

116TH CONGRESS
1ST SESSION

S. _____

To prohibit discrimination on the basis of religion, sex (including sexual orientation and gender identity), and marital status in the administration and provision of child welfare services; to improve safety, well-being, and permanency for lesbian, gay, bisexual, transgender, and queer/questioning foster youth; and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit discrimination on the basis of religion, sex (including sexual orientation and gender identity), and marital status in the administration and provision of child welfare services; to improve safety, well-being, and permanency for lesbian, gay, bisexual, transgender, and queer/questioning foster youth; and for other purposes.

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 “Every Child Deserves
5 a Family Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Every child or youth unable to live with
4 their family of origin is entitled to a supportive and
5 affirming foster care placement. Federal law re-
6 quires, and child welfare experts recommend, that
7 children and youth be placed with a family or in the
8 most family-like setting available.

9 (2) Thousands of children and youth lack a sta-
10 ble, safe, and loving temporary or permanent home
11 and have been placed in a congregate care setting,
12 which is associated with more placements, poorer
13 educational outcomes, and greater risk of further
14 trauma. More homes are needed to accommodate the
15 growing number of children and youth involved with
16 child welfare services.

17 (3) In 2017, there were an estimated 443,000
18 children and youth in the United States foster care
19 system, and 123,000 were eligible and waiting to be
20 adopted. Tragically, approximately 20,000 “aged
21 out” of the child welfare system without a forever
22 family, placing them at higher risk of negative out-
23 comes including poverty, homelessness, incarcer-
24 ation, and early parenthood.

25 (4) Title VI of the Civil Rights Act of 1964 (42
26 U.S.C. 2000d et seq.) protects people from discrimi-

1 nation based on race, color, or national origin in
2 programs, activities, and services administered or
3 performed by child welfare agencies. Eliminating dis-
4 crimination in child welfare based on religion, sex
5 (including sexual orientation and gender identity),
6 and marital status would increase the number and
7 diversity of foster and adoptive homes able to meet
8 the individual needs of children and youth removed
9 from their homes.

10 (5) Lesbian, gay, bisexual, transgender, and
11 queer/questioning (referred to in this Act as
12 “LGBTQ”) youth are overrepresented in the foster
13 care system by at least a factor of 2, comprising at
14 least 22 to 30 percent of children and youth in fos-
15 ter care.

16 (A) While some LGBTQ youth enter foster
17 care for similar reasons as non-LGBTQ youth,
18 the two most common reasons for LGBTQ
19 youth are high rates of physical abuse and con-
20 flict with parents.

21 (B) LGBTQ foster youth report twice the
22 rate of poor treatment while in care experienced
23 by foster youth who do not identify as LGBTQ
24 and are more likely to experience discrimina-
25 tion, harassment, and violence in the child wel-

1 fare system than their LGBTQ peers not in the
2 child welfare system.

3 (C) Because of high levels of bias, LGBTQ
4 foster youth have a higher average number of
5 placements and higher likelihood of living in a
6 group home than their non-LGBTQ peers, neg-
7 atively affecting mental health outcomes and
8 long-term prospects.

9 (D) Approximately 60 percent of homeless
10 LGBTQ youth were previously in foster care,
11 and many reported that living on the streets
12 felt safer than living in a group or foster home.

13 (6) “Conversion therapy” is a form of discrimi-
14 nation that harms LGBTQ people. It undermines an
15 individual’s sense of self-worth, increases suicide ide-
16 ation and substance abuse, exacerbates family con-
17 flict, and contributes to second-class status. No sci-
18 entifically valid evidence supports this discredited
19 practice, which is prohibited by many States and
20 foreign nations. Approximately 350,000 LGBTQ
21 adults were subjected to so-called “conversion ther-
22 apy” as adolescents, and an estimated 20,000
23 LGBTQ youth ages 13 to 17 will be subjected to it
24 by a licensed health care professional before age 18.

1 (7) Many youth, especially LGBTQ youth, in-
2 volved with child welfare services identify with a
3 cross-section of marginalized communities. Youth of
4 color are overrepresented in the foster care system,
5 and the majority of LGBTQ foster youth are youth
6 of color. Children and youth with multiple
7 marginalized identities often experience more stress
8 and trauma than other youth, compounding the neg-
9 ative effects of discrimination and increasing the
10 likelihood of negative outcomes.

