

# American Council of Chief Defenders National Juvenile Defender Center

## TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS

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### Preamble<sup>1</sup>

#### **A. Goal of These Principles**

The Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems are developed to provide criteria by which an indigent defense system may fully implement the holding of *In Re: Gault*.<sup>2</sup> Counsel's paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights. The Principles also serve to offer greater guidance to the leadership of indigent defense providers as to the role of public defenders, contract attorneys or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children in delinquency proceedings as well as those prosecuted in adult court.<sup>3</sup>

While the goal of the juvenile court has shifted in the past decade toward a more punitive model of client accountability and public safety, juvenile defender organizations should reaffirm the fundamental purposes of juvenile court: (1) to provide a fair and reliable forum for adjudication; and (2) to provide appropriate support, resources, opportunities and treatment to assure the rehabilitation and development of competencies of children found delinquent. Delinquency cases are complex, and their consequences have significant implications for children and their families. Therefore, it is of paramount importance that children have ready access to highly qualified, well-resourced defense counsel.

Defender organizations should further reject attempts by courts or by state legislatures to criminalize juvenile behavior in order to obtain necessary services for children. Indigent defense counsel should play a strong role in determining this and other juvenile justice related policies.

In 1995, the American Bar Association's Juvenile Justice Center published *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national study that revealed major failings in juvenile defense across the nation. The report spurred the creation of the National Juvenile Defender Center and nine regional defender centers around the country. The National Juvenile Defender Center conducts state and county assessments of juvenile indigent defense systems that focus on access to counsel and measure the quality of representation.<sup>4</sup>

#### **B. The Representation of Children and Adolescents is a Specialty**

The Indigent Defense Delivery System must recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

The Indigent Defense Delivery System must provide training regarding the stages of child and adolescent development and the advances in brain research that confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Expectations, at any stage of the court process, of children accused of crimes must be individually defined according to scientific, evidence-based practice.

The Indigent Defense Delivery System must emphasize that it is the obligation of juvenile defense counsel to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client. The client's minority status does not negate counsel's obligation to appropriately litigate factual and legal issues that require judicial determination and to obtain the necessary trial skills to present these issues in the courtroom.

#### **C. Indigent Defense Delivery Systems Must Pay Particular Attention to the Most Vulnerable and Over-Represented Groups of Children in the Delinquency System**

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult. Defenders must work to increase awareness of issues such as disparities in race and class, and they must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also over-represented in the juvenile justice system. Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and juvenile justice system personnel are now beginning to acknowledge that girls' issues are distinct from boys'. Gender-based interventions and the programmatic needs of girls, who have frequently suffered from abuse and neglect, must be assessed and appropriate gender-based services developed and funded.

In addition, awareness and unique advocacy are needed for the special issues presented by lesbian, gay, bisexual and transgender youth.

The **American Council of Chief Defenders** (ACCD), a section of the National Legal Aid & Defender Association, is dedicated to promoting fair justice systems by advocating sound public policies and ensuring quality legal representation to people who are facing a loss of liberty or accused of a crime who cannot afford an attorney. For more information, see [www.nlada.org](http://www.nlada.org) or call (202) 452-0620.

The **National Juvenile Defender Center** (NJDC) is committed to ensuring excellence in juvenile defense and promoting justice for all children. For more information, see [www.njdc.info](http://www.njdc.info) or call (202) 452-0010.

# Ten Principles

## 1 The Indigent Defense Delivery System Upholds Juveniles' Right to Counsel Throughout the Delinquency Process and Recognizes The Need For Zealous Representation to Protect Children

A. The indigent defense delivery system should ensure that children do not waive appointment of counsel. The indigent defense delivery system should ensure that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.<sup>5</sup>

B. The indigent defense delivery system recognizes that the delinquency process is adversarial and should provide children with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

C. The indigent defense delivery system should include the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider.<sup>6</sup>

## 2 The Indigent Defense Delivery System Recognizes that Legal Representation of Children is a Specialized Area of the Law

A. The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.<sup>7</sup>

B. The indigent defense delivery system leadership demonstrates that it respects its juvenile defense team members and that it values the provision of quality, zealous and comprehensive delinquency representation services.

C. The indigent defense delivery system leadership recognizes that delinquency representation is not a training assignment for new attorneys or future adult court advocates, and it encourages experienced attorneys to provide delinquency representation.

## 3 The Indigent Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity<sup>8</sup>

A. The indigent defense delivery system encourages juvenile representation specialization without limiting attorney and support staff's access to promotional progression, financial advancement or personnel benefits.

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas<sup>9</sup> and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

## 4 The Indigent Defense Delivery System Utilizes Expert and Ancillary Services to Provide Quality Juvenile Defense Services

A. The indigent defense delivery system supports requests for essential expert services throughout the delinquency process and whenever individual juvenile case representation requires these services for effective and quality representation. These services include, but are not limited to, evaluation by and testimony of mental health professionals, education specialists, forensic evidence examiners, DNA experts, ballistics analysis and accident reconstruction experts.

