S. 1137

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

IN THE SENATE OF THE UNITED STATES

APRIL 15, 2021

Mr. Markey (for himself, Ms. Smith, Mr. Blumenthal, Ms. Klobuchar, Mr. Merkley, Ms. Baldwin, Mr. Sanders, Ms. Rosen, Mr. Kaine, Mr. Booker, Mr. Menendez, Mr. King, Ms. Hirono, and Mr. Padilla) 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.

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 “Gay and Trans Panic Defense Prohibition Act of 2021”.

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, transgender, and queer (referred to in this Act as “LGBTQ”) 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 LGBTQ individuals;

(4) gay and trans panic defenses appeal to irrational fears and hatred of LGBTQ 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 Fed-
eral 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, 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 indi-
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 prohibi-
tion in subsection (a), a court may admit evidence, in ac-
cordance 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 fol-
lowing:

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

(e) REPORT.—The Attorney General shall submit to 
Congress an annual report that details prosecutions in 
Federal court involving capital and noncapital crimes com-
mittted against LGBTQ individuals that were motivated by 
the victim’s gender, gender identity or expression, or sex-
ual orientation.