

Draft Proposed Indigent Defense Standard Language & Commentary for Stakeholder Input

Title 37 – LAW

PART VI. PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CH. 481]

Standards for Delivery of Effective Indigent Defense Services

Preamble

The Commission on Crime and Delinquency (Commission), under the authority of section 203-F of The Fiscal Code (72 P.S. §203-F), amends Chapter 481 (relating to Indigent Defense) to read as set forth in Annex A.

Act 34 of 2023 established the Indigent Defense Advisory Committee (IDAC) within the Commission, tasked with improving the delivery of indigent defense services within the Commonwealth through the dissemination of funds, collection and analysis of data, and development of standards. Specifically, this includes the development of proposed “minimum standards for the delivery of indigent defense services throughout this Commonwealth that are consistent with the requirements of the Constitution of the United States and the Constitution of Pennsylvania” (72 P.S. §203-F(i)(1)) as well as “minimum standards for attorneys providing indigent defense services to ensure that the ability, training and experience of the attorneys match the cases assigned to the attorneys” (72 P.S. §203-F(i)(2)). The proposed standards must be submitted by the IDAC, with review and approval of the Commission, to the “Pennsylvania Supreme Court for adoption through a manner prescribed by the Supreme Court” (72 P.S. §203-F(i)(3)).

Two preliminary standards were originally approved by the Pennsylvania Supreme Court on May 29, 2024, to comply with the requirements set forth by Act 34 of 2023. It was published at 54 Pa.B. 3151 and modified on **XX, 2025** as the result of a subsequent order by the Court on March 11, 2025 (55 Pa.B. 2254). The Commission is proposing to amend Chapter 481 to include additional standards pursuant to 72 P.S. §203-F(i)(1-2), subject to approval of the Pennsylvania Supreme Court (72 P.S. §203-F(i)(3)).

These standards were developed in consultation with the IDAC Professional & Services Standards Subcommittee and with input from Pennsylvania public defenders, court-appointed/conflict counsel, and other relevant stakeholders. The goal of the standards is to address foundational aspects of the delivery of effective indigent defense services in Pennsylvania: namely, by outlining minimum standards the attorneys providing those services must meet as a prerequisite and establishing new responsibilities for counties to outline steps they will take to support these standards through the development of local plans.

The standards related to Education, Training, & Qualifications of Defense Counsel build on minimum standards already established in Pennsylvania to practice law, as well as requirements outlined under Pennsylvania’s Continuing Legal Education (CLE) Rules and Regulations (Pa.R.C.L.E. 105). This standard further requires that attorneys providing indigent defense services complete half of the required 12 hours of CLE courses in areas specific to criminal law practice, prioritizing course credits

concentrating on criminal law, criminal defense, trial advocacy, or related topics impacting the criminal courts, the profession, indigent clients, or issues related to §481.26 (knowledge of the law), §481.27 (legal skills and training), §481.28 (technological skills), or §481.29 (forensic knowledge).

Furthermore, consistent with requirements adopted by other states, and to enhance the ability of local indigent defense providers to meet these standards, §481.31 requires the development and adoption of a written policy for attorney qualifications and a training plan for attorneys handling indigent defense matters consistent with these standards.

These standards were developed to ensure that indigent defense services are provided effectively and in a manner consistent with federal and state law, including relevant case law.

Annex A.

TITLE 37. LAW

PART VI. COMMISSION ON CRIME AND DELINQUENCY

CHAPTER 481. INDIGENT DEFENSE

Subchapter A. Indigent Defense Advisory Committee

[Preliminary] Standards for Delivery of Effective Indigent Defense Services

GENERAL PROVISIONS

Authority

The provisions of this chapter issued under section 203-F(i) of Act 34 of 2023 (72 P.S., Ch. 1, Art. II-F, Refs & Annos), unless otherwise noted.

Source

The provisions of this Chapter 481 added **XX, 2025**, effective immediately, **[PA Bulletin Citation]**.

§ 481.23. Purpose.

Consistent with the Act and orders of the Supreme Court, this chapter is adopted to establish minimum standards for the delivery of effective indigent defense services throughout this Commonwealth that are consistent with the requirements of the Constitution of the United States and the Constitution of Pennsylvania, and for attorneys providing indigent defense services to ensure that the ability, training, and experience of the attorneys match the cases assigned to the attorneys.

Sources

See U.S. Const. amend. VI, and PA. CONST. art. . I, §9.

§ 481.24. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—Act 34 of 2023.

Attorney—Counsel providing indigent defense services, including public defenders, court-appointed counsel, and conflict counsel, consistent with 72 P.S., Ch. 1, Art. II-F, §202-F and the Pennsylvania Public Defender Act (Act of Dec. 2, 1968, P.L. 1144, No. 358).

Commission—The Pennsylvania Commission on Crime and Delinquency.

Committee—The Indigent Defense Advisory Committee of the Commission.

Competence—Legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation of a client, consistent with Pa.R.P.C. 1.1.

Continuing legal education (CLE) —Continuing legal education as established by the Pennsylvania Continuing Legal Education Rules and Regulations (Pa.R.C.L.E.).

Forensic knowledge—Basic understanding of scientific and expert evidence and its uses in criminal cases.

