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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 2
FOR
HOUSE BILL NO. 142

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 222, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 222. General definitions.

4 When used in this Criminal Code:

5 (~~) “Gender identity” means a gender-related identity, appearance, expression, or behavior of a person,~~
6 regardless of the person’s assigned sex at birth.

7 (~~) “Sexual orientation” includes heterosexuality, bisexuality, or homosexuality.~~

8 Section 2. Amend § 472, Title 11 of the Delaware Code by making deletions as shown by strike through and
9 insertions as shown by underline as follows:

10 ~~§ 472-474. [Reserved.]~~ § 472. Mitigating Factors and Defenses Based on a Victim’s Sexual Orientation, Sex,
11 Gender, Gender Identity, or Sex Assigned at Birth.

12 (a) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, a
13 defendant is not justified in using force against another based on the discovery of, knowledge or belief about, or the
14 potential or actual disclosure of the victim’s actual or perceived sexual orientation, sex, gender, gender identity, or sex
15 assigned at birth.

16 (b) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, for
17 the purposes of determining whether there is a reasonable explanation or excuse for the existence of extreme emotional

18 disturbance or other asserted mitigating factor or circumstance, such explanation or excuse is not reasonable if it is based on
19 the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual
20 orientation, sex, gender, gender identity, or sex assigned at birth.

21 (c) Notwithstanding any other provision of this Criminal Code, in any prosecution or sentencing for an offense, a
22 defendant does not suffer from a mental illness, mental defect, mental disorder, serious mental disorder, psychiatric
23 disorder, or other impairment affecting or impacting the defendant's mental state relating to any questions of intent;
24 knowledge; capacity to appreciate the wrongfulness of the defendant's conduct; disturbance of the defendant's thinking,
25 feeling, or behavior; culpability; willpower to choose whether to do or refrain from doing an act; or ability to distinguish
26 right from wrong, based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's
27 actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth.

28 § 473-474. [Reserved.]

29 Section 3. Amend § 1304, Title 11 of the Delaware Code by making deletions as shown by strike through and
30 insertions as shown by underline as follows:

31 § 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C
32 felony, class B felony, class A felony.

33 (b) For purposes of this section:

34 ~~(1) "Gender identity" means a gender related identity, appearance, expression, or behavior of a person,~~
35 ~~regardless of the person's assigned sex at birth.~~

36 ~~(2)(1) "Group" includes an organization or association of persons, whether formal or informal.~~

37 ~~(3)(2) "Protective hairstyle" includes braids, locks, and twists.~~

38 ~~(4)(3) "Race" includes traits historically associated with race, including hair texture and protective hairstyle.~~

39 ~~(5) "Sexual orientation" includes heterosexuality, bisexuality, or homosexuality.~~

40 Section 4. If any provision of this Act or the application of this Act to any person or circumstance is held to be invalid, the
41 provisions of this Act are severable if the invalidity does not affect other provisions of this Act that can be given effect
42 without the invalid provision or if the application of this Act can be given effect without the invalid application.

SYNOPSIS

This bill precludes the so-called LGBTQ+ "panic" defense that seeks to partially or completely excuse or justify a defendant from full accountability for the commission of a crime on the grounds that the actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth of the victim is sufficient to explain, excuse, or justify the defendant's conduct, or contributes to or causes the defendant's mental state, or that the defendant's reaction thereto constitutes a mental illness, mental defect, or mental disorder sufficient to excuse or justify the defendant's conduct (including under circumstances in which the victim made a nonviolent romantic or sexual advance toward the defendant or in which the defendant and the victim dated or had a romantic or sexual relationship). Sections 1 and 3 of this bill move the

definitions for gender identity and sexual orientation currently in the hate crimes statute to the general definitions section of the Criminal Code to maintain standard definitions of these terms throughout the Criminal Code. Section 2 of this bill provides that in any prosecution or sentencing for an offense: (i) a defendant is not justified in using force against another based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth; (ii) for the purposes of determining whether there is a reasonable explanation or excuse for the existence of extreme emotional disturbance or other asserted mitigating factor or circumstance, such explanation or excuse is not reasonable if it is based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth; and (iii) a defendant does not suffer from a mental illness, mental defect, mental disorder, serious mental disorder, psychiatric disorder, or other impairment affecting or impacting the defendant's mental state relating to any questions of intent, knowledge, capacity to appreciate the wrongfulness of the defendant's conduct, disturbance of the defendant's thinking, feeling or behavior, culpability, willpower to choose whether to do or refrain from doing an act, or ability to distinguish right from wrong, based on the discovery of, knowledge or belief about, or the potential or actual disclosure of the victim's actual or perceived sexual orientation, sex, gender, gender identity, or sex assigned at birth.

This bill does not preclude a defendant from availing themselves of any defense permitted by the Delaware Criminal Code or other applicable Delaware law on bases other than those specifically precluded by this bill.

This House Substitute No. 2 differs from the original in that it corrects the omission of the phrase "or sentencing" in § 472(a), (b), and (c).