

REPORT CARD

An assessment of Louisiana's compliance with the "Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems"

MARCH 2005

The *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* were developed by the American Council of Chief Defenders and the National Juvenile Defender Center, "to provide criteria by which an indigent defense system may fully implement the holding of *In Re Gault*," in which the United States Supreme Court extended the right to counsel to juveniles. These Principles provide guidance for policymakers in devising an indigent defense delivery system for children in delinquency proceedings, as well as for those prosecuted in adult court.

JUVENILE REPORT CARD

1. ZEALOUS REPRESENTATION:

The indigent defense delivery system upholds juveniles' right to counsel throughout the delinquency process and recognizes the need for zealous representation to protect children.

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Comments: Although recent legislative changes make it difficult for youth to waive their right to counsel, the reality of Louisiana's indigent defense system renders a juvenile's right to counsel all but meaningless. Extensively documented structural and fiscal deficiencies in Louisiana's indigent defense system impede defense counsel's ability to provide zealous representation for juveniles. Defense counsel appointed to represent indigent youth in Louisiana's juvenile justice system routinely (1) are appointed late in the life of the case; (2) have no resources to investigate and prepare cases; (3) fail to investigate or file any pre-trial motions; (4) enter pleas in more than 95% of their cases; and (5) close their case files after the conclusion of the adjudication hearing, many times without filing a single motion. With defense counsel unable to fulfill their essential role, the fairness and reliability of the juvenile justice system is undermined, as is its ability to provide appropriate support, resources, opportunities and treatment to assure the positive rehabilitation and development of children found delinquent.

2. SPECIALIZED SKILL:

The indigent defense delivery system recognizes that legal representation of children is a specialized area of the law.

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Comments: Juvenile delinquency cases are complex, and their outcomes have significant consequences for children and their families. Children and adolescents are at a crucial stage of development, and do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Generally, defense counsel who represent indigent juveniles in Louisiana also represent adult clients, and lack appropriate training to respond to the unique needs of their juvenile clients. The state does not provide or require appropriate training for juvenile defenders, particularly with regard to the complexities of adolescent behavior and development. Defense counsel are not encouraged to specialize in juvenile representation, which is frequently viewed as a training ground for young and inexperienced attorneys. Inexperience coupled with poor training virtually guarantees a high rate of unjust and erroneous outcomes in delinquency cases.

3. PERSONNEL AND RESOURCE PARITY:

The indigent defense delivery system supports quality juvenile delinquency representation through personnel and resource parity.

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Comments: Louisiana's juvenile justice system lacks sufficient resources to meet the unique and specialized needs of the clients it serves: defense counsel do not have access to training or specialized staff (i.e., education specialists or social workers) to assist with the collateral and specialized needs of clients, and indigent defense funding streams are so unstable that realistic budgetary planning is impossible. Furthermore, there is no parity of resources between prosecutors and defenders in Louisiana. On average, Louisiana prosecutors outspend their indigent defense counterparts 3 to 1. This disparity of resources exacerbates problems related to the heavy workloads of defense counsel, and causes delay in dispensing justice to victims, witnesses and juveniles.

4. EXPERT AND ANCILLARY SERVICES:

The indigent defense delivery system utilizes expert and ancillary services to provide quality juvenile defense services.

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Comments: Louisiana provides an ill-conceived patchwork of services for children accused of delinquent behavior. Louisiana's indigent defense system does not generally support requests for essential expert and ancillary services at any stage of the delinquency process. Such services are rarely requested on behalf of juveniles, and frequently denied even when defense counsel demonstrates that such services are needed for effective representation to ensure that the unique needs of the juvenile client are adequately understood.

5. SUPERVISION AND WORKLOAD:

The indigent defense delivery system supervises attorneys and staff and monitors work and caseloads.

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Comments: There is a limit to the number of cases defense counsel can handle per year and still provide effective, efficient, high quality, ethical, conflict-free legal representation for each and every client. National standards set that limit at 200 juvenile cases per year. Reports have documented defender caseloads well in excess of this standard throughout the state – caseloads that prevent even the most well-intentioned of defense counsel from providing constitutionally adequate representation. Louisiana's flat-fee representation contracts do not account for the number or complexity of cases assigned, and little monitoring is provided to ensure quality representation or reasonable workloads. Without binding and enforceable workload and performance standards, young people do not receive the individualized attention needed to ensure a fair hearing, reliable outcome, or effective disposition, losing a critical opportunity to deter future delinquent behavior.

6. PROFESSIONAL ACCOUNTABILITY:

The indigent defense delivery system supervises and systematically reviews juvenile defense staff for quality according to national, state and/or local performance guidelines or standards.

