

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8-9, 2010

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges Congress to ensure that funding for the
2 John R. Justice Prosecutors and Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is
3 expanded beyond its original authorization of \$25 million to cover the actual national need.
4
5 FURTHER RESOLVED, That the American Bar Association urges Congress to lift the proposed
6 expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

REPORT

This proposed resolution attempts to expand and enhance an existing federal student loan repayment program for prosecutors and public defenders and requests certain action be taken immediately given 1) the year and a half delay in implementing the program, and 2) the program's fixed six year duration.

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For our criminal justice system to function effectively, we need a sufficient number of dedicated and competent attorneys working in prosecutor and public defender offices. However, prosecutor and public defender offices have had serious difficulties in recruiting and retaining qualified attorneys. Understaffed offices mean considerable delays or overworked or inexperienced attorneys potentially resulting in innocent people sitting in jail or criminals going free.

Potential recruits for these positions cite the modest starting salaries for these positions as a reason they are unable to take them. According to the American Bar Association, the average cumulative educational debt for law school graduates in the class of 2008 was \$91,506 for private school graduates and \$59,324 for public school graduates. This is in addition to undergraduate debt. Repayment on these loans would represent more than 40% of a borrower's take home pay each month for positions that start, on average, in the low \$40,000's.

Accordingly, last year Congress enacted The John R. Justice Prosecutors and Defenders Incentive Act (Section 951 of PL110-315). The law is named after the late John R. Justice, former solicitor for the Sixth Judicial Circuit in South Carolina, president of the National District Attorneys Association, and a strong supporter of loan repayment programs for public sector attorneys. The program is administered by the Department of Justice and provides up to \$10,000 a year in student loan repayment for state and local prosecutors and public defenders, and federal public defenders, in exchange for a renewable three-year service commitment. This program is modest federal investment in not just state and local workforce, but in the administration of criminal justice public's confidence in the decisions the system may render.

The program is modeled on existing loan repayment programs that cover federal executive branch employees and the Department of Justice. According to the Office of Personnel Management which administers the program, 479 lawyers working in relevant positions had benefited from the program in FY2005 and federal agencies report that the program has been beneficial in recruiting and retaining attorneys. We know that such programs when properly implemented do work.

However, authorizing a program is not a guarantee that it will be funded, and approved funding levels do not necessarily reflect actual need. This is true of the John R. Justice Act. The \$25 million authorization figure was established to reflect the practical realities of funding under the Department of Justice budget, and did not take into account the tens of thousands of attorneys in thousands of offices nationwide seeking relief. Further, the program has yet to be appropriated any funding, although that may change soon with partial funding currently under consideration in Congress.

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Enacted into law in August 2008, the John R. Justice Act may finally see its first funding under the 111th Congress, roughly a year and a half later. Per congressional historical practice, if the \$10 million currently under consideration were approved, it would not be available for distribution until the end of the fiscal year, i.e., the fall of 2010. Even then, the law gives priority in financial awards to those with fewer than three years of service and with the greatest difficulty in repaying their loans. Without the implementing regulations in place, it is unclear how this priority will be interpreted, e.g., would these persons receive larger awards, or simply receive their awards first, with any remainder available for others?

We know the John R. Justice Act to be an excellent investment of tax dollars. However, we also know that while a dollar amount had to be set that would be palatable to appropriators, the set authorization figure – let alone the fraction currently under deliberations – is insufficient to address what is truly a national constitutional concern of national proportion. Accordingly, we recommend revisiting the authorization figure of the program as it demonstrates success to contemplate 1) increased costs of program administration including such matters as inflation, and 2) the extent of the actual need facing prosecutor and public defender offices in recruiting and retaining competent counsel.

As noted at the start of this report, the program is currently only authorized to run for six years and an interim study to be conducted in year three. It is difficult to understand how an accurate assessment of the program's success could be made when it hasn't been operational. Accordingly, while we encourage measures which seek to promote accountability and efficacy of federal programs, we strongly urge that either the program's six year duration be extended to give an interim study better data from which to draw conclusions, or else to lift the program's expiration date all together, a negative interim study being grounds for reform or termination of the program.

