

117TH CONGRESS
1ST SESSION

S. 1848

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

MAY 26, 2021

Mrs. GILLIBRAND (for herself, Ms. CORTEZ MASTO, Mr. MARKEY, Ms. BALDWIN, Mr. WYDEN, Mr. BROWN, Ms. SMITH, Mr. CARPER, Mr. BENNET, Mr. BLUMENTHAL, Ms. DUCKWORTH, Ms. KLOBUCHAR, Mr. KAINE, Mr. MENENDEZ, Ms. WARREN, Mr. VAN HOLLEN, Mrs. FEINSTEIN, Ms. CANTWELL, Mr. BOOKER, Mr. KING, Mr. MURPHY, Mr. PADILLA, Ms. ROSEN, Mrs. SHAHEEN, and Ms. HIRONO) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “John Lewis Every
3 Child Deserves a Family Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

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

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

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

20 (3) On the last day of fiscal year 2019, there
21 were an estimated 424,000 children and youth in the
22 United States foster care system, and 122,000 were
23 waiting to be adopted. Tragically, approximately
24 20,000 “aged out” of the child welfare system with-
25 out a forever family, placing them at higher risk of

1 negative outcomes including poverty, homelessness,
2 incarceration, and early parenthood.

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

14 (5) Lesbian, gay, bisexual, transgender, and
15 queer or questioning (referred to in this Act as
16 “LGBTQ”) youth are overrepresented in the foster
17 care system by at least a factor of 2, comprising at
18 least 30 percent of children and youth in foster care.
19 These numbers are higher for transgender and non-
20 binary youth compared to their cisgender LGBTQ
21 counterparts.

22 (A) While some LGBTQ youth enter foster
23 care for similar reasons as non-LGBTQ youth,
24 the 2 most common reasons for LGBTQ youth

1 are high rates of physical abuse and conflict
2 with parents.

3 (B) LGBTQ foster youth report twice the
4 rate of poor treatment while in care experienced
5 by foster youth who do not identify as LGBTQ
6 and are more likely to experience discrimina-
7 tion, harassment, and violence in the child wel-
8 fare system than their LGBTQ peers not in the
9 child welfare system.

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

16 (D) Approximately 28 percent of homeless
17 youth with histories of time in foster care iden-
18 tified as LGBTQ and were significantly more
19 likely to experience 7 of 8 adverse events, such
20 as being physically harmed, or being stig-
21 matized or discriminated against, compared to
22 their peers with no foster care history.

23 (E) LGBTQ youth in foster care had near-
24 ly 3 times greater odds of reporting a past-year
25 suicide attempt compared to LGBTQ youth

1 who were never in foster care (35 percent for
2 those youth in foster care as compared to 13
3 percent for those youth who were never in fos-
4 ter care). These numbers were even higher for
5 LGBTQ foster youth of color (38 percent) and
6 highest for transgender and nonbinary foster
7 youth (45 percent).

8 (F) LGBTQ youth who had been in foster
9 care had over 3 times greater odds of being
10 kicked out, abandoned, or running away due to
11 treatment based on their LGBTQ identity com-
12 pared to those who were never in foster care
13 (27 percent for those youth who had been in
14 foster care as compared to 8 percent for those
15 youth who had never been in foster care). These
16 numbers were higher for LGBTQ foster youth
17 of color (30 percent) and transgender and non-
18 binary foster youth (40 percent).

19 (6) “Conversion therapy” is a form of discrimi-
20 nation that harms LGBTQ people. It undermines an
21 individual’s sense of self-worth, increases suicide ide-
22 ation and substance abuse, exacerbates family con-
23 flict, and contributes to second-class status. No sci-
24 entifically valid evidence supports this discredited
25 practice, which is prohibited by many States and

1 foreign nations. Approximately 350,000 LGBTQ
 2 adults were subjected to so-called “conversion ther-
 3 apy” as adolescents, and an estimated 16,000
 4 LGBTQ youth ages 13 to 17 will be subjected to it
 5 by a licensed health care professional before age 18.

6 (7) Many youth, especially LGBTQ youth, in-
 7 volved with child welfare services identify with a
 8 cross-section of marginalized communities. Youth of
 9 color are overrepresented in the foster care system,
 10 and the majority of LGBTQ foster youth are youth
 11 of color. Children and youth with multiple margina-
 12 lized identities often experience more stress and
 13 trauma than other youth, compounding the negative
 14 effects of discrimination and increasing the likeli-
 15 hood of negative outcomes.

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

24 (9) Professional organizations that serve chil-
 25 dren in the fields of medicine, psychology, law, and

1 child welfare oppose discrimination against prospec-
 2 tive parents in adoption and foster care.

