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The Honorable Maxine Grad, Chair
House Committee on Judiciary
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: H.128 – An act relating to limiting criminal defenses based on victim identity

Dear Chair Grad and Members of the Committee:

Thank you for the opportunity to testify this week on H.128 and to provide this written testimony for the record.

The Human Rights Commission (hereinafter “HRC” or “Commission”) enforces the anti-discrimination laws of the State. Sexual orientation, gender identity and sex are all protected categories in Vermont’s housing, public accommodations, and employment laws. While the Commission does not prosecute or defend criminal matters, it does defend the human and civil rights of our LGBTQ+ community. As such, we strongly support this bill and encourage you to do the same.

H.128 seeks to remove the gay panic defense that criminal defendants have used in jurisdictions throughout this country to mitigate or remove criminal liability. It is a legal strategy that has long been rooted in homophobia and that shifts the blame and burden from the offender to the victim. Permitting someone the right or ability to defend their violent actions because of the victim’s sexual orientation or gender identity perpetuates dangerous stereotypes about the LGBTQ community. The sexual or romantic advances of someone who belongs to the LGBTQ community are no different from that of someone who is cisgender or straight.

Certainly, we would all agree that it would be racist to permit a White woman to argue that the sexual or romantic advances of a Black person so shocked and alarmed her that it caused her to act violently in response – to even kill him. Unfortunately, those types of defenses were not uncommon 50-60 years ago. Today, it would be unconscionable to permit such a discriminatory defense in the courtroom.

In general, the Commission supports the rights of criminal defendants to raise their defenses against the prosecution’s case. Not only is this required by the Constitution but it is required of a

just and moral society. However, this right is not without limitations. It should be noted that the Rules of Evidence are rules of exclusion. Courts routinely exclude relevant evidence because it is hearsay, not the best evidence, subject to privilege, overly prejudicial and more. Evidence is sometimes excluded from admissibility simply because attorneys miss disclosure deadlines. Here, the Vermont Legislature is asked, not to remove a defendant's legitimate defense, but to take a strong and bold stance that an individual's sexual orientation and gender identity is not a legitimate defense.

Vermont has an important interest in protecting all members of society from violence and harm and studies have shown that the harm perpetuated against our LGBTQ+ community members is great. In the U.S., LGBTQ+ people are disproportionately targeted. While this community makes up only 3.5% - 5.6% of the population, the hate crimes against people based on their sexual orientation or gender identity make up 18.8% of all hate crime incidents. One out of five lesbian, gay and bisexual people living in the United States will experience a hate crime in their lifetime; One out of every four transgender people will; and transgender women of color are especially vulnerable.¹ Between 2013 and 2017, of the 102 known transgender people killed in hate crimes in the United States, 75 were black or African-American.² Juries have acquitted dozens of murderers because of the gay panic defense.³

In the 1954 murder of William T. Simpson in North Miami, FL, the defendants claimed that they shot Simpson, a gay man, because he made them feel unsafe and made unwanted sexual advances towards them. The term "pervert" was used to describe Simpson. Even though the defendants were criminals who frequented that area of highway to rob drivers and intentionally targeted gay victims, the defendants were convicted of manslaughter rather than first-degree murder.⁴

Most of us recall the Jenny Jones case in 1998 when Scott Amedure revealed that he had a crush on Jonathan Schmitz while on the "Jenny Jones" show. After a friendly evening together, Amedure left Schmitz a note. The defense used the note and Amedure's homosexuality as a basis for Schmitz panicking and killing Amedure. Schmitz was convicted of the lesser offense second-degree murder rather than first-degree.⁵

In 2015, Daniel Spencer, a guitarist, invited another musician, James Miller, to his Austin apartment to play music together. Later that night, Miller stabbed Spencer four times, killing him. Miller then cleaned Spencer's apartment, went back to his own home, changed clothes and contacted the police to report killing Spencer. The defense attorney argued at trial that because Miller had never been in trouble with the police before, the only thing that could explain his committing murder was that Spencer was gay and had tried to sexually assault him. There was no evidence of this. The jury convicted Miller of criminally negligent homicide, the lowest grade

¹ [LGBTQ+ "Panic" Defense - The National LGBT Bar Association](#)

² [The Gay/Trans Panic Defense: What It is, and How to End It \(americanbar.org\)](#)

³ [LGBTQ+ "Panic" Defense - The National LGBT Bar Association](#)

⁴ [The Gay/Trans Panic Defense: What It is, and How to End It \(americanbar.org\)](#); <https://latimesblogs.latimes.com/thedailymirror/2010/11/death-in-miami.html>; [1954 Miami Murder Leads to 'Homosexual Panic' \(eriegaynews.com\)](#).

⁵ [The Gay/Trans Panic Defense: What It is, and How to End It \(americanbar.org\)](#)

of felony in Texas. Ultimately, the court punished Miller with only a six-month jail term and a 10-year probation sentence.⁶

What is particularly alarming in many of these murders of LGBTQ+ victims is that offenders were more likely to use a knife and their hands instead of a gun. In murders of LGBTQ victims, guns are used only 26% of the time but are used 46% of the time in the majority of homicides. Victims were stabbed multiple times.⁷

The defense is already banned in nine states including Connecticut, New York, Rhode Island, New Jersey. Vermont should be amongst this group of states. Sometimes, culture dictates a change in the law and other times, the law changes first and this prompts a cultural shift. Regardless of how prevalent this type of defense is raised in Vermont or what the data tells us about hate crimes here, this bill should pass quickly.

Thank you.

/s/ Bor Yang

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⁶ [I track murder cases that use the 'gay panic defense,' a controversial practice banned in 9 states \(theconversation.com\)](http://theconversation.com)

⁷ [W. Carsten Andresen, Assistant Professor of Criminal Justice, St. Edward's University I track murder cases that use the 'gay panic defense,' a controversial practice banned in 9 states \(theconversation.com\)](http://theconversation.com)