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# The **Public Defense Crisis** in Washington State

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## STAFF CONTACT

**Curtis Steinhauer**  
Policy Coordinator  
[csteinhauer@wsac.org](mailto:csteinhauer@wsac.org)

**Paul Jewell**  
Government Relations Director  
[pjewell@wsac.org](mailto:pjewell@wsac.org)

# Key Takeaways

**The right to counsel is a state constitutional obligation.** Delegating administration to local governments does not relieve the state of responsibility.

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**Washington is a national outlier in public defense funding.** Only Arizona, Mississippi, and Nebraska contribute less.

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**Local governments lack the capacity to fund public defense adequately.** Counties face revenue limits and lack the necessary statutory authority to control caseload drivers.

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**Underfunding has produced systemic constitutional failures.** Excessive caseloads, inadequate counsel, and resulting injustices have been documented by decades of litigation.

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**Justice depends on geography.** The quality of defense varies based on local revenue, not legal standards.

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**Public safety is compromised when defense systems fail.** Courts stall, cases are delayed, and accountability breaks down.

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**New caseload standards make reform unavoidable.** Without major state investment compliance is impossible.

# Introduction

The right to counsel for individuals accused of crimes is among the most fundamental guarantees in American constitutional law. Enshrined in the Sixth Amendment to the United States Constitution and independently protected by the Washington State Constitution, this right is essential to ensuring fairness, accuracy, and legitimacy in the criminal justice system. Over the past six decades, courts have repeatedly emphasized that the promise of counsel is not satisfied by the mere appointment of an attorney in name, but by the provision of effective representation—representation that includes adequate time, resources, independence, and professional judgment. Yet in Washington State, persistent structural and funding deficiencies have placed this constitutional guarantee under increasing strain, culminating in what the Washington Supreme Court has now explicitly described as a crisis in public defense services.<sup>i</sup>

Washington's public defense system differs from other states in ways that have proven consequential. Unlike the majority of states, Washington delegates both the administration and the primary financial responsibility for indigent defense services to counties and cities, while retaining legislative control over the criminal laws that drive caseloads and costs.<sup>ii</sup> Local governments are constitutionally and statutorily constrained in their ability to raise revenue, yet they must absorb nearly all expenses associated with providing defense counsel in felony, misdemeanor, juvenile, dependency, and civil commitment cases. This mismatch between responsibility and capacity has produced wide disparities across jurisdictions, leaving the quality of constitutionally required representation largely dependent on geography, as the available resources are based on the ability to raise revenue locally, rather than law. The resulting "justice by geography" undermines public confidence, exposes vulnerable defendants to heightened risk of constitutional violations, and places local officials in an untenable position of budgeting for obligations they cannot meaningfully control.

The deficiencies of Washington's system are neither new nor unforeseen. Courts have consistently intervened when underfunded and overburdened defense systems render the right to counsel illusory. In Washington, cases such as *Wilbur v. City of Mount Vernon* and *Davison v. State* document systemic failures resulting from excessive caseloads, inadequate oversight, and chronic underinvestment. These decisions underscore a central tension in Washington law: although counties administer public defense, the constitutional obligation to ensure effective representation ultimately rests with the state.

This paper examines Washington's public defense crisis through the lens of caseload standards, funding structures, and constitutional accountability. It traces the historical development of the right to counsel, analyzes the statutory framework governing indigent defense in Washington, and evaluates the consequences of prolonged underfunding for defendants, courts, and public safety. It also situates Washington within a national context, comparing alternative state models that have successfully

rebalanced responsibility toward statewide funding and oversight. Finally, the paper considers potential policy solutions capable of aligning Washington’s public defense system with its constitutional obligations. As recent reductions in allowable defender caseloads take effect, the need for durable, systemic reform is no longer theoretical—it is immediate, unavoidable, and central to the continued functioning of the state’s criminal justice system.

# The Right to Counsel for Indigent Persons

The right to legal representation for individuals accused of crimes is enshrined in both the Sixth Amendment to the United States Constitution and the Washington State Constitution.

***“In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence.”***

U.S. CONSTITUTION, 6TH AMENDMENT

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***“In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel . . .”***

WASHINGTON STATE CONSTITUTION, ARTICLE 1, SECTION 22

This language, while definitive in its assertion, did not immediately guarantee that the government would provide a lawyer to defendants who could not afford one. The original interpretation presumed that defendants had the right to retain legal counsel, but it did not compel the state to provide such representation free of charge. Early federal and state court cases were inconsistent on the issue of appointed counsel, allowing states significant leeway in how they implemented criminal procedure. As a result, indigent defendants across the country were often left to navigate the complexities of the legal system alone.

Today, decades of supreme court precedent have established that the right to counsel during trial, as well as during other crucial stages of the legal process like arraignment, plea bargaining, and sentencing, is guaranteed to all criminal defendants, even if they cannot afford one.

## Gideon

The modern understanding of the right to counsel is shaped by the landmark ruling in *Gideon v. Wainwright* (1963). This decision established the obligation of states, not just the federal government, to provide counsel to indigent defendants charged with felonies.

Gideon was a watershed moment. Clarence Earl Gideon was charged with felony theft in Florida and denied a court-appointed attorney. He appealed his conviction from prison, and the United States Supreme Court unanimously ruled that the Sixth Amendment requires states to provide attorneys to defendants who cannot afford one.

In their decision, the Court held that the Sixth Amendment's guarantee of counsel is a fundamental right essential to a fair trial and, as such, applies to the states through the Due Process Clause of the Fourteenth Amendment.

Justice Black, authoring the majority opinion, stated that "reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." He further wrote that the "noble ideal" of "fair trials before impartial tribunals in which every defendant stands equal before the law . . . cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."<sup>iii</sup>

This ruling led to the creation and expansion of public defense systems across the United States, including in Washington State. Although Washington had already provided appointed counsel in certain cases, the decision created pressure to formalize and systematize these efforts statewide.

# The Development of Public Defense Services in Washington State

*“The poor man charged with crime has no lobby. Ensuring fairness and equal treatment in criminal trials is the responsibility of us all.”*

U.S. ATTORNEY GENERAL ROBERT KENNEDY

While Gideon directs the states to provide indigent public defense services, it does not specify how they must do so.<sup>iv</sup> In Washington State, the legislature has delegated the duty to enforce the right to counsel to local governments—counties and cities. In Washington, unlike most states, the burden of paying for public defense services for indigent defendants is also borne primarily by counties and cities.

## Local Funding Disparity

Counties and cities do not have equal capacity to raise local revenue. Significant disparities exist across jurisdictions, driven by differences in tax authority, economic base, and statutory constraints. Because responsibility for funding public defense in Washington rests primarily with local governments, the quality and availability of defense services are directly tied to local revenue capacity. Counties are structurally disadvantaged relative to both the state and cities in their ability to generate sufficient resources.

Unlike cities and the state, counties rely almost exclusively on two local revenue sources: property taxes and sales taxes.<sup>v</sup> Property taxes are the single largest source of county revenue, yet annual growth is capped by law at one percent plus the value of new construction. This limitation fails to keep pace with inflation, let alone the rising costs of legally mandated services such as public defense.

Sales taxes provide a second, but uneven, revenue stream. Because sales tax revenue is generated primarily in urban areas, more populous counties benefit disproportionately. Washington’s growth management framework further restricts sales tax-generating commercial development largely to incorporated cities, reducing counties’ access to local sales tax revenue by eighty-five percent. Together, these constraints leave counties with limited, volatile, and inequitable funding capacity for a constitutional obligation over which they have little control.

Costs for public defense include nearly everything associated with providing attorneys for those constitutionally entitled to counsel in municipal, district, and superior court criminal (misdemeanor and felony) cases, as well as juvenile, dependency, and civil commitment cases. In addition to counsel, local jurisdictions must pay for required interpreters, defense experts, and other essential defense services.

As a result, public defense services in Washington are provided by a patchwork of organizations and systems, including public defender agencies (both nonprofit organizations and government offices), contracts with individual attorneys or private firms, and the appointment of individual attorneys.

Since the establishment of the first public defender offices in local governments in the late 1960s and early 1970s, counties and cities have struggled to fully fund indigent defense services, given their limited taxing authority and lack of oversight over the regulatory environment that drives indigent caseloads. Local authorities have only limited control over the law enforcement priorities and policies that bring cases, and the associated costs, into their courts.

For example, the Washington State Patrol, a state agency, is responsible for many of the DUI and other traffic-related offenses prosecuted in local courts, but local jurisdictions are responsible for indigent defense costs. Similarly, juvenile dependency cases are filed by the State Attorney General, but the burden of providing defense counsel for indigent parents in these cases has fallen on the counties.

The Washington State Constitution establishes a separation of powers at the local level among the county legislative authority (like Commissioners, Councilmembers, or Councilors), Sheriffs, and County Prosecuting Attorneys. Commissioners are the county legislative authority that sets the budget for their jurisdiction, but they have no control over the enforcement of crimes and misdemeanors. The State Legislature writes the law, independently elected Sheriffs enforce the law and make arrests, and independently elected County Prosecutors determine when to bring charges against individuals. As a result, the county legislative authority often find themselves in the difficult situation of budgeting for a volume of services over which they have no control.

## THE DEVELOPMENT OF PUBLIC DEFENSE SERVICES IN WASHINGTON STATE

### County Commissioner, Councilmember, or Councilor

- Acts as the county's legislative and administrative body, setting local policies.
- Approves the county budget.
- May share administrative functions with other elected officials like the sheriff, treasurer, and assessor.

