

116TH CONGRESS
1ST SESSION

S. 1377

To incentivize States and localities to improve access to justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2019

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

A BILL

To incentivize States and localities to improve access to justice, 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 “Ensuring Quality Ac-
5 cess to Legal Defense Act of 2019” or the “EQUAL De-
6 fense Act of 2019”.

7 **SEC. 2. PURPOSE.**

8 The purpose of this Act is—

9 (1) to protect the rights of defendants in crimi-
10 nal cases to due process and a fair trial under the

1 Fifth, Sixth, and Fourteenth Amendments to the
 2 Constitution of the United States, including the
 3 right to counsel in State criminal trials, as articu-
 4 lated by the United States Supreme Court in *Gideon*
 5 *v. Wainwright*, 372 U.S. 335 (1963);

6 (2) to collect data related to public defense in
 7 order to facilitate the development of evidence-based
 8 workload limits, and for other purposes; and

9 (3) to ensure that public defender compensation
 10 reflects the constitutional imperative of the work and
 11 adequately incentivizes attorneys at all levels to pur-
 12 sue a career in public defense.

13 **SEC. 3. DEFINITIONS.**

14 In this Act, except as otherwise provided in section
 15 6:

16 (1) **APPLICABLE COURT.**—The term “applicable
 17 court”, with respect to an eligible entity that is—

18 (A) a State or unit of local government,

19 means—

20 (i) a court of the eligible entity; and

21 (ii) a court of a unit of local govern-

22 ment within the eligible entity; and

23 (B) a Tribal organization, means a court

24 of the Indian Tribe.

1 (2) APPLICABLE PUBLIC DEFENDER’S OF-
 2 FICE.—The term “applicable public defender’s of-
 3 fice”, with respect to an eligible entity that is—

4 (A) a public defender’s office, means the
 5 eligible entity;

6 (B) a State or unit of local government,
 7 means—

8 (i) the public defender’s office of the
 9 eligible entity; and

10 (ii) a public defender’s office of a unit
 11 of local government within the eligible enti-
 12 ty; and

13 (C) a Tribal organization, means the pub-
 14 lic defender’s office of the Tribal organization.

15 (3) BASIS OF COMPENSATION.—The term
 16 “basis of compensation” means the classification of
 17 the compensation of an employee into 1 of the fol-
 18 lowing categories:

19 (A) Hourly.

20 (B) Flat rate.

21 (C) Per case.

22 (D) Salary.

23 (4) CASE.—

1 (A) IN GENERAL.—The term “case” in-
2 cludes all charges involved in a single incident
3 of alleged criminal or delinquent conduct.

4 (B) MULTIPLE DEFENDANTS.—If a charg-
5 ing document states that multiple defendants
6 were involved in a single incident of alleged
7 criminal or delinquent conduct, each defendant
8 shall be counted as a separate case.

9 (5) CASE TYPE.—

10 (A) IN GENERAL.—The term “case type”
11 means the classification of a client’s case into
12 1 of the following categories, as defined under
13 State law:

14 (i) Juvenile.

15 (ii) Misdemeanor.

16 (iii) Felony.

17 (iv) Life without parole.

18 (v) Capital or death penalty.

19 (B) MULTIPLE CHARGES.—If a case in-
20 volves multiple charges, the case type shall be
21 determined according to the dominant charge.

22 (6) CHIEF PROSECUTOR.—The term “chief
23 prosecutor”, with respect to—

24 (A) a State, means the attorney general of
25 the State;

1 (B) a unit of local government, means the
2 district attorney of the unit of local govern-
3 ment; and

4 (C) a Tribal organization, means the lead
5 prosecutor of the Tribal organization.

6 (7) CHIEF PUBLIC DEFENDER.—The term
7 “chief public defender”, with respect to a State, unit
8 of local government, or Tribal organization, means
9 the head of the public defender’s office of the State,
10 unit of local government, or Tribal organization, re-
11 spectively.

12 (8) CORRESPONDING PROSECUTOR’S OFFICE.—
13 The term “corresponding prosecutor’s office”, with
14 respect to a public defender’s office, means the pros-
15 ecutorial unit that appears adverse to the public de-
16 fender’s office in criminal proceedings.

17 (9) COVERED GRANT.—The term “covered
18 grant” means a grant awarded under section 4.

19 (10) DOMINANT CHARGE.—The term “domi-
20 nant charge”, with respect to a case that involves
21 multiple charges, means the charge that carries the
22 most severe or lengthy maximum penalty.

