Enrolled Version - Final Version

ENROLLED

H. B. 2780

(By Delegates Miley, Skinner, Poore, Manchin,

Hunt and Barill)

[BY REQUEST OF THE SUPREME COURT OF APPEALS]

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5D-3 and §49-5D-3c of the Code of West Virginia, 1931, as amended, all relating generally to multidisciplinary team meetings for juveniles committed to the custody of the West Virginia Division of Juvenile Services; requiring such meetings be held quarterly; authorizing the directors of detention centers to call such meetings in certain circumstances; requiring assessments be provided in all cases to the court and team members; and requiring that team members be notified that he or she may participate in team meetings electronically.

Be it enacted by the Legislature of West Virginia:

That §49-5D-3 and §49-5D-3c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5D. MULTIDISCLIPINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process for cases initiated pursuant to articles five and six of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to its custody, including those cases in which the juvenile has been committed for examination and diagnosis.

(2) The provisions of this section do not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Health and Human Resources for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: *Provided,* That the provisions of this subsection do not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings: *Provided however,* That written notice shall be provided to all team members of the availability to participate by videoconferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Health and Human Resources, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies; and the agencies shall cooperate in the sharing of information, as may be provided in sections three(d) and six, article five-d and section one, article seven, all of chapter forty-nine, and any other relevant provision of law. Any multidisciplinary team member who acquires confidential information shall not disclose such information except as permitted by the provisions of this code or court rules.

§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.

(1) When a juvenile is adjudicated as a status offender pursuant to section eleven-d, article five of this chapter, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(2) When a juvenile is adjudicated as a delinquent or has been granted an improvement period pursuant to section nine, article five of this chapter, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to section thirteen, article five of this chapter. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(3) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Juvenile Services, including those cases in which the juvenile has been committed for examination and diagnosis, the Division of Juvenile Services shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for thejuvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Juvenile Services without an active service plan for more than sixty days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(4) (A) The rules of juvenile procedure shall govern the procedure for obtaining an assessment of a juvenile, preparing an individualized service plan and submitting the plan and assessment to the court.

(B) In juvenile proceedings conducted pursuant to article five of this chapter, the treatment team shall consist of the juvenile, the juvenile's case manager in the Department of Health and Human Resources or the Division of Juvenile Services, the juvenile's parent or parents, guardian or guardians or custodial relatives, the juvenile's attorney, any attorney representing a member of the treatment team, the prosecuting attorney or his or her designee, an appropriate school official and any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(C) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(D) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court.

(E) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and section twenty, article five, chapter forty-nine of the code shall govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(F) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to article five, chapter forty-nine of this code in the multidisciplinary treatment planning process, his or her statements shall not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

Role of Juvenile Defense Counsel in Delinquency Court

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ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT

PREAMBLE AND SCOPE

A. The Origin of the Role of the Juvenile Defender

In a series of cases starting in 1966, the United States Supreme Court extended bedrock elements of due process to youth charged in delinquency proceedings. Arguably the most important of these cases, *In re Gault*[1] held that juveniles facing delinquency proceedings have the right to counsel under the Due Process Clause of the United States Constitution, applied to the states through the Fourteenth Amendment. The Court added juvenile defense counsel to rectify the dilemma ensnaring juveniles across the country, in which juveniles received "the worst of both worlds . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[2] The Court clearly observed that juvenile defense counsel's role in delinquency proceedings is unique and critical: "[t]he probation officer cannot act as counsel for the child. His role . . . is as arresting officer and witness against the child. Nor can the judge represent the child."[3] The Court concluded that no matter how many court personnel were charged with looking after the accused child's interests, any child facing "the awesome prospect of incarceration" needed "the guiding hand of counsel at every step in

the proceedings against him" for the same reasons that adults facing criminal charges need counsel.[4]

The introduction of advocates to the juvenile court system was meant to change delinquency proceedings in several key ways. First, it was meant to infuse the informal juvenile court process with more of the jealously-guarded constitutional protections of adult criminal court and their attendant adversarial tenor. Perhaps more importantly, with attorneys explicitly assigned to advocate on their behalf, juveniles accused of delinquent acts were to become participants, rather than spectators, in their court proceedings. The Court observed specifically that juvenile respondents needed defenders to enable them "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] has a defense and to prepare and submit it."[5]

With its decisions in *Gault* and other cases,[6] the Court moved the treatment of youth in juvenile justice systems into the national spotlight. In 1974, with a goal of protecting the rights of children, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA).[7] The JJDPA created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, which was charged with developing national juvenile justice standards and guidelines. The National Advisory Committee standards, published in 1980, require that children be represented by counsel in delinquency matters from the earliest stage of the process.[8]

At the same time, several non-governmental organizations also recognized the necessity of protections for youth in delinquency courts. Beginning in 1971, and continuing over a ten-year period, the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) researched, developed and produced 23 volumes of comprehensive juvenile justice standards, annotated with explicit policies and guidelines.[9] The IJA/ABA Joint Commission on Juvenile Standards relied

upon the work of approximately 300 dedicated professionals across the country with expertise in the many disciplines relevant to juvenile justice practice, including the judiciary, social work, corrections, law enforcement, and education. The Commission circulated draft standards to individuals and organizations throughout the country for comments. The final standards, which were adopted by the ABA in 1982, were crafted to establish a model juvenile justice system, one that would not fluctuate in response to transitory headlines or controversies.

