

115TH CONGRESS
1ST SESSION

H. R. 3811

To establish the National Center for the Right to Counsel.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2017

Mr. DEUTCH (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the National Center for the Right to Counsel.

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 “National Center for
5 the Right to Counsel Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Sixth Amendment to the Constitution
9 of the United States provides that “In all criminal
10 prosecutions, the accused shall enjoy the right to

1 . . . have the Assistance of Counsel for his de-
2 fense.”.

3 (2) In *Gideon v. Wainwright*, 372 U.S. 335
4 (1963), the United States Supreme Court held that
5 the States were required to provide counsel for indi-
6 gent defendants in all felony cases.

7 (3) In *Argersinger v. Hamlin*, 407 U.S. 25
8 (1972), the United States Supreme Court held that
9 indigent defendants are entitled to court-appointed
10 counsel in any case that leads to actual imprison-
11 ment.

12 (4) For more than 50 years, the States and
13 local governments have been struggling to satisfy
14 this mandate.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) The term “Board” means the Board of Di-
18 rectors of the National Center for the Right to
19 Counsel.

20 (2) The term “Center” means the National
21 Center for the Right to Counsel established in this
22 Act.

23 (3) The term “indigent defendant” means a de-
24 fendant in a criminal case who is unable to afford

1 a reasonable attorney’s fee in the case against such
2 person.

3 (4) The term “public defense services” means
4 legal assistance provided to an indigent defendant in
5 a criminal case against such person.

6 (5) The term “public defense system” means a
7 system that provides public defense services, and in-
8 cludes a system that is run by a State or local unit
9 of government, and a system that is run by a private
10 entity or individual that provides such services by
11 reason of a contract with a State or local unit of
12 government.

13 (6) The term “State” means any State of the
14 United States, the District of Columbia, the Com-
15 monwealth of Puerto Rico, the United States Virgin
16 Islands, Guam, American Samoa, and the Common-
17 wealth of the Northern Mariana Islands.

18 **SEC. 4. ESTABLISHMENT OF CENTER.**

19 (a) IN GENERAL.—There is established in the Dis-
20 trict of Columbia a private nonmembership nonprofit cor-
21 poration, which shall be known as the National Center for
22 the Right to Counsel, for the purpose of—

23 (1) providing financial support to supplement,
24 not supplant, funding for public defense systems;
25 and

1 (2) providing financial and substantive support
2 for training programs that aim to improve the deliv-
3 ery of legal services to indigent defendants.

4 (b) PRINCIPAL OFFICE; AGENT FOR SERVICE OF
5 PROCESS.—The Center shall maintain its principal office
6 in the District of Columbia and shall maintain therein a
7 designated agent to accept service of process for the Cen-
8 ter. Notice to or service upon the agent shall be deemed
9 notice to or service upon the Center.

10 (c) STATUS OF CENTER UNDER TAX LAWS.—The
11 Center shall be eligible to be treated as an organization
12 described in section 170(c)(2)(B) of the Internal Revenue
13 Code of 1986 and as an organization described in section
14 501(c)(3) of the Internal Revenue Code of 1986 which is
15 exempt from taxation under section 501(a) of such Code.
16 If such treatments are conferred in accordance with the
17 provisions of such Code, the Center shall be subject to all
18 provisions of such Code relevant to the conduct of organi-
19 zations exempt from taxation.

20 **SEC. 5. GOVERNING BODY.**

21 (a) BOARD OF DIRECTORS ESTABLISHED.—The Cen-
22 ter shall have a Board of Directors consisting of 9 voting
23 members appointed by the President, by and with the ad-
24 vice and consent of the Senate. The President shall make

1 such nominations not later than 60 days after the date
2 of the enactment of this Act.

3 (b) QUALIFICATIONS OF MEMBERS.—The members
4 shall be qualified as follows:

5 (1) A majority of the members shall be mem-
6 bers of the bar of the highest court of any State.

7 (2) One member shall have been an indigent de-
8 fendant who received public defense services from a
9 public defense system.

10 (3) The members, except for the member de-
11 scribed in paragraph (2), shall have—

12 (A) significant experience in the legal de-
13 fense of criminal cases;

14 (B) demonstrated a commitment to quality
15 indigent defense representation; or

16 (C) demonstrated a commitment to work-
17 ing with and advocating for the population
18 served by the Center.

