

114TH CONGRESS
2D SESSION

H. R. 5449

To amend title 18, United States Code, to create a commission to provide adequate representation to defendants in Federal criminal cases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2016

Mr. DEUTCH (for himself and Mr. KENNEDY) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to create a commission to provide adequate representation to defendants in Federal criminal cases, and for other purposes.

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 “Independent and Ef-
5 fective Federal Defenders Act of 2016”.

6 **SEC. 2. REVISION OF SYSTEM TO ENSURE ADEQUATE REP-**
7 **RESENTATION OF FEDERAL DEFENDANTS.**

8 Section 3006A of title 18, United States Code, is
9 amended to read as follows:

1 **“§ 3006A. Adequate representation of defendants**

2 “(a) FEDERAL DEFENDER COMMISSION.—

3 “(1) IN GENERAL.—There is established, as an
4 independent agency within the executive branch, the
5 Federal Defender Commission (hereinafter in this
6 section referred to as the ‘Commission’).

7 “(2) COMPOSITION AND APPOINTMENT BY
8 PRESIDENT.—The Commission shall consist of 12
9 members, appointed by the President.

10 “(3) DIRECTOR.—The President shall appoint a
11 Director to serve on the Commission. The Director
12 shall have all of the qualifications described in para-
13 graph (5) and none of the disqualifications described
14 in paragraph (6). The term of the Director shall be
15 6 years, but a Director may serve after the expira-
16 tion of that term until a successor takes office.

17 “(4) CONSIDERATIONS IN APPOINTMENT.—In
18 appointing members of the Commission, the Presi-
19 dent shall ensure that—

20 “(A) each of the 12 members of the Com-
21 mission has primary experience in criminal de-
22 fense in a circuit in which no other member of
23 the Commission has such experience at the time
24 of the appointment; and

1 “(B) at least a majority of the members of
2 the Commission are individuals who are former
3 Federal defenders.

4 “(5) QUALIFICATIONS OF MEMBERS.—To be a
5 member of the Commission, an individual must—

6 “(A) be a member of the bar of the highest
7 court of a State; and

8 “(B) have significant experience in the
9 legal defense of criminal cases or demonstrated
10 a commitment to indigent defense representa-
11 tion or juvenile defense representation.

12 “(6) DISQUALIFICATIONS OF MEMBERS.—An
13 individual shall not serve on the Commission who
14 is—

15 “(A) employed as a Federal defender;

16 “(B) employed as a prosecutor or law en-
17 forcement official; or

18 “(C) serving as an active judicial officer of
19 the United States.

20 “(7) TERM.—

21 “(A) Except as otherwise provided in this
22 paragraph, the term of a member of the Com-
23 mission shall be 6 years.

1 “(B) A member may serve after the expi-
2 ration of that member’s term until a successor
3 takes office.

4 “(C) Of the 12 members first appointed to
5 the Commission, 6 shall be initially appointed
6 for 2-year terms, so that the terms of members
7 of the commission are staggered.

8 “(8) DUTIES OF COMMISSION.—The Commis-
9 sion shall—

10 “(A) consult with each United States dis-
11 trict court on a plan operating throughout the
12 district for furnishing representation to any
13 person financially unable to obtain representa-
14 tion;

15 “(B) appoint, taking into consideration the
16 recommendations of the relevant bar or bars of
17 the State, law schools in the State, and other
18 organizations and individuals, a Federal Public
19 Defender, having the same qualifications for
20 service as this subsection requires for a member
21 of the Commission and not having any of the
22 disqualifications described in this subsection,
23 other than that described in paragraph (6)(A),
24 for such service, for each district to carry out
25 the plan for that district; and

1 “(C) develop for Federal Public Defender
2 offices—

3 “(i) national guidelines on quality of
4 representation;

5 “(ii) program evaluation systems;

6 “(iii) attorney and staff evaluation
7 systems to ensure effective management
8 and representation;

9 “(iv) training, publications, and semi-
10 nars;

11 “(v) specialty resource centers;

12 “(vi) research and development pilot
13 projects;

14 “(vii) statistical studies; and

15 “(viii) committees, projects, or work-
16 ing groups.

17 “(9) PLAN MAY COMBINE DISTRICTS.—The
18 plan may include a combination of districts if such
19 a combined office would be cost effective, based on
20 the number of appointments each year, and where
21 the interests of justice of effective representation re-
22 quire the establishment of such an office. The Com-
23 mission shall determine the need for a Federal Pub-
24 lic Defender office and geographic boundaries it
25 serves. However, the Commission shall ensure that

1 each Federal judicial district has within it a Federal
2 Public Defender office providing representation.

3 “(10) STAFF.—The Commission may appoint
4 additional employees as it deems appropriate, to as-
5 sist the Commission in carrying out its duties.

6 “(11) COMPENSATION OF MEMBERS AND EM-
7 PLOYEES.—Members of the Commission and em-
8 ployees of the Commission shall be compensated at
9 rates determined by the Commission, but not in ex-
10 cess of the rate of level V of the Executive Schedule
11 specified in section 5316 of title 5.

