



NLADA

National Legal Aid &
Defender Association

National Indicators of Quality Indigent Defense

**A Project of the NLADA
Defender Research Consortium**

The **National Legal Aid & Defender Association** (NLADA), founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. Among its key strategies, NLADA works to expand the defender community's capacity to utilize research and data through information, training, and technical assistance. This work has been guided by the Defender Research Consortium, a convening of practitioners and researchers interested in building a body of research that helps defenders make evidence-based and data-driven decisions that improve criminal justice policy and public defense systems nationwide.



National Indicators of Quality Indigent Defense

A Project of the NLADA Defender Research
Consortium

Prepared by the National Legal Aid & Defender
Association

January 2018

Contents

Introduction	3
Background: How This Document Was Developed	4
National Quality Indicators Development Process	5
How Does the ILF Performance Assessment Process Work?	7
DRC Work Group Adapts ILF Work to U.S. Practice	12
Conclusion: Next Steps and Tools to Help	20
Tools to Help	21
Appendix: Defender Research Consortium 2017: Quality Indicators Working Group ..	22

Introduction

The Sixth Amendment to the United States Constitution guarantees the right to counsel to all people facing criminal or juvenile delinquency proceedings, regardless of their ability to afford a lawyer.¹ U.S. Supreme Court case law makes clear that the right to counsel guarantee carries with it the promise of *meaningful and effective* defense services, not simply representation by any lawyer who possesses a bar card.² There is no nationally accepted mechanism for determining whether high quality defense services are being provided, although some models have been developed for individual jurisdictions.³ This document seeks to fill that gap.

Set out below (in Table 3) is a set of standard practice principles that serve as a floor for providing high-quality, client-centered public defense services. Following that (in Table 4) is a set of indicators that can help determine whether indigent defense systems are delivering on those practice principles. These “quality indicators” are intended to equip defender program leaders with evidence-based information about how their programs are doing. Such information can inform individual attorney

¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963) was the first of a series of Supreme Court decisions broadly affirming the right to counsel in criminal and juvenile trial and appeals cases.

² In *Strickland v. Washington*, 466 U.S. 668, 685 (1984), the Court wrote, “[t]hat a person who happens to be a lawyer is present at trial alongside the accused . . . is not enough to satisfy the constitutional command.” The attorney must also be effective. See *McMann v. Richardson*, 397 U.S. 759 (1970), 771 n.14 (“It has long been recognized that the right to counsel is the right to the effective assistance of counsel.”). To be effective, an attorney must be reasonably competent, providing to the particular defendant in the particular case the assistance demanded of attorneys in criminal cases under prevailing professional norms, such as those “reflected in American Bar Association standards and the like.” *Strickland*, 466 U.S. at 688-89. The attorney must subject the prosecution’s case to “the crucible of meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 656 (1984). And the defense function must have adequate support resources, such as access to investigators, social workers, paralegals, substantive experts, and forensic testing in order to marshal an effective defense. The Court has held, for example, that an indigent accused is entitled to the assistance of a psychiatrist at public expense to assert an insanity defense. *Ake v. Oklahoma*, 470 U.S. 68, 74 (1985).

³ A number of state and local jurisdictions have developed and adopted sets of quality indicators. See, e.g., N.C. OFFICE OF INDIGENT DEF. SERVS., NORTH CAROLINA SYSTEMS EVALUATION PROJECT (NCSEP): OPEN SOCIETY FOUNDATIONS FINAL GRANT REPORT (2014), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/Final.OSF.GrantReport.pdf; TRAVIS CNTY. INDIGENT DEF. VALUES COMM. (AS FACILITATED BY MARK ERWIN AND MEG LEDYARD, PHD), INDIGENT DEFENSE VALUES, GOALS, AND MEASURES, *available at* <http://www.nlada100years.org/sites/default/files/ValuesChartWithMeasuresv8v2.pdf> (describing indicators used in Travis County (Austin), Texas); ZIYAD HOPKINS, COMM. FOR PUB. COUNSEL SERVS. & MELISSA LABRIOLA, CTR. FOR COURT INNOVATION, THE COMMITTEE FOR PUBLIC COUNSEL SERVICES ANSWERING GIDEON’S CALL PROJECT (2012-DB-BX-0010): FINAL REPORT: NATIONAL RECOMMENDATIONS (2014), *available at* <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Final-Report-Recommendations.pdf> (describing indicators used in Massachusetts). Conversely, at the national level there are performance standards for individual attorneys and best practices for systems, but no national indicators of quality of representation. See, e.g., *Performance Guidelines for Criminal Defense Representation (2006)*, NAT’L LEGAL AID & DEFENDER ASS’N, <http://www.nlada.org/defender-standards/performance-guidelines> (presenting nationally applicable standards for individual attorney performance); ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, AM. BAR ASS’N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf (presenting nationally applicable standards for systems).

performance reviews, of course, but can also support other approaches to monitoring and advocating for high quality defender services.

Practice principles and quality indicators that illustrate them can serve as an organizing framework for defender staff training. Following training, the principles can serve as a checklist, or road map, of practice expectations for staff. Such a checklist can be a particularly helpful reminder to attorneys in the crush of day-to-day business. A checklist of performance expectations can also help educate funders about defense practice and illustrate why certain resources, for example social workers, are needed.⁴ Finally, with aggregated data from the indicators, defender managers will be able to review overall program performance and detect patterns or trends to investigate on a host of topics.

