

118TH CONGRESS
1ST SESSION

S. 850

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

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2023

Mr. BOOKER (for himself and Mr. DURBIN) 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 “Providing a Quality
5 Defense Act of 2023” or the “Quality Defense Act of
6 2023”.

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are—

9 (1) to protect the constitutional rights to due
10 process and a fair criminal prosecution under the

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

7 (2) to protect the right to counsel for juveniles
8 in delinquency proceedings, including the determina-
9 tion of whether a juvenile should be tried as an
10 adult, under the Due Process Clause of the Four-
11 teenth Amendment as articulated by the Supreme
12 Court in *In re Gault*, 387 U.S. 1 (1967);

13 (3) to collect data related to public defense in
14 order to facilitate evidence-based reforms and im-
15 provements; and

16 (4) to ensure that compensation for public de-
17 fenders and panel attorneys reflects the constitu-
18 tional guarantee of the right to counsel and does not
19 disincentivize attorneys from pursuing a career in
20 public defense.

21 **SEC. 3. DEFINITIONS.**

22 In this Act, except as otherwise provided in section
23 7:

1 (1) 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 (2) ASSIGNED COUNSEL PROGRAM.—The term
16 “assigned counsel program” means a program or
17 procedure by which a court assigns a panel attorney
18 to provide quality legal representation to a client.

19 (3) CASE.—The term “case” includes all
20 charges against an individual involved in a single in-
21 cident of alleged criminal or delinquent conduct.

22 (4) CASE TYPE.—

23 (A) IN GENERAL.—The term “case type”
24 means the classification of a client’s case into

1 1 of the following categories, as defined under
2 State or local law:

3 (i) Juvenile.

4 (ii) Misdemeanor.

5 (iii) Felony for which the death pen-
6 alty may be imposed.

7 (iv) Felony for which a sentence of up
8 to life imprisonment may be imposed.

9 (v) Felony not described in clause (iii)
10 or (iv).

11 (vi) Violation of probation or parole.

12 (vii) School proceeding.

13 (viii) Other.

14 (B) MULTIPLE CHARGES.—If a case in-
15 volves multiple charges, the case type shall be
16 determined according to the most serious
17 charge under the applicable State or local law.

18 (5) CORRESPONDING PROSECUTOR’S OFFICE.—
19 The term “corresponding prosecutor’s office”, with
20 respect to a public defender’s office or panel attor-
21 neys, means a prosecutorial unit that appears ad-
22 verse to the public defender’s office or panel attor-
23 neys in criminal proceedings.

24 (6) DATA GRANT.—The term “data grant”
25 means a grant awarded under section 4(a)(1).

1 (7) ELIGIBLE ENTITY.—The term “eligible enti-
2 ty” means a State, unit of local government, Tribal
3 organization, public defender’s office, or assigned
4 counsel program that—

5 (A) in the case of an application for a data
6 grant, has not, as of the date of application, de-
7 veloped and implemented a data collection proc-
8 ess that meets the requirements under section
9 4(b)(2); and

10 (B) in the case of an application for a hir-
11 ing grant, as of the date of the application,
12 has—

13 (i) received a data grant; and

14 (ii) fulfilled the requirements of the
15 data grant.

16 (8) HIRING GRANT.—The term “hiring grant”
17 means a grant awarded under section 4(a)(2).

18 (9) MOST SERIOUS CHARGE.—The term “most
19 serious charge”, with respect to a case that involves
20 multiple charges, means the charge that carries the
21 most severe or lengthy maximum penalty.

22 (10) PANEL ATTORNEY.—The term “panel at-
23 torney” means a private attorney assigned by the
24 court who serves the same function as a public de-

1 fender, without regard to whether the role is full-
2 time or part-time.

3 (11) PROSECUTOR.—The term “prosecutor”—

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

8 (B) includes a full-time employee of a
9 Tribal organization who—

10 (i) is continually licensed to practice
11 law; and

12 (ii) carries out activities equivalent to
13 those of a prosecutor referred to in sub-
14 paragraph (A).

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

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

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

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

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

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

10 (14) RESOLUTION.—The term “resolution”,
11 with respect to a case, means the manner in which
12 the case concludes, including by—

13 (A) dismissal by the prosecutor;

14 (B) dismissal based on a motion, such as
15 a motion to suppress evidence;

16 (C) a plea agreement at first appearance;

17 (D) a plea agreement entered into at any
18 point in the criminal prosecution other than
19 first appearance;

20 (E) diversion; or

21 (F) a bench or jury trial and the outcome
22 of the trial, including the sentence if the de-
23 fendant is convicted of any offense charged.

24 (15) SECONDARY CHARGE.—The term “sec-
25 ondary charge”, with respect to a case that involves

1 multiple charges, means any charge that is not the
2 most serious charge.

