

**Adherence of Public Defense Providers to ABA *Ten Principles*:
Perceptions, Benchmarks Achieved in Practice, Issues Encountered, and Technical
Assistance Needs Emerging**

SURVEY REPORT: *HIGHLIGHTS*

January 2015

As part of the *Right to Counsel* Initiative launched by the Bureau of Justice Assistance (BJA) in 2013 in commemoration of the fiftieth anniversary of the *Gideon* decision, American University, in partnership with the National Legal Aid and Defender Association, instituted the “*Right To Counsel/Ten Principles Technical Assistance Project*” designed to assist public defense providers in enhancing their ability to adhere to the *Ten Principles of a Public Defense Delivery System*, articulated by the ABA in 2002, and a major initiative of the Attorney General. The project began its services with a national survey of public defense providers to obtain their perspectives on the degree to which they were able to adhere to the *Ten Principles*, including selected operational “benchmarks” referenced in the *Commentary* to each of the *Principles*, as well as obstacles encountered, promising practices they had developed, and areas for which technical assistance would be useful.

The survey was distributed to over 1,100 public defense providers, working in all 50 states plus the District of Columbia, in a wide range of contexts for indigent defense service delivery -- governmental and non-governmental defender offices, court-appointed counsel systems, contract defender systems -- and others in an effort to obtain as broad a perspective as possible on challenges public defense providers are encountering in being able to adhere to the *Ten Principles* and areas for which technical assistance might be useful. The survey effort represents the first national effort to obtain a self-assessment by public defense providers of both their ability to adhere to the *Ten Principles* as well as the obstacles they are encountering so that realistic priorities for follow up action plans and appropriate technical assistance support can then be developed and carried out.

With no central repository of “public defense providers”, recipients for the survey were identified through multiple sources, including state by state web searches and inquiries to courts, county government agencies, state and local public defense offices, and word-of mouth. Survey responses were received from 386 providers in

all states plus the District of Columbia, although not all respondents answered all of the survey questions. Survey responses were analyzed in aggregate as well as by type of system, size of jurisdiction, nature of caseload handled, and size of office based on the number of full time attorneys reported, and the size of the jurisdiction in which the office operated.

The survey results are summarized in a two volume report available at: www.american.edu/justice/spa/jpo. Volume One summarizes the survey responses by *Principle*, with particular focus on the perceptions of public defense providers regarding their ability to adhere to each of the *Principles*, and their reported ability to actually achieve the operational benchmarks associated with each *Principle*. The disconnect between perceptions and practice highlight the lack of understanding of many survey respondents in terms of what “adherence” to each *Principle* actually entails. Almost half of the respondents were unfamiliar with the *Ten Principles* prior to receiving the survey. These disconnects highlight the importance of providing focused orientation on the operational indicators of adherence to each of the “Principles” and the performance benchmarks entailed in adhering to them. It also makes training public defense providers – and others who shape the environment in which public defense providers function --on the *Ten Principles* and their application to practice along with providing necessary technical assistance even more vital.

Volume Two provides a wealth of information relating to the operational issues survey respondents were encountering in their respective jurisdictions in terms of efforts to adhere to each of the *Principles* as well as strategies some respondents had found useful in addressing these issues. Volume Two also includes references to websites and operational materials (forms, etc.) that respondents provided for posting on the specially developed information sharing website American University has developed for public defense providers as part of the technical assistance services being provided.

These Highlights provide a brief synopsis of the survey results.

ABA's Ten Principles of Public Defense

Principle One: <i>The Defense Function, Including The Selection, Funding, And Payment Of Defense Counsel, Is Independent</i>
Principle Two: <i>Where The Caseload Is Sufficiently High, The Public Defender Delivery System Consists Of Both A Defender Office And The Active Participation of the private bar</i>
Principle Three: <i>Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel</i>
Principle Four: <i>"Defense counsel is provided sufficient time and a confidential space within which to meet with the client"</i>
Principle Five: <i>Defense counsel's workload is controlled to permit the rendering of quality representation</i>
Principle Six: <i>Defense counsel's ability, training, and experience match the complexity of the case</i>
Principle Seven: <i>The same attorney continuously represents the client until completion of the case</i>
Principle Eight: <i>There is parity between defense counsel and the prosecution with respect to resource and defense counsel is included as an equal partner in the justice system</i>
Principle Nine: <i>Defense counsel is provided with and required to attend continuing legal education</i>
Principle Ten: <i>Defense counsel is supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards</i>