By the early 1980s, there was professional consensus that defense attorneys owe their juvenile clients the same duty of loyalty as adult clients.[10] That coextensive duty of loyalty requires defenders to represent the legitimate "expressed interests" of their juvenile clients, and not the "best interests" as determined by the attorney.[11]

B. Present State of Juvenile Defense: A Call for Justice

Recognizing the need for more information about the functioning of delinquency courts across the country, as part of the reauthorization of the JJDPA in 1992, Congress asked the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to address this issue. One year later, in 1993, OJJDP responded to Congress' request by funding the Due Process Advocacy Project, led by the ABA Juvenile Justice Center, together with the Youth Law Center and the Juvenile Law Center. The purpose of the project was to build the capacity and effectiveness of the juvenile defense bar to ensure that children have meaningful access to qualified counsel in delinquency proceedings. One result of this collaboration was the 1995 release of *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national review of the legal representation of children in delinquency proceedings.[12] The first systemic national assessment of its kind, the report laid the foundation for a closer examination of access to counsel, the training and resource

needs of juvenile defenders, and the quality of legal representation provided by each state's juvenile indigent defense system. The report highlighted the gaps in the quality of legal representation for indigent children across the country.

The findings of *A Call for Justice* prompted an outpouring of concern from judges and lawyers across the country, and pointed to the need for state-specific assessments to guide and inform legislative reforms. In response, a methodology was developed to conduct comprehensive assessments of access to counsel and quality of representation in individual states. Since 1995, first the ABA Juvenile Justice Center, and then the National Juvenile Defender Center, have conducted state-specific juvenile defense assessments in 16 states: Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington. Re-assessments have been conducted in Kentucky and Louisiana. County-based assessments were conducted in Cook County, Illinois, Marion County, Indiana and Caddo Parish, Louisiana. The National Juvenile Defender Center is continuously working with leaders in states who are interested in conducting juvenile indigent defense assessments.

Although each state has its own idiosyncrasies, hundreds of interviews in assessment after assessment reaffirm the findings first uncovered in *A Call for Justice*. Since the *Gault* decision, the role of the juvenile defender has evolved to require a complex and challenging skill set. Juvenile defense attorneys must have all the legal knowledge and courtroom skills of a criminal defense attorney representing adult defendants. In addition, juvenile defenders must be aware of the strengths and needs of their juvenile clients and of their clients' families, communities, and other social structures. Juvenile defenders must: understand child and adolescent development to be able to communicate effectively with their clients, and to evaluate the client's level of maturity and competency and its relevancy to the delinquency case; have knowledge of and

contacts at community-based programs to compose an individualized disposition plan; be able to enlist the client's parent or guardian as an ally without compromising the attorney-client relationship; know the intricacies of mental health and special education law, as well as the network of schools that may or may not be appropriate placements for the client; and communicate the long- and short-term collateral consequences of a juvenile adjudication, including the possible impact on public housing, school and job applications, eligibility for financial aid, and participation in the armed forces.

There are many juvenile defense attorneys who, in the face of daunting systemic and other obstacles, offer their clients zealous, holistic, client-centered advocacy. Unfortunately, as *A Call for Justice* first revealed, these attorneys are the exception and not the norm: in jurisdiction after jurisdiction, systemic and other barriers prevent juvenile defenders from realizing the constitutionally-mandated vision of their role. For example, on average, juvenile defenders' caseloads are staggeringly high, and these crushing caseloads have redounding repercussions: plea agreements function as a case management tool and are entered into without previous, independent investigation; pre-trial advocacy to test the strengths and weaknesses of the government's case is often set aside; and already scarce resources, stretched thin to provide basic services, like office space, computers, desks, and files, are not available for investigators, social workers, and expert witnesses. Also, across the country, juvenile court suffers from a "kiddie court" mentality where stakeholders do not believe that juvenile court is important. Finally, in some jurisdictions, because they view juvenile court first and foremost as an opportunity to "help a child," judges and other system participants undermine attorneys' efforts to challenge the government's evidence and provide zealous, client-centered representation, considering such advocacy an impediment to the smooth function of the court. As a result, many juvenile courts still operate in a pre-*Gault* mode in which the defense attorney is irrelevant, real

lawyering cannot occur, and the fair administration of justice is impeded.

C. Goals of These Principles

The Principles that follow are developed to describe the unique and critical role juvenile defense attorneys play in juvenile proceedings. Hundreds of interviews with juvenile justice system stakeholders reveal that the juvenile defense attorney's role is perceived differently by different courtroom actors. While there are of course exceptions, across the country, prosecutors and probation officers often view zealous juvenile defense attorneys as obstructionists who overlook the compelling needs of their clients in service to the single and monolithic goal of "getting the client off, and communicate, in direct and indirect ways, that the defender should be less adversarial. Similarly, judges rely on juvenile defense attorneys to advocate on the child's behalf, but only as a necessary cog in the machinery of the appearance of fairness and of judicial economy, and not as a zealous, client-centered advocate. Juvenile defenders themselves are unsure of their role. Most understand that, in theory, they are bound to zealously represent their clients' expressed interests. Nonetheless, in practice, many yield to the unified pressure from other stakeholders and from the seemingly irresistible momentum of the proceedings, and advocate for their clients' best interests. The reasons for this capitulation vary. Some set aside their ethical obligation because of a genuinely misguided understanding of their role; others sacrifice zealous advocacy because they have to triage staggering caseloads supported by scant resources; still others bow to systemic barriers that interfere with their advocacy. The defenders' role seems all the more ambiguous in specialty boutique courts, like drug court and mental health court.

