

118TH CONGRESS  
1ST SESSION

# S. 1839

To improve Federal population surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation, gender identity, and variations in sex characteristics in certain surveys, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Ms. BALDWIN (for herself, Mr. MERKLEY, Mr. BOOKER, Ms. WARREN, Mr. BLUMENTHAL, Mr. PADILLA, Mr. FETTERMAN, Mr. MURPHY, Mr. DURBIN, Mrs. MURRAY, Mr. MARKEY, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. BROWN, Mr. MENENDEZ, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To improve Federal population surveys by requiring the collection of voluntary, self-disclosed information on sexual orientation, gender identity, and variations in sex characteristics in certain surveys, 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 “LGBTQI+ Data In-  
5 clusion Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) In its 2023 Federal Evidence Agenda on  
4 LGBTQI+ Equity, the Subcommittee on Sexual  
5 Orientation, Gender Identity, and Variations in Sex  
6 Characteristics (in this section referred to as  
7 “SOGI”) Data that operates as part of the Sub-  
8 committee on Equitable Data of the National  
9 Science and Technology Council found that—

10 (A) SOGI data collection can and should  
11 become part of standard demographic data col-  
12 lection throughout Federal agencies; and

13 (B) the collection of quality data on  
14 LGBTQI+ populations is essential for evi-  
15 dence-based policymaking and programmatic  
16 decision making.

17 (2) The National Academies on Sciences, Engi-  
18 neering, and Medicine (in this section referred to as  
19 “NASEM”), in their 2022 report, found that com-  
20 plete and accurate demographic information on the  
21 LGBTQI+ community should be standardized and  
22 collected.

23 (3) Comprehensive statistics are needed to in-  
24 form public policy and Federal programs.

25 (4) The availability of data also has a critical  
26 role in ensuring that any disparities in areas like

1 health outcomes, housing, and employment can be  
2 addressed.

3 (5) As of the March release of the NASEM re-  
4 port, limited Federal surveys collect data on sexual  
5 orientation and gender, with none currently meas-  
6 uring intersex populations.

7 (6) The integrity of the Federal statistical sys-  
8 tem relies on the ability of agencies to determine the  
9 content of their statistical surveys based on consider-  
10 ations of relevance, timeliness, accuracy, objectivity,  
11 and ability to maintain confidentiality.

12 **SEC. 3. REQUIREMENT TO COLLECT DATA ON SEXUAL ORI-**  
13 **ENTATION, GENDER IDENTITY, AND VARI-**  
14 **ATIONS IN SEX CHARACTERISTICS.**

15 (a) DEFINITIONS.—In this section:

16 (1) AGENCY.—The term “agency” has the  
17 meaning given the term in section 551 of title 5,  
18 United States Code.

19 (2) COVERED SURVEY.—The term “covered  
20 survey” means a survey that includes demographic  
21 data in which—

22 (A) a subject self-reports information; or

23 (B) a knowledgeable proxy (including a  
24 proxy of a deceased individual, if applicable)

1 provides information about the subject or re-  
2 sponds for all individuals in a household.

3 (3) DEMOGRAPHIC DATA.—The term “demo-  
4 graphic data” means information about the race or  
5 ethnicity, sex, and age of a survey participant or  
6 population.

7 (4) GENDER IDENTITY.—The term “gender  
8 identity” means the gender-related identity, appear-  
9 ance, mannerism, or other gender-related char-  
10 acteristic of an individual, regardless of the des-  
11 ignated sex at birth of the individual.

12 (5) SEXUAL ORIENTATION.—The term “sexual  
13 orientation” means how a person identifies in terms  
14 of their emotional, romantic, or sexual attraction,  
15 and includes identification as straight, heterosexual,  
16 gay, lesbian, or bisexual, among other terms.

17 (6) SURVEY.—The term “survey”—

18 (A) means a data collection activity involv-  
19 ing a questionnaire for a sample of a popu-  
20 lation; and

21 (B) includes the decennial census.

