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

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on ___________

A BILL

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

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

(1) the American Bar Association has urged the Federal Government to take legislative action to cur-
tail the availability and effectiveness of the “gay
panic” and “trans panic” defenses, which seek to partially or completely excuse crimes such as murder and assault on the grounds that the sexual orientation or gender identity of the victim is provocation enough for the violent reaction of the defendant;

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

(3) gay and trans panic defenses characterize sexual orientation and gender identity as objectively reasonable excuses for loss of self-control, and thereby illegitimately mitigate the responsibility of a perpetrator for harm done to LGBT individuals;

(4) gay and trans panic defenses appeal to irrational fears and hatred of LGBT individuals, thereby undermining the legitimacy of Federal criminal prosecutions and resulting in unjustifiable acquittals or sentencing reductions;

(5) the use of gay and trans panic defenses is entirely incompatible with the express intent of Federal law to provide increased protection to victims of
bias-motivated crimes, including crimes committed against LGBT individuals;

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

(7) to end the antiquated notion that LGBT lives are worth less than others and to reflect modern understanding of LGBT individuals as equal citizens under law, gay and trans panic defenses must end.

SEC. 3. PROHIBITION ON GAY AND TRANs PANIC DEFENSES.

(a) In General.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

“§ 28. Prohibition on gay and trans panic defenses

“(a) Prohibition.—No nonviolent sexual advance or perception or belief, even if inaccurate, of the gender, gender identity or expression, or sexual orientation of an individual may be used to excuse or justify the conduct of an individual or mitigate the severity of an offense.
“(b) PAST TRAUMA.—Notwithstanding the prohibition in subsection (a), a court may admit evidence, in accordance with the Federal Rules of Evidence, of prior trauma to the defendant for the purpose of excusing or justifying the conduct of the defendant or mitigating the severity of an offense.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end the following:

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

(c) REPORT.—The Attorney General shall submit to Congress an annual report that details prosecutions in Federal court involving capital and noncapital crimes committed against LGBT individuals that were motivated by the victim’s gender, gender identity or expression, or sexual orientation.