19 (c) TERMS.—

20 (1) IN GENERAL.—The term of a member shall
21 be 5 years, except as provided in paragraphs (2) and
22 (4).

23 (2) FIRST TERMS.—As designated by the Presi-
24 dent at the time of appointment, of the members
25 first appointed—

1 (A) 3 shall be appointed for terms of 2
2 years;

3 (B) 3 shall be appointed for terms of 3
4 years; and

5 (C) 3 shall be appointed for terms of 4
6 years.

7 (3) REAPPOINTMENT.—No member may be re-
8 appointed to more than two consecutive terms imme-
9 diately following such member's initial term.

10 (4) VACANCIES.—Any member appointed to fill
11 a vacancy occurring before the expiration of the
12 term for which the member's predecessor was ap-
13 pointed shall be appointed only for the remainder of
14 that term. A member may serve after the expiration
15 of that member's term until a successor has taken
16 office. A vacancy in the Board shall be filled in the
17 manner in which the original appointment was
18 made.

19 (5) REMOVAL FOR CAUSE.—A member of the
20 Board may be removed by the President for malfea-
21 sance in office, for persistent neglect of or inability
22 to discharge duties, or for offenses involving moral
23 turpitude, and for no other cause.

24 (d) MEMBERS NOT OFFICERS OR EMPLOYEES OF A
25 GOVERNMENT.—The members of the Board shall not, by

1 reason of such membership, be deemed officers or employ-
2 ees of the Federal Government, a State government, local
3 government, or any law enforcement agency.

4 (e) CHAIRMAN.—The President shall select a chair-
5 man from among the initial members to serve for a period
6 of two years. Thereafter, the chairman shall be elected an-
7 nually by the members.

8 (f) CONFLICT OF INTEREST.—

9 (1) IN GENERAL.—No member of the Board,
10 member of a State advisory council, or employee of
11 a regional backup service center may participate in
12 any decision, action, or recommendation with respect
13 to any matter which directly benefits such member
14 or employee or pertains specifically to any firm or
15 organization with which such member or employee is
16 then associated or has been associated within a pe-
17 riod of two years.

18 (2) DISCLOSURE AND RECUSAL.—In the event
19 of a conflict of interest described in paragraph (1),
20 the member of the Board, member of a State advi-
21 sory council, or employee of a regional backup serv-
22 ice center who has a conflict shall disclose the inter-
23 est that the member or employee has in the matter,
24 subject to applicable attorney-client privilege, to the
25 Board, and—

1 (A) in the case of a member of a State ad-
 2 visory council, to that council; or

3 (B) in the case of an employee of a re-
 4 gional backup service center, to that center.

5 (3) WRITTEN POLICY.—The Center shall adopt
 6 a written policy to ensure that paragraphs (1) and
 7 (2) are carried out.

8 (g) STATE ADVISORY COUNCILS.—

9 (1) IN GENERAL; APPOINTMENT OF MEM-
 10 BERS.—Each State shall have a State advisory coun-
 11 cil composed of 9 members, appointed not later than
 12 90 days after the first meeting of the Board as fol-
 13 lows:

14 (A) 3 members appointed by the Chief
 15 Justice of the highest court of the State.

16 (B) 3 members appointed by the United
 17 States Senators for the State, or in the case of
 18 a State that does not have Senators, appointed
 19 by the Member of the United States House of
 20 Representatives for that State.

21 (C) 3 members appointed by the chief ex-
 22 ecutive of the State.

23 (2) FAILURE TO APPOINT.—If 90 days have
 24 elapsed without such an advisory council appointed
 25 pursuant to paragraph (1), the Board is authorized

1 to appoint such a council, or such remaining
2 unappointed members of the council, from among
3 the individuals recommended by the State bar asso-
4 ciation.

5 (3) QUALIFICATIONS OF MEMBERS.—The mem-
6 bers of the advisory council shall be subject to the
7 qualifications under subsection (b), and shall be
8 made from among recommendations made by the
9 State bar association, in collaboration with the Ac-
10 cess to Justice Initiative of the Department of Jus-
11 tice.