Background: How This Document Was Developed

To large extent, this document was produced as an item of necessity identified by indigent defense researchers and practitioners. Three convenings of the Defender Research Consortium (DRC),⁵ led by the National Legal Aid & Defender Association (NLADA), provided the time and a venue in which to undertake a consensus process to produce a nationally applicable set of indicators to assess indigent defense quality.⁶

Funded by the Open Society Foundations and held between 2015 and 2017, the three DRC gatherings each brought together approximately thirty participants, including researchers, defenders, social workers, paralegals, analysts, technologists, and others, to discuss ways to increase and improve research about indigent defense systems.⁷ An emphasis throughout was on making research practical and accessible to defender programs themselves, rather than on encouraging theoretical research projects.

⁴ Indicators lists are a close cousin to practice checklists. Checklists, which can easily be adapted to be an indicators list, or vice versa, can be as broad or general as needed. The San Francisco Public Defender's Office has been a leader in this area, developing checklists for a variety of practice areas. Similarly, the Travis County, TX Capital Area Public Defender Services produced a checklist for a discrete practice area, the jail call docket.

⁵ The origin of DRC traces to the Research and Data Analysis Advisory Committee, which was formed by NLADA to identify core data points every defender agency should track. Comprised of practitioners and researchers, the group's work formed the basis of the 2014 *Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders*. DRC expanded on the model of bringing together individuals from multiple perspectives and skill sets to identify and pursue additional research priorities for the indigent defense field.

⁶ The pressing need to systematically define and measure quality of indigent defense services has been cited in other national efforts to prioritize research, such as that of the March 2015 Topical Working Group Meeting on Right to Counsel and Indigent Defense, convened by the U.S. Department of Justice, Office of Justice Program's National Institute of Justice. See NAT'L INST. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, Pub. No. NCJ 248692, TOPICAL WORKING GROUP MEETING ON RIGHT TO COUNSEL AND INDIGENT DEFENSE (2015), *available at* <https://www.ncjrs.gov/pdffiles1/nij/248692.pdf>.

⁷ The DRC meetings were held in December 2015 (Baltimore, MD), July 2016 (Detroit, MI), and September 2017 (Las Vegas, NV). Highly interactive, the meetings featured workgroups that tackled topics such as incorporating client perspectives in indigent defense research, improving defender program analytics capacity, and how defender programs can put quality indicators into place to assess system performance. More information and resources about NLADA's efforts to build defender research capacity are available at: <http://www.nlada.org/tools-and-technical-assistance/defender-resources/research>.

NLADA envisioned that during the first DRC meeting, participants would make significant progress toward developing a practitioner-driven, national research agenda for indigent defense. However, this process was halted by the Consortium's observation of the lack of consensus around a national definition of "quality" indigent defense.

Thus, starting with the first convening in 2015, DRC participants quite organically took interest in identifying a set of national indicators that reflect quality indigent defense services.

For researchers, having no nationally agreed upon definition of quality indigent defense services, much less a consensus method to assess quality, frustrated efforts to prioritize and undertake research projects to improve indigent defense. Should quality be defined through particular case outcomes? Client satisfaction ratings? Compliance with the American Bar Association's *Ten Principles of a Public Defense Delivery System*?⁸ Should it be assessed by review of inputs, outputs, outcomes, or something else? No agreement existed.

For practitioners, having no nationally agreed upon definition of quality indigent defense services complicated their ability to clearly explain to funders what work is essential for defender programs to undertake in order to deliver quality services, meet minimal constitutional and ethical obligations, and contribute to a more fair and effective criminal justice system. Furthermore, it limited the ability to conduct meaningful performance assessments to monitor and improve services provided.

Over three meetings, DRC participants reflected, debated, and reviewed existing efforts to identify and assess quality indigent defense. At the second DRC meeting in 2016, attendees reached the consensus that it would be useful to develop a set of national quality indicators for indigent defense, and an ad hoc working group formed to undertake the work. The goal was to create a nationally applicable, readily understood document that any defender program could either adopt wholesale or adapt to local practice nuances. Finally, during the third DRC meeting in 2017, agreement was reached around a set of national quality indicators. The balance of this paper chronicles the process and sets out the resulting work.⁹

National Quality Indicators Development Process

Viewed in the broadest frame, there are three basic steps to creating a quality performance assessment process, whether for indigent defense or any other undertaking:

⁸ See AM. BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 1 (2002), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

⁹ An accompanying NLADA white paper, *Assessing Quality: A History of Indigent Defense "Quality Indicators,"* chronicles two decades of efforts in this area.

1. Establish performance goals, or expectations;
2. Identify measurable indicators of activities that express those goals; and
3. Assess empirically, by collecting and reviewing data on those indicators, whether quality is being delivered.

Meeting by conference call in fall 2016, the DRC working group initially sought to develop a set of indicators that map to the ABA's *Ten Principles of a Public Defense Delivery System*. The Ten Principles are an easily digestible set of tenets that are widely agreed to capture the characteristics of an effective indigent defense system.¹⁰ Considered in the three-part process outlined above, the Ten Principles comprised the DRC work group's goals for which indicators were needed in order to assess quality.

