

115TH CONGRESS
2D SESSION

S. _____

To establish in the Bureau of Democracy, Human Rights, and Labor of the Department of State a Special Envoy for the Human Rights of LGBTI Peoples, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself, Mr. BOOKER, Ms. WARREN, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. COONS, Mrs. GILLIBRAND, Mr. BROWN, Mr. DURBIN, Mr. VAN HOLLEN, Mr. CARDIN, Mr. SANDERS, Ms. BALDWIN, Mr. MURPHY, Mr. NELSON, Mr. WYDEN, Mr. LEAHY, Mrs. MURRAY, Mr. CASEY, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish in the Bureau of Democracy, Human Rights, and Labor of the Department of State a Special Envoy for the Human Rights of LGBTI Peoples, 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 “International Human
5 Rights Defense Act of 2018”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Foreign Relations
7 and the Committee on Appropriations of the
8 Senate; and

9 (B) the Committee on Foreign Affairs and
10 the Committee on Appropriations of the House
11 of Representatives.

12 (2) GENDER IDENTITY.—The term “gender
13 identity” means the gender-related identity, appear-
14 ance, or mannerisms or other gender-related charac-
15 teristics of an individual, regardless of the individ-
16 ual’s designated sex at birth.

17 (3) INTERSEX.—The term “intersex” means in-
18 dividuals born with sex characteristics (including
19 genitals, gonads, or chromosome patterns) that vary
20 from typical binary notions of male or female bodies
21 and is an umbrella term used to describe a wide
22 range of natural bodily variations.

23 (4) LGBTI.—The term “LGBTI” means les-
24 bian, gay, bisexual, transgender, or intersex.

1 (5) SEX CHARACTERISTICS.—The term “sex
2 characteristics” means the chromosomal, gonadal, or
3 anatomical features of a person, including—

4 (A) primary characteristics, such as repro-
5 ductive organs and genitalia, chromosomal
6 structures, or hormones; and

7 (B) secondary characteristics, such as
8 muscle mass, hair distribution, breasts, or
9 structure.

10 (6) SEXUAL ORIENTATION.—The term “sexual
11 orientation” means actual or perceived homosex-
12 uality, heterosexuality, or bisexuality.

13 **SEC. 3. FINDINGS.**

14 Congress makes the following findings:

15 (1) Around the world, LGBTI people face vio-
16 lence, discrimination, hatred, and bigotry.

17 (2) Seventy-five countries criminalize same-sex
18 relations or prohibit the public support of the
19 LGBTI community. That is equal to nearly 40 per-
20 cent of United Nations member states.

21 (3) In several countries, homosexuality is a
22 crime that is punishable by death.

23 (4) Intersex people experience prejudice and
24 discrimination because their bodies do not conform
25 to other people’s expectations about sex and gender,

1 including the common performance of medically un-
2 necessary surgeries without the consent or approval
3 of intersex individuals.

4 (5) Violence and discrimination based on sexual
5 orientation and gender identity are documented in
6 the Department of State's annual Human Rights
7 Report to Congress. The 2016 report continues to
8 show a clear pattern of human rights violations in
9 every region of the world based on sexual orientation
10 and gender identity. These violations include mur-
11 der, rape, torture, death threats, extortion, and im-
12 prisonment, as well as loss of employment, housing,
13 access to health care, and other forms of societal
14 stigma and discrimination. The report further docu-
15 ments LGBTI-specific restrictions on basic freedoms
16 of assembly, press, and speech in every region of the
17 world.

18 (6) In Jamaica and other countries, discrimina-
19 tion against LGBTI people, including "corrective
20 rape" of lesbian women, occurs all too frequently
21 and with relative impunity.

22 (7) In 2013, the Russian Duma passed a law
23 banning so-called "homosexual propaganda", which
24 effectively makes it a crime to publicly support
25 LGBTI equality or even discuss homosexuality. This

1 pernicious law is the basis for similar so-called
2 “antipropaganda” legislation in countries across
3 Eastern Europe and Central Asia, including in
4 Moldova, Kyrgyzstan, and Belarus.