3 (16) STATE.—The term “State” has the mean-
4 ing given the term in section 901 of title I of the
5 Omnibus Crime Control and Safe Streets Act of
6 1968 (34 U.S.C. 10251).

7 (17) TRIBAL ORGANIZATION.—The term “Trib-
8 al organization” has the meaning given the term
9 “tribal organization” in section 4(l) of the Indian
10 Self-Determination and Education Assistance Act
11 (25 U.S.C. 5304(l)).

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

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

18 (a) GRANT AUTHORITY.—The Attorney General may
19 award a grant to an eligible entity to—

20 (1) develop, implement, and update a data col-
21 lection process under subsection (b)(2); or

22 (2) hire additional public defense attorneys or
23 carry out related activities under subsection (c)(3).

24 (b) DATA GRANTS.—

1 (1) TERM.—The term of a data grant shall be
2 3 fiscal years.

3 (2) REQUIRED DATA COLLECTION.—An eligible
4 entity that receives a data grant shall develop and
5 implement a process for collecting the following data
6 for attorneys employed by each applicable public de-
7 fender’s office, and for panel attorneys within the ju-
8 risdiction of the eligible entity, during each fiscal
9 year of the grant period:

10 (A) The mean number of hours per month
11 worked per attorney.

12 (B) The mean number of hours spent per
13 month by an attorney on—

14 (i) discovery and investigation, includ-
15 ing witness interviews;

16 (ii) court time, including preparation
17 and appearances;

18 (iii) client communication and care;

19 (iv) research and writing, including
20 motions practice; and

21 (v) administrative work.

22 (C) The number of cases handled, broken
23 down by—

24 (i) case type, including by—

25 (I) the most serious charge; and

- 1 (II) each secondary charge;
- 2 (ii) the race, ethnicity, age, and gen-
- 3 der of the client;
- 4 (iii) the date on which the attorney
- 5 was appointed to the case;
- 6 (iv) whether the case remained open
- 7 as of the last day of the fiscal year, and
- 8 if not, the date on which the case was
- 9 closed; and
- 10 (v) the resolution of the case, if the
- 11 case was concluded by the last day of the
- 12 fiscal year.

13 (D) Any other information as the Attorney

14 General determines appropriate.

15 (3) RENEWAL.—Upon application from an eligi-

16 ble entity that received a data grant, the Attorney

17 General may award a subsequent data grant to the

18 eligible entity for an additional term that may begin

19 upon termination of the initial data grant.

20 (c) HIRING GRANTS.—

21 (1) APPLICATION REQUIREMENTS.—An eligible

22 entity desiring a hiring grant shall submit to the At-

23 torney General an application that includes, as of

24 the date of the application—

1 (A) the caseload and number of, and pay
2 scale for, attorneys and other staff of each ap-
3 plicable public defender's office; and

4 (B)(i) the number of panel attorneys with-
5 in the jurisdiction of the eligible entity;

6 (ii) the total number of cases assigned to
7 the attorneys described in clause (i); and

8 (iii) the average number of hours spent on
9 a case by an attorney described in clause (i).

10 (2) TERM.—The term of a hiring grant shall be
11 3 years.

12 (3) USE OF FUNDS.—An eligible entity may use
13 a hiring grant to—

14 (A) hire additional public defenders;

15 (B) increase compensation for public de-
16 fenders or panel attorneys to achieve pay parity
17 with corresponding prosecutor's offices;

18 (C) hire case workers, social workers, in-
19 vestigators, or paralegals; or

20 (D) establish or fund a loan assistance
21 program for public defenders.

22 (4) SUPPLEMENT, NOT SUPPLANT.—An eligible
23 entity may not use a hiring grant to supplant funds
24 that the eligible entity would otherwise have used for

1 any authorized purpose described in paragraph (3)
2 during the grant period.

3 (5) REQUIRED DATA COLLECTION.—During
4 each fiscal year of the grant period, an eligible entity
5 that receives a hiring grant shall collect the data de-
6 scribed in subsection (b)(2).

7 (d) SUBMISSION REQUIREMENT.—Not later than 60
8 days after the end of a fiscal year, an eligible entity that
9 receives a data grant or hiring grant shall submit to the
10 Attorney General the data described in subsection (b)(2)
11 for that fiscal year.

12 (e) MULTIPLE DEFENDANTS.—If a prosecutor's
13 charging document states that multiple defendants were
14 involved in a single incident of alleged criminal or delin-
15 quent conduct, each defendant shall be considered a sepa-
16 rate case for purposes of the collection of data described
17 in subsection (b)(2).

