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TO: Erie County Indigent Defense Working Group

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RE: Public Defense Overview

DATE: July 10, 2024

The New York State Office of Indigent Legal Services (ILS) has been invited to provide the Erie County Indigent Defense Working Group with information about public defense in New York State and Erie County, as well as ILS' work to improve the quality of public defense. Accordingly, this memo provides background information about ILS, the legal framework for our work, the standards for establishing and maintaining public defense systems which guide our work, and an overview of the funding ILS has made available to Erie County for improved quality public defense.

ILS' Statutory Responsibilities and Funding

ILS was established in 2010 pursuant to Executive Law § 832 with the mission to “monitor, study, and make efforts to improve the quality of representation” provided pursuant to County Law Article 18-B. Under County Law § 722(3), ILS also has the responsibility to approve assigned counsel program and conflict defender plans, as well as any changes to existing plans. In 2014, ILS accepted the responsibility to implement the historic *Hurrell-Harring v. State of New York* Settlement (HH settlement), which requires the State to make a significant investment to improve the quality public defense in five counties (Onondaga, Ontario, Schuyler, Suffolk, and Washington). In 2017, Executive Law § 832 and County Law § 722-e were amended to codify and extend the HH settlement requirements statewide and make them permanent. For both the HH settlement and its extension statewide, ILS is responsible for identifying the amount of State funding each county requires for implementation and to disburse this funding to the counties via cost-reimbursement contracts. Additionally, since 2023, ILS has had the responsibility for reimbursing counties for 50% of their expenditures for the assigned counsel rate increase that went into effect April 1, 2023.

Since its inception, and prior to the HH settlement, ILS has made funding available to counties via competitive and non-competitive grants. These grants include ILS Distributions, the Counsel at First Appearance grant, the Upstate Quality Improvement & Caseload Reduction grant, and

our Family Defense grants. The attached chart (Attachment A) summarizes the funding that ILS has made available to Erie County via these grants, the HH settlement funding, and the assigned counsel reimbursement funding.

As with all ILS funding, and in accord with State Finance Law § 98-b, the funding for Erie County is disbursed according to plans that ILS develops in cooperation with the county and its public defense providers to ensure that the funding will be used to improve the quality of public defense and that it will supplement, not supplant, county funding. Because our work is county-based, we also recognize and value county-specific issues that may inform the model of representation each county selects to deliver public defense representation pursuant to County Law § 722. Therefore, we are committed to cultivating respectful and collaborative relationships with counties and their public defense providers by which we listen to concerns, identify barriers to quality representation, and brainstorm solutions.

While we do not dictate the model of public defense counties use, we are guided by the law, specifically, County Law § 722 (which identifies the options for counties in developing plans for public defense representation), Executive Law § 832(4) (which incorporates the HH settlement requirements), and State Finance Law § 98-b (which requires that ILS funding be used to supplement county funding for improved quality mandated representation). We are also guided by the American Bar Association's *Ten Principles of a Public Defense Delivery System* (revised August 2023) (ABA's Ten Principles). Below, we summarize the relevant portions of the County Law, and Executive Law, and the ABA's Ten Principles.

County Law § 722

County Law § 722 sets forth the right to counsel for people who cannot afford to retain counsel in all criminal matters and for parents and other legally responsible adults in specified Family Court matters. Thus, in New York State, public defense includes not only criminal matters, but also the representation of parents in Family Court matters.

Since 1965, with the enactment of County Law Article 18-b (i.e., County Law §§ 722, 722-a, 722-b, 722-c, 722-d, 722-e, and 722-f), the State has required counties to establish and maintain public defense systems and, until recently, fully fund these systems. County Law § 722 states that counties may use any combination of the following options for their public defense systems:

- public defender office pursuant to County Law Article 18-a
- contract with a legal aid society
- conflict defender office
- assigned counsel program (ACP)

The first three options (public defender office, legal aid society, and conflict defender office) are all considered “institutional providers” and employ staff. The last option, an ACP, uses private attorneys who are paid an hourly fee per case. It bears emphasizing that because of conflicts, all counties must have an ACP. Because of the importance of ACPs in any public defense system and because County Law § 722(3) requires ILS to approve county-based ACP plans, in 2019 ILS issued *Standards for Establishing and Administering Assigned Counsel Programs*. The Black Letter Standards are attached as Attachment B. Commentary to these Standards are available

on ILS' website at: [Assigned Counsel Program Standards | New York State Office of Indigent Legal Services \(ny.gov\)](#).

Executive Law § 832(4)

As noted previously, Executive Law § 832(4) extends the HH settlement statewide and makes it permanent. The statute requires that ILS work with counties to develop plans to implement the following initiatives:

- *Counsel at Arraignment* – Develop systems and protocols to ensure that all people eligible for assigned counsel are represented by defense counsel at arraignment.
- *Caseload Relief* – Ensure that all public defense providers have the staffing and resources needed to comply with the caseload standards for criminal cases issued by ILS in December 2016, via a report available here: [Caseload Standards Report Final 120816.pdf \(ny.gov\)](#). Attached as Attachment C is a chart with the ILS caseload standards for criminal cases by case type, as well as a chart depicting ILS' caseload standards for Family Court matters by petition type. The Family Court caseload standards are discussed further below.
- *Quality Improvement* – Develop systems and protocols to ensure that criminal defense attorneys: 1) receive effective supervision and training; 2) have access to and utilize specialized professionals, including investigators, interpreters, mitigation specialists, social workers, and other experts; 3) communicate effectively with their clients; and 4) have the necessary qualifications and experiences for the types of cases assigned to them.

Counties are required to “undertake good faith efforts” to implement these initiatives, and the State is required to appropriate the funding needed. See Executive Law § 832(4)(d) and County Law § 722-e.

ABA's Ten Principles

In working with counties to improve their public defense systems, ILS is guided by the ABA's Ten Principles, which are attached as Attachment D. We highlight the first two foundational principles, below:

- *Principle 1, Independence*: This principle states that public defense providers “should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers.” Among other things, this means that decisions about public defense leaders should be based on relevant qualifications and not driven by patronage or politics.
- *Principle 2, Funding, Structure, and Oversight*: This principle urges counties to adopt “mixed” public defense systems that include as the primary provider one or more institutional public defense providers (i.e., public defender office, legal aid society, conflict defender office) augmented by a well-managed ACP. Public defense programs should be sufficiently funded to ensure that staff receive competitive wages and that there is the staffing needed for quality representation, including not just attorneys, but other

specialized professionals (investigators, mitigation specialists, social workers, and other experts).

Representation of Parents in Family Court

Though public defense in New York State includes the representation of parents in Family Court matters, the HH settlement and its extension statewide do not include this vital component of public defense. As a result, while the State has made a significant fiscal investment to improving the quality of public defense in criminal matters, the State has not made the same investment to improve the quality of public defense for Family Court matters. The disparity in State funding is starkly illustrated in the final enacted state budget for FY 2024-25, which appropriates to ILS' Aid to Localities budget \$274 million for the HH settlement and its extension statewide, but only \$19.5 million for improved quality Family Court representation.

ILS has disbursed the limited State funding available for improved quality Family Court representation via competitive grants, which we call our Family Defense grants. To date, we have issued three rounds of Family Defense grants. Erie County is currently in receipt of two such grants, totaling \$416,666 per year.

ILS has also issued caseload standards for the representation of parents in Family Court matters, which the ILS Board has approved contingent upon the availability of the State funding needed to implement them. ILS estimates conservatively that it would cost the State \$150 million to implement these caseload standards statewide.

In the meantime, several reports have identified the statewide crisis in the quality of representation provided to parents in Family Court matters, including the Commission on Parental Legal Representation, *Interim Report to Chief Judge DiFiore*, (February 2019), and more recently, *The Crisis in New York's Family Courts*, A Report on the Senate Hearing from the NYS Senate Committee on the Judiciary and Committee on Children & Families. Erie County is not exempt from this crisis.

Erie County's Current Public Defense System

Erie County currently contracts with the Erie County Bar Association, Aid to Indigent Prisoners Society, for an Assigned Counsel Program (Erie ACP), and the Legal Aid Bureau of Buffalo (LABB), an institutional provider, to deliver public defense representation.

The Erie ACP is the primary and sole provider of representation for most public defense matters, including the following:

- all representation of parents in Family Court matters
- all town and village court matters
- all County Court matters that originate in the town and village courts
- all class A, B, and C felony matters that originate in Buffalo City Court
- all Raise the Age matters
- all local court appeals

The LABB is the primary provider with the ACP serving as the conflict provider in the following matters:

- all misdemeanor matters in Buffalo City Court
- all class D and E felony matters in County Court that originate in Buffalo City Court
- all appellate matters before the Appellate Division, Fourth Department
- all superior court post-conviction matters

Because the Erie ACP is the primary and sole provider of representation in most public defense matters, Erie County's public defense system is currently not aligned with Principle 2 of the ABA's Ten Principles.

ILS' Experience with Erie County

Since our inception, ILS has worked collaboratively with Erie County officials and its two public defense providers, the Erie ACP and LABB, to improve the quality of mandated representation provided to people in criminal and Family Court matters in Erie County. For the ACP, ILS funding has, among other things, bolstered the administrative infrastructure for better support and oversight of panel attorneys, created mentor, second chair, and training programs to support and train attorneys, and made funding available so panel attorneys have access to the specialized services vital to quality representation, such as investigators, mitigation specialists, and other experts. For the LABB, ILS funding is being used to, among other things, increase the number of attorney and non-attorney staff for caseload relief and quality improvement, increase and improve office space, enhance the office technology for improved performance and efficiencies, and bolster the administrative infrastructure for better support and oversight of staff. For both the ACP and LABB, ILS funding is also used to ensure that every arrested person is represented by counsel at arraignment.