23 (11) ELIGIBLE ENTITY.—The term “eligible en-
24 tity” means a State, unit of local government, Tribal
25 organization, or public defender’s office that, as of

1 the date of enactment of this Act and without re-
2 gard to the deadlines under section 4(b)—

3 (A) has not developed and implemented a
4 data collection process that meets the require-
5 ments under paragraph (1) of that section;

6 (B) has not developed workload limits that
7 meet the requirements under paragraph (2) of
8 that section, or has developed such limits but is
9 not in compliance with the limits; or

10 (C) does not meet the compensation re-
11 quirements under paragraph (3) of that section.

12 (12) FULL-TIME.—The term “full-time”, with
13 respect to an employee of a prosecutor’s office or
14 public defender’s office, means an employee who
15 works not less than 40 hours per week for that of-
16 fice.

17 (13) PERIPHERAL CHARGE.—The term “periph-
18 eral charge”, with respect to a case that involves
19 multiple charges, means any charge that is not the
20 dominant charge.

21 (14) PROSECUTOR.—The term “prosecutor”—

22 (A) has the meaning given the term in sec-
23 tion 3001(b) of title I of the Omnibus Crime
24 Control and Safe Streets Act of 1968 (34
25 U.S.C. 10671(b)); and

1 (B) includes a full-time employee of a
2 Tribal organization who—

3 (i) is continually licensed to practice
4 law; and

5 (ii) carries out activities equivalent to
6 those of a prosecutor referred to in sub-
7 paragraph (A).

8 (15) PROSECUTOR’S OFFICE; PUBLIC DE-
9 FENDER’S OFFICE.—The terms “prosecutor’s office”
10 and “public defender’s office” mean an agency or of-
11 fice of a State, unit of local government, or Tribal
12 organization that employs prosecutors or public de-
13 fenders, respectively.

14 (16) PUBLIC DEFENDER.—The term “public
15 defender”—

16 (A) has the meaning given the term in sec-
17 tion 3001(b) of title I of the Omnibus Crime
18 Control and Safe Streets Act of 1968 (34
19 U.S.C. 10671(b)); and

20 (B) includes an attorney employed by a
21 Tribal organization who—

22 (i) is continually licensed to practice
23 law; and

1 (ii) carries out activities equivalent to
2 those of a public defender referred to in
3 subparagraph (A).

4 (17) STAFF ATTORNEY.—The term “staff attor-
5 ney”, with respect to a prosecutor’s office or public
6 defender’s office, means a prosecutor or public de-
7 fender who is not the chief prosecutor or chief public
8 defender, respectively.

9 (18) STATE.—The term “State” has the mean-
10 ing given the term in section 901 of title I of the
11 Omnibus Crime Control and Safe Streets Act of
12 1968 (34 U.S.C. 10251).

13 (19) TRIBAL ORGANIZATION.—The term “Trib-
14 al organization” has the meaning given the term
15 “tribal organization” in section 4(l) of the Indian
16 Self-Determination and Education Assistance Act
17 (25 U.S.C. 5304(l)).

18 (20) UNIT OF LOCAL GOVERNMENT.—The term
19 “unit of local government” has the meaning given
20 the term in section 901 of title I of the Omnibus
21 Crime Control and Safe Streets Act of 1968 (34
22 U.S.C. 10251).

23 **SEC. 4. PUBLIC DEFENSE GRANT PROGRAM.**

24 (a) GRANT AUTHORITY.—

25 (1) IN GENERAL.—

1 (A) INITIAL GRANTS.—During the first 5
2 fiscal years beginning after the date of enact-
3 ment of this Act, the Attorney General shall
4 award a grant, to be used for public defense, to
5 any eligible entity that commits to satisfying
6 the requirements under subsection (b) and sec-
7 tion 5.

8 (B) CONTINUING GRANTS.—During the
9 sixth fiscal year beginning after the date of en-
10 actment of this Act, and each fiscal year there-
11 after, the Attorney General shall award a grant
12 to any eligible entity that—

13 (i) commits to satisfying the require-
14 ments under section 5;

15 (ii) certifies that the eligible entity is
16 in compliance with—

17 (I) the workload limits developed
18 by the eligible entity under subsection
19 (b)(2) of this section; and

20 (II) the requirements under sub-
21 section (b)(3) of this section; and

22 (iii) commits to using the grant funds
23 for public defense.

