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 or questioning foster youth, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JUNE 11, 2019
Mrs. Gillibrand (for herself, Mr. Blumenthal, Mr. Markey, Mr. Murphy, Ms. Harris, Mrs. Murray, Mr. Sanders, Mrs. Shaheen, Ms. Rosen, Ms. Baldwin, Mr. Leahy, Mr. Wyden, Mr. Whitehouse, Mr. Merkley, Ms. Klobuchar, and Mr. Durbin) introduced the following bill; which was read twice and referred to the Committee on Finance

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 or questioning foster youth, and for other purposes.

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 “Every Child Deserves a Family Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

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

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

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) protects people from discrimination based on race, color, or national origin in programs, activities, and services administered or performed by child welfare agencies. Eliminating discrimination in child welfare based on religion, sex (including sexual orientation and gender identity), and marital status would increase the number and diversity of foster and adoptive homes able to meet the individual needs of children and youth removed from their homes.

(5) Lesbian, gay, bisexual, transgender, and queer or questioning (referred to in this Act as “LGBTQ”) youth are overrepresented in the foster care system by at least a factor of 2, comprising at least 22 to 30 percent of children and youth in foster care.

(A) While some LGBTQ youth enter foster care for similar reasons as non-LGBTQ youth, the 2 most common reasons for LGBTQ youth are high rates of physical abuse and conflict with parents.
(B) LGBTQ foster youth report twice the rate of poor treatment while in care experienced by foster youth who do not identify as LGBTQ and are more likely to experience discrimination, harassment, and violence in the child welfare system than their LGBTQ peers not in the child welfare system.

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

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

(6) “Conversion therapy” is a form of discrimination that harms LGBTQ people. It undermines an individual’s sense of self-worth, increases suicide ideation and substance abuse, exacerbates family conflict, and contributes to second-class status. No scientifically valid evidence supports this discredited practice, which is prohibited by many States and foreign nations. Approximately 350,000 LGBTQ
adults were subjected to so-called “conversion therapy” as adolescents, and an estimated 20,000 LGBTQ youth ages 13 to 17 will be subjected to it by a licensed health care professional before age 18.

(7) Many youth, especially LGBTQ youth, involved with child welfare services identify with a cross-section of marginalized communities. Youth of color are overrepresented in the foster care system, and the majority of LGBTQ foster youth are youth of color. Children and youth with multiple marginalized identities often experience more stress and trauma than other youth, compounding the negative effects of discrimination and increasing the likelihood of negative outcomes.

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

(9) Professional organizations that serve children in the fields of medicine, psychology, law, and
child welfare oppose discrimination against prospective parents in adoption and foster care.

(10) Religious organizations play a critical role in providing child welfare services. Most welcome all children, youth, and families and affirm a diversity of religions and faiths. State assessments, planning, and counseling should connect children and youth for whom spirituality and religion are important with affirming, faith-based resources consistent with the faith of the child or youth.

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

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

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

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

(D) Discrimination against qualified prospective foster and adoptive parents for non-merit related reasons denies religious minority, LGBTQ, and unmarried relatives the opportunity to become foster and adoptive parents for their own kin in care, including grandchildren.

(12) LGBTQ families of origin are at risk for discrimination in child welfare referrals, investigations, removals, reunification, kinship placements, and other case management services. A study of low-income African-American mothers showed that those who identified as lesbian or bisexual were 4 times more likely than their non-LGBTQ counterparts to lose custody of their children in child welfare proceedings. LGBTQ-positive services are necessary to shield families and protect parents’ rights to reunification.

(13) Single people are more likely than couples to experience challenges in adopting due to biases that persist against single-parent adoption. In 2017, 28 percent of adoptions from foster care were com-
pleted by unmarried single people, including adop-
tions from almost 2,000 single men and over 14,800
single women. Studies show that the outcomes for
children adopted and raised by single parents are
just as good as, if not better than, outcomes for chil-
dren adopted by couples.

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

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

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

(2) to improve safety, well-being, and perma-
nency for LGBTQ children and youth involved with
child welfare services.
SEC. 3. EVERY CHILD DESERVES A FAMILY.

(a) PROHIBITION.—No child or youth involved with child welfare services, family, or individual shall, on the grounds of religion, sex (including sexual orientation and gender identity), or marital status, be excluded from participation in, denied the benefits of, or be subjected to discrimination in the administration or provision of child welfare programs and services by a covered entity.

(b) PRIVATE RIGHT OF ACTION.—Any individual who is aggrieved by a violation of this Act may bring a civil action seeking relief in an appropriate United States district court. The court shall award a plaintiff prevailing in such an action all appropriate relief, including injunctive, declaratory, and other equitable relief necessary to carry out this Act, attorneys’ fees, and such other relief as the court determines appropriate.

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

(d) TECHNICAL ASSISTANCE.—In order to ensure compliance with and understanding of the legal, practice, and cultural changes required by this Act, the Secretary shall provide technical assistance to all covered entities, including—
(1) identifying State laws and regulations inconsistent with this Act, and providing guidance and training to ensure the State laws and regulations are brought into compliance with this Act by the applicable compliance deadline in effect under subsection (h);

(2) identifying casework practices and procedures inconsistent with this Act and providing guidance and training to ensure the practices and procedures are brought into compliance with this Act by the applicable compliance deadline;

(3) providing guidance in expansion of recruitment efforts to ensure consideration of all prospective adoptive and foster parents regardless of the religion, sex (including sexual orientation and gender identity), or marital status of the prospective parent;

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

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

(e) SERVICE DELIVERY AND TRAINING.—

(1) IN GENERAL.—A covered entity shall provide service delivery to children and youth involved
with child welfare services, families, and adults, and
staff training, that—

(A) comprehensively addresses the individual strengths and needs of children and youth involved with child welfare services; and

(B) is language appropriate, gender appropriate, and culturally sensitive and respectful of the complex social identities of the children and youth, families, and adults currently or prospectively participating in or receiving child welfare services.