### Sheriff

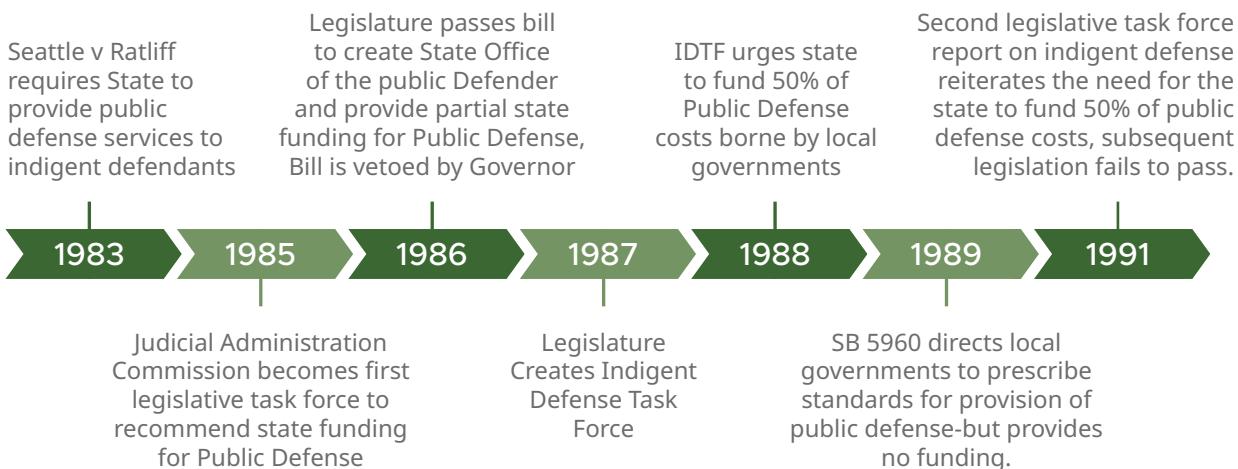
- Chief law enforcement officer for the county.
- Responsible for police services, especially in unincorporated areas.
- May manage the county jail and handles all law enforcement activities.
- Executes court orders throughout the county.

### Prosecuting Attorney

- Represents the state and county in criminal cases.
- Decides whether to file charges, negotiates plea deals, and advocates for sentencing in court.
- Seeks justice for crime victims and enforces child support rights.
- Serves as legal advisor for county government.

Given these challenges, over the last 40 years, numerous efforts by bar groups, the judiciary, and the legislature have sought to improve the provision of indigent defense services in Washington State.

## Washington State Public Defense System Timeline



## State Response to Gideon

In the 1983 case *City of Seattle v Ratliff*, the Washington State Supreme Court declared that the right to counsel is of “paramount importance to all persons appearing in our courts.”<sup>vi</sup> In Ratliff, the Court affirmed that due to its fundamental nature, it is not enough that the State refrain from interfering with a criminal defendant’s ability to obtain criminal legal counsel; the right to counsel requires the State to actively provide criminal defense services to those who cannot afford it.

In 1985, the Judicial Administration Commission, created by the Washington Legislature, recommended that “the state should support with partial funding the delivery of indigent criminal defense services, administered by a state public defender chosen by the supreme court.”<sup>vii</sup> This led to an assessment of indigent defense services in Washington and a bill in the 1986 Legislature to create an Office of the State Public Defender charged with preparing a report on the current system of representation and making recommendations for a statewide plan to provide public defense services.

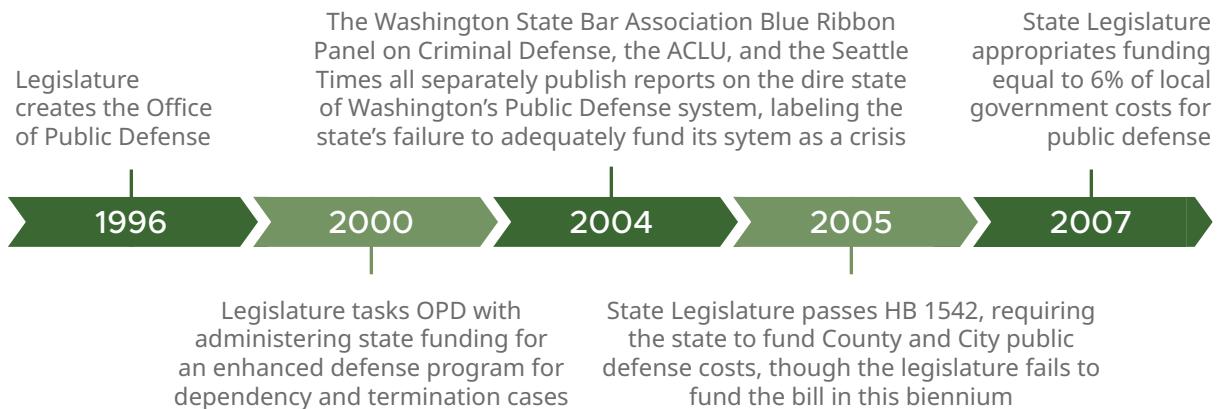
The bill passed the legislature but was vetoed by the governor when its funding was removed.<sup>viii</sup> A new bill proposing a commission was passed by the legislature again in 1987, but the governor again vetoed it.

In 1988, the legislature successfully passed a bill creating the Indigent Defense Task Force. In early 1989, the task force expressed alarm at excessive public-defense caseloads.<sup>ix</sup> The panel urged the state to subsidize indigent defense — paying as much as 50 percent of costs — and to attach conditions to that money. Only counties that adopted standards, including caseload limits, would get state funding.

In response to the findings of the task force and court cases like *Gideon and Ratliff*, the Washington State legislature passed SB 5960 in the 1989 session, which established chapter 10.101 RCW and delegated the duty to enforce the right to counsel to local governments – counties and cities.<sup>x</sup> This legislation required counties and cities to “adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office.” The legislation prescribed categories that must be included in standards, but left counties and cities wide discretion in setting these standards at the local level. The legislature declined to provide state funding for these services, despite the recommendations of the task force.

In 1991, the Washington State Advisory Group on Indigent Defense, which was chaired by Lt. Governor Joel Pritchard, published a report that, in addition to reiterating the 1988 Task Force’s recommendation that 50% of indigent defense costs should be provided by the state to local governments that adopt standards, focused on identifying minor criminal offenses that could be diverted from the criminal justice system. Legislation introduced on the Task Force’s recommendations failed to pass.

## OPD and The Passage of 10.101



In 1996, the legislature created the Washington State Office of Public Defense (OPD). The director is appointed by the Washington Supreme Court, and the agency is governed by an advisory committee consisting of appointees by the Supreme Court, the Senate, the House of Representatives, the Governor's Office, and the Washington State Bar Association (WSBA). The OPD's legislative mandate is to "implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington."<sup>xi</sup> Since its creation, the OPD has administered state funding for appellate public defense representation and, since 2000, state funding for an enhanced defense program for dependency and termination cases.

The issue of state funding again gained momentum in the legislature in 2004-05. In April of 2004, three indigent defendants successfully sued Grant County for "operating a public defense system that regularly and systematically deprives indigent persons of the effective assistance of counsel". The complaint alleged that the county had "failed to provide adequate funds for public defense".<sup>xii</sup> Later that year, the American Civil Liberties Union (ACLU), the Seattle Times, and the WSBA Blue Ribbon Panel on Criminal Defense all published reports spotlighting the difficult state of indigent defense in some Washington counties.

The Seattle Times articles, which drew substantial interest among state and local elected officials, laid the blame squarely on the state's failure to adequately fund these services. The series of articles savaged the state's role in the public defense system, referring to Washington's funding levels for criminal prosecutions as "dead last" in the nation and asserting that decades of complaints about a clearly underfunded system have resulted in "little more than one impotent state law, passed 15 years ago."

In the 2005 legislative session, the Washington State legislature responded with HB 1542. This bill created the first state-level funding mechanism for indigent defense in local courts. The legislation also mandated state oversight of local public defense systems through OPD. The bill required local governments to create standards for public defense services based on the WSBA standards, and stipulated receipt of new funding on compliance with these standards or certification from OPD that the county was using the funds to make, "appreciable demonstrable improvements in the delivery of public defense services."<sup>xiii</sup>

The intent of this legislation was made clear by the comments of its prime sponsor upon introduction:

***"All of us sitting up here know what it means to represent our counties and our cities who are so strangled for money for their operations because of what happens with the requirements of the justice system...If we could take on the responsibility, here in the state where it should lay, because after all that constitutional principle, that principle of effective legal counsel for all indigent defendants, is NOT a local government responsibility, it should be that of the state of Washington."***

STATE REPRESENTATIVE PATRICIA LANTZ, COMMENTING ON  
THE INTRODUCTION OF HB 1542 IN 2005<sup>xiv</sup>

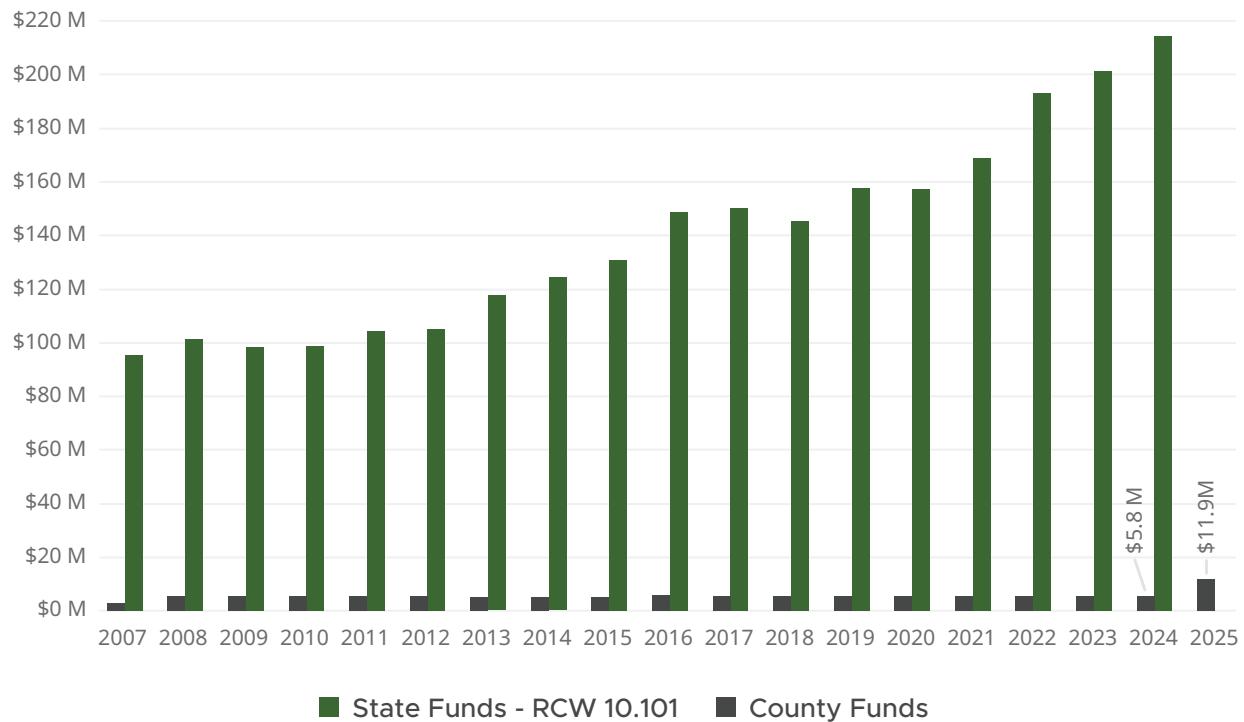
In addition to the prime sponsor, many advocates of the legislation pointed to the necessity of state funding to deliver on the constitutional mandate for the state to provide effective representation.