1 (2) AMOUNT.—In applying for a grant under
2 paragraph (1), an eligible entity shall request a
3 grant amount that takes into account—

4 (A) any technology and training required
5 to meet the requirements under subsection
6 (b)(1); and

7 (B) the size of the justice system—

8 (i) that the entity administers or in
9 which the entity participates, as applicable,
10 relative to the size of other justice systems
11 in—

12 (I) the United States, if the enti-
13 ty is a State or a public defender’s of-
14 fice of a State; or

15 (II) the State in which the entity
16 is located, if the entity is a unit of
17 local government or a public defend-
18 er’s office of a unit of local govern-
19 ment; or

20 (ii) of the Indian Tribe, if the entity
21 is a Tribal organization or a public defend-
22 er’s office of a Tribal organization.

23 (b) REQUIREMENTS.—The requirements for an eligi-
24 ble entity under this subsection are as follows:

25 (1) DATA COLLECTION.—

1 (A) PROCESS.—During the first fiscal year
2 for which the eligible entity receives a covered
3 grant, the eligible entity shall develop and im-
4 plement a process for collecting the following
5 data for full-time attorneys employed by each
6 applicable public defender’s office during the
7 fiscal year:

8 (i) The mean and median number of
9 hours per month worked per attorney.

10 (ii) The mean and median percentage
11 of hours per month spent with clients per
12 attorney, excluding court appearances.

13 (iii) The mean and median percentage
14 of hours per month spent in court pro-
15 ceedings per attorney.

16 (iv) The mean and median percentage
17 of hours spent per month by a attorney
18 on—

19 (I) investigation;

20 (II) research;

21 (III) writing; and

22 (IV) preparation.

23 (v) The amount of attorney turnover,
24 broken down by the level of experience and
25 length of employment of the attorney.

1 (vi) The number of open cases as of
2 the last day of the fiscal year, broken down
3 by—

- 4 (I) case type, including by—
5 (aa) the dominant charge;
6 and
7 (bb) each peripheral charge;
8 (II) the attorney, who shall be
9 identified using an anonymized unique
10 identifier;
11 (III) the date on which the attor-
12 ney was appointed to the case; and
13 (IV) the date on which the attor-
14 ney first met with the client.

15 (vii) The number of cases closed dur-
16 ing the fiscal year, broken down by—

- 17 (I) case type, including by—
18 (aa) the dominant charge;
19 and
20 (bb) each peripheral charge;
21 (II) the attorney, who shall be
22 identified using an anonymized unique
23 identifier;

1 (III) the date on which the case
2 was referred to the public defender's
3 office;

4 (IV) the date on which the attor-
5 ney was appointed to the case; and

6 (V) the date on which the case
7 was closed.

8 (B) COLLECTION AND SUBMISSION RE-
9 QUIREMENT.—For the second fiscal year, and
10 each subsequent fiscal year, for which an eligi-
11 ble entity receives a covered grant, the eligible
12 entity shall—

13 (i) collect the data described in sub-
14 paragraph (A) with respect to that fiscal
15 year; and

16 (ii) submit the data to the Attorney
17 General.

18 (2) WORKLOAD LIMITS.—

19 (A) DEVELOPMENT OF WORKLOAD LIM-
20 ITS.—During the second fiscal year for which
21 the eligible entity receives a covered grant, the
22 eligible entity shall develop workload limits,
23 based on the data collected under paragraph
24 (1), that provide each full-time public defender

1 employed by an applicable public defender's of-
2 fice with sufficient time to provide—

3 (i) reasonably effective assistance of
4 counsel pursuant to prevailing professional
5 norms; and

6 (ii) competent representation pursu-
7 ant to applicable rules of professional re-
8 sponsibility.

9 (B) PERIODIC UPDATES.—If the eligible
10 entity receives covered grants under subsection
11 (a)(1)(B), the eligible entity shall review and,
12 as necessary, update the limits developed under
13 subparagraph (A) of this paragraph not less
14 frequently than once every 10 fiscal years.

15 (3) PUBLIC DEFENDER COMPENSATION.—Dur-
16 ing the sixth fiscal year, and each subsequent fiscal
17 year, for which the eligible entity receives a covered
18 grant, the eligible entity shall satisfy the following
19 requirements with respect to employees of each ap-
20 plicable public defender's office (or, in the case of
21 subparagraph (D), with respect to each private at-
22 torney appointed by an applicable court):

23 (A) The rate and basis of compensation of
24 the chief public defender shall be equivalent to

1 the rate and basis of compensation of the cor-
2 responding chief prosecutor.

3 (B) The rate and basis of compensation of
4 an entry-level full-time staff attorney shall be
5 equivalent to the rate and basis of compensa-
6 tion of an entry-level full-time staff attorney
7 employed by the corresponding prosecutor's of-
8 fice.

