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

IN THE SENATE OF THE UNITED STATES

Ms. HARRIS 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 Representa-

tives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Ensuring Quality Ac-

cess to Legal Defense Act of 2019” or the “EQUAL De-

fense Act of 2019”.

SEC. 2. PURPOSE.

The purpose of this Act is—

(1) to protect the rights of defendants in crimi-

nal cases to due process and a fair trial under the
Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States, including the right to counsel in State criminal trials, as articulated by the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335 (1963);

(2) to collect data related to public defense in order to facilitate the development of evidence-based workload limits, and for other purposes; and

(3) to ensure that public defender compensation reflects the constitutional imperative of the work and adequately incentivizes attorneys at all levels to pursue a career in public defense.

**SEC. 3. DEFINITIONS.**

In this Act, except as otherwise provided in section 6:

(1) **APPLICABLE COURT.**—The term “applicable court”, with respect to an eligible entity that is—

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

(i) a court of the eligible entity; and

(ii) a court of a unit of local government within the eligible entity; and

(B) a Tribal organization, means a court of the Indian Tribe.
(2) 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.

(3) Basis of Compensation.—The term “basis of compensation” means the classification of the compensation of an employee into 1 of the following categories:

(A) Hourly.

(B) Flat rate.

(C) Per case.

(D) Salary.

(4) Case.—
(A) In general.—The term “case” includes all charges involved in a single incident of alleged criminal or delinquent conduct.

(B) Multiple defendants.—If a charging document states that multiple defendants were involved in a single incident of alleged criminal or delinquent conduct, each defendant shall be counted as a separate case.

(5) 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 law:

   (i) Juvenile.

   (ii) Misdemeanor.

   (iii) Felony.

   (iv) Life without parole.

   (v) Capital or death penalty.

(B) Multiple charges.—If a case involves multiple charges, the case type shall be determined according to the dominant charge.

(6) Chief prosecutor.—The term “chief prosecutor”, with respect to—

   (A) a State, means the attorney general of the State;
(B) a unit of local government, means the district attorney of the unit of local government; and

(C) a Tribal organization, means the lead prosecutor of the Tribal organization.

(7) CHIEF PUBLIC DEFENDER.—The term “chief public defender”, with respect to a State, unit of local government, or Tribal organization, means the head of the public defender’s office of the State, unit of local government, or Tribal organization, respectively.

(8) CORRESPONDING PROSECUTOR’S OFFICE.—The term “corresponding prosecutor’s office”, with respect to a public defender’s office, means the prosecutorial unit that appears adverse to the public defender’s office in criminal proceedings.

(9) COVERED GRANT.—The term “covered grant” means a grant awarded under section 4.

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

(11) ELIGIBLE ENTITY.—The term “eligible entity” means a State, unit of local government, Tribal organization, or public defender’s office that, as of
the date of enactment of this Act and without re-

gard to the deadlines under section 4(b)—

(A) has not developed and implemented a
data collection process that meets the require-
ments under paragraph (1) of that section;

(B) has not developed workload limits that
meet the requirements under paragraph (2) of
that section, or has developed such limits but is
not in compliance with the limits; or

(C) does not meet the compensation re-
quirements under paragraph (3) of that section.

(12) Full-time.—The term “full-time”, with
respect to an employee of a prosecutor’s office or
public defender’s office, means an employee who
works not less than 40 hours per week for that of-

ciice.

(13) Peripheral charge.—The term “periph-
eral charge”, with respect to a case that involves
multiple charges, means any charge that is not the
dominant charge.

(14) 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).

(15) 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.

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

(A) has the meaning given the term in section 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).

(17) STAFF ATTORNEY.—The term “staff attorney”, with respect to a prosecutor’s office or public defender’s office, means a prosecutor or public defender who is not the chief prosecutor or chief public defender, respectively.

(18) 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).

(19) 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)).

(20) 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.—

(1) IN GENERAL.—
(A) INITIAL GRANTS.—During the first 5 fiscal years beginning after the date of enactment of this Act, the Attorney General shall award a grant, to be used for public defense, to any eligible entity that commits to satisfying the requirements under subsection (b) and section 5.

(B) CONTINUING GRANTS.—During the sixth fiscal year beginning after the date of enactment of this Act, and each fiscal year thereafter, the Attorney General shall award a grant to any eligible entity that—

(i) commits to satisfying the requirements under section 5;

(ii) certifies that the eligible entity is in compliance with—

(I) the workload limits developed by the eligible entity under subsection (b)(2) of this section; and

(II) the requirements under subsection (b)(3) of this section; and

(iii) commits to using the grant funds for public defense.
(2) AMOUNT.—In applying for a grant under paragraph (1), an eligible entity shall request a grant amount that takes into account—

(A) any technology and training required to meet the requirements under subsection (b)(1); and

(B) the size of the justice system—

(i) that the entity administers or in which the entity participates, as applicable, relative to the size of other justice systems in—

(I) the United States, if the entity is a State or a public defender’s office of a State; or

(II) the State in which the entity is located, if the entity is a unit of local government or a public defender’s office of a unit of local government; or

(ii) of the Indian Tribe, if the entity is a Tribal organization or a public defender’s office of a Tribal organization.