***"Without assistance from the state government, our cash-strapped counties and cities are unable to correct the problems that were identified in the articles and in the report."***

JUSTICE GERRY ALEXANDER, COMMENTING ON THE  
INTRODUCTION OF HB 1542 IN 2005

Despite this testimony, the legislature failed to make budgetary appropriations commensurate with the scale of the crisis. Funding for the purposes outlined in HB 1542 would not be provided until 2007. Funding has never exceeded 6% of total statewide expenditures toward indigent defense, and no increase in annual appropriations occurred between 2008 and 2024.

## Statewide - Source of County Public Funding



In that sixteen-year span, local governments continued to struggle to fund the rising costs of public defense services. Costs have increased to over \$220 million annually, while state funding has remained relatively flat, accounting for as little as 3% of statewide costs.

## Supreme Court Intervenes on Caseload Standards



This lack of structural reform (in a statewide system with established and well-studied deficiencies) led to a series of landmark court decisions that have shaped the public defense landscape in Washington State over the past decade.

In the 2010 court case *State v. A.N.J.*, a juvenile defendant sought to withdraw a guilty plea due to inadequate representation.<sup>xv</sup> The Washington Supreme Court took the opportunity to directly confront some of the most persistent problems in our public defense system. The Court charged that the guarantee of effective representation is often rendered an illusory promise for indigent defendants due to structural problems, including inadequate funding and caseload standards. This led to the Washington State Supreme Court adopting portions of the WSBA Standards on Indigent Defense into its Court Rules.

The WSBA Standards detail the minimum requirements for attorneys representing individual clients and for state and local administrators who “manage and oversee” public defense services.<sup>xvi</sup> As stated by the Washington State Legislature, in RCW 101.030, counties and cities are required to adopt standards for the delivery of public defense services, regardless of whether public defense services are provided by contract, assigned counsel, or a public defender agency or nonprofit office.

RCW 10.101.030 provides that the WSBA Standards should serve as guidelines to local legislative authorities in adopting their standards. The WSBA Standards are consistent with, but more comprehensive than, the Washington Supreme Court’s Standards for Indigent Defense that are included in the Washington State Court Rules. All public defense attorneys must certify every quarter that they comply with the Court Rule Standards.

The failure to provide adequate defense services leads to appeals based on ineffective assistance of counsel and results in the reversal and remand of convictions, imposing additional appeal and retrial costs funded by the public. An increasing number of civil rights lawsuits have been brought throughout the United States to compel jurisdictions to provide constitutionally and statutorily adequate representation to indigent defendants, and/or to seek monetary damages against them for failure to do so.

In 2013, the ACLU filed a federal lawsuit on behalf of indigent defendants in Mount Vernon and Burlington<sup>xvii</sup>, alleging that the cities' public defense system violated the Sixth Amendment by making effective representation impossible in practice. The complaint centered on the cities' use of two part-time contract defenders who were each assigned more than 1,000 misdemeanor cases per year, were paid a flat fee, and lacked supervision, investigative support, or meaningful time to meet with clients or review evidence. The court agreed, holding that the Sixth Amendment guarantees the effective assistance of counsel—not merely the formal appointment of an attorney—and that a system structured to prevent meaningful representation is unconstitutional even if counsel is technically assigned in every case.

In the 2020 case *Davison v. State*, a class of indigent defendants argued that Washington State—not just its counties—should be held responsible for the systemic underfunding of public defense that had led to widespread constitutional violations.<sup>xviii</sup> The plaintiffs sought damages from the State for alleged violations of the Sixth Amendment and the Washington Constitution. The Washington Supreme Court rejected this claim, holding that under the existing statutory scheme, public defense is administered and funded by local governments and that the State cannot be held liable in tort for resulting deficiencies. The decision leaves the State insulated from judicially enforceable accountability for its own constitutional mandate: even when systemic failures are acknowledged, the absence of state tort liability means that victims have no legal mechanism to compel the State to fund or reform public defense, placing the burden of compliance entirely on local governments.

The Washington State Supreme Court in October 2023 requested that the WSBA Council on Public Defense (CPD) review a newly released National Public Defense Workload Study and provide recommendations, if any, to the Court. As a result of that review, the CPD proposed comprehensive revisions to the WSBA Standards for Indigent Defense Services.

The WSBA Board of Governors, after receiving public comments, adopted the proposed revised Standards and forwarded them to the Court with a recommendation that the Court incorporate the WSBA-adopted revised Standards into the Court's Rules. These standards reduce allowable caseloads for public defenders by a factor of three, effectively tripling the demand for public defenders in Washington State.

In the 2025 operating budget, the Legislature, finally responding to the crisis at the local level, doubled state contributions toward local public defense services (table below). This is a necessary first step, but substantial additional investments are needed to avoid the consequences of this ongoing crisis in courtrooms across the state.

## State and Local Public Defense Funding Under Fixed State Support

*(Actuals through FY 2025; projections assume caseload-driven cost growth with no additional state investment)*

Fiscal Year	Anticipated Statewide Public Defense Expenditures	State Contribution (Fixed)	Local Government Contribution	State Share of Total
2023	\$221.0 M	\$5.8 M	\$215.2 M	2.6%
2024	\$221.0 M	\$5.8 M	\$215.2 M	2.6%
<b>2025</b>	<b>\$242.0 M</b>	<b>\$11.91 M</b>	<b>\$230.1 M</b>	<b>4.9%</b>
2026*	\$266.0 M	\$11.91 M	\$254.1 M	4.5%
2027*	\$293.0 M	\$11.91 M	\$281.1 M	4.1%
2028*	\$322.0 M	\$11.91 M	\$310.1 M	3.7%
2029*	\$354.0 M	\$11.91 M	\$342.1 M	3.4%
2030*	\$389.0 M	\$11.91 M	\$377.1 M	3.1%
2031*	\$428.0 M	\$11.91 M	\$416.1 M	2.8%
2032*	\$471.0 M	\$11.91 M	\$459.1 M	2.5%

*\*Projected expenditures reflect approximately 10% annual growth associated with phased implementation of the Washington Supreme Court's June 2025 caseload standards and related workforce costs.*

In June 2025, the Supreme Court incorporated some of WSBAs new caseload standards into its court rule. This decision reduced allowable caseloads from 400 annual misdemeanors to 120, and 150 annual felony cases to 47. Counties must make annual progress over the next decade, shrinking caseloads annually toward the new standards. The increase in costs associated with these new caseloads will far outpace the recent investments made by the legislature as well as any ability for local governments to raise local funding.

# Consequences of Washington State's Underfunded Public Defense System

*"We wax poetically about justice for all, and on Law Day attorneys get together and reminisce about Fred Turner representing Clarence Gideon at his retrial and winning an acquittal, and yet you go into courthouses all over the country, and what you see is not at all what is being celebrated. What you see is people being processed like widgets on an assembly line."*

STEPHEN BRIGHT, FORMER DIRECTOR OF THE SOUTHERN CENTER FOR HUMAN RIGHTS

Washington's failure to adequately fund public defense services has led to a crisis in local courts. The worst consequences of this crisis may be injustice, wrongful convictions, inequitable provision of services across jurisdictions, and, in the most extreme cases, a deadlocked inability to hold criminals and misdemeanants accountable. Our Supreme Court has recognized these flaws in the current statutory scheme for indigent defense. In *Davison v State*, the court commented that the high number of ineffective assistance of counsel claims "might be a symptom of structural problems with the current state system governing indigent public defense".

The court also noted that despite counties and cities bearing the brunt of financing indigent defense services, "the legislature retains ultimate responsibility for drafting a statutory scheme that sufficiently safeguards the constitutional right to counsel." In June 2025, when ordering reduced caseload maximums for indigent defense attorneys, our Supreme Court described public defense in Washington to be in a "crisis" that "requires action now . . . to support quality defense representation at every level."

## Injustice and Wrongful Convictions

The right to counsel is premised on the critical importance of ensuring fairness and a just result. When minimum standards of fairness are not met, the outcomes can be wrongful convictions and injustice. As the previous section illustrates, in the absence of legislative action to address the Public Defense crisis, the courts have repeatedly intervened to remedy a decades-long list of injustice resulting from inadequate defense.

Case	Court	Underlying Injustice
Seattle v Ratliff	WA Supreme Court	Defendant was denied effective assistance of counsel because the defender was given neither an opportunity to consult with his supervisor nor sufficient time to prepare for trial
Grant v Best	WA Supreme Court	The sole Public Defense contractor in Grant County committed a series of injustices over the span of a decade, including failing to communicate with defendants before trial, failing to consult evidence prior to trial, and recommending guilty pleas for the sake of convenience.
State v ANJ	WA Supreme Court	The court-appointed lawyer recommended a guilty plea for a juvenile defendant without informing the defendant of the consequences of that plea or consulting pre-trial evidence.
Wilbur v City of Mount Vernon	US District Court	Contract defenders for the cities of Mount Vernon and Burlington closed over 1,000 cases annually without meeting with defendants prior to trial, informing them of the consequences or options, or interacting with the evidence prior to trial.
Davison v State	WA Supreme Court	Juvenile Defendants in Grays Harbor County were detained past statutory maximums while awaiting defense services. Public Defenders failed to meet with defendants in a timely manner or challenge excessive detentions.

As these cases repeatedly show, the systemic deficiencies of Washington's system for delivering public defense may lead to inadequate defense at trial and resulting injustice. When Public Defenders are forced to handle an inordinate number of cases, they may fail to perform their constitutional duties. Adequate counsel requires the time and attention to meet with defendants before trial, fully review the evidence and the facts of the case, and ensure the defendant understands the consequences and the process.<sup>xix</sup> As the authors of the *Wilbur* decision wrote, "this situation was the natural, foreseeable, and expected result of the caseloads the attorneys handled."