11 (8) Prospective parents who experience the
12 heartbreak and dignitary harm of discrimination
13 based on religion, sex (including sexual orientation
14 and gender identity), or marital status may not be
15 able or willing to apply at another agency, resulting
16 in fewer available homes, and knowing that discrimi-
17 nation exists may deter them from even attempting
18 to foster or adopt.

19 (9) Professional organizations that serve chil-
20 dren in the fields of medicine, psychology, law, and
21 child welfare oppose discrimination against prospec-
22 tive parents in adoption and foster care.

23 (10) Religious organizations play a critical role
24 in providing child welfare services. Most welcome all
25 children, youth, and families and affirm a diversity

1 of religions and faiths. State assessments, planning,
2 and counseling should connect children and youth
3 for whom spirituality and religion are important
4 with affirming, faith-based resources consistent with
5 the faith of the child or youth.

6 (11) Child welfare agencies that refuse to serve
7 same-sex couples and LGBTQ individuals reduce the
8 pool of qualified and available homes for children
9 and youth who need placement on a temporary or
10 permanent basis.

11 (A) Same-sex couples are 7 times more
12 likely to foster and adopt than their different-
13 sex counterparts.

14 (B) Same-sex couples raising adopted chil-
15 dren tend to be older than, just as educated as,
16 and have access to the same economic resources
17 as other adoptive parents.

18 (C) Research shows that sexual orientation
19 is a nondeterminative factor in parental success
20 and that children with same-sex parents have
21 the same advantages and expectations for
22 health, social, and psychological development as
23 children whose parents are different-sex.

24 (D) Discrimination against qualified pro-
25 spective foster and adoptive parents for non-

1 merit related reasons denies religious minority,
2 LGBTQ, and unmarried relatives the oppor-
3 tunity to become foster and adoptive parents
4 for their own kin in care, including grand-
5 children.

6 (12) LGBTQ families of origin are at risk for
7 discrimination in child welfare referrals, investiga-
8 tions, removals, reunification, kinship placements,
9 and other case management services. A study of low-
10 income African American mothers showed that those
11 who identified as lesbian or bisexual were four times
12 more likely than their non-LGBTQ counterparts to
13 lose custody of their children in child welfare pro-
14 ceedings. LGBTQ-positive services are necessary to
15 shield families and protect parents' rights to reunifi-
16 cation.

17 (13) Single people are more likely than couples
18 to experience challenges in adopting due to biases
19 that persist against single-parent adoption. In 2017,
20 28 percent of adoptions from foster care were com-
21 pleted by unmarried single people, including adop-
22 tions from almost 2,000 single men and over 14,800
23 single women. Studies show that the outcomes for
24 children adopted and raised by single parents are

1 just as good as, if not better than, outcomes for chil-
2 dren adopted by couples.

3 (14) More nationwide data about the experi-
4 ences of LGBTQ children and youth involved with
5 child welfare services is needed to understand fully
6 the extent and impact of discrimination and ensure
7 accountability. States must report and researchers
8 must collect this sensitive data in an ethical, affirm-
9 ing, and non-intrusive manner, with appropriate
10 safeguards to protect respondents.

11 (b) PURPOSE.—The purposes of this Act are—

12 (1) to prohibit discrimination on the basis of re-
13 ligion, sex (including sexual orientation and gender
14 identity), and marital status in the administration
15 and provision of child welfare services that receive
16 Federal funds; and

17 (2) to improve safety, well-being, and perma-
18 nency for LGBTQ children and youth involved with
19 child welfare services.

20 **SEC. 3. EVERY CHILD DESERVES A FAMILY.**

21 (a) PROHIBITION.—No child or youth involved with
22 child welfare services, family, or individual shall, on the
23 grounds of religion, sex (including sexual orientation and
24 gender identity), or marital status, be excluded from par-
25 ticipation in, denied the benefits of, or subjected to dis-

1 crimination in the administration or provision of child wel-
2 fare programs and services by a covered entity receiving
3 Federal financial assistance under part A, B, or E of title
4 IV; title XIX; or title XX of the Social Security Act.

