

LEGISLATIVE COMMITTEE MINUTES

# **HB238**

Bill as  
Introduced

HB 238 - AS INTRODUCED

2021 SESSION

21-0168  
04/08

HOUSE BILL

**238**

AN ACT

prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

SPONSORS:

Rep. Query, Hills. 16; Rep. Levesque, Straf. 4; Rep. Weston, Graf. 8; Rep. Bunker, Rock. 18; Rep. Mullen, Hills. 7; Rep. Tanner, Sull. 9; Rep. Alexander Jr., Hills. 6; Rep. Toll, Ches. 16; Rep. Amanda Bouldin, Hills. 12; Sen. Perkins Kwoka, Dist 21

COMMITTEE:

Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears ~~[in brackets and struckthrough]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1       1 Homicide; Manslaughter. Amend the introductory paragraph in RSA 630:2, I to read as  
2 follows:

3           I. A person is guilty of manslaughter when [he] *such person* causes the death of another:

4       2 ~~New Paragraph; Homicide; Manslaughter; Certain Provocation Not Objectively Reasonable.~~

5 Amend RSA 630:2 by inserting after paragraph III the following new paragraph:

6           IV.(a) For the purpose of determining if the defendant was under the influence of extreme  
7 mental or emotional disturbance caused by extreme provocation pursuant to paragraph I, the  
8 provocation was not objectively reasonable if it resulted from the discovery of, knowledge about, or  
9 potential disclosure of the victim's actual or perceived gender, gender identity, gender expression,  
10 sex, or sexual orientation, including under circumstances in which the victim made an unwanted  
11 nonforcible romantic or sexual advance towards the defendant, or if the defendant and victim dated  
12 or had a romantic or sexual relationship. Nothing in this paragraph shall preclude the jury from  
13 considering all relevant facts to determine whether the defendant was in fact provoked for purposes  
14 of establishing subjective provocation.

15           (b) For the purpose of this paragraph, "gender" includes a person's gender identity and  
16 gender-related appearance and behavior regardless of whether that appearance or behavior is  
17 associated with the person's gender as determined at birth.

18       3 Effective Date. This act shall take effect January 1, 2022.

# Committee Minutes

**AMENDED  
SENATE CALENDAR NOTICE  
Judiciary**

Sen Sharon Carson, Chair  
Sen Bill Gannon, Vice Chair  
Sen Harold French, Member  
Sen Rebecca Whitley, Member  
Sen Jay Kahn, Member

Date: April 7, 2022

**HEARINGS**

Thursday	04/14/2022
(Day)	(Date)
Judiciary	State House 100
(Name of Committee)	(Place)
	10:30 a.m.
	(Time)

Note: The committee will meet at 10:30 a.m. or 15 minutes following the end of Session.

10:30 a.m.	<b>EXECUTIVE SESSION ON PENDING LEGISLATION</b>	
1:00 p.m.	<b>HB 1036</b>	relative to nonpublic meetings concerning public employees.
1:15 p.m.	<b>HB 1073</b>	modifying attorney exemptions under RSA 91-A.
1:30 p.m.	<b>HB 1343</b>	allowing limited legal services to be provided by certain paraprofessionals.
1:45 p.m.	<b>HB 1448</b>	relative to the pretermitted heir statute.
2:00 p.m.	<b>HB 1579</b>	relative to landowner liability on land authorized for outdoor recreational activities.
2:15 p.m.	<b>HB 238</b>	prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**HB 1036**

Rep. Wuelper  
Rep. Spillane

Rep. M. Smith  
Rep. Ford

Rep. P. Schmidt  
Rep. Testerman

Rep. Potucek

**HB 1073**

Rep. Wuelper

Rep. Potucek

Rep. Stapleton

**HB 1343**

Rep. Gordon  
Sen. French

Rep. Rice  
Sen. Whitley

Rep. M. Smith

Rep. Wuelper

**HB 1448**

Rep. Lynn

Rep. Umberger

**HB 1579**

Rep. Gould

Rep. Stavis

Rep. Cordelli

Rep. S. Pearson

Rep. Creighton  
Sen. Prentiss

**HB 238**

Rep. Query  
Rep. Mullen  
Rep. Amanda Bouldin

Rep. Notter  
Sen. Kahn

Rep. Levesque  
Rep. Tanner  
Sen. Perkins Kwoka

Rep. Gagne

Rep. Weston  
Rep. Alexander Jr.

