



NLADA

National Legal Aid &
Defender Association

Assessing Quality: A History of Indigent Defense Quality Indicators

**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.

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Includes National Practice Principles with Indicators of a
Quality Public Defense Attorney

Prepared by the National Legal Aid & Defender
Association

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Introduction

In the past two decades, various defender programs and research partners have devoted significant pioneering effort to defining and measuring quality in indigent defense. Each project involved investment of substantial resources and all arrived at strikingly, perhaps reassuringly, similar results. Considered together, the work clearly signals a national path forward for indigent defense programs to better monitor their own work, improve their services, and communicate their needs and value to funders. But despite this ground-breaking work, little of it percolated into notice, much less adoption, by the broader defender community across the country. There are multiple reasons for this, including:

- Outside of the federal criminal justice system, indigent defense is a highly diffuse function carried out at the state and local levels by agents who answer to no single national organization that provides guidance or oversight. Unless there is a set of agreed upon practices vetted and endorsed by a nationally recognizable entity, such as the American Bar Association or the National Legal Aid & Defender Association (NLADA), it can be very difficult to share standardized practices or guidance with defender systems nationally.
- Different language and terms were used by these pioneers working to operationalize quality assessment. Although the projects were working toward the same end, the language used differed. Terms included best practices, key performance indicators, practice principles, measures, goals, values, and standards. To a casual observer, it may not be clear that these efforts were deeply united, and that any one of them could form a national template, or model, to follow.
- Finally, a challenge arises from the reality that thinking in terms of empirical measurement and assessment of quality is still relatively new to the defender field. Defender leaders are increasingly embracing data and analytics to help them provide better services, but for many, it is still a new frontier. It can take time to appreciate the value of a new practice, such as quality assessment, and even more time to shift norms and practices to operationalize it, such as through collecting and analyzing data.

All of these factors speak to the importance of making quality assessment as easy to do as possible by putting forth a nationally applicable, readily understood roadmap that any defender program can either adopt wholesale or adapt to local practice nuances.

This document briefly summarizes the efforts of dozens of individuals and organizations over the past two decades to define and measure quality in indigent defense. It is intended to serve as a resource for defenders, researchers, and others interested in the history and development of indicators of quality indigent defense representation. The document is a companion piece to another NLADA paper, *National Indicators of Quality Indigent Defense*, which provides a ready-to-use set of quality indicators that can be adopted by any indigent defense program in the U.S. Supported by a grant from the Open Society Foundations, NLADA convened the Defender Research Consortium (DRC) three times between 2015 and 2017. The DRC brought together dozens of defenders, researchers, and technologists to

address ways to improve indigent defense services and systems through data-based approaches, notably including the development and implementation of quality indicators.¹

The document is divided into three chapters: 1) a literature review that discusses the contributions of key publications on quality indicators from 2005 to 2016; 2) a distillation of the process of developing quality indicators; and 3) a chronicle of the Defender Research Consortium's three-year path toward developing a set of indicators to assess the quality of indigent defense services.

¹ For in-depth discussion of each meeting of the DRC, *see* Chapter 3, *infra*.

Chapter 1: Literature Review

The following literature review tracks the evolution and refinement of “quality indicators” from 2005 to 2017. In that time, multiple jurisdictions and non-governmental organizations have enriched the wider discussion of quality representation in indigent defense through promulgation of best practices and indicators of quality defense.

The publications highlighted in this review were produced by the North Carolina Systems Evaluation Project; the Travis County, Texas Indigent Defense Values Committee, as facilitated by Mark Erwin and Meg Ledyard, PhD; the Massachusetts Committee for Public Counsel Services; NLADA; and the International Legal Foundation. Additional recent efforts not detailed here have been undertaken in Texas, through a partnership between the Public Policy Research Institute at Texas A&M University and the Texas Indigent Defense Commission, and in Wisconsin by the Wisconsin State Public Defender.²

North Carolina Systems Evaluation Project

Prior to the first convening of the DRC, significant work had already been done to define and measure quality indigent defense. In 2005, the North Carolina Office of Indigent Defense Services (NCIDS) established the **North Carolina Systems Evaluation Project (NC-SEP)**, led by Margaret A. Gressens and Daryl V. Atkinson.³ Whereas other research had focused on the resources available to indigent defense (or “inputs”) and the work of attorneys (or “processes”), NC-SEP identified *outcomes* (both broadly-stated “goals” and narrower “objectives”) that indigent defense systems seek to achieve as well as *indicators* for these outcomes:

Performance measures and indicators are statistical measures that tell you whether you have achieved your objectives. Ideally, performance measures or indicators measure program outcomes, rather than inputs or processes. Inputs are resources, such as people, raw materials, energy, information, and finances, that are put into a system (such as an economy, manufacturing plant, or computer system) to produce desired results. Outcomes are the desired results. Once again, if you want to evaluate how well a baseball team is playing, you would measure how many games the team won (desired outcome), not how long or how often the team practiced (input).⁴

NC-SEP conducted extensive research into indigent defense goals, objectives, and indicators, including hosting a national conference of experts;⁵ holding focus groups with

² Publications documenting the quality indicators projects undertaken in Texas and Wisconsin are forthcoming.

³ All of NC-SEP’s reports are available at <http://www.ncids.org/Systems%20Evaluation%20Project>.

⁴ MARGARET A. GRESSENS & DARYL V. ATKINSON, N.C. OFFICE OF INDIGENT DEF. SERVS., THE CHALLENGE: EVALUATING INDIGENT DEFENSE: NORTH CAROLINA SYSTEMS EVALUATION PROJECT PERFORMANCE MEASURES GUIDE 5 (2012), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/performanceasures/PM_guide.pdf.

⁵ See N.C. OFFICE OF INDIGENT DEF. SERVS., THE CHALLENGE: EVALUATING INDIGENT DEFENSE: CONFERENCE REPORT (2005), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/SEP%20Research%20Report%20June%202009%20Full%20Report.pdf (the report from NCIDS’s 2005 conference).

representatives of all criminal justice stakeholders;⁶ surveying former clients in correctional facilities; and completing a literature review.⁷ This research tackled many of the obstacles to defining “quality” that the DRC continued to discuss.

In 2012, NC-SEP published a detailed guide to performance measurement for NCIDS to use in courts and indigent defense delivery systems (including public defenders, court-appointed attorneys, and contract attorneys) across North Carolina’s 100 counties. As part of this guide, NC-SEP published a short list of key performance indicators that could serve as a starting place for any indigent defense agency interested in performance measurement. NC-SEP then worked with the NLADA Research & Data Analysis Advisory Committee to test the indicators in North Carolina; Connecticut; Knox County, Tennessee; and Travis County, Texas. In 2014, NC-SEP published a revised list of eighteen key performance indicators that correspond to a spectrum between Best Client Outcomes and Worst Client Outcomes in the areas of Client Case Outcomes and Access to Attorney.⁸ The indicators are listed in Table 1.

⁶ See N.C. OFFICE OF INDIGENT DEF. SERVS., THE CHALLENGE: EVALUATING INDIGENT DEFENSE: RESULTS FROM IDS ROUND TABLE DISCUSSIONS, WHAT CLIENTS, INDIGENT DEFENSE ATTORNEYS, JUSTICE SYSTEM PARTNERS, LAW ENFORCEMENT, AND THE COMMUNITY SAY ABOUT NORTH CAROLINA’S INDIGENT DEFENSE SYSTEM (2007), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/RoundTableReport_06_08.pdf.

⁷ MARGARET A. GRESSENS & DARYL V. ATKINSON, N.C. OFFICE OF INDIGENT DEF. SERVS., THE CHALLENGE: EVALUATING INDIGENT DEFENSE: INNOVATION IN THE ART AND PRACTICE OF INDIGENT DEFENSE (2009), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/SEP%20Research%20Report%20June%202009%20Full%20Report.pdf.

⁸ The pilot study produced examples for how charts can compare jurisdictions to each other and monitored over time according to these indicators. It also developed toolkits for implementing the indicators, which explain, for example, how to uniformly define a “case.”

Table 1:
NC-SEP Indicators, adapted from Final Grant Report to the Open Society Foundations
(2014)⁹

Area	Outcome	#	Key Indicator
Client Case Outcomes	Best	1	The percent of cases that ended in nonconviction, disaggregated by dismissal without leave, noncriminal responsible, and deferred prosecution
	Best	2	The percent of convictions that ended in an alternative to incarceration**
	Best	3	The percent of felony cases that ended in a conviction where the conviction was a nonfelony*
	Best	4	The average percent of sentence avoided for cases that ended in a conviction and the average jail or prison sentence received (months)*
	Worst	5	The percent of cases defendant is convicted of the highest charge and all charges and convicted of the highest charge and some, but not all, charges*
	Worst	6	The percent of alternative to incarceration convictions that ended in supervised probation**
	Worst	7	The percent of convictions and jail sentences that were time served*
	Both	8	Average case cost (per case attorney fees only)
	Both	9	Average cost of court fees and fines (excludes restitution, attorney fees)
Access to Attorneys	Best	10	The percent of all cases handled by the indigent defense system
	Best	11	The percent of cases where the number of days between arrest and appointment of counsel occurred within three days
	Best	12	The percent of cases where the defendant was incarcerated pretrial and met with a member of the defense team within seven days of arrest
	Best	13	Environmental scan of the proportion of initial bail determinations where the indigent defense system provided access to counsel in adult criminal cases
	Best	14	Environmental scan of the proportion of first appearance court sessions before a judge where the indigent defense system provided access to counsel to qualified defendants in adult criminal cases
	Worst	15	The percent of cases that ended in conviction or deferral where the defendant waived counsel and pled guilty
	Worst	16	The percent of cases that ended in time served where the defendant waived counsel
	Worst	17	The percent of cases where the defendant was incarcerated pretrial and met with a member of the defense team for the first time more than 20 days after arrest
	Worst	18	The percent of cases that ended in conviction or deferral where at-large defendants met for the first time on the day of disposition with the attorney who disposed the case
			Supplemental Metric: The percent of cases where the defendant's request for appointed counsel was denied
* Convictions include: Flat Time/Straight Sentence, Split Sentence, Time Served, Non-Custodial Sentence, Financial and/or Civil Penalties Only, and Adjudication/Judgment Withheld.			
** Alternative to incarceration convictions include: Non-Custodial Sentence, Financial and/or Civil Penalties Only, and Adjudication/Judgment Withheld.			

⁹ N.C. OFFICE OF INDIGENT DEF. SERVS., NORTH CAROLINA SYSTEMS EVALUATION PROJECT (NCSEP): OPEN SOCIETY FOUNDATIONS FINAL GRANT REPORT 3-6 (2014), *available at* http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/Final.OSF.GrantReport.pdf.

Travis County, Texas

As part of the North Carolina pilot activities, **Travis County, Texas** developed performance measures for its newly-created managed assigned counsel system, the Capital Area Private Defender Service (CAPDS), which launched in 2015.¹⁰ CAPDS was designed to replace an ad hoc judicial assignment system with a nonprofit corporation that is able to continually evaluate and improve the quality of representation it provides. To determine what that meant for local stakeholders, Travis County created a Values Committee, made up of members of the defense bar, judges, county policymakers, and members of the Texas Indigent Defense Commission (TIDC). The Committee chose six values to measure: Quality, Efficiency, Fairness, Compliance, Access, and Continuous Improvement.

