



NATIONAL JUVENILE DEFENDER CENTER



Juvenile Defense Self-Assessment Tool

Dear Public Defense Leader:

Juvenile delinquency defense is an important and vital part of a functioning public defender system. Research shows that juveniles who experience incarceration are more likely to commit adult offenses than similarly situated juveniles who avoid incarceration. Juveniles in custody experience trauma, violence, disengagement from family and community and exacerbated mental health problems including suicide, and sexual abuse in prisons. Dedicated high quality, properly resourced, developmentally-informed defense for juveniles creates profound opportunities for children accused of delinquent and status offenses.

While public defender offices are underfunded, and often stretched to and beyond the breaking point, we believe that defense in juvenile delinquency cases requires carefully cultivated and properly developed juvenile defenders. Skilled advocates who choose the juvenile defense field should be placed on an equal footing with their counterparts in adult criminal defense. The defense of juveniles is a highly complex and specialized practice. The role of the juvenile defender has evolved to require a challenging and complex skillset needed to meet core ethical obligations. Youth need attorneys who are well-versed in the science of adolescent development and who can leverage that understanding to help youth navigate the complexities of the justice system; present the legal and the social cases; promote accuracy in youthful client decision making; provide alternatives for system decision makers; enforce the client's due process rights; and monitor institutional treatment, aftercare, and re-entry.

The Juvenile Committee of the National Association for Public Defense (NAPD) and the National Juvenile Defender Center (NJDC) have developed a Self-Assessment Tool that is intended to create an opportunity to reflect on practices in your office that you may not have considered before. We hope you will complete this assessment and fairly consider the juvenile practice in your office.

The National Juvenile Defender Center and the National Association For Public Defense stand ready to assist your office in completing the self-assessment or in developing solutions that will improve juvenile defense delivery to ensure children's access to counsel and quality of representation.

Sincerely,

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Dear Colleagues:

We all work each day to ensure that public defender offices are well-resourced, that defenders are well-trained, and that the defense profession is respected and valued by all stakeholders. We know that only by elevating the practice of public defenders do those accused and charged truly get the benefit of a justice system. We also know, like you, that this is an uphill battle requiring our collective and collaborative support for each other. Organizations that provide defenders the ability to share tools, techniques, successes and lessons learned, like the National Association of Public Defenders (NAPD) and the National Juvenile Defender Center (NJDC), are at the center of many of the innovative and creative ways in which we work together towards our common goal of justice for all.

To this end, we share a recognition of the critical importance of a well-funded, fully resourced, expertly trained juvenile defense workforce, one that recognizes the nuanced and complex work of representing juveniles who have been charged with crimes. The manner in which juvenile defense is provided is vastly different from state to state, in fact, even the definition of who is a juvenile varies from jurisdiction to jurisdiction. But one thing remains clear: children deserve the same robust, innovative and thoughtful defense as adults targeted to their needs and issues, and adult defense offices are in the best position to champion this cause.

Attached to this letter, you will find a Juvenile Defense Assessment Tool created via a partnership between NAPD's Juvenile Committee and the NJDC. This excellent tool was designed to assess the state of juvenile defense in your jurisdictions, and to give thoughtful pause to the priority placed on juvenile defense provision. It is not a test, nor an evaluation, more simply an outline that will assist defender offices in looking more closely and carefully at whether juveniles receive appropriate and meaningful defense services. NAPD's Juvenile Committee and NJDC are staffed by juvenile defense attorneys who are the experts in their field, and remain at the ready to assist any public defender office who, after utilizing the assessment tool would like to take a deeper look at how to improve juvenile defense.

So, please join us, in promoting the strongest juvenile defense system possible and ensuring that all children charged with crimes receive focused, comprehensive and quality legal representation. The Juvenile Defense Assessment Tool is just one step towards realizing that goal.

Sincerely,

Tina Luongo
Attorney-in-Charge, The Legal Aid Society
Criminal Defense Practice

Paul DeWolfe
Public Defender
State of Maryland

This tool is intended to assist defender leaders who want to ensure that juvenile defense is sufficiently resourced and that juvenile defense delivery complies with national standards. Throughout this material NAPD referenced the NJDC and NLADA Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems, which are online at: http://njdc.info/wp-content/uploads/2013/11/Principles-in-Practice_Promoting-Accountability-Safety-and-Fairness-in-Juvenile-Delinquency-Proceedings.pdf

The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist.