Then in November 2016, the International Legal Foundation (ILF) released *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*, which sets out a system to identify and measure performance of indigent defense providers based on international legal norms.¹¹ Robust yet accessible, the report was well received by the ad hoc work group, which decided to cease its work mapping indicators that track the ABA Ten Principles, to determine whether the ILF work could instead be adapted in the U.S.¹²

¹⁰ The ten blackletter principles are:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. 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.
3. 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.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. 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.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Id.

¹¹ See INT'L LEGAL FOUND., *MEASURING JUSTICE: DEFINING AND EVALUATING QUALITY FOR CRIMINAL LEGAL AID PROVIDERS* (2016) (prepared in conjunction with Joshua Perry, Deputy Director at Connecticut Legal Services).

¹² Headquartered in New York City, the ILF is an international, nongovernmental organization formed in 2001 that assists post-conflict and transitional countries in establishing public defender systems that provide effective, quality criminal defense services for the poor. It currently has five legal aid offices, operating in Afghanistan, Nepal, the West Bank of Palestine, Tunisia, and Myanmar. Formed with the benefit of hindsight into what has – and has not – worked well in developing and managing public defender programs in the U.S. since the *Gideon* decision, ILF's defender offices seek to provide the highest level of quality through intensive training, ongoing supervision, and caseload controls.

How Does the ILF Performance Assessment Process Work?

Operations of ILF's defender offices are organized around ten core practice principles.¹³ Similar to the ABA Ten Principles, the practice principles are the animating goals, or expectations, of ILF's work. Unlike the Ten Principles, they concern the work not of a defender *system* but rather of an individual *attorney* or defense team. ILF considers these ten practice principles to be the minimal, foundational obligations of all indigent criminal defense providers:

**Table 1:
ILF's Ten Practice Principles**

#	Principle
1	Provide Early Representation
2	Provide Client-Centered Advocacy
3	Advocacy for Pre-Trial Liberty
4	Address Direct and Indirect Consequences
5	Engage in Independent Fact Investigation
6	Use of Social Worker
7	Engage in Diligent Preparation
8	Engage Experts Assistance
9	Engage in Pre-trial Litigation
10	Defend the Client at Trial

To help defender program managers know whether these principles are actually being fulfilled, ILF's *Measuring Justice* assessment approach identifies key activities, key output measures, key perceptual outcomes, and key case outcomes for each practice principle.¹⁴ The idea is to methodically collect and review data on all of these activities and outcomes. The following page excerpts from *Measuring Justice* show these practice principles and key measures arrayed.¹⁵

¹³ The ILF based its approach to assessing criminal legal aid in international norms, with the United Nations Principles and Guidelines on Access to Justice in Criminal Legal Systems and the International Covenant on Civil and Political Rights comprising foundations for their discussion in *Measuring Justice*. From those broad principles, the ILF synthesized performance standards from legal norms encapsulated in the Legal Aid Reformers' Network's *Model Practice Standards for Criminal Defense*, NLADA's *Performance Guidelines for Criminal Defense Representation*, and the ILF's *Minimum Performance Standards for Representation During Initial Criminal Proceedings*. See INT'L LEGAL FOUND., MEASURING JUSTICE: DEFINING AND EVALUATING QUALITY FOR CRIMINAL LEGAL AID PROVIDERS 9, 19 (2016).

¹⁴ *Id.* at 29.

¹⁵ Reproduced from INT'L LEGAL FOUND., MEASURING JUSTICE: DEFINING AND EVALUATING QUALITY FOR CRIMINAL LEGAL AID PROVIDERS 30-33 (2016).

**Table 2:
ILF's Ten Practice Principles and Key Activities, Measures, and Outcomes**

FIGURE 4

A Plan Illustrating a Process and Impact Evaluation

PRACTICE PRINCIPLES

Criminal legal aid lawyers should be guided by the following principles, which can be broken down into individual activities and encoded in standards...

KEY ACTIVITIES

The practice principles, embodied in performance standards mandate that criminal legal aid lawyers conduct the following activities, organized by stage of the case...

1. **Provide Early Representation** - A legal aid provider should endeavor to meet with the client at or near the time of arrest or initial detention, and before any interrogation; and should interview clients within 24 hours of appointment or assignment to their case.
2. **Provide Client-Centered Advocacy** - A legal aid provider should counsel the client thoroughly and empower the client to make all of the important decisions in the case.
3. **Advocate for Pretrial Liberty** - A legal aid provider should advocate for the client's release from pretrial custody at the earliest possible opportunity and throughout the case, as appropriate.

- Perform an initial client interview within 24 hours of appointment
- Perform a comprehensive client interview within 72 hours of appointment
- Request a hearing to advocate for the client's pretrial release, if a hearing is not automatically granted as a right
- Communicate with clients to prepare them in advance of every court hearing
- Report every prosecution plea offer to the client and discuss it thoroughly

4. **Engage in Independent Fact Investigation** - A legal aid provider should conduct an independent fact investigation, including visiting the scene of the alleged offense and interviewing all potential witnesses in the case.

