds that the sexual orientation or gender identity of the victim is provocation enough for the violent reaction of the defendant;

(2) panic defenses based on sexual orientation or gender identity or expression, which continue to be raised in criminal proceedings in Federal courts across the United States, are surprisingly long-lived historical artifacts, remnants of a time when widespread public antipathy was the norm for lesbian, gay, bisexual, transgender, and queer (referred to in this Act as “LGBTQ”) individuals;

(3) panic defenses based on sexual orientation or gender identity or expression characterize sexual orientation and gender identity or expression as objectively reasonable excuses for loss of self-control, and thereby illegitimately mitigate the responsibility of a perpetrator for harm done to LGBTQ individuals;

(4) panic defenses based on sexual orientation or gender identity or expression appeal to irrational fears and hatred of LGBTQ individuals, thereby undermining the legitimacy of Federal criminal prosecutions and resulting in unjustifiable acquittals or sentencing reductions;

(5) the use of panic defenses based on sexual orientation or gender identity or expression is entirely incompatible with the express intent of Federal law to provide increased protection to victims of bias-motivated crimes, including crimes committed against LGBTQ individuals;

(6) continued use of these anachronistic defenses reinforces and institutionalizes prejudice at the expense of norms of self-control, tolerance, and compassion, which the law should encourage, and marks an egregious lapse in the march of the United States toward a more just criminal justice system; and

(7) to end the antiquated notion that LGBTQ lives are worth less than others and to reflect modern understanding of LGBTQ individuals as equal citizens under law, panic defenses based on sexual orientation or gender identity or expression must end.

The LGBTQ+ “panic” defense (a legal strategy)

1. Defendants charged with violent crimes weaponize their victim’s real or perceived sexual orientation or gender identity/expression to reduce or evade criminal liability.
2. It is not a freestanding defense to criminal liability.
3. It is a legal tactic that bolsters other defenses, such as insanity, provocation, or self-defense.
4. When a defendant uses the LGBTQ+ “panic” defense, they argue that their **violent actions are both explained and excused** by their victim’s real or perceived sexual orientation or gender identity/expression.
5. The **goal of this strategy** is to employ homophobia and transphobia to persuade a jury into fully or partially acquitting the defendant.
6. Whether or not this appeal to bigotry is successful in court, every time a defendant invokes the LGBTQ+ “panic” defense, they reinforce the dangerous and discredited belief that LGBTQ+ lives are worth less than others.

SEC. 3. PROHIBITION ON PANIC DEFENSES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION.

(a) IN GENERAL.—[Chapter 1](#) of title 18, United States Code, is amended by adding at the end the following:

“§28. Prohibition on panic defenses based on sexual orientation or gender identity or expression

“(a) PROHIBITION.—No nonviolent sexual advance or perception or belief, even if inaccurate, of the gender, gender identity or expression, or sexual orientation of an individual may be used to excuse or justify the conduct of an individual or mitigate the severity of an offense.

“(b) PAST TRAUMA.—Notwithstanding the prohibition in subsection (a), a court may admit evidence, in accordance with the Federal Rules of Evidence, of prior trauma to the defendant for the purpose of excusing or justifying the conduct of the defendant or mitigating the severity of an offense.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for [chapter 1](#) of title 18, United States Code, is amended by adding at the end the following:

[“28. Prohibition on panic defenses based on sexual orientation or gender identity or expression.”](#)

(c) REPORT.—The Attorney General shall submit to Congress an annual report that details prosecutions in Federal court involving capital and noncapital crimes committed against LGBTQ individuals that were motivated by the victim’s gender, gender identity or expression, or sexual orientation.

Title 18 of the United States Code

What it covers	Federal crimes and criminal procedure
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Parts	Five parts: I through IV cover crimes, criminal procedure, prisons and prisoners, and juvenile delinquency; the fifth part covers witness immunity
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How is the defense used in court?

Defense of insanity or diminished capacity

Defense of provocation

Defense of self-defense

How successful is the LGBT+ “panic” defense?

- It can be **difficult** to track the success and usage of this defense.
- Jurors and Judges may have implicit homophobia and transphobia and influences the **decisions**.
- When it comes to a LGBTQ+ victim’s **dignity**, a hung jury and a mitigated sentence have the same effect.
 - Withhold justice
 - Sends message that your life is NOT equal to others
- The defense does not need to be successful to be **dangerous**.
- Narrative blaming for violence endured bolster harmful stereotypes and justify alarming rates of anti-LGBTQ+ violence in the United States.