5 (8) In December 2013, the Government of Ni-
6 geria adopted a law that further criminalized same-
7 sex relations and support for LGBTI people, endan-
8 gering neighbors, friends, doctors, and landlords of
9 LGBTI people.

10 (9) Several countries in South Asia continue to
11 have draconian laws that criminalize homosexual
12 acts which place LGBTI people in danger and un-
13 dermines their ability to live free from persecution.

14 (10) In April 2014, the Supreme Court of India
15 recognized transgender people as a third gender, im-
16 proving the legal rights of transgender people in that
17 country. Though an important step, the decision
18 does not grant full legal rights to transgender peo-
19 ple.

20 (11) In February 2014, the Government of
21 Uganda adopted a law making “aggravated homo-
22 sexuality” a crime punishable with life imprisonment
23 and concurrently, the Government of Uganda also
24 passed laws severely limiting the basic freedoms of
25 speech and assembly for LGBTI citizens. While the

1 Constitutional Court overturned the Anti-Homosex-
2 uality Act on a technicality in August 2014, LGBTI
3 Ugandans continue to be subjected to discrimination
4 and violence, and their government has in recent
5 years forcibly shut down even private Pride celebra-
6 tions in Kampala.

7 (12) On April 1, 2017, the Russian newspaper
8 Novaya Gazeta reported that the government of the
9 autonomous republic of Chechnya had been arrest-
10 ing, detaining, and torturing gay and bisexual men
11 in secret prisons since early 2017. International
12 human rights groups and Russian LGBTI rights ac-
13 tivists estimate that as many as 20 people may have
14 been murdered thus far and potentially over 200
15 people were detained during the purge.

16 (13) On May 23, 2017, two gay men were pub-
17 licly caned in the Indonesian province of Aceh, while
18 thousands of spectators snapped pictures outside a
19 mosque as the brutal punishment was meted out.
20 Several times in 2017, Indonesian police have ar-
21 rested men at private parties, sometimes releasing
22 their photographs to the news media, endangering
23 their lives.

24 (14) In September 2017, reports emerged from
25 Azerbaijan that authorities had begun a crackdown

1 on gay men and transgender women, arresting more
2 than 60 and subjecting them to beatings, harass-
3 ment, torture, and blackmail.

4 (15) In September 2017, Egyptian authorities
5 arrested seven people for the “crime” of raising a
6 rainbow flag at a concert in Cairo in September
7 2017, leading to a wider crackdown on LGBTI
8 Egyptians.

9 (16) From September 2017 until the end of the
10 year, over 70 LGBTI Egyptians were arrested, with
11 dozens receiving prison sentences of up to 6 years.
12 In late 2017, Egyptian authorities instructed local
13 media to delete any positive references to LGBTI
14 people, and lawmakers proposed a bill that would
15 criminalize LGBTI people and their allies.

16 (17) Anti-LGBTI laws not only endanger all
17 LGBTI individuals, but also pose serious risks for
18 those associated with or caring for LGBTI people.
19 Studies have shown that when LGBTI people, espe-
20 cially LGBTI youth, face discrimination, they are
21 less likely to seek HIV testing, prevention, and
22 treatment services.

23 (18) According to the Trans Murder Monitoring
24 Project, which monitors homicides of transgender in-
25 dividuals, 2,343 transgender and gender-diverse peo-

1 ple were murdered between 2008 and 2016, in 69
2 countries. Violence against transgender individuals is
3 particularly alarming in Brazil, where 938
4 transgender individuals were murdered during this
5 time span.

6 (19) According to the International Guidelines
7 on HIV/AIDS and Human Rights, as published by
8 the United Nations High Commissioner for Human
9 Rights, and according to the July 2017 report of the
10 Independent Expert on protection against violence
11 and discrimination based on sexual orientation and
12 gender identity, countries should review and reform
13 criminal laws and correctional systems to ensure
14 that they are consistent with international human
15 rights obligations and are not misused or targeted
16 against vulnerable groups.

