

115TH CONGRESS
1ST SESSION

S. 1303

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2017

Mrs. GILLIBRAND (for herself, Mr. FRANKEN, Mr. BROWN, Mr. SANDERS, Mr. WYDEN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

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”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

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

1 (1) There is a shortage of qualified individuals
2 willing to adopt or foster a child in the child welfare
3 system. As a result, thousands of foster children
4 lack a permanent and safe home.

5 (2) In order to open more homes to foster chil-
6 dren, child welfare agencies should work to eliminate
7 sexual orientation, gender identity, and marital sta-
8 tus discrimination and bias in adoption and foster
9 care recruitment, selection, and placement proce-
10 dures.

11 (3) Of the estimated 427,910 children in the
12 United States foster care system, more than
13 111,820 cannot return to their original families and
14 are legally free for adoption.

15 (A) 53,549 children were adopted in 2015,
16 while 20,789 youth “aged out” of the foster
17 care system.

18 (B) Research shows that youth who “age
19 out” of the foster care system are at a high risk
20 for poverty, homelessness, incarceration, and
21 early parenthood.

22 (C) Increasing adoption rates, in addition
23 to establishing permanency and decreasing risk
24 factors for foster youth, can yield annual na-

1 tional cost savings between \$3,300,000,000 and
2 \$6,300,000,000.

3 (4) Experts agree that in many States, lesbian,
4 gay, bisexual, and transgender youth experience dis-
5 crimination, harassment, and violence in the foster
6 care system because of their sexual orientation or
7 gender identity.

8 (5) Approximately 60 percent of homeless les-
9 bian, gay, bisexual, and transgender youth were pre-
10 viously in foster care. According to the Urban Jus-
11 tice Center, many of these young people reported
12 that living on the streets felt “safer” than living in
13 their group or foster home.

14 (6) According to the Williams Institute, an esti-
15 mated 19 percent of same-sex couple households in-
16 clude children under 18 years of age.

17 (7) The Williams Institute estimates that
18 3,000,000 lesbian, gay, bisexual, and transgender
19 people have had a child and as many as 6,000,000
20 American adults and children have a lesbian, gay,
21 bisexual, or transgender parent. Among adults under
22 50 years of age living alone or with a spouse or
23 partner, 48 percent of lesbian, bisexual, or
24 transgender women are raising a child under 18

1 years of age, and 20 percent of gay, bisexual, or
2 transgender men are doing so.

3 (8) As of 2013, same-sex couples are raising
4 1.4 percent of adopted children with 2 parents and
5 are fostering 1.7 percent of foster children living
6 with 2 parents. A 2007 report from the Williams In-
7 stitute found that an additional 2,000,000 gay, les-
8 bian, and bisexual individuals are interested in adop-
9 tion.

10 (9) According to the Williams Institute/Urban
11 Institute, same-sex couples raising adopted children
12 tend to be older than, just as educated as, and have
13 access to the same economic resources as other
14 adoptive parents. Studies confirm that children with
15 same-sex parents have the same advantages and
16 same expectations for health, social, and psycho-
17 logical adjustment, and development as children
18 whose parents are heterosexual.

19 (A) The practice of prohibiting applicants
20 from becoming foster parents or adopting chil-
21 dren solely on the basis of sexual orientation,
22 gender identity, or marital status has resulted
23 in reducing the number of qualified adoptive
24 and foster parents overall and denying gay, les-
25 bian, bisexual, and unmarried relatives the op-

1 portunity to become foster parents for their
2 own kin, including grandchildren, or to adopt
3 their own kin, including grandchildren, from
4 foster care.

5 (B) According to the Williams Institute, as
6 of 2013, more than 3,400 children are currently
7 in foster placements with same-sex couples. An-
8 other 22,000 children are being raised by same-
9 sex adoptive couples. If other States followed
10 the minority of States and discriminated
11 against qualified individuals because of their
12 sexual orientation, gender identity, or marital
13 status, foster care expenditures would increase
14 between \$87,000,000 and \$130,000,000 per
15 year in order to pay for additional institutional
16 and group care, as well as to recruit and train
17 new foster and adoptive parents.

18 (10) Some States allow 1 member of an unmar-
19 ried couple to adopt, but do not recognize both mem-
20 bers of the unmarried couple as the child's legal par-
21 ents. Recognition of joint adoption by unmarried
22 couples provides children with the same rights and
23 security that children of married parents enjoy.
24 These protections include access to both parents'
25 health benefits, survivor's, Social Security, and child

1 support entitlements, legal grounds for either parent
2 to provide consent for medical care, education, and
3 other important decisions, as well as the establish-
4 ment of permanency for parents and child.

5 (11) Professional organizations in the fields of
6 medicine, psychology, law, and child welfare have
7 taken official positions in support of the ability of
8 qualified gay, lesbian, bisexual, and unmarried cou-
9 ples to foster and adopt a child, as supported by sci-
10 entific research showing sexual orientation as a non-
11 determinative factor in parental success.

12 (12) Several States have passed, and a number
13 of additional States have proposed, “conscience
14 clause” laws that permit agencies and case workers
15 to delay or deny placements to anyone with whom
16 they have a religious or moral objection.

17 (13) Discrimination against potential foster or
18 adoptive parents based on sexual orientation, gender
19 identity, or marital status is not in the best interests
20 of children in the foster care system.