In the vision of the *Gault* Court, the juvenile defense attorney is a critical check on the power of the state as it imperils the client's liberty interests. Defenders are not obstructionists; they

protect the child's constitutional rights. They do this through their practical, everyday duties – from interviewing the child outside of the presence of the child's parents, to objecting to inadmissible but informative evidence at adjudicatory hearings, to advocating for the least restrictive alternative at disposition, to pressing, at every stage, for the client's expressed interests. Each of these day-to-day duties has its grounding in defense counsel's mandatory ethical obligations. These Principles serve to inform indigent defense providers and the leadership of indigent defense organizations, judges, prosecutors, probation officers, and other juvenile justice stakeholders the specifics of the role of defense counsel in the delivery of zealous, comprehensive and quality legal representation to which children charged with crimes are constitutionally entitled.

THE ROLE OF JUVENILE DEFENSE COUNSEL

1. Duty to Represent the Client's Expressed Interests

ABA Model Rules of Professional Conduct (Model Rules): Preamble; 1.14(a) Client with Diminished Capacity; 1.2(a) Scope of Representation and Allocation of Authority between Client and Lawyer

At each stage of the case, juvenile defense counsel acts as the client's voice in the proceedings, advocating for the client's expressed interests, not the client's "best interest" as determined by counsel, the client's parents or guardian, the probation officer, the prosecutor, or the judge. With respect to the duty of loyalty owed to the client, the juvenile delinquency attorney-client relationship mirrors the adult criminal attorney-client relationship. In the juvenile defender's day-to-day activities, the establishment of the attorney-client relationship is animated by allocating the case decision-making, and practicing the special training required to represent clients with diminished capacity.

A. **Establishment of the Attorney-Client Relationship:** Juvenile defense counsel do not assume they know what is best for the client, but instead employ a client-centered model of advocacy that actively seeks the client's input, conveys genuine respect for the client's perspective, and works to understand the client in his/her own socioeconomic, familial, and ethnic context.

1. At every stage,[13] juvenile defense counsel works to provide the client with complete information concerning all aspects of the case, including honest predictions concerning both the short-term (e.g., whether the client will be detained pending trial or whether the client will win the probable cause hearing) and long-term (e.g., whether the child will be acquitted or whether, if found involved, the child will be committed and/or face additional collateral consequences) goals of the case. Juvenile defense counsel's abiding purpose is to empower the client to make informed decisions. Counsel's advice to the client about the likely advantages and disadvantages of different case scenarios is legally comprehensive, candid, and objectively relayed using age-appropriate language.

2. Operating under a client-centered model of advocacy allows juvenile defense counsel to enhance immeasurably the fundamental fairness of the system. Because no other courtroom actor serves the juvenile's expressed interests, without juvenile defense counsel, the juvenile would be subjected to a pre-*Gault* proceeding in which protecting the juvenile's due process rights are relegated to a mere technicality.

B. **Allocation of Decision-Making:** Unlike the other courtroom actors, who have no obligation to consider a juvenile's expressed interests in their recommendations and orders, juvenile defense counsel allows clients, to the greatest extent possible, to be the primary decision-makers in their cases.

1. Juvenile defense counsel enables the client, with frank information and advice, to direct the course of the proceedings in at least the following areas:

    a. whether to cooperate in a consent judgment, diversion, or other early disposition plans;

    b. whether to accept a plea offer;

    c. if the client can choose, whether to be tried as a juvenile or an adult;

    d. if the client can choose, whether to have a jury trial or a bench trial;

    e. whether to testify in his own defense; and

    f. whether to make or agree to a specific dispositional recommendation.

2. Other decisions concerning case strategy and tactics to pursue the client's goals, like the determination of the theory of the case, what witnesses to call, or what motions to file, are left to juvenile defense counsel, with the critical limitations that counsel's decisions 1) shall not conflict with the client's expressed interests concerning the areas listed in c, and 2) shall not conflict with the client's expressed interests in any other case-related area.

C. **Diminished Capacity:** Minority does not automatically constitute diminished capacity such that a juvenile defense attorney can decline to represent the client's expressed interests. Nor does a juvenile's making what juvenile defense counsel considers to be a rash or ill-considered decision constitute grounds for finding that the client suffers from diminished capacity. In fact, because of the unique vulnerabilities of youth, it is all the more important that juvenile defense attorneys firmly adhere to their ethical obligations to articulate and advocate for the child's expressed interest, and to safeguard the child's due process rights. In other words, in direct contrast to the pervasive informality that characterizes juvenile court practice in so many jurisdictions, minority sharpens defense counsel's ethical responsibilities, instead of relaxing them.

1. In light of current brain development research, it is clear that minority critically affects the scope of the juvenile attorney- juvenile client relationship. Current brain development research posits that youth are categorically less culpable than the average adult offender. This research has gained wide acceptance, as indicated most recently by the United States Supreme Court's opinion in *Roper v. Simmons*, 543 U.S. 551(2005), which struck down the juvenile death penalty as unconstitutional. The *Roper* Court concluded that youths are less culpable than the average adult offender because they: (1) lack maturity and responsibility, (2) are more vulnerable and susceptible to outside influences, particularly negative peer influences, and (3) are not as well formed in character and personality as, and have a much greater potential for rehabilitation than, adults. *Id.* at 569-570. This research requires juvenile defense counsel to be adept at using age-appropriate

language, motivational interviewing, visual aids, and other techniques effective in communicating with, and more specifically, effective in translating legal concepts to, children.

