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M E M O R A N D U M

TO: Honorable Sen. Prozanski, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of SB 704

DATE: 2/17/2021

In Oregon, as nationally, hate and bias crimes have increased over the last five years. Within this data is a notable increase of hate and bias crimes committed against individuals on the basis of their sexual orientation or gender identity. A 2018 report by the Federal Bureau of Investigation reported a 517.4% increase of reported hate crimes against individuals who identify as transgender between 2013 and 2018, by far the largest rate of growth of any category.

Senate Bill 704 pertains to what is colloquially known as the “gay/trans panic defense.” In this defense, a defendant who commits the murder of a gay or transgender person subsequently attempts to excuse their criminal conduct on the basis that they did not know that their victim was gay or transgender and that they were so distraught upon learning this fact that they were unable to restrain themselves from committing murder.

This theory has no basis in established psychology and has never been validated as a legitimate defense in Oregon. Blaming a victim for their murder is odious and has no place in Oregon law. Senate Bill 704 clarifies that this defense cannot be made in a prosecution for murder in the second degree under Oregon law and is not a recognized form of “extreme emotional distress” per ORS 163.135. The bill further details that the discovery of or disclosure of a person’s perceived gender, gender identity, gender expression or sexual orientation cannot be the basis for using force against a person. The bill does not otherwise modify the scope of the extreme emotional distress defense.

While we applaud these efforts, we also wish to make clear as prosecutors that the invoking of a person’s gender, gender identity or sexual orientation is not a defense to *any* crime under *any* circumstance and we will treat any such instance as what it is: A hate crime.

While we are not aware of the gay/trans panic defense having been used successfully in Oregon, it has been used successfully in other states and its prohibition is therefore appropriate and necessary here. We urge that the legislature bring Oregon into alignment with California, Washington and many other states by eliminating any possibility of this defense under Oregon law through the passage of SB 704.

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