

113TH CONGRESS  
1ST SESSION

# S. 1069

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.

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## IN THE SENATE OF THE UNITED STATES

MAY 23, 2013

Mrs. GILLIBRAND (for herself, Mr. SCHUMER, Ms. WARREN, Mrs. MURRAY, Mr. WYDEN, Mr. FRANKEN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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”.

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

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

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

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

13 (3) Of the estimated 400,000 children in the  
14 United States foster care system, more than  
15 104,000 cannot return to their original families and  
16 are legally free for adoption.

17 (A) 50,516 children were adopted in 2011,  
18 while 26,286 youth “aged out” of the foster  
19 care system.

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

24 (C) Increasing adoption rates, in addition  
25 to establishing permanency and decreasing risk  
26 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 (10) An Evan B. Donaldson Adoption Institute  
20 study found that  $\frac{1}{3}$  of child welfare agencies in the  
21 United States reject gay, lesbian, and bisexual appli-  
22 cants.

23 (A) The practice of prohibiting applicants  
24 from becoming foster parents or adopting chil-  
25 dren solely on the basis of sexual orientation or

1 marital status has resulted in reducing the  
2 number of qualified adoptive and foster parents  
3 overall and denying gay, lesbian, bisexual, and  
4 unmarried relatives the opportunity to become  
5 foster parents for their own kin, including  
6 grandchildren, or to adopt their own kin, in-  
7 cluding grandchildren, from foster care.

8 (B) According to the Williams Institute,  
9 more than 3,400 children are currently in foster  
10 placements with same-sex couples. Another  
11 22,000 children are being raised by same-sex  
12 adoptive couples. If other States followed the  
13 minority of States and discriminated against  
14 qualified individuals because of their sexual ori-  
15 entation or marital status, foster care expendi-  
16 tures would increase between \$87,000,000 and  
17 \$130,000,000 per year in order to pay for addi-  
18 tional institutional and group care, as well as to  
19 recruit and train new foster and adoptive par-  
20 ents.

21 (11) Some States allow 1 member of a same-  
22 sex couple to adopt, but do not recognize both mem-  
23 bers of the couple as the child's legal parents. Rec-  
24 ognition of joint adoption provides children with the  
25 same rights and security that children of hetero-

1 sexual parents enjoy. These protections include ac-  
2 cess to both parents' health benefits, survivor's, So-  
3 cial Security, and child support entitlements, legal  
4 grounds for either parent to provide consent for  
5 medical care, education, and other important deci-  
6 sions, as well as the establishment of permanency  
7 for parents and child.

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

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

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

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

2 (a) ACTIVITIES.—

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

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

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

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

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

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

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

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

24                  (1) identifying laws and regulations inconsistent  
25                  with this Act and providing guidance and training to



1 ensure the laws and regulations are brought into  
2 compliance within the prescribed period of time;

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 within the pre-  
7 scribed period of time;

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

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

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

19 (e) DEADLINE FOR COMPLIANCE.—

20 (1) IN GENERAL.—Except as provided in para-  
21 graph (2), an entity that receives Federal assistance  
22 and is involved with adoption or foster care place-  
23 ments shall comply with this section not later than  
24 6 months after publication of the guidance referred

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

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

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

23 (f) GAO STUDY.—

24 (1) IN GENERAL.—Not later than 5 years after  
25 the date of enactment of this Act, the Comptroller

1 General of the United States shall conduct a study  
2 to determine whether the States have substantially  
3 complied with this Act, including specifically whether  
4 the States have—

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

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

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

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

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