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

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice and referred to the Committee on

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Providing a Quality Defense Act of 2023” or the “Quality Defense Act”.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to protect the constitutional rights to due process and a fair criminal prosecution under the Fifth, Sixth, and Fourteenth Amendments to the
Constitution of the United States, including the right to counsel, in State and local courts, as articulated by the Supreme Court of the United States in Gideon v. Wainwright, 372 U.S. 335 (1963), and its progeny;

(2) to protect the right to counsel for juveniles in delinquency proceedings, including the determination of whether a juvenile should be tried as an adult, under the Due Process Clause of the Fourteenth Amendment as articulated by the Supreme Court in In re Gault, 387 U.S. 1 (1967);

(3) to collect data related to public defense in order to facilitate evidence-based reforms and improvements; and

(4) to ensure that compensation for public defenders and panel attorneys reflects the constitutional guarantee of the right to counsel and does not disincentivize attorneys from pursuing a career in public defense.

SEC. 3. DEFINITIONS.

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

(1) Applicable public defender’s office.—The term “applicable public defender’s office”, with respect to an eligible entity that is—
(A) a public defender’s office, means the eligible entity;

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

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

(ii) a public defender’s office of a unit of local government within the eligible entity; and

(C) a Tribal organization, means the public defender’s office of the Tribal organization.

(2) ASSIGNED COUNSEL PROGRAM.—The term “assigned counsel program” means a program or procedure by which a court assigns an attorney to provide quality legal representation to a client who is—

(A) financially unable to hire counsel; and

(B) legally entitled under the Sixth Amendment or the laws of the applicable State to have counsel assigned to represent the client.

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

(4) CASE TYPE.—
(A) IN GENERAL.—The term “case type”
means the classification of a client’s case into
1 of the following categories, as defined under
State or local law:

   (i) Juvenile.
   (ii) Misdemeanor.
   (iii) Felony for which the death pen-
       alty may be imposed.
   (iv) Felony for which a sentence of up
       to life imprisonment may be imposed.
   (v) Felony not described in clause (iii)
       or (iv).
   (vi) Violation of probation or parole.
   (vii) School proceeding.
   (viii) Other.

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

(5) CORRESPONDING PROSECUTOR’S OFFICE.—
The term “corresponding prosecutor’s office”, with
respect to a public defender’s office or panel attor-
neys, means a prosecutorial unit that appears ad-
verse to the public defender’s office or panel attor-
neys in criminal proceedings.
(6) DATA GRANT.—The term “data grant” means a grant awarded under section 4(a)(1).

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

(A) in the case of an application for a data grant, has not, as of the date of application, developed and implemented a data collection process that meets the requirements under section 4(b)(2); and

(B) in the case of an application for a hiring grant, as of the date of the application, has—

(i) received a data grant; and

(ii) fulfilled the requirements of the data grant.

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

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

(10) PANEL ATTORNEY.—The term “panel attorney” means a private attorney assigned by the
court who serves the same function as a public de-
defender, without regard to whether the role is full-
time or part-time.

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

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

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

(i) is continually licensed to practice
law; and

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

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

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

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

(i) is continually licensed to practice
law; and
(ii) carries out activities equivalent to those of a public defender referred to in subparagraph (A).

(13) **Prosecutor’s office; public defender’s office.**—The terms “prosecutor’s office” and “public defender’s office” mean an agency or office of a State, unit of local government, or Tribal organization that employs prosecutors or public defenders, respectively.

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

(A) dismissal by the prosecutor;

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

(C) a plea agreement at first appearance;

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

(E) diversion; or

(F) a bench or jury trial and the outcome of the trial, including the sentence if the defendant is convicted of any offense charged.

(15) **Secondary charge.**—The term “secondary charge”, with respect to a case that involves
multiple charges, means any charge that is not the most serious charge.

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

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

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

SEC. 4. PUBLIC DEFENSE GRANT PROGRAM.

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

(1) develop, implement, and update a data collection process under subsection (b)(2); or

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

(b) DATA GRANTS.—
(1) **TERM.**—The term of a data grant shall be 3 fiscal years.

(2) **REQUIRED DATA COLLECTION.**—An eligible entity that receives a data grant shall develop and implement a process for collecting the following data for attorneys employed by each applicable public defender’s office, and for panel attorneys within the jurisdiction of the eligible entity, during each fiscal year of the grant period:

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

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

(i) discovery and investigation, including witness interviews;

(ii) court time, including preparation and appearances;

(iii) client communication and care;

(iv) research, motions, practice, and other writing; and

(v) administrative work.

