

115TH CONGRESS
1ST SESSION

S. 328

To enforce the Sixth Amendment right to the assistance of effective counsel at all stages of the adversarial process, to confer jurisdiction upon the district courts of the United States to provide declaratory and injunctive relief against systemic violations of such right, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To enforce the Sixth Amendment right to the assistance of effective counsel at all stages of the adversarial process, to confer jurisdiction upon the district courts of the United States to provide declaratory and injunctive relief against systemic violations of such right, 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 “Equal Justice Under
5 Law Act of 2017”.

1 **SEC. 2. EFFECTIVE ASSISTANCE OF COUNSEL.**

2 (a) IN GENERAL.—An indigent individual facing
3 criminal prosecution or juvenile delinquency in a State
4 court shall be entitled to the effective assistance of coun-
5 sel, as guaranteed by the Sixth and Fourteenth Amend-
6 ments to the Constitution of the United States, at the ex-
7 pense of the State.

8 (b) DELEGATION.—If a State delegates fiscal or ad-
9 ministrative authority over the indigent defense function
10 to a political subdivision of the State, the State shall se-
11 cure effective assistance of counsel for the individual.

12 (c) INEFFECTIVE ASSISTANCE.—For purposes of this
13 section, the assistance of counsel is ineffective if the per-
14 formance of counsel was not reasonable under prevailing
15 professional norms.

16 **SEC. 3. REMEDY.**

17 (a) CLASS ACTION AUTHORIZED.—If a State official
18 or one or more of a political subdivision of the State fails
19 on a systemic basis to guarantee the right to the assist-
20 ance of effective counsel as guaranteed by the Sixth and
21 Fourteenth Amendments to the Constitution of the United
22 States, an individual aggrieved by a violation of section
23 2 may commence a civil class action in an appropriate dis-
24 trict court of the United States to seek declaratory, in-
25 junctive, or other equitable relief.

1 (b) ABSTENTION DOCTRINE.—A court entertaining a
 2 petition for relief filed under this Act need not apply the
 3 abstention doctrine established in *Younger v. Harris* (401
 4 U.S. 37).

5 (c) ATTORNEY’S FEES.—In any action or proceeding
 6 under this section, the court, in its discretion, may allow
 7 the prevailing party, other than a named official of a State
 8 or political subdivision of a State, a reasonable attorney’s
 9 fee as part of the costs. In awarding an attorney’s fee
 10 under this subsection, the court, in its discretion, may in-
 11 clude expert fees as part of the attorney’s fee.

12 (d) SAVINGS PROVISION.—Nothing in this section
 13 shall restrict any right that any individual has under any
 14 other statute or under common law to seek redress for
 15 a violation of the right to counsel.

16 **SEC. 4. EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE**
 17 **GRANT PROGRAM.**

18 Section 501(b) of the Omnibus Crime Control and
 19 Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended
 20 by inserting “, in consultation with public defenders,” be-
 21 fore “may”.