More recently, ILS worked with Erie County officials to resolve some of the issues identified in the December 2023 *Audit of Erie County Department of Law Grant and Claim Reimbursement for Indigent Legal Services*. In so doing, ILS sought to be responsive and to provide clear and thorough information to assist Erie County in resolving the issues and receiving the full amount of ILS funding to which Erie County is entitled under our contracts.

ILS appreciates the efforts of this Working Group. We are at your disposal to answer questions and provide any information we have that assist you in your work.

Attachments

A: ILS Grant Funding Available to Erie County

B: *ILS Standards for Establishing and Administering Assigned Counsel Programs, Black Letter Standards*

C: ILS' Caseload Standards for Criminal and Family Court Matters

D: *ABA, Ten Principles of a Public Defense Delivery System (revised 2023)*

ATTACHMENT A

ILS Grant Funding Available to Erie County for Improved Quality Mandated Representation: Summary

Grant	Annual Amount
Statewide Expansion of Hurrell-Harring	\$16,820,657
Distribution grants	\$ 1,940,170
Counsel at First Appearance grant	\$ 750,000
Upstate Quality & Caseload Reduction grant	\$ 300,000
Family Defense grants	\$ 416,666
Total	\$20,227,493
Reimbursement for 50% of Expenditure for Increased ACP vouchers	\$2,416,023 *Note: This is the amount Erie County claimed for FY 2023-24. Based on the pattern of claims submitted in FY 2023-24, we anticipate that in FY 2024-25, the amount will be closer to \$5 million.



NYS Office of Indigent Legal Services

ILS Standards for Establishing and
Administering Assigned Counsel Programs
BLACK LETTER STANDARDS

July 1, 2019

**New York State Office of Indigent Legal Services
Standards for Establishing and Administering Assigned Counsel Programs
BLACK LETTER STANDARDS**

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New York State Office of Indigent Legal Services
Standards for Establishing and Administering Assigned Counsel Programs
BLACK LETTER STANDARDS

PART I. INTRODUCTION

1. Preamble

Well-designed, properly maintained, and adequately funded assigned counsel programs (ACPs or Programs) play a vital role in ensuring justice for clients who cannot afford to retain an attorney in criminal defense or family law matters. Every county in New York State depends upon assigned counsel to provide representation for public defense clients. In several counties, ACPs are the primary or sole provider of mandated representation. In most counties, where public defender offices or legal aid societies are the primary providers, the mandated representation of some eligible individuals presents conflicts of interest requiring the assignment of private attorneys.

For compelling reasons beyond conflicts of interest, the continuing involvement of the private bar is essential to the success of public defense. First and foremost, effective public defense requires a robust competition of ideas among practitioners with a broad range of perspectives. By bringing their experiences representing private clients to public defense, private assigned counsel may show staff attorneys new and different ways of doing things, thus helping to ensure that public defense practice remains rich and innovative. Further, private attorneys who represent public defense clients can serve as effective ambassadors to bar associations, legislatures, community groups, and others. They can educate the public and system stakeholders about the needs of the criminal justice system and promote funding and initiatives that will ensure quality public defense. Finally, when public defenders face unanticipated fluctuations in staffing and caseloads, the private bar can help achieve administrative stability and quality of representation.

County Law article 18-B, enacted in 1965, delegates to localities the responsibility for public defense services. Section 722 sets out the types of providers that counties may employ to fulfill the right to counsel. One permissible mechanism is a bar association program in which an Administrator rotates assignments and administers the services of private counsel. However, County Law § 722 provides no details as to the proper establishment of ACPs, so counties and bar associations have created and maintained programs with little guidance. To aid counties and ACP Administrators and to ensure quality representation, the State Office of Indigent Legal Services (ILS), in consultation with the ILS Board, promulgates these Standards for Establishing and Administering Assigned Counsel Programs (Standards), pursuant to Executive Law § 832.

These Standards draw from existing national, state, and local standards; developments in ACPs over the last half-century; and the experience and knowledge of the Standards Working Group and ILS staff. Materials consulted include: New York State Bar Association (NYSBA) Revised Standards for Providing Mandated Representation (NYSBA Revised Standards); National Legal Aid and Defender Association (NLADA) Standards for the Administration of Assigned Counsel Systems (NLADA ACS Standards); and standards promulgated by the New York State Defenders Association (NYSDA), including Standards for Providing Constitutionally and Statutorily Mandated Representation in New York State (NYSDA Standards for Mandated Representation),

and by the American Bar Association (ABA). These Standards reference, and should be read in conjunction with, other relevant ILS standards listed in the Commentary to Standard 1.2, as set forth in the comprehensive version of these Standards including Commentaries.

ILS has created these Standards to help ACPs ensure that panel attorneys can comply with all applicable individual representation standards and with New York Rules of Professional Conduct. There are many unique and challenging aspects of assigned counsel representation. For instance, where judges select attorneys to handle public defense cases, those attorneys may be concerned that zealous representation could discourage future assignments. Attorneys may sometimes feel pressure to consider the fiscal interests of the government, which may be adverse to the needs of clients. These pressures can be exacerbated for the many panel attorneys who depend on assignments as part of a solo or small law practice.

These challenges must not result in any compromise in the quality of representation provided to public defense clients or the independence of panel attorneys. *Gideon v Wainwright*, 372 US 335, 345 (1963), established the right of state criminal defendants to the “guiding hand of counsel at every step in the proceedings.” Implicit in that concept is “the assumption that counsel will be free of state control. There can be no fair trial unless the accused receives the services of an effective and independent advocate.” *Polk County v Dodson*, 454 US 312, 322 (1981). The government must adequately fund public defense services and structure ACPs so that lawyers can remain independent, meet their ethical obligations, and deliver quality representation. ILS and its Board will continue to work with stakeholders to secure the funding necessary for compliance with these Standards.

1.1. Applicability. These Standards apply to all existing and future systems in the state for the delivery of mandated representation by assigned counsel.

1.2. Scope. These Standards are designed to guide ACPs to ensure that attorneys can comply with relevant performance standards in providing mandated representation.

1.3. Purpose. These Standards set out the structure and components of ACPs necessary to ensure quality representation.

1.4. Definitions.

1.4.a. Administrator. The organizational leader who administers the ACP and ensures that these Standards are met.

1.4.b. Assigned Counsel. A private attorney or attorneys, other than an attorney or attorneys employed by an institutional provider, paid by the government to represent public defense clients.

1.4.c. Assigned Counsel Program (ACP). An entity that sets forth protocols and policies for assigning attorneys to public defense clients and ensures that those attorneys provide quality representation.

1.4.d. Clients. Persons entitled to representation in criminal defense and family law matters under County Law article 18-B.

1.4.e. Counties. All 62 counties in the state: the 57 upstate counties and the five boroughs of New York City.

1.4.f. Independence. Freedom from improper influence and control by an outside entity, to ensure that ACPs and assigned counsel make decisions based solely on the interests of clients.

1.4.g. Judge. Judges, magistrates, and any other persons with adjudicative powers over clients eligible for mandated representation.

1.4.h. Mandated Representation. Government-funded legal representation that is constitutionally or statutorily required. “Mandated representation” is used interchangeably with “public defense representation.” As employed in these Standards, both terms encompass 18-B representation in family law litigation, regardless of the client’s party status.

1.4.i. Mentor or Mentoring Attorney. An experienced attorney who provides training, consultation, and guidance to less experienced attorneys on the panel.

1.4.j. Panel. The ACP’s list of attorneys eligible to receive assignments, which should be limited to those in good standing and with the requisite skills and training.

1.4.k. Quality Representation. Representation of clients in a professional, skilled, ethical, and client-centered manner.

1.4.l. Supervising Attorney. An attorney who assists the Administrator in ensuring that each individual assigned counsel provides quality representation.

1.4.m. Chief Defender. A leader of a Public Defender office, Conflict Defender office, Legal Aid Society or ACP.

PART II. COUNTY RESPONSIBILITIES

A. Establishment and Maintenance of an Assigned Counsel Program

2. General Policies

2.1. ACP Requirement. Each county should establish and maintain an ACP that complies with these Standards.

2.1.a. Regional Programs. Counties may agree to create a regional ACP to comply with these Standards and to promote the efficient delivery of services.

2.2. Quality Representation. Each ACP shall ensure the provision of professional, skilled, ethical, and client-centered legal representation for all clients.

2.3. Independence. Each ACP shall remain independent and free from improper influence and conflicts of interest.

2.3.a. Independent Office. The ACP shall not be part of a Legal Aid Society, Public Defender office, Conflict Defender office or County Attorney office.

2.3.b. Judicial Supervision. The ACP and individual assigned counsel should be subject to judicial supervision only in the same manner and to the same extent as applies to all other practicing lawyers.

2.3.c. Independent Function. The function of providing mandated representation—including the assignment, selection, funding, and payment of counsel—shall be independent.

3. Required Structure

3.1. Governing Law. Each county should establish an ACP pursuant to a plan of a bar association within the county.

3.2. ACP Board. To ensure that the management of the ACP is independent of all branches of county government, the ACP shall operate under the guidance of a governing Board.

3.2.a. Board Members. The majority of the Board’s members shall be attorneys who are not judges; and no members of the Board shall hold a position as a prosecutor, law enforcement or government official.

3.2.b. Board Supervision. The Board shall appoint the ACP Administrator and may supervise the operation of the ACP and establish policies to support implementation of these Standards.

3.2.c. No Interference. The Board shall not interfere with the representation of individual clients.