5 (b) PRIVATE RIGHT OF ACTION.—Any individual who
6 is aggrieved by a violation of this Act may bring a civil
7 action seeking relief in an appropriate United States dis-
8 trict court. The court shall award a plaintiff prevailing in
9 such an action all appropriate relief, including injunctive,
10 declaratory, and other equitable relief necessary to carry
11 out this Act, attorneys' fees, and such other relief as the
12 court deems appropriate.

13 (c) FEDERAL GUIDANCE.—Not later than 6 months
14 after the date of the enactment of this Act, the Secretary
15 shall publish and disseminate guidance with respect to
16 compliance with this Act.

17 (d) TECHNICAL ASSISTANCE.—In order to ensure
18 compliance with and understanding of the legal, practice,
19 and cultural changes required by this Act, the Secretary
20 shall provide technical assistance to all covered entities,
21 including—

22 (1) identifying State laws and regulations in-
23 consistent with this Act, and providing guidance and
24 training to ensure the State laws and regulations are
25 brought into compliance with this Act by the appli-

1 cable compliance deadline in effect under subsection
2 (h);

3 (2) identifying casework practices and proce-
4 dures inconsistent with this Act and providing guid-
5 ance and training to ensure the practices and proce-
6 dures are brought into compliance with this Act by
7 the applicable compliance deadline;

8 (3) providing guidance in expansion of recruit-
9 ment efforts to ensure consideration of all prospec-
10 tive adoptive and foster parents regardless of the re-
11 ligion, sex (including sexual orientation and gender
12 identity), or marital status of the prospective parent;

13 (4) creating comprehensive cultural competency
14 training for covered entities and prospective adoptive
15 and foster parents; and

16 (5) training judges and attorneys involved in
17 foster care, guardianship, and adoption cases on the
18 findings and purposes of this Act.

19 (e) SERVICE DELIVERY AND TRAINING.—

20 (1) IN GENERAL.—A covered entity shall pro-
21 vide service delivery to children and youth involved
22 with child welfare services, families, and adults, and
23 staff training, that comprehensively addresses the
24 individual strengths and needs of children and youth
25 involved with child welfare services, as well as be

1 language appropriate, gender appropriate, and cul-
2 turally sensitive and respectful of the complex social
3 identities of the children and youth, families, and
4 adults currently or prospectively participating in or
5 receiving child welfare services.

6 (2) SOCIAL IDENTITY.—In this subsection, the
7 term “social identity” includes an individual’s race,
8 ethnicity, nationality, age, religion (including spiritu-
9 ality), sex (including gender identity and sexual ori-
10 entation), socioeconomic status, physical or cognitive
11 ability, language, beliefs, values, behavior patterns,
12 and customs.

13 (f) DATA COLLECTION.—Using developmentally ap-
14 propriate best practices, the Secretary shall collect data
15 through the Adoption and Foster Care Analysis and Re-
16 porting System on—

17 (1) the sexual orientation and gender identity of
18 children and youth involved with child welfare serv-
19 ices and foster and adoptive parents; and

20 (2) whether family conflict related to the sexual
21 orientation or gender identity of a child or youth
22 was a factor in the removal of the child or youth
23 from the family.

24 (g) NATIONAL RESOURCE CENTER ON SAFETY,
25 WELL-BEING, PLACEMENT STABILITY, AND PERMA-

1 AGENCY FOR LGBTQ CHILDREN AND YOUTH INVOLVED
2 WITH CHILD WELFARE SERVICES.—

3 (1) IN GENERAL.—The Secretary shall establish
4 and maintain the National Resource Center on Safe-
5 ty, Well-Being, Placement Stability, and Perma-
6 nency for LGBTQ Children and Youth Involved with
7 Child Welfare Services that will promote well-being,
8 safety, permanency, stability, and family placement
9 for LGBTQ children and youth involved with child
10 welfare services, through training, technical assist-
11 ance, actions, and guidance that—

