

THE ABA “TEN PRINCIPLES OF A PUBLIC DEFENSE
DELIVERY SYSTEM”: HOW CLOSE ARE WE TO BEING ABLE
TO PUT THEM INTO PRACTICE?*

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I. OVERVIEW

As part of the Gideon Initiative launched by the Bureau of Justice Assistance (BJA) in 2013 in commemoration of the fiftieth anniversary of the *Gideon*¹ decision, American University (AU), in partnership with the National Legal Aid and Defender Association (NLADA), launched the Right to Counsel/Ten Principles Technical Assistance Project designed to assist public defense providers to enhance their ability to adhere to the “Ten Principles of a Public Defense Delivery System” (Ten Principles or Principles), articulated by the American Bar Association (ABA) over a decade ago.² The project began its services with a national survey of public defense providers to obtain their perspectives on the degree to which they were able to adhere to the Ten Principles, including selected operational “benchmarks” referenced in the commentary (see Appendix) to each of the Principles, as well as obstacles they were encountering, promising practices they had developed, and areas for which technical assistance would be useful. The survey was distributed to over 1150 public defense providers working in a wide range of contexts for indigent defense service delivery—governmental and nongovernmental defender offices, court-

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¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

² American Bar Association. (2002). *Ten principles of a public defense delivery system*. Chicago, IL: American Bar Association. Retrieved from http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.auth_checkdam.pdf.

appointed counsel systems, contract defender systems, and others—in an effort to obtain as broad a perspective as possible on the degree to which public defense providers felt they were able to adhere to the Ten Principles, challenges they were addressing, and areas for which technical assistance might be useful—whether through information sharing, interactive web discussions, and/or focused assistance to address specific topic areas.

The survey initiative represented the first national effort to obtain a self-assessment by public defense providers of both their ability to adhere to the Ten Principles as well as the day-to-day impediments they are dealing with so that realistic priorities for follow-up action and appropriate technical assistance support could then be developed and carried out.

II. METHODOLOGICAL ISSUES

Methodologically, the survey effort presented a number of challenges, many of which resulted in some deviation from traditionally accepted social science research practice. What had seemed at the start to be a straight-forward effort at information gathering to better understand the situational context in which public defense services were being provided became entangled with unanticipated problems arising from the wide range of contexts in which public defense services were being provided; the lack of readily available information on overall caseloads in the jurisdictions and those requiring public defense services (versus the specific caseload that the respondent handled); and the degree of familiarity of respondents regarding the ABA Principles, their intent and their application. Among the challenges the survey effort presented included: (a) developing the survey instrument to yield both perceptions as well as the operational information necessary to identify technical assistance needs since many public defense providers were not aware of the Ten Principles or were unfamiliar with what achievement entailed, (b) identifying a cross section of public defense providers for survey distribution since there exists no comprehensive list of attorneys providing public defense services in the United States, and (c) subsequently analyzing the survey results to isolate the systemic issues (e.g., factors relating to “independence” and quality of defense services) relevant to implementing the Ten Principles from the numerous tangential problems being reported. These are discussed briefly below.

A. Designing the Survey to Yield Operational Information

Each of the Ten Principles provides a general statement(s) regarding critical elements associated with effective public defense services without any additional benchmarks to measure adherence. Simply measuring public defense providers' perceptions regarding their adherence to each of the Principles, however, would not provide information relating to the operational context in which survey respondents worked or a frame of reference for identifying technical assistance needs. It would also not "educate" the respondent in terms of the intent of each Principle to help the respondent better understand what was entailed in adherence and determine the degree to which the respondent was complying as well as potential technical assistance that might be useful. This "educational component" of the survey was also important to promote a consistent frame of reference for respondents' comments to survey questions. In order for the survey to yield more than "perceptions," the commentary and supporting documents for each of the Principles were therefore reviewed to develop a brief list of follow-up survey questions to highlight operational "benchmarks" that could further document the intended application of each Principle.³ The addition of "operational benchmarks" for each of the Principles made it possible to both ascertain respondents' *perceptions* regarding the ability of their offices to adhere to each Principle as well as to match respondents' *perceptions* with the operational context in which the respondent worked.