Rep. Abel

Rep. Bunker  
Rep. Toll

Jennifer Horgan 271-7875

Sharon M Carson  
Chairman

# Senate Judiciary Committee

*Jennifer Horgan 271-7875*

**HB 238**, prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

**Hearing Date:** April 14, 2022

**Time Opened:** 3:31 p.m.

**Time Closed:** 3:56 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, French, Whitley and Kahn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill prohibits provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

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**Sponsors:**

Rep. Query

Rep. Levesque

Rep. Weston

Rep. Bunker

Rep. Mullen

Rep. Tanner

Rep. Alexander Jr.

Rep. Toll

Rep. Amanda Bouldin

Sen. Perkins Kwoka

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**Who supports the bill:** 109 people signed up in support of the bill. Full sign in sheet available upon request.

**Who opposes the bill:** 3 people signed up in opposition to the bill. Full sign in sheet available upon request.

**Who is neutral on the bill:** 1 person signed up neutrally to the bill. Full sign in sheet available upon request.

**Summary of testimony presented in support:**

**Representative Query**

- The gay panic defense is a legal strategy that asks a jury to find a victim's sexual orientation or gender identity expression to blame for a defendant's violent reaction, including murder.
- Around the country this is used successfully to excuse the murder of LGBTQ+ community members.



- When a perpetrator uses a LGBTQ+ panic defense they are claiming that a victim's sexual orientation or gender identity not only explains but excuses a loss of self-control and a subsequent assault.
- This is currently allowed under NH law.
- This will ban the use of the panic defense on the basis of someone's actual or perceived gender, gender identity, gender expression, sex, or sexual orientation.
- Someone's mere existence as an LGBTQ+ person does not constitute a reason or provocation to commit manslaughter.
- The Bar Association opposes the use of a gay panic defense, and since 2013 has called for local, state, and federal lawmakers to curtail the availability of this defense.
- This bill does not dismiss traditional self-defense lawsuits and does not deny existing due process defenses.
- An LGBTQ+ person would not be immune from prosecution should they be accused of a crime under this bill.
- 13 states and DC have banned this defense already, and eight other states are considering this type of legislation this term.
- This is proactive in protecting individual rights.
- Nationally one out of five hate crimes are committed against LGBTQ+ people.
- 60,000 (5%) of NH residents are members of the LGBTQ+ community.
- Has heard multiple citizens ask him and other legislators to sponsor this legislation.
- Heard from people who have friends or family members who are queer, who have seen this defense play out in other states and do not want to see the same thing happen here.
- This will simply correct an oversight in the law.
- Senator Whitley asked if the other states' statutes are similar in scope and breath.
  - Their laws are very similar. OLS drafted this working off some of the other states' laws. This is a little broader, as some of the other states' laws are older. After the murder of Matthew Shepard in Montana back in the 90s where this defense was successfully used, states just made it a gay panic defense ban. Therefore, their laws could still allow someone to use this defense against trans people. This bill includes all members of the LGBTQ+ community

### **Summary of testimony presented in opposition:**

#### **Representative Sylvia**

- Has a slight objection to the circular logic applied to gender and gender identity, and how it uses the same word to define another word; finds that problematic.
- Why can't we have language that is very clear that describes the situation without using the same word?
- His real concern with the bill is the constitutional issue.

- All people are allowed to bring forward any defense suitable in the State.
- This bill seems to preclude that.
- NH Article 15, the Right of the Accused, says “Every subject shall have a right to produce all proofs that may be favorable to himself... and to be fully heard in his defense”
- This bill is cutting off that right of defense.
- Has not heard that this is something going on in NH or that this is currently a problem.
- There are incidents here and there, but NH is a very welcoming place.
- Is sympathetic to others’ fears, but thinks this bill is unconstitutional.