With data from these measures, CAPDS uses a data dashboard to get an overview of their system at a glance. In a 2015 webinar, Dr. Meg Ledyard of the Travis County Courts reported that the values of Efficiency and Compliance had been relatively easy to measure and visualize, but Quality – attorney knowledge of law, compassion for client, understanding of available programs, etc. – had been harder to quantify. Travis County’s solution had been to use outcome-based measures and measures of a few attorney activities (timeliness of meetings and use of investigators) as proxies for the value of Competent Representation.¹¹ Table 2 lists all of the objectives and performance measures they identified for each value.

¹⁰ See *Capital Area Private Defender Service*, CAPITAL AREA PRIVATE DEFENDER SERV., <http://www.capds.org>.

¹¹ For NLADA’s webinar about Travis County’s Managed Assigned Counsel system, see *The Travis County (TX) Managed Assigned Counsel Journey*, NAT’L LEGAL AID & DEFENDER ASS’N, <http://www.nlada.org/travis-county-tx-managed-assigned-counsel-journey>; also available at <https://www.youtube.com/watch?v=ymoTYhrndQ>.

Table 2:
Travis County Indicators, adapted from Indigent Defense Values, Goals, and Measures (2014)¹²

Value: Compliance			
Goal 1: Comply with the Travis County Indigent Defense Plan and State Law			
Objective	#	Measures	Source
Prompt magistration ¹³	1.a	% magistrated within 48 hours (Fel.)	Statute
	1.b	% magistrated within 24 hours (Mis.)	Statute
Indigence determination standards follow Travis County fair defense plan	2	appointed by each standard	Local plan
Attorneys meet Travis County fair defense plan qualifications	3	% meeting requirements	Local plan
Prompt appointment	4	% in jail appointed within one working day	Statute
Attorney selection process is fair and neutral	5		
Clients are screened uniformly	6.a	% screened within 24 hours	Statute?
	6.b	% in jail appointed within one working day	Statute?
Defense counsel is provided sufficient time and confidential space within which to meet client	7.a	Space available to meet. (jail and courthouse)	ABA
	7.b	Time available for meetings (jail time limits)	ABA
	7.c	Procedures for meeting with clients in jail	ABA
Defense counsel's workload is controlled to permit the rendering of quality representation	8.a	Caseload limits (by Travis County Plan)	Local plan
	8.b	Caseload by attorney	Local plan
	8.c	Number of attorneys with caseloads in different ranges. (histogram)	Local plan
	8.d	# of days an attorney is above the caseload limit in the local plan.	Local plan
Defense counsel's ability, training and experience match the complexity of the case	9.a	Requirements of each wheel	Local plan
	9.b	% meeting requirements for each wheel	Local plan
Same attorney continuously represents client until completion of case	10.a	# of withdrawals	Statute
	10.b	# of originally appointed attorneys who dispose of the case	Statute
Defendant is advised of rights	11	Metric from the magistration process? Do we capture or just in pre-trial?	Statute
Defense counsel is provided with an required to attend CLE	12.a	# of CLE courses provided by county	Local plan
	12.b	% of counsel meeting CLE requirements	Local plan

¹² 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>.

¹³ "Magistration" is the term used in Texas for a defendant's first appearance before a judicial officer, where the defendant is informed of the charges against him or her as well as his or her rights. This is essentially equivalent to "arraignment" in most other jurisdictions.

Goal 2: Adhere to General Principles of a Top Quality Public Defense Delivery System			
Public defense function is independent.	13	On wheel versus off wheel appointments (how can we split out bench appointments from invoice appts, etc)	ABA 10 Principles
Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	14.a	Review standards in Travis County Plan	ABA 10 Principles
	14.b	% or number of attorneys failing to meet standards	ABA 10 Principles
Parity between the defense counsel and the prosecution with respect to resources and the defense counsel is an equal partner in the justice system.	15.a	% of DA/CA resources that go to cases with an indigent defendant (estimate from public information)	ABA 10 Principles
	15.b	Total resources for defense in indigent cases.	ABA 10 Principles
	15.c	# of indigent cases with experts by type	ABA 10 Principles
	15.d	# of indigent cases with investigators	ABA 10 Principles
Value: Competent Representation			
Goal 3: Clients Receive Competent Representation			
Counsel meets with clients in timely manner	16.a	Days from Appointment to first substantial meeting	
	16.b	Days between work start date and disposition	
High quality representation		<i>Outcome Measures</i>	
	17.a	• convictions	
	17.b	• % of cases where highest charge is reduced	
	17.c	• sentence	
	17.d	• sentence type	
	17.e	• % convictions resulting in alternatives to incarceration	
	17.f	• dismissals	
	17.g	• sentence length	
	17.h	• financial costs	
	17.i	• # of days defendant incarcerated, pretrial	
	17.j	• average bond amounts	
	17.k	• conditions of release (PR, Surety bonds, etc.)	
	17.l	• failure to appear rates	
	17.m	• # days between filing and resolution	
	17.n	• % of cases resolved within X days by case type	
	17.o	• impact of pre-trial release on outcomes	
	17.p	• % of cases overturned on appeal	
	17.q	• number of people diverted to specialty courts	
	17.r	• deferred prosecution (Judge Brown, Bradley Hargis)	
	17.s	Trials	
	17.t	Jail Call Outcomes	

	17.u	Resets by case type	
	17.v	Trial date certainty	
	17.w	Withdrawals	
	17.x	Disciplinary hearings/ grievances	
	17.y	Use of Investigators	
Representation is free of racial, gender, and other bias. (added)	18.a	Measure outcomes (above) by race, sex, citizenship (available)	
	18.b	Socio-economic status (needs to be developed)	
Value: Fairness in Compensation and Appointments			
Goal 4: Create Fair Compensation and Appointment Practices			
Defense attorneys are full participants	19	Defense attorneys are included in policy discussions	Statute (requires to include overhead)
Defense counsel is compensated fairly	20.a	Parity of payment per case compared to other local jurisdictions	
	20.b	Payment by case type	
	20.c	Potential Salary by wheel type, average actual salary for each wheel, perhaps by month	
Defense counsel is compensated promptly	21.a	Days between submission of voucher submission to auditor	
	21.b	Days from submission to auditor to payment of attorney	
Attorneys on list are treated equally	22.a	% of appointments to each attorney on wheel	
	22.b	% of appointments to each attorney on wheel	
	22.c	% of appointments to each decile of wheel attorneys (or some appropriate measure of the variance in number of cases)	
Value: Efficiency and Cost Effectiveness			
Goal 5: Increase System Efficiency and Improve Cost Effectiveness			
Cases move through system efficiently		<i>Trial date certainty</i>	
	23.a	Number of resets	
	23.b	Number of pre-trial settings	
		<i>Case length</i>	
	23.c	Time from warrant date/indictment/information to disposition	
	23.d	Time from arrest to information/indictment	
	23.e	Time from filing to indictment/info	
Money is used in an effective manner/Most bang for buck (This type of goal is often best analyzed in comparison to alternative plans)	24.a	\$ per case	
	24.b	\$ spent on investigators/specialists	
	24.c	Recidivism rates	
	24.d	Probation Failure rates	
Attorneys submit vouchers and are paid in a timely manner	25.a	Time from Work end date to submission of voucher	
	25.b	Time from voucher submission to payment	

Value: Access to Counsel			
Goal 6: Enhance Defendant Access to Counsel			
Rules are flexible enough to be used in real life situations	26.a	Ability to make appointments outside of official indigence determination	
	26.b	# appointments made to those not initially determined indigent	
	26.c	% of cases with appointed counsel	
Public has access to courts' information	27	# of public facing websites	
Value: Transparency/Accountability			
Goal 7: Provide Transparency to Appropriate Stakeholders			
Appropriate data is available to key participants	28.a	Forms of data availability	
	28.b	Dashboards (judges, administration)	
	28.c	Open Records requests (#)	
Value: Transparency/Accountability			
Goal 8: Improve System Value in an Iterative and Continuous Way			
New programs	29.a	# new programs per year	
	29.b	# participants per program	
Scholarships	30		
Measures that could be useful, but not currently available in Travis County (or anywhere else really)			
	*	<i>Collateral Consequences</i>	
	*	• What are they for different offenses?	
	*	• Are defendants aware of them?	
	*	<i>Defendant Satisfaction Measures</i>	

Massachusetts Committee for Public Counsel Services

Beginning in 2012 (around the same time as NC-SEP's pilot studies in North Carolina; Connecticut; Knox County, Tennessee; and Travis County, Texas), Massachusetts's statewide public defender agency, the Committee for Public Counsel Services (CPCS), partnered with the Center for Court Innovation (CCI) to identify agency-wide best practices and corresponding performance indicators. This partnership was part of the U.S. Department of Justice, Bureau of Justice Assistance's **Answering Gideon's Call: Improving Indigent Defense Delivery Systems Program**.¹⁴ Similarly to NC-SEP, CPCS and CCI sought to create indicators that would apply to five divisions with diverse practice areas and delivery systems: the Public Defender Division (PDD), Youth Advocacy Division (YAD), Children and Family Law Division (CAFL), Mental Health Litigation Division (Mental Health), and the Private Counsel Division. Unlike NC-SEP, CPCS and CCI relied in part on well-established and detailed statewide performance guidelines: the *Assigned Counsel Manual*.¹⁵ Perhaps because

¹⁴ See *Answering Gideon's Call Project*, COMM. FOR PUB. COUNSEL SERVS., <https://www.publiccounsel.net/cfo/bja-gideon>.

¹⁵ See *Assigned Counsel Manual*, COMM. FOR PUB. COUNSEL SERVS., <https://www.publiccounsel.net/assigned-counsel-manual>. CPCS and CCI also reviewed national best practices and standards; incorporated insights from

of these guidelines, CPCS and CCI, in the first instance, created indicators for ten “best practice principles” for individual cases, rather than for overall system health, as NC-SEP had done.

For each division, and for each best practice principle, CPCS and CCI created about ten to twenty indicators.¹⁶ From this list, they selected about two to five indicators for each best practice principle.¹⁷ This list is presented as part of CPCS and CCI’s national recommendations for how agencies outside of Massachusetts can undertake similar performance measurement projects.¹⁸ CPCS and CCI also recommend a small group of key indicators that every agency should track. These indicators, captured in the Table 3, are broken down by the types of research for which they should be used, in ascending order of complexity:

- “Action research,” or “routine tracking ... to provide immediate and useful feedback about everyday program operations and performance”
- “Case outcome research,” or “desired results that flow from the work performed by the defense team”
- “Impact research,” which “answers the question, “How much (if any) of the change or positive outcomes observed in the target population occurred because of the program or particular (e.g., indigent defense representation) activities of interest?”