B. Limitations Regarding the Pool of Public Defense Providers Receiving the Survey

With no central repository of "public defense providers" existing in the United States, recipients of the survey were limited to those who could be identified, primarily through public sources, including state-by-state web searches and inquiries to courts, county government agencies, state and local public defense offices, and word-of-mouth. Although the survey was sent to public defense providers in every state, the distribution did not reflect a statistically developed sampling pattern; rather, the survey was distributed to all public defense providers who could be located in a given jurisdiction. In some states the survey was therefore sent to

³ See Appendix.

only a few providers; in other states, it was sent to significantly more. Despite intensive effort to develop the survey distribution list, it should be noted that the survey was sent to only a small segment of public defense providers compared to the (yet to be identified) universe of all attorneys providing public defense services. The survey responses, therefore, reflect the comments of a small slice of those involved with the provision of public defense services who could be readily identified and whose perspectives are nevertheless extremely valuable. Hopefully future research efforts of this type will be able to reach a broader segment of attorneys providing public defense services—in particular those working as assigned counsel, especially those in jurisdictions without organized assigned counsel offices.

C. Limitations in Achieving a Cross Section of Public Defense Provider Perspectives

Given the limitation in survey distribution noted above, it is not surprising that a high percentage (75%) of survey respondents worked in governmental public defense offices, with only 10% working as contract or assigned counsel. As noted above, this profile of defense service delivery systems reflected among the survey respondents is at odds with the universe of public defense providers in the United States, well over half of whom are estimated to be working as assigned counsel in “unmanaged” assigned counsel systems.⁴ And, because the survey recipients (and respondents) represented public defense providers who were the easiest to identify, their comments cannot be presumed to reflect the full range of operational issues relevant to the universe of all public defense service providers in the United States. While the 386 responses from public defense providers included responses from providers in every state plus the District of Columbia, there was no pattern in terms of the numbers of responses per state; for some states only two to three responses were received while for others,

⁴ Cooper, C. (2014). *Volume 1: Adherence of public defense providers to the ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office; Cooper, C. (2014). *Volume 2: Adherence of public defense providers to ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office; Cooper, C. (2014). *Survey Report: Highlights—Adherence of public defense providers to the ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office. Retrieved from <http://jpo.wrlc.org/>.

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responses totaled twenty or more.

D. Interpreting Survey Results

Despite the limitations in identifying the universe of attorneys providing public defense services, the survey results provide a valuable perspective on the operational contexts in which public defense providers are working and the first national self-assessment of the day-to-day challenges they are encountering. Not all survey respondents provided comments regarding the degree to which they felt their offices were able to adhere to all of the Ten Principles. In part, response rates may have been a reflection of respondents' greater or lesser familiarity with individual Principles. In fact, almost half of the respondents indicated that they were not familiar with the Ten Principles prior to receiving the survey. A number of respondents who did not provide comment on the degree to which they felt their offices *adhered* to the Ten Principles still provided comment on the degree to which they felt their office's operations reflected achievement of the operational benchmarks associated with these Principles.

The original audience intended for application of the survey results and the technical assistance follow-up to be provided were public defense service providers who were assumed to be in the best position to promote adherence to the Ten Principles. However, the extensive commentary survey respondents provided regarding operational issues they were addressing in regard to adhering to each of the Principles⁵ also highlighted broad, systemic problems affecting state and local justice systems which required interagency and collaborative leadership and action at multiple levels to address. A common theme of these responses is the need to promote the organizational context and structure for effective public defense services—the underlying theme of the Ten Principles as well. This audience of justice system and nonjustice system leaders will also need to be a prime focus for technical assistance and related efforts.

III. SURVEY FORMAT

As noted earlier, in designing the survey, effort was made to both ascertain respondents' *perceptions* regarding the ability of their

⁵ Cooper, C. (2014). *Volume 1: Adherence of public defense providers to the ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office.

offices to adhere to each Principle as well as to match respondents' *perceptions* with the operational context in which the respondent worked. The commentary and supporting documents for each of the Principles, therefore, provided the foundation for subsequently framing selected follow-up questions to determine the presence of relevant operational "benchmarks" for each Principle.

The survey consisted primarily of short answer questions on each Principle, each with the following three-part format: (1) statement of the Principle; (2) questions relating to the degree of adherence to selected "operational benchmarks"⁶ referenced in the commentary for each Principle, requesting respondents to indicate the degree to which the "benchmark" was practiced in their respective offices by selecting "always," "often," "sometimes," "rarely," and "never"; and (3) a final question as to the degree to which the respondent perceived his/her office adhering to each Principle, with response choices in terms of "completely," "mostly," "somewhat," "slightly," or "not at all."

