

October 23, 2019

Good morning Chairman Allen and members of the Committee on the Judiciary and Public Safety. Thank you for the opportunity to testify. My name is Sasha Buchert and I'm a Senior Attorney at Lambda Legal. I'm testifying in support of the *Tony Hunter and Bella Evangelista Panic Defense Prohibition Act of 2019* and in support of the *Sexual Orientation and Gender Identity Panic Defense Prohibition Act of 2019*.

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."<sup>1</sup>

This fear is well-substantiated. At least 21 transgender people, almost all of them transgender women of color have been murdered this year already.<sup>2</sup> Almost all of the murders involve the victims being shot multiple times, and commonly involve beatings and burnings. Two of those murders this year took place in the DC area; Zoe Spears a Black transgender woman, was found lying in the street with signs of trauma near Eastern Avenue in Fairmount Heights last June and Ashanti Carmon, also a black transgender woman was fatally shot this year in Prince George's County, Maryland.<sup>3</sup> There has also been a troubling increase in violence targeting people based on their sexual orientation. Hate crimes have increased nationally over the last three years,<sup>4</sup> and there were a record number of suspected hate crimes in D.C. last year—a disproportionate number of those hate crimes targeting LGBTQ people.<sup>5</sup>

Defendants in these cases sometimes attempt to justify a criminal act by asserting that it was motivated by their transphobia, homophobia, racism, xenophobia, ableism or other bias. There is a long history of defendants of seeking to invoke these defenses. In Bella Evangelista's case, the defendant argued that he became enraged when he discovered Bella's gender identity, In Tony Hunter's case, the defendant told police that he fatally punched Mr. Hunter in self-defense after Mr. Hunter supposedly touched in a sexually suggestive way while on his way to a gay bar in the Shaw District.

Other high-profile examples include the example of Islan Nettles, a trans woman of color who in 2009 was walking home with a friend when she ran into a group of men. As the two groups collided, Dixon began flirting with Nettles, when one of his fiends shouted, "That's a guy!" Dixon pushed Nettles away, and she pushed back. Dixon said he tripped and "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," according to prosecutors.

---

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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](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.

<sup>4</sup> <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>

<sup>5</sup> <https://www.washingtonpost.com/graphics/2019/local/dc-hate-crimes/>

Dixon claimed that he'd felt duped and humiliated by the revelation of his victim's gender identity, was admissible in court. Dixon was sentenced to 12 years in prison, overriding the Manhattan DA's Office's recommendation of 17 years.<sup>6</sup>

The defense has often been used to target people based on their sexual orientation (actual or perceived) as well. The defendants in the Matthew Shepard case argued that their violence should be excused to some degree because they became "enraged them to the point of murder,"<sup>7</sup> and more recently a defendant in Texas used the gay panic defense at his trial following the killing of his neighbor in September 2015. The defendant testified he thought the victim had propositioned him. In 2018, a jury found Miller guilty of criminally negligent homicide, but not guilty of manslaughter and murder. Miller received a sentence of six months jail time and 10 years of probation.<sup>8</sup>

DC has a hate crime statute that applies whenever someone is targeted for their identity.<sup>9</sup> And just as no one should be targeted as a victim based on bias against their actual or perceived gender identity, gender expression, or sexual orientation or other protected characteristic, those biases should not be the basis for a mental state of mind reducing criminal responsibility for a killing. These defenses are incompatible with the intent of DC law to provide increased protection to victims of bias-motivated crimes.

Similar legislation has already been passed in eight states: California, Illinois, New York State (and City), Rhode Island, Hawaii, Nevada, Connecticut, Maine.<sup>10</sup> Similar legislation has been introduced in New Jersey, Minnesota, Pennsylvania, Washington, Texas and New Mexico, and there is a federal bill that has been reintroduced this year.<sup>11</sup> 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.<sup>12</sup>

---

<sup>6</sup> 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>.

<sup>7</sup> 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/>.

<sup>8</sup> 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>.

<sup>9</sup> DC Hate Crime Statute: (a) Irrespective of any criminal prosecution or the result of a criminal prosecution, any person who incurs injury to his or her person or property as a result of an intentional act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act shall have a civil cause of action in a court of competent jurisdiction for appropriate relief, which includes: D.C. Code Ann. § 22-3704

<sup>10</sup> See 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=IwAR2u6x109HWlbrN4Bd1IwOkMob6c\\_AW1iJgL8cG2Rxt5ga8EW4FtbSmzaU](https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00027-R00SB-00058-PA.pdf?fbclid=IwAR2u6x109HWlbrN4Bd1IwOkMob6c_AW1iJgL8cG2Rxt5ga8EW4FtbSmzaU) (Connecticut); [https://www.capitol.hawaii.gov/session2019/bills/HB711\\_.HTM](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-qPqKjQh2i7CBuyDCikhxJWpSEXr3dtsLw\\_TG1VUjyIzJfod1XSuI](https://www.nysenate.gov/legislation/bills/2019/A8375?fbclid=IwAR2wA-qPqKjQh2i7CBuyDCikhxJWpSEXr3dtsLw_TG1VUjyIzJfod1XSuI) (New York).

<sup>11</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/1721?q=%7B%5B%5D%7D&s=1&r=1>

<sup>12</sup> <https://www.americanbar.org/groups/crsj/publications/member-features/gay-trans-panic-defense/>

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 supports decriminalization and robust criminal defenses, but the harm incurred by allowing these defenses to be used outweighs the limitation of this defense. These cases inevitably receive a lot of media attention, sometimes exactly because of this defense, and permitting it inevitably sends a message that homophobia and transphobia is a justifiable excuse for violence. These defenses are disproportionately used to target the LGBTQ community and especially transgender women of color, and it is their voices that should be centered in this discussion.
- *Eliminating the defense will limit defenses for LGBT people in domestic violence situations.*
  - A defendant would retain all defenses related to adequate provocation/heat-of passion, they would just not be able to justify their violence on the “discovery of, knowledge about, or the potential disclosure” of their identity.
- *A judge can already dismiss the panic defense or with proper instructions to a jury.*
  - Unfortunately, judges and juries are not exempt from overt or implicit bias.

#### Policy Recommendations:

- We recommend clarifying that this defense would also apply to diminished capacity and self-defense in the *Tony Hunter/Bella Evangelista* bill.
- We recommend expanding the prohibition to all protected characteristics.

#### Conclusion

The Act 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 is really just using the bias of jurors and the judge to their advantage and it perpetuates anti-LGBT stigma. 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,

Sasha Buchert  
Senior Attorney  
Lambda Legal