18 (f) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Attorney General
20 to carry out this section—

21 (1) \$250,000,000 for each of the first 5 fiscal
22 years beginning after the date of enactment of this
23 Act; and

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

1 **SEC. 5. STUDIES.**

2 (a) STUDIES.—

3 (1) CASELOAD LIMITS STUDY.—

4 (A) IN GENERAL.—After the end of the
5 first fiscal year for which data grants are
6 awarded, the Attorney General, acting through
7 the Director of the Bureau of Justice Assist-
8 ance and the Director of the Office for Access
9 to Justice, shall—

10 (i) conduct a study to analyze the
11 data submitted to the Attorney General
12 under section 4(d) for that fiscal year re-
13 lated to public defender and panel attorney
14 caseloads and correlated outcomes;

15 (ii) review studies, reports, and other
16 data published or provided by professional
17 organizations, legal associations, and bar
18 associations related to public defender and
19 panel attorney caseloads; and

20 (iii) develop and publish best practices
21 and recommendations for setting public de-
22 fender and panel attorney caseloads based
23 on the information described in clauses (i)
24 and (ii) to ensure—

25 (I) reasonably effective assistance
26 of counsel pursuant to constitutional

1 standards and prevailing professional
2 norms; and

3 (II) competent representation
4 pursuant to applicable rules of profes-
5 sional responsibility.

6 (B) CONTINUING STUDY.—Not less fre-
7 quently than once every 5 years, the Attorney
8 General shall—

9 (i) study and review new studies, re-
10 ports, or other data as described in sub-
11 paragraph (A)(ii); and

12 (ii) update the best practices and rec-
13 ommendations under subparagraph
14 (A)(iii).

15 (2) COMPENSATION STUDY.—Not later than 3
16 years after the date of enactment of this Act, the
17 Attorney General, acting through the Director of
18 Bureau of Justice Assistance and the Director of the
19 Office for Access to Justice, shall—

20 (A) conduct a national study of public de-
21 fender salaries and panel attorney rates, using
22 prosecutors' salaries as one benchmark; and

23 (B) develop and publish best practices and
24 recommendations relating to compensation of
25 public defenders and panel attorneys.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Attorney General
3 such sums as may be necessary to carry out this section.

4 **SEC. 6. STATE DATA COLLECTION.**

5 (a) IN GENERAL.—For any fiscal year beginning
6 after the date of enactment of this Act, a State that re-
7 ceives funds under subpart 1 of part E of title I of the
8 Omnibus Crime Control and Safe Streets Act of 1968 (34
9 U.S.C. 10151 et seq.) may submit to the Office for Access
10 to Justice of the Department of Justice data on, with re-
11 spect to criminal cases heard by a court of the State or
12 of a unit of local government in the State during that fis-
13 cal year, the number of cases for which a defendant was
14 represented in court by a public defender or panel attor-
15 ney, broken down by—

16 (1) the most serious charge and the total num-
17 ber of secondary charges in each case; and

18 (2) race, ethnicity, age, and gender of the de-
19 fendant.

20 (b) APPLICABLE CRIMINAL OFFENSES.—A State
21 that elects to submit data under subsection (a) shall in-
22 clude data with respect to—

23 (1) criminal offenses for which a term of im-
24 prisonment of more than 1 year may be imposed;

1 (2) criminal offenses for which a term of im-
2 prisonment of 1 year or less may be imposed, includ-
3 ing misdemeanors, traffic violations, and violations
4 of municipal ordinances; and

5 (3) acts of juvenile delinquency or juvenile sta-
6 tus offenses for which any term of detention may be
7 imposed.

8 (c) FUNDING.—A State that receives funds under
9 subpart 1 of part E of title I of the Omnibus Crime Con-
10 trol and Safe Streets Act of 1968 (34 U.S.C. 10151 et
11 seq.) may apply for, and the Attorney General may award,
12 a 5 percent increase in those funds, to be used by the
13 State to collect and provide to the Office for Access to
14 Justice of the Department of Justice the data described
15 in subsection (a) of this section.

16 **SEC. 7. FUNDING FOR EDUCATIONAL PROGRAMS.**

17 (a) DEFINITION.—In this section, the term “eligible
18 entity” means an entity that is—

19 (1) an organization—

20 (A) described in paragraph (3) or (6) of
21 section 501(c) of the Internal Revenue Code of
22 1986 and exempt from taxation under section
23 501(a) of such Code; or

24 (B) funded by a State or unit of local gov-
25 ernment; or

1 (2) a State, unit of local government, Indian
2 Tribal government, or political subdivision of an In-
3 dian Tribe.

4 (b) GRANTS.—The Attorney General shall award
5 grants to eligible entities to provide a comprehensive edu-
6 cational program to public defenders and panel attorneys
7 that offers—

8 (1) ongoing training and support; and

9 (2) programming that includes—

10 (A) skills training, including pretrial prac-
11 tice, negotiation skills, trial skills, and sen-
12 tencing advocacy;

13 (B) client-centered values;

14 (C) implicit bias training;

15 (D) leadership development; and

16 (E) ongoing support to reinforce the train-
17 ing curriculum.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Attorney General
20 to carry out this section \$5,000,000 for each of the first
21 5 fiscal years beginning after the date of enactment of
22 this Act.

○