- Direct a complete fact investigation in every case
- Attempt to interview every known witness
- Visit the alleged crime scene and the scene of arrest

Excerpted from *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*

**Table 2:
ILF's Ten Practice Principles and Key Activities, Measures, and Outcomes**

<p>KEY OUTPUT MEASURES</p> <p>If lawyers conduct these activities, they will produce the following evidence of service delivery, which can be used in a process evaluation of their work...</p>	<p>KEY PERCEPTUAL OUTCOMES</p> <p>If completed, the activities will lead to the following short-term changes in perceptions about advocacy, the justice system, and clients' own sense of self-actualization, if all other things are held equal...</p>	<p>KEY CASE OUTCOMES</p> <p>If completed, the activities will lead to the following short-term results in clients' cases, if all other things are held equal...</p>
<ul style="list-style-type: none"> • % of cases in which the lawyer conducts an initial interview within 24 hours of appointment • % of cases in which the lawyer conducts a comprehensive interview within 72 hours of appointment • % of cases in which the client is detained pretrial and the lawyer files or orally makes a motion for pretrial release • # of client communications (in-person meetings, phone calls, and written communications)/ case 	<ul style="list-style-type: none"> • Increase in % of clients who report satisfaction with the amount of time that their attorney spends with them • Increase in % of clients who report satisfaction with their attorney's advice • Increase in % of clients who report that they trust their attorney • Increase in % of clients who agree that they were empowered to make the important decisions in their case 	<ul style="list-style-type: none"> • Increase in % of clients who are free while awaiting trial • Increase in % of clients who are given a bail amount that they can afford • Increase in % of clients who complete terms of probation satisfactorily
<ul style="list-style-type: none"> • % of cases in which the file contains a written investigation plan • % of cases in which at least one witness is interviewed outside of court • % of cases in which the attorney and/or an investigator visits the alleged crime scene 	<ul style="list-style-type: none"> • Increase in % of clients who are satisfied that their attorney is fighting for them 	<ul style="list-style-type: none"> • Increase in % of cases that result in pre-trial dismissal • Increase in % of cases that result in acquittal or a lesser-included verdict at trial • Increase in % of clients who receive a trial-stage outcome that is more favorable than guilty as charged

Excerpted from *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*

**Table 2:
ILF's Ten Practice Principles and Key Activities, Measures, and Outcomes**

FIGURE 4

A Plan Illustrating a Process and Impact Evaluation, cont'd

PRACTICE PRINCIPLES

Criminal legal aid lawyers should be guided by the following principles, which can be broken down into individual activities and encoded in standards...

KEY ACTIVITIES

The practice principles, embodied in performance standards mandate that criminal legal aid lawyers conduct the following activities, organized by stage of the case...

5. **Engage in Diligent Preparation** - A legal aid provider should develop coherent, creative, and comprehensive case plans and strategies, and prepare carefully and thoroughly for every court hearing.
6. **Engage Expert Assistance** - A legal aid provider should consider engaging expert consultants and witnesses wherever appropriate.
7. **Engage in Pretrial Litigation** - A provider should timely file and argue all pretrial pleadings that may be advantageous for the client, applying the substantive and procedural law with skill and expertise.
8. **Defend the Client at Trial** - A legal aid provider should present clear, focused, forceful arguments that deploy both law and facts effectively in support of a compelling trial theory, and should conduct skilled witness examinations.

- Prepare written trial materials for every case
- Develop and document compelling theory for every trial case
- Consult with experts and other professionals whenever appropriate
- File a written suppression motion wherever there is a colorable claim for relief
- File a written motion to dismiss wherever there is a colorable claim for relief
- Present cross-examinations that elicit facts supportive of the defense theory

9. **Engage in Sentence Mitigation** - A legal aid provider should argue for the least restrictive result at sentencing, presenting the court with creative alternatives to imprisonment wherever appropriate.

- Develop and present creative sentencing proposals
- Introduce a defense case at sentencing wherever appropriate

10. **File Appeals** - A legal aid provider should preserve a complete record for appeal and timely file appellate briefs that apply the law skillfully to raise every reasonable claim on the client's behalf.

- Timely object and make a complete record wherever appropriate
- Timely file an appeal from every conviction

Excerpted from *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*

**Table 2:
ILF's Ten Practice Principles and Key Activities, Measures, and Outcomes**

<p>KEY OUTPUT MEASURES</p> <p>If lawyers conduct these activities, they will produce the following evidence of service delivery, which can be used in a process evaluation of their work...</p>	<p>KEY PERCEPTUAL OUTCOMES</p> <p>If completed, the activities will lead to the following short-term changes in perceptions about advocacy, the justice system, and clients' own sense of self-actualization, if all other things are held equal...</p>	<p>KEY CASE OUTCOMES</p> <p>If completed, the activities will lead to the following short-term results in clients' cases, if all other things are held equal...</p>
<ul style="list-style-type: none"> • % of cases in which the attorney prepares written trial materials including an opening statement, closing argument, and written witness examinations • % of cases in which a defense expert is retained • # of written motions filed per case, by motion type 	<ul style="list-style-type: none"> • Increase in % of clients who report satisfaction with their attorney's preparation • Increase in % of clients who report satisfaction with their attorney's courtroom performance • Increase in % of clients who report satisfaction with the outcome of their case • Increase in % of clients who agree that their attorney is an expert in the law 	<ul style="list-style-type: none"> • Increase in % of cases in which evidence is suppressed or excluded • Increase in % of cases that result in pre-trial dismissal • Increase in % of cases that result in acquittal or a lesser-included verdict at trial • Increase in % of clients who receive a trial-stage outcome that is more favorable than guilty as charged
<ul style="list-style-type: none"> • # of written sentencing plans prepared • % of cases in which the defense calls one or more witnesses at sentencing 	<ul style="list-style-type: none"> • Increase in % of clients who express satisfaction with the outcome of their case 	<ul style="list-style-type: none"> • Increase in % convicted clients whose sentence does not include incarceration • Reduction in average duration of sentence imposed on clients, as a fraction of the available maximum
<ul style="list-style-type: none"> • % of appellate claims that are deemed to be defaulted by court of appeals for failure to preserve the issue • % of cases in which an appeal is filed 	<ul style="list-style-type: none"> • Increase in % of clients who express satisfaction with the outcome of their case • Increase in % of clients who are satisfied that their attorney is fighting for them • Increase in % of clients who agree that their attorney is an expert in the law 	<ul style="list-style-type: none"> • Increase in % of convictions that are reversed on appeal • Increase in % of sentences that are reduced or vacated on appeal