Table 3:
CPCS and CCI Indicators, adapted from National Recommendations (December 2014)¹⁹

Action Research	
Intake Data	
1	Volume by type of case (#)
2	Disposed at arraignment/initial hearing (%)Volume by client (#)
3	Client demographics (% by race/ethnicity, age, sex)
4	Interpreter needed (%)
Staff Activity (court and case specific related best practices)	
5	Distribution of number of days from first appearance to assignment of attorney (#)
6	Average days from assignment to first (private, in person) contact (#)
7	Same attorney from first assignment by CPCS through disposition (%)
8	Result of first appearance, (detained/placed outside home)(%)
9	Average days of pretrial detention/out of home placement (#)

training materials (like checklists and sample motions); looked to internal review protocols; and met with leading trial attorneys in each practice area to discuss the motivation for their activities and the logistics of completing them consistent with best practices. *See* ZIYAD HOPKINS, COMM. FOR PUB. COUNSEL SERVS., THE COMMITTEE FOR PUBLIC COUNSEL SERVICES ANSWERING GIDEON’S CALL PROJECT (2012-DB-BX-0010): BEST PRACTICES, OBJECTIVES AND PERFORMANCE INDICATORS 3 (2014), *available at* <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Best-Practices-Objectives-and-Performance-Indicators.pdf>.

¹⁶ HOPKINS, *supra* note 15.

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 4-7 (2014), *available at* <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Final-Report-Recommendations.pdf> (listing the eight best practices and suggested data and indicators for each).

¹⁸ *See id.*

¹⁹ *See id.*

10	Average age (in days) of pending cases (#)
11	Motions (including responses/oppositions) (# and % of cases)
	<i>Trials</i>
12	Bench (# and % of cases)
13	Jury (for criminal/juvenile cases) (# and % of cases)
	<i>Open cases with investigator involved (staff or hired)</i>
14	Witness(es) interviewed (%)
15	Visit crime scene (%)
16	Testifies in court (%)
	Staff Activity (client related best practices)
	<i>Client Contacts</i>
	<i>Out of court, in-person client contacts by any CPCS staff member</i> - Office (#/%) - Detention/placement location (#/%) - Home (of client) (#/%) - Other Face to face (#/%) - Out of court, NOT in-person contacts (email, phone, text, etc.) (#/%)
	Clients for whom Social Service Advocate (SSA) engaged
22	Client contacts from SSA (#/%)
23	External to CPCS collateral contact from SSA (e.g., school, work, health care, family, etc.) (% of cases)
24	Client contacts from SSA (#/%) and collateral contacts by attorney
	Outcome Research
	Case Specific
25	Client not detained pre-trial/Placement decisions about children (%)
26	Charge(s)/petitions dismissed prior to trial (#/%)
27	Charges acquitted/dismissals/denials after trial (#/%)
28	Pleas/admissions to reduced charge(s)/stipulations/uncontested hearings (#/%)
29	Sentences (% each of custody, probation/community based supervision)/Child custody orders
	Impact Research [Public Defender Division and Youth Advocacy Division]
30	Client satisfaction with representation
31	Clients not under any criminal justice/juvenile supervision
32	Clients not incarcerated past minimum sentence/projected GCL date (suggests successful parole)
33	Clients without new arrests
34	Clients without new admissions/convictions
35	Clients engaged in pro-social activities post disposition/incarceration
36	Reduce erroneous legal outcomes
37	Reduce collateral costs
38	Safer communities

National Legal Aid & Defender Association

In 2014, as part of its Open Society Foundations-funded work to increase capacity of defender managers to use data and conduct research, NLADA published **Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders**.²⁰ The “Basic Data Toolkit” sets out a list of data points identified by NLADA’s Research and Data Advisory Committee as fundamental for every defender agency to collect.²¹ The data points selected enable defenders to assess performance for their programs across three interconnected areas:

1. What resources exist, and are they adequate? *Basic resources that can be expressed through data include overall funding, expenditures, staff size and composition, and attorney experience level. These types of data should be considered in context with other important resources that speak to capacity, such as training, office equipment and tools of the trade, such as on-line legal research.*
2. Attorney activities: what work is performed? *Case-related work activities include client contact, legal research, motion practice, investigation and in-court advocacy. Again, measurements of these case-related activities can be considered in context with non-case-related activities, such as training and professional development.*
3. Client outcomes: what do you do for your clients? *Basic client outcomes include case disposition (guilt or acquittal/dismissal) while more nuanced understandings consider life outcomes, client satisfaction, or whether clients plead to offenses less severe than originally charged.*

In addition to the data points, NLADA provided a list of suggested performance measures, seen in Table 4.

²⁰ MAREA BEEMAN, NAT’L LEGAL AID & DEFENDER ASS’N, BASIC DATA EVERY DEFENDER PROGRAM NEEDS TO TRACK: A TOOLKIT FOR DEFENDER LEADERS (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>.

²¹ *Id.* at 8-9.

Table 4:
NLADA Indicators, adapted from Basic Data Toolkit (2014)²²

Area	Measurement Options	Extras
Resources		
Budget and Expenditure	Annual budget, by category, by funding source(s)	
	Attorney and expert voucher payments	
Workload*	Cases assigned, cases closed, cases open (by attorney and by case type/division)	Develop overall cost per case or by dividing budget by cases.
	Number of attorneys (by case type/division)	Develop overall attorney workload by dividing cases by number of attorneys.
	Experience level of attorneys (by case type/division)	
Attorney Activity	<i>Track all information by case and by attorney</i>	
Client Contact	Number of client visits: jail, non-jail?	
	Number of phone conversations	
	Number of family visits	
Legal Research	Westlaw/Lexis time records	
Motion Practice	Number and type of motions filed	
Social Worker	Requested?	
	Granted/Used?	
Investigator	Requested?	
	Granted/Used?	
Expert	Requested?	
	Granted/Used?	
	Type of Expert	
Procedure	Trial, Plea, Deferred Sentence	
Case Outcomes	<i>Track all information by case and by attorney</i>	
Pre-trial Status	Detained	
	Released	
Disposition	Guilty, Not Guilty, Nolle Prose, Deferral	
Sentencing	Incarceration, probation, fines	Sentence specifics (length, fine amount)
	Plea to reduced charge vs. sentence for original top charge	Drug or specialty court?

²² See *id.* at 11-12.

Client Outcome	Employment before & after case; housing situation; recidivism within 3 years	
* NOTE: Count cases in the same way the local prosecutor does.		

International Legal Foundation

In 2016, the International Legal Foundation (ILF) published *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*,²³ a report that laid out a set of quality defense principles and indicators, which are summarized in Table 5. This set of indicators served as one of the setting-off points for the discussion of quality indicators by the working group at DRC III in Las Vegas.

Table 5:
ILF Indicators, adapted from *Measuring Justice* (2016)²⁴

	Practice Principles	Key Output Measures
1	Provide Early Representation	• % 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
2	Provide Client-Centered Advocacy	
3	Advocate for Pretrial Liberty	• % 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) per case
4	Engage in Independent Fact Investigation	• % 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
5	Engage in Diligent Preparation	• % of cases in which the attorney prepares written trial materials including an opening statement, closing argument, and written witness examinations
6	Engage Expert Assistance	
7	Engage in Pretrial Litigation	
8	Defend the Client at Trial	• % of cases in which a defense expert is retained • # of written motions filed per case, by motion type
9	Engage in Sentence Mitigation	• # of written sentencing plans prepared • % of cases in which the defense calls one or more witnesses at sentencing
10	File Appeals	• % 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

²³ INT'L LEGAL FOUND., MEASURING JUSTICE: DEFINING AND EVALUATING QUALITY FOR CRIMINAL LEGAL AID PROVIDERS (2016).

²⁴ See *id.* at 30-33.

Chapter 2: Developing National Indicators of Quality Indigent Defense: Five Steps

Through its work reviewing the quality indicator development illustrated in the examples shared in Chapter 1, and engaging with attendees of the Defender Research Consortium, NLADA concluded that establishing nationally applicable definitions and measurements of quality indigent defense was both possible and worthwhile.²⁵ By examining the Chapter 1 examples, plus others undertaken in Texas and Wisconsin, there is a discernable five-step process for how to adopt and promulgate national indicators. This chapter sets out information on each of these steps:

1. **Clarify the meaning and purpose of quality indicators.**
2. **Identify consensus elements of quality indigent defense.**
3. **Articulate values shared by the national defender community.**
4. **Deliver a clear and inclusive definition.**
5. **Look to national authority and common standards.**

Function of National Definition and Measures

Step 1: Clarify the meaning and purpose of quality indicators.

Some of the objections to a national definition and indicators for quality indigent defense can be answered by clarifying what the indicators represent and by bridging the perspectives of defenders and researchers. NLADA recommends defining quality of service apart from the results of representation, while necessarily collecting measures of both.

Data and research projects are often met with skepticism by defenders because they seem to work against the values to which defenders are deeply committed: humanizing and individualizing people that are too often judged by stereotypes and processed *en masse* through assembly-line bureaucracies. Does defender-led research just assign another number to clients?

To the contrary, defender-led research initiatives are this community's opportunity to take control of the narrative. On a local level, when defenders have their own data, they are able to challenge other stakeholders' claims about their work. On a national level, major criminal justice reform efforts, like the Justice Reinvestment Initiative,²⁶ are built on research, and stake their value on it, whereas others, like Measures for Justice,²⁷ are entirely devoted to nationwide performance measurement of criminal justice systems. Defenders must be prepared to empirically define their own worth or have someone else do it for them.

²⁵ Drawing inspiration from the work mentioned in Chapter 1, the attendees of the Defender Research Consortium set about creating an initial, nationally applicable set of indigent defense quality indicators. That work appears in Chapter 3, *infra*.

²⁶ See *BJA Justice Reinvestment Initiative*, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, <https://www.bja.gov/programs/justicereinvestment/index.html>.

²⁷ See *Measures for Justice*, MEASURES FOR JUSTICE, <http://measuresforjustice.org>.

That definition should include *quality* representation. This is not an easy task. The healthcare field has struggled with how to define the “quality of care” or “quality of life” associated with a course of treatment, and how to prioritize these measures against traditional measures like how long a treatment extends someone’s life or prevents a disease from recurring.²⁸ Nevertheless, it is clear that quality of service matters in customer-driven industries. When the Clinton Administration undertook the National Performance Review, it sought to adopt a business model for government in order to better perform for “our principal customer the American people.”²⁹ They defined performance measurement as:

*A process of assessing progress toward achieving predetermined goals, including information on the efficiency with which resources are transformed into goods and services (outputs), the quality of those outputs (how well they are delivered to clients and the extent to which clients are satisfied) and outcomes (the results of a program activity compared to its intended purpose), and the effectiveness of government operations in terms of their specific contributions to program objectives.*³⁰

Defenders’ principal customers are their clients, and they are not doing their jobs if their clients are neglected or unsatisfied; defenders are unique among criminal justice system actors in this regard. Other service-focused fields can therefore offer a conceptual model for indigent defense, with two key components:

First, **defenders can define their quality of service apart from the results of their work**, much like doctors distinguish quality of care from treatment effect, and businesses distinguish customer service from profit. The “results” for defenders would be case outcomes, life outcomes, recidivism, and community wellbeing. For a researcher, this would mean, in a sense, measuring process rather than measuring outcomes. *Defenders already think this way to a great extent*, in part because of the legal profession’s focus on procedure, and in part because defenders have so much of the outcomes of their cases determined by other criminal justice system actors who have considerably more discretion (and, typically, resources); the quality of their services is arguably more within their own control.