2. It is crucial to recognize that this research does not provide an argument for counsel to disregard a child's expressed interests merely because of the child's minority. To the contrary, the unique vulnerabilities of youth, make it all the more important for the child's lawyers to help the child identify and articulate his or her views to key players in the juvenile justice system. Any juvenile client capable of considered judgment is entitled to a normal attorney-client relationship. And, even youth of diminished capacity and other vulnerabilities have views, concerns and opinions that are entitled to weight in legal proceedings.

Additional sources:

- *IJA/ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties (Juvenile Justice Standards): 3.1 The Nature of the Lawyer-Client Relationship; 5.2 Control and Direction of the Case; 9.3(a) Counseling Prior to Disposition*
- *ABA Standards for Criminal Justice, Standards Relating to the Defense Function (Criminal Justice Standards): 4-3.1 Establishment of Relationship*

2. Duty of Confidentiality and Privilege
Model Rules: 1.6 Confidentiality of Information

Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that juvenile defense counsels owe their juvenile clients is coextensive with

the duty of confidentiality that criminal defense counsels owe their adult clients. This duty includes:

A. **No Exception for Parents or Guardians:** There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Practically, this fact means that juvenile defense counsel has an affirmative obligation to safeguard a client's information or secrets from parents or guardians; that interviews with the client must take place outside of the presence of the parents or guardians; and that parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's expressed consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the client's secrets. Information relating to the representation of the client includes all information relating to the representation, whatever its source.

B. **No Exception for Client's Best Interests:** There is no exception to attorney-client confidentiality in juvenile cases allowing disclosure of information in service to what counsel, parents or guardians, or any other stakeholders deem to be the client's best interests. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the client's confidences, unless the client gives the attorney express permission to reveal the information to get the particular services, or disclosure is impliedly authorized to carry out the client's case objectives.

C. **Private Meeting Space:** To observe the attorney's ethical duty to safeguard the client's confidentiality,

attorney-client interviews must take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case specifics with the client in the hallways; in detention facilities, juvenile defense counsel should have a means to talk with the client out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the client, and speak with the client out of range of any microphones or recording devices.

Additional sources:

- *Juvenile Justice Standards: 3.3 Confidentiality*

3. Duties of Competence and Diligence
Model Rules: 1.1 Competence, 1.3 Diligence

A juvenile defense attorney provides competent, prompt, and diligent representation based in legal knowledge, skill, thorough preparation, and ongoing training.[14] With respect to the juvenile defender's day-to-day activities, the Duties of Competence and Diligence are expansive, encompassing the obligations to investigate, to zealously protect the child's due process rights from arrest through the close of the case, to engage in dispositional advocacy, and to access ancillary services.

A. **Comprehensive Skill Set:** Juvenile defense counsel possesses a comprehensive skill set that meets the client's legal, educational, and social needs.

1. Competent representation in juvenile delinquency matters requires legal training that encompasses rules of evidence, constitutional law, juvenile law and procedure, and criminal

law and procedure, as well as trial skills, such as examining witnesses, admitting documents into evidence, and making legal arguments before the court, and appellate procedure.

2. Competent juvenile defense counsel is also well-versed in the areas of child and adolescent development. Child and adolescent development research intersects with counsel's representation in many ways. For example, counsel might rely on recent development research in detention and disposition arguments. Counsel also might use the research to help counsel convey complex legal concepts in age-appropriate language.

3. Competent juvenile defense counsel has a working knowledge of and maintains contacts with experts in ancillary areas of law that often intersect juvenile delinquency matters, including but not limited to the collateral consequences of adjudication and conviction, expungement, special education, abuse and neglect, mental health, cultural competency, child welfare and entitlements, and immigration

4. Competent defense counsel engages in continuing study and education of juvenile-specific subject areas and complies with all relevant continuing legal education requirements.

B. **Investigation:** Juvenile defense attorneys promptly investigate cases to find witnesses, examine forensic evidence, locate and inspect tangible objects and other evidence that might tend to exculpate the client, that might lead to the exclusion of inculpatory evidence at adjudication or disposition, or that might buttress the client's potential defenses. This duty exists even when

the lawyer believes the client is guilty, and when the client has confessed in interrogation, in interviews with counsel, or to anyone else.

1. Juvenile defense attorneys promptly take the necessary steps to obtain discovery, including filing discovery requests, motions pursuant to *Brady v. Maryland,* and motions to compel if the prosecutor does not comply with counsel's request.

2. Based on leads from the client and from discovery received from the prosecutor, juvenile defense attorneys conduct independent investigation of, *inter alia,* the allegations against the client, of police conduct, of witnesses' backgrounds, and of any and all possible defenses and mitigating factors for disposition.

3. Juvenile defense attorneys do not allow clients to plead guilty without first reviewing the government's file, including police reports, results of forensic examinations and tests, photographs, and other evidence, discussing and pursuing possible exculpatory investigation leads, and providing a fair and informed assessment of the strengths and weaknesses of the government's case.