21 (b) PURPOSES.—The purposes of this Act are to de-
22 crease the length of time that children wait for perma-
23 nency with a loving family and to promote the best inter-
24 ests of children in the child welfare system by preventing
25 discrimination in adoption and foster care placements

1 based on sexual orientation, gender identity, or marital
2 status.

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

4 (a) ACTIVITIES.—

5 (1) PROHIBITION.—An entity that receives Fed-
6 eral assistance or contracts with an entity that re-
7 ceives Federal assistance, and is involved in adoption
8 or foster care placements may not—

9 (A) deny to any person the opportunity to
10 become an adoptive or a foster parent on the
11 basis of the sexual orientation, gender identity,
12 or marital status of the person, or the sexual
13 orientation or gender identity of the child in-
14 volved;

15 (B) delay or deny the placement of a child
16 for adoption or into foster care on the basis of
17 the sexual orientation, gender identity, or mar-
18 ital status of any prospective adoptive or foster
19 parent, or the sexual orientation or gender iden-
20 tity of the child; or

21 (C) require different or additional
22 screenings, processes, or procedures for adop-
23 tive or foster placement decisions on the basis
24 of the sexual orientation, gender identity, or
25 marital status of the prospective adoptive or

1 foster parent, or the sexual orientation or gen-
2 der identity of the child involved.

3 (2) DEFINITION OF PLACEMENT DECISION.—In
4 this section, the term “placement decision” means
5 the decision to place, or to delay or deny the place-
6 ment of, a child in a foster care or an adoptive
7 home, and includes the decision of the agency or en-
8 tity involved to seek the termination of birth parent
9 rights or otherwise make a child legally available for
10 adoptive placement.

11 (b) EQUITABLE RELIEF.—Any individual who is ag-
12 grieved by an action in violation of subsection (a) may
13 bring an action seeking relief in a United States district
14 court of appropriate jurisdiction.

15 (c) FEDERAL GUIDANCE.—Not later than 6 months
16 after the date of enactment of this Act, the Secretary of
17 Health and Human Services shall publish guidance to con-
18 cerned entities with respect to compliance with this sec-
19 tion.

20 (d) TECHNICAL ASSISTANCE.—In order to ensure
21 compliance with, and ensure understanding of the legal,
22 practice, and culture changes required by, this Act in mak-
23 ing foster care and adoption placement decisions, the Sec-
24 retary shall provide technical assistance to all entities cov-
25 ered by this Act, including—

1 (1) identifying laws and regulations inconsistent
2 with this Act and providing guidance and training to
3 ensure the laws and regulations are brought into
4 compliance within the prescribed period of time;

5 (2) identifying casework practices and proce-
6 dures inconsistent with this Act and providing guid-
7 ance and training to ensure the practices and proce-
8 dures are brought into compliance within the pre-
9 scribed period of time;

10 (3) providing guidance in expansion of recruit-
11 ment efforts to ensure consideration of all interested
12 and qualified prospective adoptive and foster parents
13 regardless of the sexual orientation, gender identity,
14 or marital status of the prospective parent;

15 (4) comprehensive cultural competency training
16 for covered entities and prospective adoptive and fos-
17 ter parents; and

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

21 (e) DEADLINE FOR COMPLIANCE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), an entity that receives Federal assistance
24 and is involved with adoption or foster care place-
25 ments shall comply with this section not later than

1 6 months after publication of the guidance referred
2 to in subsection (c), or 1 year after the date of en-
3 actment of this Act, whichever occurs first.

4 (2) AUTHORITY TO EXTEND DEADLINE.—If a
5 State demonstrates to the satisfaction of the Sec-
6 retary of Health and Human Services that it is nec-
7 essary to amend State statutory law in order to
8 change a particular practice that is inconsistent with
9 this section, the Secretary may extend the compli-
10 ance date for the State and any entities in the State
11 that are involved with adoption or foster care place-
12 ments a reasonable number of days after the close
13 of the 1st State legislative session beginning after
14 the date the guidance referred to in subsection (c)
15 is published.

16 (3) AUTHORITY TO WITHHOLD FUNDS.—If a
17 State fails to comply with this section, the Secretary
18 may withhold payment to the State of amounts oth-
19 erwise payable to the State under part B or E of
20 title IV of the Social Security Act (42 U.S.C. 621
21 et seq., 670 et seq.), to the extent the Secretary
22 deems the withholding necessary to induce the State
23 into compliance with this section.

24 (f) GAO STUDY.—

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

7 (A) eliminated policies, practices, or stat-
8 utes that deny to any otherwise qualified person
9 the opportunity to become an adoptive or foster
10 parent on the basis of the sexual orientation,
11 gender identity, or marital status of the person,
12 or the sexual orientation or gender identity of
13 the child involved;

14 (B) removed all program, policy, or statu-
15 tory barriers that delay or deny the placement
16 of a child for adoption or into foster care on the
17 basis of the sexual orientation, gender identity,
18 or marital status of any qualified, prospective
19 adoptive or foster parent, or the sexual orienta-
20 tion or gender identity of the child; and

21 (C) eliminated all different or additional
22 screenings, processes, or procedures for adop-
23 tive or foster placement decisions based on the
24 sexual orientation, gender identity, or marital
25 status of the prospective adoptive or foster par-

1 ent, or the sexual orientation or gender identity
2 of the child involved.

3 (2) REPORT TO CONGRESS.—Not later than 1
4 year after completing the study required by para-
5 graph (1), the Comptroller General shall submit to
6 Congress a written report that contains the results
7 of the study.

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