

Testimony of Sasha Buchert
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Dear Chairman Smith and members of the Committee.

My name is Sasha Buchert and I am a Senior Attorney at Lambda Legal, and I'm testifying in support of Senate Bill 46. Founded in 1973, Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work. Through Lambda Legal's Fair Courts Project, we provide training for judges, court staff and attorneys nationwide on LGBT cultural competency and bias related to gender and sexuality. We have also created a guide designed to help practitioners address bias during jury selection, conduct LGBT inclusive voir dire, and challenge the discriminatory use of peremptory strikes.¹

LGBTQ people, and transgender women of color in particular, move through the world under the constant threat of impending violence. In the words of one transgender woman of color in a recent New York Times article, "it's always in the forefront of our minds, when we're leaving home, going to work, going to school."²

This fear is well-substantiated. In 2020, there were at least 44 reported murders of transgender people, almost all of them transgender women of color.³ Almost all of the murders involve the victims being shot multiple times, and commonly involve beatings and burnings. Two of the murders in 2019 took place in the Maryland; Zoe Spears a Black transgender woman, was found lying in the street with signs of trauma in Fairmount Heights last June and Ashanti Carmon, also a black transgender woman was fatally shot in Prince George's County and Bailey Reeves, 17, a Black transgender teen, was fatally shot in Baltimore, Maryland, on September 2.⁴

Nationwide, there has also been a troubling increase in hate violence targeting people based on their sexual orientation. The number of hate crime incidents targeting gays, lesbians, and bisexuals in the United States in 2018 increased by nearly six percent over the previous year and the number of anti-transgender hate crime incidents increased by 41 percent during that same period, according to the FBI's newly released annual Hate Crime Statistics Report. The report, which covers 2018, the most recent year for which the FBI has released hate crimes data, shows that participating law enforcement agencies throughout the country reported to the FBI a total of 7,120 hate crime incidents for 2018, 55 fewer than the total reported for 2017.

¹ Available at https://www.lambdalegal.org/sites/default/files/publications/downloads/jury-selection_08-31-17.pdf.

² Rick Rojas and Vaness Swales, *18 Transgender Killings This Year Raise Fears of an "Epidemic"* NEW YORK TIMES (Sept. 27, 2019), available at <https://www.nytimes.com/2019/09/27/us/transgender-women-deaths.html>.

³ Sadly, this is not exceptional. There were 26 murders in 2018, 30 in 2017, and 26 in 2016. See Violence Against the Transgender Community in 2019, Human Rights Campaign, available at <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>.

⁴ On June 18, 2019, Zoe Spears, 23, a Black transgender woman, was found lying in the street with signs of trauma in Fairmount Heights, Maryland https://www.washingtonpost.com/local/public-safety/second-transgender-woman-killed-in-same-dc-suburb/2019/06/14/82957314-8eb9-11e9-b08e-cfd89bd36d4e_story.html; Ashanti Carmon, 27, another Black transgender woman was fatally shot on March 30, 2019.

There is a long history of defendants seeking to justify such violence by asserting that it was motivated by the defendant's transphobia, homophobia or other bias against the victim.

Another notable example is that of Islan Nettles, a trans woman of color who was walking home with a friend when she ran into a group of men in New York City. As the groups collided, Dixon began flirting with Nettles, when one of his friends shouted, "That's a guy!" Dixon pushed Nettles, and she pushed back. Dixon said he "got enraged," so he punched her in the face. Nettles fell down and hit her head on the curb, causing a serious brain injury. Dixon swung a second punch "as she lay on the ground," while "driving the side of her head into the pavement." Dixon claimed that he'd felt duped and humiliated by the revelation of his victim's gender identity, which was admissible in court. Dixon was sentenced to 12 years in prison, overriding the DA's recommendation of 17 years.⁵

The defense has also often been used to target people based on their sexual orientation. The defendants in the Matthew Shepard case argued that their violence should be excused because they became "enraged to the point of murder,"⁶ by a supposed sexual advance and, more recently a defendant in Texas testified in his 2015 trial that he killed his neighbor because he became enraged because he thought the victim had propositioned him. A jury found the defendant guilty of criminally negligent homicide, but not guilty of manslaughter and murder and the defendant received a sentence of six months jail time and 10 years of probation.⁷

Maryland has a hate crime statute that applies whenever someone is targeted for their identity.⁸ And just as no one should be targeted as a victim based on bias against their gender identity, sexual orientation or other protected characteristic, those biases should not be the basis for a mental state of mind reducing criminal responsibility. These defenses are incompatible with the intent of Maryland law to provide increased protection to victims of bias-motivated crimes.