B. The indigent defense delivery system ensures the provision of all litigation support services necessary for the delivery of quality services, including, but not limited to, interpreters, court reporters, social workers, investigators, paralegals and other support staff.

## 5 The Indigent Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads

A. The leadership of the indigent defense delivery system monitors defense counsel's caseload to permit the rendering of quality representation. The workload of indigent defenders, including appointed and other work, should never be so large as to interfere with the rendering of zealous advocacy or continuing client contact nor should it lead to the breach of ethical obligations.<sup>10</sup> The concept of workload may be adjusted by factors such as case complexity and available support services.

B. Whenever it is deemed appropriate, the leadership of the indigent defense delivery system, in consultation with staff, may adjust attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

## 6 The Indigent Defense Delivery System Supervises and Systematically Reviews Juvenile Defense Team Staff for Quality According to National, State and/or Local Performance Guidelines or Standards

A. The indigent defense delivery system provides supervision and management direction for attorneys and all team members who provide defense representation services to children.<sup>11</sup>

B. The leadership of the indigent defense delivery system adopts guidelines and clearly defines the organization's vision as well as expectations for the delivery of quality legal representation. These guidelines should be consistent with national, state and/or local performance standards, measures or rules.<sup>12</sup>

C. The indigent defense delivery system provides administrative monitoring, coaching and systematic reviews for all attorneys and staff representing juveniles, whether contract defenders, assigned counsel or employees of defender offices.

## 7 The Indigent Defense System Provides and Supports Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training<sup>13</sup> on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law.<sup>14</sup> In addition to understanding the juvenile court process and systems, juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Child and adolescent development
4. Communicating and building attorney-client relationships with children and adolescents
5. Community-based treatment resources and programs
6. Competency and capacity
7. Counsel's role in treatment and problem solving courts<sup>15</sup>
8. Dependency court/abuse and neglect court process
9. Diversionary programs
10. Drug addiction and substance abuse
11. Ethical issues and considerations
12. Gender-specific programming
13. Immigration
14. Mental health, physical health and treatment

15. Racial, ethnic and cultural understanding
16. Role of parents/guardians
17. Sexual orientation and gender identity awareness
18. Special education
19. Transfer to adult court and waiver hearings
20. Zero tolerance, school suspension and expulsion policies

## 8 The Indigent Defense Delivery System Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court

A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.

B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.

C. The indigent defense delivery system provides independent post-conviction monitoring of each child's treatment, placement or program to ensure that rehabilitative needs are met. If clients' expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

## 9 The Indigent Defense Delivery System Advocates for the Educational Needs of Clients

A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.

B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.

C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.

D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

## 10 The Indigent Defense Delivery System Must Promote Fairness and Equity For Children

A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.

B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.

C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

## Notes

<sup>1</sup> These principles were developed over a one-year period through a joint collaboration between the National Juvenile Defender Center and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA), which officially adopted them on December 4, 2004.

<sup>2</sup> 387 U.S. 1 (1967). According to the IJA/ABA Juvenile Justice Standard Relating to Counsel for Private Parties 3.1 (1996), "the lawyer's principal duty is the representation of the client's legitimate interests" as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that "counsel's principal responsibility lies in full and conscientious representation" and that "no lesser obligation exists when youthful clients or juvenile court proceedings are involved."

<sup>3</sup> For purposes of these Principles, the term "delinquency proceeding" denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.

<sup>4</sup> Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages pleas to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see *Selling Justice Short: Juvenile Indigent Defense in Texas* (2000); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (2001); *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2001); *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002); *An Assessment of Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (2003); *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003).

<sup>5</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

<sup>6</sup> A conflict of interest includes both codefendants and intra-family conflicts, among other potential conflicts that may arise. See also *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 2.

<sup>7</sup> For purposes of this Principle, the term "transfer/waiver proceedings" refers to any proceedings related to prosecuting youth in adult court, including those known in some jurisdictions as certification, bind-over, decline, remand, direct file, or youthful offenders.

<sup>8</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

<sup>9</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

<sup>10</sup> See National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), 5.1, 5.3; American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992), 5-5.3; American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993), 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, "The Defense"* (1973), 13.12; National Legal Aid and Defender Association and American Bar Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* (NLADA, 1984; ABA, 1985), III-6, III-12; National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), 4.1.A.1.2; ABA Model Code of Professional Responsibility DR 6-101; *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

<sup>11</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

<sup>12</sup> For example, Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards* (1979); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts, Chapter 13, "The Defense"* (1973); National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992); American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993); *Standards and Evaluation Design for Appellate Defender Offices* (NLADA, 1980); *Performance Guidelines for Criminal Defense Representation* (NLADA, 1995).

<sup>13</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

<sup>14</sup> National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2.

<sup>15</sup> American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).