## Justice by Geography

Counties and cities must pay for indigent defense costs from local general funds. Local governments most in need of funding to provide indigent defense services are often the ones least able to afford them. The circumstances that restrain a local government's revenue – low property values, high unemployment, high poverty, and low household incomes – tend to correlate with high relative crime rates, high indigency rates, and high demand for appointed counsel. Under-resourced local governments that are already financially strained risk providing services that are affordable (e.g., awarding a flat fee government contract to the lowest bidder) rather than services that are constitutionally effective.

Local Government services in Washington State are funded through local government taxing authorities. Several dynamics associated with this taxing authority make it difficult to respond to the growing crisis in public defense, particularly amid reduced caseload standards. Property tax growth is capped by law at 1% annual growth plus the value of new construction. Sales tax revenues are highly dependent on local economic growth, which privileges growing communities and urban centers over communities where vulnerable residents are most in need of services. According to the Washington State Auditor's Office, these two revenue sources accounted for 56% of the counties' general fund revenue in 2024.<sup>xx</sup>

This revenue context makes it extremely challenging for local decision makers to adequately fund public defense services. For smaller counties where the annual caseload does not justify a full-time public defender, contracting becomes the obvious solution, but this practice has been identified by the WSBA and OPD as a barrier to providing adequate indigent defense services (all of the court cases cited above arose from jurisdictions utilizing contracted public defense).

The result is an uneven distribution of justice across our state. Where a defendant appears in court often determines the quality of representation they receive.

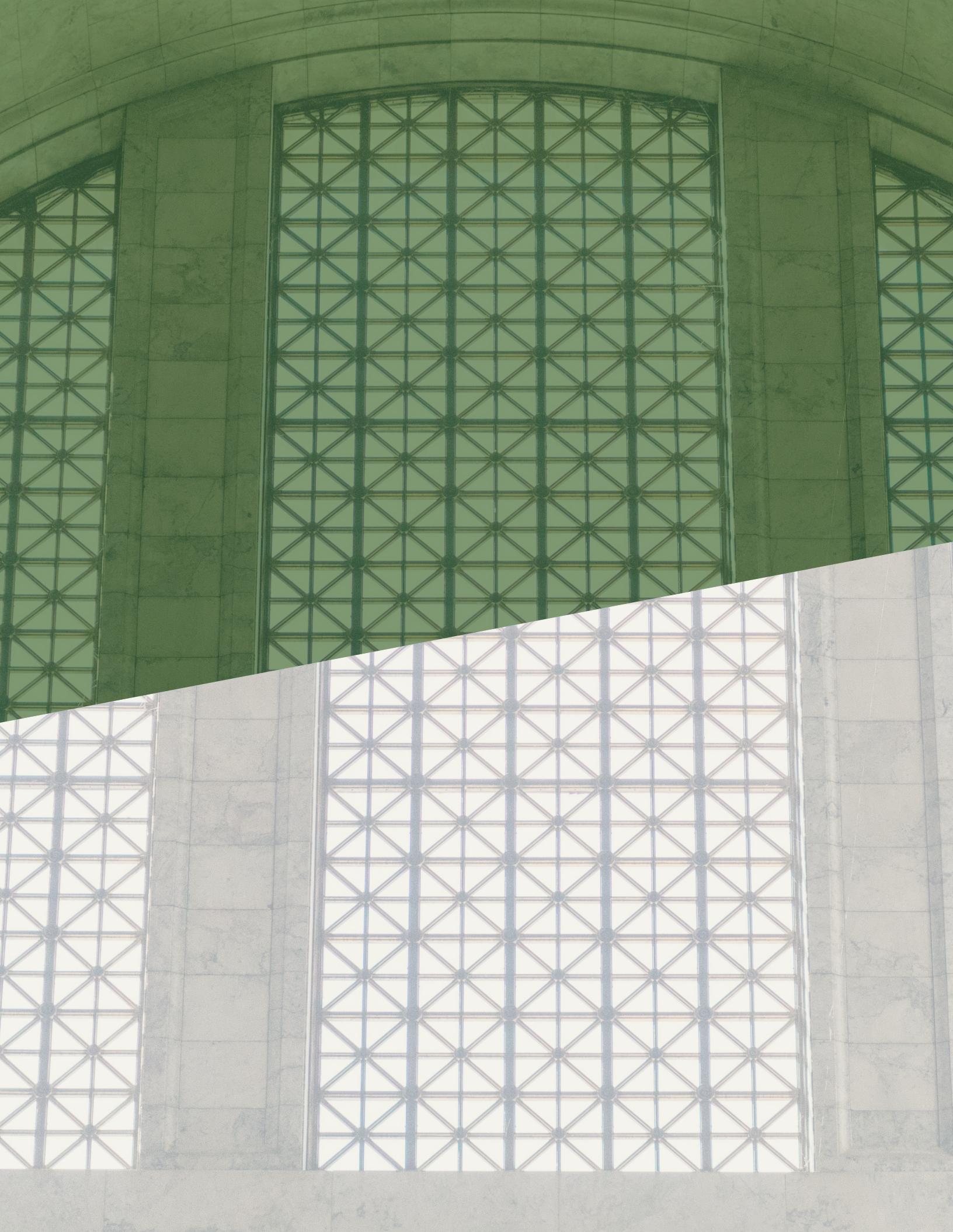
County	2024 General Government Expenditures	2024 Public Defense Expenditure	% of general fund	Population	\$ per capita
Adams County	\$6,326,753	\$800,000.00	13%	21,550	\$37.12
Asotin County	\$7,051,202	\$864,143.97	12%	22,750	\$37.98
Benton County	\$56,622,910	\$6,167,705.27	11%	219,625	\$28.08
Chelan County	\$24,536,656	\$3,396,725.70	14%	82,900	\$40.97
Clallam County	\$23,164,919	\$2,471,354.03	11%	78,650	\$31.42
Clark County	\$91,885,260	\$8,604,990.00	9%	542,400	\$15.86
Columbia County	\$3,874,308	\$175,415.09	5%	3,950	\$44.41
Cowlitz County	\$29,684,265	\$4,453,819.20	15%	114,500	\$38.90
Douglas County	\$14,462,493	\$927,335.50	6%	45,450	\$20.40
Ferry County	\$4,111,550	\$246,150.95	6%	7,350	\$33.49
Franklin County	\$22,238,787	\$1,846,632.99	8%	103,250	\$17.89
Garfield County	\$2,714,056	\$96,984.76	4%	2,300	\$42.17
Grant County	\$33,639,349	\$3,550,811.17	11%	106,250	\$33.42
Grays Harbor County	\$22,192,137	\$1,676,637.46	8%	77,750	\$21.56
Island County	\$24,347,525	\$1,762,284.55	7%	88,700	\$19.87
Jefferson County	\$14,271,975	\$1,011,931.70	7%	33,825	\$29.92
King County	\$619,804,000	\$87,075,205.84	14%	2,411,700	\$36.11
Kitsap County	\$64,536,166	\$4,629,197.80	7%	288,900	\$16.02
Kittitas County	\$20,537,075	\$846,436.00	4%	48,950	\$17.29
Klickitat County	\$11,485,585	\$427,181.79	4%	23,600	\$18.10
Lewis County	\$26,121,886	\$2,611,556.61	10%	85,550	\$30.53
Lincoln County	\$6,668,047	\$173,517.68	3%	11,250	\$15.42
Mason County	\$23,361,563	\$780,068.00	3%	67,800	\$11.51
Okanogan County	\$13,913,772	\$1,416,510.05	10%	43,400	\$32.64
Pacific County	\$8,975,892	\$637,533.14	7%	23,950	\$26.62
Pend Oreille County	\$7,361,495	\$375,916.41	5%	13,950	\$26.95
Pierce County	\$180,378,548	\$22,187,928.60	12%	959,900	\$23.11
San Juan County	\$12,520,302	\$326,883.34	3%	18,550	\$17.62
Skagit County	\$34,994,829	\$5,356,558.34	15%	134,600	\$39.80
Skamania County	\$8,723,811	\$145,884.21	2%	12,150	\$12.01
Snohomish County	\$195,431,982	\$16,508,590.48	8%	873,800	\$18.89
Spokane County	\$111,052,859	\$11,845,407.00	11%	566,000	\$20.93
Stevens County	\$14,907,619	\$1,058,788.41	7%	47,800	\$22.15
Thurston County	No filing	\$8,345,658.64		309,100	\$27.00
Wahkiakum County	\$5,291,605	\$90,474.52	2%	4,550	\$19.88
Walla Walla County	\$19,300,877	\$1,052,740.19	5%	63,800	\$16.50
Whatcom County	No filing	\$8,886,047.69		240,500	\$36.95
Whitman County	\$11,897,405	\$470,102.52	4%	49,450	\$9.51
Yakima County	\$54,218,376	\$6,934,924.00	13%	264,650	\$26.20
Grand Total	\$1,832,607,839	\$ 220,236,033.60	12%	8,115,100	\$27.14

## Deadlocked Court Systems

When local court systems lack funding to appoint counsel for indigent defendants, the result is often reduced accountability for criminals and misdemeanants. In extreme cases, the criminal justice system can grind to a complete halt.

In September 2025, the Public Defenders' office in Spokane County adopted the WSBA caseload standards without additional increases in staffing or funding to support the change. To comply with the new standards, each month the Public Defenders' Office informs the county Superior Court when it reaches caseload capacity and will no longer accept new cases for that month. Since implementing this system, Spokane has not been able to assign indigent defense attorneys for out-of-custody cases past the 15th of the month. In November 2025, the Public Defenders Office stopped accepting out-of-custody cases on the 3rd day of the month.

As caseload standards are implemented over the next ten years, examples like Spokane County will become more common. In most cases, a person detained and accused of a crime or misdemeanor must have an initial arraignment within 72 hours of their arrest, with counsel assignment required prior to arraignment for indigent persons. These timelines, combined with new caseload standards, are already creating major gaps in local court systems around the state.



# How Does Washington Compare to Other States?

Washington State is an outlier nationally in its failure to adequately fund indigent defense services. Thirty-three states fully fund indigent defense service for at least felony cases, and 21 states employ a fully centralized, state-funded model for administering indigent defense services. Eight other states task local governments or regional courts with administering services, but provide 50-100% of the funds. Washington State is one of only 10 states that ask local governments to fund and administer indigent defense services without significant state support. Only Arizona, Mississippi, and Nebraska fund a smaller portion of statewide indigent defense services than Washington. The result is an uneven distribution of justice across our state. Where a defendant appears in court often determines the quality of representation they receive.