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

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

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

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

23 (C) Research shows that sexual orientation
 24 is a nondeterminative factor in parental success
 25 and that children with same-sex parents have

1 the same advantages and expectations for
2 health, social, and psychological development as
3 children whose parents are different-sex.

4 (D) Discrimination against qualified pro-
5 spective foster and adoptive parents for non-
6 merit related reasons denies religious minority,
7 LGBTQ, and unmarried relatives the oppor-
8 tunity to become foster and adoptive parents
9 for their own kin in care, including grand-
10 children.

11 (12) LGBTQ families of origin are at risk for
12 discrimination in child welfare referrals, investiga-
13 tions, removals, reunification, kinship placements,
14 and other case management services. A study of low-
15 income African-American mothers showed that those
16 who identified as lesbian or bisexual were 4 times
17 more likely than their non-LGBTQ counterparts to
18 lose custody of their children in child welfare pro-
19 ceedings. LGBTQ-positive services are necessary to
20 shield families and protect parents' rights to reunifi-
21 cation.

22 (13) Single people are more likely than couples
23 to experience challenges in adopting due to biases
24 that persist against single-parent adoption. During
25 fiscal year 2019, 29 percent of adoptions from foster

1 care were completed by unmarried single people, in-
2 cluding adoptions by some 2200 single men and
3 more than 16,800 single women. Studies show that
4 the outcomes for children adopted and raised by sin-
5 gle parents are just as good as, if not better than,
6 outcomes for children adopted by couples.

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

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

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

21 (2) to improve safety, well-being, and perma-
22 nency for LGBTQ children and youth involved with
23 child welfare services.

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

2 (a) PROHIBITION.—No child or youth involved with
3 child welfare services, family, or individual shall, on the
4 grounds of religion, sex (including sexual orientation and
5 gender identity), or marital status, be excluded from par-
6 ticipation in, denied the benefits of, or be subjected to dis-
7 crimination in the administration or provision of child wel-
8 fare programs and services by a covered entity.

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

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

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

1 (1) identifying State laws and regulations in-
2 consistent with this Act, and providing guidance and
3 training to ensure the State laws and regulations are
4 brought into compliance with this Act by the appli-
5 cable compliance deadline in effect under subsection
6 (h);

7 (2) identifying casework practices and proce-
8 dures inconsistent with this Act and providing guid-
9 ance and training to ensure the practices and proce-
10 dures are brought into compliance with this Act by
11 the applicable compliance deadline;

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

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

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

23 (e) SERVICE DELIVERY AND TRAINING.—

24 (1) IN GENERAL.—A covered entity shall pro-
25 vide service delivery to children and youth involved

1 with child welfare services, families, and adults, and
2 staff training, that—

3 (A) comprehensively addresses the indi-
4 vidual strengths and needs of children and
5 youth involved with child welfare services; and

6 (B) is language appropriate, gender appro-
7 priate, and culturally sensitive and respectful of
8 the complex social identities of the children and
9 youth, families, and adults currently or prospec-
10 tively participating in or receiving child welfare
11 services.

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

19 (f) DATA COLLECTION.—Using developmentally ap-
20 propriate best practices, the Secretary shall collect data
21 through the Adoption and Foster Care Analysis and Re-
22 porting System on—

23 (1) the sexual orientation and gender identity of
24 children and youth involved with child welfare serv-
25 ices and foster and adoptive parents; and

1 (2) whether family conflict related to the sexual
2 orientation or gender identity of a child or youth
3 was a factor in the removal of the child or youth
4 from the family.

5 (g) NATIONAL RESOURCE CENTER ON SAFETY,
6 WELL-BEING, PLACEMENT STABILITY, AND PERMA-
7 NENCY FOR LGBTQ CHILDREN AND YOUTH INVOLVED
8 WITH CHILD WELFARE SERVICES.—

9 (1) IN GENERAL.—The Secretary shall establish
10 and maintain the National Resource Center on Safe-
11 ty, Well-Being, Placement Stability, and Perma-
12 nency for LGBTQ Children and Youth Involved with
13 Child Welfare Services (referred to in this Act as the
14 “National Resource Center”) that will promote well-
15 being, safety, permanency, stability, and family
16 placement for LGBTQ children and youth involved
17 with child welfare services, through training, tech-
18 nical assistance, actions, and guidance that—

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

23 (B) promote the provision of child welfare
24 services that address the specific needs of

1 LGBTQ children and youth involved with child
2 welfare services and their families;

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

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

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

19 (F) initiate other actions that improve
20 safety, well-being, placement stability, and per-
21 manency outcomes for LGBTQ children and
22 youth involved with child welfare services at the
23 State and local level.

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

4 (3) AUTHORIZATION OF APPROPRIATIONS.—
5 There are authorized to be appropriated to the Sec-
6 retary such sums as may be necessary to establish
7 and maintain the National Resource Center and
8 carry out the activities described in this subsection.