If quality of service is defined apart from results, then it may also be easier to measure.

Directly surveying clients about their perceptions of defenders is one option, but is not the only option.³¹ A defense team’s work on a case can also serve as proxies for how much time and attention was given to the client’s needs. To be sure, the number of client interviews, for

²⁸ See *Agency for Healthcare Research and Quality*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <http://www.qualityindicators.ahrq.gov>.

²⁹ NAT’L PERFORMANCE REVIEW, SERVING THE AMERICAN PUBLIC: BEST PRACTICES IN PERFORMANCE MEASUREMENT (1997), *available at* <http://govinfo.library.unt.edu/npr/library/papers/benchmrk/nprbook.html> (quoted in Executive Summary).

³⁰ *Id.*

³¹ For example, Brooklyn Defender Services, who embrace improving client experience as a goal, have critiqued client satisfaction surveys. See *Client Satisfaction Surveys for City-Funded Indigent Legal Services: Hearing on Int. 958-2015 Before the Comm. on Courts & Legal Servs. of the N.Y.C. Council* (Dec. 4, 2015) (statement of Lisa Schreibersdorf, Exec. Dir., Brooklyn Defender Services), *available at* <http://bds.org/testimony-on-intro-958-client-satisfaction-surveys>.

example, may not tell you much about the “quality” of the conversation in terms of whether it was productive and empathetic, as the Committee for Public Counsel Services acknowledged in its indicators report:

The main challenge that emerged from the discussions in all practice areas was the difficulty in quantifying work that is both qualitative in nature and inherently contextual. Many of the markers of quality representation cannot be quantified—the non-judgmental client interview; the precise cross-examination; the development of positive relationships with court personnel. The complex social and legal circumstances of CPCS clients, including different court practices from county to county, coupled with a client-centered and directed approach to case strategy impact staff activity and case results.³²

Yet despite these difficulties, CPCS developed and prioritized indicators³³ related to staff activities on the understanding that “the first step is for CPCS, and other similarly situated indigent representation organizations, to develop a quarterly or annual statistical report that lists out the very most critical performance measures and outcome indicators of the data that can most readily be collected, tracked and analyzed for the purposes of self-assessment.”³⁴ Their outcome measures are reserved for more complex data analysis.³⁵

Quality of service may also be easier to reach a national consensus on than best case or life outcomes. Regardless of whether the purpose is to have a client’s sentence reduced, or to address her criminogenic needs with social services, or to protect her civil rights from collateral consequences, some of the same activities apply: meeting the client early and often, engaging experts of other disciplines, and being knowledgeable on updates in law and practice are aspects of quality of service that are relatively uncontroversial. As will be described below, these aspects of quality are at the top of the list for the national defender community and are reflected in national standards.

To be clear, although outcomes are distinct from the concept of “quality indigent defense,” it is no less necessary to measure outcomes. Data on outcomes makes it possible to demonstrate the **effects of quality indigent defense** on cases and the lives of clients, which are the primary concerns of policymakers and funders. This conceptual distinction has an important implication: defender researchers can identify outcomes data to collect, without any implicit implication that this data is reflective of the quality of service. This means that complete consensus about the relevance of a particular “outcome” indicator is not necessary. It should still be tracked (unless it is unnecessarily burdensome to do so), so that

³² HOPKINS & LABRIOLA, *supra* note 17, at 4.

³³ See Table 3, *supra*.

³⁴ HOPKINS & LABRIOLA, *supra* note 17, at 21.

³⁵ See generally 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> (addressing how to build analytics capacity).

it may be used to demonstrate correlational and causal relationships, in the specific circumstances where this is appropriate.

Second, **defenders must measure results alongside quality of service.** Results are still basic pieces of information that defenders need to keep track of, even if, as a national community, there is not consensus about what they stand for. Results are what demonstrate the effect that quality of service has on the outcomes of cases and the lives of clients. Beginning to collect this information is the first step in building the data and research capacity that defenders need to justify their work.

Elements and Values of Quality Indigent Defense

Step 2: Identify consensus elements of quality indigent defense.

NLADA has found that certain elements of quality indigent defense are consistently identified by defenders from around the country. National indicators of quality should include these elements.

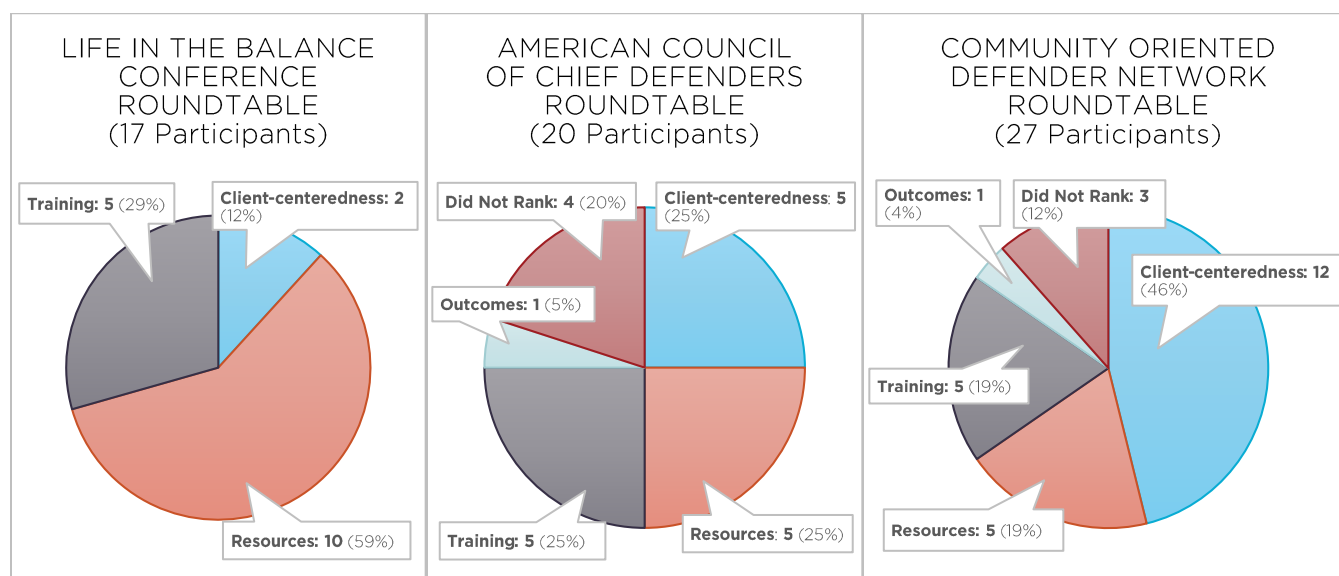
To help understand and articulate these values, NLADA facilitated roundtable discussions with members of its national community about how they think about quality indigent defense. These discussions took place during Spring and Summer 2016 at NLADA's Life in the Balance conference (a capital defense team conference, where participants were mostly social workers and investigators); American Council of Chief Defenders meeting (a small gathering of chief defenders), and the Community-Oriented Defender Network conference (a holistic defense conference, where participants represented diverse members of defense teams, as well as policymakers). At each conference, NLADA brought together about twenty-five people at a time to answer the following questions:

1. What are the goals of indigent defense?
2. What are the elements of quality indigent defense – e.g., activities, people or resources?
3. If you had to rank them, which of the above elements do you consider the most important to achieving quality indigent defense and why?

The participants were given worksheets with these questions to silently complete before engaging in a forty-five-minute discussion. They were also given the opportunity to revise their statements on the worksheets (on the back of the sheet) once the discussion was over.

The charts in Figure 1 summarize the written responses to question 3:

Figure 1:
Written Responses from NLADA Roundtables:
Most Important Elements of Quality Indigent Defense (2016)



The fact that participants were not provided with elements to rank by NLADA, but rather identified them on their own, makes the similarity of their responses significant. It indicates that there is considerable agreement even between diverse types of defense advocates on the fundamental elements of quality indigent defense:

- **Resources.** Includes general funding and time/caseload considerations, in addition to access to investigators and/or social workers.
- **Training.** Roughly half of responses in this category specifically mentioned “legal competency” (or some variation of it), but this category includes appropriate training for advocates such as investigators and social workers.
- **Client-centeredness.** This reflects responses that highlighted the relationship between the client and their advocates, including whether the client is fully informed and participatory within their case, in addition to considerations about an attorney’s demeanor (that clients are treated with respect and dignity).

The difference in frequency with which these responses were considered “most important” is likely to be reflective of the differences in participants at each group. The most notable of these is the far greater prominence the “client-centeredness” received at the Community Oriented Defender Network Conference, consistent with the COD Network’s commitment to “holistic” defense. In contrast, participants at the Life in the Balance roundtable, who are engaged in death penalty and LWOP cases, were more concerned that advocates were sufficiently trained.

Step 3: Articulate values shared by the national defender community.

Of the performance measurement projects that NLADA reviewed, the reports of Travis County and CPCS were especially clear and compelling because they carefully articulated the values and goals that their indicators are meant to track. These statements of values and goals, consistent with best practices in performance measurement,³⁶ are what resonate with the people actually collecting data (such as line defenders) and clarify desired outcomes for the people designing studies (researchers). A national set of indicators should therefore make explicit the values of indigent defense.

The discussions at the roundtables delved into these values. The following themes were most prominent:

1. Due Process (Rule of Law)

Many participants stated that a basic goal of indigent defense is to make the criminal justice system work legally and consistently.

“As we’ve seen in New Orleans, the system collapses without defenders. Courts can’t operate. There is a human rights issue when people end up being held without just cause.”

“When our jurisdiction didn’t have defenders, the government couldn’t enforce the law in the same way.”

Similarly though subtly different, others viewed indigent defense as being more outside of and opposed to the government than as a kind of partner with shared goals:

“A person charged with crime is faced with the full power of government and public opinion. Without defense, they would be railroaded.”

“My single minded purpose is to kick the government’s ass.”

2. Equal Justice (Economic Justice, Racial Justice, Social Justice)

In their written answers, participants often stated “fairness” and “equality” as goals of indigent defense. In discussion, different meanings for these concepts emerged. In addition to the due process meaning of fairness, participants explained that they meant either that every defendant is represented as well as any other defendant, *regardless of wealth, race, disability, etc.*, or that every defendant is represented *according to his or her needs*, taking into consideration his or her wealth, race, disability, etc. These competing definitions are examples of a “conceptual model of fairness,” which insists that the law is applied uniformly,

³⁶ See, e.g., NAT’L PERFORMANCE REVIEW, *supra* note 29; NAT’L STATE AUDITORS ASS’N, BEST PRACTICES IN PERFORMANCE MEASUREMENT: DEVELOPING PERFORMANCE MEASURES (2004), *available at* http://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2004_Developing_Performance_Measures.pdf.

and a “contextual model of fairness,” which insists that the law account for different needs of certain individuals and groups.³⁷ Characteristic statements of the former view included:

“Quality indigent defense is quality defense, period.”