C. **Protecting Pretrial Due Process Rights:** Juvenile defense attorneys have a duty to protect the client's pretrial due process rights by obtaining discovery, filing motions, and making arguments to protect the client's rights while serving the client's expressed interests.[15]

1. To ensure that the court system is not being used for societal functions it was not meant to assume – for example, as the disciplinary arm of the school system, or as a reflection of the

racial, ethnic and class biases that often mark police arrest rates – juvenile defense attorneys file pretrial motions that seek pretrial release, that advocate for individualized plans that offer the least restrictive set of release conditions necessary to ensure the client's return to court and community safety, and that guard against infringement of the client's federal or state constitutional rights before and during the arrest, including motions to suppress tangible evidence, identifications, and statements.

2. Juvenile defense attorneys also file pretrial motions that clarify points of law, block the admission into evidence of inadmissible or prejudicial information, and otherwise ensure that the client will receive a fair trial.

D. **Protecting Due Process Rights at Adjudicatory Hearings:** Juvenile defense counsel has a duty to protect the client's due process rights and to pursue vigorously the client's expressed interests at adjudication.

1. Juvenile defense counsel ensures that, as *In re Gault* and its progeny clearly intended, juvenile adjudicatory hearings are adversarial proceedings in which the state bears the burden to prove its case beyond a reasonable doubt with credible, admissible evidence.

2. In accord with this constitutional imperative, juvenile defense counsel ensures fairness in the courtroom by litigating the case vigorously consistent with the presumption of innocence, regardless of counsel's opinion concerning either guilt or innocence or the client's need for social, educational, and other services.

3. Juvenile defense counsel litigate adjudicatory hearings aware of the elements of each charged allegation, the lesser-includeds for each charge, all the client's possible defenses, and relevant case law.

4. Juvenile defense counsel fulfill their role under *Gault* by adhering to and enforcing application of the rules of evidence, lodging objections, examining witnesses, filing written and oral motions, and challenging the credibility and admissibility of the state's evidence. This duty exists regardless of counsel's opinion of the client's guilt.

5. Juvenile defense counsel explains the right to testify, helps the client identify and weigh the advantages and disadvantages of testifying, and helps the client prepare if he decides to testify.

E. **Preparing for and Engaging in Dispositional Advocacy:** As part of the duty of competence and diligence, juvenile defense counsel has an affirmative duty to prepare for and engage in dispositional advocacy. Accordingly, at disposition, juvenile defense counsel offers the court strengths-based disposition alternatives that look beyond the options considered by the probation officer to address the child's expressed interests while being responsive to the court's concerns.

1. Dispositional investigation and advocacy begin at the initiation of the attorney-client relationship. Regardless of counsel's prognosis of the case outcome, counsel begins disposition planning and investigation at the earliest opportunity to maximize the chance that the appropriate investigation, evaluations and inter-

views are completed, and the necessary documents are located and submitted, with the end result that, should the client be found guilty, the client receives the most appropriate, least restrictive disposition with as little delay as possible.

2. Juvenile defense counsel investigates disposition alternatives beyond those available to and considered by probation officers and juvenile court counselors, drawing on community-based resources, according to the client's wishes.

3. Counsel thoroughly engages the child in disposition planning by helping the child identify and understand and weigh the available options. Counsel informs the client about the nature of the presentence investigation process and the importance of statements the client and the client's family might make to probation officers and youth court counselors. Counsel also advises the client about the right of allocution at disposition, and helps the client prepare if the client chooses to allocute.

4. As part of disposition preparation, juvenile defense counsel consults with mitigation specialists, social workers, and mental health, special education, and other experts to develop a plan consistent with the client's expressed interests.

5. At the disposition hearing, juvenile defense counsel prepares and presents the court with a creative, comprehensive, strengths-based, individualized disposition alternative consistent with the client's expressed interests.

6. As at the adjudicatory hearing, at the disposition hearing, juvenile defense counsel protects

the client's due process rights by challenging the state's evidence, including any hearsay and other inadmissible evidence that may be included in the presentence report, by cross-examining the state's witnesses, including the probation officer, and by proffering witnesses in support of the client's own disposition plan, according to the client's expressed interests.

F. **Conducting Post-Disposition Representation:** Juvenile defense counsel has a duty to research and understand the legal rights to which the client is entitled and the legal options the client can access at the post-disposition stage of the case and, after consultation with the client, to pursue available options.

1. Juvenile defense counsel files timely notices of appeals, writs of *habeas corpus*, and other motions that challenge orders or outcomes that counsel believes are illegal or otherwise offend principles of fundamental fairness.

2. At periodic intervals after disposition, juvenile defense counsel checks in with the client, with an eye towards averting any potential problems with the client's successful completion of disposition conditions, to maximize the client's chance at closing the case as quickly as possible.

3. In jurisdictions that hold regular post-disposition review hearings, juvenile defense counsel participates in these proceedings. In jurisdictions that do not hold regular post-disposition review hearings, juvenile defense counsel encourages periodic post-disposition reviews by filing motions to review that request hearings or other forms of relief, unless counsel's contract prohibits filing such a motion.

4. In preparation for probation and parole revocation hearings, juvenile defense counsel locates witnesses, investigates allegations, challenges the government's evidence, prepares a defense and offers relevant mitigating factors for the court's consideration.

5. Defense counsel also keeps a record of any difficulties with, or failings by probation officers, programs or other entities charged with providing service to the client in order to militate against violations of probations. If the client is detained, juvenile defense counsel helps the client to maintain contact with the client's family and/or other positive community-ties, in accordance with the client's wishes.