(b) REQUIREMENTS.—The requirements for an eligible entity under this subsection are as follows:

(1) DATA COLLECTION.—
(A) PROCESS.—During the first fiscal year for which the eligible entity receives a covered grant, the eligible entity shall develop and implement a process for collecting the following data for full-time attorneys employed by each applicable public defender’s office during the fiscal year:

(i) The mean and median number of hours per month worked per attorney.

(ii) The mean and median percentage of hours per month spent with clients per attorney, excluding court appearances.

(iii) The mean and median percentage of hours per month spent in court proceedings per attorney.

(iv) The mean and median percentage of hours spent per month by a attorney on—

(I) investigation;

(II) research;

(III) writing; and

(IV) preparation.

(v) The amount of attorney turnover, broken down by the level of experience and length of employment of the attorney.
(vi) The number of open cases as of
the last day of the fiscal year, broken down
by—

(I) case type, including by—

(aa) the dominant charge;

and

(bb) each peripheral charge;

(II) the attorney, who shall be
identified using an anonymized unique
identifier;

(III) the date on which the attor-
ney was appointed to the case; and

(IV) the date on which the attor-
ney first met with the client.

(vii) The number of cases closed dur-
ing the fiscal year, broken down by—

(I) case type, including by—

(aa) the dominant charge;

and

(bb) each peripheral charge;

(II) the attorney, who shall be
identified using an anonymized unique
identifier;
(III) the date on which the case was referred to the public defender’s office;

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

(V) the date on which the case was closed.

(B) COLLECTION AND SUBMISSION REQUIREMENT.—For the second fiscal year, and each subsequent fiscal year, for which an eligible entity receives a covered grant, the eligible entity shall—

(i) collect the data described in subparagraph (A) with respect to that fiscal year; and

(ii) submit the data to the Attorney General.

(2) WORKLOAD LIMITS.—

(A) DEVELOPMENT OF WORKLOAD LIMITS.—During the second fiscal year for which the eligible entity receives a covered grant, the eligible entity shall develop workload limits, based on the data collected under paragraph (1), that provide each full-time public defender
employed by an applicable public defender’s office with sufficient time to provide—

   (i) reasonably effective assistance of counsel pursuant to prevailing professional norms; and

   (ii) competent representation pursuant to applicable rules of professional responsibility.

(B) Periodic Updates.—If the eligible entity receives covered grants under subsection (a)(1)(B), the eligible entity shall review and, as necessary, update the limits developed under subparagraph (A) of this paragraph not less frequently than once every 10 fiscal years.

(3) Public Defender Compensation.—During the sixth fiscal year, and each subsequent fiscal year, for which the eligible entity receives a covered grant, the eligible entity shall satisfy the following requirements with respect to employees of each applicable public defender’s office (or, in the case of subparagraph (D), with respect to each private attorney appointed by an applicable court):

   (A) The rate and basis of compensation of the chief public defender shall be equivalent to
the rate and basis of compensation of the corresponding chief prosecutor.

(B) The rate and basis of compensation of an entry-level full-time staff attorney shall be equivalent to the rate and basis of compensation of an entry-level full-time staff attorney employed by the corresponding prosecutor’s office.

(C) The rate and basis of compensation of a non-entry-level full-time staff attorney shall be equivalent to the greater of—

(i) the rate and basis of compensation of a full-time staff attorney employed by the corresponding prosecutor’s office who has the same number of years of experience working as a criminal attorney; or

(ii) the rate and basis of compensation of a full-time staff attorney employed by the corresponding prosecutor’s office who has an equivalent supervisory or managerial role.

(D) In the case of an eligible entity that is not a public defender’s office, the rate of compensation of a private attorney appointed by an applicable court to represent a defendant shall
be equivalent to the rate of compensation of an 
attorney appointed under section 3006A of title 
18, United States Code, by the United States 
district court for the Federal judicial district in 
which the applicable court is located, for the 
same or a similar type of case.

(E) The rate and basis of compensation of 
a full-time investigator shall be equivalent to 
the rate and basis of compensation of a full-
time investigator employed by the cor-
responding prosecutor’s office who has the same 
number of years of experience working as an in-
vestigator.

(F) The rate and basis of compensation of 
a full-time paralegal shall be equivalent to the 
rate and basis of compensation of a full-time 
paralegal employed by the corresponding pros-
ceutor’s office who has the same number of 
years of experience working as a paralegal.