“I’m a lawyer, and if I was representing Enron, I wouldn’t counsel them to not do something again – I would fight as hard as I could for them to win.”

“We need to avoid creating an elitist model that doesn’t acknowledge our own biases against poor people. I understand that poor people are different, but we shouldn’t treat them like they’re a step away from humanity.”

“Life, liberty, and the pursuit of happiness shouldn’t be dependent on income level.”

Other participants, however, believed that there is a unique context, and thus specialized skills for defenders:

“As a juvenile defender, I don’t think most of my clients would be my clients if they were rich – weren’t poor black or brown kids – and I wouldn’t defend an entitled white kid the same way.”

“Indigent clients will have different issues than Bernie Madoff.”

“We have a huge challenge to get resources to poor people, who are disliked.”

3. Liberty

“Keep the client out of jail – my number one goal. Avoid collateral damage – number two.”

“My clients want me to win, which can mean many different things, but definitely means, ‘My case doesn’t exist anymore and I’m out of jail.’ Winning means not having to work on [reentry].”

4. Client Autonomy & Voice

“Our clients don’t have enough info to see farther down the road than getting out of jail that night. We shouldn’t be paternal by making decisions for our clients, but we have an obligation to get information to clients to make informed decisions.”

³⁷ See THE OPPORTUNITY AGENDA, AN OVERVIEW OF PUBLIC OPINION AND DISCOURSE ON CRIMINAL JUSTICE ISSUES 32 (2014), available at https://www.prisonpolicy.org/scans/2014.08.23-CriminalJusticeReport-FINAL_0.pdf.

“One of our goals is asking our clients what their goals are. We can’t presume what their goals will be. [For example,] some people have a short-term worry about getting deported.”

“Keep the client from getting coerced into a plea. Poor people get coerced in a way that rich people don’t.”

“All lawyers feel paternalist and like they can do cases well without client input.”

5. Humanity (Dignity, Empathy)

“Rich people get treated better from the beginning [of the criminal justice system]. They’re addressed by name.”

“My goal is to serve the client, by learning everything about the client, not just what’s on the indictment; to honor the client, by treating them with dignity and respect; and to protect the client from legal consequences.”

“Quality communication means consideration of the client’s feelings.”

“Measuring empathy is possible: Do you go to the jail? Do you talk to families?”

6. Client Satisfaction (Procedural Justice)

“Even if I know they got a great outcome in a difficult system, the client may feel that they got shit service. We can work more quickly on client satisfaction, since our justice system will always be unfair during our lifetimes.”

“Defenders often feel like the police report or charging document are all the facts, while clients feel that their attorneys haven’t investigated their side of the story. Unbiased investigation is important.”

7. Reform

“The failures of other systems get worked out through the criminal justice system . . . As a ‘failsafe’ mechanism, defenders are natural advocates on other social issues.”

“Indigent defense as an institution needs to be focused on system reform as well as individual client representation.”

“System reform is what makes all this possible, or you’ll always be on the government treadmill. That means lobbying and using research.”

8. Multidisciplinary Collaboration

“You have to address housing, for example, as a preliminary matter to get the best legal outcome in the criminal case.”

“[For someone who] handles death cases, the client focus will be on case outcome primarily. For attorneys on misdemeanor cases, collateral consequences are even more important than case. [The client will say,] ‘I don’t want to get kicked out of public housing for this petty conviction.’”

“The team model needs to be part of [the] definition of quality indigent defense, because rich people have a team to help them.”

“I believe wholeheartedly in [the] holistic approach, but [with certain civil legal and social services] in a separate organization . . . Other organizations are better at that job.”

Proposed National Definition

Step 4: Deliver a clear and inclusive definition.

Stating the elements and values of indigent defense is essential to creating a useful theoretical model, because it is important to be clear about exactly what is being measured. Additionally, summarizing these elements and values as succinctly as possible is important to creating an accessible and compelling messaging model. NLADA recommends developing a national definition that is inclusive of the elements of “quality indigent defense.”

This is distinct from a mission statement that will incorporate the results of representation and advocacy goals that may not necessarily be uniform across programs or localities. The following definition broadly states the values of indigent defense identified in NLADA’s roundtables and in previous indigent defense research:

Quality indigent defense representation meets the legal and social needs of every client through client-centered advocacy.

Quality indigent defense systems deliver quality indigent representation and are engaged in community advocacy.

This definition is intended to include these features of indigent defense and methods of measurement:

- Quality indigent defense is “comprehensive,” “holistic,” and “community-oriented,” which means that it **meets legal** (including civil legal services) **and social needs** and is **proactive in community advocacy**.
- Quality indigent defense can be understood either in terms of the quality of each individual attorney’s (or defense team’s) **representation** or in terms of the quality of a whole **system**. The quality of the system should largely be the sum of the quality of its individuals, but certain measures – such as impact on the community or non-clients – may only correspond to the whole system.
- As explained in *Recommendation 2*, quality indigent defense is not measured by outcomes. **Meeting legal and social needs** means performing the appropriate activities, the *effect of which* is presumably better outcomes for the client.
- Quality indigent defense representation is ultimately defined by clients. **Client-centered advocacy** can be measured both by the attorney’s efforts to understand and achieve the goals of clients, and the client’s satisfaction with his or her representation.

National Standards as Basis for National Measures

Step 5: Look to national authority and common standards.

National standards and guidelines are field-tested guides for achieving quality representation through quality systems. Although they do not establish nationally agreed-upon outcomes, they are nationally agreed-upon descriptions of the most essential activities of defenders. NLADA therefore recommends that they be used to identify and substantiate national indicators of quality of service.

All indigent defense systems are required to fulfill the right to counsel guaranteed by the Sixth Amendment of the United States Constitution. Some of the minimum requirements for *effective* indigent defense representation and for indigent defense systems have been laid out in case law.³⁸ These baseline requirements for constitutional compliance generally fall short of *quality* indigent defense, as it has been defined in performance guidelines, standards, and best practices.

There are generally two types of national indigent defense standards: (1) attorney performance standards, which set out the specifics of what each attorney should do in

³⁸ For example, 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).

representing each client; and (2) systemic or structural standards, which establish the specifics of the defense system in which each attorney works.³⁹ National attorney performance standards for defenders include the American Bar Association (ABA) *Model Rules of Professional Conduct* (2010);⁴⁰ the ABA *Standards for Criminal Justice: Prosecution Function and Defense Function, Third Edition* (1993);⁴¹ and the NLADA *Performance Guidelines for Criminal Defense Representation* (1995).⁴² National systemic standards include the ABA *Standards for Criminal Justice: Providing Defense Services, Third Edition* (1992),⁴³ the Institute of Judicial Administration and ABA's *Juvenile Justice Standards Annotated* (1996),⁴⁴ and NLADA's standards for each delivery system (defender offices,⁴⁵

³⁹ See Jon Mosher, *Quick Guide to National Standards for Indigent Defense*, NAT'L LEGAL AID & DEFENDER ASS'N (Mar. 29, 2011), <http://www.nlada.net/library/articles/quick-guide-national-standards-indigent-defense>.

⁴⁰ See ABA Ctr. for Prof'l Responsibility, *Model Rules of Professional Conduct: Table of Contents*, AM. BAR ASS'N (2016), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html (providing access to an updated online version of the Model Rules).

⁴¹ Available at

https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/prosecution_defense_function.authcheckdam.pdf.

⁴² See *Performance Guidelines for Criminal Defense Representation (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/performance-guidelines> (black-letter text of the performance guidelines as they appeared in the fourth printing from 2006); see also *Performance Guidelines for Criminal Defense Representation (2006)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/performance-guidelines> (introduction to the 1995 edition and the preface to the fourth printing from 2006).

⁴³ Available at

https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf.

⁴⁴ Available at <https://www.ncjrs.gov/pdffiles1/ojdp/166773.pdf>.

⁴⁵ See *Guidelines for Legal Defense Systems in the United States (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/guidelines-legal-defense-systems> (black-letter text of the guidelines); see also *Guidelines for Legal Defense Systems in the United States (1976)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/guidelines-legal-defense-systems> (introduction)

contract,⁴⁶ assigned counsel⁴⁷), practice area (appellate,⁴⁸ capital⁴⁹), and for defender training and development.⁵⁰

These standards were distilled into the *Ten Principles of a Public Defense Delivery System* (2002), originally written by NLADA, vetted through the American Council of Chief Defenders (ACCD), and adopted by the ABA. The *Ten Principles* are meant to communicate concisely to policymakers the needs of indigent defense systems:

*The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. 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.*⁵¹

National standards have been an important tool for state and local systems seeking to give context to their practice and secure the resources needed to improve it.⁵² The *Ten Principles*, in particular, have been used widely in litigation and legislation, and have even influenced international standards for indigent defense.⁵³

⁴⁶ See *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/guidelines-governmental-contracts/black-letter> (black-letter text of the contract counsel guidelines); see also *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/guidelines-governmental-contracts> (introduction to the 1984 edition).

⁴⁷ See *Standards for the Administration of Assigned Counsel Systems: Black Letter*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/assigned-counsel/black-letter> (black-letter text of the assigned counsel standards); see also *Standards for the Administration of Assigned Counsel Systems (1989)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/assigned-counsel> (introduction to the 1989 edition).

⁴⁸ See *Standards and Evaluation Design for Appellate Defender Offices (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/appellate/black-letter> (black letter-text of the appellate standards).

⁴⁹ See *Standards for the Appointment and Performance of Counsel in Death Penalty Cases (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/death-penalty/black-letter> (black-letter text of the capital case performance guidelines); see also *Standards for the Appointment and Performance of Counsel in Death Penalty Cases (1988)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/death-penalty> (introduction to the 1988 edition).

⁵⁰ See *Defender Training and Development Standards (Black Letter)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/training/black-letter> (black-letter text of the training and development standards); see also *Defender Training and Development Standards (1997)*, NAT'L LEGAL AID & DEFENDER ASS'N, <http://www.nlada.org/defender-standards/training> (preface to the 1997 edition).

⁵¹ 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.

⁵² See SCOTT WALLACE & DAVID CARROLL, NAT'L LEGAL AID & DEFENDER ASS'N, THE IMPLEMENTATION AND IMPACT OF INDIGENT DEFENSE STANDARDS (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/205023.pdf>.

⁵³ See Norman Lefstein, *Time to Update the 'ABA Ten Principles' for the 21st Century*, CHAMPION, Mar. 2016, at 42, available at <https://www.nacdl.org/Champion.aspx?id=41012>.