Model Name	Model Description	States Utilizing Model
Fully Centralized	<ul style="list-style-type: none"><li>State is the Single Payer for at least adult criminal trial services</li><li>Statewide oversight of services</li><li>Services provided through a central state agency or regional agencies with state oversight</li></ul>	Alaska, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Maine, Minnesota, Montana, New Hampshire, North Carolina, North Dakota, Vermont, Virginia, West Virginia, Wisconsin
Divided Responsibility	<ul style="list-style-type: none"><li>State is the Single Payer and administrator in most jurisdictions for at least adult felony criminal trial services</li><li>Local responsibility for misdemeanor and municipal trial services</li><li>Local jurisdictions may have greater levels of responsibility and financial burden in large urban counties</li></ul>	Alabama, Colorado, Georgia, Kansas, Missouri, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Wyoming
Supported Local	<ul style="list-style-type: none"><li>State funds 50-100% of services</li><li>Local or regional courts administer services and cover unfunded portions of the system</li><li>Local jurisdictions may have greater levels of responsibility and financial burden in large urban counties</li><li>Local control and oversight of service delivery</li></ul>	California, Florida, Indiana, Michigan, Nevada, New York, Ohio, Tennessee
Fully Local	<ul style="list-style-type: none"><li>State provides little or no funding; if funding is provided, it is in the form of grants to local jurisdictions</li><li>Local responsibility for funding and administering services</li></ul>	Arizona, Illinois, Mississippi, Nebraska, Pennsylvania, South Dakota, Texas, Utah, Washington

*Note: Data taken from 6th Amendment Center State of the Sixth Report*

## Fully Centralized Models

Many states employ a statewide, centralized system for providing indigent defense services. In these systems, a statewide entity (department, agency, or commission) runs indigent defense services, hires staff, and manages contracts. This may be accomplished through direct administration by the central entity or through centralized oversight of regional entities. In either case, the state government appropriates all of the funding required to administer these services. In some cases, the state does not cover indigent defense services for purely municipal matters such as local ordinance violations.

## Divided Responsibility Models

Other states employ a shared responsibility model in which the state is responsible for providing indigent defense services in a portion of the statewide criminal justice system and/or for a portion of jurisdictions. In many states a central statewide entity provides services for high courts or for criminal offenses, while local jurisdictions are responsible for these services in lower courts and for misdemeanor offenses. In other states, the centralized entity provides services in some jurisdictions while others (often large urban cities and counties) are responsible for administering services within their jurisdictions. In most cases, the state funds the portion of the system it is responsible for while local governments cover costs for their portion of the system. In other cases, states and local governments share costs even when one entity is responsible for the actual administration.

## Supported Local Models

In supported local models, the local government or a regional entity has local control over administration and oversight of public defense service, but they receive significant funding from the state, often exceeding 50% of total costs. These models often reflect a history of full local responsibility, with recent action by the state government to support unfunded portions of the state. In many cases, larger jurisdictions have a greater level of responsibility for funding their own systems.

## Fully Local Models

In ten states, local governments are tasked with administering and funding indigent defense services within their jurisdiction. In every state except Arizona, the State provides some level of funding, but none of these states fund more than 15% of statewide costs. In all of these states, indigent defense services are a hot-button

political issue and widely acknowledged as a policy failure. In the last two decades, many states have moved away from this model, including Michigan, Montana, Idaho, and New York.

## What State Systems Work Best?

Reports from the federal government<sup>xxi</sup> and nonprofit think tanks like the 6th Amendment Center note that what matters is whether any chosen model meets constitutional parameters:

- Early appointment of counsel.
- Qualified, trained lawyers.
- Enough time and resources to do the job right.
- Independent supervision.

These reports note that the administration structure is less important than how it delivers on those constitutional metrics. But the structure still matters because it shapes accountability and consistency.

There is no single national model. Instead, there is a spectrum, from fully centralized, commission-driven state systems to fragmented, local-funded, locally administered systems with little or no state oversight. However, the reports referenced above all recognize that the constitutional obligation is the state's, and that the most defensible models are those where:

- The state funds the system,
- A statewide commission sets and enforces meaningful standards, and
- Delivery models, whether public defender offices or managed private counsel, are constructed to meet those standards in practice.



# Potential Solutions

As the preceding sections of this report demonstrate, Washington State's system for delivering indigent defense services suffers from deep, longstanding structural deficiencies. These deficiencies are not the result of isolated failures or temporary shortfalls, but rather of a statutory framework that assigns constitutional obligations to local governments without providing them with the authority, resources, or oversight capacity necessary to fulfill those obligations. Over the past four decades, bar associations, judicial task forces, legislative panels, journalists, and courts have repeatedly diagnosed the same core problems: chronic underfunding, excessive caseloads, inconsistent standards, and the absence of meaningful statewide accountability. The persistence of these conditions, despite sustained attention, suggests that incremental adjustments are insufficient. What is required instead is a coordinated set of reforms that realign responsibility, funding, and authority with the constitutional mandate to provide effective assistance of counsel.

## 1. Increase State Funding

One of the most widely endorsed and consistently recommended reforms is a substantial increase in state funding for indigent defense services. Although Washington has taken modest steps in this direction in recent years, state funding still accounts for only a small fraction of total statewide public defense expenditures. Local governments continue to bear the overwhelming majority of costs, even as those costs grow rapidly due to reduced caseload limits, increased case complexity, and rising personnel expenses. This funding imbalance is not merely a fiscal concern; it is a constitutional one. Courts have repeatedly recognized that the right to counsel is a state obligation under the Sixth and Fourteenth Amendments, regardless of how the legislature chooses to allocate administrative responsibility. A system that relies primarily on local funding, particularly in a state where counties face strict limitations on revenue growth, predictably produces uneven and constitutionally risky outcomes.

Importantly, increased state funding must be structured as a stable and general appropriation, not as an optional or contingent revenue source tied to fines, fees, or local voter approval. National research and Washington's own experience demonstrate that fine and fee-based funding mechanisms are inherently unstable and often counterproductive. Revenues from traffic citations, court assessments, and other enforcement-related activities fluctuate with economic conditions, enforcement priorities, and external shocks, such as public health emergencies. More fundamentally, reliance on such sources creates a perverse linkage between public safety decisions and the constitutional right to counsel. Effective indigent defense cannot depend on how many tickets are written or how aggressively minor offenses are prosecuted. For this reason, virtually every major study of indigent defense systems, including those cited throughout this report, rejects fines and fees as a

primary funding mechanism. A durable solution requires that the legislature accept direct fiscal responsibility for ensuring constitutionally adequate representation.

## 2. Empower OPD to Provide Direct Services

Beyond funding levels alone, Washington must address the administrative capacity of its public defense system. The current statutory framework assumes that every county and city is capable of designing, administering, monitoring, and continuously improving a complex professional service delivery system. In practice, this assumption has proven unrealistic, particularly in smaller, rural jurisdictions with limited staff and expertise. Even well-intentioned local governments often lack the ability to implement sophisticated performance metrics, oversee contracts effectively, or respond quickly to changing legal standards. One critical reform, therefore, is to explicitly authorize the Washington State Office of Public Defense to provide direct defense services in jurisdictions that cannot meet the administrative burden on their own.

Allowing OPD to step in as a service provider would introduce flexibility into the system, provide opportunities for regional efficiencies, and reduce the risk of constitutional failure in under-resourced areas. This authority could be exercised voluntarily at the request of local governments. Importantly, this reform would not require eliminating local control statewide; rather, it would create a safety valve for jurisdictions where the current model is demonstrably failing. Other states have successfully implemented hybrid systems in which a state agency provides services in some regions while local systems operate elsewhere, all under a common set of standards. Washington's refusal to permit such flexibility has contributed to the rigidity and fragility of its current system.

## 3. Use Data to Inform Policy

Equally important is the development of robust mechanisms to track, measure, and evaluate the performance of Washington's indigent defense system over time. At present, data collection is fragmented, inconsistent, and often insufficient to identify emerging problems before they reach constitutional dimensions.<sup>xxii</sup> While some information is reported to OPD, it is not always standardized or comprehensive, and it rarely captures key constitutional metrics such as early appointment of counsel, frequency of uncounseled guilty pleas, attorney-client contact time, or workload distribution within offices. Without reliable data, policymakers are forced to rely on litigation, audits, or media investigations to learn that systems have failed—often years after the harm has occurred.

Creating a statewide performance measurement framework would allow Washington

to move from a reactive to a preventive posture. Such a framework should focus on outcomes and constitutional benchmarks rather than purely administrative compliance. It should also be designed to support continuous improvement, not merely to identify violations. Critically, this effort must be led by the legislative and executive branches, rather than continuing the pattern of system reform driven primarily by court orders. While judicial intervention has been necessary to enforce minimum constitutional standards, it is an inherently blunt and limited tool for system design. Courts can declare what the Constitution requires, but they are not well-positioned to allocate resources, design workforce strategies, or balance competing policy priorities. Ending the cycle of court-driven system building requires the legislature to assume a more active and informed role in the governance of indigent defense.

## 4. Invest in Workforce Solutions

Workforce shortages represent another acute and growing challenge that demands legislative attention. Even if funding levels increase, Washington will struggle to comply with new caseload standards without a sufficient supply of qualified public attorneys, including both public defenders and prosecutors. Public legal work is demanding, high-stakes, and often emotionally taxing, yet compensation frequently lags behind comparable positions in prosecution or private practice. High student debt, limited advancement opportunities, and burnout contribute to chronic turnover, particularly in rural areas. Over time, these conditions undermine not only capacity but also quality, as experienced defenders leave the field and institutional knowledge is lost.

Addressing this problem requires statutory incentives specifically targeted at workforce growth and retention in public legal professions. Potential approaches include student loan forgiveness or repayment assistance for public attorneys, state-funded training and mentorship programs, and pension or benefit enhancements for long-term service. These tools are not novel; they are already used in other public service fields where recruitment and retention are critical to fulfilling government obligations. Framing public defense as an essential public service—rather than a discretionary local expense—would help justify and normalize such investments. Without deliberate workforce strategies, increased funding alone will be insufficient to translate new caseload standards into meaningful improvements in representation.

