

Juvenile Defense Standards

A Framework for the Specialized Representation of Youth

ISSUE

The Supreme Court's 1967 ruling in *In re Gault* established the right for all children to have counsel in delinquency proceedings,¹ but the nature of that right has often been unclear or misunderstood, even by some juvenile defenders charged with protecting the liberty and interests of their young clients. Juvenile defense standards provide juvenile defenders with clarity about their multi-faceted ethical duties and professional responsibilities in representing young clients. Defenders who have clear guidance on their duties and responsibilities can strengthen their own individual practice, protect their clients' due process rights, work effectively on collaborative justice issues,² and advocate for systemic reforms that elevate the practice of juvenile defense across jurisdictions.

NATIONAL SNAPSHOT

Prior to the release of the *National Juvenile Defense Standards (Standards)* in February 2013,³ there were no comprehensive national standards geared exclusively at informing the ethical and professional practice of juvenile defense attorneys. Other ethical and professional standards that exist at the national level address *systemic issues* and provide some *policy guidance* for the field of juvenile defense⁴ but do not focus on the *practice* of delinquency representation by defenders.

Ethical and professional standards specific to juvenile defenders are well established in a few jurisdictions at the state and local levels but completely lacking in many others.⁵ For example, the District of Columbia was among the first jurisdictions to promulgate juvenile-specific practice standards with the 2004 release of *Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision (D.C. Standards)*.⁶ The *D.C. Standards* set forth ethical obligations specific to the juvenile defender; mandate specific

actions to be taken at disposition and post-disposition hearings; and require specialized training, including training in mental health and special education.⁷ Other states, such as Florida, Louisiana, and Pennsylvania, have also developed standards specific to juvenile defense, but the overwhelming majority of states and local jurisdictions have no ethical and professional standards specific to the field.

WORKING INNOVATIONS

National

In February 2013, the National Juvenile Defender Center (NJDC) released the *Standards*—a set of best practices focused on juvenile defenders' ethical and professional responsibilities to their child clients at every stage of system involvement. The *Standards* were developed by a national multi-disciplinary team of experts and consultants over a five-year period with support from MacArthur Models for Change and the Juvenile Indigent Defense Action Network (JIDAN).⁸

The *Standards* are rooted in an acknowledgement that it is critically important for juvenile defenders to develop the specialized skills required to navigate the complexities of the juvenile justice system. In an effort to advance the goal of developing a specialized practice of juvenile defense, the *Standards* integrate constitutional and state law, codes of professional responsibility, and a growing body of scientific knowledge about adolescent development. The *Standards* also recognize "the important and vital role that juvenile defenders must play in the discourse on public policy and juvenile justice reform."⁹

The *Standards* set forth a national vision for the role of the juvenile defender and aim to strengthen and clarify juvenile defense practice and policy. States and local jurisdictions looking to promulgate standards and best practices for juvenile defenders can look to the *Standards*

for guidance. The *Standards* can also be used as an evaluation tool or support mechanism for defender supervisors, an assessment tool to measure the level of performance and delivery of legal services for individual defender offices, and a means to address the pervasive lack of leadership in the field.

The release of the *Standards* has been met with overwhelming interest from the juvenile defense and juvenile justice communities. To date, thousands of hard copies of the *Standards* have been disseminated to juvenile justice professionals and policy makers across the country.

State

The release of the *Standards* has ignited work in several states—including Indiana, New Mexico, North Carolina, Oregon, Tennessee, and Wisconsin—and at least one local jurisdiction—Allegheny County, Pennsylvania—to develop or update ethical and professional standards specific to juvenile defenders in those jurisdictions. In addition, prior to the release of the *Standards*, juvenile defense stakeholders in Florida, Louisiana, and Pennsylvania¹⁰ had already mobilized to draft standards addressing the ethical duties and responsibilities of juvenile defense counsel:

- **Florida:** Juvenile defense stakeholders from across the state participated in bi-monthly conference calls to examine existing juvenile-specific standards and draft guidelines for Florida. This collaborative work culminated in the *Florida Guidelines of Practice for Attorneys Who Represent Children in Delinquency Proceedings*¹¹—a comprehensive set of guidelines addressing the specific roles and responsibilities of attorneys appointed or retained to represent children in delinquency cases. The Florida Public Defender Association approved the guidelines in 2009, and they have since been widely disseminated to both attorneys and judges across the state.
- **Louisiana:** Under the leadership of the Louisiana Public Defender Board (LPDB)—an executive branch agency charged with improving fairness and accountability in Louisiana’s courts—and with the input of defenders and stakeholders across the state, Louisiana promulgated the *Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings*¹² (*Louisiana Standards*) in 2011. The *Louisiana Standards* are intended to promote zealous representation and professionalism in the representation of children in delinquency proceedings, serve as a performance measure for practicing attorneys, and serve as a resource for trainers and supervisors. The LPDB Compliance Officer and the Deputy Public Defender - Director

of Juvenile Defender Services are responsible for ensuring that District Defenders and their local offices comply with the *Louisiana Standards*.