17 (20) Removing institutionalized discrimination
18 and targeted persecution against LGBTI people
19 around the world is a critical step in the promotion
20 of human rights and global health internationally.

21 (21) Anti-LGBTI laws and discrimination pose
22 significant risks for LGBTI youth who come out to
23 their family or community and often face rejection,
24 homelessness, and limited educational and economic
25 opportunities. These factors contribute to increased

1 risks of substance abuse, suicide, and HIV infection
2 among LGBTI youth.

3 (22) On December 6, 2011, President Barack
4 Obama released the Presidential Memorandum—
5 International Initiatives to Advance the Human
6 Rights of Lesbian, Gay, Bisexual, and Transgender
7 Persons. The memorandum directed all Federal
8 agencies engaged abroad to ensure that United
9 States diplomacy and foreign assistance promote and
10 protect the human rights of LGBTI persons.

11 (23) On February 23, 2015, Secretary of State
12 John Kerry appointed senior diplomat Randy Berry
13 as the State Department's first-ever Special Envoy
14 for the Human Rights of LGBTI Persons.

15 (24) On June 30, 2016, the United Nations
16 Human Rights Council passed a resolution cospon-
17 sored by the United States that established an inde-
18 pendent expert on violence and discrimination based
19 on sexual orientation and gender identity to help
20 monitor and track discrimination and violence expe-
21 rienced by LGBTI persons around the world.

22 (25) In November 2016, Tanzania placed a ban
23 on all HIV and AIDS outreach projects aimed at
24 gay men, including those funded by the President's
25 Emergency Plan for AIDS Relief. This forced the

1 closure of United States-funded programs providing
2 testing, condoms, and care to gay men, exacerbating
3 the health needs of gay men in Tanzania, about 30
4 percent of whom are HIV positive.

5 (26) In February 2017, three transgender
6 women were murdered in El Salvador with impunity,
7 leading the United Nations to call for an investiga-
8 tion into crimes against sexual and gender minorities
9 in that country. A 2016 report noted that
10 transgender women in El Salvador have an average
11 life expectancy of less than 35 years due to violence,
12 discrimination, and femicide.

13 **SEC. 4. STATEMENT OF POLICY.**

14 It is the policy of the United States—

15 (1) to take effective action to prevent and re-
16 spond to discrimination and violence against all peo-
17 ple on any basis internationally, including sexual ori-
18 entation, gender identity, and sex characteristics,
19 and that human rights policy includes attention to
20 criminalization, hate crimes, and other discrimina-
21 tion against LGBTI people;

22 (2) to systematically integrate and coordinate
23 into United States foreign policy efforts to prevent
24 and respond to criminalization, discrimination, and
25 violence against LGBTI people internationally;

1 (3) to support and build local capacity in coun-
2 tries around the world, including of governments at
3 all levels and nongovernmental organizations, to pre-
4 vent and respond to criminalization, discrimination,
5 and violence against LGBTI people internationally;

6 (4) to consult, cooperate, coordinate, and col-
7 laborate with a wide variety of nongovernmental
8 partners, including faith-based organizations and
9 LGBTI-led organizations, with demonstrated experi-
10 ence in preventing and responding to criminalization,
11 discrimination, and violence against LGBTI people
12 internationally;

13 (5) to employ a multisectoral approach to pre-
14 venting and responding to criminalization, discrimi-
15 nation, and violence against LGBTI people inter-
16 nationally, including activities in the economic, edu-
17 cation, health, nutrition, legal, and judicial sectors;

18 (6) to work at all levels, from the individual to
19 the family, community, local, national, and inter-
20 national levels, to prevent and respond to criminal-
21 ization, discrimination, and violence against LGBTI
22 people internationally;

23 (7) to enhance training by United States per-
24 sonnel of professional foreign military and police
25 forces and judicial officials to include appropriate