## 5. Reestablish the Legislature as the Appropriate Policymaking body for Caseload Standards

Finally, Washington must confront the question of who should bear responsibility for setting and revising indigent defense caseload standards. Historically, this responsibility has fallen largely to the judiciary, often in response to litigation or studies documenting systemic failure. While the courts have appropriately insisted that excessive caseloads are incompatible with effective assistance of counsel, reliance on judicial rulemaking to define workload limits has significant drawbacks. Court-imposed standards may lack corresponding funding mechanisms, implementation timelines, or workforce planning tools, leaving local governments with mandates they cannot realistically meet. This dynamic exacerbates tension between branches of government and increases the likelihood of system breakdowns, such as case refusals and delayed arraignments.

Placing primary responsibility for caseload standards in the hands of the legislature would promote greater alignment between policy goals and practical capacity. The legislature is uniquely positioned to integrate caseload limits with funding appropriations, staffing projections, and administrative reforms. This does not mean excluding the judiciary or professional organizations from the process; on the contrary, their expertise is essential. But ultimate responsibility for adopting and funding enforceable standards should rest with the branch of government that controls the state's fiscal and statutory framework.

Taken together, these reforms point toward a more coherent and constitutionally sound model for indigent defense in Washington State. They recognize that effective representation cannot be achieved through local effort alone, nor through litigation-driven correction after harm has occurred. Instead, they call for a rebalancing of responsibility toward the state, coupled with flexible administration, meaningful data collection, deliberate workforce investment, and legislative leadership. Other states have demonstrated that such reforms are both feasible and effective when political will aligns with constitutional obligation. Washington's challenge is not a lack of information or precedent, but the need to act decisively on lessons that have been clear for decades.

# Conclusion

Washington State's public defense crisis is neither accidental nor inevitable. It is the predictable result of a statutory and fiscal framework that places primary responsibility for a core constitutional obligation on local governments while denying them the tools necessary to fulfill it. As this paper has shown, decades of studies, court decisions, legislative task forces, and investigative reporting have reached the same conclusion: chronic underfunding, excessive caseloads, and fragmented oversight have rendered the right to counsel precarious for thousands of indigent defendants across the state. The consequences of this failure are profound—ranging from wrongful convictions and prolonged detention to systemic court backlogs and a growing erosion of public trust in the fairness of the criminal justice system. These harms fall most heavily on poor and historically marginalized communities, reinforcing inequality rather than safeguarding justice.

Recent actions by the Washington Supreme Court and the Legislature underscore both the urgency of the crisis and the limits of piecemeal reform. The adoption of dramatically reduced caseload standards represents an essential reaffirmation of what effective representation requires. Yet without corresponding structural change, these standards risk exposing, rather than resolving, the system's underlying fragility. As early evidence from jurisdictions already struggling to assign counsel demonstrates, unfunded mandates can push local systems to the breaking point, resulting in delayed arraignments, case refusals, and the effective suspension of prosecution for certain offenses. Court intervention has been necessary to enforce constitutional minimums, but it cannot substitute for comprehensive policymaking that aligns funding, administration, and accountability.

Comparisons with other states further illustrate that Washington's approach is an outlier—and an increasingly untenable one. Across the country, states have moved away from fully local models toward systems in which the state assumes the majority of financial responsibility, establishes enforceable standards, and ensures consistent oversight. While no single administrative structure guarantees success, the most durable systems share a common recognition: the constitutional right to counsel is ultimately a state responsibility. Washington's continued reliance on counties and cities to fund and administer indigent defense without meaningful state support leaves it vulnerable to the very failures courts have repeatedly condemned.

The solutions outlined in this paper are neither radical nor untested. Increasing stable state funding, empowering the Office of Public Defense to provide direct services where needed, building robust data systems, investing in the public defense workforce, and restoring the legislature's role in setting and funding caseload standards are all practical steps grounded in national best practices and Washington's own history. Taken together, these reforms would not only mitigate the immediate crisis created by new caseload limits but also lay the foundation for a system capable

of meeting constitutional demands over the long term.

Ultimately, the question facing Washington is not whether it can afford to reform its public defense system, but whether it can afford not to. The costs of inaction (measured in injustice, inefficiency, and constitutional failure) are already being borne by defendants, victims, courts, and taxpayers alike. Ensuring the effective assistance of counsel is not a discretionary policy choice; it is a fundamental obligation of statehood. Meeting that obligation now requires legislative leadership commensurate with the gravity of the right at stake.

# Appendix: State of the Sixth State Profiles

The best source of information for comparing state models on Public Defense is the 6th Amendment Center, a nonprofit organization founded in 2013 to help policymakers provide the right to counsel for all Americans. The 6th Amendment Center's State of the Sixth project is a national typology project: it classifies every state, D.C., and the major U.S. territories according to how they carry out the Sixth Amendment right to counsel. Below are descriptions from this report for each state organized by corresponding funding model. The full report can be found at: <https://6ac.org/state-of-the-sixth/>

## Fully Centralized

### Alaska

For all adult trial-level criminal cases except municipal ordinances, two state-funded agencies administer services. The Public Defender Agency (PDA) provides primary services mainly through public defender branch offices but also through some contracts with private attorneys. PDA also handles appeals. The Office of Public Advocacy (OPA) provides conflict services in criminal trials through branch offices and contracts with private attorneys (hourly) and law firms (flat fees). OPA also handles appeals and civil cases. State law requires municipalities that prosecute jailable ordinances to fund and administer indigent defense services for those cases. Municipalities can do so by contracting with either state agency.

The governor appoints the public defender to lead PDA, and the Department of Administration's commissioner, a governor-appointee, appoints a director to lead OPA. Both agencies oversee only the delivery of state services, meaning that they have no oversight of indigent defense services in municipal ordinance prosecutions unless the municipality has chosen to contract with them for services.

### Arkansas

The Arkansas Public Defender Commission (APDC) administers adult and juvenile indigent defense services through public defender offices and contracts with private attorneys paid hourly. Services are regionalized by judicial circuits; in each of the state's 28 judicial circuits, the circuit judges appoint a chief public defender to manage the district, based on APDC's recommendation. The APDC has a statewide unit to provide conflict representation in capital cases.

The APDC is responsible for overseeing indigent defense statewide. The commission is composed of seven members, all appointed by the governor. Commission members appoint an executive director to lead APDC and oversee the state indigent defense system by establishing standards, requiring reports from public defender offices, and conducting performance reviews. Indigent defense is predominantly state funded. APDC funds public defender office staff salaries, case-related expenses, and private attorneys whereas counties pay for the public defender offices' overhead costs (facilities, equipment, supplies, etc.)

## **Connecticut**

The state-funded Connecticut Division of Public Defender Services (DPDS) administers all indigent defense services across the state, including adult and juvenile trials, appeals and post-conviction matters. DPDS provides representation in adult trial-level cases primarily through public defender offices. When public defender offices have conflict or overflow cases, DPDS contracts with private attorneys on an hourly or flat fee basis.

A chief public defender leads DPDS, and the Public Defender Services Commission oversees the agency. The commission is composed of seven members appointed by diverse authorities and appoints the chief public defender and the deputy chief public defender. The chief public defender establishes divisions and staff as necessary, with the approval of the commission. The commission also establishes guidelines for the delivery of indigent defense services. The chief public defender is responsible for supervising all indigent defense representation statewide.

## **Delaware**

The state-funded Office of Defense Services (ODS) is responsible for providing indigent defense services in all trial-level adult criminal cases. ODS provides representation in all state courts hearing jailable offenses, except for in the lowest level state court in which some misdemeanor cases are heard. ODS provides primary services through public defender offices and conflict services through its Office of Conflicts Counsel, which contracts with private attorneys on an hourly or flat fee basis. The state agency also provides services in juvenile matters and appeals.

The governor appoints the chief defender to lead ODS. The chief is responsible for overseeing the delivery of indigent defense services statewide. The state does not have a separate commission to provide oversight of the chief.

## **Hawaii**

The state Office of the Public Defender administers almost all adult and juvenile trial and appellate representation across the state. The state agency provides representation through branch public defender offices located on Hawaii's four most populated islands (Oahu, Hawai'i, Maui, and Kauai). If a public defender office has a conflict, local judges can appoint private attorneys who are paid hourly. The state does not oversee these private attorneys. All indigent defense services are state funded.

The state public defender leads the Office of the Public Defender, and the Defender Council oversees the office. The Defender Council is composed of five members, one from each county and one at-large, all appointed by the governor, and is responsible for appointing the state public defender.

## **Idaho**

The state-funded Office of the State Public Defender is responsible for providing indigent defense services in all trial-level adult criminal and juvenile cases. A state public defender leads the office and determines how services are provided statewide, either through public defender offices or contracts with private attorneys. In each of the state's seven judicial districts, a local panel selects a district public defender to assist in managing services within the district through supervision of all primary indigent defense providers, whether staff attorneys or contract private attorneys. For conflict cases, the Alternate Counsel Division within the state office provides oversight of all private attorneys under contract with the state.

The governor appoints the state public defender from a list of names submitted by a nominating committee. The state public defender has standard-setting authority and is responsible for overseeing the delivery of indigent defense services statewide. The state does not have a separate commission to provide oversight of the state public defender. Separate from the trial system, Idaho administers appellate representation statewide through the State Appellate Public Defender.

## **Iowa**

The Iowa Office of the State Public Defender is responsible for providing indigent defense services in adult criminal trials across the state. The agency provides most services through public defender offices. In counties not covered by an office and in conflict cases, the agency contracts with private attorneys for an hourly rate and nonprofit organizations for a flat fee. If the state cannot provide an attorney, courts may appoint counsel outside of the state system. The state agency also provides services in juvenile, appellate, and post-conviction matters.

The governor appoints the state public defender to lead the agency. The agency oversees all indigent defense services, except in those cases where the trial court

individually appoints counsel. The state of Iowa funds almost all costs related to indigent defense, with one exception—municipal governments must reimburse the state for the cost of providing services in municipal prosecutions.

## Kentucky

The state-funded Kentucky Department of Public Advocacy (DPA) administers all indigent defense services statewide. Trial offices provide representation for adult and juvenile cases across the state and a conflict service division contracts with private attorneys for conflict cases. A post-trial division administers appellate and post-conviction representation.

The public advocate leads the DPA, which has standards-setting authority. The Public Advocacy Commission oversees the DPA. The governor appoints most of the commission's 12 members from recommendations by diverse groups. The governor is also responsible for selecting the public advocate from a list of three nominees provided by the commission.

