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February 14, 2020

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

Additional Statement of FreeState Justice

And

The National LGBT Bar Association

IN SUPPORT OF

SB0554: Crimes - Mitigation - Sex, Gender Identity, or Sexual Orientation

To the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and esteemed members of the Judicial Proceedings Committee:

At the conclusion of the Judicial Proceedings Committee's consideration of SB0554, the committee invited our organizations to submit an additional statement to discuss known cases in which the panic defense has been used in Maryland, as well as recent incidents of violence against transgender individuals in Maryland.

As noted in the oral testimony of C.P. Hoffman of FreeState Justice, it is difficult to quantify the total number of incidents in which a panic defense has been used or attempted in Maryland. The use of panic defenses is not tracked by the Maryland judiciary nor by any other government database at the local, state, or federal levels. Furthermore, trial court proceedings in criminal matters are rarely if ever published, making a search of legal databases such as Westlaw or Lexis Nexis impractical and incomplete. Finally, the large percentage of cases that end with a plea bargain means many cases never reach a stage where a defendant who used the victim's perceived or actual identity or nonviolent sexual advance as an excuse for their violent action makes a panic defense on the written transcripts at trial, even if that defense has been and will continue to be used in private discussions with the state's attorney office.

FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

Due to this, tracking panic defenses has always fallen to impartial private individuals, legal practitioners, and academics, primarily through reviews of media reports and reports from legal practitioners.¹ According to such analyses, there are at least four cases in which the panic defense has been used in Maryland. Despite the various outcomes in convictions and sentencing, we see the use of this courtroom tactic in some degree of success where the defendant or their counsel states the victim's alleged identity or alleged nonviolent sexual advance excuses violence.

***Dykes v. State*, 319 Md. 206 (1990)**

Jon Carlton Dykes killed Dwight Lee Landon in Landon's home in Somerset County, stabbing him over 200 times with two separate knives. Over a two hour interrogation, Dykes offered three separate stories for the killing: 1) that Landon had kidnapped him at gunpoint, taken him to his home, and threatened to sexually assault him, forcing Dykes to kill him in self-defense; 2) that Dykes had voluntarily gone to Landon's house to purchase cocaine, but the two ended up in a knife fight after Dykes walked in on Landon masturbating; and 3) that the two ended up in a knife fight after Dykes walked in on Landon masturbating *and* Landon propositioned him.

At trial, Dykes was convicted of second degree murder. That conviction was later overturned by the Court of Appeals in 1990 on the grounds that the trial judge had not properly instructed the jury on perfect and imperfect self-defense. Per the Court of Appeals, by determining that the defenses of perfect and imperfect self-defense did not apply, the trial judge improperly assumed the jury's role as finder of fact.

Subsequently, on retrial, once again assessing the perpetrator's own various stories of the activities that led up to the killing, Dykes was once again found guilty of second degree murder.

***State v. Lucas*, Circuit Court for Montgomery County #00-6039-11815-3 (2000)**

In June 1999, Robert Paul Lucas entered the Mother Seton Roman Catholic Church in Germantown by force, where he then encountered Monsignor Thomas Wells, ultimately stabbing the priest nearly a dozen times until he was dead. According to the story told by Lucas at trial, Monsignor Wells initially welcomed him to the

¹ See W. Carsten Andresen, "I track murder cases that use the 'gay panic defense,' a controversial practice banned in 9 states," *The Conversation* (Jan. 29, 2020), available at <http://theconversation.com/i-track-murder-cases-that-use-the-gay-panic-defense-a-controversial-practice-banned-in-9-states-129973>.

church and later allegedly made sexual advances, attempting to coerce Lucas into performing oral sex on him. Lucas then claimed that he reacted in a violent panic, before leaving the church with a variety of stolen goods, including over \$800 in cash and the priest's watch.²

At trial, prosecutors attempted to emphasize that Lucas had not claimed Monsignor Wells had come on to him until months after the killing. Nonetheless, the jury, after considering the mitigation evidence and Lucas's own account of the excuse for the killing, convicted Lucas of second degree, rather than first degree, murder.

***State v. Allen*, Circuit Court for Charles County #08-K-02-000161 (2002),
Allen v. State, Court of Special Appeals No. 02268 (2004)**

In October 2001, Jeffrey Allen met John Butler in a gay cruising area in Washington, DC, before traveling with him to Butler's cabin in Charles County, where he stabbed him multiple times ultimately killing him. After meeting for the first time, the pair had sex and may have engaged in recreational drug use. The next morning, Allen became upset when Butler was not getting up quickly enough to take him home. After Allen stated he would take Butler's keys and drive himself home, Butler got up and approached Allen to calm him down. At this point, Allen grabbed a kitchen knife and stabbed Butler multiple times, killing him, and took the car. Allen subsequently crashed Butler's car into a ditch, after which time he presented himself to the police.

