

118TH CONGRESS
1ST SESSION

S. 2279

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

JULY 12, 2023

Mr. MARKEY (for himself, Mr. MERKLEY, Mr. KAINE, Mr. BLUMENTHAL, Ms. HIRONO, Mr. SANDERS, Ms. BALDWIN, Mr. WYDEN, Ms. KLOBUCHAR, Mr. PADILLA, Mr. BOOKER, Mr. CASEY, Mr. MENENDEZ, Mrs. FEINSTEIN, Ms. SMITH, and Mr. CARDIN) 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 panic defenses based on sexual orientation or gender identity or expression.

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 “LGBTQ+ Panic De-
5 fense Prohibition Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the American Bar Association has urged the
2 Federal Government to take legislative action to cur-
3 tail the availability and effectiveness of legal de-
4 fenses that seek to partially or completely excuse
5 crimes such as murder and assault on the grounds
6 that the sexual orientation or gender identity or ex-
7 pression of the victim was provocation enough for
8 the violent reaction of the defendant;

9 (2) panic defenses based on sexual orientation
10 or gender identity or expression, which continue to
11 be raised in criminal proceedings in Federal courts
12 across the United States, are surprisingly long-lived
13 historical artifacts, remnants of a time when wide-
14 spread public antipathy was the norm for lesbian,
15 gay, bisexual, transgender, and queer (referred to in
16 this Act as “LGBTQ”) individuals;

17 (3) panic defenses based on sexual orientation
18 or gender identity or expression characterize sexual
19 orientation and gender identity or expression as ob-
20 jectively reasonable excuses for loss of self-control,
21 and thereby illegitimately mitigate the responsibility
22 of a perpetrator for harm done to LGBTQ individ-
23 uals;

24 (4) panic defenses based on sexual orientation
25 or gender identity or expression appeal to irrational

1 fears and hatred of LGBTQ individuals, thereby un-
2 dermining the legitimacy of Federal criminal pros-
3 ecutions and resulting in unjustifiable acquittals or
4 sentencing reductions;

5 (5) the use of panic defenses based on sexual
6 orientation or gender identity or expression is en-
7 tirely incompatible with the express intent of Fed-
8 eral law to provide increased protection to victims of
9 bias-motivated crimes, including crimes committed
10 against LGBTQ individuals;

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

18 (7) to end the antiquated notion that LGBTQ
19 lives are worth less than others and to reflect mod-
20 ern understanding of LGBTQ individuals as equal
21 citizens under law, panic defenses based on sexual
22 orientation or gender identity or expression must
23 end.

1 **SEC. 3. PROHIBITION ON PANIC DEFENSES BASED ON SEX-**
 2 **UAL ORIENTATION OR GENDER IDENTITY OR**
 3 **EXPRESSION.**

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

7 **“§ 28. Prohibition on panic defenses based on sexual**
 8 **orientation or gender identity or expres-**
 9 **sion**

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

15 “(b) PAST TRAUMA.—Notwithstanding the prohibi-
 16 tion in subsection (a), a court may admit evidence, in ac-
 17 cordance with the Federal Rules of Evidence, of prior
 18 trauma to the defendant for the purpose of excusing or
 19 justifying the conduct of the defendant or mitigating the
 20 severity of an offense.”.

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

“28. Prohibition on panic defenses based on sexual orientation or gender iden-
 tity or expression.”.

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

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