Additional questions relating to "issues being addressed" and "strategies that had proven effective" were also included for each Principle and generated extensive comment.⁷

IV. SURVEY RESPONDENTS: DEMOGRAPHICS

A. Number of Full-Time Attorneys in Public Defense Offices of Survey Respondents and Population Size of Jurisdictions Served

Over half of the survey respondents (53%) were working in either smaller (one to ten full-time attorneys) or larger offices with over fifty attorneys. While 45% of the respondents worked in offices serving populations of fewer than 250,000, over 20% worked in offices serving populations over 750,000.⁸ There appeared to be no

⁶ See Appendix.

⁷ The survey responses in terms of perceptions regarding adherence to each of the Ten Principles and to the associated operational benchmarks are reported in Volume One of the survey report. Cooper, C. (2014). *Volume One: Adherence of public defense providers to the ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office. Survey respondents' comments regarding relevant issues being addressed, strategies that have proven effective, relevant resources, and technical assistance needs are reported in volume two. Cooper, C. (2014). *Volume Two: Adherence of public defense providers to ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office.

⁸ See Table 1.

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clear correlation between the number of full-time attorneys employed in respondents' offices and the population sizes of the jurisdiction they served.

Table 1: Office Sizes and Populations Served

Office Size of Respondents

<u>Number of Full-Time Attorneys</u>	<u>Number (Percent) of Respondents</u>
One to five full-time attorneys	77 (20%)
Six to ten full-time attorneys	58 (15%)
Eleven to twenty full-time attorneys	57 (15%)
Twenty-one to thirty full-time attorneys	23 (2%)
Thirty-one to fifty full-time attorneys	22 (2%)
Fifty-one or more full-time attorneys	36 (18%)
<u>Did not provide information</u>	<u>113(29%)</u>
TOTAL	386 (100%)

Population Size of Jurisdictions Served by Respondents' Offices

<u>Population Served by Respondents' Offices</u>	<u>Number (Percent) of Respondents</u>
Under 100,000	100 (26%)
100,001–250,000	72 (19%)
250,001–500,000	43 (11%)
500,001–750,000	21 (5%)
750,001–1,000,000	26 (7%)
Over 1,000,000	53 (14%)
<u>Did not provide information</u>	<u>71 (18%)</u>
TOTAL	386 (100%)

B. Types of Cases Handled by Survey Respondents

Almost all of the 386 respondents were handling a combination of felony, misdemeanor, and juvenile cases. Most were also handling a range of other criminal, quasi-criminal, and civil matters including civil commitments, extradition proceedings, direct appeals, postconviction matters, contempt, abuse and neglect, probation/parole revocations, and sexual offender classification or commitment hearings. Over half (58%) of the respondents reported handling at least eight different case types simultaneously.

Although almost half of the respondents (181) reported handling

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capital cases, only four of these respondents reported working exclusively on capital cases.⁹ The remaining 177 respondents handled capital cases in addition to other felony and misdemeanor cases. Although most of the respondents handled juvenile matters, none handled juvenile cases exclusively. Only two respondents handled felony cases exclusively and one respondent handled misdemeanor cases exclusively.¹⁰

Table 2: Number of Different Case Types Being Handled by Survey Respondents

<u>Number of Case Types Being Handled</u>	<u>Number of Respondents</u>	<u>Percent of Respondents</u>
Four or less	37	10.2%
Five	28	7.7%
Six	36	9.9%
Seven	40	11.0%
Eight	49	13.5%
Nine	51	14.0%
Ten	49	13.5%
Eleven	36	9.9%
Twelve	24	6.6%
Thirteen	8	2.2%
Fourteen or more	6	1.6%
<u>Did not provide case type information</u>	<u>12</u>	<u>3.3%</u>
TOTAL	386	100%

V. KEY FINDINGS EMERGING

Given the limitations surrounding the survey effort, the results have nevertheless provided a valuable snapshot on a number of levels regarding the operational context in which public defense providers are working and challenges that must be addressed to provide effective public defense services, many of which go well beyond what public defense providers can do on their own. Broadly stated, these include: lack of adequate understanding on the part of many public defense providers themselves as to what is entailed in adhering to each of the Ten Principles (as noted earlier, over half of the respondents were not familiar with them prior to receiving the

⁹ Two of these respondents were from Virginia, one was from Texas, and the fourth respondent did not provide information regarding his/her jurisdiction.