National standards are therefore a valuable source for the “why” of quality indigent defense, but they do not speak directly to the “how” of assessing best possible outcomes. That is, the standards do not set forth measures; that is a function that the indicators serve. The state and local performance measurement projects described above all considered national standards in developing their indicators. This also means that the measures for quality that those projects have identified should have some national applicability. For example, Table 6 shows how the Committee for Public Counsel Services’ (CPCS’s) indicators⁵⁴ line up with the ABA *Ten Principles*:

Table 6:
CPCS Indicators, Sorted by ABA Ten Principles⁵⁵

ABA Principle	CPCS Indicator
1. Independence: The public defense function, including the selection, funding, and payment of defense counsel, is independent .	
2. * Private Assigned Counsel: 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. * Early Entry: 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.	a. Distribution of number of days from first appearance to assignment of attorney (#) b. Average days from assignment to first (private, in person) contact (#) c. Result of first appearance, (detained/placed outside home) (%) d. Average days of pretrial detention/out of home placement (#)
4. Communication: Defense counsel is provided sufficient time and a confidential space within which to meet with the client .	a. Client Contacts i. Out of court, in-person client contacts by any CPCS staff member 1. Office (#/%) 2. Detention/placement location (#/%) 3. Home (of client) (#/%) 4. Other Face to face (#/%) ii. Out of court, NOT in-person contacts (email, phone, text, etc.) (#/%)

⁵⁴ See Table 3, *supra*.

⁵⁵ Principles with an asterisk have recently been flagged for update or addition. See Lefstein, *supra* note 53.

5. * Workload: Defense counsel's workload is controlled to permit the rendering of quality representation.	a. Volume by type of case (#) b. Disposed at arraignment/initial hearing (%) c. Client demographics (% by race/ethnicity, age, sex) d. Interpreter needed (%)
6. Qualifications: Defense counsel's ability, training, and experience match the complexity of the case.	
7. Vertical Representation: The same attorney continuously represents the client until completion of the case.	a. Same attorney from first assignment by CPCS through disposition (%)
8. Resource & Political 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 .	
9. Training: Defense counsel is provided with and required to attend continuing legal education .	
10. Evaluation: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	
11. [New Principle/Concept]* Holistic Representation	a. Clients for whom Social Service Advocate (SSA) engaged i. Client contacts from SSA (#/%) ii. External to CPCS collateral contact from SSA (e.g., school, work, health care, family, etc.) (% of cases) iii. Client contacts from SSA (#/%) and collateral contacts by attorney

The above list does not account for all the indicators that CPCS identified;⁵⁶ the remaining indicators are:

1. Staff Activity
 - a. *Average age (in days) of pending cases (#)*
 - b. *Motions (including responses/oppositions) (# and % of cases)*
 - c. *Trials*
 - i. *Bench (# and % of cases)*
 - ii. *Jury (for criminal/juvenile cases) (# and % of cases)*
 - d. *Open cases with investigator involved (staff or hired)*
 - i. *Witness(es) interviewed (%)*
 - ii. *Visit crime scene (%)*
 - iii. *Testifies in court (%)*
2. Case Outcomes
 - a. *Client not detained pre-trial/Placement decisions about children (%)*
 - b. *Charge(s)/petitions dismissed prior to trial (#/%)*
 - c. *Charges acquitted/dismissals/denials after trial (#/%)*
 - d. *Pleas/admissions to reduced charge(s)/stipulations/uncontested hearings (#/%)*
 - e. *Sentences (% each of custody, probation(community based supervision)/Child custody orders*
3. Impacts
 - a. *Client satisfaction with representation*
 - b. *Clients not under any criminal justice/juvenile supervision*
 - c. *Clients not incarcerated past minimum sentence/projected GCL date (suggests successful parole)*
 - d. *Clients without new arrests*
 - e. *Clients without new admissions/convictions*
 - f. *Clients engaged in pro-social activities post disposition/incarceration*
 - g. *Reduce erroneous legal outcomes*
 - h. *Reduce collateral costs*
 - i. *Safer communities*

⁵⁶ Again, the *Ten Principles* are systemic standards that are not focused on case and life outcomes, so they do not correspond to those measures. Attorney performance standards, like the *NLADA Performance Guidelines*, will correspond more closely to the staff activities measures.

Chapter 3: The Defender Research Consortium's Progression Toward Developing National Quality Indicators

Between 2015 and 2017, NLADA hosted a series of meetings known as the Defender Research Consortium (DRC) gatherings. Funded by the Open Society Foundations, each gathering 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. Highly interactive, the meetings featured workgroups that tackled topics such as incorporating client perspectives in indigent defense research, improving defender program analytics capacity, and identifying quality. The DRC meetings were held in December 2015 (Baltimore, Maryland), July 2016 (Detroit, Michigan), and September 2017 (Las Vegas, Nevada). This chapter recaps aspects of the DRC convenings that led toward development of a national set of quality indicators.

The First Meeting of the Defender Research Consortium

The Defender Research Consortium met for the first time in Baltimore, Maryland, on December 3-4, 2015.⁵⁷ On Day One, Janet Moore, Assistant Professor of Law at the University of Cincinnati College of Law, led the group through a “universal brainstorming” exercise in order to generate priority topics for a defender-driven research agenda. Specifically, Moore posed this question: if you had access to as many data and research assistants as you wanted so that you could answer pressing research questions, what questions would you ask?

Moore led participants through an intensive, multiphase brainstorming session that she refers to as “universal brainstorming.” First, all participants wrote down as many research questions as they could think of. To promote the development of unencumbered ideas, the research participants worked in silence to record individual research questions. To further reduce potential inhibitions in responses, participants were assigned to tables by common roles: defender managers, line defenders, researchers, information technologists, and policymakers. Second, small groups (seven participants each) discussed their ideas, identified areas of overlap and, offered suggestions for refinement. Third, each table presented its priority research questions and the entire group, through a consensus process, identified priority topics and research questions. The outcomes of this third phase are presented in Table 7:

⁵⁷ See Appendix A, *infra*, for a list of participants in the Defender Research Consortium's 2015 convening.

Table 7:
Priority Research Questions as Identified by Stakeholder Groups

Table (Group)	Priority Research Questions
Table 1 (Line Defenders)	1. Primary Question: How do we track racial bias in officer interactions – who they are interacting with – and how this impacts case dispositions? 2. How do we track racially biased officers via body cameras? 3. How do we improve interdisciplinary teamwork? 4. How do we track mental illness?
Table 2 (Defender Managers)	1. Primary Question: What is quality representation and how do we measure and provide it? 2. How do we define case dispositions in terms of what the client wants? 3. How does race affect access to justice? 4. How do we measure client satisfaction? 5. Do participants in the criminal justice system – juries, judges, witnesses, etc. – understand what is going on? How do they perceive defenders?
Table 3 (Defender Managers)	1. Primary Question: What is the expectation for the defense function in the criminal justice system? 2. What are the life and system impacts of criminal justice system and defense practices, especially in terms of recidivism? 3. How do you measure whether public defender offices and attorneys are doing a good job? 4. For funding purposes, what is the cost of defending a case? How does that compare to prosecutor cost and funding?
Table 4 (Policymakers, Researchers, and I.T.)	1. Primary Question: What factors have the biggest impact on our policy objectives? 2. Do we care most about case outcomes, process, standards, or cost? 3. How do we assess inputs, especially viz. pleas vs. trials? 4. Who is the audience for the research?
Table 5 (Researchers and I.T.)	1. Primary Question: Which inputs have the most impact on outputs? 2. How can we standardize inputs, such as “investigator” vs. “social worker,” “diversion,” etc.? 3. Are inputs and outputs effecting each other the same way across jurisdictions, cases, and demographics?

NLADA had envisioned that the Defender Research Consortium, during its first meeting, would make significant progress on developing a practitioner-driven, national research agenda for indigent defense. Although other such agendas have been developed,⁵⁸ the idea

⁵⁸ For example, in March 2015, the U.S. Department of Justice, Office of Justice Program’s National Institute of Justice (NIJ) held a Topical Working Group Meeting on Right to Counsel and Indigent Defense. The resulting

at DRC was for those in the research and practitioner community to produce their own research priorities, with an eye toward targeting limited research resources toward the most important and widely shared research questions. However, this progress was halted by the Consortium's observation of the lack of consensus around a national definition of "quality" indigent defense. The researchers present at the meeting observed that they have to rely on practitioners for this vision of the optimal performance of their agencies, and that it is only from this vision that they can create measurements of progress. The practitioners conceded there has been difficulty pinpointing an agreed upon definition of optimal performance. The definition shifts depending on one's vantage point, e.g., defense practitioner, client, court, justice system, or funder. Even among defense practitioners themselves, the group noted, there has been no consensus reached. Some of the factors mentioned for this were:

- Traditionally, when criminal sentencing options were more limited – levels of punitive supervision and fines – the goal in almost every case was to attain the least restrictive sentence possible. The expansion of **alternative sentencing** means that there is now a tradeoff between some forms of supervision and treatment for problems like substance abuse or mental illness that would otherwise go untreated and that are likely to drive clients back into the criminal justice system even if a particular case goes away. Defenders are not in agreement about problem-solving courts, for example, so they cannot be said to necessarily lead to a "win" or "loss."
- **Collateral consequences** also complicate a win/loss dynamic, since someone can receive a relatively light sentence, but take on heavy collateral consequences that harm his quality of life and prospects for staying out of the criminal justice system in the future.
- Moreover, each client is supposed to decide for himself what his ideal outcome is in a given case. Defenders who are committed to **client-centered advocacy** – and the attorney's ethical duty to each client – wonder about the feasibility and ethics of identifying system-wide, objective goals of, for example, reducing incarceration and collateral consequences, when the success of each case is basically a subjective determination by the client.
- Similarly, **procedural justice** research suggests that, when assessing the fairness of the criminal justice system, clients care more about how they are treated than the outcome of their cases.⁵⁹ Procedural justice means that people feel that they are heard, which could mean that, if clients determine success, attorneys should spend more time talking to their clients and taking cases to trial even if the immediate plea offer is likely to mean the lowest sentence.
- Clients' desire for more time with their attorney, can conflict with stakeholders and funders' desire for **cost and time efficiency**. Discussion of these competing goals noted that, as one component of the criminal justice system and as supporters of good government, perhaps defenders should also factor efficiency into their definition of quality. Additionally, if defenders can demonstrate a long-term cost savings from quality representation, they will be better positioned to be properly

research agenda spans several topical areas of interest to NIJ. For the working group's results, *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>.

⁵⁹ *See* TOM R. TYLER, WHY PEOPLE OBEY THE LAW: PROCEDURAL JUSTICE, LEGITIMACY, AND COMPLIANCE (1990), *available in excerpt at* http://www.psych.nyu.edu/tyler/lab/Chapters_1-4.pdf.

resourced. For example, if clients feel they were treated fairly by the system, (the essence of procedural justice), they are more likely to adhere to the case outcome, e.g., complying with the terms of a probation sentence. Consequently, reductions in recidivism rates could mean long-term savings from up-front investment on time and attention given to defendants.

- On the other hand, some clients simply want to resolve their cases as quickly as possible, especially where they are most concerned with other issues in their lives, like returning to their families or jobs. It can be hard to say if a **quick guilty plea** is a win or loss if it means that a client is out of jail sooner and less destabilized as a result. Putting legal collateral consequences aside, though, some defenders do not think it is their job to assess their client's choices about family, employment, or health; in fact, they think this "help" can be dangerously paternalistic. For practitioners of holistic defense, on the other hand, attention to these matters is necessary to meaningful and effective public defense.⁶⁰

In addition to these philosophical disagreements about desired outcomes, the group raised questions about measurement. Some defenders were concerned that any measurement based on case outcomes, life outcomes, or client satisfaction would not accurately or fairly describe the contribution of defenders, since they have so little control over the criminal justice process compared to stakeholders like prosecutors and police. Both practitioners and researchers also noted that there is inconsistency among jurisdictions in terms of their criminal justice processes and vocabulary, making consistent data collection and comparisons more challenging.

