

118TH CONGRESS
2D SESSION

H. R. 10403

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 2024

Mr. SARBANES (for himself and Ms. SCANLON) introduced the following bill;
which was referred to the Committee on the Judiciary

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 2024”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The majority of cases filed by pro se liti-
9 gants in Federal court involve basic human needs

1 such as physical and mental health, safety, employ-
2 ment, and housing.

3 (2) The cases described in paragraph (1) are
4 also a matter of civil rights.

5 (3) Pro se litigants are unable to navigate such
6 complex cases without the assistance of counsel.

7 **SEC. 3. COUNSEL IN CASES WHERE PERSONS ARE PRO-**
8 **CEEDING IN FORMA PAUPERIS.**

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

11 “(e)(1) If a person appears without counsel, including
12 in a proceeding under title VII of the Civil Rights Act
13 of 1964 (42 U.S.C. 2000e et seq.) or title VIII of such
14 Act (42 U.S.C. 2000f et seq.), the court shall inform the
15 person of their ability to request counsel if unable to af-
16 ford counsel. Upon granting such request, the court may
17 appoint counsel for that person.

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

21 “(A) The person’s ability to articulate
22 claims, investigate facts, respond to dispositive
23 motions, and otherwise participate, including—

24 “(i) any barriers to access created by
25 mental health, intellectual, cognitive, or

1 physical disabilities, incarceration or other
2 confinement, language or other commu-
3 nication issues, and education or literacy
4 level;

5 “(ii) the person’s education and lit-
6 eracy level; and

7 “(iii) any assistance the person has
8 received to date, including the sufficiency
9 of that assistance and whether it will be
10 available in the future.

11 “(B) The degree of factual investigation
12 required.

13 “(C) The complexity of the legal and fac-
14 tual questions.

15 “(D) The degree to which the claims turn
16 on credibility determinations, including the need
17 for cross-examination.

18 “(E) Whether the person has asserted any
19 colorable claims.

20 “(F) The need for expert testimony.

21 “(G) The court’s willingness to aid the per-
22 son in presenting claims by, for example, ex-
23 plaining how to introduce and move for the ad-
24 mission of evidence.

1 “(H) Whether any opposing party is rep-
2 resented by counsel.

3 “(I) Any other factors the court considers
4 relevant, other than that pro se pleadings are
5 construed more liberally by the court.

6 “(3) The court may not deny a request on the
7 grounds that it has not yet ruled on dispositive mo-
8 tions, such as a motion to dismiss or for summary
9 judgment.

10 “(4) The court shall dismiss a case under this
11 subsection if—

12 “(A) the court determines that the allega-
13 tion that the person is unable to afford counsel
14 is untrue; or

15 “(B) in a case in which no request for ap-
16 pointment of counsel is made after the person
17 is informed of the right to make such request,
18 the action or appeal—

19 “(i) is frivolous or malicious;

20 “(ii) fails to state a claim on which re-
21 lief may be granted; or

22 “(iii) seeks monetary relief against a
23 defendant who is immune from such relief.

24 “(5) The court may require the person to at-
25 tempt to obtain assistance from private counsel prior

1 to evaluating the factors above. However, upon re-
2 ceiving a request for counsel, the court shall commu-
3 nicate to the person the number of attempts re-
4 quired, if any, and shall not consider the person’s in-
5 ability to secure private counsel as an indication of
6 a lack of colorable claims.

7 “(6) The court should consider whether to pro-
8 visionally appoint counsel for limited purposes, such
9 as responding to a particular motion, amending the
10 complaint, representing a person at mediation, con-
11 ducting discovery, or investigating the claims for
12 purposes of providing a recommendation to the court
13 as to whether a full appointment is warranted.

14 “(7) Notwithstanding paragraphs (2) through
15 (4), whenever the court determines that the interests
16 of justice so require, representation may be provided
17 for any financially eligible person who is seeking re-
18 lief under—

19 “(A) title VII of the Civil Rights Act of
20 1964 (42 U.S.C. 2000e et seq.); or

21 “(B) title VIII of the Civil Rights Act of
22 1964 (42 U.S.C. 2000f et seq.).

23 “(8) To the extent the consideration of the fac-
24 tors described in paragraph (2)(A) involves personal
25 details not otherwise at issue in the case, the court

1 should take steps to maintain the privacy of the de-
2 tails including, for instance, sealed filings or in cam-
3 era review. The other party or parties to the action
4 should not have access to these personal details. To
5 the extent the person has already shared personal
6 details by filing a publicly available document, the
7 court should advise him or her of the option to re-
8 place the filing with a redacted or sealed copy in ac-
9 cordance with any applicable local or Federal rules.

10 “(9) Any challenge to the appointment of coun-
11 sel made by an opposing party shall be limited to the
12 potential prejudice to that party, such as a delay in
13 proceedings, and shall not concern the personal fac-
14 tors considered by the court under paragraph
15 (2)(A).”.

16 **SEC. 4. DATA COLLECTION.**

17 Not later than 2 years after the date of the enact-
18 ment of this Act, and every 2 years thereafter, the Direc-
19 tor of the Administrative Office of the United States
20 Courts. shall submit to Congress and make publicly avail-
21 able a report on the subsection (e) of section 1915 of title
22 28, United States Code, as amended by section 3 of this
23 Act, which shall include the following:

24 (1) With respect to persons for whom counsel
25 was provided pursuant to a request under section

1 1915(e)(1) of title 28, United States Code, the types
2 of cases. With respect to a person for whom counsel
3 was provided pursuant to a request under section
4 1915(e)(1) of title 28, United States Code, the type
5 of case, length of time spent by counsel, and the out-
6 come of the matter for which such counsel was pro-
7 vided and outcomes of the matters for which such
8 counsel was provided.

9 (2) Benefits related to increased access to coun-
10 sel and any remaining barriers to access to counsel
11 pursuant to requests under such section 1915(e).

12 (3) Any changes in the frequency of requests
13 made by courts under such section 1915(e).

14 (4) Other changes to the functioning of the
15 Federal courts, including increases in efficiency of
16 adjudication of cases and changes in the number of
17 cases resolved in favor of the party for whom counsel
18 was provided pursuant to a request under such sec-
19 tion 1915(e).

20 (5) Suggested changes to such section 1915 to
21 ensure greater access to justice for low-income liti-
22 gants.

○