**Neutral Information Presented:**

**Associate Attorney General Jeffery Strelzin (Attorney General’s Office)**

- Last sentence of IV (a) says “Nothing in this paragraph shall preclude the jury from considering all relevant facts to determine whether the defendant was in fact provoked for purposes of establishing subjective provocation.”
- The first part of the bill attempts to eliminate the defense, but second part preserves a portion of it.
- In a provocation manslaughter defense, there is a two-part test: one is objective, and the other is subjective.
- This bill attempts to eliminate the objective portion but preserves the subjective portion.
- Under this bill if a defendant tried to raise this defense, they would ask for a jury instruction on provocation manslaughter and the judge would say you cannot get it.
- However, the defense could still present all the evidence they want to about it and then could argue a nullification defense and say to the jury ‘you should excise the client’s conduct for all the reasons presented’.
- A nullification defense is when a defendant gets up in court and says, ‘the judge told you the law is this, but you heard the facts and you the jury can still disregard that and find the defendant not guilty.’
- The bill is a little inconsistent.
- The bill may eliminate the defense, but it does not eliminate the evidence in support of the defense.
- NH has not had a defense like this presented, but that does not mean it couldn’t be.
- There have been two homicide cases he is aware of where defendants claimed that there was an attempt at a forcible sexual assault by the victim. They did not believe that to be true, and the jury rejected that.
- Senator French asked in a case of forceful sexual assault that was upheld, if this law passed, could a person use gender identity in that case.
  - This law specifically does not apply to forcible instances. In the two cases they had, the defendant claimed that the victim was attempting to

forcefully sexually assault them, and they were acting in self-defense/provocation. Those defendants were able to make that defense. The Attorney General's Office was able to disprove that. This bill would prevent someone from bringing forward a defense that said they found out the victim is gay, and they said they were interested in the defendant, and that made them so mad that they reacted. Provocation manslaughter means that the provocation was so extreme the defendant lost control of themselves, and what would otherwise be murder becomes manslaughter.

- Senator French asked if that defense would not hold up anyway.
  - As a prosecutor would probably argue that it shouldn't, but under the terms of the bill the jury would get to consider it because they would not be precluded from hearing that evidence. Currently, a defendant could argue 'that is what happened you should find me not guilty'. As a prosecutor, he would argue that that is absurd and you don't get to kill people because you are angry at them. This bill still preserves that nullification option.
- Senator Carson asked if someone was subjected to an attack because of their gender or gender identity wouldn't that be covered under a hate crime.
  - It could. This is a little different than that because it is aimed at cases where a defendant in a way retaliates simply because of a person's identity. This bill is geared at cases where there is no conduct involved. If someone were to sexually assault someone else, that person under the law can defend themselves. A lawful act cannot be sufficient for provocation under the provocation manslaughter law in NH; it must be an unlawful act like attempted sexual assault to claim that defense. If someone says they are gay and another person attacked them as a result of that, it seems to him that they would likely be precluded from claiming provocation manslaughter because there is nothing unlawful about saying you are gay. The provocation manslaughter defense law is somewhat complicated and there has been a fair amount of litigation with it over the years. It has been difficult at times to understand it and get clarity. This bill is attempting to negate this defense while still preserving the jury's ability to hear the evidence.
- Senator Carson stated that if someone is accused of a crime, they are able to put forward any defense and that the Scales of Justice are weighted on the side of the accused. Concerned that this is taking something away.
  - All proofs favorable gives a defendant wide latitude to introduce evidence to a court case, but it is not without limitation. The rules of evidence can limit it. The Legislature can also limit it, for example with the insanity defense requiring a burden of a certain standard. Thinks this would pass constitutional muster but has not done a deep dive on that. If people think this bill is going to preclude evidence though, it will not. The claim that someone was inflamed because of someone's gender will still go in front of

the jury, it just won't be a formal defense called provocation manslaughter, it would be nullification.