1 and thorough LGBTI-specific instruction on pre-
2 venting and responding to criminalization, discrimi-
3 nation, and violence based on sexual orientation and
4 gender identity;

5 (8) to engage non-LGBTI people as allies and
6 partners, as an essential element of making sus-
7 tained reductions in criminalization, discrimination,
8 and violence against LGBTI people internationally;

9 (9) to require that all Federal contractors and
10 grant recipients in the United States Government's
11 international programs establish appropriate policies
12 and take effective measures to ensure the protection
13 and safety of their staff and workplace, including
14 from discrimination and violence directed against
15 LGBTI people and those who provide services to
16 them;

17 (10) to exert sustained international leadership,
18 including in bilateral and multilateral fora, to pre-
19 vent and respond to criminalization, discrimination,
20 and violence against LGBTI people internationally;

21 (11) to fully implement and expand upon the
22 policies outlined in the Presidential Memorandum—
23 International Initiatives to Advance the Human
24 Rights of Lesbian, Gay, Bisexual, and Transgender
25 Persons;

1 (12) to ensure that international efforts to com-
2 bat HIV/AIDS take all appropriate measures to sup-
3 port at-risk communities, including LGBTI people,
4 and to create enabling legal environments for these
5 communities;

6 (13) to work with governments and nongovern-
7 mental partners around the world to develop and im-
8 plement regional strategies to decriminalize homo-
9 sexuality and to counteract the prohibition of public
10 support of LGBTI people; and

11 (14) to ensure that those who have a well-
12 founded fear of persecution on account of being
13 LGBTI or supporting LGBTI rights have the oppor-
14 tunity to seek protection in the United States.

15 **SEC. 5. SPECIAL ENVOY FOR THE HUMAN RIGHTS OF LGBTI**
16 **PEOPLE.**

17 (a) ESTABLISHMENT.—The Secretary of State shall
18 establish in the Bureau of Democracy, Human Rights,
19 and Labor (DRL) of the Department of State a perma-
20 nent Special Envoy for the Human Rights of LGBTI Peo-
21 ples (in this section referred to as the “Special Envoy”),
22 who shall be appointed by the President. The Special
23 Envoy shall report directly to the Assistant Secretary for
24 DRL.

1 (b) PURPOSE.—In addition to the duties described in
2 subsection (c) and those duties determined by the Sec-
3 retary of State, the Special Envoy shall direct efforts of
4 the United States Government relating to United States
5 foreign policy, as directed by the Secretary, regarding
6 human rights abuses against LGBTI people and commu-
7 nities internationally and the advancement of human
8 rights for LGBTI people, and shall represent the United
9 States internationally in bilateral and multilateral engage-
10 ment on such matters.

11 (c) DUTIES.—

12 (1) IN GENERAL.—The Special Envoy—

13 (A) shall serve as the principal advisor to
14 the Secretary of State regarding human rights
15 for LGBTI people internationally;

16 (B) shall, notwithstanding any other provi-
17 sion of law, direct activities, policies, programs,
18 and funding relating to the human rights of
19 LGBTI people and the advancement of LGBTI
20 equality initiatives internationally, for all bu-
21 reaus and offices of the Department of State
22 and shall lead the coordination of relevant
23 international programs for all other Federal
24 agencies relating to such matters;

1 (C) shall represent the United States in
2 diplomatic matters relevant to the human rights
3 of LGBTI people, including criminalization, dis-
4 crimination, and violence against LGBTI people
5 internationally;

6 (D) shall direct, as appropriate, United
7 States Government resources to respond to
8 needs for protection, integration, resettlement,
9 and empowerment of LGBTI people in United
10 States Government policies and international
11 programs, including to prevent and respond to
12 criminalization, discrimination, and violence
13 against LGBTI people internationally;

14 (E) shall design, support, and implement
15 activities regarding support, education, resettle-
16 ment, and empowerment of LGBTI people
17 internationally, including for the prevention and
18 response to criminalization, discrimination, and
19 violence against LGBTI people internationally;

