

## Federal Support for Improving Public Defense Quality: The EQUAL Defense Act

### Summary

The Constitution of the United States requires that people accused of serious crimes who cannot afford to pay for private counsel be provided with an attorney. However, this mandate is unfunded by the federal government. Rather, public defender systems are administered and funded by states and local jurisdictions. As a result, standards of public defense delivery vary widely state-to-state and county-to-county.

It is not NLADA's position that the federal government should be *solely* responsible for funding the right to counsel in state and local courts. However, we strongly advocate for a significant federal investment as a public policy issue. NLADA also promotes a federal role in creating accountability for states that fail to provide effective assistance of counsel on a systemic basis.

H.R. 1408, the EQUAL Defense Act, would invest \$250 million each year through a new federal grant program to reduce public defender workloads and create pay parity between defenders and prosecutors.

### Background

In *Gideon v. Wainwright* (1963), the U.S. Supreme Court held that the Constitution's Sixth Amendment right to counsel applies to individuals accused of serious crimes in state courts and that states are required to appoint attorneys for individuals who cannot afford to retain counsel on their own.

Responsibility for upholding the mandate of the Sixth Amendment currently lies with the states, though in many places this responsibility has been delegated further to counties or municipalities. In many jurisdictions, the quality of counsel provided is not adequate to ensure that a person receives a comprehensive defense and/or other important related services, including support that can prevent recidivism. It is not NLADA's position that the federal government should take over responsibility for providing public defense in state and local systems. However, the federal government can and should choose to play a supporting role as a public policy matter. There are clear analogues to federal interventions of this type, most closely related is the [Edward Byrne Memorial Justice Assistance Grant \(JAG\) Program](#), which provides large grants to state and local justice agencies to support a range of justice programs that are administered locally.

Importantly, bipartisan support of public defense exists. For example, in 2013, then-Senator Jeff Sessions (R-AL) and Senator Chris Coons (D-DE) wrote [a letter to the Judicial Conference of the United States](#) requesting that the federal defender service be exempt from sequestration, writing: "Quality representation not only promotes the rule of law and safeguards constitutional rights, it also saves money by reducing pretrial and post-trial incarceration costs." And perhaps even more notably, public defense has support among the general public. A [2017 survey](#) funded by the U.S. Department of Justice found that 66% of Americans favor the government using tax dollars to provide public defense for people accused of a crime who cannot afford a lawyer.

## The Issue

The quality of public defense delivery varies widely between and within states. Where jurisdictions fail to provide sufficient resources and other needed support to public defense systems, the quality of representation is reduced because:

- Excessive workloads limit the time an attorney can spend on a case. This can prevent thorough investigation of the facts, effective preparation for court, or even being present during critical pretrial stages of the case.
- Inadequate compensation for public defenders creates unnecessary turnover. It can be unaffordable for public defenders, who earn relatively low salaries while often carrying crushing student loan debt, to remain in their jobs over the long term. This reality forces talented attorneys to leave just as they gain the experience they need to be most effective.
- Deficiency in resources also impacts the ability to afford to hire or contract with critical support staff. This includes professional investigators and experts who can help prove a client's innocence or social or civil legal services that can help a defendant resolve an underlying problem that led them to justice system involvement in the first place.

## Proposed Legislation: The EQUAL Defense Act

In 2019, Vice President Harris – then Senator Harris – introduced the Ensuring Quality Access to Legal (EQUAL) Defense Act (S. 1377/H.R. 2868), which would invest \$250 million each year in state, local, and tribal public defense systems to reduce public defender workloads and create pay parity between defenders and prosecutors. States and local governments, tribal organizations, and public defender offices would be eligible to apply for a portion of this federal grant funding if they commit to developing and implementing evidence-based workload limits and guaranteeing public defender pay equals that of a prosecutor with similar experience. This is the most ambitious federal legislation related to state and local public defense in recent history. NLADA strongly supports the bill.

The EQUAL Defense Act has been reintroduced in the current Congress by Representative Ted Deutch as [H.R. 1408](#). NLADA anticipates that it will soon be reintroduced in the Senate and that the Administration will support the bill.