¹⁰ See Table 2.

survey); lack of understanding on the part of other justice system officials—judges and prosecutors in particular—as to what is truly required to achieve the Ten Principles; and, most important, lack of an adequate organizational structure (and infrastructure) to promote effective public defense services—a situation that will require attention from policy makers at all levels, not simply public defense providers.

A. Reported Ability to Adhere to the Ten Principles and Apply Them in Practice

Analysis of respondents' reported ability to adhere to each of the Ten Principles, along with the degree to which they reported being able to achieve the operational benchmarks (e.g., apply the principles in practice) indicated a significant “disconnect” between perceptions regarding adherence to each Principle and the reality of everyday practice. This disconnect highlights the critical need for elaboration on what is, in fact, envisioned by a public defense delivery system operating in line with the Ten Principles. The extensive comments respondents provided regarding the challenges their offices were addressing vis-à-vis each of the Principles,¹¹ and the common themes that run through these comments, briefly referenced here, provide a ready point of departure to begin this clarification.

Table 3 below provides a summary of respondents' comments regarding adherence to each of the Ten Principles and associated operational benchmarks. While respondents' comments are reported in the aggregate, comment is also provided, where applicable, regarding observations on any distinctions in comments based on (a) the number of full-time employees in the respondent's office, and/or (b) the population size of the jurisdiction served by the respondent's office. Because the overwhelming majority of respondents were from organized defender offices and most respondents were handling multiple case types, responses based on “type of system” and “types of cases handled” were not separately reported. In terms of analysis of reported familiarity with the Ten Principles by respondents in terms of their office size or size of population served, responses ranged between approximately 45%

¹¹ See Cooper, C. (2014). *Volume 2: Adherence of public defense providers to ABA Ten Principles: Perceptions, benchmarks achieved in practice, issues encountered, and technical assistance needs emerging*. Washington, DC: American University Justice Programs Office, at Appendices C and D.

and 90% with greater familiarity reported by public defense providers in larger size offices and jurisdictions.

The only Principle with which a significant percentage of respondents reported adhering to (either “completely” or “mostly”) was Principle One (Independence), with which over two thirds (70%) of the respondents reported adherence. Interestingly, Principle One was also the Principle that received comments regarding adherence from the highest percentage of respondents—over half, with only 20% of respondents not providing any assessment.

The frequency with which respondents provided an assessment of the degree to which their offices adhered to the other nine Principles varied between 25% (Principle Eight) to 46% (Principle Two). For Principles Two (Involvement of the Private Bar), Three (Eligibility), Six (Training), Seven (Vertical Representation), and Nine (Continuing Legal Education), reported adherence ranged between 41% and 46%. For Principles Five (Caseload/Workload Limits) and Ten (Supervision), reported adherence was 30%; for Principle Eight (Parity), reported adherence was 26%.¹²

Table 3: Survey Respondents’ Reported Adherence to Ten Principles

Principle Number:	1	2	3	4	5	6	7	8	9	10
Completely	141 37%	80 21%	84 22%	60 16%	48 12%	69 18%	67 17%	22 5.6%	88 23%	38 10%
Mostly	127 33%	96 25%	90 23%	110 28%	71 18%	92 24%	97 25%	79 20%	72 18%	79 20%
Somewhat	29 8%	38 10%	29 7.5%	27 7%	36 9%	16 4%	16 4%	45 12%	21 5%	36 9%
Slightly	6 1.5%	8 2%	12 3%	8 2%	16 4%	4 1%	4 1%	23 6%	6 3%	12 3%
Not at all	4 1%	13 3%	2 .5%	0 0%	14 3.6%	4 1%	3 .7%	10 3%	4 2%	9 2%
Did not provide info	79 20%	151 39%	169 44%	181 47%	201 52%	201 52%	199 51%	207 53%	195 50%	212 55%
Total	386 100%									

While there are many factors that can account for the variations relating to respondents’ reported adherence to each of the

¹² See Table 3.