12 (A) increases LGBTQ cultural competency
13 among the staff of covered entities, and foster,
14 adoptive, and relative parents, guardians, and
15 caregivers;

16 (B) promotes the provision of child welfare
17 services that address the specific needs of
18 LGBTQ children and youth involved with child
19 welfare services and their families;

20 (C) promotes effective and responsible col-
21 lection and management of data on the sexual
22 orientation and gender identity of children and
23 youth in the child welfare system, with appro-
24 priate safeguards to protect the data;

1 (D) identifies and promotes promising
2 practices and evidence-based models of engage-
3 ment and appropriate collective and individual
4 services and interventions that can be linked to
5 improved outcomes for LGBTQ children and
6 youth in the child welfare system;

7 (E) endorses best practices for human re-
8 source activities of covered entities, including in
9 hiring, staff development, and implementing a
10 system of accountability to carry out those best
11 practices; and

12 (F) initiates other actions that improve
13 safety, well-being, placement stability, and per-
14 manency outcomes for LGBTQ children and
15 youth involved with child welfare services at the
16 State and local level.

17 (2) ACTIVITIES.—The Secretary shall carry out
18 the collection and analysis of data and the dissemi-
19 nation of research to carry out this subsection.

20 (3) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated to the Sec-
22 retary such sums as may be necessary to establish
23 and maintain the National Resource Center on Safe-
24 ty, Well-Being, Placement Stability, and Perma-
25 nency for LGBTQ Children and Youth Involved with

1 Child Welfare Services and carry out the activities
2 described in this subsection.

3 (h) DEADLINE FOR COMPLIANCE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), a covered entity shall comply with this
6 section not later than 6 months after publication of
7 the guidance referred to in subsection (c), or 1 year
8 after the date of the enactment of this Act, which-
9 ever occurs first.

10 (2) AUTHORITY TO EXTEND DEADLINE.—If a
11 State demonstrates to the satisfaction of the Sec-
12 retary that it is necessary to amend State law in
13 order to change a particular practice that is incon-
14 sistent with this Act, the Secretary may extend the
15 compliance date for the State and any covered enti-
16 ties in the State a reasonable number of days after
17 the close of the 1st State legislative session begin-
18 ning after the date the guidance referred to in sub-
19 section (c) is published.

20 (3) AUTHORITY TO WITHHOLD FUNDS.—If the
21 Secretary finds that a covered entity has failed to
22 comply with this Act, the Secretary may withhold
23 payment to the State of amounts otherwise payable
24 to the State under part B or E of title IV of the

1 Social Security Act, to the extent determined by the
2 Secretary.

3 (i) GAO STUDY.—

4 (1) IN GENERAL.—Not later than 3 years after
5 the date of enactment of this Act, the Comptroller
6 General of the United States shall conduct a study
7 to determine whether the States have substantially
8 complied with this Act, including specifically whether
9 the States have—

10 (A) eliminated all policies, practices, or
11 laws that permit a covered entity to violate sub-
12 section (a);

13 (B) provided necessary training and tech-
14 nical support to covered entities to ensure all
15 services to children and youth involved with
16 child welfare services are carried out in a non-
17 discriminatory, affirming, safe, and culturally
18 competent manner;

19 (C) collected data necessary to accom-
20 plishing the purposes of this Act, and ensured
21 that the data is appropriately safeguarded, in-
22 cluding data related to—

23 (i) the sexual orientation and gender
24 identity of children and youth involved
25 with child welfare services;

1 (ii) the permanency and placement
2 outcomes and rates for those children and
3 youth, as compared to their non-LGBTQ
4 peers;

5 (iii) the rates at which those children
6 and youth are placed in family homes as
7 compared to congregate or group homes;

8 (iv) the sexual orientation, gender
9 identity, and marital status of foster and
10 adoptive parents, as well as the placement
11 rates and wait periods for those foster and
12 adoptive parents; and

13 (D) ensured that covered entities—

14 (i) are in compliance with this Act;
15 and

16 (ii) have implemented procedures for
17 children and youth involved with child wel-
18 fare services, or individuals or families par-
19 ticipating in, or seeking to participate in,
20 child welfare services, to report violations
21 of this Act.

