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February 18, 2020

Sen. Jamie Pederson  
Law and Justice Committee Chairperson  
Washington State Senate  
235 John A. Cherberger Bldg.  
PO Box 40443  
Olympia, WA 98504

CC: Senate Law & Justice Committee

Dear Senator Pederson:

We write on behalf of the QLaw Association and QLaw Foundation of Washington to express our support for the bill addressing the House passage of HB 1687, the Nikki Kuhnhausen Act, which is now before the Senate Law and Justice Committee for consideration. The QLaw Association serves as a voice of LGBTQ+ lawyers and other legal professionals in the state of Washington on issues relating to diversity and equality in the legal profession, in the courts, and under the law. QLaw Foundation of Washington promotes the dignity and respect of LGBTQ+ Washingtonians within the legal system through advocacy, education, and legal assistance.

In recent weeks, LGBTQ+ communities across Washington have been reeling at the discovery of the body of Nikki Kuhnhausen, a 17 year-old transgender woman from Vancouver, Washington. Nikki's youth and the brutal circumstances of her murder make her death particularly hard to bear. Her accused murderer, David Bogdanov, is noted to have remarked to investigators that Nikki's status as a trans person was "offensive to his culture." While Mr. Bogdanov has pled his innocence and the charges against him are still pending, the impact of his statement—that Nikki's existence as a transgender woman was offensive to him—serves as a grim reminder of the dangers LGBTQ+ persons face each day.

Violence against transgender people is nothing new. In recent years, the United States has seen a spike in hate crimes against folks who identify as LGBTQ+, especially LGBTQ+ people of color. This is a result of many factors, through which racism, homophobia, and transphobia contribute to disproportionately high rates of violence against our communities. For example, according to the 2015 US Transgender Survey, half of the nearly 28,000 transgender people surveyed experienced some form of intimate partner violence. At least 10% experienced violence at the hands of family members after they told them they were transgender, 9% said they had been physically attacked for being transgender in the year before they took the survey, and 10% reported they were sexually assaulted in the same time period.

Moreover, such violence has only been emboldened by the erosion of LGBTQ+ rights at the national level. These broader issues make our communities, and particularly LGBTQ+ people of color, much more susceptible to violence, more likely to be living on the street when they are turned away from homeless shelters because of their gender, and more likely to be forced into precarious or abusive economic relationships when employers or educators are discriminatory.

Presently in Washington, criminal defendants can raise a defense of incapacity called a “trans panic defense” or “gay panic defense”, meaning that they seek exoneration for their crime because they were so disturbed to discover their victim’s LGBTQ+ identity that they temporarily could not tell right from wrong.

Not only is this defense morally reprehensible, as it shifts the focus from the crime committed to the victim’s very existence—going on dates, initiating consensual romantic encounters, or engaging in other interpersonal relationships—but it is legally unsound and Washington State should not allow this practice to continue. Nowhere else in the law is it a legal defense to do harm to someone on the basis of their identity. One cannot claim diminished capacity because they were incensed by their victim’s race, sex, disability status, or religious beliefs. Such an argument would be rejected by both judges and juries alike, and rightly so. Why then would we not reject such defenses when raised to excuse crimes against people on the basis of one facet of their identity and outright reject it for others?

This defense asks that our legal system equate a violent and hateful response to our existence to diminished capacity, a defense typically used to allow the legal system to account for mental illness significant enough to impact a person’s ability to tell the difference between right and wrong. Hatred of LGBTQ+ people is not a mental illness, and mental illness does not cause hatred. Our friends, neighbors, and community members who experience mental illness deserve better than to be lumped in together with those who would harm us because of their own fear and bias.

Last year, Washington lawmakers introduced HB 1687 which would have ended the use of the panic defense in Washington, but representatives never brought it to a formal vote. One question that was asked in committee multiple times was “whether this happens in our state?” The short answer is simple: it does happen and it has here in Washington. This year, HB 1687 passed the house at a 90-5 margin—only now it must be considered in light of Nikki’s murder along with the nearly 30 other known transgender women murdered in 2019.

We believe that Nikki and her trans siblings deserve better. They deserve justice like anyone else who faces harm because of an immutable facet of their identity. The passage of the Nikki Kuhnhausen Act would be a major stride for Washington to take in ensuring all its citizens are equally protected under the law. While it will not prevent violence from occurring in the future, we can at least be assured that those who commit it will not, quite literally, get away with murder.

Thank you for recognizing the LGBTQ+ community’s fear that perpetrators of violence against us will escape justice, and for having the courage to address it.

Respectfully,



J. Denise Diskin  
Executive Director  
QLaw Foundation of Washington



Matt Etter  
President  
QLaw Association of Washington



Dana Savage  
Vice President – Issues and Advocacy  
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