



NATIONAL ASSOCIATION FOR PUBLIC DEFENSE FOUNDATIONAL PRINCIPLES

Introduction

This document sets forth Foundational Principles adopted by NAPD, which we recommend to our members and other persons and organizations interested in advancing the cause of equal justice for accused persons. The principles are organized in three sections: (1) the structure and organization of public defense services; (2) the quality of public defense services; and the (3) treatment of accused persons in criminal and juvenile justice systems.

While the Supreme Court's landmark right to counsel decisions, including *Gideon*, *Gault*, and *Argersinger*, established the foundation for representing the indigent accused, in reality only the footings were dug. In the wake of these and other important Sixth Amendment decisions, much has remained to be determined about how best to deliver defense services and accused persons treated.

We firmly believe that that the following foundational principles are essential to help guide all of us in the public defense community as we move forward together not only to address systemic failures of our criminal and juvenile justice systems but also to ensure that lawyers, with the help of vital support staff, deliver effective, competent and diligent representation in accordance with the Constitution and rules of professional conduct.

PRINCIPLES RELATED TO THE STRUCTURE AND ORGANIZATION FOR PROVIDING PUBLIC DEFENSE SERVICES

Principle 1: Competent and Effective Public Defense Lawyers Must Be Provided for the Fair Administration of Justice

The fair administration of juvenile and criminal justice requires competent and effective "public defense lawyers" (hereafter sometimes referred to as "lawyers") for all juveniles charged with delinquency and adults in criminal cases unable to afford a reasonable attorney's fee. Similarly, competent and effective lawyers should be provided in all other proceedings in which lawyers are commonly provided, such as dependency, children in need of supervision, sexually violent predator, and civil commitment cases. For juveniles charged with delinquency, the right to counsel should be non-waivable, and in criminal cases no waiver of counsel should be permitted unless the accused is first provided the opportunity to speak to a lawyer. Waivers of lawyers by adult criminal defendants should occur rarely and only if a judge has addressed the defendant personally on the

record, and the waiver of counsel is made knowingly, intelligently, voluntarily, and is in writing. All adults in criminal cases and juveniles charged with delinquency taken into custody should be brought before a judicial officer no later than 48 hours after custody begins and, prior to such appearance, all persons charged should be interviewed promptly by a lawyer or person working on behalf of the lawyer, who is prepared to address the person's release from custody at first appearance.

Principle 2: Public Defense Must Be Independent of Judicial and Political Control

The fair administration of justice requires that representation by lawyers be free from real or perceived inappropriate influence. Representation should be without political influence and subject to judicial supervision only in the same manner and to the same extent as are prosecutors and attorneys in private practice. The selection and payment of lawyers should be independent of the judiciary. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged by administrators of defender, assigned-counsel or contract-for-service programs. Except in jurisdictions in which public defenders are locally elected, the policy-making function, choice of the chief public defender, and oversight of defense programs should be vested in a commission or board of trustees selected by diverse authorities, including but not limited to, officials from executive and legislative branches of government, heads of bar associations and law school deans. All persons chosen for a board or commission should be committed to high quality public defense and members should include one or more persons who previously were represented by a public defense lawyer. Commissions or boards should not include active public defense practitioners, judicial office holders, and active law enforcement officials of any kind such as prosecutors, police, sheriffs, or their staffs. All systems for defense representation should include both full-time public defenders and private public defense lawyers serving as assigned counsel or pursuant to contracts.

Principle 3: The Public Defense Function Must be Administered and Overseen Statewide

Except in jurisdictions in which public defenders are locally elected, each state should have a public defense provider (hereafter "provider") with responsibility for all components of public defense services which is overseen by a board or commission as described in Principle 2. The provider should have responsibility for establishing qualifications of counsel, determining eligibility standards for appointment of counsel, setting workload and caseload standards, providing for training and other administrative support, and representing the public defense function to policy makers and stakeholders. The need for the provider to exist at a state level is to ensure that services are consistent in quality, efficiency, effectiveness, and that the same standards are applied in all subdivisions throughout the state. Where local delivery of public defense services is prevalent without oversight and centralized administration there is significant risk of unjustified variations in the quality of services in the state's various jurisdictions. Oversight and consistent administration throughout each state provides a necessary mechanism to evaluate and improve service delivery.

Principle 4: The Expense of the Criminal Justice System Is a Government Obligation That Must Not Be Imposed on Defendants

The duty to fund the criminal justice system is a fundamental government obligation. Accordingly, the criminal justice system must end its pervasive use of predatory costs, fines, and user fees that are disproportionately borne by those who can least afford it. Persons encountering the criminal justice system invariably face fines, fees, and costs at every step of the process, including at the pretrial stage. There are fees for applying for public defense counsel; fees for supervision while on pretrial release; fees for filing

pleadings; fees for requesting a jury; and fees for vehicle interlocks or impounded vehicle costs, all before ever having been found guilty of an offense. This fee based, user pay system leads to destructive outcomes since the overwhelming majority of persons charged in the criminal justice system are impoverished. The inability to pay leads to arrests, loss of employment, liberty, housing, and driving privileges. Ultimately, the various revenue generating mechanisms of the criminal justice system, many of which have proliferated in recent years, undermine public confidence in the purpose and fairness of the courts and the rule of law.