Excerpted from *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*

As documented in NLADA’s paper, *Assessing Quality: A History of Indigent Defense Quality Indicators*, this basic approach to indigent defense performance assessment has been undertaken by other organizations, albeit using slightly different terminology. For instance, ILF’s core practice principles and measures are analogous to the Travis County, Texas *Indigent Defense Values, Goals and Measures*,¹⁶ and the Massachusetts Committee for Public Counsel Services’ *Best Practices in Indigent Defense Representation*,¹⁷ with their corresponding key performance indicators.¹⁸ Arguably, the key innovation of ILF was its distillation of this process into an elegant and digestible plan.

DRC Work Group Adapts ILF Work to U.S. Practice

At the September 2017 meeting of the Defender Research Consortium in Las Vegas, Nevada, an ILF representative spoke to participants about the *Measuring Justice* model, which had been developed but not yet implemented. Motivated to refine, not rethink, the ILF work, a working group of seventeen individuals, including chief defenders, line defenders, researchers, technologists, analysts, and the ILF representative,¹⁹ then set out to identify a set of practice principles and quality indicators deemed useful for any defender program in the U.S. Reflecting on its earlier work mapping indicators for the ABA Ten Principles, the group agreed to shift direction and follow ILF’s lead to focus on *attorney*, not *system*, performance, for this first iteration. Keeping in mind the animating question of “What makes a good defense attorney?” the group endorsed twelve practice principles of quality defense, seen alongside the ILF version in Table 3.

¹⁶ See TRAVIS CNTY. INDIGENT DEF. VALUES COMM. (AS FACILITATED BY MARK ERWIN AND MEG LEDYARD, PHD), *INDIGENT DEFENSE VALUES, GOALS, AND MEASURES*, *available at* <http://www.nlada100years.org/sites/default/files/ValuesChartWithMeasuresv8v2.pdf>.

¹⁷ See ZIYAD HOPKINS, COMM. FOR PUB. COUNSEL SERVS. & MELISSA LABRIOLA, CTR. FOR COURT INNOVATION, THE COMMITTEE FOR PUBLIC COUNSEL SERVICES, *ANSWERING GIDEON’S CALL PROJECT (2012-DB-BX-0010) FINAL REPORT: NATIONAL RECOMMENDATIONS (2014)*, *available at* <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Final-Report-Recommendations.pdf>.

¹⁸ See Introduction to NAT’L LEGAL AID & DEFENDER ASS’N, *ASSESSING INDIGENT DEFENSE QUALITY: A HISTORY OF DEVELOPING “QUALITY INDICATORS” (2018)* (discussing use of differing language and terms in the pioneering U.S. examples of indigent defense practice principles and indicators).

¹⁹ See Appendix, *infra*, for a list of participants in the working group.

**Table 3:
Comparison of Practice Principles Endorsed by
the Defender Research Consortium and the International Legal Foundation**

	DRC Practice Principles	ILF Practice Principles
1	Provide Early Representation	Provide Early Representation
2	Engage in Client-Centered Advocacy	Provide Client-Centered Advocacy
3	Advocate for Pretrial Liberty	Advocacy for Pre-Trial Liberty
4	Address Indirect/Direct Consequences of Prosecution	Address Direct and Indirect Consequences
5	Undertake Independent Fact Investigation	Engage in Independent Fact Investigation
6	Utilize a Social Worker & Interdisciplinary Team	Use of Social Worker
7	Conduct Diligent Case Preparation	Engage in Diligent Preparation
8	Engage Expert Assistance	Engage Experts Assistance
9	Conduct Pre-trial Litigation	Engage in Pre-trial Litigation
10	Represent Client at Trial	Defend the Client at Trial
11	Engage in Sentencing/Disposition Mitigation	
12	Preserve Record/File Appeals	

The DRC principles are substantively identical to those identified by ILF, with the addition of the last two, which encompass post-adjudication responsibilities.²⁰ The principles apply to work on adult (not juvenile) trial-level cases. There was discussion about adding a thirteenth principle – engage in ongoing training/CLE - but lack of consensus left it off the list.

Next, for each of the twelve practice principles, the group identified three to eighteen indicators that will help gauge whether the particular principle is being achieved. The inter-disciplinary composition of the DRC workgroup helped isolate indicators that are informative about practice, and also practical to collect and review. For the most part, the indicators reflect the behaviors, or activities, undertaken by those attorneys who are intuitively recognized as doing exemplary work on behalf of their clients.

