

117TH CONGRESS
2D SESSION

S. 5247

To enforce the Sixth Amendment right to the assistance of effective counsel at all stages of the adversarial process, to confer jurisdiction upon the district courts of the United States to provide declaratory and injunctive relief against systemic violations of such right, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2022

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

A BILL

To enforce the Sixth Amendment right to the assistance of effective counsel at all stages of the adversarial process, to confer jurisdiction upon the district courts of the United States to provide declaratory and injunctive relief against systemic violations of such right, 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 “Equal Justice Under
5 Law Act of 2022”.

1 **SEC. 2. EFFECTIVE ASSISTANCE OF COUNSEL.**

2 (a) IN GENERAL.—An indigent individual facing
3 criminal prosecution or juvenile delinquency in a State
4 court shall be entitled to the effective assistance of coun-
5 sel, as guaranteed by the Sixth Amendment and the 14th
6 Amendment to the Constitution of the United States, at
7 the expense of the State.

8 (b) DELEGATION.—Each State shall secure effective
9 assistance of counsel for indigent defendants, regardless
10 of whether the State delegates fiscal or administrative au-
11 thority over the indigent defense function to a political
12 subdivision of the State.

13 (c) INEFFECTIVE ASSISTANCE.—For purposes of this
14 section, the assistance of counsel is ineffective if the per-
15 formance of counsel was not reasonable under prevailing
16 professional norms.

17 **SEC. 3. REMEDY.**

18 (a) CLASS ACTION AUTHORIZED.—

19 (1) IN GENERAL.—If a State official or 1 or
20 more political subdivisions of the State fails on a
21 systemic basis to guarantee the right to the assist-
22 ance of effective counsel as guaranteed by the Sixth
23 Amendment and the 14th Amendment to the Con-
24 stitution of the United States, including delay of
25 counsel and denial of counsel at critical stages in-
26 cluding bail hearings, an individual aggrieved by a

1 violation of section 2 may commence a civil class ac-
2 tion in an appropriate district court of the United
3 States to seek declaratory, injunctive, or other equi-
4 table relief.

5 (2) EVIDENCE.—To prevail in a class action de-
6 scribed in paragraph (1), structural evidence, such
7 as statistics and national standards, may be pro-
8 bative of the existence of systemic denials of counsel
9 and may be sufficient evidence, if the trier of fact
10 is persuaded by a preponderance of all evidence pre-
11 sented at trial.

12 (b) ATTORNEY'S FEES.—In any action or proceeding
13 under this section, the court, in its discretion, may allow
14 the prevailing party, other than a named official of a State
15 or political subdivision of a State, a reasonable attorney's
16 fee as part of the costs. In awarding an attorney's fee
17 under this subsection, the court, in its discretion, may in-
18 clude expert fees as part of the attorney's fee.

19 (c) SAVINGS PROVISION.—Nothing in this section
20 shall restrict any right that any individual has under any
21 other statute or under common law to seek redress for
22 a violation of the right to counsel.

1 **SEC. 4. EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE**
2 **GRANT PROGRAM.**

3 Section 501(b) of the Omnibus Crime Control and
4 Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended
5 by inserting “, in consultation with public defenders,” be-
6 fore “may”.

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