- Senator Whitley asked if the last sentence was eliminated would that make the bill more consistent and would that pass constitutional muster.
  - It would definitely make it clear that the goal of the bill is to eliminate that defense. Cannot say right now if it would pass constitutional muster. It will definitely engender litigation under the likely argument of all proofs favorable. The inconsistency might have been intentional to balance that.
- Senator Kahn asked if the bill passed as is, the evidence would be presented and the judge would say consider that relative to a subjective provocation.
  - Does not think that is how it would work. If the bill passed as is, the judge would not give an instruction about that evidence at all. The defense attorney would say in closing arguments that this is the defense he is presenting and here is the evidence. The judge would not comment on that. It becomes a nullification defense. In NH every defendant can get up and say to the jury 'ignore the law because of these facts.' They have the right to do that. The defense would get to do it, but they would not get the semi-stamp of approval that they are doing it under this bill. The jury could decide the person was provoked even though they were not given any standards of that in the law.
- Senator Kahn asked if the last sentence is useful.
  - That depends on what side you are on. That sentence preserves the right of the defendant to put in this evidence. It does not preserve the right to claim a provocation manslaughter defense. It allows them to claim a different kind of defense for which there is no jury instruction.
- Senator Carson asked if this passed would it be grounds for appeal based on being denied the right to put forward a defense.
  - That second paragraph still allows the evidence to come in. As with any change to the laws on defense there would be litigation. Without doing research on this, cannot say what that outcome will be. This may be more likely to stand up challenge because it still preserves a defendant's right to put this evidence in.
- Senator Carson asked if this is slippery slope, where other groups would come forward claiming this for things like political parties.
  - If this bill completely barred the admission of the evidence there would probably be a good argument that it may be unconstitutional, but it does not do that. Whether it is a slippery slope is up to the Legislature to determine whether it is appropriate and if there is a justified need for it. Has not seen this type of claim before. Has seen something somewhat similar but that always involved forcible cases. Cannot speak to whether it is a slippery slope.

- Attorney Lehmann asked where it is in statute that it has to be a criminal act for provocation manslaughter.
  - It is in case law. In NH there are a bunch of cases that talk about the provocation manslaughter defense that have to be pieced together. There are several cases that say that if it is a lawful act that is not sufficient for provocation.

jch

Date Hearing Report completed: April 18, 2022

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# Speakers



# Senate Remote Testify

## Judiciary Committee Testify List for Bill HB238 on 2022-04-14

Support: 108 Oppose: 2

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Perez, Erika	A Lobbyist	Myself	Support
Neubieser, JF Carter	A Member of the Public	Myself	Support
Kremer, Ben	A Member of the Public	Myself	Support
Murray, Grace	A Member of the Public	Myself	Support
Alberga, Jacob	A Member of the Public	Myself	Support
Anderson, Ryann	A Member of the Public	Myself	Support
Sinclair-Wingate, Griffin	A Member of the Public	Myself	Support
Maloney, Fennel	A Member of the Public	Myself	Support
King, Jordan	A Member of the Public	Myself	Support
Mower, Robin	A Member of the Public	Myself	Support
Mott-Smith, Wiltrud	A Member of the Public	Myself	Support
Eisner, Mary	A Member of the Public	Myself	Support
Ehlers, Robert	A Member of the Public	Myself	Support
bory, lee	A Member of the Public	Myself	Support
Baker, Deb	A Member of the Public	Myself	Support
Morrison, Carol	A Member of the Public	Myself	Support
M Clark, Denise	A Member of the Public	Myself	Support
Almy, Susan	An Elected Official	Myself	Support
Pugh, Barbara	A Member of the Public	Myself	Support
Zaenglein, Barbara	A Member of the Public	Myself	Support
Zaenglein, Eric	A Member of the Public	Myself	Support
Doherty, David	A Member of the Public	Myself	Support
Moore, Susan	A Member of the Public	Myself	Support
Keeler, Margaret	A Member of the Public	Myself	Support
Jamison, Jean	A Member of the Public	Myself	Support
Hatcher, Phil	A Member of the Public	Myself	Support
West, Christie	A Member of the Public	Myself	Support
Fudge, Kim Marie	A Member of the Public	Myself	Support
Dontonville, Roger	An Elected Official	Myself	Support
Benham, Linda	A Member of the Public	Myself	Support
almeida, zulmira	A Member of the Public	Myself	Support
Cahill-Yeaton, Miriam	A Member of the Public	Myself	Support
Dontonville, Anne	A Member of the Public	Myself	Support
Kennerson, Kelly	A Member of the Public	Myself	Support
Richman, Susan	A Member of the Public	Myself	Support
Perencevich, Ruth	A Member of the Public	Myself	Support
Nelson, Elizabeth	A Member of the Public	Myself	Support
Kindeke, Grace	A Lobbyist	American Friends Service Committee	Support
Reed, Barbara	A Member of the Public	Myself	Support
Smith, Julie	A Member of the Public	Myself	Oppose
Lucas, Janet	A Member of the Public	Myself	Support
Liberman, Sheryl	A Member of the Public	Myself	Support
Jones, Andrew	A Member of the Public	Myself	Support
Devore, Gary	A Member of the Public	Myself	Support
Widerstrom, Sally	A Member of the Public	Myself	Support
Till, Mary	A Member of the Public	Myself	Support
Dahl, Dana	A Member of the Public	Myself	Support



