

117TH CONGRESS
1ST SESSION

H. R. 5856

To amend parts B and E of title IV of the Social Security Act to expand nondiscrimination protections for children and families and offer greater flexibility to States before petitioning to terminate parental rights, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2021

Ms. BASS introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend parts B and E of title IV of the Social Security Act to expand nondiscrimination protections for children and families and offer greater flexibility to States before petitioning to terminate parental rights, 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 “21st Century Children
5 and Families Act”.

1 **SEC. 2. EXPANSION OF NONDISCRIMINATION PROTEC-**
2 **TIONS FOR CHILDREN AND FAMILIES IN**
3 **ADOPTION AND FOSTER CARE PLACEMENT.**

4 (a) STATE PLAN REQUIREMENTS RELATING TO
5 ADOPTION AND FOSTER CARE PLACEMENT.—Section
6 471(a)(18) of the Social Security Act (42 U.S.C.
7 671(a)(18)) is amended to read as follows:

8 “(18) provides that—

9 “(A) neither the State nor any other entity
10 in the State that receives funds from the Fed-
11 eral Government and is involved in adoption or
12 foster care placements may—

13 “(i) deny to any person the oppor-
14 tunity to become an adoptive or a foster
15 parent, on the basis of the race, color, sex
16 (including sexual orientation, gender iden-
17 tity, and gender expression), religion, or
18 national origin of the person, or of the
19 child, involved;

20 “(ii) delay or deny the provision of
21 foster care prevention support and services,
22 family preservation or reunification serv-
23 ices, kinship supports, or adoption or
24 guardianship subsidies to children, parents
25 or kin caregivers on the basis of the race,
26 color, sex (including sexual orientation,

gender identity, and gender expression),
religion, or national origin of the parent,
kin caregiver, or of the child, involved; or

“(iii) significantly delay or deny the
placement of a child for adoption or into
foster care, or otherwise discriminate in
making a placement decision solely on the
basis of the race, color, sex (including sex-
ual orientation, gender identity, and gen-
der expression), religion, or national origin
of the adoptive or foster parent, or the
child, involved; and

“(B) an agency or entity to which subpara-
graph (A) applies—

“(i) may consider, among the factors
used to determine the best interests of the
child, the capacity of the prospective foster
or adoptive parents to affirm the cultural,
ethnic, sexual orientation, gender identity,
gender expression, racial, or religious back-
ground of the child; and

“(ii) when requested by the child or a
parent of the child, shall consider, among
the factors used to determine the best in-
terests of the child—

1 “(I) the cultural, ethnic, sexual
2 orientation, gender identity, gender
3 expression, racial, or religious back-
4 ground of the child; and

5 “(II) the capacity of the prospec-
6 tive foster or adoptive parents to af-
7 firm the identities of the child;”.

8 (b) STATE PLAN REQUIREMENT RELATING TO PRO-
9 VISION OF CHILD WELFARE SERVICES.—Section
10 422(b)(7) of such Act (42 U.S.C. 622(b)(7)) is amended
11 by inserting “substantiate with clear and convincing data
12 and analysis that the child welfare agency is addressing
13 disproportionality in the State child welfare system, and
14 disparities in access to community-based services, array,
15 and contracting; and” before “provide”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall take effect on the 1st day of the
19 1st fiscal year beginning on or after the date of the
20 enactment of this Act, and shall apply to payments
21 under subpart 1 of part B and part E of title IV
22 of the Social Security Act for calendar quarters be-
23 ginning on or after such date.

24 (2) DELAY PERMITTED IF STATE LEGISLATION
25 REQUIRED.—If the Secretary of Health and Human

1 Services determines that State legislation (other
2 than legislation appropriating funds) is required in
3 order for a State plan developed pursuant to subpart
4 1 of part B or part E of title IV of the Social Secu-
5 rity Act to meet the additional requirements imposed
6 by the amendments made by this section, the plan
7 shall not be regarded as failing to meet any of the
8 additional requirements before the 1st day of the 1st
9 calendar quarter beginning after the first regular
10 session of the State legislature that begins after the
11 date of the enactment of this Act. For purposes of
12 the preceding sentence, if the State has a 2-year leg-
13 islative session, each year of the session is deemed
14 to be a separate regular session of the State legisla-
15 ture.

16 (3) APPLICATION TO PROGRAMS OPERATED BY
17 INDIAN TRIBAL ORGANIZATIONS.—In the case of an
18 Indian tribe, tribal organization, or tribal consortium
19 which the Secretary of Health and Human Services
20 determines requires time to take action necessary to
21 comply with the additional requirements imposed by
22 the amendments made by this section (whether the
23 tribe, organization, or tribal consortium has a plan
24 under section 479B of the Social Security Act or a
25 cooperative agreement or contract entered into with

1 a State), the Secretary shall provide the tribe, orga-
2 nization, or tribal consortium with such additional
3 time as the Secretary determines is necessary for the
4 tribe, organization, or tribal consortium to take the
5 action to comply with the additional requirements
6 before being regarded as failing to comply with the
7 requirements.

