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Testimony of Angie Martell - SUPPORT HB 4718 STATE BAR OF MICHIGAN LGBTQ+ SECTION & NATIONAL LGBTQ+ BAR TESTIMONY IN SUPPORT OF HB 4718

September 20, 2023

Thank you to Chairwoman Hope and members of the House Committee on Criminal Justice for the opportunity to present this testimony in support of HB 4718, a bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding Section 21d to Chapter VIII on behalf of the National LGBTQ+ Bar Association (LGBTQ+ Bar) and the LGBTQ+ Law Section of the State Bar of Michigan.

Founded over thirty years ago, the LGBTQ+ Bar is an official affiliate of the American Bar Association (ABA) and is the largest professional association for LGBTQ+ attorneys, judges, law students, and legal professionals in the United States. The organization proudly works with advocates and legislators across the country to ban the LGBTQ+ "panic" defense and raise awareness of its devastating consequences. In 2013, the ABA unanimously approved a resolution introduced by the LGBTQ+ Bar calling for the end of this heinous excuse for legal defense.

The LGBTQ+ Law Section of the State Bar of Michigan is an official affiliate of the LGBTQ+ Bar; it regularly reviews law, cases, regulations, and other legal matters that affect LGBTQ+ Michiganders and promotes the fair and just administration of those laws. The LGBTQ+ Section of the Michigan State Bar was established in 2016 and has grown to over 262 dues paying members whose Mission is "to review law, cases, regulations, and other legal matters that affect LGBTQ+ people and allies of this State and to promote the fair and just administration of those laws".

HB 4718 is a vital piece of legislation that, if passed, would ban the so-called LGBTQ+ "panic" defense, protecting the dignity of LGBTQ+ Michiganders and sending a clear message that LGBTQ+ identities are not inherently dangerous. The LGBTQ+ "panic" defense, also referred to as the "gay panic defense" or "trans panic defense," is a legal defense strategy that asks a jury to find the victim's sexual orientation or gender identity to blame for the defendant's violent actions. This defense strategy relies on the idea that violent offenses committed against LGBTQ+ people are blameless due to a "panic" the defendant experienced upon discovering the victim's gender identity or sexual orientation. Rooted in irrational homophobic and transphobic fears, when employed it communicates that violence against LGBTQ+ people is acceptable and that their lives are worth less than others.

The LGBTQ+ “panic” defense is not a freestanding defense to criminal liability. Rather, it is a legal tactic that bolsters other defenses, such as insanity, provocation, or self-defense. When strategically applied to these common defenses, it is used to evade a guilty verdict or reduce criminal charges ranging from murder to assault. HB 4718 protects against use of the LGBTQ+ “panic” defense strategies in these permissible defenses by explicitly barring the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation as valid self-defense, diminished capacity, or heat of passion defenses. Importantly, the bill also includes a ban on this practice in cases where the victim made a perceived unwanted romantic or sexual advance toward the defendant.

HB 4718 protects the dignity of LGBTQ+ Michiganders without diminishing the rights of defendants. The defenses of provocation, diminished capacity, and self-defense would not be eliminated under this legislation. Only specific theories employed in those defenses that tell a jury that anti-LGBTQ+ biases justify violence would be made unavailable to defendants. That being said, LGBTQ+ victims cannot rely on jury instructions to shield them against bigotry. Even in instances where courts instruct jurors not to engage in bias, the implicit homophobia and transphobia of the LGBTQ+ “panic” defense can still influence the jury’s decision. Specifically barring the LGBTQ+ “panic” defense in Michigan’s criminal code is necessary to ensure insidious arguments that justify this targeted violence hold no weight in court.

While it can be difficult to track the success of the LGBTQ+ “panic” defense, we know that juries have reduced the charges or acquitted dozens of defendants for crimes ranging from assault to murder due to the LGBTQ+ “panic” defense. It is also important to recognize that this insidious defense does not need to be successful to be dangerous. The notion that a person can be so upset about learning another person's sexual orientation or gender identity that they are justified in attacking or murdering them is simply outrageous and should not be given validity in a Michigan courtroom. Every time a defendant presents a narrative blaming LGBTQ+ individuals for the violence they endure, including murder, they bolster harmful stereotypes and justify alarming rates of anti-LGBTQ+ violence in the United States.