3.2.d. Insurance. The ACP shall insure the Board and the Administrator, for all insurable risks incident to the operation of the ACP, to a dollar amount specified by the Board. The funding agency shall indemnify the Board and the Administrator for all liability arising from their authorized activities pursuant to the ACP.

3.3. Assigned Counsel Administrator. The Board shall appoint an Administrator to implement the policies and duties of the ACP.

3.3.a. Administrator Qualifications. The Administrator shall be an attorney licensed in the State of New York who possesses administrative experience and skill in the representation of criminal defendants and/or adults in family law matters and who demonstrates integrity and a commitment to quality representation of public defense clients.

3.3.b. Administrator Selection. The Administrator shall be selected based on merit; appointed for a stated term set by the Board; serve full-time where feasible; if full-time, shall not engage in the private practice of law; and may be dismissed prior to the expiration of his or her term only for good cause, following a hearing.

3.3.c. Administrator Continuity. The ACP shall establish protocols to address personnel transitions in the operation of the Program.

3.3.d. Administrator Functions. The Administrator shall implement and ensure adherence to these Standards and ACP policies.

3.3.d.i. Delegating Duties. The Administrator may delegate day-to-day tasks to foster efficiency, but may not delegate ultimate responsibility for the Administrator's primary functions. The Administrator shall not delegate to a nonlawyer any duties for which legal training is needed.

3.3.d.ii. Spokesperson Role. The Administrator shall act as the spokesperson for the ACP in matters involving policy and the operation of the Program.

3.3.d.iii. Addressing Issues. The Administrator shall address matters that arise among the ACP, its attorneys, and other actors in the criminal justice and parental representation systems.

3.3.d.iv. Planning and Policy. The Administrator shall engage in planning and policy discussions with the county and other entities regarding decisions affecting the ACP, assigned lawyers, and public defense clients; and shall be responsible for preparing and submitting a proposed budget to the funding entity.

3.3.d.v. Assignment Process. The Administrator shall oversee the rotation and coordination of panel attorneys and implement a fair process for assignments.

3.3.d.vi. Vouchers. The Administrator shall establish protocols for the review of assigned counsel vouchers for quality-review purposes and to ensure that attorney billing is accurate.

3.3.d.vii. Non-Attorney Professional Services. The Administrator shall approve applications for the provision of investigative, social work or other professional services; and shall review vouchers submitted for such services.

B: Provision of Necessary Resources

4. ACP Capacity

4.1. Facilities. Each county shall provide suitable facilities so that the ACP can carry out its duties under County Law article 18-B and meet these Standards.

4.1.a. Office Space. Each county shall establish an administrative office for its ACP. Such administrative office shall have a suitable location, and suitable space, technology, equipment, and supplies to facilitate independent, professional representation.

4.1.b. Technology. Each county shall provide its ACP with the technology necessary to effectively and efficiently administer the Program. Such technology shall enable the ACP to communicate efficiently with clients, courts, attorneys, and the public; to collect, analyze, and report on data; and to track caseloads.

4.2. Necessary Services. Each county shall ensure that its ACP provides assigned counsel with access to the following services necessary for quality representation.

4.2.a. Supervision. Each ACP shall ensure that its panel is appropriately supervised by an attorney or attorneys.

4.2.b. Mentoring. Each ACP shall ensure that every attorney new to the representation of public defense clients receives a mentor to help the attorney develop high professional standards and provide quality representation.

4.2.c. Consultation. Each ACP shall ensure that assigned counsel have access to resources to assist in addressing complex or systemic issues arising during individual representation.

4.2.d. Training. Each ACP shall provide its panel with access to appropriate substantive, procedural, and practical training programs.

4.2.e. Second-Chair Program. Each ACP shall create a Second-Chair Program to provide necessary trial experience to attorneys.

4.3. Staffing. Each county shall provide its ACP with suitable personnel to carry out its duties under County Law § 722 (3) and comply with these Standards.

4.3.a. Supervising Attorney. The Administrator shall be responsible for the supervision of assigned counsel, and such responsibility may be delegated to one or more supervising attorneys.

4.3.b. Administrative Staff. The ACP shall include staff responsible for providing administrative services, which may include, but not be limited to, clerical support, data management, and budget and finance support.

4.3.b.i. Hiring Staff. The Administrator shall be responsible for assessing the administrative staff needs of the ACP and shall oversee the hiring of such staff.

4.3.b.ii. Client's Rights. The ACP shall ensure that all staff comply with the Statement of Client's Rights. *See* 22 NYCRR § 1210.1.

4.3.c. ACP Staff Salaries

4.3.c.i. The Administrator's compensation should be set at a level commensurate with the attorney's qualifications and experience and the responsibilities of the position. There should be a parity of compensation as between the Administrator and any other Chief Defender in the county.

4.3.c.ii. The starting pay for ACP legal and administrative staff should facilitate the recruitment of qualified personnel. Salary levels thereafter should promote the retention of staff. All salary levels should reflect parity as to similar positions in the prosecutor's office or local public defense offices.

4.4. Client Communication. The ACP shall work with justice system and other officials to ensure that adequate confidential meeting space for client interviews is provided in courthouses, jails, and prisons. The ACP shall similarly work with officials to establish means by which incarcerated clients can have confidential communication with their assigned counsel by telephone or otherwise.

4.5. Full Partnership. The ACP should have a voice in the county's efforts to maintain and improve the justice system.

4.6. Ensuring Adequacy of Facilities for Representation. The ACP shall require that all panel attorneys have the facilities necessary to provide quality representation.

4.6.a. Confidential Client Communication Facilities. The ACP shall ensure that assigned counsel have access to meeting facilities and equipment as needed to ensure client confidentiality, including a means for clients to contact the attorney by telephone without the client having to incur burdensome charges.

4.6.b. Legal Research Capacity. ACP services and facilities shall ensure that assigned counsel have access to adequate research resources. The ACP is not obligated to provide these support services directly, but should strive to do so where feasible.

5. Timely Representation

5.1. General. The ACP shall implement systematic procedures to ensure the prompt assignment of counsel for all persons eligible for mandated representation.

5.1.a. Assignment During Eligibility Determination. Provision of counsel shall not be delayed while a person's eligibility for mandated representation is being determined or verified.

5.1.b. Subsequent Appearances. Eligible persons shall have counsel at every court appearance.

5.2. Counsel in Criminal Cases. Counsel shall be provided as soon as possible to any persons who are subject to state action due to allegations of criminal conduct. The ACP, working with other components of the justice system, shall ensure the provision of counsel at first appearance. Upon request, the ACP shall provide counsel prior to the initiation of formal charges, when it appears that such charges, and mandated representation, are imminent.

5.3. Counsel for Litigants in Family Law Matters. The ACP shall provide counsel, upon request, to any person legally entitled to representation in family law matters; and the Program should make representation available during the investigatory stage of a child protective matter.

6. Duration and Continuity of Representation

6.1. Duration of Representation. The ACP shall ensure that all clients receive legal representation throughout the matter for which representation was approved.

6.2 Continuity of Representation. The ACP shall ensure representation by the same attorney throughout the trial level, unless the needs of the client or unavoidable circumstances require otherwise.

7. Budget and Funding

7.1. General. Each ACP shall be provided with sufficient funding to carry out its functions under County Law § 722 (3) and to ensure quality representation.

7.1.a. Periodic Review. Each county shall conduct periodic evaluation and review of the ACP budget and communicate the fiscal and programmatic needs of the ACP to ILS.

7.1.b. Compliance with all ILS Standards. The ACP and the county shall make known to ILS the state funding needed to comply with these and all other ILS standards.

7.1.c. Budget and Record-Keeping. The ACP shall prepare and submit a detailed budget to the county funding authority and shall maintain records and accounts of expenditures in accordance with accepted accounting practices and relevant laws and regulations.

7.1.d. Voucher Review. The county and ACP shall not delay the payment of vouchers or reduce the amount paid to reduce costs.

PART III. ACP RESPONSIBILITIES

A. General Responsibilities

8. Operational Responsibilities

8.1. Attorney Panels. The ACP shall create panels of attorneys who have demonstrated the skill, experience, and commitment needed to provide quality representation to public defense clients.

8.1.a. Differentiated Panels. To ensure the competence necessary for a given case, the ACP shall create specific types of panels based upon the category and complexity of the case.

8.1.b. Qualifications. The ACP shall create standards and a process for attorneys to apply to participate on the panel, including specific criteria for acceptance onto any subpanel.

8.1.c. Regional Recruitment. While recruitment for the panel may begin with the local bar association, all qualified attorneys shall be considered; and the opportunity to participate in the panel should be publicized to all attorneys within the ACP's county or region.

8.1.d. No Fee. The ACP shall not charge a fee for applying to, or remaining on, a panel.

8.1.e. Administrator Assignments. The selection of assigned counsel for a case should be made by, or at the direction of, the Administrator; should ensure that the ability, training, and experience of panel attorneys are matched to the complexity of the cases to which they are assigned; and should not be made by a judge or court official, except in an emergency, in exceptional circumstances, or when an initial assignment of counsel in one court is continued by a judge in a court to which the case is transferred.

8.1.f. Geographic Areas. To ensure that assigned counsel are available at first appearance for every client, the ACP may establish geographic areas in which each assigned attorney may accept cases.

8.1.g. Malpractice Insurance. The ACP should require all attorneys seeking appointment to the panel to provide evidence of adequate malpractice insurance coverage.

8.2. Requirement that Eligible Clients Receive Representation. The ACP shall utilize applicable ILS Eligibility Standards.

8.3. Procedures for Compensating Panel Attorneys. The ACP shall establish and maintain procedures for compensating assigned counsel.