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Principles, what is particularly noteworthy is the significantly higher rates of perceived adherence to each of the Principles compared with reported achievements of the operational benchmarks associated with each of the principles. These comparisons can provide insights for further technical assistance and training that can be useful. Of particular significance is whether public defense providers—as well as the wider community of justice and nonjustice system officials who, in fact, directly or indirectly shape the environment in which public defense services are provided—fully understand the import of each of the Principles and the systemic framework and infrastructure necessary to put the Principles into practice.

Table 4: Reported Adherence to Ten Principles Versus Achievement of Benchmarks

Principle One (Independence):

Adherence to Principle	70%
Achievement of Benchmarks	44% (Average)

Principles Two (Involvement Of The Private Bar), Three (Eligibility), Four (Confidential Meeting Facilities), Six (Training), Seven (Vertical Representation), and Nine (Continuing Legal Education):

Adherence to Principle	Between 41% and 46 %
Achievement of Benchmarks	31%–35% (Average)

Principle Five (Caseload/Workload Limits) and Principle Ten (Supervision):

Adherence to Principle	30%
Achievement of Benchmarks	20–22% (Average)

Principle Eight (Parity):

Adherence to Principle	26%
Achievement of Benchmarks	20% (Average)

Turning to the respondents' reported ability to comply with the operational benchmarks associated with each of the Principles, the difficulties public defenders are encountering in applying the Principles to practice become further apparent. Generally, reported ability to comply with the operational benchmarks for each

Principle was rated at least ten percentage points lower than the perceived adherence to the Principle.¹³

B. Other Findings

Differences between perceived adherence to each Principle and lower reported achievement of associated operational benchmarks referenced in the commentary suggest that most public defense providers do not fully understand what is entailed in adhering to the Ten Principles. Most are also dealing with a wide range of immediate issues in terms of adhering to the Ten Principles stemming from lack of adequate funding, understaffing, heavy caseloads, and the general absence of adequate infrastructure, including essential management data, to address these issues.

Most important, however, the perceptions, insights, and day-to-day challenges reported by the survey respondents highlight fundamental systemic issues that affect the entire justice system and impede both the achievement of the Ten Principles as well as the fair and timely administration of justice generally. This situation highlights the reality that the ability of public defense providers to adhere to the Ten Principles and to meet the associated “operational benchmarks” in many instances depends upon the systemic framework in which their offices operate rather than any actions public defense providers can take on their own.

Developing the sound organizational and systemic structure needed for an effective public defense delivery system to operate, consistent with the Ten Principles, will require collaborative action on the part of justice and nonjustice system “stakeholders” on multiple levels, with particular focus on the following issues:

- pressing general issues of overload and dysfunction in court systems throughout the country and in which many public defense providers are working;
- increasing criminalization of offenses that has occurred over the past years through legislative “creep”; and
- inefficiencies, protracted delays, and consequent resource—as well as legal and human rights—implications in the pretrial process where decisions on release, diversion, and dismissal are often delayed, resulting in multiple continuances of scheduled court events that unnecessarily burden public defense offices as well as the

¹³ See Table 4.

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entire system, not to mention the defendants.

VI. THE ROLE OF TECHNICAL ASSISTANCE

Sixty percent of the survey respondents expressed an interest in receiving technical assistance. Most frequent areas of interest included: (1) information exchange and networking, (2) listservs on specialized topics, (3) receiving examples of best practices in various topic areas, (4) obtaining tools for improved office management and caseload management, and (5) guidance on accessing grants. What is particularly noteworthy about the extent of interest in technical assistance expressed by survey respondents is that it has been accompanied by contributions of sample operational materials, website references, and other resources survey respondents sent as an initial contribution for an interactive website that the AU/NLADA project has established to promote information exchange among public defense service providers. Promoting forums for dialogue among public defense providers and others regarding critical issues relating to the provision of public defense services, including achievement of the Ten Principles, will be an important element in breaking down the isolation in which many public defense providers appear to be working, as reflected in the common themes of their individual comments on issues their jurisdictions are addressing.