Leavitt, Deborah	A Member of the Public	Myself	Support
Hackmann, Kent	A Member of the Public	Myself	Support
Martin, Patricia	A Member of the Public	Myself	Support
QUISUMBING-KING, Cora	A Member of the Public	Myself	Support
Cote, Lois	A Member of the Public	Myself	Support
Torpey, Jeanne	A Member of the Public	Myself	Support
Corell, Elizabeth	A Member of the Public	Myself	Support
Hershey, Jane	A Member of the Public	Myself	Support
Merlone, Lynn	A Member of the Public	Myself	Support
Thomas, Anne	A Member of the Public	Myself	Support
Kelly, Fran	A Member of the Public	Myself	Support
Greenwood-Briggs, Sabrina	A Member of the Public	Myself	Support
Hunnewell, Richard	A Member of the Public	Myself	Support
Hunnewell, Anne	A Member of the Public	Myself	Support
Telerski, Rep. Laura	An Elected Official	Hillsborough 35	Support
Ballou, Bronwen	A Member of the Public	Myself	Support
Brown, Jean	A Member of the Public	Myself	Support
Caudill Slosberg, Margaret	A Member of the Public	Myself	Support
Gorman, Ethan	A Member of the Public	Myself	Support
Istel, Claudia	A Member of the Public	Myself	Support
Bowles, Margaret	A Member of the Public	Myself	Support
Frades, Sandra	A Member of the Public	Myself	Support
Kwoka, Senator Rebecca	An Elected Official	Myself	Support
Clark, Margaret	A Member of the Public	Myself	Support
Muri, Linda	A Member of the Public	Myself	Support
Garland, Ann	A Member of the Public	Myself	Support
Bacon Nelson, Deborah	A Member of the Public	Myself	Oppose
Kane, Eileen	A Member of the Public	Myself	Support
thompson, julia	A Member of the Public	Myself	Support
Black, Betsy	A Member of the Public	Myself	Support
Mullen, Sue	An Elected Official	Myself	Support
Spencer, Louise	A Member of the Public	Myself	Support
Spencer, Rob	A Member of the Public	Myself	Support
Dolkart, Vivian	A Member of the Public	Myself	Support
Boudreau, Chandra	A Member of the Public	Myself	Support
Delude, Hannah	A Member of the Public	Myself	Support
pinkson-burke, ilsa	A Member of the Public	Myself	Support
Montminy, Sandra	A Member of the Public	Myself	Support
Goudin, Mallory	A Member of the Public	Myself	Support
Kennedy, Charlene	A Member of the Public	Myself	Support
Demers, Haley	A Member of the Public	Myself	Support
Woodman, Erin	A Member of the Public	Myself	Support
Berman, Zohar	A Member of the Public	Myself	Support
Long, Julian	A Member of the Public	Myself	Support
Piskovitz, Jennifer	A Member of the Public	Myself	Support
Moore, Kelly	A Member of the Public	Myself	Support
Favreau, Jennifer	A Member of the Public	Myself	Support
Kuemmerle, Nancy	A Member of the Public	Myself	Support
Daschbach, Holley	A Member of the Public	Myself	Support
Hamblet, Joan	A Member of the Public	Myself	Support
Zajano, Emily	A Member of the Public	Myself	Support
Pardoe, Mackenzie	A Member of the Public	Myself	Support
Kerr, Emily	A Member of the Public	Myself	Support
Billingham, Carla	A Member of the Public	Myself	Support
Lennox, David	A Member of the Public	Myself	Support
Cranage, Amy	A Member of the Public	Myself	Support