8.3.a. Full Compensation. The ACP shall compensate assigned counsel for all hours necessary to provide quality legal representation.

8.3.b. Prompt Payment. The ACP shall develop and implement procedures for compensating panel attorneys that ensure prompt payment.

8.3.c. Additional Payment. On the matter to which counsel is assigned, he or she shall not seek to be privately retained to represent the client, shall not agree to be privately retained upon request of the client, and shall neither seek nor accept payment from a client or any other person. Noncompliance with this rule is a ground for removal from the panel. Assigned counsel should not seek nor accept payment from a client or any other source to supplement fees and expenses for non-attorney professional services authorized by the ACP.

8.3.d. Interim Vouchers. Procedures for compensating assigned counsel should include policies allowing for the payment of interim vouchers for fees and expenses.

8.3.e. Post-Disposition Work. Policies for compensating assigned counsel shall allow for payment of vouchers in cases requiring post-disposition work.

8.3.f. Expenses. The ACP shall advise assigned counsel as to which expenses are reimbursable and shall promptly authorize reimbursement for all reasonable out-of-pocket expenses.

8.3.g. Changes in Procedures. The ACP shall distribute prompt, clear information regarding payment or reimbursement procedures to panel attorneys and shall provide prompt, clear information regarding any changes in such procedures.

8.4. Administrative Responsibilities for Panel Attorneys. The ACP shall establish clear, fair guidelines regarding the administrative responsibilities of panel attorneys.

8.5. Access to Appropriate Non-Attorney Professional Services. The ACP shall ensure that individual assigned counsel have access to the non-attorney professional services needed at every phase of the case.

8.5.a. Range of Services. Such professional services shall include access to investigatory, expert, social work, mental health, interpreter, and other relevant services.

8.5.b. Direct Services. The ACP is not obligated to provide these services directly, but should strive to do so where feasible.

8.6. Quality Assurance Procedures. The ACP shall develop and implement comprehensive quality assurance procedures, as set forth below.

B: Quality Assurance Provisions

9. General Provisions

9.1. Compliance with Applicable Standards. The ACP shall ensure that assigned counsel are aware of, and comply with, all applicable performance and ethical standards.

9.2. Client-Centered Representation. The ACP shall ensure that assigned counsel provide client-centered representation, which, at a minimum, shall include:

9.2.a. Contacting clients as soon as possible after appointment.

9.2.b. Promptly meeting with clients (whether in detention or not) prior to a court appearance, and as needed, in a space that complies with Standard 9.2.e.

9.2.c. Accepting telephone calls from clients, including from detention facilities.

9.2.d. Timely responding to client inquiries.

9.2.e. Ensuring that client privacy and the confidentiality of communications are protected.

9.2.f. Communicating relevant information about the case to the client in a timely and respectful manner, and using clear and understandable language, so that the client can make informed decisions.

9.2.g. Discussing relevant documents with the client and providing copies upon request.

9.2.h. Collaborating with the client to achieve the best possible result, consistent with the client's objectives.

9.2.i. In criminal matters, pursuing alternatives to incarceration where appropriate; providing accurate information about sentencing; reviewing the presentence report with the client; acting to correct errors in that report; and filing a defense presentence memorandum where appropriate.

9.2.j. With respect to Family Court cases, providing accurate information about dispositions; reviewing any (pre)dispositional report with the client; acting to correct errors in such report; and, where appropriate, filing a memorandum on behalf of the client advocating an appropriate disposition.

9.2.k. Utilizing appropriate non-attorney professional services, such as investigators, expert witnesses, sentencing advocates, and social workers.

9.2.l. Determining, and explaining to clients, the collateral consequences of any course of action, and where appropriate, using the existence of these consequences to achieve better plea negotiations.

9.2.m. When representing adolescent and young adult clients—whether charged with criminal or delinquent behavior or facing loss of the opportunity to parent their children—developing expertise in adolescent development, custody and care of youth, and other unique needs of these clients.

9.2.n. Taking all necessary steps to protect, preserve, and enforce clients' post-conviction, post-disposition, and appellate rights.

10. Attorney Capability

10.1. Knowledge and Experience. The ACP shall establish and maintain systems to ensure that assigned counsel have sufficient knowledge and experience to provide quality representation to clients.

10.2. Assessment of Attorneys. The ACP shall develop and maintain systems to (a) determine which levels of cases are appropriate for each attorney; (b) recertify panel attorneys; and (c) identify the training needs of panel attorneys.

11. Attorney Caseload

11.1. Attorney Caseloads. The ACP shall establish and maintain systems to ensure that caseloads comply with ILS Caseload Standards.¹

11.1.a. Evaluation of Attorney Caseload. In assigning cases to panel attorneys, the ACP shall take into consideration: (a) the types of cases being handled; (b) the qualifications and experience of the attorneys; (c) the distance between the attorney's office and the courts or other relevant sites; (d) the time needed to interview clients and witnesses; (e) the attorneys' total workload, including the extent of the attorney's private practice; and (f) any other relevant factors.

11.1.b. Review of Attorney Caseload. The ACP shall review attorney caseloads on a regular basis.

12. Training

12.1. Orientation. For new panel members, the ACP shall provide a mandatory orientation, which should include a discussion of expectations for quality representation and administrative procedures.

12.2. Initial Training. The ACP shall ensure that panel attorneys receive appropriate training prior to any case assignments. The ACP may directly provide, or financially support, this training, but is not required to do so.

12.3. Ongoing Training

12.3.a. Obtaining CLE Training. The ACP shall ensure that all assigned counsel obtain continuing legal education (CLE) and other training needed so that their skills and knowledge will enable them to provide quality representation. The ACP should encourage panel attorneys to utilize national, regional, state, and local sources of training.

12.3.b. Mandated Representation Topics. The ACP shall ensure that all assigned counsel allocate a significant portion of their mandatory CLE credit requirement to courses related to the subject matter of the mandated representation they provide.

12.3.c. Monitoring CLE Programs. The ACP shall monitor CLE programs attended by assigned counsel.

¹ILS, Determination of Caseload Standards pursuant to § IV of the *Hurrell-Harring v. The State of New York* Settlement (2016), <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf> (last accessed Feb. 22, 2019). *See also* Executive Law § 832 (4) (b).

12.3.d. Providing Affordable Programs. The ACP shall ensure that assigned counsel have access to high-quality free or affordable CLE and other training programs relevant to their work.

13. Supervision and Mentoring

13.1. Use of ACP Resources. The ACP shall ensure that assigned counsel are aware of, and utilize, the services described in Section 4.2 of these Standards.

14. Performance Review and Remediation

14.1. Performance Review and Remediation Policies. The ACP shall provide assigned counsel with meaningful, periodic evaluation of their work, based on objective criteria, and shall publicize the criteria applied.

14.2. Complaint Procedures. The ACP shall establish procedures for the receipt, investigation, and resolution of complaints from clients, client family members, co-counsel, opposing counsel, the judiciary, and any other relevant source.

14.3. Remediation. The ACP shall establish policies for remediation to be employed when an attorney's performance fails to satisfy applicable criteria and standards.

ATTACHMENT C

ILS Caseload Standards

Caseload Standards for Criminal Matters

Pursuant to the ILS Caseload Standards (Criminal Matter) each individual attorney should be assigned no more than 300 misdemeanor/violation new cases per year or the equivalent. For mixed caseloads (i.e., a combination of case types), we weight cases based on the misdemeanor equivalent value. The misdemeanor equivalent value represents what the other case type equivalent is to 300 misdemeanor/violation case type. The case types, maximum annual assignments, and misdemeanor equivalents are listed in the below chart:

Case Type	Maximum Annual Assignments	Misdemeanor Equivalent Value
Violent Felonies ¹	50	6
Non-Violent Felonies	100	3
Misdemeanors and Violations	300	1
Post-Disposition	200	1.5
Parole Revocation	200	1.5
Appeals of Trial Verdict	12	25
Appeals of Guilty Pleas	35	8.57

Caseload Standards for the Representation of Parents in Family Court Matters

Pursuant to the ILS Caseload Standards (Parent Representation), each individual attorney should be assigned no more than 300 new paternity cases per year or the equivalent. ILS defines cases by petition type. For mixed caseloads (i.e., a combination of petition/case types), we weight cases based on the paternity equivalent value. The paternity equivalent value represents what the other petition/case type equivalent is to 300 paternity petition/case type. The case types, maximum annual assignments, and paternity equivalent values are listed in the below chart.

Petition/Case Type	Maximum Annual Assignments	Paternity Equivalent Value
Paternity	300	1
Willful Violation of Support Order	150	2
Willful Violation Order	120	2.5
Family Offense	120	2.5
Guardianship	100	3

¹ “Violent felonies” are defined as: any violent felony as defined in Penal Law § 70.02 and any class A felony except those defined in Article 220 of the Penal Law (Class A “drug” felonies).

Violation of Conditional Surrender	100	3
Adoption	100	3
Modification of Prior Order	75	4
Custody/Visitation	75	4
Conditional Surrender	60	5
Neglect	33.3	9
Abuse	33.3	9
TPR	33.3	9



Ten Principles of a Public Defense Delivery System



AMERICAN BAR ASSOCIATION

Standing Committee on Legal
Aid and Indigent Defense

AUGUST 2023





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Ten Principles of a Public Defense Delivery System



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AUGUST 2023



The ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM were prepared by the ABA Standing Committee on Legal Aid and Indigent Defense.

The ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, black letter and commentary, were adopted by the American Bar Association House of Delegates, August 2023. The American Bar Association recommends that each jurisdiction swiftly assess its compliance with the ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM.