6. Because juvenile defense counsel's obligation is to the client, counsel can challenge conditions of confinement, either individually or as part of a larger strategy with other juvenile defense counsel.

7. Juvenile defense counsel helps the client expunge juvenile adjudications from the client's record, so that the client is better able to live as a productive, law-abiding citizen without the stigma of adjudication.

G. **Accessing Ancillary Services:** Juvenile defense counsel provides to the client, either directly or indirectly through referrals, assistance in ancillary areas of law that intersect juvenile indigent defense, with the goal of affording the client holistic representation. Juvenile defense counsel does whatever counsel can reasonably undertake to facilitate the relationship with the client and the provider, and ensure the attainment of the client's ultimate goal.

1. Juvenile defense counsel is familiar with special education law and works to ensure that the client is in an appropriate educational setting.

2. Juvenile defense counsel ensures that the client's rights are protected at school discipline or expulsion hearings.

3. Juvenile defense counsel is available to assist the client with intersecting, ancillary proceedings that may impact the client's case, including housing and immigration matters, as well as procedures for obtaining Medicaid or other public benefits.

4. Juvenile defense counsel who are prohibited from or face limitations in providing these services directly develop a network of providers to whom these cases can be referred so that ancillary representation is holistic and responsive to the client's legal needs.

Additional sources:

- *Juvenile Justice Standards: 4.3 Investigation and Preparation; 4.1 Prompt Action to Protect the Client; 7.2 Formality, In General; 7.3 Discovery and Motion Practice; 7.8 Examination of Witnesses; 7.9(a) Testimony by the Respondent; 9.1 Disposition, In General; 9.2 Disposition Investigation and Preparation; 9.3 Counseling Prior to Disposition; 9.4 Disposition Hearing; 9.5 Counseling after Disposition; 10.1 Relations with the Client after Disposition; 10.2 Postdispositional Hearings before the Juvenile Court; 10.3 Counsel on Appeal; 10.4 Conduct of the Appeal; 10.6 Probation Revocation; Parole Revocation; 10.7 Challenges to the Effectiveness of Counsel*
- *Criminal Justice Standards: 4-4.1 Duty to Investigate; 4-3.6 Prompt Action to Protect the Accused; 4-1.2(a) The Function of Defense Counsel, Commentary; 4-7.4 Opening Statement; 4-7.5 Presentation of Evidence; 4-7.6 Examination of Witnesses; 4-7.7 Argument to the Jury; 4-8.1 Sentencing; 4-7.9 Posttrial Motions; 4-8.2 Appeal, 4-8.3 Counsel on Appeal*

4. Duty to Advise and Counsel
Model Rules: 2.1 Advisor

To better enable the client to make a fully informed decision about the direction of the case, juvenile defense attorneys offer clients honest and comprehensive advice that considers the client's educational, familial, social, developmental, and other realities, in addition to the client's legal situation.

A. **Pursuing Diversion Options:** Consistent with the client's expressed interests, juvenile defense counsel negotiates, at every possible opportunity, for diversion and other means of case dismissal, regardless of counsel's own opinion of guilt or innocence or the client's need for services. Counsel advises the client on the advantages and disadvantages of each of these alternatives to adjudication, including the consequences of non-compliance with conditions of diversion.

B. **Ensuring Ethical Plea Agreements:** Juvenile defense counsel negotiates reasonable plea offers and ensures that clients make well-considered decisions concerning whether to plead or go to trial.

1. In negotiations with prosecutors, juvenile defense counsel represents and advocates for the client's expressed interests.

2. Juvenile defense counsel promptly relays plea offers, taking time to review the offer with the client in detail and using age-appropriate language, advises the client on the full panoply of rights relinquished by pleading, as well as the range of disposition options.

3. Juvenile defense counsel seeks to ensure the client has sufficient time to understand and weigh the offer.

4. Juvenile defense counsel's advice as to whether to accept the plea offer includes discussion of the long-term collateral consequences of a juvenile adjudication or transfer to and conviction in adult criminal court (e.g., in some jurisdictions, deportation if the client is undocumented, ineligibility for public housing, federal student loans, and military service). This discussion should also include: the possible dispositions and their impact on the client's life; if the client is likely to get probation; and the consequences of a probation violation.

Additional sources:

- *Juvenile Justice Standards: 6.3 Early Disposition; 7.1 Adjudication without Trial*
- *Criminal Justice Standards: 4-6.1 Duty to Explore Disposition Without Trial; 4-6.2 Plea Discussions; 4-5.2 Control and Direction of the Case*

5. Duty of Communication
Model Rules: 1.4 Communications

At every stage of the case, a juvenile defense attorney keeps the client informed of the case's legal progression in frequent discussions using age-appropriate language, so that the client is a fully informed and proactive participant at all stages of the proceedings.

A. **Communication in Court:** For in-court proceedings, juvenile defense counsel previews for the client each hearing before it happens, and reviews each hearing after it happens, providing an opinion as to how the specific hearing has affected the course of the overall case, and allowing the client ample opportunity to ask questions and raise concerns.

B. **Communication outside of Court:** Juvenile defense counsel keeps the client similarly informed about the case's progression outside of the courtroom by: soliciting and following up on the client's investigatory leads, sharing copies of and discussing motions filed, monitoring the client's compliance with release conditions, or, if the client is detained, making sure that the client is receiving adequate services, and being available to assuage the client's concerns as the case proceeds.