- **Pennsylvania:** The Juvenile Defenders Association of Pennsylvania developed the *Pennsylvania Performance Guidelines for Quality and Effective Juvenile Delinquency Representation*¹³ (*Guidelines*) “to provide clear standards regarding the ethical duties and responsibilities of juvenile defense counsel.”¹⁴ To this end, the *Guidelines* incorporate principles from state and national rules of professional conduct, along with principles from Pennsylvania’s Juvenile Act and Rules of Juvenile Court Procedure. They also emphasize the defense attorney’s duty to continue representation through every stage of juvenile court proceedings, including post-disposition hearings. The *Guidelines* are used to train new and experienced attorneys and serve as a roadmap for juvenile indigent defense reform initiatives in Pennsylvania.

RECOMMENDATIONS FOR REFORM

Juvenile defense is a specialized practice requiring specialized skills. The demands on juvenile defenders are high. To meet core ethical obligations and provide zealous expressed-interest advocacy, juvenile defenders must enforce due process rights, present the legal and social case, promote accurate decision making, provide alternatives for decision makers, and monitor treatment, after-care, and reentry.¹⁵ In order to elevate the practice of juvenile defense and ensure that the juvenile indigent defense system operates fairly, accurately, and humanely, NJDC recommends that:

- Defender offices and commissions/associations, along with non-profit, advocacy, and community groups, continue to spread the word about the existence of the *Standards* and encourage widespread use among juvenile defenders;
- Defender offices and commissions/associations strive to elevate the practice of juvenile defense by offering trainings and/or information sessions on the substance of the *Standards* and how to best integrate them into everyday practice and policy advocacy efforts;
- State and local governments look to the *Standards* as a model for implementing and reforming performance standards at the state and local level; and
- State and local governments, commissions/associations, and/or councils with oversight authority create positions, or delegate

responsibility to an existing position, dedicated to ensuring that juvenile defense standards are implemented and followed.

CONCLUSION

Juvenile defenders across the country benefit from clarity on the ethical and professional duties required to represent their clients. Defenders who have clear guidance on their duties and responsibilities

can strengthen their own individual practice, protect their clients' due process rights, work effectively on collaborative justice issues, and advocate for systemic reforms that elevate the practice of juvenile defense across jurisdictions. The *Standards* are a great step forward at the national level, and states and jurisdictions should follow suit and provide this critical guidance to juvenile defense attorneys at the local level.

¹ In *Re Gault*, 387 U.S. 1, 36 (1967) (noting that juveniles need “the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [they have] a defense and to prepare and submit it” (footnote omitted)); *see also* NAT'L JUVENILE DEFENDER CTR. & NAT'L LEGAL AID & DEFENDER ASS'N, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS (2008) [hereinafter TEN PRINCIPLES]; NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS (2012) [hereinafter NAT'L JUV. DEF. STDS.].

² Collaborative justice issues refer to systemic issues or problems requiring a coordinated or collaborative response (*i.e.*, beyond a single agency or entity).

³ *See generally* NAT'L JUV. DEF. STDS., *supra* note 1.

⁴ *See* AM. BAR ASS'N, JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES (1980) [hereinafter JUVENILE JUSTICE STANDARDS]; NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES (2005); TEN PRINCIPLES, *supra* note 1.

⁵ Juvenile-specific standards are typically established by legislatures, bar associations, or defender associations.

⁶ LEE F. SATTERFIELD, SUPERIOR COURT OF D.C., ATTORNEY PRACTICE STANDARDS FOR REPRESENTING JUVENILES CHARGED WITH DELINQUENCY OR AS PERSONS IN NEED OF SUPERVISION 8-9 (2004), <http://www.dccourts.gov/internet/documents/0413a.pdf>; *see* Laura Cohen, *New Hope Found in Practice Standards*, 23 ABA CRIM. JUST. MAG. 49 (2009).

⁷ Cohen, *supra* note 6, at 49.

⁸ JIDAN is part of the John D. and Catherine T. MacArthur Foundation's Model for Change Initiative. It was launched in 2008 to develop targeted strategies to improve juvenile indigent defense policy and practice.

⁹ NAT'L JUV. DEF. STDS., *supra* note 1, at 6.

¹⁰ The work to create standards/guidelines in Florida, Louisiana, and Pennsylvania was supported by the JIDAN Models for Change Initiative.

¹¹ FL. BAR STANDING COMM. ON THE LEGAL NEEDS OF CHILDREN, FLORIDA GUIDELINES OF PRACTICE FOR ATTORNEYS WHO REPRESENT CHILDREN IN DELINQUENCY PROCEEDINGS (2010), <http://modelsforchange.net/publications/433>.

¹² LA. PUBLIC DEFENDER BD., TRIAL COURT PERFORMANCE STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN DELINQUENCY PROCEEDINGS (2011), <http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/LPDB%20TCPS%20Children%20In%20Delinquency.pdf>.

¹³ JUVENILE DEFENDERS ASS'N OF PA., PENNSYLVANIA PERFORMANCE GUIDELINES FOR QUALITY AND EFFECTIVE JUVENILE DELINQUENCY REPRESENTATION (2010), <http://www.pabar.org/weblinks/resources/Performance%20Guidelines%20for%20Quality%20and%20Effective%20Juvenile%20Delinquency%20Representation.pdf>.

¹⁴ MODELS FOR CHANGE, INNOVATION BRIEF: RAISING THE STANDARDS OF JUVENILE INDIGENT DEFENSE (2011), <http://www.modelsforchange.net/publications/312>.

¹⁵ NAT'L JUV. DEF. STDS., *supra* note 1, at 8.



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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.