## Louisiana

The state of Louisiana administers all indigent defense services in adult criminal trials. Services are regionalized by judicial districts, each managed by a district public defender who has the authority to determine the delivery model for the district, so long as it meets state standards. Public defender offices and private attorneys under contract are the main providers of services. The state also funds contracts with non-profits to supplement services in capital trials, appeals, and post-conviction matters.

The Office of the State Public Defender is responsible for overseeing all services. The governor appoints the state public defender. A nine-member board, with most of its members also appointed by the governor, must approve the selection. The state public defender has the authority to hire district public defenders and to establish and enforce standards. Though services are funded first through fines and fees (mainly fees assessed on traffic tickets) and then through state allocations, the state has become the primary funder as revenues generated by fees have declined. Local governments can also supplement funding.

## Maryland

The state-funded Maryland Office of the Public Defender (OPD) administers indigent defense services for the entire state. Twelve district offices provide trial-level representation for adult and juvenile cases. A state public defender leads OPD and appoints a district public defender to head each office. Each district public defender

compiles a list of local private attorneys to appoint to conflict cases in their district, and OPD pays private attorneys an hourly rate. OPD also provides appellate and post-conviction representation statewide.

The Board of Trustees of the Public Defender System oversees OPD. The governor appoints most of the board's 13 members. The board is responsible for appointing the state public defender, who manages OPD and oversees the district offices. Four public defender regional advisory boards also provide oversight of the 12 district offices. The governor appoints five members to each advisory board.

## **Massachusetts**

The Committee for Public Counsel Services (CPCS) is a state agency responsible for funding and administering all adult and juvenile trial-level indigent defense representation in the state. CPCS delivers indigent defense services through two divisions. The private counsel division provides representation through contracts with private attorneys paid on an hourly basis. CPCS contracts with county bar programs who in turn contract with private attorneys. The public defender division provides representation through full-time public defender staff. CPCS also provides appellate and post-conviction representation.

A chief counsel leads CPCS, and a deputy chief counsel manages each division. A 15-member committee oversees CPCS. The state supreme court appoints most of the committee's members. The committee appoints the chief counsel and has authority to establish and enforce minimum qualification, training, and performance standards.

## **Maine**

The state of Maine funds and administers indigent defense services statewide. The Maine Commission on Public Defense Services (PDS) provides representation in all adult and juvenile cases, including at both the trial and appellate levels. PDS administers indigent defense services mainly through private attorneys paid hourly. PDS provides courts with lists of private attorneys based on the case types for which they are eligible, and judges assign cases to individual attorneys. PDS also employs full-time public defenders with offices in a few counties throughout the state and a Rural Defender Unit that has no fixed location.

An executive director leads PDS, and a nine-member commission oversees the agency. The governor appoints the commission members from recommendations by various groups. Two of the members have no voting power. The commission is responsible for hiring the executive director and establishing standards. The executive director manages PDS' daily operations and is responsible for enforcing the commission's standards.

## Minnesota

The state of Minnesota funds almost all indigent defense statewide and administers services through a regionalized system: in each of the state's ten judicial districts, a chief district public defender delivers services through public defender offices employing full-time and part-time attorneys. Chief public defenders may contract with private attorneys to handle excessive conflicts and as needed. Separate from the regionalized system, the state contracts with non-profit public defender corporations. The corporations provide services to Native American populations and may supplement services in urban areas. One county, Hennepin County, funds a small number of public defender office positions.

The Minnesota Board of Public Defense is responsible for providing oversight of indigent defense services statewide. The state of Minnesota also funds and administers appellate representation statewide. The state supreme court and governor appoint the board's nine members. The board in turn appoints a state public defender, the ten chief district public defenders, and chief appellate defender. The state public defender runs daily operations, sets standards, supervises all ten districts, and appellate office.

## Montana

The state-funded Montana Office of the State Public Defender (OPD) administers indigent defense services across the state. Public defender offices, grouped in three regions, provide primary services. Conflict offices, also grouped in three regions, handle conflict cases. Private attorneys paid on an hourly or flat fee basis under contract with OPD handle overflow cases. The state agency also handles juvenile cases, appeals, and some civil matters.

The Department of Administration's director, a governor-appointee, hires OPD's director. The director is charged with setting standards, appointing and supervising division heads, and overseeing indigent defense statewide. The state does not have a separate commission to provide oversight of the director.

## New Hampshire

The New Hampshire Judicial Council (NHJC) is a state agency charged with ensuring the efficient administration of justice statewide. One of its responsibilities is funding, administering, and overseeing the indigent defense system. The NHJC is composed of 24 members, who are either appointed by the governor and council or the chief justice, or automatically made a member by virtue of holding another position. The NHJC has an indigent defense subcommittee (IDS), composed of four NHJC members, which is responsible for making decisions relating to the delivery of indigent defense services across the state of New Hampshire.

The NHJC itself does not provide any direct representation; rather, it contracts with indigent defense providers and is statutorily authorized to supervise contractor performance. For primary services, the NHJC is required by law to contract with an organization approved by the state bar association. Historically, the NHJC has contracted with a nonprofit, the New Hampshire Public Defender (NHPD), which delivers services through 10 branch offices. NHPD also provides representation for juvenile and appellate cases. For conflict services, the NHJC first contracts with private attorneys or law firms under a flat fee, and finally assigns cases to private attorneys paid hourly.

## **North Carolina**

The state-funded North Carolina Office of Indigent Defense Services (IDS) is responsible for administering and overseeing indigent defense across the state. IDS provides oversight of indigent defense through its 13-member Commission on Indigent Defense Services. Diverse authorities appoint the commission's members, who are responsible for selecting the IDS executive director, developing standards, and determining the method of delivery for indigent defense services throughout the state. IDS also houses statewide units for capital cases, juvenile cases, and appeals, among others.

IDS provides trial-level adult representation through public defender offices, contracts with private attorneys, or panels of private attorneys paid hourly. The commission's authority to determine delivery methods across the state is limited in certain ways. First, the commission must consult with local stakeholders, mainly the bar and judges of each district. Second, a legislative act is required to establish a public defender office. Third, in districts with a public defender office, the senior resident superior court judge selects the chief public defender.

## **North Dakota**

The state-funded North Dakota Commission on Legal Counsel for Indigents (CLCI) administers all indigent defense services, except for violations of county ordinances and municipal matters heard in municipal court or transferred to district court. CLCI provides services through public defender offices and monthly contracts with private attorneys. Counties and municipalities may request that CLCI provide services in cases for which they are responsible, but the localities must still pay for the services received. CLCI also provides appellate representation.

CLCI is responsible for overseeing state-administered indigent defense services. Diverse authorities appoint the commission's seven members, who in turn appoint a director. The CLCI director is responsible for setting standards, among other duties.

The state has no oversight of locally administered services unless a locality has chosen to contract with the state for services.

## **Vermont**

The state-funded Office of the Defender General (ODG) administers indigent defense services across the state. Fourteen field offices, consisting of seven public defender offices and seven private law firms under flat fee contracts with ODG, provide primary representation. ODG also contracts with private law firms on a flat fee basis to provide conflict representation. When no conflict contractor is available, local judges can appoint private attorneys on a case-by-case basis for a small portion of conflict cases. Those attorneys are paid hourly at state expense, and ODG can reassign the case to another attorney, as needed. The ODG also provides juvenile, appellate and post-conviction representation.

The governor appoints a defender general to lead ODG. The defender general is responsible for managing the operations of ODG and establishing standards applicable to all indigent defense providers in the state. The state does not have a separate commission to provide oversight of the defender general.

## **Virginia**

The state-funded Virginia Indigent Defense Commission (VIDC) administers indigent defense services across the state. Public defender offices, which must be created through legislative acts, provide primary representation. Counties and municipalities can supplement the salaries of public defenders, and some do. When no public defender office is available to take a case, VIDC maintains a list of private attorneys, from which local judges appoint counsel at an hourly rate subject to statutory fee caps. The state supreme court pays private attorneys. If no attorney on VIDC's list is available, judges may appoint other counsel. The VIDC also provides juvenile and appellate services.

VIDC is responsible for providing oversight of indigent defense. Most of the commission's 14 members are appointed by or directly from the legislative branch. The commission appoints the VIDC executive director and sets standards. The executive director selects a chief for each public defender office and fixes staff salaries. Each chief public defender operates their office with autonomy, while VIDC focuses on statewide administrative tasks. The state has no oversight of other counsel appointed by local judges.

## **West Virginia**

The West Virginia Public Defender Services (PDS) determines how services are delivered in each of the state's 31 judicial circuits, subject to legislative approval. In 20 circuits, PDS contracts with non-profit public defender corporations to deliver primary services. Each public defender corporation is governed by a local board of directors. The governor appoints the chairman of the local board, and the local bar association and county commission appoint the remaining members. In the other 11 circuits, and for conflict or overflow cases statewide, local judges maintain a list of private panel attorneys for appointments.

An executive director leads PDS and chairs an advisory commission, which assists PDS in overseeing the delivery of indigent defense services statewide. The governor appoints the executive director and the commission's eight other members. PDS and the commission set standards that provide guidance to indigent defense providers, and PDS approves and processes payments for private attorneys.

## Wisconsin

The state-funded Office of the Wisconsin State Public Defender (SPD) administers almost all indigent defense services in adult criminal trials. SPD delivers services primarily through public defender offices but also through contracts with private attorneys (on an hourly basis for conflict and overflow cases, and on a flat fee basis for some misdemeanors). SPD also provides appellate services. In Wisconsin, it is possible that a person qualifies for public counsel but does not meet the higher statutory threshold for SPD representation. In such a case, the local judge appoints a private attorney at county expense.

The Wisconsin Public Defender Board oversees SPD. The governor appoints nine members to this oversight commission, who in turn appoints the head of SPD. The commission is also responsible for promulgating standards. The commission does not have oversight of private attorneys appointed by local judges at county expense.

# Dispersed Responsibility Model

## Alabama

The state-funded Office of Indigent Defense Services (OIDS) administers indigent defense services in every court of the state, except for municipal courts where the state requires local governments to fund and administer all services. OIDS services are regionalized by judicial circuit, each managed by a local indigent defense advisory board with the authority to determine the delivery model for the circuit. OIDS can

appeal a local board's decisions to a review panel (made of three attorneys and two judges appointed by diverse authorities), whose decision is final. OIDS services are delivered through public defender offices, appointed private attorneys, and/or contracts with private attorneys, depending upon the local board's selection.

