

118TH CONGRESS
2D SESSION

S. 5499

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2024

Mr. VAN HOLLEN introduced the following bill; which was read twice and 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, a
19 court shall consider all of the following on the record to
20 the degree they are known to the court:

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

24 “(i) any barriers to access created by men-
25 tal health, intellectual, cognitive, or physical

1 disabilities, incarceration or other confinement,
2 language or other communication issues, and
3 education or literacy level;

4 “(ii) the person’s education and literacy
5 level; and

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

10 “(B) The degree of factual investigation re-
11 quired.

12 “(C) The complexity of the legal and factual
13 questions.

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

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

19 “(F) The need for expert testimony.

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

23 “(H) Whether any opposing party is rep-
24 resented by counsel.

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

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

7 “(4) The court shall dismiss a case under this sub-
8 section if—

9 “(A) the court determines that the allegation
10 that the person is unable to afford counsel is untrue;
11 or

12 “(B) in a case in which no request for appoint-
13 ment of counsel is made after the person is informed
14 of the right to make such request, the action or ap-
15 peal—

16 “(i) is frivolous or malicious;

17 “(ii) fails to state a claim on which relief
18 may be granted; or

19 “(iii) seeks monetary relief against a de-
20 fendant who is immune from such relief.

21 “(5) The court may require the person to attempt
22 to obtain assistance from private counsel prior to evalu-
23 ating the factors above. However, upon receiving a request
24 for counsel, the court shall communicate to the person the
25 number of attempts required, if any, and shall not con-

1 sider the person’s inability to secure private counsel as an
2 indication of a lack of colorable claims.

3 “(6) The court should consider whether to provision-
4 ally appoint counsel for limited purposes, such as respond-
5 ing to a particular motion, amending the complaint, rep-
6 resenting a person at mediation, conducting discovery, or
7 investigating the claims for purposes of providing a rec-
8 ommendation to the court as to whether a full appoint-
9 ment is warranted.

10 “(7) Notwithstanding paragraphs (2) through (4),
11 whenever the court determines that the interests of justice
12 so require, representation may be provided for any finan-
13 cially eligible person who is seeking relief under—

14 “(A) title VII of the Civil Rights Act of 1964
15 (42 U.S.C. 2000e et seq.); or

16 “(B) title VIII of the Civil Rights Act of 1964
17 (42 U.S.C. 2000f et seq.).

18 “(8) To the extent the consideration of the factors
19 described in paragraph (2)(A) involves personal details not
20 otherwise at issue in the case, the court should take steps
21 to maintain the privacy of the details including, for in-
22 stance, sealed filings or in camera review. The other party
23 or parties to the action should not have access to these
24 personal details. To the extent the person has already
25 shared personal details by filing a publicly available docu-

1 ment, the court should advise him or her of the option
 2 to replace the filing with a redacted or sealed copy in ac-
 3 cordance with any applicable local or Federal rules.

4 “(9) Any challenge to the appointment of counsel
 5 made by an opposing party shall be limited to the potential
 6 prejudice to that party, such as a delay in proceedings,
 7 and shall not concern the personal factors considered by
 8 the court under paragraph (2)(A).”.

9 **SEC. 4. DATA COLLECTION.**

10 Not later than 2 years after the date of the enact-
 11 ment of this Act, and every 2 years thereafter, the Direc-
 12 tor of the Administrative Office of the United States
 13 Courts. shall submit to Congress and make publicly avail-
 14 able a report on the subsection (e) of section 1915 of title
 15 28, United States Code, as amended by section 3 of this
 16 Act, which shall include the following:

17 (1) With respect to persons for whom counsel
 18 was provided pursuant to a request under section
 19 1915(e)(1) of title 28, United States Code, the types
 20 of cases. With respect to a person for whom counsel
 21 was provided pursuant to a request under section
 22 1915(e)(1) of title 28, United States Code, the type
 23 of case, length of time spent by counsel, and the out-
 24 come of the matter for which such counsel was pro-

1 vided and outcomes of the matters for which such
2 counsel was provided.

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

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

8 (4) Other changes to the functioning of the
9 Federal courts, including increases in efficiency of
10 adjudication of cases and changes in the number of
11 cases resolved in favor of the party for whom counsel
12 was provided pursuant to a request under such sec-
13 tion 1915(e).

14 (5) Suggested changes to such section 1915 to
15 ensure greater access to justice for low-income liti-
16 gants.

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