

# STATE OF NEW YORK

9705

## IN ASSEMBLY

February 2, 2018

Introduced by M. of A. BARNWELL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to limiting the extreme emotional disturbance affirmative defense

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1 of section 125.25 of the  
2 penal law, as amended by chapter 791 of the laws of 1967, is amended to  
3 read as follows:

4 (a) The defendant acted under the influence of extreme emotional  
5 disturbance for which there was a reasonable explanation or excuse, the  
6 reasonableness of which is to be determined from the viewpoint of a  
7 person in the defendant's situation under the circumstances as the  
8 defendant believed them to be, provided, however, it shall not be an  
9 affirmative defense that the defendant acted under the influence of  
10 extreme emotional disturbance upon the discovery, knowledge or disclo-  
11 sure of the victim's sexual orientation, sex, gender or sex assigned at  
12 birth. Nothing contained in this paragraph shall constitute a defense  
13 to a prosecution for, or preclude a conviction of, manslaughter in the  
14 first degree or any other crime; or

15 § 2. Paragraph (a) of subdivision 3 of section 125.26 of the penal  
16 law, as added by chapter 765 of the laws of 2005 and such subdivision as  
17 renumbered by chapter 482 of the laws of 2009, is amended to read as  
18 follows:

19 (a) The defendant acted under the influence of extreme emotional  
20 disturbance for which there was a reasonable explanation or excuse, the  
21 reasonableness of which is to be determined from the viewpoint of a  
22 person in the defendant's situation under the circumstances as the  
23 defendant believed them to be, provided, however, it shall not be an  
24 affirmative defense that the defendant acted under the influence of  
25 extreme emotional disturbance upon the discovery, knowledge or disclo-  
26 sure of the victim's sexual orientation, sex, gender or sex assigned at  
27 birth. Nothing contained in this paragraph shall constitute a defense  
28 to a prosecution for, or preclude a conviction of, aggravated

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 manslaughter in the first degree, manslaughter in the first degree or  
2 any other crime except murder in the second degree; or

3 § 3. Paragraph (a) of subdivision 2 of section 125.27 of the penal  
4 law, as added by chapter 367 of the laws of 1974, is amended to read as  
5 follows:

6 (a) The defendant acted under the influence of extreme emotional  
7 disturbance for which there was a reasonable explanation or excuse, the  
8 reasonableness of which is to be determined from the viewpoint of a  
9 person in the defendant's situation under the circumstances as the  
10 defendant believed them to be, provided, however, it shall not be an  
11 affirmative defense that the defendant acted under the influence of  
12 extreme emotional disturbance upon the discovery, knowledge or disclo-  
13 sure of the victim's sexual orientation, sex, gender or sex assigned at  
14 birth.

15 Nothing contained in this paragraph shall constitute a defense  
16 to a prosecution for, or preclude a conviction of, manslaughter in the  
17 first degree or any other crime except murder in the second degree; or

§ 4. This act shall take effect immediately.