1. Does your office/agency employ juvenile defender specialists whenever possible? Where employing a juvenile defender specialist¹ is not possible, is an attorney's juvenile practice considered just as important in terms of evaluation and promotion as their adult practice?

Representing children is a legal specialty that requires advanced knowledge and training in both juvenile law, and how to work effectively with juveniles.² The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist. Organizations with effective juvenile defender specialists encourage them to view their role as a career, not merely as a starting point towards adult practice. Juvenile defender specialists in those organizations have the same opportunities for promotion and advancement as their adult counterparts, and are given access to needed training and resources in juvenile representation.³

In those communities where it is not possible to employ a juvenile specialist, such as in rural communities where an attorney must cover every court, it is critical that the attorney's juvenile cases are treated on par with their adult cases in terms of caseload assignment, evaluation, and promotion.⁴ Though juvenile cases are often relegated to lower level courts, they are generally closer to adult felony cases than misdemeanor cases in terms of the amount of time and resources required. For example, the NAC Standards developed in the early 1970s identified maximum caseloads of 150 felonies, 200 juvenile cases, and 400 misdemeanor cases.⁵

A juvenile case was therefore considered twice as time consuming as a typical misdemeanor, and 3/4ths as time consuming as a typical felony. Especially in offices without meaningful caseload limitations, placing a significantly higher priority on adult cases within a mixed caseload deprives juvenile clients of the full measure of representation that they are entitled to. This is why it is better to have juvenile specialists whenever possible.

2. Are there any obstacles for promotions/professional advancement for defenders dedicated to specializing in juvenile defense? Do juvenile defenders have salaries in parity with adult defenders in adult court with the same level of experience?

In order to ensure that juveniles receive the same quality representation afforded to adults, systems should encourage juvenile representation "without limiting access to promotions, financial advancement, or personnel benefits for attorneys and support staff."⁶ At its most basic level, this means that an adult defender or employee with a certain level of experience should not be paid more than a juvenile court attorney or employee with the same level of experience.

While many defender offices have objective standards for promotion and advancement, those standards may include factors that will not fall equally on adult and juvenile defenders. For example, if jury trial litigation and experience is a prerequisite for promotion in a jurisdiction without juvenile jury trials, then the most effective juvenile specialists will rarely qualify for promotion.

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As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.

One way to check to see if the office's human resources and promotion system is not treating juvenile representation the same as adult representation is to see whether the profile of the typical adult defender in terms of age, years of experience, etc., is the same as the typical juvenile court attorney. If not, and especially if the adult unit employs many former juvenile specialists, then it is probable that either the promotion system itself, or the culture surrounding it, has made clear that juvenile representation is not valued the same as adult representation for purposes of advancement.

In order to address this issue, systems must either (a) identify criterion for promotion, such as quality of legal representation and advocacy as well as overall experience, which ensures adult and juvenile defenders have equal opportunity for promotion and advancement, or alternatively (b) identify separate juvenile standards that ensure that juvenile attorneys have the same opportunities for promotion or advancement as their adult counterparts, without having to abandon juvenile practice.

Finally, juvenile defenders should be provided with not only a healthy career path, but an office environment which is client centered and focused on providing quality representation for all clients. Accordingly, defender offices should ensure that juvenile defenders have the same opportunities for professional development, including opportunities to assume a leadership role and training in how best to perform in that role, as their counterparts in adult defender units.

3. Does your office provide procedures for specialized representation for children prosecuted in adult court?

Jurisdictions differ significantly in the methods by which children may find themselves tried as an adult. Regardless of the method, the fact remains that the defendant is still a child, and that carries with it certain benefits, even in the adult system. Moreover, children differ from adults in a variety of areas related to maturity and decision-making which can often be

relevant in a criminal trial, not just as a defense to the crime, but as a basis for suppressing a statement or a search, and in other ways. Communication with a child-client is a specialized skill, so professionals experienced in communicating with child clients should be available to assist a child to understand the nature of the proceedings, and to explain plea negotiations, collateral consequences, trial strategy, and other matters related to the proceeding. As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.⁷ This expectation should apply whenever a person under the age of 18 is being prosecuted in adult court, even if the law of the jurisdiction treats the child as an adult at an earlier age.

4. Does your office/agency ensure that juvenile defenders have access to investigators, social workers, mental health, education and alternative sentencing experts to address the unique needs of adolescent clients?

