

116TH CONGRESS  
2D SESSION

# H. R. 6037

To amend title 28, United States Code, with regard to counsel for persons proceeding in forma pauperis.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2020

Mr. SARBANES (for himself, Mr. NADLER, Mr. JOHNSON of Georgia, Ms. BASS, Ms. SCANLON, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, with regard to counsel for persons proceeding in forma pauperis.

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 “Fair Access to Legal  
5 Counsel Act of 2020”.

6 **SEC. 2. COUNSEL IN CASES WHERE PERSONS ARE PRO-**  
7 **CEEDING IN FORMA PAUPERIS.**

8 Subsection (e) of section 1915 of title 28, United  
9 States Code, is amended to read as follows:

1       “(e)(1) If a person appears without counsel, the court  
2 shall inform the person of their right to request counsel  
3 if unable to afford counsel. Upon granting such request,  
4 the court may appoint counsel for that person.

5       “(2) In evaluating whether to grant the request, a  
6 court shall consider all of the following on the record to  
7 the degree they are known to the court:

8           “(A) The person’s ability to articulate claims,  
9 investigate facts, respond to dispositive motions, and  
10 otherwise participate, including:

11               “(i) any mental disabilities, limitations on  
12 physical liberty, or language barriers;

13               “(ii) the person’s education and literacy  
14 level; and

15               “(iii) any assistance the person has re-  
16 ceived to date, including the sufficiency of that  
17 assistance and whether it will be available in  
18 the future.

19           “(B) The degree of factual investigation re-  
20 quired.

21           “(C) The complexity of the legal and factual  
22 questions.

23           “(D) The degree to which the claims turn on  
24 credibility determinations, including the need for  
25 cross-examination.

1           “(E) Whether the person has asserted any  
2           colorable claims. That fact that attorneys have de-  
3           clined to take the case shall not be an considered an  
4           indication of a lack of colorable claims.

5           “(F) The need for expert testimony.

6           “(G) The court’s willingness to aid the person  
7           in presenting claims by, for example, explaining how  
8           to introduce and move for the admission of evidence.

9           “(H) Whether any opposing party is rep-  
10          resented by counsel.

11          “(I) Any other factors the court considers rel-  
12          evant, other than that pro se pleadings are con-  
13          strued more liberally by the court.

14          “(3) The court may not deny a request on the  
15          grounds that it has not yet ruled on dispositive motions,  
16          such as a motion to dismiss or for summary judgment.

17          “(4) The court should consider whether to provision-  
18          ally appoint counsel for limited purposes, such as respond-  
19          ing to a particular motion, amending the complaint, rep-  
20          resenting a person at mediation, conducting discovery, or  
21          investigating the claims for purposes of providing a rec-  
22          ommendation to the court as to whether a full appoint-  
23          ment is warranted.

24          “(5) Notwithstanding paragraphs (2) through (4),  
25          whenever the court determines that the interests of justice

1 so require, representation may be provided for any finan-  
2 cially eligible person who is seeking relief under section  
3 2241, 2254, or 2255.”.

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