➤ **Types of "systems" in which respondents worked**

Survey respondents were asked to indicate the type of "system" in which they worked, using the following categories and definitions that had been developed by the Bureau of Justice Statistics for the census of defender office operations BJS had conducted in 2007 and is currently conducting during the 2014 – 2015 period.¹ The distribution of responses based on the type of systems in which respondents worked indicated an overwhelmingly response from government public defenders offices (76%), with "contract" and "assigned counsel" representing approximately 10% of

SURVEY RESPONSES BY TYPE OF SYSTEM IN WHICH RESPONDENTS WORKED (TOTAL)			
TYPE		NUMBER	PERCENT
Gov't PD	Gov't PDO	285	73.83%
	Gov't Conf	7	1.81%
	NGOV PDO	18	4.66%
Contract		19	4.92%
Assigned		20	5.18%
Other		27	6.99%
Didn't Answer		10	2.59%
Total		386	100.00%

respondents –significantly lower than the "systems" in which it is estimated over 60% of public defense providers work². This anomaly is attributed to the difficulty of identifying public defense providers who work in non managed contract and assigned counsel systems.

"We would be very interested in getting help establishing our office as an equal player in the justice system and helping to ensure that the 10 principles are adhered to in our jurisdiction. Of special concern are access to counsel issues that detrimentally affect the clients." – survey respondent

¹ "2013 National Survey of Indigent Defense systems." US Department of Justice, Bureau of Justice Statistics. Web. 1 Aug 2014. [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDgQFjAD&url=http%3A%2F%2Fwww.reginfo.gov%2Fpublic%2Fdo%2FDownloadDocument%3FdocumentID%3D459338%26version%3D0&ei=8_nbU47sCovmsASsvoKYDg&usq=AFQjCNE5du9t69vJeBCjgR8rmp4KQj2uAg&sig2=9RanPSIIHoybuOR0WYBd-A&bvm=bv.72197243,d.cWc]

² "2013 National Survey of Indigent Defense systems." US Department of Justice, Bureau of Justice Statistics. Web. 1 Aug 2014. [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDgQFjAD&url=http%3A%2F%2Fwww.reginfo.gov%2Fpublic%2Fdo%2FDownloadDocument%3FdocumentID%3D459338%26version%3D0&ei=8_nbU47sCovmsASsvoKYDg&usq=AFQjCNE5du9t69vJeBCjgR8rmp4KQj2uAg&sig2=9RanPSIIHoybuOR0WYBd-A&bvm=bv.72197243,d.cWc]

As further discussed in the *Volume One* of the report, in practice, responses indicated achievement of the operational benchmarks associated with each of the *Principles* at a significantly lower rate than the rate reported.

The only Principle with which a significant percentage of respondents reported adhering to (either “completely” or “mostly”) was *Principle One* (“Independence”), with which over two thirds (70%) of the respondents reported adherence.

Reported adherence to the remaining principles was as follows:

- For *Principles Two* (“Involvement of the Private Bar”), *Three* (“Eligibility Six (“Training”), *Four* (“Time and Confidential Space for Client Meetings”), *Seven* (“Vertical Representation”), and *Nine* (“Continuing Legal Education”): reported adherence ranged between 41 percent and 46 percent.
- For *Principles Five* (“Caseload/Workload Limits”) and *Ten* (“Supervision”): reported adherence was 30 percent; and
- For *Principle Eight* (“Parity”): reported adherence was 26 percent.