12 (4) TERMS; VACANCIES.—The term of a mem-
13 ber of a State advisory council shall be 4 years. A
14 member may serve after the expiration of that mem-
15 ber's term until a successor member takes office. A
16 vacancy on the council shall be filled in the manner
17 described in paragraph (2).

18 (5) POWERS.—Each State advisory council
19 shall—

20 (A) monitor, receive, and investigate com-
21 plaints regarding the compliance of public de-
22 fense systems in that State that receive funding
23 under this Act with the provisions of this Act
24 and applicable rules, regulations, and guidelines
25 promulgated pursuant to this Act;

1 (B) notify the Center of any apparent vio-
2 lation of the provisions of this Act and applica-
3 ble rules, regulations, and guidelines promul-
4 gated pursuant to this Act, and furnish a copy
5 of the notification to any recipient affected
6 thereby, and the Center shall allow such recipi-
7 ent a reasonable time (but in no case less than
8 30 days) to reply to any allegation contained in
9 the notification;

10 (C) collect information and data on the de-
11 livery of public defense services in that State;
12 and

13 (D) facilitate the sharing of information
14 between public defense systems in that State.

15 (6) STAFF.—Each State advisory council may
16 appoint additional personnel as it considers appro-
17 priate in order to carry out paragraph (5)(A).

18 (7) REPORT.—Beginning on the date that is
19 one year after a State advisory council has its first
20 meeting, and annually thereafter, a State advisory
21 council shall submit to the Center a report that in-
22 cludes—

23 (A) an assessment on the provision of pub-
24 lic defense services in that State; and

1 (B) recommendations on actions that the
2 Center could take to—

3 (i) enhance compliance of public de-
4 fense systems in that State that receive
5 funding under this Act with the provisions
6 of this Act and applicable rules, regula-
7 tions, and guidelines promulgated pursuant
8 to this Act; and

9 (ii) improve the delivery of public de-
10 fense services in that State.

11 (h) OPEN MEETINGS; APPLICABILITY OF GOVERN-
12 MENT IN THE SUNSHINE PROVISIONS.—All meetings of
13 the Board, of any executive committee of the Board, and
14 of any advisory council established in connection with this
15 Act shall be open and shall be subject to the requirements
16 and provisions of section 552b of title 5, United States
17 Code (relating to open meetings).

18 (i) QUARTERLY MEETINGS.—The Board shall meet
19 at least 4 times during each calendar year.

20 **SEC. 6. OFFICERS AND EMPLOYEES.**

21 (a) EXECUTIVE DIRECTOR AND OTHER OFFICERS.—
22 The Board shall appoint the Executive Director of the
23 Center, who shall be a member of the bar of the highest
24 court of a State and shall be a nonvoting ex officio mem-
25 ber of the Board, and such other officers as the Board

1 determines necessary. No officer of the Center may receive
2 any salary or other compensation for services from any
3 source other than the Center during his period of employ-
4 ment by the Center, except as authorized by the Board.
5 All officers shall serve at the pleasure of the Board.

6 (b) APPOINTMENT AND REMOVAL OF EMPLOYEES.—
7 The Executive Director of the Center, subject to general
8 policies established by the Board, may appoint and remove
9 such employees of the Center as the Executive Director
10 determines necessary to carry out the purposes of the Cen-
11 ter.

12 (c) NONPARTISAN APPOINTMENTS.—No political test
13 or political qualification shall be used in selecting, appoint-
14 ing, promoting, or taking any other personnel action with
15 respect to any officer, agent, or employee of the Center
16 or of any recipient, or in selecting or monitoring any
17 grantee, contractor, or person or entity receiving financial
18 assistance under this title.

19 (d) COMPENSATION.—Officers and employees of the
20 Center shall be compensated at rates determined by the
21 Board, but not in excess of the rate of level V of the Exec-
22 utive Schedule specified in section 5316 of title 5, United
23 States Code.

24 (e) OFFICERS AND EMPLOYEES NOT DEEMED OFFI-
25 CERS AND EMPLOYEES OF FEDERAL GOVERNMENT.—

1 (1) IN GENERAL.—Except as otherwise specifi-
2 cally provided in this Act, officers and employees of
3 the Center shall not be considered officers or em-
4 ployees, and the Center shall not be considered a de-
5 partment, agency, or instrumentality, of the Federal
6 Government.