22 (7) VARIATIONS IN SEX CHARACTERISTICS.—  
23 The term “variations in sex characteristics”—

24 (A) means a physical trait present at birth  
25 or naturally occurring at a later time, including

1           genitals, gonads, hormone function, and chro-  
2           mosome patterns, that differs from normative  
3           expectations for male or female bodies regard-  
4           ing the development, appearance, or function of  
5           sex-related characteristics; and

6                   (B) is sometimes referred to as intersex  
7           traits.

8           (b) SURVEY REQUIREMENT.—Not later than 360  
9           days after the date of enactment of this Act, the head of  
10          any agency that collects information through a covered  
11          survey for statistical purposes shall establish data stand-  
12          ards that require, with regard to the survey, the following:

13                   (1) REVIEW.—The review of covered surveys to  
14                  determine in which surveys information about sexual  
15                  orientation, gender identity, and variations in sex  
16                  characteristics is not included.

17                   (2) METHODS.—An identification of appro-  
18                  priate methods to include questions on sexual ori-  
19                  entation, gender identity, and variations in sex char-  
20                  acteristics in covered surveys that facilitate cat-  
21                  egorization and voluntary participation and preserve  
22                  privacy and confidentiality, including protocols for  
23                  anonymizing data collected and destroying personally  
24                  identifiable information at the appropriate time and

1 not later than 3 years after the date on which the  
2 information is collected.

3 (3) DATA COLLECTION.—The use of the appro-  
4 priate methods identified in paragraph (2) to gather  
5 data on sexual orientation, gender identity, and vari-  
6 ations in sex characteristics for any survey identified  
7 in paragraph (1).

8 (4) ASSESSMENT.—The implementation of a  
9 process to routinely assess needed changes in cov-  
10 ered survey methods related to asking questions on  
11 sexual orientation, gender identity, and variations in  
12 sex characteristics.

13 (c) DATA REPORTS; WAIVER.—

14 (1) DATA REPORTS.—Not later than 3 years  
15 after the date of enactment of this Act, any report  
16 published by an agency that relies on covered survey  
17 demographic data shall include information on sex-  
18 ual orientation, gender identity, and variations in  
19 sex characteristics.

20 (2) WAIVER.—The statistical official (as de-  
21 scribed in section 314 of title 5, United States Code)  
22 of each agency, or the head of the agency, for any  
23 agency that does not have a statistical official, may  
24 waive the requirement under paragraph (1), on a  
25 case-by-case basis, if—

1 (A) the laws, policies, and standards de-  
2 scribed in subsection (d) cannot be met; or

3 (B) adding such information to the survey  
4 would impair the ability of the agency to pre-  
5 serve the utility, accuracy, or objectivity of the  
6 survey while also generating relevant evidence  
7 about the LGBTQI+ community.

8 (d) CONFIDENTIALITY.—Any information collected  
9 relating to the sexual orientation, gender identity, or vari-  
10 ations in sex characteristics of a covered survey partici-  
11 pant shall be maintained in accordance with applicable  
12 confidentiality and privacy laws, policies, and standards.

13 (e) CONSTRUCTION.—Nothing in this Act shall be  
14 construed to require an individual to disclose their sexual  
15 orientation, gender identity, or variations in sex character-  
16 istics to an agency.

17 (f) REPORT.—Not later than 2 years after the date  
18 of enactment of this Act, the Comptroller General of the  
19 United States shall submit to Congress a report on the  
20 implementation of the requirements of this Act by agen-  
21 cies, including how the implementation of those require-  
22 ments by agencies affected the provision of services to per-  
23 sons according to the gender identity, sexual orientation,  
24 and variations in sex characteristics of the persons.

1       (g) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion shall be construed to permit the use of information  
3 collected under this section in a manner that—

4           (1) would adversely affect any individual; or

5           (2) is inconsistent with disclosure limitations  
6 established in any other law.

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