

115TH CONGRESS
1ST SESSION

H. R. 968

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 HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2017

Mr. SEAN PATRICK MALONEY of New York (for himself, Mr. CUMMINGS, and Mr. JEFFRIES) introduced the following bill; which was 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 2017”.

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 and Fourteenth Amend-
6 ments, at the State’s expense. If the State delegates fiscal
7 or administrative authority over the indigent defense func-
8 tion to one of its political subdivisions, the State retains
9 ultimate responsibility for securing counsel for the indi-
10 vidual.

11 (b) INEFFECTIVE ASSISTANCE.—The assistance of
12 counsel is considered ineffective when a class can dem-
13 onstrate that counsel’s performance was not reasonable
14 under prevailing professional norms.

15 **SEC. 3. REMEDY.**

16 (a) CLASS ACTION AUTHORIZED.—If a State official
17 or one or more of a State’s political subdivisions fails on
18 a systemic basis to guarantee the right to the assistance
19 of effective counsel as guaranteed by the Sixth and Four-
20 teenth Amendments, aggrieved persons may, prior to con-
21 viction, commence a civil class action in the district courts
22 of the United States to seek declaratory, injunctive, or
23 other equitable relief.

24 (b) ABSTENTION DOCTRINE.—A court entertaining a
25 petition for relief filed under this Act need not apply the

1 abstention restrictions articulated in *Younger v. Harris*
2 (401 U.S. 37).

3 (c) BURDEN OF PROOF.—Members of the class shall
4 have the burden of establishing that there is a likelihood
5 of imminent and irreparable injury from that violation.

6 (d) ATTORNEY’S FEES.—In any action or proceeding
7 under this section, the court, in its discretion, may allow
8 the prevailing party, other than a named official of a State
9 or political subdivision of a State, a reasonable attorney’s
10 fee as part of the costs. In awarding an attorney’s fee
11 under this subsection, the court, in its discretion, may in-
12 clude expert fees as part of the attorney’s fee.

13 (e) SAVINGS PROVISION.—Nothing in this section
14 shall restrict any right that any individual has under any
15 other statute or under common law to seek redress for
16 a violation of the right to counsel.

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