



CORE PRINCIPLES FOR
APPOINTED ATTORNEYS
REPRESENTING YOUTH IN
DELINQUENCY PROCEEDINGS

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USER STATEMENT

The Utah Indigent Defense Commission promulgated the Core Principles for Appointed Attorneys Representing Youth in Delinquency Proceedings in February 2018 to provide advisory guidance to indigent defense systems, delinquency defense attorneys, and other juvenile court stakeholders. Nothing in these core principles is considered the rendering of legal advice with respect to specific cases.

UTAH INDIGENT DEFENSE COMMISSION

The Utah Indigent Defense Commission was created by legislation in 2016 to help the state ensure its indigent defense services are consistent with the United States and Utah Constitutions.

The membership of the Commission includes key leaders in state and local government, criminal defense, indigent defense services, and the courts.

The Commission works with the state, local governments, indigent defense providers, and other stakeholders to: provide guidance on standards for constitutional representation, gather data and information about local indigent defense services, award grants to improve local indigent defense services, and encourage and aid in the regionalization of indigent defense services throughout the state.

Principle 1/ ROLE OF THE ATTORNEY

The central role of the delinquency defense attorney is the protection of the client's procedural and substantive rights through ethical, competent, and effective representation.

Ethical, competent, and effective representation is independent, conflict-free, individualized, developmentally appropriate, and based on the client's expressed wishes.¹

Principle 2/ DUTIES TO CLIENT

Ethical representation by the delinquency defense attorney encompasses the same type of duties owed to adult clients, in addition to duties that arise from the youth status of the client.

The attorney's duties include:

- undivided loyalty, which includes identifying and addressing any conflicts of interest²;
- confidentiality³;
- regular, developmentally appropriate communication sufficient to enable:
 - the attorney's understanding of the client's expressed wishes;
 - the client's understanding of the allegations, court proceedings, case developments, available evidence, likelihood that the allegations would be found true at trial, and likely dispositional options; and
 - the client's knowing and voluntary decisions regarding plea offers;
- an obligation to monitor the competency of the client throughout the pendency of the delinquency case and to litigate issues of competency, where appropriate; and
- a responsibility to gather, in each individual case, the relevant client background information, which commonly includes education history, mental health history, medical history, immigration status, and family history.

¹ The delinquency defense attorney acts as the client's voice in the proceedings, advocating for the client's expressed interests, not the client's "best interests" as determined by counsel or any other interested party. *See*, Rule 1.14(a) "Client with Diminished Capacity" and Rule 1.2(a) "Scope of Representation and Allocation of Authority between Client and Lawyer" of the Utah Rules of Professional Conduct.

² At minimum, the attorney should maintain a case and file management system sufficient to enable conflict checks. The attorney should operate under the presumption that representing co-minors is likely to harm the quality of representation of one or both clients.

³ Effective representation generally requires robust communication with the client's parent(s). However, the attorney should be mindful there exists no exception to the duty of confidentiality for parent communications. Relatedly, attorney-client communications in the presence of parents are likely not protected by the attorney-client privilege.

Principle 3/ AREAS OF KNOWLEDGE AND EXPERTISE

The specialized nature of delinquency defense practice requires knowledge in several areas of law, policy, research, and practice, including:

- constitutional law as it relates to criminal procedure and issues of due process;
- the Utah Rules of Juvenile Procedure, the Utah Rules of Civil Procedure, the Juvenile Court Act, the Utah Criminal Code, the Utah Rules of Evidence, and the Utah Rules of Appellate Procedure;
- relevant federal and state caselaw;
- court rules and local court protocols;
- collateral consequences of allegations adjudicated to be true in juvenile court;
- collateral consequences of arrest and referral, whether or not adjudicated;
- relevant agency procedures, including those of school systems, Department of Human Services, Juvenile Justice Services, Department of Children and Family Services, Probation, Department of Mental Health, and local mental health authorities;
- law, rules, and procedures related to competency in juvenile court;
- adolescent development concepts as they relate to client relations, competency issues, suppression issues, culpability, and dispositional advocacy; and
- related areas of law, including immigration law and education law, sufficient to allow the attorney to identify issues and make appropriate referrals.

Principle 4/ QUALIFICATIONS, TRAINING, AND ONGOING EDUCATION

Delinquency defense is a complex specialty, requiring specialized training and ongoing legal education.

The delinquency defense attorney should limit their representation to cases for which they have the requisite expertise and qualifications.

On an ongoing basis, the attorney should:

- seek and participate in training in areas of law and practice that specifically impact delinquency defense practice (see “Principle 4/ Areas of Knowledge and Expertise,” above);
- seek consultation and mentorship from experienced practitioners in areas of law and practice less familiar to the attorney;
- become familiar with available resources and experts with whom they can consult on related areas of expertise, including but not limited to immigration law, educational advocacy, mental health services, and treatment options; and
- seek affiliation and mutually supportive relationships with other delinquency practitioners.