NJDC and NLADA's "Ten Core Principles" require both "resource parity" with adult systems, but also that the system recognize "that legal representation of children is a specialized area of the law", which requires the use of "expert and ancillary services."⁸ Ensuring parity of resources between adult and juvenile defenders therefore does not mean treating both groups identically.

In addition to the basic investigative and administrative support resources which all defense attorneys require, effective representation in a juvenile case often requires access to professional support with training in social work, educational advocacy, and other disciplines which are not utilized to the same extent in adult cases. These individuals require specialized training to communicate effectively with juvenile clients, and also require training about the educational and social services protections and resources that are available to children that are not available to adults.

Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys. As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.

In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.

5. Does the office/agency provide juvenile defense attorneys and other experts (or “the juvenile defense team”) with access to specialized training?

As noted above, juvenile representation is a specialized area of the law, which requires specialized training both in working with a juvenile population, and in the requirements of the jurisdiction's juvenile code. Supervisors are required to ensure that all juvenile attorneys have “access to specialized training” in juvenile matters.⁹ Training topics include not only updates in the jurisdiction's juvenile law, but also updates in recent developments in our understanding of adolescent development, education, and the treatment of delinquent children.

While in-house or statewide training opportunities are superior for dealing with issues related to the jurisdiction's juvenile law, in many areas training in adolescent development, education and treatment will require participation in regional or national training events, conducted in non-local live conferences or through video webinar.

6. Has your office/agency or your jurisdiction adopted standards of practice in juvenile court, which incorporate best practices and are consistent with national standards of juvenile representation?

Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys.¹⁰ As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.¹¹ As in the rest of the public defender system, juvenile standards should be used to evaluate an attorney's performance in juvenile cases. Even if they are not personally practicing juvenile cases, supervisors and evaluators should be trained in the standards to ensure that they are evaluating attorney performance in juvenile practice appropriately.¹²

7. Does the office/agency build community relationships with schools, other service providers, and other government agencies who specifically assist the juvenile population?

The requirement that juveniles be placed in the “least restrictive alternative” places a premium on counsel's awareness of local treatment alternatives that may be offered by schools or community organizations.¹³ Public defender agencies should build relationships with these programs with an eye towards ensuring that public defender clients have equal access to these resources when needed. This is part of the specialization that is unique to juvenile representation, and may require additional staffing, workload adjustment or office/agency support.

8. Recognizing the complex and time-consuming nature of most juvenile cases, does the office utilize juvenile-specific caseload controls?

A controlled caseload is critical to ensuring effective representation in any juvenile case.¹⁴ Methods of controlling caseloads vary by jurisdiction, and many jurisdictions still lack effective caseload controls. In jurisdictions that impose hard caps on defender caseloads, juvenile caseload caps should be identified which reflect the complexity and relative difficulty of juvenile cases. As noted above, nationally recognized caseload standards have identified a juvenile case as being slightly less time consuming than a felony case, and about twice as time consuming as the typical misdemeanor.¹⁵

In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.¹⁶ In most of these jurisdiction leaders are also advocating for additional resources, based on their evaluation of systemic

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shortfalls. As with those states which set hard caseload limits, it is important in making evaluations about an individual attorney's caseload, or the number of attorneys needed to adequately represent all clients, to recognize the complexity and relative difficulty of juvenile cases.

9. Does the office/agency ensure regular in-person contact between attorney and the juvenile client and parent or guardian, including regular contact with out-of-custody clients?

Studies have repeatedly confirmed that most juveniles either would not be considered competent in adult court, or would be regarded as only marginally so.¹⁷ Not only do juveniles have difficulty with comprehension, they are subject to peer pressure, pressure from parents and others, and other factors that make it significantly more difficult for them to manage their own case. For this reason, regular in-person client contact is essential to effective representation.¹⁸ Contact in the courtroom on the morning of the case is not sufficient.

In addition to expecting regular visits to clients in custody, public defender systems should ensure that attorneys are regularly visiting juveniles out of custody as well. As juveniles generally are less able to come to a public defender office to meet, this will often require the attorney to visit the child at the child's school or place of residence. Further, time must be dedicated to communication with a child's guardians/caretakers. While client privilege certainly extends to juvenile clients, there is often a need to communicate appropriately about proceedings with the child's guardian/caretaker with the client's consent. This is an important consideration for juvenile supervision, workload monitoring, and staffing juvenile programs.