C. **Communication and Confidentiality:** Counsel creates a safe, comfortable, and, to the extent possible, private environment, and allocates adequate time for counseling; engages the youth with age-appropriate language; earns the child's trust over time; and offers balanced and objective advice when appropriate.

D. **Communication with Detained Clients:** If the client is detained pending trial, juvenile defense counsel visits the client at the detention facility, and informs the client's family how and when they can visit the client. If the detention facility is too remote, counsel keeps in regular phone contact with the client.

Additional sources:

- *Juvenile Justice Standards: 3.5 Duty to Keep Client Informed; 4.2 Interviewing the Client; 5.1 Advising the Client Concerning the Case*
- *Criminal Justice Standards: 4-3.1 Establishment of Relationship; 4-3.8 Duty to Keep Client Informed; 4-5.1 Advising the Accused*

ENDNOTES

1 387 U.S. 1 (1967).

2 Gault, 387 U.S. at 19 n. 23 (internal quotations and citation omitted).

3 *Gault*, 387 U.S. at 36.

4 *In re* Gault, 387 U.S. 1, 36 (1967).

5 *In re* Gault, 387 U.S. 1, 36 (1967).

6 *See Kent v.U.S.*, 383 U.S. 541 (1966) (holding that due process requirements apply to transfer proceedings); *In re Gault*, 387 U.S. 1 (1967) (holding that juveniles have right to notice of charges, right to counsel, privilege against self incrimination, and right to confrontation and cross-examination); *In re Winship*, 397 U.S. 358 (1970) (holding that fundamental fairness requires proof beyond a reasonable doubt in delinquency adjudications); *Breed v. Jones*, 421 U.S. 519 (1975)(rejecting the rigid categorization of juvenile proceedings as civil, and extending the protection offered by the Double Jeopardy Clause, which had traditionally been applied to criminal proceedings, to juvenile proceedings).

7 Pub. L. 93-415 (1974).

8 National Advisory Committee for Juvenile Justice and Delinquency Prevention, *Standards for the Administration of Juvenile Justice* §3.132 Representation by Counsel – For the Juvenile (1980).

9 For a description of the project, *see IJA/ABA Juvenile Justice Standards Annotated: A Balanced Approach* xvi-xviii (Robert E. Shepherd, ed., 1996).

10 Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 245, 255-56 (2005).

11 *Id.*

12 ABA Juvenile Justice Center, Juvenile Law Center & Youth Law Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995), available at http://www.njdc.info/pdf/cfjfull/pdf.

13 For purposes of this document, "stage" is broadly defined to include each step at which the state's power intersects the child's life, including, but not limited to, arrest, interrogation at the police station, at school, or at home, initial detention hearings, the probable cause hearing, and post-disposition hearings.

14 Under Model Rule 1.16(a)(1), *Declining or Terminating Representation*, if a lawyer cannot provide competent, prompt and diligent representation, and continued representation will result in violation of the rules of professional conduct, a lawyer can decline new cases or terminate representation. This rule gives important support to juvenile defense attorneys whose unmanageable caseloads prohibit the individualized, zealous advocacy to which juveniles are constitutionally entitled.

15 It should be noted that juvenile defense counsel is not the only stakeholder ethically charged with safeguarding the client's pretrial due process rights. Model Rule 3.8, *Special Responsibilities of a Prosecutor*, requires prosecutors to: refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel; not seek to obtain from an unrepresented defendant a waiver of important pretrial rights, such as the right to a preliminary hearing; and make timely disclosure to the defense of all mitigating or exculpatory evidence.

APPENDIX B

TEN CORE PRINCIPLES FOR PROVIDING QUALITY PUBLIC DEFENSE DELIVERY SYSTEMS

PREAMBLE

A. Goals of These Principles

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

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

the parameters of this critical relationship already well established in legal ethics rules and opinions.

In 1995, the American Bar Association's Juvenile Justice Center published *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, a national study that revealed major failings in juvenile defense across the nation. Since that time, numerous state-based assessments have documented in detail the manner in which these failings result in lifelong, harmful consequences for our nation's children.[5] These Principles provide public defense leaders and policymakers a guide to rectifying systemic deficits and to providing children charged with criminal behavior the high quality counsel to which they are entitled.

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

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

Public defense delivery systems must emphasize that juvenile defense counsel has an obligation to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate informed decision making by the client. Defense attorneys owe their juvenile clients the same duty of loyalty that adult criminal clients enjoy. This coextensive duty of loyalty requires the juvenile defense attorney to advocate for the child client's expressed interests with the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.[7]

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

Because research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult, public defense delivery systems should pay special attention to providing high quality representation for the most vulnerable and over-represented groups of children in the delinquency system.

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Defenders must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also overrepresented in the juvenile justice system. Defenders must address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

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

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

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

TEN PRINCIPLES

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

A. Competent and diligent representation is the bedrock of a juvenile defense attorney's responsibilities.[9]

B. The public defense delivery system ensures that children do not waive appointment of counsel and that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.[10]

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

D. The public defense delivery system includes the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider or when the caseload justifies the need for outside counsel.[11]

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

A. The public defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law that is different from, but equally

as important as, the representation of adults in criminal proceedings. The public defense delivery system further acknowledges the specialized nature of representing juveniles prosecuted as adults following transfer/waiver proceedings.[12]

B. The public defense delivery system leadership promotes respect for juvenile defense team members and values the provision of quality, zealous and comprehensive delinquency representation services.