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on Legal Aid and Indigent Defense
2022-2023**

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AMERICAN BAR ASSOCIATION

**STANDING COMMITTEE ON LEGAL AID
AND INDIGENT DEFENSE**

SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE

RESOLUTION

RESOLVED, That the American Bar Association adopts the revised Ten Principles of a Public Defense Delivery System, dated August 2023, including black letter and commentary; and

FURTHER RESOLVED, That the American Bar Association recommends that each jurisdiction swiftly assess its compliance with the Ten Principles of a Public Defense Delivery System, dated August 2023, and implement any necessary legal and policy changes where deficiencies may exist.

INTRODUCTION

The Revised ABA Ten Principles of a Public Defense Delivery System were sponsored by the American Bar Association Standing Committee on Legal Aid and Indigent Defense (SCLAID) and approved by the ABA House of Delegates at the ABA's Annual Meeting in August 2023. The Revised Principles update the original Ten Principles, adopted by the ABA in February 2002, for modern public defense systems while retaining the original commitment to high-quality, well-funded, and independent indigent defense. As with the original Principles, the Revised Principles describe the fundamental criteria for jurisdictions to use when assessing their public defense systems. The ABA has adopted more detailed policy on the provision of indigent defense services elsewhere, such as the ABA Standards for Criminal Justice, Providing Defense Services (3d ed. 1992).¹

ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defense thanks everyone who contributed to the development of the Revised Principles. First and foremost, SCLAID acknowledges former SCLAID member and ABA Criminal Justice Section Chair Norm Lefstein. Mr. Lefstein, a law professor, law school dean, and public defender, was passionate about improving the quality of public defense, and instrumental in getting the Revised Principles off the ground. Mr. Lefstein died in 2019, but the tireless devotion to equal justice reflected in the Revised Principles bears his unmistakable imprint.

The Standing Committee also thanks the members of the Revised Ten Principles Committee, a group of public defenders, academics, and indigent defense experts recruited by SCLAID who volunteered countless hours researching, drafting, and reaching a consensus on these principles: Barbara Bergman, Bob Boruchowitz, Brendon Woods, Lauren Sudeall, Stephen Hanlon, Dawn Deaner, Carlos Martinez, and Malia Brink. Further, SCLAID is grateful to the ABA Criminal Justice Section and

¹ https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_defsvcvcs_toc/

Section of Civil Rights and Social Justice, whose members provided critically important input during the drafting process. Finally, SCLAID thanks the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, the Sixth Amendment Center, and the National Association for Public Defense, who also helped ensure the final version of the Revised Principles met the needs of indigent defense counsel and their clients.

A handwritten signature in black ink, appearing to read 'B. Yang'.

Hon. Bryant Y. Yang
Chair, Standing Committee on Legal Aid and Indigent Defense

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

PRINCIPLE 1: Independence

Public Defense Providers¹ and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting agency and its lawyers.² To safeguard independence and promote effective³ and competent⁴ representation, a nonpartisan board or commission should oversee the Public Defense Provider.⁵ The selection of the head of the Public Defense Provider, as well as lawyers and staff, should be based on relevant qualifications and should prioritize diversity and inclusion to ensure that public defense staff are as diverse as the communities they serve.⁶ Public Defender Providers should have recruitment and retention plans in place to ensure diverse staff at all levels of the organization.⁷ Neither the chief defender nor staff should be removed absent a showing of good cause.⁸

PRINCIPLE 2: Funding, Structure, and Oversight

For state criminal charges, the responsibility to provide public defense representation rests with the state;⁹ accordingly, there should be adequate state funding and oversight of Public Defense Providers. Where the caseloads allow, public defense should be a mixed system: primarily dedicated public defense offices,¹⁰ augmented by additional Public Defense Providers¹¹ to handle overflow and conflict of interest cases.¹² The compensation for lawyers working for Public Defense Providers should be appropriate for and comparable to other publicly funded lawyers. Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors.¹³ Other provider attorneys should be paid a reasonable fee that reflects the cost of overhead and other office expenses, as well as payment for work.¹⁴ Investigators, social workers, experts, and other staff and service providers necessary to public defense should also be funded and compensated in a manner consistent with this Principle.¹⁵ There should

be at least parity of resources between public defense counsel and prosecution.¹⁶

PRINCIPLE 3: Control of Workloads

The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation.¹⁷ Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations.¹⁸ Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately,¹⁹ but national workload standards should never be exceeded.²⁰ If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.²¹

PRINCIPLE 4: Data Collection and Transparency

To ensure proper funding and compliance with these Principles, states should, in a manner consistent with protecting client confidentiality, collect reliable data on public defense, regularly review such data, and implement necessary improvements.²² Public Defense Providers should collect reliable data on caseloads and workloads,²³ as well as data on major case events,²⁴ use of investigators, experts, social workers and other support services, case outcomes, and all monetary expenditures.²⁵ Public Defense Providers should also collect demographic data on lawyers and other employees.²⁶ Providers should also seek to collect demographic data from their clients to ensure they are meeting the needs of a diverse clientele.²⁷ Aggregated data should be shared with other relevant entities and made publicly available in accordance with best practices.²⁸

PRINCIPLE 5: Eligibility and Fees for Public Defense

Public defense should be provided at no cost to any person who is financially unable to obtain adequate representation without substantial

burden or undue hardship.²⁹ Persons³⁰ should be screened for eligibility in a manner that ensures information provided remains confidential.³¹ The process of applying for public defense services should not be complicated or burdensome, and persons in custody or receiving public assistance should be deemed eligible for public defense services absent contrary evidence.³² Jurisdictions should not charge an application fee for public defense services, nor should persons who qualify for public defense services be required to contribute to or reimburse defense services.³³

PRINCIPLE 6: Early and Confidential Access to Counsel

Counsel should be appointed immediately after arrest, detention, or upon request. Prior to a client's first court appearance, counsel should confer with the client and prepare to address pretrial release and, if possible, probable cause.³⁴ Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information.³⁵ Waiver of the right to counsel and waiver of the person's right to court appearance should never be coerced or encouraged.³⁶ Before a person may waive counsel, they must be provided a meaningful opportunity to confer with a defense lawyer who can explain the dangers and disadvantages of proceeding without counsel and, if relevant, the implications of pleading guilty, including the direct and collateral consequences of a conviction.³⁷

PRINCIPLE 7: Experience, Training and Supervision

A Public Defense Provider's plan for the assignment of lawyers should ensure that the experience, training, and supervision of the lawyer matches the complexity of the case.³⁸ Public Defense Providers should regularly supervise and systematically evaluate their lawyers to ensure the delivery of effective and competent representation free from discrimination or bias. In conducting evaluations, national, state, and local standards, including ethical obligations, should be considered. Lawyers and staff should be required to attend continuing education programs or other training to enhance their knowledge and skills. Public Defense Providers should provide training at no cost to attorneys, as well as to other staff.³⁹

Public Defense Providers should ensure that attorneys and other staff have the necessary training, skills, knowledge, and awareness to effectively represent clients affected by poverty, racism, and other forms of discrimination in a culturally competent manner.⁴⁰ Public defense counsel should be specifically trained in raising legal challenges based on racial and other forms of discrimination.⁴¹ Public defense counsel and other staff should also be trained to recognize biases within a diverse workplace.⁴²

PRINCIPLE 8: Vertical Representation

To develop and maintain a relationship of trust, the same defense lawyer should continuously represent the client from assignment⁴³ through disposition and sentencing in the trial court, which is known as “vertical” representation. Representation by the defense lawyer may be supplemented by specialty counsel, such as counsel with special expertise in forensic evidence, immigration, or mental health issues, as appropriate to the case.⁴⁴ The defense lawyer assigned to a direct appeal should represent the client throughout the direct appeal.

PRINCIPLE 9: Essential Components of Effective Representation

Public Defense Providers should adopt a client-centered approach to representation based around understanding a client’s needs and working with them to achieve their goals.⁴⁵ Public Defense Providers should have the assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals necessary to meet public defense needs.⁴⁶ Such services should be provided and controlled by Public Defense Providers.⁴⁷ Additional contingency funding should be made available to support access to these services as needed.⁴⁸ Public Defense Providers should address civil and non-legal issues that are relevant to their clients’ cases.⁴⁹ Public Defense Providers can offer direct assistance with such issues or establish collaborations with, or provide referrals to civil legal services organizations, social services providers, and other lawyers and non-lawyer professionals.⁵⁰

PRINCIPLE 10: Public Defense as Legal System Partners

Public Defense Providers should be included as equal participants in the legal system. Public Defense Providers are in a unique position to identify and challenge unlawful or harmful conditions adversely impacting their clients. Legislative or organizational changes or other legal system reforms should not be considered without soliciting input from representatives of the defense function and evaluating the impact of such changes on Public Defense Providers and their clients. To the extent any changes result in an increase in defender workload or responsibilities, adequate funding should be provided to Public Defense Providers to accommodate such changes.

¹ The term “Public Defense Providers” refers to public defender agencies and to programs that furnish assigned lawyers and contract lawyers who provide defense services at public expense. The term “Public Defense Providers” is also used in the *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (2009).

² Independence should extend to the selection, funding, and payment of Public Defense Providers and lawyers. “The selection of lawyers for specific cases should not be made by the judiciary or elected officials but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs.” *ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-1.3(a) (3rd edition, 1992). See also Nat’l Ass’n for Public Defense, *Statement on the Importance of Judicial Independence*, July 1, 2016, <https://www.publicdefenders.us/positionpapersstatements>. Establishing independence from political and judicial influence is also critically important to effective public defense at the federal level. See *Ad Hoc Committee to Review the Criminal Justice Act, 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act* (2017); Nat’l Ass’n of Criminal Defense Lawyers, *Federal Indigent Defense 2015: The Independence Imperative* (2015), <https://www.nacdl.org/Document/FederalIndigentDefense2015IndependenceImperative>.