10. Does the office/agency provide appellate and post-disposition representation as required by law?

Appellate and post-dispositional representation is a critical part of protecting the rights of juveniles, and part of the constitutional criteria of effective assistance of counsel. Where the

law of the jurisdiction creates a defender system to provide representation in post-trial matters, such as appeals or post-conviction, whether that is through the same system that provides trial representation or through a separate system, such as an appellate defender, that system must ensure that juveniles have the same access to representation as adults do.

Moreover, as the facts underlying the Gault decision indicate, children are expected to give up core rights, such as the right to bail or a jury trial, in return for rehabilitative care that is not always provided.¹⁹ It is incumbent upon the public defender system of each state to ensure that some body, either the trial system or the relevant post-trial system, is ensuring that the juvenile court's judgments are carried out in accordance with the rationale of the juvenile justice system, and that youth are not trapped in a custodial setting which is either not providing effective care or is retaining the child long after care has ceased to be effective.²⁰

However, the American Bar Association, reviewing a recent study on the rate of appeals in juvenile cases, noted that "[t]he extent of the lack of appeals is profound and raises questions about the inability of juvenile courts to ensure just outcomes."²¹ As a result, the ABA has resolved that jurisdictions should not only ensure adequate resources for appellate representation in juvenile cases, but should be tracking the number of juvenile appeals to ensure that such resources are utilized. While the report did not identify a benchmark, it did note that "When only five out of 1000 cases juvenile convictions are appealed, it is difficult to maintain that minors are protected from error."²²

Juveniles require access to counsel post-disposition in order to effectively access the courts.²³ Children should have representation to ensure that the child is receiving the services contemplated by the court, and that the treatment being offered is effective and consistent with best practices. That representation on these issues may be provided by the trial office, or by an independent post-disposition defender.

In addition, children are entitled to representation to assist them in determining whether the child received effective representation at trial, and to investigate the for trial error, and to file appropriate post-disposition actions on those grounds. Because effective representation on those issues requires and investigation and evaluation of trial counsel's performance, where possible, representation on those issues should be provided by a specialized post-disposition counsel not associated with the trial defender. Post-disposition counsel generally need extensive specialized training in a variety of areas, including post-conviction law, methods of effective juvenile treatment, and other areas.

Due to the unique nature of juveniles, and the need to evaluate both the case and the child's circumstances, juvenile post-disposition representation is resource intensive. As noted above, most juveniles are not highly competent, and educating the child about their rights and options takes substantial time. Also, juvenile confidentiality laws can create obstacles to effective post-disposition representation. For example, post-disposition counsel may be barred from accessing confidential court files unless they become "counsel of record", which may require them to participate in all future court proceedings involving the child. These obstacles may need to be addressed in coordination with other stakeholders in order to provide this fundamental element of juvenile defense practice.