After this discussion, the next step was for the tables to be rearranged into three groups, where defenders and researchers assembled together for "reality checks" on these research questions. Guided by Alissa Pollitz Worden, Associate Professor at the University at Albany SUNY School of Criminal Justice, each group considered the following questions, then made short reports:

1. **Priorities:** How would the answer to your research question actually improve public defense services?
2. **Politics:** Are there potential political costs or benefits to conducting this research? Would you want to publicize results?
3. **Partnerships:** Will getting the answers to your questions benefit long-term research partnerships?
4. **Possible:** Lastly, is it practical or possible to get the data needed to answer your question?

These questions prepared the three groups for the work of Day Two: identifying what resources were available, and what was still needed, to start putting priority research questions into action. At the beginning of Day Two, the whole group watched a video presentation featuring Jim Bethke, then Executive Director of the Texas Indigent Defense

⁶⁰ See Robin Steinberg, *Heeding Gideon's Call in the Twenty-first Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961 (2013), available at <https://www.bronxdefenders.org/wp-content/uploads/2013/06/HEEDING-GIDEONS-CALL-IN-THE-TWENTY-FIRST-CENTURY-HOLISTIC-DEFENSE.pdf>.

Commission, and Dottie Carmichael, Research Scientist with the Public Policy Research Institute at Texas A&M University, to learn how their active and long-term collaboration has improved Texas's indigent defense system. Three groups then split up to discuss how each person at the meeting could contribute their expertise in data analysis, technology, law, standards, management, politics, partnerships, or communications to help answer one of three questions, which were drawn from the previous day's brainstorming.:

Group 1: **What is quality representation?**

Group 2: **What is the expectation for the defense function in the criminal justice system?**

Group 3: **How can we track police?**

When the whole group came back together to debrief, a shared sentiment emerged that time ran short, and there would be value in continuing the conversations using this multi-disciplinary group format. Participants recommended next steps to take at a second DRC meeting to advance research into the three questions:

- Deeply explore the question of what “quality” indigent defense means to defenders, clients, community, and funders. For collecting data from line defenders, consider their buy-in for a definition of quality. For reporting data to funders, consider their interest as well. Are the ABA Ten Principles of a Public Defense Delivery System⁶¹ empirically sound? Does cost-saving matter?
- Involve more (a) information technologists and (b) social workers in setting a defender research agenda and determining next steps.
- Survey what research resources are available in each jurisdiction so that jurisdictions can know where they stand and how to improve.
- Create directories of researchers interested in indigent defense, defenders interested in research, and funders interested in indigent defense research.
- Create local and national databases of police activity (e.g., complaints against officers, dismissals of cases for each officer, officers' treatment of mentally ill (hospital vs. jail admission)).
- Create local and national databases of collateral consequences.
- Determine ethics of defender-led experiments (e.g., controlled experiments, confidentiality).

Rather than try to tackle every suggestion, for the second DRC convening, NLADA chose to focus the group on the question of defining quality indigent defense services. If that could be done, future research questions and agendas could be advanced more expeditiously and without the question of definitions impeding discussion, and defenders would be better equipped to assess quality of their organizations.

⁶¹ See ABA STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *supra* note 51.

The Second Meeting of the Defender Research Consortium

National Indicators of Quality Indigent Defense Services

At the July 26-27, 2016 convening of the NLADA Defender Research Consortium in Detroit, Michigan, presentations and group discussion centered on why and how to define and measure “quality” indigent defense. The group discussed pros and cons of developing national quality indicators, and then agreed that the work needed to be undertaken.⁶² As a starting point, the group chose to begin brainstorming indicators that track to the well-respected ABA Ten Principles of a Public Defense Delivery System, and added several important factors that were not addressed when the Ten Principles were first promulgated.

What follows are the notes from the spirited initial brainstorming session. As at the first DRC meeting, time again ran short, so agreement was made to continue refining the initial draft after the meeting, through a volunteer work group.

National Indicators – Ten Principles⁶³

1. Independence

- Who selects chief defender?
- Can you bring impact litigation?
- 1-5 Scale
- Where is it housed?
 - Physically
 - Branch
- Who pays for investigators and experts?
- State, County, Local funding?
- Can you cap cases?
- Who approves payments?
- Who approves budgets?
- How are you assigned to cases? List? Who selects? Judge?
- Generally – Developing some sort of benchmark or scale for independence.

2. Private Bar Participation

- Release Valve
- Using bar during service restrictions
- Partnerships
- Caseload Caps
- Hire/Fire
- Centralized system with quality control
- Oversight and Supervision

⁶² See Appendix B, *infra*, for a list of participants in the Defender Research Consortium’s 2016 convening.

⁶³ In addition to the areas addressed by the Ten Principles, the group felt the following areas require indicators:

- Client Satisfaction
- Time-tracking
- Early entry of counsel
- Holistic, client-centered practice

3. Eligibility Screening and Counsel at First Appearance

- Auto-counsel at arraignment regardless of eligibility
 - Counsel at critical stages (including first appearance)
 - Eligibility screening
- Eligibility standards outside of scope
- Indicate how long until eligibility is decided
- How much time until appointment?
- How much time until screening?
- % with public defense vs. poverty level?
- % of cases handled by indigent defense system?
- Public defense has say in eligibility standards
- Cutting court out of eligibility? PD out?
- Account for complexity of case?

4. Time and Space for Meeting with Client

5. Workloads (*American Council of Chief Defenders*)

- Caseload Caps
 - Jurisdiction specific
- Workload self-assessment
- Ability to refuse
- Fall back on NAC or ACCD?

6. Experience matches case

- How often are:
 - Investigation
 - Social Workers
 - Paralegals
 - Orientation and training programs?
 - Dedicated trainer?
 - Training Availability?
 - Mentoring and second chair?
 - Used?
 - Ongoing?
- Define experience?
- Certain amount of experience?
- How many years/trials before (X) type of case?
 - Nancy Bennett
- Supervision (10?) ratio?
- Application for assigned counsel -> different panels -> whose call?

7. Vertical Representation

- Principle=Indicator?
 - Or standardized communication from 1st lawyer to 2nd and to client
 - Not always possible – re: 1st appearance

8. Parity (*frame as adequacy, not parity?*)

- Total budget can be problematic
- Resources:
 - Salaries
 - Benefits – retirements, etc.
 - Space
 - Support Staff
 - Investigation capacity
 - FTE
 - Overhead
- Goal: 1st years start at same level (+ benefits)
- Salaries play into retention
- Multiple job descriptions (ladder)
- Parity discussion can be tricky for assigned counsel
 - Frame as compensation?
 - Flat-fee contracts?
- Equal Participation in System (not be complicit)
 - Decisions made in consultation with PD
 - Legislative work
 - Member of CJS Planning Community
 - Defender receives Byrne/JAG funding

9. CLE

- Cultural competency
- Mental health issues
- Language and Interpreters
- Socioeconomic
- Race
- Ethnicity
- Availability of defender– specific training (relevant)
- Mandate: relates to your practice area

10. Supervisor Ratio

- Supervisor caseload
- Formal Evaluation Process
- Know private caseload

11. Holistic Defense (*not part of the Ten Principles*)

- Immigration expertise
 - Available to you
- Social Worker
- Mechanism to survey client needs
- Participatory defense
- Whole client
- Housing, schooling
- Pairing with local legal aid
- Interpreters

- Whose money?
- In-person v. language line
- Collateral consequences
- Checklists, protocols, etc.
- Days from appointment to meeting
- How many times meeting with client?
- Videoconferencing okay?
- Meetings with clients who are out
- Client Data

The Third Meeting of the Defender Research Consortium

NLADA was fortunate to receive support from OSF to hold a third convening of the Defender Research Consortium, which met in Las Vegas, Nevada on September 11-12, 2017.⁶⁴ Building from the second meeting, presentations were shared about quality indigent defense indicators being developed in Texas and Wisconsin,⁶⁵ and by the International Legal Foundation (ILF). Another presentation was made about the criminal justice system-wide indicator work of the national Measures for Justice project.⁶⁶ Attendees were energized by these presentations, but there was no denying that there was a tremendous amount of overlap among these efforts. And while there is a common path to developing indigent defense indicators from scratch, as described in Chapter 2, it is an intensive process. All of the examples mentioned in Chapter 2, plus those in Texas and Wisconsin, were undertaken with the assistance of grant funding. Developing a synthesized, simple set that can be applied nationwide could move many more less-well-resourced programs toward using quality indicators. There was strong momentum to finalize the draft begun in 2016.

So on Day Two of this meeting, a group of seventeen chief defenders, line defenders, researchers, technologists, analysts, and academics from around the country formed a working group⁶⁷ to continue the work of developing a set of quality indicators. 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. Working from the framing question, "What makes a good attorney?," the group sought to isolate the behaviors, or activities, undertaken by those attorneys who are intuitively recognized as doing exemplary work on behalf of their clients. Launching its discussion from the ILF's *Measuring Justice* set of ten practice principles,⁶⁸ the working group produced a set of national indicators of quality defense that map to the following twelve practice principles:

1. Provide Early Representation
2. Engage in Client-Centered Advocacy
3. Advocate for Pretrial Liberty

⁶⁴ See Appendix C, *infra*, for a list of participants in the Defender Research Consortium's 2017 convening.

⁶⁵ Efforts in both states were supported by the federally grant-funded Innovative Solutions in Public Defense Initiative.

⁶⁶ See *generally Measures for Justice*, MEASURES FOR JUSTICE, <https://measuresforjustice.org> (providing information on the organization's work).

⁶⁷ See Appendix D, *infra*, for a list of participants in the working group.

⁶⁸ See INT'L LEGAL FOUND., *MEASURING JUSTICE: DEFINING AND EVALUATING QUALITY FOR CRIMINAL LEGAL AID PROVIDERS* (2016). See Table 5, *supra*, for a summary of the quality indicators from *Measuring Justice*.

4. Address Indirect/Direct Consequences of Prosecution
5. Undertake Independent Fact Investigation
6. Utilize a Social Worker & Interdisciplinary Team
7. Conduct Diligent Case Preparation
8. Engage Expert Assistance
9. Conduct Pre-trial Litigation
10. Represent Client at Trial
11. Engage in Sentencing/Disposition Mitigation
12. Preserve Record/File Appeals

For each practice principle, the group identified a series of three to eighteen quality indicators to monitor in each case handled by a defense attorney, whether a public defender staff attorney, private, court-appointed lawyer, or contract defender. More insight about the indicators identified for each practice principle is detailed here:

1) Provide Early Representation

Indicators relating to this core practice principle probe: How soon does the defender make contact with the client? Is the contact made in person, or by phone or email? Does the defender provide advocacy at the client's first appearance before a judicial officer? If so, is the defender prepared?

