



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

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2<sup>nd</sup> Edition

### PREAMBLE

#### A. Goals of These Principles

The *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*<sup>1</sup> provide criteria by which a public defense delivery system<sup>2</sup> may fully implement the holding of *In re Gault*.<sup>3</sup> These Principles offer guidance to public defense leaders and policymakers regarding the role of public defenders, contract attorneys, or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children facing both delinquency and criminal proceedings.<sup>4</sup> In applying these Principles, advocates should always be guided by defense counsel's primary responsibility to zealously defend clients against the charges leveled against them and to protect their due process rights.

Delinquency cases are complex and their consequences have significant implications for children and their families. Therefore, every child client must have access to qualified, well-resourced defense counsel. These resources should include the time and skill to adequately communicate with a client so that lawyer and client can build a trust-based attorney-client relationship and so that the lawyer is prepared to competently represent the client's interests. These Principles elucidate the parameters of this critical relationship already well established in legal ethics rules and opinions.

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. Since that time, numerous state-based assessments have documented in detail the manner in which these failings result in lifelong, harmful consequences for our nation's children.<sup>5</sup> These Principles provide public defense leaders and policymakers a guide to rectifying systemic deficits and to providing children charged with criminal behavior the high quality counsel to which they are entitled.

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

Public defense delivery systems must recognize that children and adolescents are different from adults. Advances in brain research cited favorably by the Supreme Court in *Roper v. Simmons*<sup>6</sup> confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Public defense delivery systems must provide training regarding the stages of child and adolescent development.

Public defense delivery systems must emphasize that juvenile defense counsel has an obligation 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 informed decision making by the client. Defense attorneys owe their juvenile clients the same duty of loyalty that adult criminal clients enjoy. This coextensive duty of loyalty requires the juvenile defense attorney to advocate for the child client's expressed interests with the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.<sup>7</sup>

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

Because 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, public defense delivery systems should pay special attention to providing high quality representation for 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. Defenders 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 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 advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and that girls' issues are distinct from boys'. Gender-based interventions and the programmatic needs of girls in the juvenile delinquency system, who have frequently suffered from abuse and neglect, must be assessed and appropriate gender-based services developed and funded.<sup>8</sup>

The special issues presented by lesbian, gay, bisexual and transgender youth require increased awareness and training to ensure that advocacy on their behalf addresses their needs.

The **National Juvenile Defender Center** (NJDC) is committed to ensuring excellence in juvenile defense and promoting justice for all children. NJDC was created to address the juvenile justice system deficiencies revealed by *A Call for Justice*, *supra*. In addition to conducting assessments of juvenile indigent defense delivery systems around the country, NJDC serves as a resource for juvenile justice professionals, providing technical assistance, training, publications, and other support that improves the quality of representation of children across the country. For more information, see [www.njdc.info](http://www.njdc.info) or call (202) 452-0010.

The **National Legal Aid & Defender Association** (NLADA) is a national, non-profit membership association dedicated to quality legal representation for people of insufficient means. Created in 1911, NLADA is a recognized expert in public defense and a leader in the development of national public defense standards. Representing legal aid and defender programs, as well as individual advocates, NLADA is proud to be the oldest and largest national, nonprofit membership association devoting 100 percent of its resources to serving the broad equal justice community. For more information, see [www.nlada.org](http://www.nlada.org) or call (202) 452-0620.

# TEN PRINCIPLES

## 1 The Public Defense Delivery System Upholds Juveniles' Constitutional Rights Throughout the Delinquency Process and Recognizes The Need For Competent and Diligent Representation.

- A. Competent and diligent representation is the bedrock of a juvenile defense attorney's responsibilities.<sup>9</sup>
- B. The public defense delivery system ensures that children do not waive appointment of counsel and that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.<sup>10</sup>
- C. The public defense delivery system recognizes that the delinquency process is adversarial and provides children with continuous legal representation throughout the proceedings including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.
- D. The public defense delivery system includes the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider or when the caseload justifies the need for outside counsel.<sup>11</sup>

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

- A. The public defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law that is different from, but equally as important as, the representation of adults in criminal proceedings. The public defense delivery system further acknowledges the specialized nature of representing juveniles prosecuted as adults following transfer/waiver proceedings.<sup>12</sup>
- B. The public defense delivery system leadership promotes respect for juvenile defense team members and values the provision of quality, zealous and comprehensive delinquency representation services.
- C. The public defense delivery system encourages experienced attorneys to provide delinquency representation and strongly discourages use of delinquency representation as a training assignment for new attorneys or future adult court advocates.

## 3 The Public Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity.<sup>13</sup>

- A. The public defense delivery system encourages juvenile specialization without limiting access to promotions, financial advancement, or personnel benefits for attorneys and support staff.
- B. The public defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas<sup>14</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 Public Defense Delivery System Uses Expert and Ancillary Services to Provide Quality Juvenile Defense Services.

- A. The public defense delivery system supports requests for expert services throughout the delinquency process whenever individual juvenile case representation requires these services for 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 analysts and accident reconstruction experts.

- B. The public 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 Public Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads.

- A. The leadership of the public defense delivery system monitors defense counsel's workload to promote quality representation. The workload of public defense attorneys, including appointed and other work, should never be so large that it interferes with competent and diligent representation or limits client contact.<sup>15</sup> Factors that impact the number of cases an attorney can appropriately handle include case complexity and available support services.
- B. The leadership of the public defense delivery system adjusts attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

## 6 The Public Defense Delivery System Supervises and Systematically Reviews Juvenile Staff According to National, State and/or Local Performance Guidelines or Standards.