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Comments: There is no accountability in Louisiana's present indigent defense system. Louisiana does not provide supervision or management direction regarding the provision of juvenile defense services, nor does it systematically and uniformly review attorneys and staff who represent juveniles. The state does not have enforceable performance guidelines, and has not articulated clear expectations regarding the quality of legal representation that should be provided to juveniles. Defense counsel's performance is most often measured at the local level by his or her ability to keep the court's docket moving, rather than by the quality of representation provided to the juvenile client.

7. CONTINUOUS TRAINING:

The indigent defense system provides and supports comprehensive, ongoing training and education for all attorneys and support staff involved in the representation of children.

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Comments: Despite its specialized nature, Louisiana does not require any special certification for attorneys to handle delinquency cases. While all attorneys in Louisiana are required to undertake continuing legal education, defense counsel representing juveniles are not required to attend courses relevant to indigent defense, generally, or juvenile defense, specifically. Without appropriate, comprehensive training on a range of juvenile-specific issues, defense counsel are not adequately equipped to provide juvenile clients with the zealous representation to which they are constitutionally entitled, nor are they equipped to provide competent representation that ensures fairness, efficiency, and reliability in the juvenile justice system.

8. RIGHT TO TREATMENT:

The indigent defense delivery system has an obligation to present independent treatment and disposition alternatives to the court.

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Comments: Children in Louisiana have a right to rehabilitation and treatment. In *re C.B.*, 97-2783 (La. 3/11/98), 708 So.2d. 391. In practice, however, this right is seldom respected or enforced. With inadequate training and heavy workloads, juvenile defenders do little or no disposition investigation or preparation, and fail to actively seek out and advocate for appropriate treatment and placement alternatives. Defense counsel frequently abandon their duties to juvenile clients at the conclusion of the adjudication hearing, relying on the court and the Office of Youth Services to determine proper disposition. Because Louisiana has only a limited number of community-based programs capable of addressing the rehabilitative and treatment needs of juveniles, a higher number of juveniles are held in custodial detention or incarcerated in state facilities at taxpayer expense. Reports have documented that the poor treatment juveniles receive while in custodial detention or while incarcerated in state prisons often prevents juveniles from reaching their rehabilitation and treatment goals, and significantly increases the risk that they will re-offend and remain involved in the juvenile justice system. Approximately 90% of children in Louisiana's prisons are not represented by counsel.

9. EDUCATIONAL ADVOCACY:

The indigent defense system advocates for the educational needs of clients.

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Comments: Louisiana's indigent defense system is failing in its responsibility to advocate for the educational needs of its juvenile clients. Because defense counsel are not trained regarding the educational setting and remedies available to juvenile clients, and rarely advocate for an appropriate educational environment at disposition, the specific educational needs of individual juvenile clients frequently go unaddressed. And although Louisiana's indigent defense system is uniquely positioned to intervene on behalf of children and advocate on systemic educational issues, it has consistently failed to do so. As a result, without the zealous eye of counsel to safeguard the rights of juveniles, some schools have placed alternative and special education programs in trailers, segregated from the regular school setting by chain-link fences; juveniles are rarely represented in educational proceedings such as expulsions and suspensions; and the "schoolhouse to jailhouse" pipeline in Louisiana feeds more and more children into the delinquency system, with schools being the largest single referring agency for delinquency prosecutions in some jurisdictions.

10. SYSTEMIC ADVOCACY:

The indigent defense delivery system must promote fairness and equality for children.

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Comments: As in the adult system, juvenile defenders should be equal partners in the juvenile justice system with the judiciary and prosecutors. In practice, juvenile defenders have little or no meaningful voice in policy decisions affecting the administration of indigent defense and delinquency representation. Little systemic advocacy has been undertaken by the indigent defense system on related issues that affect juvenile clients, and community advocacy by defense counsel to improve the educational, mental health and other treatment services available to their clients is intermittent and inconsistent.

“...from a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”

***United States Supreme Court Justice Anthony Kennedy,
Roper v. Simmons (2005)***

“[t]he unique nature of the juvenile system is manifested in its noncriminal, or civil, nature, its focus on rehabilitation and individual treatment rather than retribution, and the state’s role as *parens patriae* in managing the welfare of the juvenile in state custody.”

In re C.B., 97-2783 (La. 3/11/98), 708 So.2d. 391



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The Louisiana Justice Coalition (LJC) will ensure the creation of a fully funded, statewide indigent defense system that complies with the American Bar Association’s *Ten Principles of a Public Defense Delivery System*. LJC has initiated a comprehensive public education campaign to highlight the crisis in Louisiana’s indigent defense system and bring about reform. The campaign will create a sustained base for coalition members to continue to advocate for fundamental fairness in Louisiana’s criminal justice system for all of our citizens.

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