22 (2) REPORT TO THE CONGRESS.—Not later
23 than 6 months after completing the study required
24 by paragraph (1), the Comptroller General shall sub-
25 mit to the Committee on Ways and Means of the

1 House of Representatives and the Committee on Fi-
2 nance of the Senate a written report that contains
3 the results of the study.

4 (j) RELATION TO OTHER LAWS.—

5 (1) RULE OF CONSTRUCTION.—Nothing in this
6 Act shall be construed to invalidate or limit rights,
7 remedies, or legal standards under title VI of the
8 Civil Rights Act of 1964.

9 (2) CERTAIN CLAIMS.—The Religious Freedom
10 Restoration Act of 1993 (42 U.S.C. 2000bb et seq.)
11 shall not provide a claim concerning, or a defense to
12 a claim under, this Act, or provide a basis for chal-
13 lenging the application or enforcement of this Act.

14 (k) DEFINITIONS.—In this section:

15 (1) CHILD OR YOUTH INVOLVED WITH CHILD
16 WELFARE SERVICES.—The term “child or youth in-
17 volved with child welfare services” means an indi-
18 vidual, aged 23 or younger, who participates in child
19 welfare programs or services that receive Federal fi-
20 nancial assistance under part A, B, or E of title IV;
21 title XIX; or title XX of the Social Security Act.

22 (2) CONVERSION THERAPY.—

23 (A) IN GENERAL.—The term “conversion
24 therapy” means a form of discrimination that
25 includes any practice or treatment which seeks

1 to change the sexual orientation or gender iden-
2 tity of an individual, including efforts to change
3 behaviors or gender expressions or to eliminate
4 or reduce sexual or romantic attractions or feel-
5 ings toward individuals of the same gender.

6 (B) EXCLUSIONS.—The term “conversion
7 therapy” does not include counseling that pro-
8 vides assistance to an individual undergoing
9 gender transition, or counseling that provides
10 acceptance, support, and understanding of an
11 individual or facilitates an individual with cop-
12 ing, social support, and identity exploration and
13 development, including sexual orientation-neu-
14 tral interventions to prevent or address unlaw-
15 ful conduct or unsafe sexual practices.

16 (3) COVERED ENTITY.—The term “covered en-
17 tity” means an entity that—

18 (A) receives Federal financial assistance
19 under part A, B, or E of title IV; title XIX; or
20 title XX of the Social Security Act; and

21 (B) is involved in the administration or
22 provision of child welfare programs or services.

23 (4) GENDER IDENTITY.—The term “gender
24 identity” means the gender-related identity, appear-
25 ance, mannerisms, or other gender-related character-

1 istics of an individual, regardless of the designated
2 sex of the individual at birth.

3 (5) RELIGION; SEX (INCLUDING SEXUAL ORI-
4 ENTATION AND GENDER IDENTITY), OR MARITAL
5 STATUS.—The term “religion, sex (including sexual
6 orientation and gender identity), or marital status”,
7 used with respect to an individual, includes—

8 (A) the religion, sex (including sexual ori-
9 entation and gender identity), or marital status,
10 respectively, of another person with whom the
11 individual is or has been associated; and

12 (B) a perception or belief, even if inac-
13 curate, concerning the religion, sex (including
14 sexual orientation and gender identity), or mar-
15 ital status, respectively, of the individual.

16 (6) SECRETARY.—The term “Secretary” means
17 the Secretary of Health and Human Services.

18 (7) SEX.—The term “sex” includes—

19 (A) a sex stereotype;

20 (B) pregnancy, childbirth, or a related
21 medical condition;

22 (C) sexual orientation or gender identity;
23 and

24 (D) sex characteristics, including intersex
25 traits.

1 (8) SEXUAL ORIENTATION.—The term “sexual
2 orientation” means homosexuality, heterosexuality,
3 or bisexuality.

4 (9) STATE.—The term “State” means each of
5 the 50 States of the United States, the District of
6 Columbia, the Commonwealth of Puerto Rico, the
7 United States Virgin Islands, Guam, the Common-
8 wealth of the Northern Mariana Islands, and Amer-
9 ican Samoa.