

JOHN R. JUSTICE PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2007
STATEMENT FOR THE RECORD

Mr. DURBIN (for himself, Mr. SPECTER, Mr. LEAHY, MR. SMITH, MR. KERRY and MS. COLLINS):

S. A bill to provide for loan repayment for prosecutors and public defenders; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today to introduce the John R. Justice Prosecutors and Defenders Incentive Act of 2007. I am honored to have the support and cosponsorship of Senator Leahy and Senator Specter, the chairman and ranking member of the Judiciary Committee, on this important legislation. I look forward to working closely with Chairman Leahy and Ranking Member Specter to advance it through the Judiciary Committee and secure its enactment into law. I also appreciate the cosponsorship of Senator Smith, Senator Kerry and Senator Collins on this bipartisan bill.

Our bill seeks to enhance our criminal justice system by encouraging talented law school graduates to serve as criminal prosecutors and public defenders. The bill would establish a student loan repayment program for qualified attorneys who agree to remain employed for at least three years as State or local criminal prosecutors, or as State, local, or Federal public defenders in criminal cases.

This legislation is supported by the American Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the National Legal Aid and Defender Association, and the National Association of Criminal Defense Lawyers.

For our criminal justice system to function effectively, we need to have a sufficient supply of dedicated and competent attorneys working in prosecutor and public defender offices. However, many qualified law school graduates who have a strong motivation to work in the public sector find it economically impossible due to the overwhelming burden of student loan debt.

The legal profession and our communities pay a severe price when law graduates are shut out from pursuing public service careers due to educational debt. When prosecutor and public defender offices cannot attract new lawyers or keep experienced ones, their ability to protect the public interest is compromised. Such offices may find themselves unable to take on new cases due to staffing shortages, and their existing staff may be forced to handle unmanageable workloads. Cases may suffer from lengthy and unnecessary delays, and some cases may be mishandled by inexperienced or overworked attorneys. As a result, innocent people may be sent to jail, and criminals may go free.

Our bill, the John R. Justice Prosecutors and Defenders Incentive Act, is designed to help remedy some of these problems. The availability of student loan repayment can be a powerful incentive for attracting talented new lawyers to public service employment. Our proposal complements

loan forgiveness options that currently exist for Federal prosecutors. Passage of this bill will help make prosecutor and public defender jobs at all levels of government more attractive and financially viable for law school graduates who have incurred significant educational debt.

Our bill is named after the late John R. Justice, former president of the National District Attorneys Association and a distinguished prosecutor from the state of South Carolina. John Justice was instrumental in promoting student loan repayment efforts for law school graduates seeking to work in public service. This bill is a fitting tribute to his dedicated efforts.

The need for this legislation is evident. In recent years, the costs of a law school education have skyrocketed. Researchers found that tuition increased about 340 percent from 1985 to 2002 for private law school students and for out-of-state students at public law schools. In-state students at public law schools saw their tuition jump about 500 percent during that time. In 2005, the average annual tuition was \$28,900 for private law schools, \$22,987 for nonresident students at public law schools, and \$13,145 for resident students at public law schools. These tuition costs do not include the costs of food, lodging, books, fees and personal expenses over three years of law school.

Unsurprisingly, the vast majority of law students - over 80 percent - must borrow funds to finance their legal education. According to the American Bar Association, the average total cumulative educational debt for law school graduates in the class of 2005 was \$78,763 for private schools and \$51,056 for public schools. Two-thirds of law students generally carry additional unpaid debt from their undergraduate studies. These education debts are serious financial obligations that must be repaid, as any default on a loan triggers significant consequences.

Many law students graduate with a deep commitment to pursuing a career in public service. However, they need a level of income sufficient to meet the demands of their educational loan liabilities, and public service salaries have not kept up with rising law school debt burdens. From 1985 to 2002, while law school tuition increased 340 percent for private law school students and 500 percent for in-state students at public law schools, salaries for public service lawyers such as prosecutors and public defenders increased by just 70 percent. According to the National Association for Law Placement (NALP), the median entry-level salary for public defenders is \$43,000. With 11 to 15 years of experience, the median salary increases only to \$65,500. The salary progression for State prosecuting attorneys is similar, starting at around \$46,000 and progressing to about \$68,000 for those with 11 to 15 years of experience.

Many law school graduates can earn much more and repay their student loans much faster by entering the private sector. According to a NALP survey, in 2005 the median salary for first-year attorneys at law firms ranged from \$67,500 in firms of 2 to 25 attorneys to \$135,000 in firms of 500 attorneys or more. The median first-year salary for all firms participating in the survey was \$100,000. When choosing between a private sector job and a job as a prosecutor or defender, talented law graduates with large debt burdens must take into consideration this salary differential.

It is clear that large student debt deters many law graduates from pursuing public service careers. According to a national survey of 1,622 students from 117 law schools conducted by Equal Justice Works, the Partnership for Public Service, and NALP in 2002, 66 percent of respondents stated that law school debt prevented them from considering a public interest or government job.

Some law graduates initially accept public service jobs despite their high debt burdens. However, many attorneys cannot repay their loan obligations as well as pay all their other living expenses on a government salary. Attorneys who begin careers in public service, and who would like to remain, frequently leave after a few years when they find their debts are hindering their ability to provide for themselves, much less support their families or save for retirement.

