

# PENNSYLVANIA COMMISSION ON CRIME & DELINQUENCY (PCCD) INDIGENT DEFENSE ADVISORY COMMITTEE (IDAC)

## Preliminary Standards\* for Indigent Defense Services in Pennsylvania Approved by the IDAC & Recommended to the Pennsylvania Supreme Court

*April 23, 2024*

### **STANDARD 1: Funding, Structure, and Oversight**

*(Aligned with American Bar Association [ABA] Principle 2: Funding, Structure, and Oversight)*

The responsibility to provide indigent defense representation rests with the state;<sup>1</sup> accordingly, there should be adequate state funding and oversight of Indigent Defense Providers.<sup>†</sup> Where county case volume allows, indigent defense should be a mixed system: primarily dedicated public defender offices,<sup>2</sup> augmented by additional Court Appointed/Conflict Counsel<sup>3</sup> to handle overflow and conflict of interest cases.<sup>4</sup> The compensation for lawyers working for Public Defender Offices should be appropriate for and comparable to other publicly funded lawyers. Public defender salaries and benefits should be no less than the salaries and benefits for prosecutors.<sup>5</sup> Court Appointed/Conflict Counsel should be paid a reasonable fee, in a timely manner, that reflects the cost of overhead and other office expenses, as well as payment for work.<sup>6</sup> Investigators, social workers, experts, and other staff and service providers necessary to indigent defense for all Indigent Defense Providers should also be funded and compensated in a manner consistent with this Principle.<sup>7</sup> There should be at least parity of resources between Indigent Defense Providers and the prosecution.<sup>8</sup>

### **STANDARD 2: Essential Components of Effective Representation**

*(Aligned with ABA Principle 9: Essential Components of Effective Representation)*

Indigent Defense Providers should adopt a client-centered approach to representation based around a client's needs and working with them to achieve their goals.<sup>9</sup> Indigent Defense Providers should have sufficient assistance of investigators, social workers, mitigation specialists, experts, trial litigation support, paralegals, and other specialized professionals necessary to meet indigent defense needs.<sup>10</sup> Funding for such services should be provided to and controlled by Indigent Defense Providers.<sup>11</sup> Additional contingency funding should be made available to support access to these services as needed.<sup>12</sup> Indigent Defense Providers should address collateral issues that are relevant to their clients' cases.<sup>13</sup> Indigent Defense Providers can offer direct assistance with such issues or establish collaborations with, or provide referrals to civil legal services organizations, social services providers, and other lawyers and non-lawyer professionals.<sup>14</sup>

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\* **Note:** The IDAC drew upon the American Bar Association's [Ten Principles of a Public Defense Delivery System](#) for much of the language included within these two approved preliminary standards and related footnotes.

† As used in these standards, this term refers to Public Defender Offices and to programs that furnish assigned lawyers and contract lawyers who provide defense services at public expense.

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<sup>1</sup> Per the ABA [Ten Principles](#): “See *Gideon v. Wainwright*, 372 U.S. 353 (1963) (right to counsel in felony cases); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (right to counsel in misdemeanor cases); *In re Gault*, 387 U.S. 1 (1967) (right to counsel in juvenile delinquency cases); *Alabama v. Shelton*, 353 U.S. 654 (2002) (right to counsel attaches to any case in which there is a potential for active jail or prison time, including suspended sentences). For federal criminal charges, the responsibility for adequate funding and oversight rests with the federal government. Local governments should also provide funding and resources as needed or constitutionally required.”

<sup>2</sup> Per the ABA [Ten Principles](#): “Full-time public defenders, working in a fully staffed office, develop valuable expertise in handling criminal cases and working with persons charged with crimes. *See, e.g., ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“When adequately funded and staffed, defender organizations employing full-time personnel are capable of providing excellent defense services. By devoting all of their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested. By virtue of their experience, full-time defenders also are able to work for changes in laws and procedures aimed at benefiting defendants and the criminal justice system.”)

<sup>3</sup> These include assigned counsel operating pursuant to a defense service contract or similar agreement. Per the ABA [Ten Principles](#): “The appointment process for assigned counsel should be according to a coordinated plan directed by a lawyer-administrator familiar with private lawyers, investigators and other vital defense services in the jurisdiction. *See, e.g., ABA Criminal Justice Standards: Providing Defense Services*, Standard 5-1.2 (“The participation should be through a coordinated assigned counsel system and may also include contracts for services.”)