Many but not all of the quality indicators are activities that can either be answered with a binary “Yes” or “No” (e.g., has the client been screened for addiction, mental health, emotional problems) or counted (e.g., how many client meetings were held). An important exception is for the indicators relating to the first principle, *Provide Early Representation*. Indicators for that principle recognize that timing regarding when the right to counsel first attaches, and therefore at what point case

²⁰ Minor changes in language are the wordsmithing resulting from the DRC group’s deliberative review process of carefully considering each of ILF’s ten practice principles.

appointments are made, vary according to statutory requirements and local practice of each jurisdiction. The purpose of the indicators accompanying that principle relate to ensuring that – given the laws, rules and practices of a particular jurisdiction – appointment and advocacy are faithfully occurring at the earliest permissible time. Activities for that principle, and in several other areas where indicators ask open-ended questions, will require further work to identify the exact measures to count.

**Table 4:
The Defender Research Consortium – Practice Principles with Indicators of a
Quality Public Defense Attorney**

Practice Principles	Indicators
1. Provide Early Representation	<p>Threshold question: when does the right to counsel attach?</p> <ul style="list-style-type: none"> a. When was attorney appointed? b. When was first client contact made (e.g., within 24 hours)? c. What type of contact occurred (in person, letter, email)? d. Was advocacy provided at first appearance?
2. Engage in Client-Centered Advocacy	<ul style="list-style-type: none"> a. Client Meetings <ul style="list-style-type: none"> i. Number of in-person meetings ii. Settings of in-person meetings (courthouse/courtroom, jail, office, other) b. Disclosures of information to client <ul style="list-style-type: none"> i. Engagement letter provided (tailored to individual client on what to expect, how attorney will contact you, with options for a plea fully explained, in format client understands)? ii. Key issues of case discussed with client? iii. Discovery shared with client? c. Complaints <ul style="list-style-type: none"> i. Attorney relieved off case? ii. Client complaint received (from client, from family, from judge)? <ul style="list-style-type: none"> a. Who received complaint? b. Who responded to complaint, and in what format (written, phone call)? iii. Client satisfaction survey administered? d. Is attorney aware of client’s personal history? Is attorney aware of whether client may have immigration issues, and if so, are they kept confidential?
3. Advocate for Pretrial Liberty	<ul style="list-style-type: none"> a. Client status: is client in custody or out? <ul style="list-style-type: none"> i. If in custody, were bail reduction motion(s) made? ii. Outcome of motion(s)? iii. Number of days in pre-trial custody? b. Detention Alternatives/Diversion <ul style="list-style-type: none"> i. Did attorney learn about client’s history? ii. Was referral made to pretrial release, deferred prosecution, or diversion program? <ul style="list-style-type: none"> a. Was client screened? b. Was client successful in entry?

	<ul style="list-style-type: none"> c. Holistic Resources (employment, housing, insurance, etc.) <ul style="list-style-type: none"> i. Was needs assessment conducted? ii. Was client referred to relevant resources? <ul style="list-style-type: none"> a. Were resources helpful to client? b. If not, why? d. Treatment Programs <ul style="list-style-type: none"> i. Was client screened for addiction, mental health, emotional problems? ii. Was client referred to evaluators or relevant programs? <ul style="list-style-type: none"> i. Did client enter and successfully complete a program? b. If not, why?
<p>4. Address Indirect/Direct Consequences of Prosecution</p>	<ul style="list-style-type: none"> a. Did attorney consider/address possible immigration issues? b. Did attorney consider/address possible professional licensure issues? c. Did attorney consider/address possible employment issues?
<p>5. Undertake Independent Fact Investigation</p>	<ul style="list-style-type: none"> a. Investigator <ul style="list-style-type: none"> i. Was an investigator requested? <ul style="list-style-type: none"> a. Was request approved? b. Was investigator used? c. How early? ii. What tasks did the investigator complete? <ul style="list-style-type: none"> a. Meet with client? b. Visit crime scene? c. Interview witnesses? d. Collect evidence? e. Take photos? f. Conduct social media research? g. Serve subpoenas? iii. What tasks did attorney complete? <ul style="list-style-type: none"> a. Visit crime scene? b. Inform investigator of the theory of defense? c. Provide investigator with the case discovery? d. Issue subpoenas? e. Produce memo for investigator?

<p>6. Utilize a Social Worker & Interdisciplinary Team</p>	<ul style="list-style-type: none"> a. Social Worker <ul style="list-style-type: none"> i. Did attorney refer client to a social worker? <ul style="list-style-type: none"> a. How early in case? b. Outcome of request? b. Interdisciplinary Team <ul style="list-style-type: none"> i. Did attorney request an interdisciplinary team for client? ii. Was the team utilized? iii. Did it result in a positive outcome for client?
<p>7. Conduct Diligent Case Preparation</p>	<ul style="list-style-type: none"> a. Motions practice (<i>see indicators for Principles 9 and 10</i>) b. Case-related <ul style="list-style-type: none"> i. Did attorney develop a theory of defense? ii. Did attorney analyze and gather evidence? iii. Did attorney identify the important elements of the case? iv. When did attorney receive complete discovery? How early in case was a motion for discovery filed? v. Did attorney review all discovery? vi. Did attorney conduct additional legal research, if necessary? vii. Did attorney strategically consider which evidence to attempt to include/exclude? viii. Did attorney issue subpoenas? ix. Did attorney keep an updated and well-organized case file? c. Other relevant preparation <ul style="list-style-type: none"> i. Did attorney consider need to consult with an appellate attorney early on in the case? <ul style="list-style-type: none"> a. If yes, was that done? ii. Did attorney consult with peers about the case? <ul style="list-style-type: none"> a. How early on in case? b. How often, and for how long, were consults? iii. Did attorney participate in a case review? iv. Did attorney have a peer reviewed mock hearing? v. Is attorney certified to handle the case type?