➤ **Other Survey Findings**

Among the other findings emerging from the survey were the following:

- The analysis by office size indicated that offices with twenty-one to thirty full time attorneys appeared to have the most difficulty in adhering to the *Ten Principles*. Offices with smaller and larger numbers of attorneys consistently reported higher rates of adherence, regardless of their answers to the benchmark questions.
- Analysis by size of jurisdiction indicated little variation in terms of the ability of public defense providers to adhere to the *Ten Principles*.
- There are a variety of issues public defenders are facing in terms of adhering to the *Ten Principles* reportedly stemming mainly from lack of funding, understaffing, and heavy caseloads but which may also be the result of the absence of an adequate infrastructure – including essential management data and other information reflected in other survey responses – to address these issues.
- At the same time, there is tremendous creativity underway in many offices, documented in

FAMILIARITY WITH THE ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM		
Extremely Familiar	104	27%
Moderately Familiar	110	28%
Somewhat Familiar	64	17%
Slightly Familiar	38	10%
Not at all Familiar	55	14%
Didn't Answer	15	4%
Total	386	100%

“promising practices” respondents reported that are promoting achievement of the *Ten Principles*, including, for example, the use of video conferencing, development user-friendly informational materials for defendants (e.g., “frequently asked questions memos” and informational pamphlets), brown bag lunches for attorneys, improved office management practices (case weighting, case tracking and monitoring, information sharing (brief banks, forms, etc.) and, in some cases, union activity.

Two additional caveats should be noted relevant to the analysis of the survey responses, more fully addressed in the respondents’ comments in *Volume Two*:

First: the survey responses should be assessed within the context of the priority issues public defense services – and the system of justice in the U.S. generally – are facing, including the pressing issues of overload and dysfunction in which many of the survey respondents are functioning, resulting from:

- The increasing criminalization of offenses that has occurred in many jurisdictions over the past years; and
- Inefficiencies and consequent resource implications in many local justice systems, particularly on the pretrial process where decisions regarding release, diversion, and dismissal for appropriate cases need to be made as soon as possible following arrest – rather than extending for the lengthy period, with multiple hearings and continuances, that unnecessarily burden public defense providers as well as the entire justice system, not to mention the defendants.

Second: the fact, as noted above, that the majority (approximately 75%) of respondents to the survey were from organized public defender offices with very few from contract and assigned counsel systems – which, anecdotally, are considered to represent the significant percentage of the delivery systems used for providing indigent defense

services. This anomaly is undoubtedly a reflection on the difficulty experienced in identifying public defense providers to whom the survey could be sent and the much greater prominence of organized defender offices in the information sources tapped. Developing mechanisms for reaching assigned counsel providing public defense services – particularly those in unmanaged systems -- will clearly be an urgent and critical task for the project’s technical assistance and training efforts.

Technical Assistance Needs

The survey responses from state and local public defense providers provide the field with the first snapshot of the degree to which public defense providers are able to adhere to the ABA *Ten Principles of Public Defense*, relevant issues their jurisdictions were encountering in their efforts to adhere to each of the *Principles*, and areas for which technical assistance can be useful. It has also provided a framework for developing a multi-pronged plan for providing technical assistance that will be executed as part of the project. In terms of respondents requesting technical assistance, sixty (60) percent expressed an interest in receiving technical assistance. The most frequently requested areas for technical assistance were:

- information relating to obtaining grants
- listservs and other mechanisms for information exchange and networking
- webinars on relevant topics (see Volume Two “issues”)
- examples of best practices
- tools for improved staff supervision and caseload management; and
- assistance in identifying experts

“Web meetings, on-line training, brief banks - any and all available assistance appreciated.” – survey respondent

There appeared to be no significant distinctions among respondents based on the population sizes their offices served, or the number of attorneys in the respondents’ offices, and no significant distinctions in terms of the type of system in which they worked or the nature of cases they handled. All groups indicated an interest in receiving technical assistance, with some groups indicating interest more frequently than others.

Next Steps

The survey responses provide a significant message:

- Most public defense providers do not fully understand what is entailed in adhering to the *Ten Principles*, as indicated by the disconnects between their reported “adherence” to each Principle and their reported ability to meet the operational benchmarks designated in the Commentary to the Principles and, related
- The ability of public defense providers to meet the operational benchmarks for each Principle in many instances depends upon the larger systemic framework in which their office operates, rather than actions they can take on their own.

It is therefore critical that efforts to promote adherence to the *Ten Principles* focus on two audiences:

- (1) On public defense providers in terms of the nature and level of services actually required to adhere to each principle; and
- (2) On the a broader group of policy makers and community stakeholders who are in a position to ensure that the systemic structure required to enable public defense providers to implement the Principles is, in fact, in place in their state and local jurisdictions.

Special thanks to all survey respondents for taking the time out of their busy schedules to complete the survey and share their perspectives and experiences.

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