Principle 5/ SCOPE OF REPRESENTATION

Effective representation commences in a timely manner, extends for the proper period of representation, and proceeds with reasonable continuity. The attorney should:

- represent the client from the initial court proceeding through all subsequent delinquency proceedings until court jurisdiction is terminated, including at detention hearings, post-dispositional hearings, contempt proceedings, in-court reviews, and restitution hearings⁴ ;
- be present at all court hearings and avoid continuances unless there is a benefit for the client; and
- maintain continuity of representation, avoiding substitutions of counsel whenever possible.

Principle 6/ ADDRESSING THE ALLEGATIONS

Effective delinquency defense necessarily means meaningfully addressing the allegations faced by the client. The attorney should:

- develop a theory of the case that guides the case strategy;
- pursue available evidence through discovery and investigation;
- examine and review all available evidence;
- file appropriate motions;
- advise the client on the strengths and weaknesses of the state's case and on all implications of a plea offer, including direct and collateral consequences of accepting the plea offer;
- adjudicate the allegations against the client unless the plea offer is consistent with the client's expressed wishes and represents a benefit to the client;
- use expert and other defense resources, as appropriate; and
- utilize an multidisciplinary defense team model, where those services are available.

Principle 7/ DISPOSITIONAL ADVOCACY

Dispositional advocacy is a core aspect of delinquency defense. Effective dispositional advocacy requires that the attorney:

- advocate for treatment and placements that serve the needs of the individual client, leverage pre-existing strengths and supports, and are consistent with the client's expressed interests;
- actively research all available dispositional options, not limited to only those proposed by the probation department;
- present meaningful dispositional alternatives for the court's consideration, when available; and
- ensure court-ordered services are delivered in the least restrictive setting possible.

⁴ Utah Code §77-32-804(1)(a)(ii)(C) ("an indigent defense system shall ensure (...) the ability to provide representation(...) at all stages to indigent parties in juvenile delinquency and child welfare proceedings.")

Principle 8/ CLIENTS FACING RISK OF ADULT PROSECUTION

Cases where the client faces the possibility of adult prosecution—i.e., Serious Youth Offender (SYO) and “certification” cases—are necessarily high stakes, complex, labor-intensive, and require additional practice considerations.

The attorney handling an SYO case or “certification” case should:

- possess prior experience with such cases or seek the involvement of another attorney who has such experience;
- utilize investigators to address the factual issues in the case⁵;
- have authoritative knowledge of the SYO and “certification” statutes, including the provisions on retention criteria, burdens of proof, and standards of proof;
- thoroughly pursue documentation for each retention factor;
- utilize an expert or experts to develop a social and psychological history and provide assessments regarding any mental or behavioral impairments, including cognitive deficits, mental illness, developmental disabilities, and neurological deficits;
- consult with a criminal defense attorney regarding district court practices that may inform case planning;
- if the client is bound over to district court, advocate for the client to remain housed in juvenile detention during the pendency of the district court case and cooperate with the attorney handling the district court case; and
- attend any available training or CLE on topics relevant to SYO and “certification” cases.

Principle 9/ WORKLOAD

The delinquency defense attorney should not carry a total workload that interferes with the ability to render effective assistance of counsel to the client in every case.

Principle 10/ APPELLATE REPRESENTATION

The delinquency defense attorney must preserve and protect a client’s right to appeal. The attorney should:

- be familiar with the rules of appellate procedure;
- preserve issues for appeal, including through motions practice and clear objections;
- counsel the client regarding appellate rights and guide the client through the decision making process regarding possible appeal;
- file the Notice of Appeal, if the client chooses to appeal; and
- cooperate with appellate counsel, if applicable.

⁵ See, Houskeeper v. State, 197 P.3d 636 (Utah 2008) (finding that the delinquency defense attorney was ineffective by failing to investigate and by not putting on any defense witnesses.)

Principle 11/ SYSTEM ISSUES AND IMPROVEMENT

System issues in the juvenile justice system can have a significant impact on individual case outcomes.

The delinquency defense attorney, moreover, plays an important role in ensuring that the juvenile justice system promotes accuracy, fairness, non-discrimination, and rehabilitation.

The attorney should seek to:

- participate in policy development and review;
- monitor proposals to change court rules;
- advocate for adequate resources to provide effective assistance;
- advocate for the elimination of disproportionate minority contact in the juvenile justice system;
- report any harmful conditions of confinement; and
- maintain adequate records to facilitate engagement in systems advocacy.