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1. The term "specialist" is being used in this document to refer to an attorney whose assigned caseload consists exclusively or almost exclusively of juvenile cases. It is not intended to communicate that the attorney must meet the requirements of a state or local bar to refer to herself as a specialist in any area of law.
 2. See NJDC and NLADA, *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems* (2nd Edition, July 2008) ("NJDC and NLADA *Ten Core Principles*"), Principle 2; See Also NJDC National Juvenile Defense Standards, Std. 1.3.
 3. See NJDC and NLADA *Ten Core Principles*, Principle 3.
 4. *Id.*, see also Principle 5.
 5. See Report of the National Advisory Commission on Criminal Justice Standards and Goals: Courts 276 (1973). This assessment predated the development of modern juvenile standards of practice and has been criticized for insufficient rigor in its development. While its instruction that juvenile cases are twice as time-consuming as misdemeanor cases is instructive, leaders should take care not to give these standards more weight than warranted in evaluating caseloads and caseload limitations, and should carefully measure and consider the needs of clients in local practice.
 6. *Id.*, Principle 3, comment A.
 7. See NJDC National Juvenile Defense Standards, Std. 8.1 (online at: <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>); see also NJDC 10 Core Principles, Principle 2, Comment A; The Campaign for the Fair Sentencing of Youth, Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence, Guideline 2.1.
 8. See NJDC and NLADA *Ten Core Principles*, Principles 2, 3, and 4.
 9. NJDC National Juvenile Defense Standards, Std 9.2, NJDC 10 Core Principles, Principle 7.
 10. ABA Ten Principles of a Public Defense Delivery System, Principle 10. Online at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf
 11. NJDC and NLADA *Ten Core Principles*, Principles 2 and 6.
 12. *Id.*, Principle 6; NJDC National Juvenile Defense Standards, Std. 9.4
 13. NJDC and NLADA *Ten Core Principles*, Principles 8 and 9.
 14. ABA Ten Principles, Principle 5, NJDC and NLADA *Ten Core Principles*, Principle 5.
 15. *Supra*, note 4.
 16. ABA Formal Opinion 06-441, online at: <http://dpa.ky.gov/NR/rdonlyres/0A05F4ED-79D7-40C8-BC9A-1AD7D8E33421/0/ABAFormalOpinion.pdf> The ABA has adopted standards for managing caseload controls as a follow-up to ethics opinion 06-441. See *ABA Eight Guidelines Related to Public Defense Caseload* (2009).
 17. Grisso, et. al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 J.Law and Human Behavior 333 (2003).
 18. NJDC National Juvenile Defense Standards, Std. 2.4.
 19. Gerald Gault was 15 years old when he was sent to the Industrial School until he was 21 for a series of prank phone calls which would have resulted in, at most, a 2 month sentence had he been an adult. See *In re Gault*, 387 U.S. 1, 7-9 (1967).
 20. A recent example of the importance of post-disposition representation was the "Kids for Cash" scandal that unfolded in Luzerne County, PA in 2008. In that case, youth were sentenced without trial counsel to excessive detention sentences for extremely minor offenses, allegedly as part of a kickback scheme between the judges and the detention center. The Juvenile Law Center of Philadelphia entered the case post-disposition and petitioned the Pennsylvania Supreme Court for emergency relief to release the youth from custody. That petition was eventually granted. For more see: <http://jlc.org/luzerne-county-kids-cash-scandal>.
 21. Report, ABA Resolution 103A (Adopted Feb 14, 2014), pg. 2, citing Megan Annitto, *Juvenile Justice on Appeal*, 66 U. Miami L. Rev. 671 (2012), online at: http://www.americanbar.org/content/dam/aba/images/abanews/2014am_hodres/103a.pdf
 22. Report, *supra*, pg. 6.
 23. NJDC National Juv

"NAPD is committed to zealous advocacy for persons whose liberty is threatened by a criminal charge or conviction or by a juvenile petition or other status. Included in our commitment is a strong belief that an excellent juvenile practice is an integral part of every strong public defense system. We have been strongly supportive of our Juvenile Committee that has created the Juvenile Defense Assessment Tool in collaboration with the National Juvenile Defender Center. This assessment tool is an important way for public defense systems to look at their system and evaluate it in light of best practices. It is not enough to put a lawyer in a courtroom next to a child. Rather, these best practices, from client contact to creating juvenile specialties to controlling caseloads to establishing juvenile post-dispositional sections, now express what should be expected of every public defense system. NAPD heartily endorses the use of this assessment tool by all public defense organizations."

- **Ernie Lewis**, *NAPD Executive Director*

"Six years ago we created the Youth Advocacy Division to handle all juvenile matters from misdemeanors to murder cases and juvenile lifer parole release hearings. Developing a statewide juvenile defender program that aspires to meeting all of these principles is one of the more important things we have done for clients and for our client communities since our inception as an agency in 1984. Having this tool gives us something to use on a regular basis to help us set goals and measure our progress in our quest to provide consistently zealous and comprehensive advocacy for every client."

- **Anthony Benedetti**, *Chief Counsel, Committee for Public Counsel Services (Massachusetts)*

"The NAPD/NJDC Juvenile Defense Self-Assessment Tool is an invaluable resource. My administration has always focused on promoting a strong juvenile defender unit, which has provided a career path to well-trained attorney and social work teams. This tool will ensure that defenders in juvenile and criminal court are properly trained and will lead to fair and just outcomes for youth."

- **Jeff Adachi**, *San Francisco City and County Public Defender*

"I am pleased that the National Association for Public Defense and the National Juvenile Defender Center have aligned efforts to advance the increasingly specialized practice of juvenile defense. Just as the Supreme Court continues to recognize that kids are categorically less culpable than adults, committed leadership is required to ensure that representation of children is always provided by skilled attorneys who have the training and resources required to meet national practice standards. The Self-Assessment Tool is a key new resource to guide the efforts of defender leaders in this critically important area of practice."

- **Stephen Bush**, *Shelby County Public Defender, Law Offices of the Shelby County Public Defender (Memphis, TN)*



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The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.



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The National Association for Public Defense (NAPD) engages all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people.

Through affordable dues, relevant benefits and accessible real-life expertise, NAPD currently unites more than 12,000 practitioner-members across professions, cases and systems into a cohesive community for justice reform.