<p>8. Engage Expert Assistance</p>	<ul style="list-style-type: none"> a. Did attorney request an expert? <ul style="list-style-type: none"> i. How early on in case? ii. Was the expert approved? iii. Was the expert used? b. If there are medical records, DNA records, mental health records, or anything else that would require an expert review for complete explanation – were the records reviewed by a qualified expert? c. Did attorney prepare the expert for testimony/cross examination?
<p>9. Conduct Pretrial Litigation</p>	<ul style="list-style-type: none"> a. Motions <ul style="list-style-type: none"> i. What type of motions were filed? ii. How many motions were filed? iii. What was the quality of motions (boilerplate or original)? iv. Results of motions? b. Hearings <ul style="list-style-type: none"> i. How many hearings were held before trial? <ul style="list-style-type: none"> a. What type of hearings? b. Did attorney participate in all hearings? ii. Did attorney consult with appellate or other attorney about potential issues that must be preserved in the record? c. Meetings/Consultation <ul style="list-style-type: none"> i. Did attorney meet with the prosecuting attorney about the case? ii. Did attorney meet with the judge about the case?
<p>10. Represent Client at Trial</p>	<ul style="list-style-type: none"> a. Jury or bench trial? b. Did attorney file motions in limine? c. Was an expert used during trial? d. Were witnesses called during trial? <ul style="list-style-type: none"> i. If yes, how many? e. Was a second-chair attorney considered for trial? <ul style="list-style-type: none"> i. Used? f. Did attorney provide jury instructions? g. Did attorney make an opening statement? Waive it? h. Did attorney make objections during trial? <ul style="list-style-type: none"> i. How many objections? ii. Were they granted? i. Did attorney actively try to keep evidence in or out of trial? j. Was the voir dire tied to the opening and closing statements? k. Did a supervising attorney observe the trial? <ul style="list-style-type: none"> i. If yes, did supervisor conduct a post-trial debrief?

	<ul style="list-style-type: none"> ii. Did supervisor review trial scripts, cross examinations, directs? l. What kind of trial prep did attorney engage in (mock hearing, cross-examination practice)? m. Did attorney file post-trial motions? <ul style="list-style-type: none"> i. If yes, what type?
<p>11. Engage in Sentencing/Disposition Mitigation</p>	<ul style="list-style-type: none"> a. Did attorney develop a theory of sentencing? b. Did attorney produce a sentencing memo? c. Did attorney advocate for sentencing alternatives? d. Did attorney make recommendations for services/identify service providers? e. Did attorney provide relevant records to the judge? f. Did attorney gather supporting materials (written, video, etc.) in organized record log? g. Was a mitigation expert considered? <ul style="list-style-type: none"> i. Requested? ii. Used? iii. How early was the mitigation expert involved in the case? h. Did attorney (or team) prepare a re-entry plan? i. Did attorney follow up with client regarding any requirements of sentencing (drug treatment, drug court, etc.)? <ul style="list-style-type: none"> i. If no, are members of the interdisciplinary team involved in helping the client with these requirements? j. For probation/parole clients: Was client fully advised of where to go/how to comply with the requirements? (sex offender registration, etc.)
<p>12. Preserve the Record/File Appeals</p>	<ul style="list-style-type: none"> a. Did attorney advise client of post-conviction and appellate remedies? b. Did attorney file notice of appeal, regardless of whether the client pled guilty? c. Did trial attorney request an appellate attorney get involved? d. Did trial attorney cooperate with requests and communication from appellate attorney? e. Did trial attorney provide trial file to appellate attorney? f. Did attorney prepare memo about important facts/issues of case for appellate attorney?

In checklist form, the indicators presented here will produce a granular review of the performance of individual attorneys in each of their cases. But higher-level, summary information can also be extracted to assess the practices of an overall defender program. For instance, from the data tracked on all individual cases, a defender leader could compile and review select measures across the office, such as:

- #/% of jury/bench trials per year, quarter, etc.
- #/% of cases where social worker was requested/used
- #/% of cases where investigator was requested/used
- #/% of cases where experts were requested/used
- #/% of cases referred to treatment
- #/% of cases with motions hearings
- #/% of cases where appellate attorney was engaged.

To support delivery of quality representation services, indicators should operate as part of an overall system of training and ongoing supervision. Data alone can never provide a complete picture of an indigent defense system’s health. There is truth to the saying “Never a story without a statistic; never a statistic without a story.” Quality indicators can be a valuable addition to an overall approach for understanding and messaging about defender system’s health, progress, and needs.

Conclusion: Next Steps and Tools to Help

The process of developing goals of quality representation and identifying indicators to help determine if those goals are being achieved is not something that needs to be reinvented by every defender program across the country (or the globe). There are core activities or behaviors that can serve as proxies of quality representation to which every defender program can agree.