AHMED DABARRAN

📅 2001

Ahmed Dabarran was an Assistant District Attorney in Fulton County, Georgia. He was struck over the head over a dozen times by Roderiquis Reshad Reed and died from his injuries. At trial, Reed's attorney claimed that Reed killed Dabarran to protect himself from unwanted sexual advances. However, a medical examiner testified that Dabarran was asleep at the time of the murder. The jury acquitted Reed of the murder despite Reed's full confession.

TERRANCE HAUSER

📅 2008

Terrance Hauser was stabbed 61 times by his neighbor Joseph Biedermann. During his murder trial, Biedermann claimed that he passed out and woke up to Hauser holding a sword against his neck and attempting to sexually assault him. Biedermann claimed to be in such a panic that the only way he could escape was to stab Hauser 61 times, but evidence from the scene showed few signs of struggle. The jury acquitted Biedermann of first-degree murder.

ANGIE ZAPATA

📅 2008

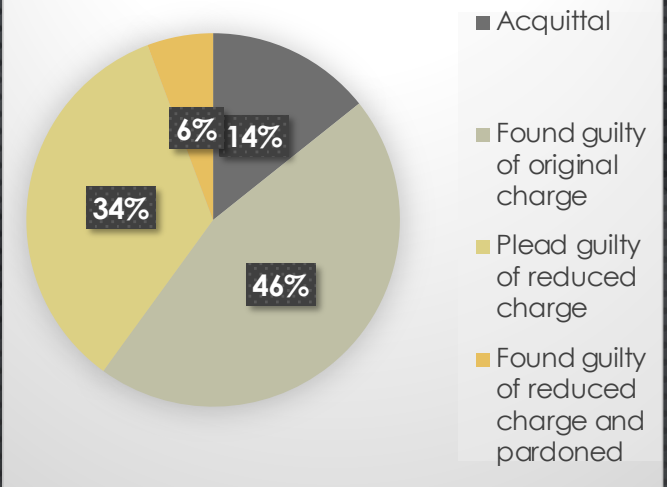
In July of 2008, 18-year-old Angie Zapata met 31-year-old Allen Andrade and they spent three days together, during which they had at least one sexual encounter. When Andrade discovered that Zapata was transgender, he viciously beat her with a fire extinguisher. Upon his arrest, Andrade said he thought he had "killed it." Andrade was found guilty of both first-degree murder and a hate crime and was sentenced to life in prison.

BELLA EVANGELISTA

📅 2013

Bella Evangelista was a popular trans performer at many of Washington D.C.'s area bars and nightclubs was loved by many. On August 16, 2003, Antoine Jacobs fatally shot Bella three times after discovering her transgender status. The crime was charged as a hate crime; carrying a life sentence if convicted; however in 2005 Jacobs pled guilty to second-degree murder. On December 16 of that year Jacobs was sentenced to sixteen years and eight months followed by five years of supervised probation.

CAUTION!!
Mentioning of
dehumanization



<https://docs.google.com/spreadsheets/d/1qk0bQF95M2hu07C2522fbcOw59y2M8TkpxzA6Yx9Wn8/edit?usp=sharing>

The concept of employee voice for LGBT employees interested in expatriation rests on the assumption that remaining in the 'global closet' can limit international career opportunities. The global closet is defined as the space within which negotiation of homosexual identity is moderated by concerns related to invisibility, discrimination, stigmatization, and safety and security issues (Gedro, 2010). Gedro (2010, p. 395) further refers to the 'lavender ceiling' as one in which organizations tend not to 'promote those in the sexual minority (i.e. those who are not heterosexual) to positions of increased authority, power, prestige, and formal responsibility'.

Allies and LGBT expatriates

Allies are characterized as people that are a member of a 'dominant or majority group who work to end oppression in his or her personal and professional life through the support of, and as an advocate for, the oppressed population' (Washington & Evans, 1991). Allies typically undergo company-supported training in their roles. One of the functions of Ally networks is their responsibility to advocate and act as change agents for issues related to LGBT minorities in organizational contexts (Brooks & Edwards, 2009). We position ERGs and Ally networks as complementary rather than separate voice mechanisms in the sense that each can be, and often is, an extension of the other.