7 (2) EXCEPTIONS.—Officers and employees of
8 the Center shall be considered officers and employ-
9 ees of the Federal Government for purposes of the
10 following provisions of title 5, United States Code:
11 subchapter I of chapter 81 (relating to compensation
12 for work injuries); chapter 83 (relating to civil serv-
13 ice retirement); chapter 87 (relating to life insur-
14 ance); and chapter 89 (relating to health insurance).
15 The Center shall make contributions at the same
16 rates applicable to agencies of the Federal Govern-
17 ment under the provisions referred to in this sub-
18 section.

19 (3) FREEDOM OF INFORMATION.—The Center
20 and its officers and employees shall be subject to the
21 provisions of section 552 of title 5, United States
22 Code (relating to freedom of information).

23 (4) OFFICE OF MANAGEMENT AND BUDGET.—
24 Nothing in this Act shall be construed as limiting
25 the authority of the Office of Management and

1 Budget to review and submit comments upon the
2 Center's annual budget request at the time it is
3 transmitted to the Congress.

4 **SEC. 7. POWERS, DUTIES, AND LIMITATIONS.**

5 (a) **POWERS OF NONPROFIT CORPORATION.**—To the
6 extent consistent with the provisions of this Act, the Cen-
7 ter shall exercise the powers conferred upon a nonprofit
8 corporation by the District of Columbia Nonprofit Cor-
9 poration Act (except for section 1005(o) of title 29 of the
10 District of Columbia Code).

11 (b) **GRANT AND CONTRACT POWER.**—The Center is
12 authorized—

13 (1) for the purpose of providing public defense
14 services to indigent defendants, to provide financial
15 assistance to and to make grants and contracts with
16 individuals, partnerships, firms, corporations, non-
17 profit organizations, public defense systems, State
18 governments, and local governments; and

19 (2) to make such other grants and contracts as
20 are necessary to carry out the purposes and provi-
21 sions of this Act.

22 (c) **POWER TO ACCEPT MONEY AND PROPERTY.**—
23 The Center is authorized to accept, in the name of the
24 Center, and employ or dispose of in furtherance of the
25 purposes of this Act, any money or property, real, per-

1 sonal, or mixed, tangible or intangible, received by gift,
2 devise, bequest, or otherwise.

3 (d) OTHER POWERS RELATING TO THE PROVISION
4 OF PUBLIC DEFENSE SERVICES.—The Center is author-
5 ized to undertake directly, or by grant or contract, the
6 following activities relating to the delivery of public de-
7 fense services—

8 (1) research;

9 (2) training and technical assistance; and

10 (3) to serve as a clearinghouse for information.

11 (e) DISCIPLINARY POWERS.—

12 (1) CENTER.—The Center shall have authority
13 to ensure the compliance of recipients and their em-
14 ployees with the provisions of this Act and the rules,
15 regulations, and guidelines promulgated pursuant to
16 this Act, and to terminate, after a hearing in accord-
17 ance with section 11, financial support to a recipient
18 which fails to comply.

19 (2) RECIPIENT.—If a recipient finds that any
20 of its employees has violated or caused the recipient
21 to violate the provisions of this Act, or the rules,
22 regulations, and guidelines promulgated pursuant to
23 this Act, the recipient shall take appropriate reme-
24 dial or disciplinary action in accordance with the

1 types of procedures prescribed in the provisions of
2 section 11.

3 (f) INTERFERENCE WITH PROFESSIONAL RESPON-
4 SIBILITIES OF ATTORNEYS PROHIBITED.—The Center
5 shall not, under any provision of this Act, interfere with
6 any attorney in carrying out such attorney's professional
7 responsibilities to such attorney's client as established in
8 the American Bar Association Model Rules of Professional
9 Conduct or abrogate as to attorneys in programs assisted
10 under this Act the authority of a State or other jurisdic-
11 tion to enforce the standards of professional responsibility
12 generally applicable to attorneys in such jurisdiction. The
13 Center shall ensure that activities under this Act are car-
14 ried out in a manner consistent with attorneys' profes-
15 sional responsibilities.

16 (g) BAR MEMBER REQUIRED.—No attorney shall re-
17 ceive any compensation, either directly or indirectly, for
18 the provision of public defense services under this Act un-
19 less such attorney is admitted or otherwise authorized by
20 law, rule, or regulation to practice law or provide such as-
21 sistance in the jurisdiction where such services are initi-
22 ated.