VII. MOVING FORWARD

Both the survey itself and the process for developing and distributing it have provided important lessons upon which to build. First, we don't know who is providing public defense services, let alone how to reach them and bring them under the fold of the Ten Principles. This is an issue that needs to be promptly addressed. Second, there is a glaring gap between what public defenders think they do and what they actually do, as measured by the disconnects between perceptions regarding the degree to which the Ten Principles are adhered to versus the degree to which the associated operational benchmarks are complied with. These disconnects also highlight the lack of full understanding on the part of at least some public defense providers as to what adherence to the Ten Principles actually entails. Third (and related), achievement of the Ten Principles will depend far more on the efforts of executive, legislative, and judicial system leaders to create a fair and efficient system of justice in which effective defense services can be provided,

than on actions that public defense providers can take on their own. Finally, closer review of the Ten Principles also makes it apparent that they are not of equal weight and that the most critical principle—the Principle that provides the foundation for achieving the others—is Principle One: Independence. While Principle One does not provide detailed discussion of the indicia of independence, it would appear that key elements include: (1) recognition of public defense providers as equal partners in all matters relating directly and indirectly to justice system issues; (2) the authority to govern and set policy, standards of practice, and resource requirements for the defense function; and (3) the attributes associated with the prosecutorial function referenced in Principle Eight, Parity.

Achieving independence for the public defense function will require the collaborative energy of public defense providers coupled with that of policy makers at all levels—judges, state and local legislative representatives, and executive branch officials as well as leaders from a wide cross section of the community. Launching this collaborative effort will not be an easy feat. As a start, it will require a multifaceted educational initiative to raise awareness and understanding of why having an independent public defense function is of critical importance to everyone in the United States, not simply the indigent defendant. It will also need to shift primary reliance on the public defense community for achieving “independence” to actively engaging judicial system leaders—judges, prosecutors, and others, as well as policy makers outside of the judicial system—to create the necessary organizational structure to provide for the “independence” necessary to deliver public defense services as envisioned by the Sixth Amendment. Two audiences in particular need to be reached: (1) public defense providers regarding the nature and level of services necessary to adhere to each Principle; and (2) the array of policy makers and community leaders who are in positions to ensure that the systemic structure required to provide for the independence of the defense function and to enable public defense providers to implement the Principles is in place. With “independence,” achievement of the other Principles can occur, including caseload limits, standards of practice, continuous representation, training, and supervision.

APPENDIX

ABA Ten Principles of a Public Defense Delivery System¹⁴
(with operational benchmarks included in the AU/NLADA “Ten Principles” survey)

PRINCIPLE ONE:

The defense function, including the selection, funding, and payment of defense counsel, is independent.

Commentary: The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality services a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

Operational Benchmarks Used in the Survey:

- *existence of a board overseeing public defense services*
- *method of selection of public defense program director or administrator*
- *perceptions regarding the role of merit vs. political influence in selecting:*
 - *the defense program director; and*
 - *staff attorneys*
- *degree to which judges exercise greater influence over attorneys in their public defense programs than they did for privately retained attorneys*
- *degree to which the office endeavored to ensure diversity among attorneys*

PRINCIPLE TWO:

Where the caseload is sufficiently high, the public defender delivery system consists of both a defender office and the

¹⁴ American Bar Association. (2002). *Ten principles of a public defense delivery system*. Chicago, IL: American Bar Association.

active participation of the private bar.

Commentary: The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

Operational Benchmarks Used in the Survey:

- *the primary system for providing public defense in the jurisdiction*
- *the existence of an assigned counsel or contract plan for providing public defense services and, if so, whether the plan was administered by a full-time administrator who was an attorney and familiar with the practice requirements in the jurisdiction*
- *reflected a “coordinated plan” for the appointment process to carry out the state’s responsibility for defense services*
- *the existence of state funding for defense services*
- *a statewide structure for ensuring uniform quality statewide, including: the existence of applicable practice standards, a written conflict of interest policy, coordination of training programs with the local bar, and information and resource sharing (brief banks, etc.)*

The survey also asked respondents to provide information regarding the annual criminal caseload in their jurisdiction and the number/percent handled by public defense providers.

PRINCIPLE THREE:

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.