(2) Social identity.—In this subsection, the term “social identity” includes an individual’s race, ethnicity, nationality, age, religion (including spirituality), sex (including gender identity and sexual orientation), socioeconomic status, physical or cognitive ability, language, beliefs, values, behavior patterns, and customs.

(f) Data collection.—Using developmentally appropriate best practices, the Secretary shall collect data through the Adoption and Foster Care Analysis and Reporting System on—

(1) the sexual orientation and gender identity of children and youth involved with child welfare services and foster and adoptive parents; and
(2) whether family conflict related to the sexual orientation or gender identity of a child or youth was a factor in the removal of the child or youth from the family.

(g) National Resource Center on Safety, Well-Being, Placement Stability, and Permanency for LGBTQ Children and Youth Involved with Child Welfare Services.—

(1) In general.—The Secretary shall establish and maintain the National Resource Center on Safety, Well-Being, Placement Stability, and Permanency for LGBTQ Children and Youth Involved with Child Welfare Services (referred to in this Act as the “National Resource Center”) that will promote well-being, safety, permanency, stability, and family placement for LGBTQ children and youth involved with child welfare services, through training, technical assistance, actions, and guidance that—

(A) increase LGBTQ cultural competency among the staff of covered entities, and foster, adoptive, and relative parents, guardians, and caregivers;

(B) promote the provision of child welfare services that address the specific needs of
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LGBTQ children and youth involved with child
welfare services and their families;

(C) promote effective and responsible col-
lection and management of data on the sexual
orientation and gender identity of children and
youth in the child welfare system, with appro-
ropriate safeguards to protect the data;

(D) identify and promote promising prac-
tices and evidence-based models of engagement
and appropriate collective and individual serv-
ices and interventions that can be linked to im-
proved outcomes for LGBTQ children and
youth in the child welfare system;

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

(F) initiate other actions that improve
safety, well-being, placement stability, and per-
manency outcomes for LGBTQ children and
youth involved with child welfare services at the
State and local level.
(2) Activities.—The Secretary shall carry out the collection and analysis of data and the dissemination of research to carry out this subsection.

(3) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary such sums as may be necessary to establish and maintain the National Resource Center and carry out the activities described in this subsection.

(h) Deadline for Compliance.—

(1) In general.—Except as provided in paragraph (2), a covered entity shall comply with this section not later than 6 months after publication of the guidance referred to in subsection (c), or 1 year after the date of the enactment of this Act, whichever occurs first.

(2) Authority to extend deadline.—If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State law in order to change a particular practice that is inconsistent with this Act, the Secretary may extend the compliance date for the State and any covered entities in the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.
(3) Authority to withhold funds.—If the Secretary finds that a covered entity has failed to comply with this Act, the Secretary may withhold payment to the State of amounts otherwise payable to the State under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.; 42 U.S.C. 670 et seq.), to the extent determined by the Secretary.

(i) GAO study.—

(1) In general.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study to determine whether the States have substantially complied with this Act, including specifically whether the States have—

(A) eliminated all policies, practices, or laws that permit a covered entity to violate subsection (a);

(B) provided necessary training and technical support to covered entities to ensure all services to children and youth involved with child welfare services are carried out in a non-discriminatory, affirming, safe, and culturally competent manner;
(C) collected data necessary to accomplishing the purposes of this Act, and ensured that the data is appropriately safeguarded, including data related to—

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

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

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

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

(D) ensured that covered entities—

(i) are in compliance with this Act; and

(ii) have implemented procedures for children and youth involved with child welfare services, or individuals or families par-
participating in, or seeking to participate in,
child welfare services, to report violations
of this Act.

(2) Report to the Congress.—Not later
than 6 months after completing the study required
by paragraph (1), the Comptroller General shall sub-
mit to the Committee on Ways and Means of the
House of Representatives and the Committee on Fi-
nance of the Senate a written report that contains
the results of the study.

(j) Relation to Other Laws.—

(1) Rule of construction.—Nothing in this
Act shall be construed to invalidate or limit rights,
remedies, or legal standards under title VI of the

(2) Certain claims.—The Religious Freedom
shall not provide a claim concerning, or a defense to
a claim under, this Act, or provide a basis for chal-
lenging the application or enforcement of this Act.

(k) Definitions.—In this section:

(1) Child or youth involved with child
welfare services.—The term “child or youth in-
volved with child welfare services” means an indi-
vidual, aged 23 or younger, who participates in child
welfare programs or services that receive Federal fi-
nancial assistance under part A, B, or E of title IV;
title XIX; or title XX of the Social Security Act.

(2) Conversion therapy.—

(A) In general.—The term “conversion
therapy” means a form of discrimination that
includes any practice or treatment which seeks
to change the sexual orientation or gender iden-
tity of an individual, including efforts to change
behaviors or gender expressions or to eliminate
or reduce sexual or romantic attractions or feel-
ings toward individuals of the same gender.

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

(3) Covered entity.—The term “covered en-
tity” means an entity that—

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

(4) GENDER IDENTITY.—The term “gender identity” means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the designated sex of the individual at birth.

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

(A) the religion, sex (including sexual orientation and gender identity), or marital status, respectively, of another person with whom the individual is or has been associated; and

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

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

(7) SEX.—The term “sex” includes—

(A) a sex stereotype;

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

(C) sexual orientation or gender identity;

and

(D) sex characteristics, including intersex
traits.

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

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