

# SENATE BILL REPORT

## EHB 1687

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As of February 19, 2020

**Title:** An act relating to limiting defenses based on victim identity.

**Brief Description:** Limiting defenses based on victim identity.

**Sponsors:** Representatives Stanford, Doglio, Macri, Hansen, Orwall, Appleton, Jinkins, Ormsby, Valdez and Davis.

**Brief History:** Passed House: 2/12/20, 90-5.

**Committee Activity:** Law & Justice: 2/19/20.

### Brief Summary of Bill

- Declares a defendant does not suffer from diminished capacity based on such discovery, knowledge, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation.
- Declares a person is not justified in using force against another based on such discovery.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Criminal culpability requires either intent, knowledge, recklessness, or criminal negligence. The defense of diminished capacity arises when a defendant claims that a mental illness or disorder deprived them of the ability to form the requisite state of mind to commit the crime. To justify a jury instruction on diminished capacity, a defendant must satisfy three elements:

- the crime charged must include a particular mental state as an element;
- the defendant must present evidence of a mental disorder; and
- expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A defendant may be found not guilty due to a lack of culpability based on recognized legal defenses including diminished capacity.

**Summary of Bill:** A defendant does not suffer from diminished capacity based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or in which the defendant and victim dated or had a romantic or sexual relationship.

A person is not justified in using force against another based on the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted nonforcible romantic or sexual advance towards the defendant, or in which the defendant and victim dated or had a romantic or sexual relationship.

This act may be know and cited as the Nikki Kuhnhausen Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: My transgender daughter was kind, loving, and my primary support person. The loss of Nikki is something I was not prepared for and will never recover from. She went missing in June 2019 and her remains were found in December 2019. She was murdered by someone who found out she was transgender and responded violently by taking her life. This bill would remove the ability to claim diminished capacity in the use of force based on the discovery of gender identity. This bill will not bring my Nikki back but I hope it will help other families from experiencing the pain I feel.

Often individuals are targeted, harassed, assaulted, and murdered in connection with their gender identity. When a perpetrator uses the LGBTQ plus panic defense they are claiming the gender identity not only explains but excuses the loss of self control. We call this victim blaming. It is rooted in homophobia and transphobia. This defense implies that LGBTQ plus lives are worth less than others and even deserving of violence.

In 2017, I came out as a transgender woman. I lost my spouse and friends. I was very much alone. One night while I was walking home I passed by some men and heard their lewd comments. I was approached and solicited for sex. One of them realized I am trans and they threatened my life. I stood my ground and some other pedestrians came close and I was lucky that I was not assaulted. This bill can eliminate a loophole. It can reduce plea bargains using this defense.

**Persons Testifying:** PRO: Lisa Woods, citizen; Dana Savage, QLaw; Tabitha Donohue, Washington Coalition of Sexual Assault Programs.

**Persons Signed In To Testify But Not Testifying:** No one.