8 **SEC. 3. GREATER FLEXIBILITY FOR STATES BEFORE PETI-**
9 **TIONING TO MODIFY PARENTAL RIGHTS.**

10 Section 475(5)(E) of the Social Security Act (42
11 U.S.C. 675(5)(E)) is amended—

12 (1) by striking “15 of the most recent 22
13 months” and inserting “24 consecutive months and
14 who is not in the care of kin (including fictive kin),
15 the State may consider filing or joining a petition
16 for modification or termination of parental rights
17 only after demonstrating by clear and convincing
18 evidence that the State has provided to the family of
19 the child such services, supports, and time needed to
20 address the reasons for foster care and enable the
21 family to safely reunify, and by demonstrating com-
22 pelling reasons why the modification or termination
23 is in the best interest of the child, and if the child
24 is living with a kinship (including fictive kinship)
25 caregiver, the State agency shall provide a meaning-

1 ful opportunity for the kinship (including fictive kin-
2 ship) caregiver to express whether modification or
3 termination is or is not in the best interests of the
4 child and shall document such in the case plan of
5 the child”;

6 (2) by striking clause (i) and redesignating
7 clauses (ii) and (iii) as clauses (i) and (ii), respec-
8 tively;

9 (3) in clause (ii) (as so redesignated by para-
10 graph (2) of this section), by striking the semicolon
11 and inserting a comma; and

12 (4) by inserting after and below clause (ii) (as
13 so redesignated) the following:

14 “except that, in the case of a child to whom
15 this subparagraph applies solely because the
16 child has been in foster care under the responsi-
17 bility of the State for 24 consecutive months
18 and is not in the care of kin (including fictive
19 kin), the State may not file or join such a peti-
20 tion if a parent of the child is actively engaged
21 in services to address the reasons the child en-
22 tered care (including treatment for substance
23 use disorder, mental health concerns, or par-
24 enting skills), if based principally on the incar-
25 ceration of a parent, or if based principally on

1 the detention of the parent by the Department
2 of Homeland Security or the deportation of the
3 parent;”.

4 **SEC. 4. EXPANSION OF PURPOSES OF COURT IMPROVE-**
5 **MENT PROGRAM.**

6 (a) IN GENERAL.—Section 438 of the Social Security
7 Act (42 U.S.C. 629h) is amended—

8 (1) in subsection (a)(2)—

9 (A) in the matter preceding subparagraph
10 (A), by striking “state” and inserting “State”;

11 (B) in subparagraph (A)—

12 (i) by inserting “and their families”
13 before “in a timely and complete manner”;
14 and

15 (ii) by striking “, as set forth in the
16 Adoption and Safe Families Act of 1997
17 (Public Law 105–89), including the re-
18 quirements in the Act related to concu-
19 rent planning”;

20 (C) in subparagraph (B), by striking
21 “and” at the end;

22 (D) in subparagraph (C), by adding “and”
23 at the end; and

24 (E) by adding at the end the following:

1 “(D) to increase access to high quality
2 legal representation at all stages of a child wel-
3 fare case for all parties to the case, including
4 the children, the parents of the children, and,
5 where applicable, kinship care providers and In-
6 dian tribes;”; and

7 (2) by striking subsection (b) and inserting the
8 following:

9 “(b) APPLICATIONS.—In order to be eligible to re-
10 ceive a grant under this section, a highest State court shall
11 have in effect a rule requiring State courts to ensure that
12 foster parents, pre-adoptive parents, and kinship (includ-
13 ing fictive kinship) caregivers of a child in foster care
14 under the responsibility of the State are notified of any
15 proceeding to be held with respect to the child, shall pro-
16 vide for the training of judicial officers, attorneys, and
17 court and child welfare staff in child welfare cases on Fed-
18 eral child welfare policies and payment limitations with re-
19 spect to children in foster care who are placed in settings
20 that are not a foster family home, and shall submit to
21 the Secretary an application at such time, in such form,
22 and including such information and assurances as the Sec-
23 retary may require, including—

24 “(1) a description of how courts and child wel-
25 fare agencies on the local and State levels will use

1 not less than 30 percent of grant funds to collabo-
2 rate and jointly plan for the collection and sharing
3 of all relevant data and information to demonstrate
4 how improved case tracking and analysis of child
5 abuse and neglect cases will produce safe and timely
6 permanency decisions;

7 “(2) a demonstration that a portion of the
8 grant will be used for cross-training initiatives that
9 are jointly planned and executed with the State
10 agency or any other agency under contract with the
11 State to administer the State program under the
12 State plan under subpart 1, the State plan approved
13 under section 434, or the State plan approved under
14 part E;

15 “(3) a demonstration that a portion of the
16 grant will be used to develop and implement, on an
17 ongoing and regular basis, training for judicial offi-
18 cers, attorneys, and court and child welfare staff on
19 race, culture, and equity, and, in the development
20 and implementation of that training, will include
21 current and former foster children, parents who have
22 experienced child removals by State child welfare
23 agencies, and kinship (including fictive kinship) care
24 providers; and

1 “(4) a demonstration of meaningful and ongoing
2 collaboration among the courts in the State, the
3 State agency or any other agency under contract
4 with the State who is responsible for administering
5 the State program under part B or E, and, where
6 applicable, Indian tribes.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) of this section shall take effect on October
9 1, 2021, immediately after the amendments made by section
10 305(b) of division CC of the Consolidated Appropriations
11 Act, 2021 (Public Law 116–260) take effect.

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