2) Engage in Client-Centered Advocacy

Indicators for this practice principle probe: Is the attorney meeting with the client? If so, when? For how long? How often? What is the type of contact? Are they meeting in person, or by letter, phone, or email? Are key issues related to the case discussed in those meetings? Is the attorney providing other kinds of disclosure to the client, such as discovery? Has the attorney sent the client an engagement letter with case information? Is the case information tailored to the client? If the client doesn't have up-to-speed reading skills, is the attorney providing that information in another way that helps the client? Does the client undergo a needs assessment? Are clients screened for addiction or mental illness? Are client complaints tracked? Are complaints from the, client's family or judge tracked? Are complaints received in writing (including by email) or orally? Does the agency use client satisfaction surveys?

3) Advocate for Pretrial Liberty

To identify indicators for this practice principle, the group asked: Is the attorney aware of whether the client has been in and out of custody? Is the attorney advocating for pre-trial release? Has the client been screened for a pretrial release program? Is the attorney knowledgeable about the client's history? How many days has the client spent in pretrial custody? Is the attorney continuously advocating for the client's liberty throughout the pretrial phase of the case? Is the client eligible for any deferred prosecution/diversion programs? Did the attorney refer the client to any programs?

4) Address Indirect/Direct Consequences of Prosecution

In this category, indicators include: Is the attorney aware of indirect (i.e., collateral) and direct consequences facing the client? Does the attorney use their team to address these consequences? Are they trying to get the client housing, drug treatment, employment, or insurance?

This category wasn't broken out by itself in the ILF principles, but the group felt the importance of indirect and direct consequences warranted separate consideration. The group originally considered a category of "collateral consequences," but felt that it was more accurate and useful to conceptualize them as "indirect and direct consequences" of the charges.

5) Undertake Independent Fact Investigation

For this practice principle, the working group sought indicators that would probe: Was an investigator used? If so, how early? How often? For what tasks? Did the investigator meet with the client? Did the investigator just talk to witnesses or did the investigator also have knowledge of the defense's theory of the case? Did the investigator search for evidence, take photos, or investigate social media?

The group also asked questions about the attorney's role in the investigation. Did the attorney go to the scene of the crime? Did the attorney inform the investigator about new developments? Did the attorney request an interdisciplinary team? If so, were they well utilized and were there good outcomes? Did the attorney engage in diligent subpoena prep?

6) Utilize a Social Worker & Interdisciplinary Team

Indicators here probe: Has the attorney requested a social worker to assist the client? Was a social worker used in the case? What was the effect of using a social worker?

7) Conduct Diligent Case Preparation

Indicators of quality for this practice principle include: Is the attorney making trial motions? Is the attorney developing a theory of defense and identifying elements in a case? Is the attorney doing case analysis? Is the attorney planning motions and the order of motions? Is the attorney fighting for discovery? When does the defender first receive or complete discovery? Does the attorney file a discovery motion, and if so, when? Does the attorney completely review discovery? Does the attorney know where and how to access discovery documents? Is the attorney conducting legal research related to the case?

8) Engage Expert Assistance

For this practice area, the working group sought indicators to know: Is the attorney requesting experts (even if they're denied)? How early on is the request made? Is the attorney requesting the appropriate type of expert? Is the attorney reviewing

medical/mental health records, or collaborating with an expert for that review? Did attorney prepare the expert for testimony/cross examination?

9) Conduct Pre-trial Litigation

Under this category, indicators include: How many motions does the attorney make? What kind of motions? What is the quality of the motions? Are they boilerplate motions? Are they motions that the attorney is writing himself or herself? Is the attorney filing motions to dismiss or suppress? Is the attorney attending hearings? If so, how many and what type of hearings? Is the attorney attending preliminary hearings? Is the attorney recognizing and preserving the issues for appeal?

10) Represent Client at Trial

For cases that proceed to trial, the DRC group's indicators asked: Were trials jury or bench trials? Is the attorney calling experts and witnesses to testify? Is the attorney preparing jury instructions? Is the attorney presenting an opening statement or waiving it? Are those trials being observed by a supervisor?

11) Engage in Sentencing/Disposition Mitigation

The group produced numerous indicators to probe sentencing and disposition mitigation practice including: What records does the attorney present to the judge (e.g., video evidence, written evidence)? Does the attorney prepare a sentencing memo? Does the attorney use an organized records log to determine what is needed prior to sentencing? Does the attorney use a mitigation expert? Does the attorney identify service providers for the client? Does the attorney strive for alternative sentencing? Does the attorney employ a social worker to assist with the sentencing memo? Does the attorney use a case manager? Does the attorney consult with a supervisor about issues in the case? Is there any other assistance that the client might need prior to sentencing? How often is the attorney using these other resources? Is the attorney presenting a re-entry plan? Is the attorney making post-sentence motions? Has the attorney informed the client about necessary steps for probation and parole? If applicable, has the attorney explained to the client about sex offender registration? Has the attorney explained how to comply with conditions of supervision?

12) Preserve Record/File Appeals

In this category, the working group's indicators ask: Does the trial attorney take the necessary steps to preserve issues for appeal? Does the trial defense attorney cooperate with the appellate defense attorney? Does the trial attorney provide the client file and share knowledge about the case with the appellate attorney? Does the trial attorney frame issues to the appellate attorney (e.g., pointing out a wrongly decided motion to suppress)? Does the trial attorney write a proactive memo to the appellate attorney that outlines the case and the issues? Does the trial attorney advise the client of post-conviction rights and appellate rights? Does the trial attorney file a notice of appeal or notice of intent to appeal within the required timeframe?

In addition to these twelve categories, the working group talked at length about potential indicators focusing on **attorney training and continuing legal education (CLE)**, and considered adding it as a thirteenth category of the above set of indicators, but did not reach a consensus on doing so. Nevertheless, within this topic, the group asked: Is the attorney staying up to date on case issues? Does the attorney's training meet the type(s) of cases he or she is taking? Does the attorney need particular certification for the kinds of cases he or she is taking?

The working group's goal in assembling this set of indicators was to produce a list that could be given to defender offices for them to tailor to their own program and jurisdiction. (For example, in some jurisdictions, defender offices file appeals for ineffective assistance of counsel as a matter of course if a client is not acquitted; those offices are going to approach metrics on appeals differently from other jurisdictions.) The indicators can be used in multiple ways, including:

- in individual attorney performance reviews
- as an organizing framework for defender staff training
- as a checklist, or road map, of practice expectations for staff
- as a set of minimum performance expectations to educate funders about defense practice
- as a tool to review overall program performance and detect patterns or trends to investigate on a host of topics.

Table 8:
The Defender Research Consortium – Practice Principles with Indicators of a Quality Public Defense Attorney

Practice Principles	Indicators
1. Provide Early Representation	Threshold question: when does the right to counsel attach? 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	a. Client Meetings i. Number of in-person meetings ii. Settings of in-person meetings (courthouse/courtroom, jail, office, other) b. Disclosures of information to client 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 i. Attorney relieved off case? ii. Client complaint received (from client, from family, from judge)? 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	a. Client status: is client in custody or out? 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 i. Did attorney learn about client's history? ii. Was referral made to pretrial release, deferred prosecution, or diversion program? a. Was client screened? b. Was client successful in entry?

	c. Holistic Resources (employment, housing, insurance, etc.) i. Was needs assessment conducted? ii. Was client referred to relevant resources? a. Were resources helpful to client? b. If not, why? d. Treatment Programs i. Was client screened for addiction, mental health, emotional problems? ii. Was client referred to evaluators or relevant programs? a. Did client enter and successfully complete a program? b. If not, why?
4. Address Indirect/Direct Consequences of Prosecution	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?
5. Undertake Independent Fact Investigation	a. Investigator i. Was an investigator requested? a. Was request approved? b. Was investigator used? c. How early? ii. What tasks did the investigator complete? 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? 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?

6. Utilize a Social Worker & Interdisciplinary Team	a. Social Worker i. Did attorney refer client to a social worker? a. How early in case? b. Outcome of request? b. Interdisciplinary Team i. Did attorney request an interdisciplinary team for client? ii. Was the team utilized? iii. Did it result in a positive outcome for client?
7. Conduct Diligent Case Preparation	a. Motions (<i>also see indicators for Principles 9 and 10</i>) i. Did attorney file appropriate motions? ii. Did attorney strategize the order and content of motions? b. Case-related 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 i. Did attorney consider need to consult with an appellate attorney early on in the case? a. If yes, was that done? ii. Did attorney consult with peers about the case? 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?

8. Engage Expert Assistance	a. Did attorney request an expert? 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?
9. Conduct Pretrial Litigation	a. Motions 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 i. How many hearings were held before trial? 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 i. Did attorney meet with the prosecuting attorney about the case? ii. Did attorney meet with the judge about the case?
10. Represent Client at Trial	a. Was trial jury or bench trial? b. Did attorney file motions in limine? c. Was an expert used during trial? d. Were witnesses called during trial? i. If yes, how many? e. Was a second-chair attorney considered for trial? i. Used? f. Did attorney provide jury instructions? g. Did attorney make an opening statement? Waive it? h. Did attorney make objections during trial? 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? i. If yes, did supervisor conduct a post-trial debrief?

	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? i. If yes, what type?
11. Engage in Sentencing/Disposition Mitigation	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? 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.)? 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.)
12. Preserve the Record/File Appeals	a. Did attorney advise client of post-conviction and appellate remedies? b. Did attorney file notice of appeal, regardless of whether the client plead 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?

Conclusion

The journey to defining quality representation in indigent defense has had many positive developments in the past two decades, highlighted by the efforts of local defender offices and stakeholders in North Carolina, Massachusetts, Texas, and Wisconsin, as well as national and international organizations like the ABA, NLADA, and the ILF, and cross-disciplinary conferences like the Defender Research Consortium.

Although these efforts have made significant headway, there is still much more work to be done in the area of quality indicators. In particular, the needed next step forward is widespread implementation of quality indicators. Even though we now have robust sets of quality indicators, such as those produced by the ILF and DRC, local defender offices will want to further define indicators to fit the idiosyncrasies of their particular jurisdictions. Following implementation of an ongoing measurement of quality through a set of indicators, defender offices will need to analyze and apply the data they have gathered from the indicators. That is when the hard work in gathering data will pay off, as defenders should be equipped with information to allocate resources more effectively, improve their services, and make a more compelling case to policymakers and funders to give more support to the efforts of indigent defense providers.

NLADA stands ready to assist defenders. Any office needing assistance to supplement the information in this guide should contact the NLADA Defender Legal Services team.

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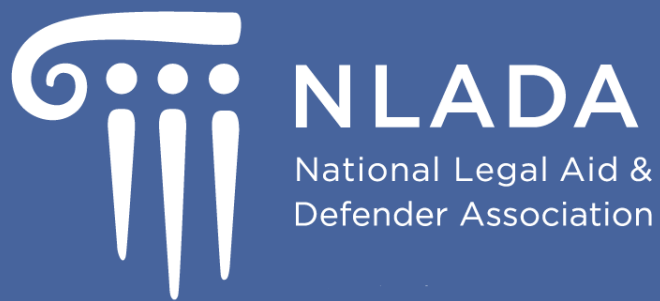
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