20 (F) shall lead interagency coordination be-
21 tween the foreign policy priorities related to the
22 human rights of LGBTI people and the devel-
23 opment assistance priorities of the LGBTI Co-
24 ordinator of the United States Agency for
25 International Development;

1 (G) shall conduct regular consultation with
2 nongovernmental organizations working to pre-
3 vent and respond to criminalization, discrimina-
4 tion, and violence against LGBTI people inter-
5 nationally;

6 (H) shall ensure that programs, projects,
7 and activities of the Department of State and
8 the United States Agency for International De-
9 velopment designed to prevent and respond to
10 criminalization, discrimination, and violence
11 against LGBTI people internationally are sub-
12 ject to rigorous monitoring and evaluation, and
13 that there is a uniform set of indicators and
14 standards for such monitoring and evaluation
15 that is used across international programs in
16 Federal agencies; and

17 (I) is authorized to represent the United
18 States in bilateral and multilateral fora on mat-
19 ters relevant to the human rights of LGBTI
20 people internationally, including criminalization,
21 discrimination, and violence against LGBTI
22 people internationally.

23 (2) DATA REPOSITORY.—The Bureau of De-
24 mocracy, Human Rights, and Labor shall—

1 (A) be the central repository of data on all
2 United States programs, projects, and activities
3 that relate to prevention and response to crim-
4 inalization, discrimination, and violence against
5 LGBTI people internationally; and

6 (B) produce—

7 (i) a full accounting of United States
8 Government spending on such programs,
9 projects, and activities; and

10 (ii) evaluations of the effectiveness of
11 such programs, projects, and activities.

12 (d) BRIEFINGS AND ASSESSMENTS.—Not later than
13 180 days after the date of the enactment of this Act and
14 annually thereafter, the Special Envoy shall—

15 (1) brief the appropriate congressional commit-
16 tees on the status of the human rights of LGBTI
17 people internationally, as well as on the status of
18 programs and response strategies to address crim-
19 inalization, discrimination, and violence against
20 LGBTI people internationally; and

21 (2) submit to the appropriate congressional
22 committees an assessment of human and financial
23 resources necessary to fulfill the purposes and duties
24 of this Act.

1 (e) UNITED STATES POLICY TO PREVENT AND RE-
2 SPOND TO CRIMINALIZATION, DISCRIMINATION, AND VIO-
3 LENCE AGAINST LGBTI PEOPLE GLOBALLY.—

4 (1) GLOBAL STRATEGY REQUIREMENT.—Not
5 later than 180 days after the date of the enactment
6 of this Act and annually thereafter for each of the
7 following five years, the Special Envoy shall develop
8 or update, as the case may be, a United States glob-
9 al strategy to prevent and respond to criminaliza-
10 tion, discrimination, and violence against LGBTI
11 people internationally. The Special Envoy shall sub-
12 mit to the appropriate congressional committees
13 such global strategy and, if practicable, made such
14 global strategy available to the public.

15 (2) COLLABORATION AND COORDINATION.—In
16 developing the global strategy described in para-
17 graph (1), the Special Envoy shall consult with—

18 (A) mid- and high-level officials of relevant
19 Federal agencies; and

20 (B) representatives of nongovernmental or-
21 ganizations with demonstrated experience in ad-
22 dressing criminalization, discrimination, and vi-
23 olence against LGBTI people internationally or
24 promoting equal rights for LGBTI people inter-
25 nationally.

