118TH CONGRESS
1ST SESSION

S.

To amend title 18, United States Code, to prohibit panic defenses based on sexual orientation or gender identity or expression.

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 panic defenses based on sexual orientation or gender identity or expression.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “LGBTQ+ Panic Defense Prohibition Act of 2023”.

SEC. 2. FINDINGS.

Congress finds that—

(1) the American Bar Association has urged the Federal Government to take legislative action to curtail the availability and effectiveness of legal de-
fenses that seek to partially or completely excuse crimes such as murder and assault on the grounds that the sexual orientation or gender identity or expression of the victim was provocation enough for the violent reaction of the defendant;

(2) panic defenses based on sexual orientation or gender identity or expression, 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, transgender, and queer (referred to in this Act as “LGBTQ”) individuals;

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

(4) panic defenses based on sexual orientation or gender identity or expression appeal to irrational fears and hatred of LGBTQ individuals, thereby undermining the legitimacy of Federal criminal pros-
executions and resulting in unjustifiable acquittals or sentencing reductions;

(5) the use of panic defenses based on sexual orientation or gender identity or expression is entirely incompatible with the express intent of Federal law to provide increased protection to victims of bias-motivated crimes, including crimes committed against LGBTQ 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 LGBTQ lives are worth less than others and to reflect modern understanding of LGBTQ individuals as equal citizens under law, panic defenses based on sexual orientation or gender identity or expression must end.
SEC. 3. PROHIBITION ON PANIC DEFENSES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION.

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

“§ 28. Prohibition on panic defenses based on sexual orientation or gender identity or expression

“(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 panic defenses based on sexual orientation or gender identity or expression.”.
(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 LGBTQ individuals that were motivated by the victim’s gender, gender identity or expression, or sexual orientation.