23 (h) LANGUAGES OTHER THAN ENGLISH.—In areas
24 where significant numbers of indigent defendants speak
25 a language other than English as their principal language,

1 the Center shall, to the extent feasible, provide that their
2 principal language is used in the provision of public de-
3 fense services to such defendants under this Act.

4 (i) MISCELLANEOUS PROHIBITIONS.—

5 (1) The Center shall have no power to issue any
6 shares of stock, or to declare or pay any dividends.

7 (2) No part of the income or assets of the Cen-
8 ter shall inure to the benefit of any director, officer,
9 or employee, except as reasonable compensation for
10 services or reimbursement for expenses.

11 (j) POLITICAL ACTIVITIES OF CENTER EMPLOYEES
12 AND STAFF ATTORNEYS.—

13 (1) Employees of the Center or of recipients
14 shall not at any time intentionally identify the Cen-
15 ter or the recipient with any partisan or nonpartisan
16 political activity associated with a political party or
17 association, or the campaign of any candidate for
18 public or party office.

19 (2) Employees of the Center and staff attorneys
20 shall be deemed to be State or local employees for
21 purposes of chapter 15 of title 5, except that no
22 staff attorney may be a candidate in a partisan po-
23 litical election.

1 **SEC. 8. GRANTS AND CONTRACTS.**

2 (a) CENTER EXECUTIVE DIRECTOR AUTHORIZED TO
3 MAKE GRANTS AND ENTER INTO CONTRACTS.—The Ex-
4 ecutive Director of the Center is authorized to make
5 grants and enter into contracts under this Act.

6 (b) GRANTS DESCRIBED.—

7 (1) IN GENERAL.—The Center shall make
8 grants to State or local governments and public de-
9 fense systems that supplement, not supplant, other
10 available resources for the purpose of improving or
11 establishing public defense systems.

12 (2) TERM.—The term of a grant under this
13 section shall be 2 or 3 years, as determined by the
14 Center.

15 (3) RENEWAL.—A grant recipient under this
16 Act may renew such grant by submitting an applica-
17 tion to the Executive Director of the Center at such
18 time, in such manner, and containing such informa-
19 tion as the Executive Director may reasonably re-
20 quire, including an assessment of such recipient's
21 compliance with or progress toward achieving the
22 quality standards that the Center develops under
23 subsection (e).

24 (c) PROGRAM EVALUATION.—The Center shall mon-
25 itor and evaluate and provide for independent evaluations
26 of programs supported in whole or in part under this Act

1 to ensure that the provisions of this Act and the bylaws
2 of the Center and applicable rules, regulations, and guide-
3 lines promulgated pursuant to this Act are carried out.

4 (d) PUBLIC NOTIFICATION.—Not later than 30 days
5 prior to the approval of any grant application or prior to
6 entering into a contract or prior to the initiation of any
7 other project, the Center shall announce publicly, and
8 shall notify the Governor, the State bar association of any
9 State, and the principal local bar associations (if there be
10 any) of any community, where public defense services will
11 thereby be initiated, of such grant, contract, or project.
12 Notification shall include a reasonable description of the
13 grant application or proposed contract or project and re-
14 quest comments and recommendations.

15 (e) QUALITY STANDARDS.—The Center shall develop
16 and make publicly available standards for the quality of
17 public defense services, which the Center shall use to as-
18 sess the success of a recipient in improving a public de-
19 fense system.

20 (f) ONLINE DATABASE.—The Center shall establish
21 and maintain a database that shall be publicly available
22 online, and shall include the contact information for all
23 public defense systems in every State.

24 (g) REGIONAL BACKUP SERVICE.—

1 (1) IN GENERAL.—The Center shall establish
2 regional backup service centers to assist public de-
3 fense systems.

4 (2) SERVICES.—The services provided at such
5 centers shall include—

6 (A) providing attorneys engaged in public
7 defense services with access to qualified inves-
8 tigators and sentencing mitigation specialists;

9 (B) providing information to public defense
10 systems about grants that are available to
11 them, and providing assistance and guidance to
12 public defense systems that apply for such
13 grants; and

14 (C) other services that the Center deter-
15 mines are appropriate.