³ The Sixth Amendment right to counsel requires “reasonably effective assistance of counsel pursuant to prevailing professional norms of practice.” See *Strickland v. Washington*, 466 U.S. 668, 688 (1984). In *Strickland*, the U.S. Supreme Court noted that the ABA Criminal Justice Standards on Defense Function are guides to determining what is reasonably effective. A quarter of a century later, the Court described these standards as “valuable measures of the prevailing professional norms of effective representation.” *Padilla v. Kentucky*, 559 U.S. 356 (2010). The Court has also held that criminal cases must be subject to “meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 658-59 (1984).

⁴ Under the ethical rules, lawyers are required to provide clients “competent” representation. *ABA Model Rules of Professional Conduct*, Rule 1.1 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). These rules have been adopted by every state throughout the country.

⁵ The board’s mission should be to advocate for and provide high-quality, well-funded public defense that ensures effective assistance of counsel for all eligible defendants. The selection process for members of the board or commission should ensure the independence of the Public Defense Provider. Appointments of members should be divided among the different branches of government and may also include appointments from interested organizations such as bar organizations, law schools, and organizations representing the client community. No members should be judges, prosecutors, law enforcement officials or current Public Defense Providers. Members should serve staggered terms to ensure continuity. *See* National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976); National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems*, Standard 3.2.1 (1989). The structure of board oversight may be adjusted based upon the organization of Public Defense Providers. It may consist of a single board or multiple separate boards requiring separate governing bodies. *See ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-1.3(b) (3rd edition, 1992) (“An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned counsel and contract-for-service components for defender systems should be governed by such a component. Board of Trustees should not include prosecutors or judges. The primary function of Boards of Trustees is to support and protect the independence of the defense services program.”).

⁶ In Florida and Tennessee, and in some cities in the United States, public defenders are popularly elected. *See* Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 *Mo. L. Rev.* 803, 814 (2010). The ABA has not endorsed popular election of chief public defenders.

⁷ 16AM113 (encouraging “all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys”).

⁸ *See ABA Standards for Criminal Justice: Providing Defense Services*, Standard 5-4.1 (3rd edition, 1992) (“The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause. Selection of the chief defender and staff by judges should be prohibited.”)

⁹ *See* Gideon v. Wainwright, 372 U.S. 353 (1963) (right to counsel in felony cases);

Argersinger v. Hamlin, 407 U.S. 25 (1972) (right to counsel in misdemeanor cases); In re Gault, 387 U.S. 1 (1967) (right to counsel in juvenile delinquency cases); Alabama v. Shelton, 535 U.S. 654 (2002) (right to counsel attaches to any case in which there is a potential for active jail or prison time, including suspended sentences). For federal criminal charges, the responsibility for adequate funding and oversight rests with the federal government. Local governments should also provide funding and resources as needed or constitutionally required.

¹⁰ Full-time public defenders, working in a fully staffed office, develop valuable expertise in handling criminal cases and working with persons charged with crimes. *See, e.g., ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“When adequately funded and staffed, defender organizations employing full-time personnel are capable of providing excellent defense services. By devoting all of their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested. By virtue of their experience, full-time defenders also are able to work for changes in laws and procedures aimed at benefiting defendants and the criminal justice system.”)

¹¹ These additional Public Defense Providers may be a second public defender office for handling conflict cases and/or assigned counsel operating pursuant to a defense service contract. The appointment process for assigned counsel should be according to a coordinated plan directed by a lawyer-administrator familiar with private lawyers, investigators and other vital defense services in the jurisdiction. *See, e.g., ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“The participation should be through a coordinated assigned counsel system and may also include contracts for services.”).

¹² Absent substantial private practitioners to augment the representation of full-time public defenders, public defenders are likely to become overwhelmed with cases. *See id.*, at Commentary to Standard 5-1.2 (“In some cities, where a mixed system has been absent and public defenders have been required to handle all of the cases, . . . [c]aseloads have increased faster than the size of staffs and necessary revenues, making quality legal representation exceedingly difficult.”). In rural areas, it may be appropriate to consider regional Public Defense Providers. Adherence to all of the Principles is critically important to an effective public defense system irrespective of whether a jurisdiction relies on public defender offices or solely on a system of appointed counsel.

¹³ Public defense counsel should also receive raises and promotions commensurate with prosecutors and other publicly funded lawyers in order to encourage retention of experienced counsel.

¹⁴ *ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-2.4. The fee rate should be subject to regular increases to ensure the ongoing availability of quality

counsel and reviewed regularly. Contract selection should be based on factors such as counsel training and experience in public defense representation and should not merely be awarded to the lowest bidder. Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible. *See Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract “left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable.”).

¹⁵ The importance of these providers is discussed in more detail in Principle 9.

¹⁶ In determining appropriate funding and resources, jurisdictions should consider that while prosecutors can often draw upon separately funded resources for investigations such as police departments and state crime labs, Public Defense Providers normally must pay for investigative and other ancillary services. In many jurisdictions, defender offices face a significant funding gap with prosecutors despite this distinction. Bryan Furst, *A Fair Fight: Achieving Indigent Defense Resource Parity* 9 (Brennan Center for Justice, Sept. 9, 2019), <https://www.brennancenter.org/our-work/research-reports/fair-fight> (discussing the lack of investigators and other support staff in public defender offices as compared prosecutorial investigatory resources).

¹⁷ Excessive caseloads impinge upon a lawyer’s ability to provide competent and effective representation to all clients. *See ABA Eight Guidelines of Public Defense Related to Excessive Workloads*, Commentary to Guideline 1 (“[A]n excessive number of cases create[s] a concurrent conflict of interest, as a lawyer is forced to choose among the interests of various clients, depriving at least some, if not all clients, of competent and diligent defense services.”) (citations omitted). Those who provide public defense services, no less than those who represent persons with financial means, are duty bound not to accept a representation when doing so would impinge upon their ability to provide competent and effective representation. *See* ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation* (2006). The National Association for Public Defense has concluded that public defenders “can no longer operate in a system without meaningful workload standards” and has “encourage[d] public defense providers in every jurisdiction to develop, adopt, and institutionalize meaningful, evidence-based workload standards in their jurisdictions.” Nat’l Ass’n for Public Defense, *Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems*, Mar. 19, 2015, <https://www.publicdefenders.us/positionpapersstatements>.

¹⁸ *See ABA Eight Guidelines of Public Defense Related to Excessive Workloads*; Formal Ethics Opinion 06-441.

¹⁹ The ABA’s Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID)

partnered with national data analysis firms to complete workload studies for seven jurisdictions. *See, e.g.*, Moss Adams and ABA SCLAID, *The New Mexico Project* (2022). These workload studies are available through the ABA SCLAID website, www.indigentdefense.org.

²⁰ Notably, in 2023, new National Public Defense Workload Standards (NPDWS) were published by The RAND CORPORATION, ABA SCLAID, The National Center for State Courts, and Stephen F. Hanlon. The NPDWS are grounded in a rigorous study of 17 prior jurisdiction-specific workload studies conducted between 2005 and 2022 and use the Model Rules and ABA Criminal Justice Section standards as the reference for reasonably effective assistance of counsel. The NPDWS then used the Delphi Method to obtain a reliable professional consensus of criminal defense experts, both public and private, from across the nation. These new national standards are intended to replace the 1973 NAC Standards. *See* National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Chapter 13, The Defense* (1973). The NPDWS reflect the changes in defense practice that have occurred in the fifty years since the creation of the NAC Standards, including the significant role of digital evidence from body-worn cameras to smart phone data and forensics in modern defense practice, as well as the expanded role of defense attorneys.

²¹ *See* Formal Opinion 06-441; *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (August 2009). Failure to take steps to reduce an excessive caseload can result in bar discipline. *See, e.g.*, [In re: Karl William Hinkebein](#), No. SC96089 (Mo. Sup. Ct. Sept. 12, 2017) (suspending the public defender’s license indefinitely but staying that suspension and placing him on probation for one year). Courts should not order public defenders to take a case, if doing so would result in an excessive caseload. *See* State ex rel. Missouri Public Defender Commission v. Waters, 370 S.W.3d 592 (Mo. 2012) (holding that a trial judge exceeded his authority in appointing a public defender after the public defender office had declared unavailability due to an excessive caseload); *c.f.* Lavalley v. Justices in the Hampden Superior Court, 442 Mass. 228 (Sup. J. Ct. Mass. 2004) (rejecting a judge’s appointment of public defenders despite an assertion by the Public Defense Provider that the public defenders had reached caseload limits).

²² Data collection is essential to proper oversight at every level. A state’s duty to fully fund the public defense function, as outlined in Principle 2, includes a duty to fully fund data collection. Florida has adopted a statute mandating the collection of extensive data throughout the criminal justice system. *See* Florida Statutes, Title 47, § 900.05 – Criminal Justice Data Collection. The Texas Indigent Defense Commission collects data on public defense from each county and publishes the data on a portal. *See* [Indigent Defense Data for Texas](#), TIDC (visited Mar. 21, 2023).

²³ Such data should include the number and types of cases assigned to each Public Defense Provider. As noted in Principle 3, caseloads and workloads must be regularly monitored and controlled to ensure ability to comply with ethical and practice standards.