9 (C) The rate and basis of compensation of
10 a non-entry-level full-time staff attorney shall
11 be equivalent to the greater of—

12 (i) the rate and basis of compensation
13 of a full-time staff attorney employed by
14 the corresponding prosecutor's office who
15 has the same number of years of experi-
16 ence working as a criminal attorney; or

17 (ii) the rate and basis of compensa-
18 tion of a full-time staff attorney employed
19 by the corresponding prosecutor's office
20 who has an equivalent supervisory or man-
21 agerial role.

22 (D) In the case of an eligible entity that is
23 not a public defender's office, the rate of com-
24 pensation of a private attorney appointed by an
25 applicable court to represent a defendant shall

1 be equivalent to the rate of compensation of an
2 attorney appointed under section 3006A of title
3 18, United States Code, by the United States
4 district court for the Federal judicial district in
5 which the applicable court is located, for the
6 same or a similar type of case.

7 (E) The rate and basis of compensation of
8 a full-time investigator shall be equivalent to
9 the rate and basis of compensation of a full-
10 time investigator employed by the cor-
11 responding prosecutor's office who has the same
12 number of years of experience working as an in-
13 vestigator.

14 (F) The rate and basis of compensation of
15 a full-time paralegal shall be equivalent to the
16 rate and basis of compensation of a full-time
17 paralegal employed by the corresponding pros-
18 ecutor's office who has the same number of
19 years of experience working as a paralegal.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Attorney General
22 to carry out this section—

23 (1) \$250,000,000 for each of the first 5 fiscal
24 years beginning after the date of enactment of this
25 Act; and

1 (2) such sums as may be necessary for each fis-
2 cal year thereafter.

3 **SEC. 5. PROGRESS REPORTS; CERTIFICATIONS.**

4 (a) PROGRESS REPORTS.—For each of the first 5 fis-
5 cal years for which a State or Tribal organization receives
6 a covered grant, the State or Tribal organization shall
7 submit a report to the Attorney General that—

8 (1) documents the progress of the State or
9 Tribal organization in meeting the requirements
10 under section 4(b)(3);

11 (2) provides a formal accounting of total
12 amounts expended on public defense during the fis-
13 cal year by the—

14 (A) State, including each unit of local gov-
15 ernment in the State; or

16 (B) Tribal organization;

17 (3) provides a formal accounting of total
18 amounts expended on prosecution during the fiscal
19 year by the—

20 (A) State, including each unit of local gov-
21 ernment in the State; or

22 (B) Tribal organization; and

23 (4) documents the progress of the State, includ-
24 ing each unit of local government in the State, or

1 Tribal organization in achieving overall resource par-
2 ity between prosecution and public defense.

3 (b) CERTIFICATIONS.—

4 (1) DATA COLLECTION PROCESS.—For the first
5 fiscal year for which an eligible entity receives a cov-
6 ered grant, the eligible entity shall submit to the At-
7 torney General a certification that the eligible entity
8 has developed and implemented a data collection
9 process in accordance with section 4(b)(1)(A).

10 (2) WORKLOAD LIMITS.—

11 (A) COMPLIANCE.—Subject to subpara-
12 graph (B), for the third fiscal year for which an
13 eligible entity receives a covered grant, and
14 each fiscal year thereafter, the eligible entity
15 shall submit to the Attorney General a certifi-
16 cation that the eligible entity has complied with
17 the workload limits developed under section
18 4(b)(2).

19 (B) REQUIREMENT.—If an eligible entity
20 is unable to certify under subparagraph (A)
21 that the eligible entity has complied with the
22 workload limits developed under section
23 4(b)(2)—

24 (i) the eligible entity shall report to
25 the Attorney General the number of addi-

1 tional public defenders and the amount of
2 additional funding needed to ensure com-
3 pliance with the limits developed under
4 that section; and

5 (ii) the Attorney General shall factor
6 the information provided under clause (i)
7 into the amount of the covered grant
8 awarded to the eligible entity for the fol-
9 lowing fiscal year.

10 (3) COMPENSATION PARITY.—For the sixth fis-
11 cal year, and each subsequent fiscal year, for which
12 an eligible entity receives a covered grant, the eligi-
13 ble entity shall submit to the Attorney General a
14 certification that the eligible entity is in compliance
15 with section 4(b)(3).