Brooks and Edwards (2009, p. 137) suggest that Ally networks have become an important mechanism through which LGBT employees find avenues for inclusion, safety and equity in the workplace in their perceptions of fair treatment. One of the functions of Ally networks for LGBT employees is their 'responsibility to advocate, educate, research and act as change agents for issues related to LGBT minorities in international contexts'.

Allies can act as an effective voice mechanism for LGBT employees by modeling behaviors of advocacy and support to LGBT persons and confronting inappropriate behaviors (Brooks & Edwards, 2009; Brooks, Robards, Gibbs, Lozano, & Edwards, 2007). Allies can further support LGBT expatriation by actively seeking to change policy and support LGBT staff participation across institutional levels; for example through HR policy formation, among managerial functional levels, within trade unions structures, and specifically in ERGs. Ally advocacy can be apparent through confronting bias and discriminatory comments and actions by championing the voices of LGBT employees. Allies are defined as 'people willing to take action, either interpersonally or in larger social settings and move beyond self-regulation of prejudice' (Brown & Ostrove, 2013, p. 2212).

Employee voice mechanisms for lesbian, gay, bisexual and transgender expatriation: the role of Employee-Resource Groups (ERGs) and allies

Yvonne McNulty^a, Ruth McPhail^b, Cristina Inversic^c, Tony Dundon^c and Eva Nechanska^d

and individually embedded. Stereotype threat is concerned with how stereotypes harm employee voice opportunities, link to HR performance, and may prevent LGBT employees from having equal access to global mobility and equal levels of benefits and support. Scholars (e.g. Gupta & Bhawe, 2007; Osborne, 2007; Shapiro, Aronson, & McGlone, 2015; Steele, 1997; Steele, Spencer, & Aronson, 2002) have shown that stereotype threat reduces the performance of individuals who belong to negatively stereotyped groups. While we are careful not to assume that LGBT employees always necessarily belong to a negatively stereotyped group, research attests to problems of discrimination towards LGBT employees that suggests issues related to stereotyping (Gates & Viggiani, 2014; Lewis & Pitts, 2017; Munoz & Thomas, 2006). Stereotype threat is defined as a situational predicament in which people perceive themselves (whether real or imagined) to be at risk of confirming a negative stereotype as a result of belonging to a particular social group (Steele, 1997), in this case LGBT. Collins (2007) found the presence of stereotype threat in the workplace for LGBT and that the stereotyping of employees can directly and indirectly impact on their work performance and turnover: the LGBT workforce feels fear, hatred, and intolerance toward them. They also face discrimination, stigmatization, isolation and stereotypes associated with being 'not normal' and less able.

Stereotype threat has been shown to induce anxiety, lower intellectual performance, and deplete working memory (Osborne, 2007; Sackett, Hardison, & Cullen, 2004), where repeated exposure can lead to diminished confidence, poor performance, and loss of interest in pursuing certain goals (Nelson, 2015). It

[I joined] to have a personal sense of belonging and community, to advocate for inclusion, and to educate on LGBT issues in the workplace. (#2)

Some of those that do not join LGBT ERGs may not want to come 'out' at work and believe that by joining they may be 'outed,' from which there may then be a detrimental effect to their employment. To this end, the role of the ERG for voice has a de facto narrow (limiting) rather than wider degree of inclusivity. Nonetheless, most respondents agreed that the main purpose of LGBT ERGs is the provision of support, awareness, and networking among LGBT employees. To a lesser extent, ERG voice can be seen also to assist the company to promote broader organizational goals. One employee said,

It exists as a safe space for LGBT employees and is also a demonstration of the company's commitment to supporting D&I at the local level. (#8)

The effectiveness of this Act (if adopted) may look like this.

Local governments are educating courts, prosecutors, defense counsel, and the public about devastating personal and legal consequences.

Federal, state, local, and tribal legislatures pass legislation

Violence reduction and mitigate harmful stereotype. Lowering of Transphobia and Homophobia.

More people openly expresses their identity and increased Ally Membership

"It is not my responsibility to minimize myself to evade violence and scrutiny"

"I decide to become free and fullest version of myself"

Potential DEIB implications of the policy?

Questions

1. How can we make the 2024-2028 Government to pass this law?
2. "If you do not support this act, you cannot call yourself an Ally" - True or False
3. Does the world have problem/hatred with femininity?