Despite the facts of the case suggesting a consensual sexual relationship turning violent, Allen raised a panic defense at trial. This instant case again shows an admitted murderer using the excuse of the gay panic defense as the decedent cannot present contradictory evidence. The defense was ultimately unsuccessful, and Allen was found guilty of first degree murder.

***State v. Harton*, Circuit Court for Howard County #13-K-05-044768 (2007)**

Two married women known to have been close friends in a clinical psychology doctoral program at Loyola College spent a spring break evening in a drinking spree when Melissa Burch Harton strangled the other with her bare hands dumping Natasha Bacchus' half-clothed body by a local pool before dawn. During questioning, the killer presented various stories to the police including an imagined abduction by a half-dozen men and a fictitious affair with an abusive man. After several hours,

² See Susan Levine, "Priest's Killer Tells Court of Struggle," *The Washington Post* (May 31, 2001), available at <https://www.washingtonpost.com/archive/local/2001/05/31/priests-killer-tells-court-of-struggle/1c35ac03-f659-475a-85c7-87919780e523/>.

Harton admitted to the killing yet claimed the death by strangulation was accidental.

Harton's counsel claimed successfully before the jury that Harton was only defending herself against Bacchus attack that may have been motivated by a sexual advance, unrequited lesbian affection, a deep fear of abandonment, or even a secret hatred. While prosecutors attempted to press for a first-degree conviction, defense lawyers argued for a full acquittal, and the jury ultimately convicted Harton of involuntary manslaughter.

After the two week trial, Harton said to the press, "I'm so relieved, I now will have a life to live."³ Sentenced to ten years, after two years and 177 days time served, Harton pled guilty to involuntary manslaughter, which is not considered to be a violent crime, and was freed as a judge suspended the remainder of her sentence.

Recent murders of transgender Marylanders

Even without this above-detailed history of the panic defense being attempted or used successfully in Maryland, the history of violence against the LGBTQ community demonstrate the need to be proactive in preventing its use.

According to the Maryland State Police 2018 Hate/Bias Report, of 377 bias crimes reported in 2018, 47 targeted individuals because of their sexual orientation or gender identity.⁴ In 2019, at least three black trans women were killed in Maryland: Ashanti Carmon⁵ and Zoe Spears⁶ in Fairmount Heights, Prince George's County,

³ Amit R. Paley, "Md. Woman Convicted of Killing Female Friend," *The Washington Post* (Feb 11, 2006), available at <https://www.washingtonpost.com/archive/local/2006/02/11/md-woman-convicted-of-killing-female-friend/fdd1b5c2-e61c-45e1-baf1-db2d8d84cff2/>.

⁴ Maryland State Police, State of Maryland 2018 Hate/Bias Report (2019) at 6, available at <https://mdsp.maryland.gov/Document%20Downloads/State%20of%20Maryland%202018%20Hate%20Bias%20Report.pdf>.

⁵ See Tim Fitzsimons, "'She did not deserve that': Trans woman fatally shot in Maryland," *NBC News* (April 1, 2019), available at <https://www.nbcnews.com/feature/nbc-out/she-did-not-deserve-trans-woman-fatally-shot-maryland-n989751>.

⁶ See Natalie Delgadillo, "Community Mourns Zoe Spears, Second Trans Woman Killed on Eastern Avenue This Year," *DCist* (June 17, 2019), available at <https://dcist.com/story/19/06/17/community-mourns-zoe-spears-second-trans-woman-killed-on-eastern-avenue-this-year/>.

and Bailey Reeves in Baltimore.⁷ These deaths, and others like them across the country, have left many LGBTQ Marylanders, especially black transgender Marylanders, feeling under attack.

The shocking level of violence against the LGBTQ community continues, and it is vital that Maryland acts now to prevent those who would hurt us from using our identity as their excuse. Passing this bill into law keeps killers from using their own alleged “panic” as justification for their violence. The “panic” defenses, even if not widely documented, is widely used, and undermines the human dignity and self-worth of LGBTQ Marylanders.

We ask that you vote favorably on SB0554.

⁷ See “At vigil for transgender teen killed in Baltimore, LGBTQ community stresses unity in face of violence,” *The Baltimore Sun* (Sept. 6, 2019), available at <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-17-year-old-transgender-teen-killed-20190907-dvsu63crwjf7pmqtiub3rzxl3e-story.html>.