12 “(12) PROFESSIONAL RESPONSIBILITY.—The
13 Commission shall not—

14 “(A) interfere with any attorney providing
15 representation under this section in carrying
16 out such attorney’s professional responsibilities
17 to such attorney’s client; or

18 “(B) abrogate as to attorneys in providing
19 representation under this section the authority
20 of a State or other jurisdiction to enforce stand-
21 ards of professional responsibility generally ap-
22 plicable to attorneys in such jurisdiction.

23 “(b) REQUIREMENTS FOR PLAN.—Each plan for rep-
24 resentation under this section shall include the following:

1 “(1) REPRESENTATION PROVIDED IN ALL
2 CASES.—Representation shall be provided for any fi-
3 nancially eligible person who—

4 “(A) is charged with a criminal offense;

5 “(B) is a juvenile alleged to have com-
6 mitted an act of juvenile delinquency as defined
7 in section 5031;

8 “(C) is charged with a violation of proba-
9 tion;

10 “(D) is under arrest, when such represen-
11 tation is required by law;

12 “(E) is charged with a violation of super-
13 vised release or faces modification, reduction, or
14 enlargement of a condition, or extension or rev-
15 ocation of a term of supervised release;

16 “(F) is subject to a mental condition hear-
17 ing under chapter 313;

18 “(G) is in custody as a material witness;

19 “(H) is entitled to appointment of counsel
20 under the sixth amendment to the Constitution;

21 “(I) faces loss of liberty in a case, and
22 Federal law requires the appointment of coun-
23 sel;

24 “(J) is entitled to the appointment of
25 counsel under section 4109;

1 “(K) is involved in a proceeding in which
2 a criminal adjudication may result;

3 “(L) is being considered for, or seeks to
4 obtain, under subsection (c)(1) or (c)(2) of sec-
5 tion 3582, a modification of a term of imprison-
6 ment; or

7 “(M) is involved in proceedings seeking
8 clemency or a pardon.

9 “(2) REPRESENTATION PROVIDED IN SOME
10 CASES.—Whenever the United States magistrate
11 judge or the court determines that the interests of
12 justice so require, representation may be provided
13 for any financially eligible person who seeks relief
14 under section 2241, 2254, or 2255 of title 28.

15 “(3) APPOINTMENT OF PRIVATE ATTORNEYS.—
16 Each District shall develop a panel of private attor-
17 neys. A private attorney shall provide representation
18 under this section when the nature of the case or
19 ethical considerations so require. Cases shall be ran-
20 domly assigned to private panel attorneys on a rotat-
21 ing basis. The Federal Public Defender in the dis-
22 trict shall not be involved in the selection of private
23 panel attorneys for individual cases. The panel of
24 private attorneys shall divide themselves into areas
25 of criminal proceeding expertise.

1 “(4) QUALIFICATIONS OF PRIVATE ATTOR-
2 NEYS.—To be a private attorney on the panel, an in-
3 dividual must have significant experience in the legal
4 defense of criminal cases.

5 “(5) ONGOING TRAINING AND CERTIFICATION
6 OF PRIVATE ATTORNEYS.—Each District shall de-
7 velop and provide ongoing, mandatory training pro-
8 grams for private attorneys on the panel. All attor-
9 neys participating on a panel shall have their per-
10 formance in representing defendants regularly peer
11 reviewed by and certified by distinguished members
12 of the local criminal defense community.

13 “(6) USE OF PRIVATE ATTORNEYS.—Each plan
14 shall provide that private attorneys be appointed to
15 represent defendants in a substantial proportion of
16 cases.

17 “(7) USE OF OTHER ATTORNEYS.—Each plan
18 may include, in addition to the provisions for private
19 attorneys, for the use of attorneys furnished by a
20 bar association or legal aid society.

21 “(c) BUDGET ANALYST.—Each District shall have a
22 budget analyst. The budget analyst shall be hired by the
23 Commission. The budget analyst shall be operationally
24 independent of the Federal Public Defender and the judi-
25 cial branch in such circuit. The budget analyst shall have

1 significant experience in criminal defense practice. The
2 budget analyst shall engage in timely, objective, and inde-
3 pendent analysis of reimbursement for costs submitted by
4 the private attorneys. The budget analyst may mediate
5 any claims for reimbursement payments submitted by pri-
6 vate attorneys. The budget analyst will oversee and ap-
7 prove the use of investigators and experts for cases.

8 “(d) FEDERAL PUBLIC DEFENDER.—

9 “(1) DUTIES AND POWERS.—The Federal Pub-
10 lic Defender in each district shall carry out the plan
11 for representation in that district. In order to do so,
12 the Federal Public Defender may appoint such staff,
13 establish salaries for the staff, and make such con-
14 tracts as are necessary to carry out the functions of
15 the office. The salary structure in each office shall
16 be commensurate with that provided for the lawyers
17 and staff of the United States Attorney for the rel-
18 evant district.