16 **SEC. 6. REQUIREMENTS FOR STATES RECEIVING BYRNE**
17 **JAG FUNDS.**

18 (a) DATA COLLECTION.—

19 (1) IN GENERAL.—For any fiscal year begin-
20 ning after the date of enactment of this Act, a State
21 that receives funds under subpart 1 of part E of
22 title I of the Omnibus Crime Control and Safe
23 Streets Act of 1968 (34 U.S.C. 10501 et seq.) shall
24 submit to the Attorney General data on the fol-
25 lowing with respect to criminal cases heard by a

1 court of the State or of a unit of local government
2 in the State during that fiscal year:

3 (A) The number of cases for which a de-
4 fendant waived his or her right to counsel, and
5 the number of charges in each case, broken
6 down by race, ethnicity, and gender of the de-
7 fendant.

8 (B) The number of cases for which a de-
9 fendant was represented in court by counsel
10 who was publicly appointed, broken down by—

11 (i) public defender, court-appointed
12 private attorney, or contract attorney, and
13 the number of charges in each case; and

14 (ii) race, ethnicity, and gender of the
15 defendant.

16 (C) The number of cases for which a de-
17 fendant was represented in court by counsel
18 who was not publicly appointed, and the num-
19 ber of charges in each case, broken down by
20 race, ethnicity, and gender of the defendant.

21 (2) APPLICABLE CRIMINAL OFFENSES.—A
22 State shall submit data under paragraph (1) with
23 respect to—

1 (A) criminal offenses for which a term of
 2 imprisonment of more than 1 year may be im-
 3 posed;

4 (B) criminal offenses for which a term of
 5 imprisonment of 1 year or less may be imposed,
 6 including misdemeanors, traffic violations, and
 7 violations of municipal ordinances; and

8 (C) acts of juvenile delinquency or juvenile
 9 status offenses for which any term of detention
 10 may be imposed.

11 (3) WITHHOLDING OF FUNDS.—If a State does
 12 not comply with paragraph (1) or (2) for a fiscal
 13 year, the Attorney General shall withhold from the
 14 State 20 percent of the funds that would otherwise
 15 be allocated to the State for the following fiscal year
 16 under subpart 1 of part E of title I of the Omnibus
 17 Crime Control and Safe Streets Act of 1968 (34
 18 U.S.C. 10501 et seq.).

19 **SEC. 7. FUNDING TO TRAIN PUBLIC DEFENDERS.**

20 (a) DEFINITION.—In this section, the term “eligible
 21 entity” means an entity that—

22 (1) is—

23 (A) an organization—

24 (i) described in paragraph (3) or (6)
 25 of section 501(c) of the Internal Revenue

1 Code of 1986 and exempt from taxation
2 under section 501(a) of such Code; or

3 (ii) funded by a State or unit of local
4 government; or

5 (B) a State, unit of local government, In-
6 dian Tribal government, or political subdivision
7 of an Indian Tribe; and

8 (2) has a comprehensive educational program
9 specific to public defenders that offers—

10 (A) ongoing training and support; and

11 (B) programming that includes—

12 (i) skills training, including pretrial
13 practice, negotiation skills, and trial skills;

14 (ii) client-centered values;

15 (iii) implicit bias training;

16 (iv) leadership development; and

17 (v) ongoing support to reinforce the
18 training curriculum.

19 (b) GRANTS.—The Attorney General shall award
20 grants to eligible organizations to be used to train public
21 defenders, court-appointed private attorneys, and contract
22 attorneys.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Attorney General
25 to carry out this section \$5,000,000 for each of the first

1 5 fiscal years beginning after the date of enactment of
2 this Act.

3 **SEC. 8. ENHANCEMENT OF STUDENT LOAN REPAYMENT**
4 **PROGRAM.**

5 (a) REAUTHORIZATION.—Section 3001(j) of title I of
6 the Omnibus Crime Control and Safe Streets Act of 1968
7 (34 U.S.C. 10671(j)) is amended—

8 (1) by striking “this section \$25,000,000” and
9 inserting the following: “this section—

10 “(1) \$25,000,000”; and

11 (2) by striking the period at the end and insert-
12 ing the following: “; and

13 “(2) \$75,000,000 for each of fiscal years 2019
14 through 2022.”.

15 (b) INCREASING LIMITS ON REPAYMENT AMOUNT.—
16 Section 3001(d)(3)(A) of title I of the Omnibus Crime
17 Control and Safe Streets Act of 1968 (34 U.S.C.
18 10671(d)(3)(A)) is amended—

19 (1) in clause (i), by striking “\$10,000” and in-
20 serting “\$35,000”; and

21 (2) in clause (ii), by striking “\$60,000” and in-
22 serting “\$200,000”.

○