Many public service employers report having a difficult time attracting and retaining talented law graduates. Prosecutor and public defender offices across the country have vacancies they cannot fill because new law graduates cannot afford to work for them. Alternatively, those who do hire law graduates find that, because of educational debt burdens, those whom they do hire leave just at the point when they have acquired the experience to provide the most valuable services. According to a Bureau of Justice Statistics survey, 24 percent of state prosecutors' offices reported problems in 2005 with recruiting new attorneys, and 35 percent reported problems in retaining attorneys. Another survey administered by Equal Justice Works and the National Legal Aid & Defender Association in 2002 found that over 60 percent of public interest law employers, including state and local prosecutor and public defender offices, reported difficulty in attorney recruitment and retention.

I recently received a letter from Bernard Murray, President of the Prosecutors Bar Association and Chief of the Criminal Prosecutions Bureau for the Cook County State's Attorney's Office in Chicago. He wrote:

“[W]e are faced with enormous hurdles in attracting first-rate candidates to pursue a career with the Cook County State's Attorney's Office. We simply cannot afford to pay new assistants a salary high enough to offset the enormous debt load that follows them from their law school graduation.”

His letter also stated:

“We are observing an exodus of talent at about the three to five year experience mark in the office when assistants are no longer able to postpone life events such as marriage, home ownership, and starting a family. We are losing much of our best talent before they even have a chance to put their skills to use in felony cases.”

I also received a copy of a letter from Michael Judge, Chief Defender of the Los Angeles County Public Defender Office, the oldest and largest such office in the nation. His letter states the following about his office's efforts to recruit new lawyers:

“It became necessary to expand the ambit of recruiting from locally to statewide, to the western region of the country and now to the entire nation to ensure the success of our recruiting in the face of the deterrent of crushing student loan debt....In some sense we are ‘poaching’ in the territory of other defender offices....I have experienced more ‘turndowns’ of employment offers in the recent past than during my first 9 or 10 years as Chief Defender. I attribute that to the ‘ice cold water in the face syndrome’ experienced by motivated candidates making the final net calculations and discovering a defender career can be an adventure in deficit financing.”

It harms the public interest when communities face a shortage of attorneys who can effectively prosecute cases and provide criminal defendants with their constitutional right to counsel. Sadly, these situations occur all too frequently. We can --and should-- do more to help prosecutor and public defender offices recruit and retain attorneys in the face of increasing student debt burdens and higher private sector salaries.

Our legislation would help by establishing, within the Department of Justice, a program of student loan repayment for borrowers who agree to remain employed for at least three years as State or local criminal prosecutors, or as State, local, or Federal public defenders in criminal cases. It would allow eligible attorneys to receive student loan debt repayments of up to \$10,000 per year, with a maximum aggregate over time of \$60,000. The bill would cover student loans made, insured, or guaranteed under the Higher Education Act of 1965, including consolidation loans.

Under our bill, repayment benefits for public sector attorneys would be made available on a first-come, first-served basis, and would be subject to the availability of appropriations. Priority would be given to borrowers who received repayment benefits for the preceding fiscal year and who have completed less than three years of the first required service period. Borrowers could enter into an additional agreement, after the required three-year period, for a successive period of service which may be less than three years. Attorneys who do not complete their required period of service would be required to repay the government.

In addition to covering those who agree to serve in state and local prosecutor and defender offices, our bill complements existing loan forgiveness programs that are currently available for Federal prosecutors by making loan relief available to Federal public defenders as well.

Our bill is modeled on a loan repayment program that has been created for Federal executive branch employees and that has enjoyed growing success. Federal law currently permits Federal executive branch agencies to repay their employees' student loans, up to \$10,000 in a year, and up to a lifetime maximum of \$60,000. In exchange, the employee must agree to remain with the agency for at least three years. According to the Office of Personnel Management (OPM), during fiscal year 2005 there were 479 lawyers working in Federal agencies who received loan repayments under this program, including 242 lawyers for the Securities and Exchange Commission and 85 attorneys for the Department of Justice. According to OPM, Federal agencies across the board say that the program has been of tremendous benefit in recruiting and retaining attorneys.

As I have worked on behalf of our legislation, I have been moved by the personal stories of attorneys who have been trying to embark on a career of public service but have been struggling because of student loans. One compelling letter I received came from Aisha Cornelius, an Assistant State's Attorney in Cook County, Illinois. Her letter said the following:

"I am a full-time prosecutor in Cook County. I wanted this job because I desired to use my law degree for public service. Although making a lot of money was not my primary goal, I had hoped at least for financial stability. This, however, is difficult to accomplish as my student loan payments take up a considerable amount of my income.

"I have more than \$100,000 in student loan debt. I am also a single mother with a five year old daughter in kindergarten. In order to work, I have to pay for before-and after-school care for her.... I depleted my savings while studying for the bar exam last year and I essentially live check to check. In order to supplement my income, I sell cosmetics and skin care. I am also in the process of applying for a part-time evening teaching position.

"I love my job and serving the greater good. The only reason I would ever leave public service is if I could no longer afford to stay. This is much more of a possibility than I would like it to be. Loan repayment assistance would help me stay longer in a position that allows me to serve the community during the day while giving me the freedom and peace of mind to focus [on] my daughter at night."

I appreciate Ms. Cornelius's willingness to share her story with me. By enacting and funding this legislation, we can take a meaningful step toward alleviating some of the financial burden for attorneys such as Ms. Cornelius who choose careers as criminal prosecutors and public defenders.

I know there are many other law graduates who, like Aisha Cornelius, want to apply their legal training and develop their skills in the public sector, but are deterred by the weight of student loan obligations. Passage of the John R. Justice Prosecutors and Defenders Incentive Act will help them make their career dreams a reality. I urge its swift adoption.