19 “(2) TERM.—The term of a Federal Public De-
20 fender is 4 years, but a Federal Public Defender
21 may serve after the expiration of that term until a
22 successor takes office. The Federal Public Defender
23 may be appointed for more than one term.

24 “(3) REMOVAL.—The Commission may, with
25 the concurrence of three quarters of the members

1 serving at the time of the removal, remove a Federal
2 Public Defender for cause.

3 “(4) VACANCY.—The Commission may fill a va-
4 cancy of the office of Federal Public Defender for
5 the remainder of the term, in the same manner as
6 the original appointment was made.

7 “(e) ALTERNATIVE MEANS OF REPRESENTATION IN
8 A DISTRICT.—

9 “(1) GENERALLY.—The Commission may cre-
10 ate a Community Defender Organization to carry
11 out the plan for representation in the District. A
12 Community Defender Organization shall be a non-
13 profit defense counsel service established and admin-
14 istered by any group authorized by the plan to pro-
15 vide representation. The organization shall be eligi-
16 ble to furnish attorneys and receive payments from
17 the Commission if its bylaws are set forth in the
18 plan of the district or districts in which it will serve.

19 “(2) ANNUAL REPORT.—Each organization
20 shall submit to the Commission an annual report
21 setting forth its activities and financial position and
22 the anticipated caseload and expenses for the next
23 fiscal year.

1 “(3) GRANTS.—Upon application an organiza-
2 tion may, to the extent approved by the Commis-
3 sion—

4 “(A) receive an initial grant for expenses
5 necessary to establish the organization; and

6 “(B) receive periodic sustaining grants to
7 provide representation and other expenses pur-
8 suant to this section.

9 “(f) CHANGE OF STRUCTURE BETWEEN THAT OF
10 FEDERAL PUBLIC DEFENDER AND THAT OF COMMUNITY
11 DEFENDER ORGANIZATION.—Either a Community De-
12 fender Organization or a Federal Public Defender may
13 apply to the Commission to change its structure to that
14 of the other. The Commission may allow that change if
15 the Commission determines such a change would better
16 serve the purposes of this section.

17 “(g) DURATION AND SUBSTITUTION OF APPOINT-
18 MENTS.—A person for whom counsel is appointed shall be
19 represented at every stage of the proceedings from before
20 being interviewed by pretrial services or a probation officer
21 through appeal, including ancillary matters appropriate to
22 the proceedings. If at any time after the appointment of
23 counsel the United States magistrate judge or the court
24 finds that the person is financially able to obtain counsel
25 or to make partial payment for the representation, it may

1 terminate the appointment of counsel or authorize pay-
2 ment as provided in subsection (f), as the interests of jus-
3 tice may dictate. If at any stage of the proceedings, includ-
4 ing an appeal, the United States magistrate judge or the
5 court finds that the person is financially unable to pay
6 counsel whom he had retained, it may appoint counsel
7 under this section, as the interests of justice may dictate.
8 The United States magistrate judge or the court may, in
9 the interests of justice, substitute one appointed counsel
10 for another at any stage of the proceedings.

11 “(h) NONAPPLICABILITY TO LOCAL COURTS OF THE
12 DISTRICT OF COLUMBIA.—This section does not apply to
13 representation in the Superior Court of the District of Co-
14 lumbia or the District of Columbia Court of Appeals.

15 “(i) DEFINITIONS.—In this section the following defi-
16 nitions apply:

17 “(1) CIRCUIT.—The term ‘circuit’ means one of
18 the circuits for which there is a United States court
19 of appeals.

20 “(2) DISTRICT COURT.—The term ‘district
21 court’ means each district court of the United States
22 created by chapter 5 of title 28, the District Court
23 of the Virgin Islands, the District Court for the
24 Northern Mariana Islands, and the District Court of
25 Guam.

1 “(3) REPRESENTATION.—The term ‘representa-
2 tion’ means representation by legal counsel and also
3 includes investigative, expert, and other services nec-
4 essary for adequate representation.

5 “(4) STATE.—The term ‘State’ includes any
6 State or other similar entity in which a district court
7 is established.”.

8 **SEC. 3. CONTINUATION OF ORGANIZATIONS ESTABLISHED**
9 **BEFORE ENACTMENT.**

10 A Federal Defender organization established before
11 enactment of this Act shall continue in operation, and the
12 Federal Public Defender then in office shall continue to
13 serve the Federal Public Defender’s term in that capacity.
14 A Community Defender Organization, committee, project,
15 or working group established before enactment of this Act
16 shall continue in operation.

17 **SEC. 4. GENERAL ACCOUNTABILITY OFFICE STUDY.**

18 Not later than 4 years after the date of the enact-
19 ment of this Act, the Comptroller General shall complete
20 a study and report to Congress on the provision and cost
21 of Federal Defense services.

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