²⁴ Such data should include eligibility determinations and decisions, initial appearance outcomes including pretrial detention and conditions of release, motions filed, use of services such as translators, investigators, social workers, and experts, and case outcomes. Effective data collection may require the hiring of specific staff to focus on the collection, verification and presentation of data. The ABA has endorsed similar data collection responsibilities for prosecutors. [2021A504](#). An effective way to collect such data is through regular timekeeping.

²⁵ Case data is most often collected using timekeeping and/or standardized case opening and closing forms. The ABA has recognized the Los Angeles Independent Juvenile Defender Program, which requires attorneys to complete case intake and resolution forms, for its effective case data collection system. ABA SCLAID, *Exemplary Defense: A Study of Three Groundbreaking Projects in Public Defense* 44-45, Oct. 2018.

²⁶ The ABA has endorsed collecting demographic data on all judges and government lawyers to promote and track progress toward improving diversity in the legal profession and increasing trust in the justice system. [2021A605](#).

²⁷ 2021A504 (urging prosecutor offices to similarly collect and publish outcomes by demographic data); *see, e.g.*, [Ramsey County Attorney’s Office Public Data Portal](#) (visited Mar. 21, 2023)(showing case outcomes by race and gender). Such data should be collected from clients voluntarily and in accordance with best practices. These best practices are evolving; accordingly, data collection and reporting practices should be regularly reviewed and updated. *See, e.g.*, [A Vision for Equitable Data: Recommendations from the White House Equitable Data Working Group](#) (Apr. 2022). Absent such data, Public Defense Providers cannot identify, assess, and seek to address disparate impact. *See, e.g.*, [Guidelines for data collection on race and ethnicity](#), Utah Dept. of Health and Human Services, Office of Health Equity (Oct. 2022).

²⁸ *See id.* Sensitive data should be made public in an aggregated format that protects the privacy of individuals. *See* 2021A605 (discussing best practices of aggregating data for privacy). Individual client data should be carefully guarded. *See, e.g.*, *ABA Model Rules of Professional Conduct*, Rule 1.6 (providing that a lawyer may not, generally, “reveal information relating to the representation of a client unless the client gives informed consent” and that a lawyer “shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client”).

²⁹ *ABA Criminal Justice Standards: Providing Defense Services*, §5-7.1 (“Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship.”); Eligibility consideration should consider the prevailing fee for the charge(s) faced by the person in the jurisdiction. *See* Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, at 13 (2008) (“In determining whether someone can afford counsel, jurisdictions should take into account the actual cost of obtaining counsel.”),

<https://www.brennancenter.org/publication/eligible-justice-guidelines-appointing-defense-counsel>. Jurisdictions should also consider how the type and nature of the charged offense would affect the cost of an effective defense.

³⁰ Persons refers to any person arrested or detained or seeking the assistance of indigent defense counsel.

³¹ *ABA Criminal Justice Standards: Providing Defense Services*, §5-7.3 (“Determination of eligibility should be made by defenders, contractors for services, assigned counsel, a neutral screening agency or by the court.”); *ABA Model Rules of Professional Conduct*, Rule 1.6. Eligibility screening should not be conducted by the presiding judge. *See also* Brennan Center for Justice, *Eligible for Justice: Guidelines for Appointing Defense Counsel*, at 11 (2008). Eligibility information should be disclosed only to the extent required by applicable Rules of Professional Conduct or other law.

³² A person should never be discouraged from or punished for applying for public defense services. *See* National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel*, at 85-87 (2009) (observing how defendants can be pressured to waive counsel rather seek public defense because “a defendant who wants . . . counsel must wait several days for counsel to be appointed and possibly several more days for appointed counsel . . . to make contact.”).

³³ Public defense user fees should be eliminated. *See ABA Ten Guidelines on Court Fines and Fees*, Commentary to Guideline 1 (2018) (recommending the elimination of user fees “because the justice system serves the entire public and should be entirely and sufficiently funded by general government revenue.”).

³⁴ Pleas of guilty to criminal charges at first appearance or arraignment are disfavored. *See ABA Criminal Justice Standards: Defense Function*, Standard 4-6.1(b), (2015) (“In every criminal matter, defense counsel . . . should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed . . . Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client’s best interest.”)

³⁵ To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where clients confer with defense counsel. *See, e.g.,* *Williams v. Birkett*, 697 F. Supp. 2d 716 (U.S. Dist. Ct., E.D. Mich. 2010) (“To ensure the privacy essential for confidential communication between defense counsel and client, adequate facilities should be available for private discussions between counsel and accused.”)

³⁶ *See ABA Criminal Justice Standards: Defense Function*, Standard 5-8.2(a) (2017) (“The accused’s failure to request counsel or an announced intention to plead guilty should not

of itself be construed to constitute a waiver of counsel in court. An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed before a judge and a thorough inquiry into the accused's comprehension of the offer and capacity to make the choice intelligently and understandingly has been made. No waiver of counsel should occur unless the accused understands the right and knowingly and intelligently relinquishes it. No waiver should be found to have been made where it appears that the accused is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors. A waiver of counsel should not be accepted unless it is in writing and of record.”)

³⁷ See *ABA Ten Guidelines on Court Fines and Fees*, Guideline 8 (“Waiver of counsel must not be permitted unless the waiver is knowing, voluntary, and intelligent. In addition, the individual first has been offered a meaningful opportunity to confer with counsel capable of explaining the implications of pleading guilty, including collateral consequences.”). See also *Faretta v. California*, 422 U.S. 806 (1975) (“Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’”) (citations omitted); *Padilla v. Kentucky*, 559 U.S. 356 (2010) (holding that counsel must advise their client on the potential immigration consequences of a criminal conviction).

³⁸ If the defense lawyer lacks the requisite experience or training for the case, the lawyer cannot provide effective and competent representation and is obligated to refuse appointment. See *ABA Model Rules of Professional Conduct*, Commentary to Rule 1.1 (“In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, the lawyer’s training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.”); *ABA Eight Guidelines of Public Defense Related to Excessive Workloads*.

³⁹ As with other aspects of an effective Public Defense System, and as described in Principle 2, Public Defense Providers should be adequately funded to provide such training.

⁴⁰ The ABA has endorsed similar requirements for attorneys providing civil legal aid services, *Standards for the Provision of Civil Legal Aid* 4.4, as well as for law students. 2022M300 (“A law school shall provide education to law students on bias, cross-cultural competency and racism[.]”).

⁴¹ For instance, all counsel should be trained to effectively raise objections under *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁴² See, e.g., 2020A116G (urging that all legal and medical professionals “receive periodic training regarding implicit biases.”); The [ABA’s Diversity, Equity and Inclusion Center](#) has a number of resources and trainings available.

⁴³ In some jurisdictions, to facilitate prompt initial appearance, a specially trained duty lawyer or bail lawyer may represent an individual from arrest through initial appearance. Before or at initial appearance, defense counsel should be assigned. Procedures should be in place to ensure continuous representation and proper transition from initial appearance counsel to defense counsel.

⁴⁴ For instance, some public defense offices have established distinct units of attorneys with specialized skills to advise non-U.S. citizen clients on immigration matters relevant to their cases. See Carlos J. Martinez, George C. Palaidis & Sarah Wood Borak, *You Are the Last Lawyer They Will Ever See Before Exile: Padilla v. Kentucky and One Indigent Defender Office’s Account of Creating a Systematic Approach to Providing Immigration Advice in Times of Tight Budgets and High Caseloads*, 39 Fordham Urb. L.J. 121 (2012).

⁴⁵ See James M. Anderson, Maya Buenaventura & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (Jan. 2019) (assessing the benefits of a client-centered defense model in reducing the length of sentences).

⁴⁶ See Nat’l Ass’n for Public Defense, *Policy Statement on Public Defense Staffing*, May 2020, <https://www.publicdefenders.us/positionpapersstatements>.

⁴⁷ Under no circumstances should defense counsel be required to bear the cost of experts and other professionals. See *Wash. R. Professional Conduct* 1.8 (“A lawyer shall not . . . make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm . . . to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.”).

⁴⁸ In Florida, for example, state funds, sometimes referred to as “due process funds for the defense,” are available for various defense services, such as investigators, experts, and other specialized public defense needs in addition to contingency funding. The funds also cover prosecution services. See *Florida Statutes* § 29.006, § 29.015, and § 29.018 (2018).

⁴⁹ In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the U.S. Supreme Court held that, in order to provide effective assistance of counsel, an attorney must provide advice on the potential immigration consequences of a client’s criminal charge. Following *Padilla*, several courts have held that advice on other potential civil consequences of a criminal case is also required. See, e.g., *Bauder v. Department of Corrections*, 619 F.3d 1272, 1275

(11th Cir. 2010) (holding that the requirement of advice on non-criminal consequences extended beyond immigration to include civil commitment). Understanding a client's non-criminal legal issues, may be critical to understanding relevant arguments regarding sentencing, including the appropriateness of diversion or other programs available through the criminal case.

⁵⁰ See [2012AM107C](#) (urging defender organizations and criminal defense lawyers to create “linkages and collaborations with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who can serve, or assist in serving, clients in criminal cases with civil legal and non-legal problems related to their criminal cases, including the hiring of such professionals as experts, or where infrastructure allows, as staff.”) https://www.americanbar.org/groups/legal_aid_indigent_defendants/indigent_defense_systems_improvement/standards-and-policies/policies-and-guidelines/. For over 40 years, scholars have recognized the importance of having social workers in defender offices. See, e.g., Charles Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978).

