

## **Resolution of the Board of Directors Concerning the Misdemeanor Report**

**Whereas** the majority of state criminal cases are misdemeanors, and most individuals' contact with the criminal justice system begins with the misdemeanor courts;

**Whereas** the Sixth Amendment to the Constitution requires that indigent persons charged with criminal offenses be provided adequate legal representation and the states must provide adequate funding to implement this right;

**Whereas** defense counsel must be appointed in any criminal prosecution that can lead to incarceration;

**Whereas** the National Association of Criminal Defense has completed an eighteen-month study in seven cities throughout the nation to ascertain the quality of misdemeanor defense;

**Whereas** that study identified the following problems in misdemeanor defense:

- Defendants in misdemeanor courts often go unrepresented because counsel is not made available or because they have unintelligently waived their right to counsel;
- Court systems use excessive application fees and delays to discourage requests for counsel in misdemeanor cases.
- Public defenders and appointed counsel are assigned excessive misdemeanor caseloads that violate ethical obligations and undermine effective representation.
- The emphasis on resolving misdemeanor cases quickly and reducing the courts' dockets, without regard for the Sixth Amendment, is manifest in the high rate of guilty pleas at arraignment.
- Represented and unrepresented defendants plead guilty to misdemeanors without proper advice or understanding of the applicable and potentially severe collateral consequences.
- The lack of investigators, experts, and mental health support that impairs indigent defense in general is particularly acute in the misdemeanor context.
- Inadequate compensation and other factors result in a high turnover rate among misdemeanor defenders, which impairs the quality of representation available in misdemeanor courts.
- Misdemeanor courtrooms are used as "training grounds" for the most inexperienced lawyers, often without proper supervision or training.
- Diversionary programs that might better serve public interests are not widely available for misdemeanor cases.
- The overcriminalization and prosecution of minor infractions and offenses, including driving offenses, has a significant impact on misdemeanor dockets and the resources available for more serious offenses.

**Therefore, be it resolved that:**

The NACDL opposes the unconstitutional denial of counsel and the uninformed waiver of counsel in misdemeanor prosecutions;

The NACDL urges the states to adequately fund their misdemeanor indigent defense systems;

The NACDL will continue to support the rights of the accused by supporting the adequate funding for indigent defense and limited caseloads , training and oversight for indigent defenders;

The NACDL supports the decriminalization of minor misdemeanor offenses and driving offenses;

The NACDL supports the use of diversionary programs that occur pre-prosecution, result in the dismissal of all charges upon completion program, and do not impact the prosecution of the case if not completed;

The NACDL supports the use of programs to assist in addressing drug and other addictions without the oversight of the criminal justice system or the use of criminal charges as a coercive measure;

The NACDL urges that policymakers significantly curtail the collateral consequences for misdemeanor convictions;

The NACDL opposes mandatory application fees and other burdens on the right for indigent defendants to obtain counsel; and

The NACDL supports mandatory training and the development of resources to educate judges and defenders on the collateral consequences of convictions.

**Be it further resolved** that the Board of Directors delegates authority to the Executive Committee to adopt the forthcoming misdemeanor report on behalf of the Association.

**Be it further resolved** that the NACDL Indigent Defense Committee, based on the misdemeanor report and in consultation with Indigent Defense Counsel, shall develop a specific implementation program, which may include coalition-building, training initiatives, impact litigation and statutory reform, to protect the constitutional rights of those accused of misdemeanors.

APPROVED this 25<sup>th</sup> day of October, 2008  
Tampa, Florida