- A. The public defense delivery system provides supervision and management direction for attorneys and team members who provide defense services to children.<sup>16</sup>
- B. The leadership of the public defense delivery system clearly defines the organization's vision and adopts guidelines consistent with national, state and/or local performance standards.<sup>17</sup>
- C. The public defense delivery system provides systematic reviews for all attorneys and staff representing juveniles, whether they are contract defenders, assigned counsel or employees of defender offices.

## 7 The Public Defense Delivery System Provides and Requires Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children.

- A. The public defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training<sup>18</sup> in unique areas of the law. The public defense delivery system provides and mandates training<sup>19</sup> on topics including detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and procedure and administrative hearing representation.
- B. Juvenile team members have a comprehensive understanding of the jurisdiction's juvenile law and procedure, and the collateral consequences of adjudication and conviction.
- C. Team members receive training to recognize issues that arise in juvenile cases and that may require assistance from specialists in other disciplines. Such disciplines include, but are not limited to:
  - 1. Administrative appeals
  - 2. Child welfare and entitlements
  - 3. Special Education
  - 4. Dependency court/abuse and neglect court process
  - 5. Immigration
  - 6. Mental health, physical health and treatment
  - 7. Drug addiction and substance abuse
- D. Training for team members emphasizes understanding of the needs of juveniles in general and of specific populations of juveniles in particular, including in the following areas:
  - 1. Child and adolescent development
  - 2. Racial, ethnic and cultural understanding
  - 3. Communicating and building attorney-client relationships with children and adolescents
  - 4. Ethical issues and considerations of juvenile representation
  - 5. Competency and capacity
  - 6. Role of parents/guardians

7. Sexual orientation and gender identity awareness
  8. Transfer to adult court and waiver hearings
  9. Zero tolerance, school suspension and expulsion policies
- E. Team members are trained to understand and use special programs and resources that are available in the juvenile system and in the community, such as
1. Treatment and problem solving courts<sup>20</sup>
  2. Diversionary programs
  3. Community-based treatment resources and programs
  4. Gender-specific programming

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

- A. The public defense delivery system ensures that attorneys consult with clients and, independent from court or probation staff, actively seek out and advocate for treatment and placement alternatives that serve the unique needs and dispositional requests of each child, consistent with the client's expressed interests.
- B. The leadership and staff of the public defense delivery system works 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 public defense delivery system provides independent post-disposition 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 Public Defense Delivery System Advocates for the Educational Needs of Clients.

- A. The public 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 public 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.

## 10 The Public Defense Delivery System Promotes Fairness and Equity For Children.

- A. The public defense delivery system demonstrates strong support for the right to counsel and due process in delinquency courts to promote a juvenile justice system that is fair, non-discriminatory and rehabilitative.
- B. The public defense delivery system recognizes that disproportionate representation of minority youth in the juvenile justice system is contrary to notions of fairness and equality. The public defense delivery system works to draw attention to, and zealously advocates for the elimination of, disproportionate minority contact.

### NOTES

<sup>1</sup> The original *Principles* were developed over an eighteen-month period through a collaborative venture between the National Juvenile Defender Center (NJDC) and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA). NLADA officially adopted the original *Principles* on December 4, 2004. NJDC and NLADA collaborated on additional revisions to release this updated version, which NLDA officially adopted on June 4, 2008.

<sup>2</sup> For the purposes of these *Principles*, the term "public defense delivery system" denotes legal delivery systems that provide defense services to indigent juveniles facing delinquency proceedings. This term is meant to encompass public defender offices, contract, appointed, and conflict counsel, law school clinics, and non-profit legal providers.

<sup>3</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>4</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>5</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); *Indiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2006); *Florida: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2006); *Mississippi: An Assessment of Access to Counsel and Quality of Representation in Youth Court Proceedings* (2007); *Illinois: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2007). All NJDC Assessments are available at <http://www.njdc.info/assessments.php>.

<sup>6</sup> 543 U.S. 551 (2005).

<sup>7</sup> *American Bar Association Model Rules of Professional Conduct*, Rule 1.1 Competence.

<sup>8</sup> *Justice by Gender*: jointly issued by the ABA and the NBA 2001.

<sup>9</sup> See generally, National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005) [hereinafter *Guidelines*]. *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

<sup>10</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

<sup>11</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>12</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>13</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

<sup>14</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

<sup>15</sup> See generally, American Council of Chief Defenders Statement on Caseloads and Workloads, issued August 24, 2007; see also 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), 4.1.4.1.2; ABA Model Code of Professional Responsibility DR 6-101; *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

<sup>16</sup> *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

<sup>17</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>18</sup> National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2. *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>19</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>20</sup> American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).

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The National Juvenile Defender Center and the National Legal Aid & Defender Association are pleased to distribute *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems*, adopted in partnership with the American Council of Chief Defenders in December 2004 and revised and reissued in July 2008.

We hope and trust that they will prove useful in future efforts to reform and improve juvenile indigent defense systems across the country.

Please contact NJDC at (202) 452-0010 or [inquiries@njdc.info](mailto:inquiries@njdc.info) with any questions or requests for assistance.