<sup>4</sup> Per the ABA [Ten Principles](#): “Absent substantial private practitioners to augment the representation of full-time public defenders, public defenders are likely to become overwhelmed with cases. *See id.*, at Commentary to Standard 5-1.2 (“In some cities, where a mixed system has been absent and public defenders have been required to handle all of the cases, . . . [c]aseloads have increased faster than the size of staffs and necessary revenues, making quality legal representation exceedingly difficult.”) In rural areas, it may be appropriate to consider regional [Indigent] Defense Providers. Adherence to all of the Principles is critically important to an effective [indigent] defense system irrespective of whether a jurisdiction relies on public defender offices or solely on a system of appointed counsel.”

<sup>5</sup> Per the ABA [Ten Principles](#): “[Indigent] defense counsel should also receive raises and promotions commensurate with prosecutors and other publicly funded lawyers in order to encourage retention of experienced counsel.”

<sup>6</sup> Per the ABA [Ten Principles](#): “*ABA Criminal Justice Standards: Providing Defense Services*, Standards 5-2.4. The fee rate should be subject to regular increases to ensure the ongoing availability of quality counsel and reviewed regularly. Contract selection should be based on factors such as counsel training and experience in [indigent] defense representation and should not merely be awarded to the lowest bidder. Counsel should not be paid on a flat fee basis as such payment structures reward counsel for doing as little work as possible. *See Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract ‘left the defenders compensated at such a paltry level that even a brief meeting at the outset of representation would likely make the venture unprofitable.’)”

<sup>7</sup> *See* ABA Principle 9 for additional information regarding the importance of these providers.

<sup>8</sup> Per the ABA [Ten Principles](#): “In determining appropriate funding and resources, jurisdictions should consider that while prosecutors can often draw upon separately funded resources for investigations such as police departments and state crime labs, [Indigent] Defense Providers normally must pay for investigative and other ancillary services. In many jurisdictions, defender offices face a significant funding gap with prosecutors despite this distinction. Bryan Furst, [A Fair Fight: Achieving Indigent Defense Resource Parity](#) 9 (Brennan Center for Justice, Sept. 9, 2019) (discussing the lack of investigators and other support staff in public defender offices as compared prosecutorial investigatory resources).”

<sup>9</sup> Per the ABA [Ten Principles](#): “*See* James M. Anderson, Maya Buenaventura & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (Jan. 2019) (assessing the benefits of a client-centered defense model in reducing the length of sentences).”

<sup>10</sup> Per the ABA [Ten Principles](#): “*See* Nat’l Ass’n for Public Defense, [Policy Statement on Public Defense Staffing](#), May 2020.”

<sup>11</sup> Per the ABA [Ten Principles](#): “Under no circumstances should defense counsel be required to bear the cost of experts and other professionals. *See Wash. R. Professional Conduct* 1.8 (“A lawyer shall not . . . make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm . . . to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel.”)

<sup>12</sup> Pennsylvania’s adopted FY 2023-2024 Indigent Defense Grant Program funding framework permits the use of state funding by local Indigent Defense Providers to support a range of defense-related services and personnel, including investigators, experts, and other specialized needs.

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<sup>13</sup> Per the ABA [Ten Principles](#): “In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the U.S. Supreme Court held that, in order to provide effective assistance of counsel, an attorney must provide advice on the potential immigration consequences of a client’s criminal charge. Following *Padilla*, several courts have held that advice on other potential civil consequences of a criminal case is also required. *See, e.g.*, *Bauder v. Department of Corrections*, 619 F.3d 1272, 1275 (11<sup>th</sup> Cir. 2010) (holding that the requirement of advice on non-criminal consequences extended beyond immigration to include civil commitment). Understanding a client’s non-criminal legal issues, may be critical to understanding relevant arguments regarding sentencing, including the appropriateness of diversion or other programs available through the criminal case.”

<sup>14</sup> Per the ABA [Ten Principles](#): “*See* [2012AM107C](#) (urging defender organizations and criminal defense lawyers to create linkages and collaborations with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who can serve, or assist in serving, clients in criminal cases with civil legal and non-legal problems related to their criminal cases, including the hiring of such professionals as experts or, where infrastructure allows, as staff.’). For over 40 years, scholars have recognized the importance of having social workers in defender offices. *See, e.g.*, Charles Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978).”