C. The public defense delivery system encourages experienced attorneys to provide delinquency representation and strongly discourages use of delinquency representation as a training assignment for new attorneys or future adult court advocates.

3 The Public Defense Delivery System Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity.[13]

A. The public defense delivery system encourages juvenile specialization without limiting access to promotions, financial advancement, or personnel benefits for attorneys and support staff.

B. The public defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas[14] and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

4 The Public Defense Delivery System Uses Expert and Ancillary Services to Provide Quality Juvenile Defense Services.

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

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

5 The Public Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads.

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

B. The leadership of the public defense delivery system adjusts attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

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

A. The public defense delivery system provides supervision and management direction for attorneys and team members who provide defense services to children.[16]

B. The leadership of the public defense delivery system clearly defines the organization's vision and adopts guidelines consistent with national, state and/or local performance standards.[17]

C. The public defense delivery system provides systematic reviews for all attorneys and staff representing juveniles, whether they are contract defenders, assigned counsel or employees of defender offices.

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

A. The public defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training[18] in unique areas of the law. The public defense delivery system provides and mandates training[19] on topics including detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and procedure and administrative hearing representation.

B. Juvenile team members have a comprehensive understanding of the jurisdiction's juvenile law and procedure, and the collateral consequences of adjudication and conviction.

C. Team members receive training to recognize issues that arise in juvenile cases and that may require assistance from specialists in other disciplines. Such disciplines include, but are not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Special Education
4. Dependency court/abuse and neglect court process
5. Immigration
6. Mental health, physical health and treatment
7. Drug addiction and substance abuse

D. Training for team members emphasizes understanding of the needs of juveniles in general and of specific populations of juveniles in particular, including in the following areas:

1. Child and adolescent development
2. Racial, ethnic and cultural understanding
3. Communicating and building attorney-client relationships with children and adolescents
4. Ethical issues and considerations of juvenile representation
5. Competency and capacity
6. Role of parents/guardians
7. Sexual orientation and gender identity awareness
8. Transfer to adult court and waiver hearings
9. Zero tolerance, school suspension and expulsion policies

E. Team members are trained to understand and use special programs and resources that are available in the juvenile system and in the community, such as

1. Treatment and problem solving courts[20]
2. Diversionary programs
3. Community-based treatment resources and programs
4. Gender-specific programming

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

A. The public defense delivery system ensures that attorneys consult with clients and, independent from court or probation staff, actively seek out and advocate for treatment and placement alternatives that serve the unique needs and dispositional requests of each child, consistent with the client's expressed interests.

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

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

9 The Public Defense Delivery System Advocates for the Educational Needs of Clients.

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

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

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

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

B. The public defense delivery system recognizes that disproportionate representation of minority youth in the juvenile justice system is contrary to notions of fairness and equality. The public defense delivery system works to draw attention to, and zealously advocates for the elimination of, disproportionate minority contact.

NOTES

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

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

[3] 387 U.S. 1 (1967). According to the *IJA/ABA Juvenile Justice Standard Relating to Counsel for Private Parties* 3.1 (1996), "the lawyer's principal duty is the representation of the client's legiti-

mate interests" as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that "counsel's principal responsibility lies in full and conscientious representation" and that "no lesser obligation exists when youthful clients or juvenile court proceedings are involved."

[4] For purposes of these *Principles*, the term "delinquency proceeding" denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.

[5] Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages pleas to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see *Selling Justice Short: Juvenile Indigent Defense in Texas* (2000); *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* (2001); *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2001); *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2002); *An Assessment of Counsel and Quality of Representation in Delinquency Proceedings in Ohio* (2003); *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003); *Indiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (2006); *Florida: An Assessment of Access to Counsel and Quality of*

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

[6] 543 U.S. 551 (2005).

[7] *American Bar Association Model Rules of Professional Conduct,* Rule 1.1 Competence.

[8] *Justice by Gender*: jointly issued by the ABA and the NBA 2001.

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

[10] *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 3.

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

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

[13] *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 8.

[14] *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 4.

[15] *See generally*, American Council of Chief Defenders Statement on Caseloads and Workloads, issued August 24, 2007; *see also* National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976), 5.1, 5.3; American Bar Association, *Standards for Criminal Justice, Providing Defense Services* (3rd ed., 1992), 5-5.3; American Bar Association, *Standards for Criminal Justice: Prosecution Function and Defense Function* (3rd ed., 1993), 4-1.3(e); National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts*, Chapter 13, "The Defense" (1973), 13.12; National Legal Aid and Defender Association and American Bar Association, *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services* (NLADA, 1984; ABA, 1985), III-6, III-12; National Legal Aid and Defender Association, *Standards for the Administration of Assigned Counsel Systems* (1989), 4.1,4.1.2; ABA Model Code of Professional Responsibility DR 6-101; *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 5.

[16] *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principles 6 and 10.

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

[18] National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standard 7.2, footnote 2. *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

[19] *American Bar Association Ten Principles of a Public Defense Delivery System* (2002), Principle 9; National Legal Aid and Defender Association, *Training and Development Standards* (1997), Standards 1 to 9.

[20] American Council of Chief Defenders, *Ten Tenets of Fair and Effective Problem Solving Courts* (2002).