PRINCIPLES RELATED TO THE QUALITY OF PUBLIC DEFENSE SERVICES

Principle 5: Workloads of Defense Attorneys Must Always Be Reasonable

Lawyers who defend adults in criminal cases and juveniles in delinquency proceedings must have reasonable workloads, which enable them to provide conflict-free representation of their clients consistent with their duty to furnish competent and effective assistance of counsel pursuant to rules of professional conduct and prevailing professional norms. To provide such representation requires initial and ongoing training, adequate support services, including access to investigators, social workers, paralegals, and expert witnesses, as well as ongoing supervision of the representation provided. When lawyers and/or providers determine that workloads are preventing or are about to prevent the delivery of defense services consistent with ethical and constitutional duties to clients, the lawyers and/or provider should be authorized to refer cases to another public defense provider participating in the jurisdiction's plan for representation. Alternatively, lawyers and/or the provider must take appropriate steps pursuant to their state's rules of professional conduct either to refuse additional cases and/or seek to withdraw from existing cases. Reasonable workloads for lawyers should be determined through time studies utilizing Delphi methodology. Permanent timekeeping by defense lawyers should be used to facilitate periodic workload studies, for management purposes, and to demonstrate the transparency and responsibility of providers.

Principle 6: Training and Continuing Education are Essential for Providing Competent and Effective Defense Representation

To be competent and effective, lawyers and other public defense professionals must be well trained and providers must make available quality training and education as required. Regardless of their size, structure, or delivery system, the training and education provided by providers should extend to all lawyers, as well as investigators, mitigation specialists, social workers, administrators, and all others who support the defense function. Training and education should be provided on a regular basis at no cost to attendees and all providers should have a dedicated budget allocated for ongoing training and education.

Principle 7: Appropriate Supervision of All Public Defense Lawyers and Other Public Defense Professionals Is Essential

Public defense providers must provide regular and timely supervision as needed of all lawyers and other professionals. The objective of supervision is to assure that all defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards. Accordingly, supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling of clients, securing pretrial release of incarcerated clients, completion of fact investigations prior to

formulating recommendations about plea agreements, formal and informal discovery is conducted, and preparation for pretrial hearings, trials, and sentencing proceedings. Supervision should also include continuous monitoring of lawyer workloads to assure that all essential tasks of defense representation are being completed.

Principle 8: Public Defense Representation Should Be Client Centered and Holistic

Client-centered representation should be practiced by public defense lawyers and other defense professionals in satisfying the constitutional right to counsel. Client-centered representation means that the lawyers and other defense professionals recognize and respect the client's authority, ability, and right to decide the direction that the client's case should take after being fully advised of all available options. Holistic representation (sometimes called "comprehensive representation") complements client-centered representation because it is the most effective approach in seeking the full range of best outcomes desired by and on behalf of clients. By addressing underlying criminogenic factors through broad based representation more favorable outcomes are achieved, thereby enhancing the lives of clients, reducing recidivism, and improving public safety. Public defense lawyers and other defense professionals should collaborate with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who serve, or assist in serving, clients with civil legal and non-legal problems impacting housing, health care, education, and food security. Lawyers and providers of defense services should retain such additional professionals as permanent staff or as necessary on a case-by-case basis.

Principle 9: The Duty of Public Defense Lawyers Is to Provide Clients Quality Legal Representation Consistent with Rules of Professional Conduct and Prevailing Professional Norms

Public Defense lawyers must always provide their clients competent and diligent representation, as well as representation that is reasonably effective assistance pursuant to prevailing professional norms. This includes empowering clients to exercise their constitutional and statutory rights, including the right to jury trial, and to litigate fully all appropriate motions to facilitate the best outcomes for their clients. Effective representation includes ensuring that all cases are fully investigated and prepared for trial, and that clients are fully informed of their right to a jury trial. Public defense lawyers should not advise clients to plead guilty until all defenses have been carefully investigated, reviewed, considered and explained to clients. Although the jury trial decision is always to be made by clients, public defense lawyers should provide clients with the necessary information to make informed decisions about whether to have a trial or accept a plea agreement.