Similar legislation has already been passed in the District of Columbia and in eleven states: California, Connecticut, Illinois, New York State (and City), Rhode Island, Nevada, Maine, Hawaii, New Jersey, Washington State, and Colorado.⁹ Similar legislation has been introduced in Iowa, Minnesota, Pennsylvania, Wisconsin, Texas and New Mexico, Virginia and there is a federal bill that has been

⁵ See James C. McKinley Jr. Man Sentenced to 12 Years in Beating Death of Transgender Woman, *NEW YORK TIMES* (Apr. 19, 2016), available at <https://www.nytimes.com/2016/04/20/nyregion/man-sentenced-to-12-years-in-beating-death-of-transgender-woman.html>.

⁶ See Matthew Shepard Foundation, *Congress Introduces Bill to Outlaw Gay/Trans Panic Defense* (June 5, 2019), available at <https://www.matthewshepard.org/blog/congress-introduces-bill-to-outlaw-gay-trans-panic-defense/>.

⁷ See Jule Compton *Alleged 'Gay Panic Defense' in Texas Murder Trial Stuns Advocates*, *NBC OUT* (May 2, 2018), available at <https://www.nbcnews.com/feature/nbc-out/alleged-gay-panic-defense-texas-murder-trial-stuns-advocates-n870571>.

⁸ Md. Code Ann., Crim. Law § 10-304.

⁹ See B23-0409 <https://lims.dccouncil.us/Legislation/B23-0409> (District of Columbia); Cal. Penal Code § 192 (f)(1); 2019 Conn. Legis. Serv. P.A. 19-27 (S.B. 58) (California); https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf?fbclid=IwAR2u6xI09HWlbrN4Bd1IwOkMob6c_AW1iJgL8cG2Rxt5ga8EW4FtbSmzaU (Connecticut) https://www.capitol.hawaii.gov/session2019/bills/HB711_.HTM (Hawaii); 720 Ill. Comp. Stat. Ann. 5/9-1(c), Ill. Comp. Stat. Ann. 5/9-2(a) (Illinois); <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1175&item=1&snum=129> (Maine); <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6080/Text12> (Nevada); R.I. Gen. Laws Ann. § 12-17-17-19 (Rhode Island); https://www.nysenate.gov/legislation/bills/2019/A8375?fbclid=IwAR2wA-qPqKjOh2i7CBuyDCikhxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI (New York).

reintroduced this year.¹⁰ The American Bar Association has carefully considered this topic and has voted in support of this type of legislation—in fact the Act is based on the model language put forward by the ABA.¹¹

We believe it is responsible to address a few of the arguments that have been made against similar legislation.

- *Eliminating the defense will increase dependence on criminalization and incarceration.*
 - Lambda Legal recognizes that the criminal legal system disproportionately incarcerates and harms people of color and LGBTQ people. We recognize that biases towards people of color are rife throughout the criminal justice system. Our support for a bill that acts to remove the use of bias against LGBTQ people is not an endorsement of the criminal legal system or other biases within it. These cases inevitably receive a lot of media attention, sometimes exactly because of this defense, and permitting it inevitably sends a message that that this violence is culturally understandable and even permissible.

- *Eliminating the defense will limit defenses for LGBT people in domestic violence situations.*
 - A defendant would retain all defenses, they would just not be able to justify their violence on the “discovery of, knowledge about, or the potential disclosure” of their victim’s protected characteristic.

Conclusion

SB 54 is a necessary step to address an anachronism in our legal system that demeans and devalues the lives of vulnerable people. Allowing this defense dehumanizes LGBTQ people and sends a message to other defendants or would-be assailants and to the public that they can always rely upon this to mitigate any punishment.

The panic defense uses the bias of jurors and the judge to their advantage and it perpetuates anti-LGBT stigma and suggests, as the ABA points out, it runs contrary to our constitutional values as a society, our existing hate crimes statute and it should be eliminated before it can be used again.

We urge the committee to support this legislation and to move quickly.

Thank you,

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¹⁰ <https://www.congress.gov/bill/116th-congress/senate-bill/1721?q=%7B%22search%3A%5B%22panic+defense+markey%22%5D%7D&s=1&r=1>

¹¹ <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>