(c) 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. 5. PROGRESS REPORTS; CERTIFICATIONS.

(a) PROGRESS REPORTS.—For each of the first 5 fiscal years for which a State or Tribal organization receives a covered grant, the State or Tribal organization shall submit a report to the Attorney General that—

(1) documents the progress of the State or Tribal organization in meeting the requirements under section 4(b)(3);

(2) provides a formal accounting of total amounts expended on public defense during the fiscal year by the—

(A) State, including each unit of local government in the State; or

(B) Tribal organization;

(3) provides a formal accounting of total amounts expended on prosecution during the fiscal year by the—

(A) State, including each unit of local government in the State; or

(B) Tribal organization; and

(4) documents the progress of the State, including each unit of local government in the State, or
Tribal organization in achieving overall resource parity between prosecution and public defense.

(b) Certifications.—

(1) Data Collection Process.—For the first fiscal year for which an eligible entity receives a covered grant, the eligible entity shall submit to the Attorney General a certification that the eligible entity has developed and implemented a data collection process in accordance with section 4(b)(1)(A).

(2) Workload Limits.—

(A) Compliance.—Subject to subparagraph (B), for the third fiscal year for which an eligible entity receives a covered grant, and each fiscal year thereafter, the eligible entity shall submit to the Attorney General a certification that the eligible entity has complied with the workload limits developed under section 4(b)(2).

(B) Requirement.—If an eligible entity is unable to certify under subparagraph (A) that the eligible entity has complied with the workload limits developed under section 4(b)(2)—

(i) the eligible entity shall report to the Attorney General the number of addi-
tional public defenders and the amount of additional funding needed to ensure compliance with the limits developed under that section; and

(ii) the Attorney General shall factor the information provided under clause (i) into the amount of the covered grant awarded to the eligible entity for the following fiscal year.

(3) COMPENSATION PARITY.—For the sixth fiscal year, and each subsequent fiscal year, for which an eligible entity receives a covered grant, the eligible entity shall submit to the Attorney General a certification that the eligible entity is in compliance with section 4(b)(3).

SEC. 6. REQUIREMENTS FOR STATES RECEIVING BYRNE JAG FUNDS.

(a) DATA COLLECTION.—

(1) 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. 10501 et seq.) shall submit to the Attorney General data on the following 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:

(A) The number of cases for which a defendant waived his or her right to counsel, and the number of charges in each case, broken down by race, ethnicity, and gender of the defendant.

(B) The number of cases for which a defendant was represented in court by counsel who was publicly appointed, broken down by—

(i) public defender, court-appointed private attorney, or contract attorney, and the number of charges in each case; and

(ii) race, ethnicity, and gender of the defendant.

(C) The number of cases for which a defendant was represented in court by counsel who was not publicly appointed, and the number of charges in each case, broken down by race, ethnicity, and gender of the defendant.

(2) APPLICABLE CRIMINAL OFFENSES.—A State shall submit data under paragraph (1) with respect to—
(A) criminal offenses for which a term of imprisonment of more than 1 year may be imposed;

(B) 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

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

(3) WITHHOLDING OF FUNDS.—If a State does not comply with paragraph (1) or (2) for a fiscal year, the Attorney General shall withhold from the State 20 percent of the funds that would otherwise be allocated to the State for the following fiscal year under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10501 et seq.).

SEC. 7. FUNDING TO TRAIN PUBLIC DEFENDERS.

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

(1) is—

(A) an organization—

(i) 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 (ii) funded by a State or unit of local government; or (B) a State, unit of local government, Indian Tribal government, or political subdivision of an Indian Tribe; and (2) has a comprehensive educational program specific to public defenders that offers— (A) ongoing training and support; and (B) programming that includes— (i) skills training, including pretrial practice, negotiation skills, and trial skills; (ii) client-centered values; (iii) implicit bias training; (iv) leadership development; and (v) ongoing support to reinforce the training curriculum. (b) Grants.—The Attorney General shall award grants to eligible organizations to be used to train public defenders, court-appointed private attorneys, and contract attorneys. (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.

SEC. 8. ENHANCEMENT OF STUDENT LOAN REPAYMENT PROGRAM.

(a) REAUTHORIZATION.—Section 3001(j) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10671(j)) is amended—

(1) by striking “this section $25,000,000” and inserting the following: “this section—

“(1) $25,000,000”; and

(2) by striking the period at the end and inserting the following: “; and

“(2) $75,000,000 for each of fiscal years 2019 through 2022.”.

(b) INCREASING LIMITS ON REPAYMENT AMOUNT.—


(1) in clause (i), by striking “$10,000” and inserting “$35,000”; and

(2) in clause (ii), by striking “$60,000” and inserting “$200,000”.