

REPORT CARD

Louisiana's Indigent Defense System

MARCH 2005

This report card assesses Louisiana's compliance with the American Bar Association's *Ten Principles of a Public Defense Delivery System*. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.

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1. INDEPENDENCE:

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

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Comments: The courts should have no greater oversight of defense counsel than they do of retained counsel or prosecutors. In violation of this principle, judges appoint local indigent defense board members. Furthermore, the policies of local law enforcement and the courts directly impact indigent defense revenue streams, oftentimes preventing public defenders from planning their budgets from month to month.

2. STATEWIDE FUNDING AND STRUCTURE:

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

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Comments: The annotations to this principle require the establishment of a statewide system for ensuring uniform quality, which is adequately funded to ensure fairness, efficiency, and reliability in the criminal justice system. Louisiana has no such statewide system. Because Louisiana's main funding source (court fines on traffic tickets) is unreliable and insufficient, many parishes attempt to contain costs by utilizing flat fee contract systems in which an attorney takes all of the cases in that parish for a fixed fee; such contracting arrangements create a financial disincentive for attorneys to provide adequate representation. Parishes that utilize public defender offices lack sufficient resources to provide adequate representation. There is no uniformity in Louisiana's indigent defense system, with fairness and reliability varying from parish to parish because of the state's inadequate funding structure.

3. PROMPT APPOINTMENT OF COUNSEL:

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.

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Comments: Early appointment allows defense counsel to assist the courts in determining whether a defendant should remain incarcerated before trial at taxpayer expense, and to resolve cases more efficiently. In Louisiana, there is no uniformity as to when defense counsel is appointed. In some jurisdictions, defense counsel is not appointed until the eve of preliminary hearings, several months after arrest. Even where a public defender office is appointed to represent a client at presentment (within 72 hours of arrest), a specific attorney often is not assigned to the case for several months.

4. CONFIDENTIAL COMMUNICATION WITH CLIENTS:

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

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Comments: In Louisiana, high caseloads often prevent defense counsel from spending sufficient time with clients to prepare cases. In some courthouses, there is no private place for defense counsel to meet with clients. Substantive conversations between clients and counsel are often conducted in an open courtroom audible to the courtroom staff, judge, prosecutor, and audience. In addition, sheriff ownership of jail communication companies and high collect call rates eliminate the ability of defense counsel to communicate with clients via telephone.

5. REASONABLE WORKLOAD:

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

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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 150 felonies per year, 200 juvenile cases per year, or 400 misdemeanor cases per year. Reports have documented defender caseloads well in excess of these standards throughout the state. Without binding caseload standards, clients are not given the individualized attention needed to ensure a fair hearing, often delaying the processing of cases and increasing the length of pre-trial detention at taxpayer expense.

6. MINIMUM QUALIFICATIONS:

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

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Comments: Defense counsel should have the ability, training and experience necessary to handle cases assigned to them. While minimum qualification standards exist in Louisiana for capital cases, they are insufficient to ensure that clients are given due process. There are no minimum qualification standards for defense counsel in felony, misdemeanor or juvenile cases, and flat-fee contracts do not include qualification requirements. The qualifications of defense counsel vary throughout the state, with more prosperous parishes able to offer higher compensation and retain more skilled attorneys.

7. CONTINUOUS REPRESENTATION:

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

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Comments: It is common practice in most Louisiana judicial districts to have a public defense "assembly line," in which one attorney handles initial hearings, and another handles cases that go to trial. It is not unusual for a defendant to be represented by multiple attorneys before a case is resolved. This continuous change in representation is not cost-effective, inhibits the establishment of an attorney-client relationship, fosters a lack of accountability and responsibility for the outcome of a case, increases the likelihood of omissions of necessary work, and demoralizes clients as the case is passed down the assembly line.

8. RESOURCE PARITY:

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.

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Comments: There is no parity of resources between prosecutors and defenders in Louisiana. On average, Louisiana prosecutors outspend their indigent defense counterparts 3 to 1, without taking into account the amount of investigative resources provided at no cost to the prosecution by police, sheriffs, or the FBI. This disparity of resources exacerbates problems related to the heavy workloads of defense counsel, and causes delay in dispensing justice to victims, witnesses and defendants.

9. TRAINING:

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

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Comments: Ongoing training is critical for defense counsel. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Appropriate training allows defense counsel to serve their essential role in the criminal justice system, thereby helping to ensure the reliability of verdicts and case outcomes. While all attorneys in Louisiana are required to attend continuing legal education, public defenders are not required to attend training that is specific to their area of practice. Furthermore, available prosecutor training far exceeds what is available for public defenders.

10. ACCOUNTABILITY:

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

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Comments: Taxpayers reasonably expect that their investment in the criminal justice system will be overseen to ensure that their tax dollars are spent effectively and efficiently. There are also basic, minimal standards that must be met to guarantee adequate representation, including early and frequent client contact, motions practice, case investigation, and trial preparation. There is no accountability in Louisiana's present indigent defense system: there are no binding and enforceable state performance standards, and local indigent defender boards often lack the expertise and authority to supervise public defenders.



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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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