What was true then has become all too clear now – the funding shortage in the states has left states powerless to make any headway in addressing prosecutor and defender compensation levels. Collectively, states are projected to be some \$400 billion in the red and some of the cost-saving measures proposed are extreme. While many programs can be cut or eliminated, the administration of justice and the courts represent a branch of government, not merely an agency, and the persons who operate within it a vested constitutional responsibility.

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. The John R. Justice Prosecutors and Defenders Incentive Act, when adequately funded, will serve to strengthen our criminal justice system by bolstering the ranks of qualified attorneys who serve in that system. The public good demands that Congress appropriate adequate funds to fulfill the promise it made when it passed the John R. Justice Act.

Respectfully submitted,

Charles Joseph Hynes
Chair, Criminal Justice Section
February 2010

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Criminal Justice Section

Submitted By: Joseph Charles Hynes, Chair

1. Summary of Recommendation(s).
This Recommendation urges Congress to ensure that funding for the John R. Justice Prosecutors and Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is expanded beyond its original authorization of \$25 million to cover the actual national need.
2. Approval by Submitting Entity.
The recommendation was approved by the Criminal Justice Section Council on November 16, 2009.
3. Has this or a similar recommendation been submitted to the ABA House of Delegates or Board of Governors previously?
The American Bar Association has several policies in support of loan forgiveness for those in public service positions including prosecutors and public defenders. The present policy would not change ABA policy, merely augment it. The policy position would merely authorize the ABA to speak to the more particular manner of funding and implementation of a particular loan forgiveness program.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
See above.
5. What urgency exists which requires action at this meeting of the House?
This proposed resolution attempts to expand and enhance an existing federal student loan repayment program for prosecutors and public defenders and requests certain action be taken immediately given 1) the year and a half delay in implementing the program, and 2) the program's fixed six year duration, among other things.
6. Status of Legislation. (If applicable.)
Enacted into law in August 2008, the John R. Justice Act may finally see its first funding under the 111th Congress, roughly a year and a half later. Per congressional historical practice, if the \$10 million currently under consideration were approved, it would not be available for distribution until the end of the fiscal year, i.e., the fall of 2010.
7. Cost to the Association. (Both direct and indirect costs.)
None
8. Disclosure of Interest. (If applicable.)
No known conflict of interest.

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9. Referrals. (List entities to which the recommendation has been referred, the date of referral and the response of each entity if known.)
Concurrently with the submission of this report to the ABA Policy Administration Office for calendaring on the February 2010 House of Delegates agenda it is being circulated to the following:
Standing Committee on Legal Aid and Indigent Defendants
Judicial Division
Litigation Section
Individual Rights and Responsibilities Section
Coalition for Justice
Council on Ethnic and Racial Justice
Young Lawyers Division
Government and Public Sector Lawyers Division
Standing Committee on Ethics and Responsibility
Standing Committee on Lawyers' Professional Responsibility
State and Local Government Law
Administrative Law
Law Student Division

10. Contact Person. (Prior to the meeting. Please include name, address, telephone number and email address.)

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11. Contact Person. (Who will present the report to the House)

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EXECUTIVE SUMMARY**A. Summary of Recommendation.**

This Recommendation urges Congress to ensure that funding for the John R. Justice Prosecutors and Defenders Incentive Act of 2008 (Section 951 of PL 110-315) is expanded beyond its original authorization of \$25 million to cover the actual national need.; and urges Congress to lift the proposed expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

B. Issue Recommendation Addresses.

It attempts to expand and enhance an existing federal student loan repayment program for prosecutors and public defenders and requests certain action be taken immediately given 1) the year and a half delay in implementing the program, and 2) the program's fixed six year duration, among other things.

C. How Proposed Policy Will Address the Issue.

This resolution is simply intended to urge Congress to lift the proposed expiration of the John R. Justice Prosecutors and Defenders Incentive Act of 2008.

D. Minority Views or Opposition.

None.