

115TH CONGRESS
2D SESSION

S. 3188

To amend title 18, United States Code, to prohibit gay and trans panic defenses.

IN THE SENATE OF THE UNITED STATES

JULY 10, 2018

Mr. MARKEY (for himself, Ms. BALDWIN, Mr. BLUMENTHAL, Ms. HARRIS, Mr. WYDEN, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit gay and trans panic defenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gay and Trans Panic
5 Defense Prohibition Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the American Bar Association has urged the
9 Federal Government to take legislative action to cur-
10 tail the availability and effectiveness of the “gay

1 panic” and “trans panic” defenses, which seek to
2 partially or completely excuse crimes such as murder
3 and assault on the grounds that the sexual orienta-
4 tion or gender identity of the victim is provocation
5 enough for the violent reaction of the defendant;

6 (2) gay and trans panic legal defenses, which
7 continue to be raised in criminal proceedings in Fed-
8 eral courts across the United States, are surprisingly
9 long-lived historical artifacts, remnants of a time
10 when widespread public antipathy was the norm for
11 lesbian, gay, bisexual, and transgender (referred to
12 in this Act as “LGBT”) individuals;

13 (3) gay and trans panic defenses characterize
14 sexual orientation and gender identity as objectively
15 reasonable excuses for loss of self-control, and there-
16 by illegitimately mitigate the responsibility of a per-
17 petrator for harm done to LGBT individuals;

18 (4) gay and trans panic defenses appeal to irra-
19 tional fears and hatred of LGBT individuals, there-
20 by undermining the legitimacy of Federal criminal
21 prosecutions and resulting in unjustifiable acquittals
22 or sentencing reductions;

23 (5) the use of gay and trans panic defenses is
24 entirely incompatible with the express intent of Fed-
25 eral law to provide increased protection to victims of

1 bias-motivated crimes, including crimes committed
2 against LGBT individuals;

3 (6) continued use of these anachronistic de-
4 fenses reinforces and institutionalizes prejudice at
5 the expense of norms of self-control, tolerance, and
6 compassion, which the law should encourage, and
7 marks an egregious lapse in the march of the United
8 States toward a more just criminal justice system;
9 and

10 (7) to end the antiquated notion that LGBT
11 lives are worth less than others and to reflect mod-
12 ern understanding of LGBT individuals as equal
13 citizens under law, gay and trans panic defenses
14 must end.

15 **SEC. 3. PROHIBITION ON GAY AND TRANS PANIC DE-**
16 **FENSES.**

17 (a) IN GENERAL.—Chapter 1 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 **“§ 28. Prohibition on gay and trans panic defenses**

21 “(a) PROHIBITION.—No nonviolent sexual advance or
22 perception or belief, even if inaccurate, of the gender, gen-
23 der identity or expression, or sexual orientation of an indi-
24 vidual may be used to excuse or justify the conduct of an
25 individual or mitigate the severity of an offense.

1 “(b) PAST TRAUMA.—Notwithstanding the prohibi-
 2 tion in subsection (a), a court may admit evidence, in ac-
 3 cordance with the Federal Rules of Evidence, of prior
 4 trauma to the defendant for the purpose of excusing or
 5 justifying the conduct of the defendant or mitigating the
 6 severity of an offense.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 8 The table of sections for chapter 1 of title 18, United
 9 States Code, is amended by adding at the end the fol-
 10 lowing:

“28. Prohibition on gay and trans panic defenses.”.

11 (c) REPORT.—The Attorney General shall submit to
 12 Congress an annual report that details prosecutions in
 13 Federal court involving capital and noncapital crimes com-
 14 mitted against LGBT individuals that were motivated by
 15 the victim’s gender, gender identity or expression, or sex-
 16 ual orientation.

○