

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.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2021

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

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## 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,

1 gender identity, and gender expression),  
2 religion, or national origin of the parent,  
3 kin caregiver, or of the child, involved; or  
4 “(iii) significantly delay or deny the  
5 placement of a child for adoption or into  
6 foster care, or otherwise discriminate in  
7 making a placement decision solely on the  
8 basis of the race, color, sex (including sex-  
9 ual orientation, gender identity, and gen-  
10 der expression), religion, or national origin  
11 of the adoptive or foster parent, or the  
12 child, involved; and

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

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

22 “(ii) when requested by the child or a  
23 parent of the child, shall consider, among  
24 the factors used to determine the best in-  
25 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;”;

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           ing 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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