Without question, there will be certain peculiarities of individual systems that will also merit careful monitoring through additional indicators.²¹ But the twelve practice principles and accompanying indicators identified here form a foundation from which *any* defender agency can run a meaningful performance program. Additions are always optional, but not necessary, to get a good sense of defender system health.

The next step is to begin using quality indicators, and NLADA encourages defender organizations to implement pilot programs to do so.²² Once implemented, any new system requires reflection and refinement to best maximize its utility. The key is to get started.

²¹ For instance, in some New York counties, public defenders routinely file ineffective assistance of counsel motions if their client is not acquitted.

²² The International Legal Foundation, for example, is doing just that. A 2017 evaluation of the West Bank Palestine Public Defender Offices (*Evaluation of the West Bank Palestine Legal Aid Offices*, conducted by Larry Landis for the ILF, on behalf of NLADA (forthcoming)) gave the program high marks for quality, but recommended that it take the next step of implementing ILF’s *Measuring Justice* assessment process in order to measure compliance with its ten Practice Principles and use the results to better message its performance to funders of the office. That work is currently underway and eventually should form the basis for measuring quality in all of the ILF offices. NLADA encourages U.S. defender programs to be similarly pioneering and implementing the measures displayed in Table 4.

Tools to Help

To implement the recommended practice principles and indicators, defender programs will need a basic data collection process. Tools developed by NLADA can help if such a system does not already exist. See NLADA's document, *Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders*, particularly "How Do I Collect Data," p. 14 and "How Do I Use Data," p. 15.²³ Assistance in determining exactly how to go about building capacity to collect and make use of data is available from NLADA's document *Increasing Analytics Capacity: A Toolkit for Public Defender Organizations*.²⁴ This toolkit sets out a model for defender leaders to assess their existing data and analytics capacity, with steps to take to progress to increased capability. Finally, NLADA's *Building In-House Research Capacity Toolkit* offers guidance to defender organizations about bringing research staff on board.²⁵

²³ MAREA BEEMAN, NAT'L LEGAL AID & DEFENDER ASS'N, BASIC DATA EVERY DEFENDER PROGRAM NEEDS TO TRACK: A TOOLKIT FOR DEFENDER LEADERS 14-15 (2014), *available at* <http://www.nlada.org/tools-technical-assistance/defender-resources/research/basic-data-toolkit> *or* <http://www.nlada.org/search/node/%22Basic%20Data%20Every%20Defender%20Program%20Needs%20to%20Track%22>.

²⁴ MARK ERWIN & MEG LEDYARD, NAT'L LEGAL AID & DEFENDER ASS'N, INCREASING ANALYTICS CAPACITY: A TOOLKIT FOR PUBLIC DEFENDER ORGANIZATIONS (2016), *available at* <http://www.nlada.org/tools-and-technical-assistance/defender-resources/research> *or* <http://www.nlada.org/search/node/%22Increasing%20Analytics%20Capacity%22>.

²⁵ NAT'L LEGAL AID & DEFENDER ASS'N & N.C. OFFICE OF INDIGENT DEF. SERVS., TOOLKIT: BUILDING IN-HOUSE RESEARCH CAPACITY (2013), *available at* <http://www.nlada.org/tools-technical-assistance/defender-resources/research/building-house-capacity-toolkit> *or* <http://www.nlada.org/search/node/%22Building%20In-House%20Capacity%22>.

Appendix: Defender Research Consortium 2017: Quality Indicators Working Group

Marea Beeman

Director, Research Initiatives, Defender Legal Services
National Legal Aid & Defender Association
Washington, DC

Dean M. Beer

Chief Defender
Montgomery County
Public Defender
Norristown, PA

Jim Bethke

Executive Director
Texas Indigent Defense Commission
Austin, TX

Robert Boruchowitz

Professor of Practice
Defender Initiative,
Seattle University
Seattle, WA

Christopher Boyle

Special Project Director
New York County
Defender Services
New York, NY

Dottie Carmichael

Research Scientist
Public Policy Research
Institute, Texas A&M
University
College Station, TX

Elena D'Agustino

Chief Deputy Public
Defender
Solano County Public
Defender
Fairfield, CA

Katherine Dellenbach

Field Services Director
Wisconsin State Public
Defender's Office
Madison, WI

Gipsy Escobar

Director of Research &
Analytics
Measures for Justice
Rochester, NY

Jean Faria

Capital Case Coordinator
Louisiana Public
Defender Board
Baton Rouge, LA

Rosalie Joy

Interim Director
Atlanta Public Defender's
Office
Atlanta, GA

Larry Landis

Executive Director
Indiana Public Defender
Council
Indianapolis, IN

Chris Pisciotta

Attorney-in-Charge
The Legal Aid Society of
New York
New York, NY

Carl Richey

Founder and CEO
Justice Works
Centerville, UT

Nicole Taylor-Brown

Program Director
The International Legal
Foundation
New York, NY

Stephen Weidlich

Public Defense Research
and Data Analyst
King County Department
of Public Defense
Seattle, WA

Rachel Woods

Contract and Research
Analyst
State of Oregon, Office
of Public Defense
Services
Salem, OR



NLADA

National Legal Aid &
Defender Association

1901 PENNSYLVANIA AVE. NW SUITE 500, WASHINGTON, DC 20008