Commentary: Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

Operational Benchmarks Used in the Survey:

- *the existence of published eligibility criteria*
- *ease of public access to information on public defense services and access to application and other information*
- *the availability of counsel immediately following arrest, at*

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- *the bail hearing, upon detention (or booking)*
- *the frequency with which individuals appear without counsel*

PRINCIPLE FOUR:

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Commentary: Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

Operational Benchmarks Used in the Survey:

- *ability of counsel to have confidential access to the client*
- *the availability of private meeting space in jails, prisons, courthouses, and other locations where counsel could confer with their clients*
- *the maintenance of guidelines, checklists, and other information regarding the information covered in the client interview(s) and time elapsing between appointment and initial client meeting, preliminary hearing, and trial date.*

PRINCIPLE FIVE:

Defense counsel's workload is controlled to permit the rendering of quality representation.

Commentary: Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

Operational Benchmarks Used in the Survey:

- *the office had a system for keeping track of the number of cases assigned to each attorney*
- *information regarding the annual caseload for individual public defense attorneys in the office was readily available*

- *supervisors or program administrators monitored the attorney caseloads or workloads*
- *the public defense attorneys kept track of their time*
- *caseload or workload limits were established for the office and, if so, (a) the factors considered in setting these limits, and (b) the frequency with which these limits were followed*
- *respondents could report information on the office's annual caseload (see also Principle 3)*
- *the office had mechanisms for refusing cases if the caseload or workload limit was reached and, if so, (a) the mechanism(s) used, and (b) whether the judiciary is supportive of the public defense provider's refusal to accept additional cases because the caseload/workload limit has been reached*
- *confidential facilities for meeting and communicating with clients were available (see also Principle 4)*
- *essential information was gathered during the initial interview (see also Principle 4)*

PRINCIPLE SIX:

Defense counsel's ability, training, and experience match the complexity of the case.

Commentary: Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

Operational Benchmarks Used in the Survey:

- *the existence of mandatory training for new, entry-level defense lawyers and, if such training existed, (a) the topics covered, (b) the number of hours of training required, and (c) whether training is provided BEFORE an attorney is assigned to represent a defendant*
- *whether the training level of the attorney matches the complexity of cases to which he/she is assigned*
- *whether the experience level of the attorney matches the complexity of the cases to which he/she is assigned*
- *the nature of experiential training opportunities offered to attorneys in the respondents' offices, including (a) opportunities for less experienced attorneys to observe more experienced attorneys in court, (b) opportunities for less experienced attorneys to second chair on more complex*

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cases, and (c) mentorship opportunities

- *whether a defense attorney can refuse an assignment if the attorney does not feel he/she has the training or experience to handle a particular case*

PRINCIPLE SEVEN:

The same attorney continuously represents the client until completion of the case.

Commentary: Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

Operational Benchmarks Used in the Survey:

- *existence of vertical representation in misdemeanor cases*
- *existence of vertical representation in felony cases*
- *existence of vertical representation in juvenile cases*
- *existence of a special unit to handle initial bail or bond hearings*
- *where transfers among attorneys occur, extent of information provided to the new attorney*
- *Where transfers among attorneys occur, method used to inform the client of the transfer*

PRINCIPLE EIGHT:

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Commentary: There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload

increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

Operational Benchmarks Used in the Survey:

- *perceptions of parity regarding key elements of operational needs (e.g., access to technology, criminal history information, criminal justice databases, legal research tools, travel budgets, paralegals, forensic labs, libraries, office facilities, investigators, and experts)*
- *perceptions of parity regarding salary and fringe and related benefits*
- *provisions of attorney contracts for public defender services relating to performance and workload requirements and support services*
- *perceptions as to whether public defense offices are included in criminal justice policy development and decision making*
- *perceptions as to whether the public defense program is considered an “equal partner” with the prosecutor in the local criminal justice system*

PRINCIPLE NINE:

Defense counsel is provided with and required to attend continuing legal education.

Commentary: Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

Operational Benchmarks Used in the Survey:

- *requirements for non-entry-level attorneys to attend continuing training/education programs*
- *the existence of a training director/coordinator*
- *whether the office had mechanisms for alerting defense lawyers to new decisions on criminal procedure or substantive criminal law*

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PRINCIPLE TEN:

Defense counsel is supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards.

Commentary: The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

Operational Benchmarks Used in the Survey:

- *the existence of written guidelines or procedures for supervising public defense attorneys*
- *the degree to which the supervision process entails:*
 - *review of case files*
 - *information gathered from judges*
 - *information gathered from clients*
 - *direct observation in court*
- *the frequency with which attorney reviews were conducted*