

116TH CONGRESS
2D SESSION

H. R. 6037

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2020

Mr. SARBANES (for himself, Mr. NADLER, Mr. JOHNSON of Georgia, Ms. BASS, Ms. SCANLON, and Mr. KENNEDY) 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 2020”.

6 **SEC. 2. COUNSEL IN CASES WHERE PERSONS ARE PRO-**
7 **CEEDING IN FORMA PAUPERIS.**

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

1 “(e)(1) If a person appears without counsel, the court
2 shall inform the person of their right to request counsel
3 if unable to afford counsel. Upon granting such request,
4 the court may appoint counsel for that person.

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

8 “(A) The person’s ability to articulate claims,
9 investigate facts, respond to dispositive motions, and
10 otherwise participate, including:

11 “(i) any mental disabilities, limitations on
12 physical liberty, or language barriers;

13 “(ii) the person’s education and literacy
14 level; and

15 “(iii) any assistance the person has re-
16 ceived to date, including the sufficiency of that
17 assistance and whether it will be available in
18 the future.

19 “(B) The degree of factual investigation re-
20 quired.

21 “(C) The complexity of the legal and factual
22 questions.

23 “(D) The degree to which the claims turn on
24 credibility determinations, including the need for
25 cross-examination.

1 “(E) Whether the person has asserted any
2 colorable claims. That fact that attorneys have de-
3 clined to take the case shall not be an considered an
4 indication of a lack of colorable claims.

5 “(F) The need for expert testimony.

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

9 “(H) Whether any opposing party is rep-
10 resented by counsel.

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

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

17 “(4) The court should consider whether to provision-
18 ally appoint counsel for limited purposes, such as respond-
19 ing to a particular motion, amending the complaint, rep-
20 resenting a person at mediation, conducting discovery, or
21 investigating the claims for purposes of providing a rec-
22 ommendation to the court as to whether a full appoint-
23 ment is warranted.

24 “(5) Notwithstanding paragraphs (2) through (4),
25 whenever the court determines that the interests of justice

1 so require, representation may be provided for any finan-
2 cially eligible person who is seeking relief under section
3 2241, 2254, or 2255.”.

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