1 (f) MONITORING THE UNITED STATES STRATEGY TO
2 PREVENT AND RESPOND TO CRIMINALIZATION, DISCRIMI-
3 NATION, AND VIOLENCE AGAINST THE LGBTI PEOPLE
4 AND COMMUNITIES INTERNATIONALLY.—

5 (1) IN GENERAL.—In each global strategy sub-
6 mitted under subsection (e), the Special Envoy shall
7 include an analysis of best practices for preventing
8 and addressing criminalization, discrimination, and
9 violence against LGBTI people and communities
10 internationally, including—

11 (A) a description of successful efforts by
12 foreign governments and nongovernmental or-
13 ganizations to prevent and respond to criminal-
14 ization, discrimination, and violence against
15 LGBTI people and communities internationally;

16 (B) recommendations related to best prac-
17 tices, effective strategies, and improvements to
18 enhance the impact of such prevention and re-
19 sponse efforts; and

20 (C) the impact of activities funded by such
21 global strategy in preventing and reducing
22 criminalization, discrimination, and violence
23 against LGBTI people and communities inter-
24 nationally.

1 (2) INFORMATION REQUIRED TO BE INCLUDED
2 IN ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS
3 PRACTICES.—

4 (A) SECTION 116.—Subsection (d) of sec-
5 tion 116 of the Foreign Assistance Act of 1961
6 (22 U.S.C. 2151n) is amended—

7 (i) in paragraph (11)(C), by striking
8 “and” after the semicolon at the end;

9 (ii) in paragraph (12)(C)(ii), by strik-
10 ing the period at the end and inserting “;
11 and”; and

12 (iii) by adding at the end the fol-
13 lowing new paragraph:

14 “(13) wherever applicable, the nature and ex-
15 tent of criminalization, discrimination, and violence
16 based on sexual orientation and gender identity, in-
17 cluding an identification of those countries that have
18 adopted laws or constitutional provisions that crim-
19 inalize or discriminate based on sexual orientation or
20 gender identity (as such terms are defined in section
21 2 of the International Human Rights Defense Act of
22 2018), including detailed descriptions of such laws
23 and provisions.”.

1 (B) SECTION 502B.—Section 502B of the
2 Foreign Assistance Act of 1961 (22 U.S.C.
3 2304) is amended—

4 (i) by redesignating the second sub-
5 section (i) (relating to child marriage sta-
6 tus) as subsection (j); and

7 (ii) by adding at the end the following
8 new subsection:

9 “(k) SEXUAL ORIENTATION AND GENDER IDEN-
10 TITY.—The report required under subsection (b) shall in-
11 clude, wherever applicable, the nature and extent of crim-
12 inalization, discrimination, and violence based on sexual
13 orientation and gender identity, including an identification
14 of those countries that have adopted laws or constitutional
15 provisions that criminalize or discriminate based on sexual
16 orientation or gender identity (as such terms are defined
17 in section 2 of the International Human Rights Defense
18 Act of 2018), including detailed descriptions of such laws
19 and provisions.”.

1 **SEC. 6. IMPLEMENTATION OF THE UNITED STATES STRAT-**
2 **EGY TO PREVENT AND RESPOND TO CRIM-**
3 **INALIZATION, DISCRIMINATION, AND VIO-**
4 **LENCE AGAINST LGBTI PEOPLE AND COMMU-**
5 **NITIES INTERNATIONALLY.**

6 The Secretary of State and the Administrator of the
7 United States Agency for International Development are
8 authorized to provide assistance to prevent and respond
9 to criminalization, discrimination, and violence against
10 LGBTI people internationally. Such assistance may in-
11 clude the following activities:

12 (1) Development and implementation of pro-
13 grams, such as the Global Equality Fund of the De-
14 partment of State, that respond to human rights
15 abuses and economic exclusion of LGBTI people in
16 the workplace and in public.

17 (2) Development and enforcement of civil and
18 criminal legal and judicial sanctions, protection,
19 training, and capacity.

20 (3) Enhancement of health sector capacity to
21 detect, prevent, and respond to violence against
22 LGBTI people and communities internationally, and
23 to combat HIV/AIDS in the LGBTI community
24 internationally, in close coordination with the Office
25 of the Global AIDS Coordinator and Health Diplo-
26 macy of the Department of State.

- 1 (4) Development of a leadership program for
- 2 international LGBTI activists that will foster col-
- 3 laboration and knowledge sharing across the world.