16 (3) LOCATIONS.—The Center shall determine
17 the locations of the regional backup service centers,
18 and the geographic region that each center is re-
19 sponsible for serving.

20 (h) REQUISITES.—With respect to grants or con-
21 tracts in connection with the provision of public defense
22 services under this Act, the following shall apply:

23 (1) PROFESSIONAL STANDARDS.—The Center
24 shall ensure the maintenance of the highest quality
25 of service and professional standards, the preserva-

tion of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing public defense services.

(2) ECONOMICAL AND EFFECTIVE DELIVERY OF PUBLIC DEFENSE SERVICES.—The Center shall ensure that grants and contracts are made so as to provide the most economical and effective delivery of public defense services to persons in both urban and rural areas.

(3) OUTSIDE PRACTICE OF LAW PROHIBITED.—The Center shall ensure that attorneys employed full time in public defense services activities supported in major part by the Center refrain from—

(A) any compensated outside practice of law; and

(B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Center.

(4) CONTINUATION OF FUNDING.—The Center may provide interim funding necessary to maintain current level of activities for any grantee, contractor, or person or entity receiving financial assistance under this Act that files with the Center a timely application for refunding until—

1 (A) the application for refunding has been
2 approved and funds pursuant thereto received;
3 or

4 (B) the application for refunding has been
5 denied in accordance with section 11.

6 **SEC. 9. RECORDS AND REPORTS.**

7 (a) **AUTHORITY TO REQUIRE REPORTS.**—The Center
8 is authorized to require such reports as it deems necessary
9 from any grantee, contractor, person, or entity receiving
10 financial assistance under this Act regarding activities
11 carried out pursuant to this Act.

12 (b) **AUTHORITY TO REQUIRE RECORDKEEPING; AC-**
13 **CESS TO RECORDS.**—The Center is authorized to prescribe
14 the keeping of records with respect to funds provided by
15 grant or contract and shall have access to such records
16 at all reasonable times for the purpose of insuring compli-
17 ance with the grant or contract or the terms and condi-
18 tions upon which financial assistance was provided.

19 (c) **ANNUAL REPORT TO PRESIDENT AND CON-**
20 **GRESS.**—The Center shall publish an annual report which
21 shall be filed by the Center with the President and the
22 Congress. Such report shall include—

23 (1) a description of the state of the provision of
24 public defense services throughout the United States

1 and any recommendations for improving the state of
2 such services;

3 (2) a description of the services that the Center
4 provides and any recommendations for improving
5 the quality of such services; and

6 (3) a copy of each report from a State advisory
7 council that the Center has received for that year
8 under section 5(g)(6).

9 (d) COPIES AND RETENTION OF REPORTS.—Copies
10 of all reports pertinent to the evaluation, inspection, or
11 monitoring of any grantee, contractor, or person or entity
12 receiving financial assistance under this Act shall be sub-
13 mitted on a timely basis to such grantee, contractor, or
14 person or entity, and shall be maintained in the principal
15 office of the Center for a period of at least 5 years subse-
16 quent to such evaluation, inspection, or monitoring. Such
17 reports shall be available for public inspection during reg-
18 ular business hours, and copies shall be furnished, upon
19 request, to interested parties upon payment of such rea-
20 sonable fees as the Center may establish.

21 (e) PUBLICATION IN FEDERAL REGISTER OF RULES,
22 REGULATIONS, GUIDELINES, AND INSTRUCTIONS.—The
23 Center shall afford notice and reasonable opportunity for
24 comment to interested parties prior to issuing rules, regu-
25 lations, and guidelines, and it shall publish in the Federal

1 Register at least 30 days prior to their effective date all
2 its rules, regulations, guidelines, and instructions.

3 **SEC. 10. AUDITS.**

4 (a) ANNUAL AUDIT.—

5 (1) IN GENERAL.—The accounts of the Center
6 shall be audited annually. Such audits shall be con-
7 ducted in accordance with generally accepted audit-
8 ing standards by independent certified public ac-
9 countants who are certified by a regulatory authority
10 of the jurisdiction in which the audit is undertaken.