9 (h) DEADLINE FOR COMPLIANCE.—

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

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

1 (3) AUTHORITY TO WITHHOLD FUNDS.—If the
2 Secretary finds that a covered entity has failed to
3 comply with this Act, the Secretary may withhold
4 payment to the State of amounts otherwise payable
5 to the State under part B or E of title IV of the
6 Social Security Act (42 U.S.C. 621 et seq.; 42
7 U.S.C. 670 et seq.), to the extent determined by the
8 Secretary.

9 (i) GAO STUDY.—

10 (1) IN GENERAL.—Not later than 3 years after
11 the date of enactment of this Act, the Comptroller
12 General of the United States shall conduct a study
13 to determine whether the States have substantially
14 complied with this Act, including specifically whether
15 the States have—

16 (A) eliminated all policies, practices, or
17 laws that permit a covered entity to violate sub-
18 section (a);

19 (B) provided necessary training and tech-
20 nical support to covered entities to ensure all
21 services to children and youth involved with
22 child welfare services are carried out in a non-
23 discriminatory, affirming, safe, and culturally
24 competent manner;

1 (C) collected data necessary to accom-
2 plishing the purposes of this Act, and ensured
3 that the data is appropriately safeguarded, in-
4 cluding data related to—

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

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

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

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

20 (D) ensured that covered entities—

21 (i) are in compliance with this Act;
22 and

23 (ii) have implemented procedures for
24 children and youth involved with child wel-
25 fare services, or individuals or families par-

1 participating in, or seeking to participate in,
 2 child welfare services, to report violations
 3 of this Act.

4 (2) REPORT TO THE CONGRESS.—Not later
 5 than 6 months after completing the study required
 6 by paragraph (1), the Comptroller General shall sub-
 7 mit to the Committee on Ways and Means of the
 8 House of Representatives and the Committee on Fi-
 9 nance of the Senate a written report that contains
 10 the results of the study.

11 (j) RELATION TO OTHER LAWS.—

12 (1) RULE OF CONSTRUCTION.—Nothing in this
 13 Act shall be construed to invalidate or limit rights,
 14 remedies, or legal standards under title VI of the
 15 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

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

21 (k) DEFINITIONS.—In this section:

22 (1) CHILD OR YOUTH INVOLVED WITH CHILD
 23 WELFARE SERVICES.—The term “child or youth in-
 24 volved with child welfare services” means an indi-
 25 vidual, aged 23 or younger, who participates in child

1 welfare programs or services that receive Federal fi-
2 nancial assistance under part A, B, or E of title IV
3 of the Social Security Act (42 U.S.C. 601 et seq.;
4 42 U.S.C. 621 et seq.; 42 U.S.C. 670 et seq.), title
5 XIX of the Social Security Act (42 U.S.C. 1396 et
6 seq.), or title XX of the Social Security Act (42
7 U.S.C. 1397 et seq.).

8 (2) CONVERSION THERAPY.—

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

17 (B) EXCLUSIONS.—The term “conversion
18 therapy” does not include counseling that pro-
19 vides assistance to an individual undergoing
20 gender transition, or counseling that provides
21 acceptance, support, and understanding of an
22 individual or facilitates an individual with cop-
23 ing, social support, and identity exploration and
24 development, including sexual orientation-neu-

1 tral interventions to prevent or address unlaw-
2 ful conduct or unsafe sexual practices.

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

5 (A) receives Federal financial assistance
6 under part A, B, or E of title IV of the Social
7 Security Act (42 U.S.C. 601 et seq.; 42 U.S.C.
8 621 et seq.; 42 U.S.C. 670 et seq.), title XIX
9 of the Social Security Act (42 U.S.C. 1396 et
10 seq.), or title XX of the Social Security Act (42
11 U.S.C. 1397 et seq.); and

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

14 (4) GENDER IDENTITY.—The term “gender
15 identity” means the gender-related identity, appear-
16 ance, mannerisms, or other gender-related character-
17 istics of an individual, regardless of the designated
18 sex of the individual at birth.

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

24 (A) the religion, sex (including sexual ori-
25 entation and gender identity), or marital status,

1 respectively, of another person with whom the
2 individual is or has been associated; and

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

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

9 (7) SEX.—The term “sex” includes—

10 (A) a sex stereotype;

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

13 (C) sexual orientation or gender identity;
14 and

15 (D) sex characteristics, including intersex
16 traits.

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

20 (9) STATE.—The term “State” means each of
21 the 50 States of the United States, the District of
22 Columbia, the Commonwealth of Puerto Rico, the
23 United States Virgin Islands, Guam, the Common-

- 1 wealth of the Northern Mariana Islands, and Amer-
- 2 ican Samoa.