REPORT

Background of the ABA's Public Defense Standards

After the U.S. Supreme Court's decision in *Gideon v. Wainwright*, 371 U.S. 335 (1963), guaranteeing the Sixth Amendment right to appointed counsel for persons charged with a felony, the American Bar Association quickly recognized the need for national standards for public defense services. In 1967, the ABA promulgated the *Standards for Criminal Justice, Providing Defense Service*, now in its third edition. Other entities soon followed suit. In 1973, President Nixon's National Advisory Commission on Criminal Justice Standards and Goals published *The Report of the Task Force on the Courts*, which included a chapter on defense standards. From 1974 to 1976, the National Legal Aid and Defender Association (NLADA) convened a 35-member National Study Commission on Defense Services, with support from the Law Enforcement Assistance Administration, which produced a report outlining several recommendations for the provision of indigent defense services. The ABA meanwhile continued to adopt additional standards governing the provision of defense services, such as the *ABA Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* in 1985 and the *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* in 1989. All these policies were passed with the aim of ensuring high-quality, effective, and independent criminal defense counsel for persons who cannot afford an attorney.

As policies became more numerous and detailed, the ABA saw the need to adopt a succinct policy that laid out the fundamental criteria for an effective public defense delivery system. Thus, the ABA House of Delegates adopted the original *Ten Principles of a Public Defense Delivery System* (the "Principles"), dated February 2002, "[T]o provide experts and non-experts alike with a quick and easy way to assess a public defense delivery system and communicate its needs to policy makers."¹ The Principles recognized the need for stronger standards in a variety of areas, including public defense independence, high caseloads, and unduly low salaries and reimbursement rates. The Principles have since been recognized as important national public defense standards by national media and public defense advocacy groups. Courts, legislatures, and state

and local public defense agencies have looked to the Principles in developing decisions, laws, and policies. In 2010, Attorney General Eric Holder called the Principles “the building blocks of a well-functioning public defender system.”²

The Need for Revised Principles

In the 21 years since the Principles were adopted, significant changes in the delivery of public defense services have occurred, such as the emergence of voluminous digital discovery. Moreover, new information and, critically, more data, have allowed public defense experts to better understand how to provide high-quality indigent defense representation effectively and efficiently. In 2018, the Standing Committee on Legal Aid and Indigent Defense (SCLAID) formed the Ten Principles Revision Committee, comprised of a diverse group of public defense leaders, academics, and experts. The Working Group set out to update the Principles based on their own experiences and the collective knowledge on public defense best practices that had been developed since 2002, while also ensuring that the Principles’ core focus remained intact.

These new developments in public defense have been reflected in SCLAID’s own work. SCLAID’s *Eight Guidelines of Public Defense Related to Excessive Workloads* became ABA policy in 2009³. Then, between 2014 and 2022, SCLAID released comprehensive studies of public defender workloads in seven states: Missouri, Louisiana, Rhode Island, Colorado, Indiana, New Mexico, and Oregon. This work culminated in 2023 with the release of the *National Public Defense Workload Standards*, a meta-study published in conjunction with the RAND Corporation, the National Center for State Courts, and nationally recognized indigent defense expert Stephen F Hanlon. Studies such as these, which rely on hard data and the Delphi method⁴ to analyze public defender workloads, were simply not available when the original Principles were adopted in 2002.⁵ The Working Group also considered developments in public defense standards related to cultural competency, technology, and ancillary services.

In 2023, the Working Group solicited commentary on a draft of the revised Principles from four leading public defense advocacy groups:

NLADA, the National Association of Criminal Defense Lawyers, the National Association for Public Defense, and the Sixth Amendment Center. Their input helped ensure that these revised Principles truly reflect the core best practices for public defense delivery in the modern age.

Key Revisions in the New Principles

All the Principles have been revised to provide more detail and clarity to policymakers. Some of the 2002 Principles were consolidated to make room for additional principles, but all topics addressed in the 2002 Principles are directly addressed in this revision. The following changes are particularly notable:

- A new principle (Principle 4) was added to reflect the importance of data collection and transparency to ensure public defense systems are receiving adequate resources and are following these Principles.
- The principle on training and supervision (Principle 7) reflects a deeper understanding of the need for systematic evaluation of defense lawyers, as well as the need for specialized training and cultural competency.
- A new principle (Principle 9) was added to reflect the importance of non-lawyer professionals, such as investigators, social workers, and experts, to the public defense function.
- The principle on public defense workloads (Principle 3) has been substantially revised to reflect the new information gleaned from the *National Public Defense Workload Standards* study and SCLAID's several state-based studies. Language has also been added on the duties of defenders who face unmanageable workloads.
- A new principle (Principle 10) was added to reinforce the important place public defense providers have in the legal system,

especially in relation to any law or policy changes that are likely to affect their clients.

Use of the Principles

As with the 2002 version of the Principles, these revised Principles are meant to provide policymakers and other stakeholders with easy-to-follow guidelines for assessing their jurisdiction's compliance with the core best practices for a public defense delivery system. They are not meant to serve as a comprehensive guide for public defense practices in every situation. However, each Principle is accompanied by extensive commentary to explain or illustrate the Principle, and to identify issues that might arise in its application. All jurisdictions should strive to bring their public defense systems into compliance with these Principles.

Conclusion

The *Ten Principles of a Public Defense Delivery System* provide policymakers, public defense administrators, and other important stakeholders a critically important roadmap for providing effective indigent defense as required by the Sixth Amendment. In revising the Principles, the ABA ensures that this roadmap reflects the realities and best practices of public defense as of 2023, while maintaining its commitment to independent, well-managed, and well-resourced indigent defense systems.

Respectfully submitted,

Hon. Bryant Yang, Chair
Standing Committee on Legal Aid and Indigent Defense

August 2023

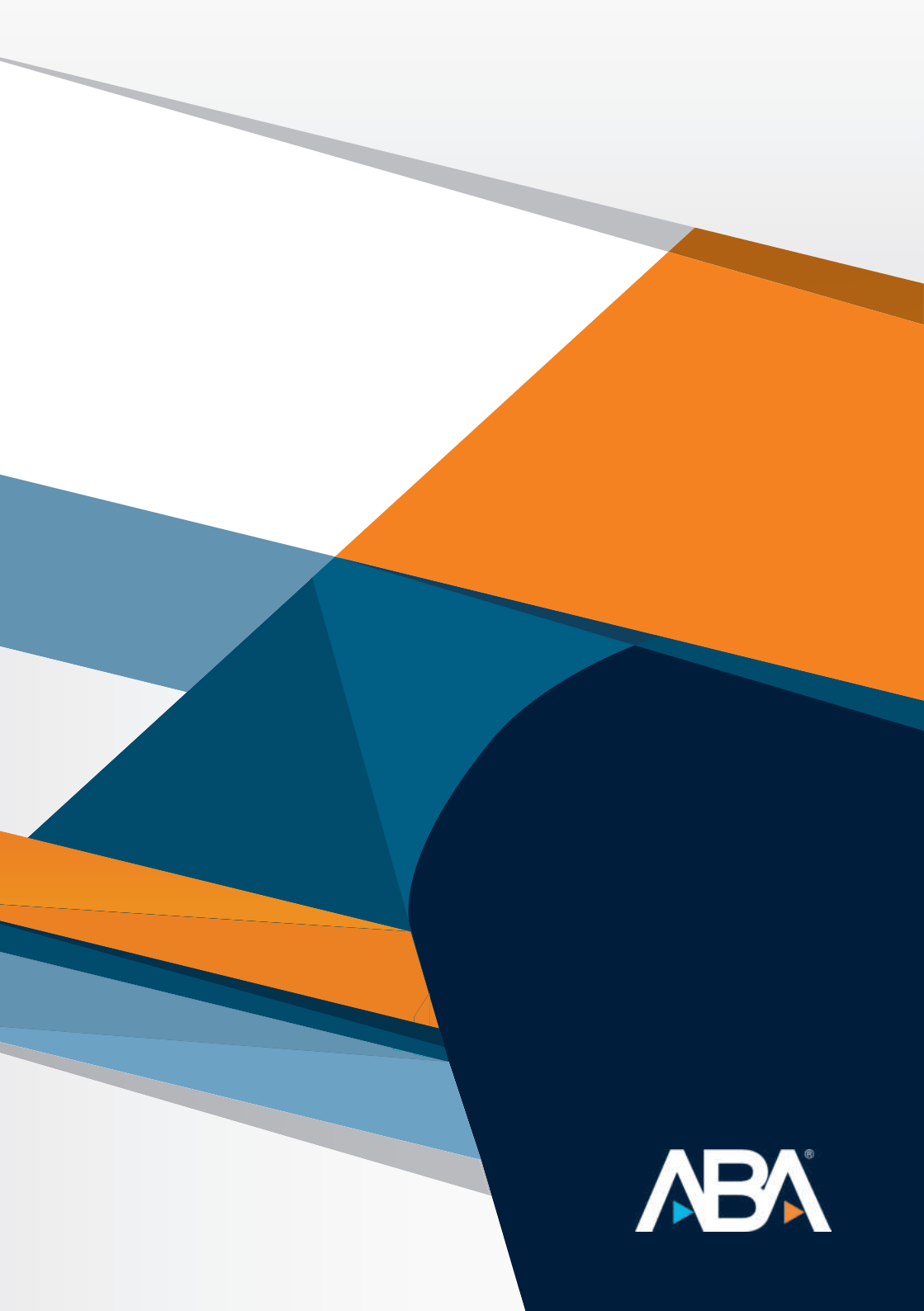
¹ 02M107.

² <https://www.justice.gov/opa/speech/attorney-general-eric-holder-addresses-department-justice-national-symposium-indigent>

³ 09M119.

⁴ The Delphi method is a process for arriving at a group consensus by surveying a panel of experts. Experts respond to questionnaires, the results are aggregated and shared with the group, and the process continues until a consensus is reached.

⁵ 02M107.



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