11 (2) AVAILABILITY OF RECORDS.—The audits
12 shall be conducted at the place or places where the
13 accounts of the Center are normally kept. All books,
14 accounts, financial records, reports, files, and other
15 papers or property belonging to or in use by the
16 Center and necessary to facilitate the audits shall be
17 made available to the person or persons conducting
18 the audits, and full facilities for verifying trans-
19 actions with the balances and securities held by de-
20 positories, fiscal agents, and custodians shall be af-
21 forded to any such person.

22 (3) AUDIT REPORT.—The report of the annual
23 audit shall be filed with the Government Account-
24 ability Office and shall be available for public inspec-

1 tion during business hours at the principal office of
2 the Center.

3 (b) AUDIT BY GOVERNMENT ACCOUNTABILITY OF-
4 FICE.—

5 (1) IN GENERAL.—In addition to the annual
6 audit, the financial transactions of the Center for
7 any fiscal year during which Federal funds are avail-
8 able to finance any portion of its operations may be
9 audited by the Government Accountability Office in
10 accordance with such rules and regulations as may
11 be prescribed by the Comptroller General of the
12 United States.

13 (2) AVAILABILITY OF RECORDS.—Any such
14 audit shall be conducted at the place or places where
15 accounts of the Center are normally kept. The rep-
16 resentatives of the Government Accountability Office
17 shall have access to all books, accounts, financial
18 records, reports, files, and other papers or property
19 belonging to or in use by the Center and necessary
20 to facilitate the audit, and full facilities for verifying
21 transactions with the balances and securities held by
22 depositories, fiscal agents, and custodians shall be
23 afforded to such representatives. All such books, ac-
24 counts, financial records, reports, files, and other pa-
25 pers or property of the Center shall remain in the

1 possession and custody of the Center throughout the
2 period beginning on the date such possession or cus-
3 tody commences and ending three years after such
4 date, but the General Accountability Office may re-
5 quire the retention of such books, accounts, financial
6 records, reports, files, papers, or property for a
7 longer period under section 3523(c) of title 31,
8 United States Code.

9 (3) AUDIT REPORT.—A report of such audit
10 shall be made by the Comptroller General to the
11 Congress and to the President, together with such
12 recommendations with respect thereto as the Comp-
13 troller General shall deem advisable.

14 (c) ATTORNEY-CLIENT PRIVILEGE.—Notwithstand-
15 ing the provisions of this section or of section 9, neither
16 the Center nor the Comptroller General shall have access
17 to any reports or records subject to the attorney-client
18 privilege.

19 **SEC. 11. SPECIAL LIMITATIONS.**

20 The Center shall prescribe procedures that ensure
21 that financial assistance under this Act shall not be termi-
22 nated (except that funding may be temporarily suspended
23 during an interim period during the processing and con-
24 sideration of an application for refunding), and an applica-
25 tion for refunding shall not be denied, unless the grantee,

1 contractor, or person or entity receiving financial assist-
2 ance under this Act has been afforded reasonable notice
3 and opportunity for a timely, full, and fair hearing, and
4 when requested, such hearing shall be conducted by an
5 independent hearing examiner. Such hearing shall be held
6 prior to any final decision by the Center to terminate fi-
7 nancial assistance or suspend or deny funding. Hearing
8 examiners shall be appointed by the Center in accordance
9 with procedures established in regulations promulgated by
10 the Center.

11 **SEC. 12. COORDINATION.**

12 The President may direct that appropriate support
13 functions of the Federal Government may be made avail-
14 able to the Center in carrying out its activities under this
15 Act, to the extent not inconsistent with other applicable
16 law.

17 **SEC. 13. GAO STUDY.**

18 On the date that is 4 years after the date of the en-
19 actment of this Act, the Comptroller General shall submit
20 to Congress a study on—

21 (1) the affect that the Center has had on—

22 (A) the provision of public defense services;

23 and

24 (B) the cost of the criminal justice system;

25 and

1 (2) the provision and the cost of providing pub-
2 lic defense services for jurisdictions that do not re-
3 ceive assistance from the Center.

4 **SEC. 14. FUNDS.**

5 Section 506 of title I of the Omnibus Crime Control
6 and Safe Streets Act of 1968 (42 U.S.C. 3756) is amend-
7 ed by inserting at the end the following:
8 “(c) Of the total amount made available to carry out
9 this subpart for a fiscal year, the Attorney General shall
10 reserve not less than 10 percent to carry out the National
11 Center for the Right to Counsel Act.”.

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