Laker-Phelps, Gail	A Member of the Public	Myself	Support
Brennan, Nancy	A Member of the Public	Myself	Support
Robinson, Ellis	A Member of the Public	Myself	Support
Canada, Liz	A Lobbyist	Planned Parenthood NH Action Fund	Support
HALLOCK, LINDA	A Member of the Public	Myself	Support
Murray, Megan	An Elected Official	Hillsborough 22 Amherst, NH	Support
McCluskey, Madelyn	A Member of the Public	Myself	Support

# Testimony

## Jennifer Horgan

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**From:** marv <marvinhammish@gmail.com>  
**Sent:** Sunday, January 30, 2022 8:58 PM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** Hb238 prohibiting gay panic defense

Hello, my name is David Crawford I spoke in front of your committee before but it's been quite a while.  
I'm writing today to ask you to support HB 238.

I learned that the gay panic defense by a podcast that I listened to called Criminal.. it's quite a good podcast and I'm going to provide a link for it here.

The podcast delineates some cases, of recent years, that have used the gay panic defense and in some cases have won with the gay panic defense; in one case the man got off murder charges because of the defense.

Here is that podcast episode. I hope you'll listen to it it's not that long and it's quite eye opening.

Maybe you could at least read the captions outlining what the podcast is about it's quite a good podcast, very well done; I listen to that podcast all the time the host's name is Phoebe Judge.

Here it is

<https://thisiscriminal.com/episode-129-panic-defense-12-6-2019/>

## Jennifer Horgan

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**From:** Lisa Bunker <ehbunker@gmail.com>  
**Sent:** Tuesday, April 12, 2022 9:27 AM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** Please vote OTP on HB238

Dear Senators Carson, Gannon, French, Whitley, Kahn, and Horgan,

I am emailing you today in my dual capacity as a co-sponsor of this bill and as a transgender/non-binary granite stater to ask you as a member of the Senate Judiciary Committee to recommend OTP on HB238, "Prohibiting provocations based on a victims actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases." The simple goal of this bill is to prevent an egregious form of victim-blaming that can sometimes occur when someone commits a crime against an LGBTQ person. More than a dozen states have already passed similar so-called "LGBTQ+ panic defense bills" into law, and they are being actively considered in several more.

Please, affirm the bipartisan OTP vote in the House to move this sensible, humane bill toward law in New Hampshire.

Thank you for your attention.

Best regards,

~Lisa~

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Lisa Bunker (she/they)  
98 Main St.  
Exeter, NH 03833-2428  
(207) 985-2053  
[ehbunker@gmail.com](mailto:ehbunker@gmail.com)

Judiciary Committee

April 12, 2022

Dear Senators,

I have written many letters to Senate and House Committees supporting or opposing legislation, and I have always felt strongly about the positions I take. This bill, however, is different from all the others, and it is because of the heart-gripping, soul-shaking, gut-wrenching fear it generates in me as a mother. I am the very proud mom of a 37 year old professional man. A year after graduating from law school he served as a clerk to a federal judge and wrote an opinion on a case that the Attorney General for the United States said would change future court cases. While working for a large firm, he successfully argued a pro bono case that saw the release of an innocent man who was serving a life sentence for a crime he did not commit. He won a Fulbright to study in Oslo, Norway for a year, and he served as a legislative assistant in Senator Shaheen's office when she was first elected to the Senate.

But even if he had not become an attorney, even if he had not won awards, excelled in school, captained his ski team in college, run in the NYC Marathon (not particularly speedily but who cares), visited and cheered up his 99 year old grandmother, sung at his aunt's memorial service, he is a complicated, funny, warm, intelligent human being. The thought that some person could use his sexuality as an excuse for murdering him is profoundly horrifying.

I cannot imagine a single one of you would find it acceptable that some innate characteristic of YOUR child is a legitimate reason for their murder. HB238 should be easy for you all to support, and I encourage you to do so with little hesitation.

Deborah H. Bacon Nelson  
21 Forest Edge Drive  
Hanover, NH 03755  
(603) 643-0399

Jennifer,

Thank you for your help in making sure that I am signed in to the system in support HB238

## Jennifer Horgan

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**From:** marv <marvinhammish@gmail.com>  
**Sent:** Thursday, April 14, 2022 1:00 PM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** A brief/concise plea in favor of hb238

I'm in favor and I hope you will be also.