PRINCIPLES RELATED TO CRIMINAL AND JUVENILE JUSTICE SYSTEMS AND THE TREATMENT OF ACCUSED PERSONS

Principle 10: Public Defense Providers Must Seek to Change the Pervasive Cultural Prejudice that Stigmatizes and Marginalizes Poor People

The overwhelming majority of persons charged with criminal offenses and juvenile delinquency are poor, which often contributes to greater poverty for the accused and their families due to fines and/or incarceration. This reality leads to pervasive cultural prejudice against the poor in our justice systems, which is particularly acute towards persons of color. In response, public defense service providers must seek to de-stigmatize poverty with every client they represent. Appropriate steps may include

challenging the imposition of fines and fees, engaging in comprehensive intake interviews, pre-trial advocacy, mitigation and sentencing advocacy, and, if appropriate, presenting the client's unique struggle in poverty in relationship to the offense(s) with which the defendant or juvenile is charged. Public defense programs must also seek systemic reforms to counter the stigma that the poor endure and limit their marginalization after contact with criminal and juvenile justice systems. Appropriate steps may include seeking non-discriminatory policing and enforcement policies, bail reform, fines and fees litigation, pre-trial programs, diversion and treatment courts, alternative sentencing opportunities, increased access to needed social service programs, and advocacy to eliminate collateral consequences that attach to arrests and convictions.

Principle 11: Competent and Effective Defense Representation Is Necessary to Eliminate Mass Incarceration

Well-funded and properly resourced public defense providers are essential in order to eliminate mass incarceration. Adherence to Principle 1, which calls for lawyers to interview defendants prior to their first court appearance and for waivers of counsel to be rare, will help eliminate "slow-counsel" and "no-counsel courts," reduce incarceration by providing advocacy in support of pretrial release for accused persons, and challenge the use of jails and prisons as predatory collection vehicles for costs, fees, and fines. Decisions to incarcerate defendants should be individualized and grounded upon evidence-based risk assessments. Properly resourced providers and lawyers can advocate successfully for the placement of convicted defendants in alternative programs that are less costly and more effective than incarceration and also urge that certain non-serious misdemeanors be reclassified and subject only to fines, thereby contributing to a reduction in mass incarceration.

Principle 12: Public Defense Providers Must Address Disparate Treatment of Racial and Ethnic Minorities in the Justice Systems

Racial and ethnic bias persists in our criminal justice systems and leads to disparate outcomes at every stage of the process, impacting persons who are stopped, arrested, released pretrial, sentenced to probation, paroled, and who receive the death penalty or life without parole. Racial and ethnic bias also is present throughout juvenile justice systems, impacting persons transferred to adult court, placed in diversion programs, and committed to custody. These outcome differences undermine fairness in our criminal and juvenile justice systems and prevent the achievement of equal justice under law. Justice systems must openly embrace gathering data on racial and ethnic bias and take bold and continuous steps to address the problem. Public defense providers and lawyers, as well as other defense professionals, must examine their own practices and outcomes to ensure that effects of race and ethnicity, including implicit bias, are eliminated. To eradicate racial disparities, providers require the capacity and funding to challenge systemically racial and ethnic bias in criminal and juvenile justice systems.

Principle 13: The Use of Punitive Measures Against Persons Who Have Mental Disorders or Other Types of Cognitive Impairments Must End

The criminalization and punishment of persons with mental disorders, cognitive disabilities or trauma is never justified. The appropriate space for the protection of people with mental disorders is a facility intended and equipped for mental health treatment. Public defense providers should oppose the use of incarceration where treatment is a more appropriate placement. Lawyers must make special efforts to prevent mental torture imposed on persons in the name of protection or shelter, such as the use of solitary confinement to "protect" a vulnerable person.

Principle 14: Public Defense Lawyers and Public Defense Professionals are Essential Participants in Achieving Justice Reforms

Public defense lawyers and other defense professionals are experts in providing defense services. As advocates for criminal defendants, public defense lawyers and defense professionals spend significant time in court, in detention centers and jails, and in the client community. They have the most credible information about the needs, opportunities and challenges facing defendants and juveniles and must be treated as equal and respected partners together with all justice agencies and programs. Their observations and recommendations must be included in any effort to improve criminal and juvenile justice systems. Reform initiatives that do not include the perspective of public defense lawyers and other defense professionals necessarily compromises efforts to achieve meaningful and enduring justice reforms.

Principle 15: Unity and Collaboration of Public Defenders and Public Defense Professionals Are Essential in Achieving Defense Reforms

The strong voice of public defense providers and defense professionals nationwide are essential in achieving transformational defense reforms. To achieve necessary and long overdue reforms, public defense providers and defense professionals must be unified and organized. Conversely, isolation among defense providers and professionals hampers national, statewide, and local reform efforts, thereby undermining the goal to achieve the constitutional protections of due process and equal access to justice in every U.S. jurisdiction.

These Principles were approved by the NAPD Steering Committee on March 16, 2017.