Approximately 7.1% of adults identify as LGBTQ+ in the United States, including 373,000 residents of Michigan. While more people are openly expressing their identities in recent years, the LGBTQ+ community faces increasing rates of violence. From 2020 to 2021, anti-LGBTQ+ hate crimes rose by 70%. Alarming, the number of transgender people murdered in the United States nearly doubled between 2017 and 2021. These stark statistics demonstrate that the LGBTQ+ community, particularly transgender people of color, are in dire need of better protections. By eliminating the LGBTQ+ “panic” defense in Michigan, HB 4718 would do more than ensure that defendants who attack or kill LGBTQ+ people answer for their crimes. It would send a clear message inside and outside of the courtroom that LGBTQ+ Michiganders deserve equal dignity under the law, and that anti-LGBTQ+ violence committed against them will not be tolerated.

In *People v. Rodgers*, 338 Mich App 312 (Mich Ct. App 2021, the Michigan Court of Appeals) reversed the trial court order granting Defendant’s motion to quash ethnic intimidation charge, and reinstated that charge, and remanded the case for further proceedings. The Michigan Court of Appeals held that MCL 750.147b included transgender individuals.

The National Crime Victimization Survey showed that LGBTQ+ people are the victims of crimes at higher rates than cisgender and straight people, with transgender people specifically having higher victimization rates than their cisgender peers.



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Hate crimes do not just affect an individual; it is instead whole communities that are affected by it. In what's known as "collective trauma," LGBTQ+ people often internalize the violence inflicted on other members of their community, persistently burdened by the looming threat of violence against them solely because of their identities. In fact, LGTBTQ+ people are still recovering from the November 2022 mass shooting at Club Q, an LGBTQ+ bar in Colorado Springs. The accused shooter has been charged with 48 counts of hate-motivated violence.

LGBTQ+ "panic" defenses violate Michigan Civil Rights Law as well as MCL 750.147b (known as the hate crimes law). MCL 750.147b equally applies to hate crimes against members of the LGBTQ+ community.

These alleged "defenses" reduce victims to second class status on the basis of their sexual orientation and gender identity in violation of Michigan Civil Rights laws and other protective laws. This "panic" defense legitimizes and excuses violence against members of the LGBTQ+ community and is a legal strategy that blames the victim for the Defendant's unlawful acts.

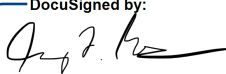
Passing this law is of vital importance to our State's "Access to Justice" mandate, because it allows people who are victims of hate crimes to come forward, report them, and know that they will be treated with respect and dignity. It also sends the message that you cannot use this prejudice as a defense to justify violence against people based on sexual orientation and gender identity expression.

One of the ways states can combat the epidemic of violence against LGBTQ+ people is by passing laws that bar defendants from asserting LGBTQ+ "panic" defenses in Court.

With HB 4718, Michigan has the opportunity to join a growing movement across the country of states affirming the dignity of LGBTQ+ people by banning the LGBTQ+ "panic" defense. Currently, eighteen states, including California, Illinois, Rhode Island, Connecticut, Hawaii, Maine, Nevada, New York, Colorado, New Jersey, Washington, Maryland, Oregon, Vermont, Virginia, New Mexico, New Hampshire, and Delaware, as well as the District of Columbia, have banned this defense. Similar legislation is pending in Pennsylvania and Wisconsin. In July of 2023, The LGBTQ+ Panic Defense Prohibition Act of 2023 was reintroduced by Senator Markey (D-MA) in the United States Senate and by Congressman Pappas (D-NH) in the United States House of Representatives.

HB 4718 will protect LGBTQ+ Michiganders and ensure victims of violent crimes receive the justice they deserve. The National LGBTQ+ Bar Association and the LGBTQ+ Law Section of the State Bar of Michigan urge the committee to support this legislation and move quickly to join other states in eliminating the LGBTQ+ "panic" defense.

Thank you,

DocuSigned by:

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Angie Martell

Immediate Past Chair State Bar of Michigan LGBTQ+ Section from 2021-2023 and Present Council Member of the SBM LGBTQ+ Section and Present Member and Affiliate of the National LGBTQ+ Bar.

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