This bill has a narrow application.

My argument for it is:

I think it should pass because gays are one of the most oppressed historically.

"The least of these"

This is a bill to say "we support you."

"We affirm you."

And that a new leaf has been turned over.

It is a welcoming into the family that is the USA. After a long cold winter of exclusion.

Sincerely David Crawford

It should pass for that alone

## Jennifer Horgan

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**From:** Barbara D. Reed <bdreed74@gmail.com>  
**Sent:** Wednesday, May 4, 2022 12:25 AM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** HB 238

I support the prohibition that a perpetrator should not be allowed to use a victim's gender ID, perceived or actual, gender expression, or sexual orientation as a defense of a manslaughter charge. However, I don't believe an interim study is necessary. Barbara Reed Swanzey NH



# Voting Sheets

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # 239

Hearing date: \_\_\_\_\_

Executive Session date: \_\_\_\_\_

Motion of: OTP Vote: 2-3

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: ITL Vote: \_\_\_\_\_

*Withdrawn*

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: IS Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Gannon

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Wednesday, April 27, 2022

THE COMMITTEE ON Judiciary

to which was referred **HB 238**

AN ACT

prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 3-2

Senator Bill Gannon  
For the Committee

Jennifer Horgan 271-7875

**JUDICIARY**

**HB 238**, prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

Interim Study, Vote 3-2.

Senator Bill Gannon for the committee.

# HB238

## Bill Details

**Title:** prohibiting provocations based on a victim's actual or perceived gender, gender identity, gender expression, or sexual orientation from being used as a defense in manslaughter cases.

**Sponsors:** (Prime) Query (D), Levesque (D), Weston (D), Bunker (D), Mullen (D), Tanner (D), Alexander (R), Toll (D), Bouldin (D), Perkins Kwoka (D)

LSR Number: **21-0168**

General Status: **SENATE**

House:

**Committee:** Criminal Justice and Public Safety

**Due Out:** 3/11/2021

**Status:** PASSED/ADOPTED

Senate:

**Committee:** Judiciary

**Floor Date:** 5/26/2022

**Status:** LAID ON TABLE

### Bill Docket

Body	Description
H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety <b>HJ 2 P. 40</b>
H	Public Hearing: 03/01/2021 02:30 pm Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/93127871930">https://www.zoom.us/j/93127871930</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
H	Retained in Committee
H	Full Committee Work Session: 10/05/2021 11:00 am LOB 201-203
H	Majority Committee Report: Ought to Pass 10/05/2021 (Vote 13-8; RC) <b>HC 48 P. 24</b>
H	Minority Committee Report: Inexpedient to Legislate
H	Ought to Pass: MA RC 223-118 01/06/2022 <b>HJ 1</b>
S	Introduced 01/05/2022 and Referred to Judiciary; <b>SJ 2</b>
S	Hearing: 04/14/2022, Room 100, SH, 02:15 pm; <b>SC 15</b>
S	Committee Report: Referred to Interim Study, 05/05/2022; <b>SC 18</b>
S	Refer to Interim Study, RC 12Y-12N, MF; 05/05/2022; <b>SJ 11</b>
S	Sen. Bradley Moved Laid on Table, MA, VV; 05/05/2022; <b>SJ 11</b>
S	No Pending Motion; 05/05/2022 <b>SJ 11</b>

# Other Referrals

**Senate Inventory Checklist for Archives**

Bill Number: HB238

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

**Bill Hearing Documents: {Legislative Aides}**

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

**Committee Action Documents: {Legislative Aides}**

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_  
 \_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

- Executive Session Sheet
- Committee Report

**Floor Action Documents: {Clerk's Office}**

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_  
 \_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

**Post Floor Action: (if applicable) {Clerk's Office}**

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

**All available versions of the bill: {Clerk's Office}**

\_\_\_ as amended by the senate      \_\_\_ as amended by the house  
 \_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

*Seneca Hayden*  
 Committee Aide

8/12/22  
 Date

Senate Clerk's Office *AK*