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

(i) case type, including by—

(I) the most serious charge; and
(II) each secondary charge;

(ii) the race, ethnicity, age, and gender of the client;

(iii) the date on which the attorney was appointed to the case;

(iv) whether the case remained open as of the last day of the fiscal year, and if not, the date on which the case was closed; and

(v) the resolution of the case, if the case was concluded by the last day of the fiscal year.

(D) Any other information as the Attorney General determines appropriate.

(3) RENEWAL.—Upon application from an eligible entity that received a data grant, the Attorney General may award a subsequent data grant to the eligible entity for an additional term that may begin upon termination of the initial data grant.

(c) HIRING GRANTS.—

(1) APPLICATION REQUIREMENTS.—An eligible entity desiring a hiring grant shall submit to the Attorney General an application that includes, as of the date of the application—
(A) the caseload and number of, and pay scale for, attorneys and other staff of each applicable public defender’s office; and

(B)(i) the number of panel attorneys within the jurisdiction of the eligible entity;

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

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

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

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

(A) hire additional public defenders;

(B) increase compensation for public defenders or panel attorneys to achieve pay parity with corresponding prosecutor’s offices;

(C) hire case workers, social workers, investigators, or paralegals; or

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

(4) SUPPLEMENT, NOT SUPPLANT.—An eligible entity may not use a hiring grant to supplant funds that the eligible entity would otherwise have used for
any authorized purpose described in paragraph (3) during the grant period.

(5) **REQUIRED DATA COLLECTION.**—During each fiscal year of the grant period, an eligible entity that receives a hiring grant shall collect the data described in subsection (b)(2).

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

(e) **MULTIPLE DEFENDANTS.**—If a prosecutor’s charging document states that multiple defendants were involved in a single incident of alleged criminal or delinquent conduct, each defendant shall be considered a separate case for purposes of the collection of data described in subsection (b)(2).

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

**SEC. 5. STUDIES.**

(a) Studies.—

(1) **CASELOAD LIMITS STUDY.**—

(A) **IN GENERAL.**—After the end of the first fiscal year for which data grants are
awarded, the Attorney General, acting through
the Director of the Bureau of Justice Assist-
ance, shall—

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

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

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

(I) reasonably effective assistance
of counsel pursuant to constitutional
standards and prevailing professional
norms; and

(II) competent representation
pursuant to applicable rules of profes-
sional responsibility.
(B) CONTINUING STUDY.—Not less frequently than once every 5 years, the Attorney General shall—

(i) study and review new studies, reports, or other data as described in subparagraph (A)(ii); and

(ii) update the best practices and recommendations under subparagraph (A)(iii).

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

(A) conduct a national study of public defender salaries and panel attorney rates, using prosecutors’ salaries as one benchmark; and

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

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General to carry out this section—
(1) $250,000,000 for each of the first 5 fiscal years beginning after the date of enactment of this Act; and

(2) such sums as may be necessary for each fiscal year thereafter.

SEC. 6. STATE DATA COLLECTION.

(a) In General.—For any fiscal year beginning after the date of enactment of this Act, a State that receives funds under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.) may submit to the Office of Access to Justice of the Department of Justice data on, with respect to criminal cases heard by a court of the State or of a unit of local government in the State during that fiscal year, the number of cases for which a defendant was represented in court by a public defender or panel attorney, broken down by—

(1) the most serious charge and the total number of secondary charges in each case; and

(2) race, ethnicity, age, and gender of the defendant.

(b) Applicable Criminal Offenses.—A State that elects to submit data under subsection (a) shall include data with respect to—
(1) criminal offenses for which a term of imprisonment of more than 1 year may be imposed;

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

(3) acts of juvenile delinquency or juvenile status offenses for which any term of detention may be imposed.

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

SEC. 7. FUNDING FOR EDUCATIONAL PROGRAMS.

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

(1) an organization—

(A) described in paragraph (3) or (6) of section 501(e) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or
(B) funded by a State or unit of local government; or

(2) a State, unit of local government, Indian Tribal government, or political subdivision of an Indian Tribe.

(b) GRANTS.—The Attorney General shall award grants to eligible entities to provide a comprehensive educational program to public defenders and panel attorneys that offers—

(1) ongoing training and support; and

(2) programming that includes—

(A) skills training, including pretrial practice, negotiation skills, trial skills, and sentencing advocacy;

(B) client-centered values;

(C) implicit bias training;

(D) leadership development; and

(E) ongoing support to reinforce the training curriculum.

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