Indigent defense services—The legal representation provided to indigent adult defendants and juvenile respondents through either a public defender’s office, contracted counsel or conflict counsel.

Reasonable knowledge—Facts a reasonably prudent and competent lawyer would ascertain for the matter in question, consistent with Pa.R.P.C. 1(f), 1(h), and 1(j).

Supreme Court—The Supreme Court of Pennsylvania existing under Section 2 Article V of the Constitution of Pennsylvania.

Technological skills—Ability to use technology relevant to legal practice.

EDUCATION, TRAINING, & QUALIFICATIONS OF DEFENSE COUNSEL

§481.25. Minimum standards for attorneys providing indigent defense services.

Attorneys shall have sufficient knowledge of the law, training, and experience to provide effective assistance of counsel.

Sources

See the Pennsylvania Rules of Professional Conduct (Pa.R.P.C. 1.1); appointment of counsel (Pa.R.Crim.P. 122); qualifications for defense counsel in capital cases (Pa.R.Crim.P. 801); and the Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E. 101, 204).

§481.26. Knowledge of the law.

(a) Attorneys must be members in good standing of the Bar of this Commonwealth. They shall have reasonable knowledge of substantive Pennsylvania and federal law regarding constitutional law, criminal law, criminal procedure, rules of evidence, rules of professional responsibility, trial advocacy, and local practices.

(b) Attorneys who practice in specialized areas such as appeals, capital defense, juvenile defense, mental health representation, or post-conviction relief shall have reasonable knowledge of the substantive law and rules relevant to their area of practice.

(c) All attorneys shall have reasonable knowledge of ethical rules of practice.

(d) All attorneys shall have a duty to keep updated on developments in the relevant rules and law set forth in this section.

Sources

See rules for attorney admission to the Pennsylvania Bar (Pa.B.A.R. 202, 301, 311); qualifications for defense counsel in capital cases (Pa.R.Crim.P. 801); and the Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E. 101, 204).

§481.27. Legal skills and training.

(a) Attorneys shall have sufficient opportunities to complete CLE credits and other professional development opportunities to improve their legal knowledge and skills and maintain competence.

(1) Attorneys shall annually complete at least half of their required CLE credits with coursework specific to criminal law practice, including criminal law, criminal defense, trial advocacy, or collateral topics impacting the criminal courts, the profession, or indigent clients. Courses can also include topics related to sections §481.26, §481.28, or §481.29.

(2) Attorneys with fewer than two years of experience practicing criminal defense in Pennsylvania shall participate in at least one basic skills acquisition class to advance legal knowledge as described in §481.26.

(b) Nothing in this section shall be construed to diminish or modify the requirements of Pa.R.Crim.P. 801, relating to qualifications for defense counsel in capital cases.

Sources

See the Pennsylvania Rules of Professional Conduct (Pa.R.P.C. 1.1) and qualifications for defense counsel in capital cases (Pa.R.Crim.P. 801).

§481.28. Technological skills.

(a) Attorneys shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system; and

(b) Attorneys shall be reasonably able to review materials that are provided in an electronic format and have a duty to keep updated with technological developments relevant to criminal defense.

Sources

See the Pennsylvania Rules of Professional Conduct (Pa.R.P.C. 1.1[8]).

§481.29. Forensic knowledge.

(a) Attorneys shall have reasonable knowledge of forensic and scientific issues that can arise in criminal cases and be reasonably able to effectively litigate those issues.

(b) While not necessary to initiate representation, if an attorney does not have sufficient forensic knowledge at the outset of a case, they shall adequately prepare to achieve competence by seeking training, information, mentorship, and supervision, as available.

Sources

See the Pennsylvania Rules of Professional Conduct (Pa.R.P.C. 1.1[2][4][5][8]).

§481.30. Consideration of attorney qualifications in determining appropriateness of case assignments.

In determining whether to accept representation, an attorney shall, at a minimum, consider the following factors relevant to competent representation, including the complexity and specialized nature of the case:

(1) The attorney's general level of experience.

(2) The attorney's training and legal knowledge relevant to the case.

(3) The attorney's ability to sufficiently prepare for a particular case to the degree required for competent representation.

(4) Whether expertise in a particular field of law or specific subject matter is necessary for competent representation.

Sources

See the Pennsylvania Rules of Professional Conduct (Pa.R.P.C. 1.1[5]).

§481.31. Adoption of local policy and training plan.

(a) Each county shall adopt a written policy for attorney qualifications and a training plan for attorneys handling indigent defense matters consistent with these standards.

(b) This local policy and training plan shall:

(1) Specify training and experience requirements for attorneys handling different case types and degrees of severity, including complex cases such as felonies or juvenile cases.

(2) Specifically address procedures for providing structured, case-relevant training and mentorship and supervision for all newly hired attorneys.

(3) Outline pre-requisites for attorneys with fewer than two years of experience to handle cases independently.

(4) Identify resources necessary to comply with these minimum standards, including use of available funding to support implementation of the local policy and training plan.

(5) Address other relevant attorney qualifications, training, and education areas identified by the county and consistent with standards adopted by Committee with approval by the Commission.

(c) The Committee, with approval of the Commission, shall develop guidance and a model plan to assist counties in the implementation of this section.