The OIDS director, appointed by the director of finance, sets standards for the qualification and performance of indigent defense attorneys, among other things, and selects chief public defenders for the circuits with a public defender office. OIDS also provides representation in juvenile delinquency and dependency matters, termination of parental rights cases, children in need of supervision, appellate, and post-conviction cases. For municipal court representation, OIDS has no oversight unless a municipality has chosen to contract with OIDS for services.

## Colorado

The state of Colorado funds and administers indigent defense services in every court of the state, except for municipal courts where the state requires municipalities to fund and administer all services. The state administers services through two agencies. The Office of the Colorado State Public Defender provides primary services in adult and juvenile trials through regional defender offices as well as statewide appellate representation. The Office of the Alternate Defense Counsel (OADC) provides services in adult and juvenile conflict cases through contracts with private attorneys paid hourly. Municipalities administer indigent defense services in municipal courts and can contract with OADC to provide these services.

The state has two separate commissions providing oversight of the state agencies. The Public Defender Commission is a five-member commission, which oversees the Office of the Colorado State Public Defender. The chief justice appoints members, who in turn appoint the state public defender. The Alternate Defense Commission is a nine-member commission, which oversees OADC. The chief justice appoints the nine members, who in turn appoint the OADC director. Neither commission has oversight of indigent defense in municipal court unless a municipality has contracted with OADC to provide services.

## Georgia

The state of Georgia administers indigent defense services through circuit public defender offices. A chief defender leads each office and is responsible for delivering adult and juvenile services across their circuit. The state also provides statewide conflict representation and capital trial and appeal representation through specialized offices. Certain single-county judicial circuits are not administered by the state, and instead locally administer their own services, subject to state standards. For local

ordinance violations, counties and municipalities are responsible for providing indigent defense services, either by contracting with the state or through their own system, subject to state standards.

The Georgia Public Defender Council (GPDC) oversees indigent defense. A governor-appointed executive director leads GPDC and is responsible for appointing and reviewing the performance of the chief public defenders for each circuit. The governor appoints most of the nine members, which make up the council responsible for annually reviewing locally administered circuits. A legislative committee, composed of eight legislators appointed by diverse authorities, oversees the council. The state funds circuit public defenders' salaries while counties must pay for offices and supplies. Circuits that administer their own services must fund their services, though they still receive some state funds.

## Kansas

The state-funded Kansas State Board of Indigents' Defense Services (BIDS) administers indigent defense services statewide for felony cases, whereas counties and cities fund and administer services for misdemeanors. BIDS has statewide authority to decide how felony representation services are delivered in each county. BIDS maintains public defender offices, conflict offices, and contracts with private attorneys for direct services in some counties, and in other counties BIDS uses local panels of private attorneys maintained by district judges.

BIDS is responsible for providing oversight of felony representation statewide but has no oversight of misdemeanor services (unless a county has contracted with BIDS to provide services at the county's expense). The governor appoints nine members to BIDS' oversight board, which is responsible for appointing BIDS' executive director. The executive director sets standards and supervises the delivery of services. The director's ability to supervise local private attorney panels is statutorily limited. BIDS also provides representation in felony appeals and post-conviction proceedings.

## Missouri

The Missouri State Public Defender (MSPD) administers indigent defense services in every court of the state, except for the municipal division of the circuit courts where the state requires municipalities and counties to fund and administer all services. MSPD delivers services through public defender offices and flat fee contracts with private attorneys. The state funds MSPD's operations, except for the office space and utilities of defender offices, which local governments must cover. MSPD also provides juvenile, appellate, and post-conviction representation.

Missouri's public defender commission is responsible for providing oversight of MSPD.

The governor appoints seven members to the commission, which is responsible for appointing the state public defender director. The commission has no oversight of services in the municipal division of the circuit courts, where municipalities and counties fund and administer indigent defense services.

## New Jersey

The state-funded New Jersey State Office of the Public Defender (NJOPD) administers indigent defense services for all “indictable” offenses (felonies in other states) and juvenile delinquency cases in superior courts, whereas municipalities are responsible for all “non-indictable” offenses (misdemeanors in other states) in municipal courts. NJOPD provides services in felony and juvenile cases through regional public defender offices and panels of private attorneys paid hourly. Municipalities are required to have at least one attorney designated as the municipal public defender to provide indigent defense services for misdemeanors.

The governor appoints a public defender to lead NJOPD. All indigent defense providers must adhere to performance standards established by the state supreme court. The public defender oversees all services provided by NJOPD but does not exercise oversight of services provided by municipalities in municipal courts. The state does not have a separate commission to provide oversight of the public defender.

## New Mexico

New Mexico’s state-funded public defender department administers indigent defense services in every court in the state, except for municipal courts where the state requires local governments to fund and administer all services. State-administered services are regionalized by district. Public defender offices and private attorneys under contract deliver services. The state agency also provides appellate and post-conviction representation statewide. Municipalities are responsible for funding and administering indigent defense services in municipal courts and do not contract with the state to provide services.

The New Mexico Public Defender Commission appoints the chief public defender to head the state agency. The commission is the only indigent defense oversight commission in the country whose creation was mandated by a state constitutional amendment. Diverse authorities appoint the commission’s 11 members. The commission has the authority to promulgate and enforce standards. Its scope is limited to state-administered services; the commission has no oversight of indigent defense services in municipal courts.

## Oklahoma

The state-funded Oklahoma Indigent Defense System (OIDS) administers indigent defense services in adult criminal and juvenile delinquency cases in 75 of the state's 77 counties. OIDS delivers trial services through ten regional defender offices and two types of contracts with private attorneys (flat-fee annual contract or hourly rate case-by-case basis). Pursuant to state law, counties with a population greater than 300,000 (Tulsa and Oklahoma Counties) must establish their own county public defender offices. Local judges appoint a county public defender to head each of the two county-run offices.

The Oklahoma Indigent Defense System's Board of Directors oversees the state system. The governor appoints the board's five members, who are responsible for appointing OIDS's executive director. The executive director is responsible for supervising the state system. The board's oversight does not extend to the Tulsa and Oklahoma Counties public defender offices.

## Oregon

The state-funded Oregon Public Defense Commission (OPDC) administers indigent defense services in circuits courts, while counties and municipalities are responsible for funding and administering services in justice (county misdemeanor) and municipal (city misdemeanor) courts, respectively. OPDC provides services mainly through private attorneys via contracts and to a smaller extent through government-employee public defenders. The agency contracts with individual attorneys, consortia of attorneys, law firms, and non-profits. OPDC also provides appellate representation.

An executive director leads OPDC, and a commission oversees the agency. Diverse authorities appoint the commission's nine members, who are responsible for setting standards. The governor appoints, and can remove, the OPDC executive director, who is responsible for handling the day-to-day management of the system. OPDC has no oversight of services delivered by local governments in justice and municipal courts.

## Rhode Island

The state of Rhode Island funds and administers indigent defense services in every court of the state, except for municipal courts where the state requires municipalities to fund and administer all services. For state-administered services, the Rhode Island Office of Public Defender provides primary representation through six offices located throughout the state. The agency also provides juvenile and appellate representation. For conflict representation, the Rhode Island Supreme Court administers a list of private attorneys paid hourly. The state does not provide indigent defense services for misdemeanors charged in the state's municipal courts; municipalities must fund and administer these services.

The governor appoints a chief public defender to lead the Rhode Island Office of Public Defender. The chief is responsible for overseeing the delivery of indigent defense services by the agency. The state does not have a commission to provide oversight of the chief or the private attorneys managed by the state supreme court. The state does not oversee services provided by localities in municipal courts.

## **South Carolina**

The state of South Carolina administers indigent defense services in every court, except for municipal courts where the state requires municipalities to fund and administer all services. The state provides services through circuit public defender offices, contract attorneys paid a flat fee, and private attorneys paid hourly. The state and counties jointly fund circuit defender offices: the state pays the salary of each office's chief public defender, the counties pay for office overhead, and the state and counties jointly fund staff public defenders. The state pays private attorneys, subject to local judges' approval. The state Office of Indigent Defense (OID) provides statewide services in capital trials and appeals.

The South Carolina Commission on Indigent Defense (SCCID) oversees the OID and state-administered services. A local selection panel selects the chief public defender for each circuit, subject to the commission's approval. The governor appoints most of the commission's 13 members from recommendations by diverse groups. SCCID appoints OID's executive director and has the authority to establish standards. The state commission has no oversight of services administered by municipalities unless the municipality has contracted with a circuit public defender to provide representation.

## **Wyoming**

The state of Wyoming funds and administers indigent defense services in district and circuit courts, and the state requires municipalities to fund and administer services in municipal courts. For state-administered services, Wyoming law requires that indigent defense be 85% state-funded and 15% county-funded. The state appropriates all necessary funding and then bills each county for its prorated share. For locally administered services, municipalities must fund any representation provided in municipal court and cannot contract with the state to provide services.

The Wyoming Office of the State Public Defender (OSPD) provides trial-level adult criminal representation through public defender offices primarily and contracts with private attorneys in conflict cases. The agency also handles juvenile, appellate, and post-conviction cases. When OSPD is unavailable due to conflict or overflow, local judges are authorized to appoint counsel. The governor appoints the state public defender to lead OSPD and oversee state-administered services. The state does not

have a commission providing oversight of the agency, and the state lacks oversight of counsel appointed by local judges or services in municipal courts.

## Supported Local Model

### California

Every county in California is responsible for determining how it funds and administers trial-level indigent defense services. Either the county board of supervisors, the superior court judges in the county, or both together, determine the method of delivery, which can be any combination of a public defender office, contracts with private attorneys, or private attorneys appointed on a case-by-case basis. Counties with a public defender office determine whether the chief public defender is elected or appointed. Private attorneys can contract with the county board of supervisors or the local judges and may be paid on an hourly or flat fee basis.

The state of California does not have a state commission or agency responsible for providing oversight of trial-level indigent defense. There is the Office of the State Public Defender, which provides services in capital appeals; this agency also provides training and support to county indigent defense systems. State law permits state reimbursements for some costs incurred by counties, subject to funding by the state legislature. In FY24-25 the State provided about \$250M in funding for public defense.<sup>xxiii</sup>

### Florida

In each judicial circuit, a chief public defender is elected to manage a public defender office providing services in adult and juvenile cases. Five regional conflict defender offices handle conflict cases. A regional counsel manages each office. The governor appoints the regional counsel from nominations by the supreme court judicial nominating commission. Also, the chief judge of each judicial circuit compiles a list of private attorneys to provide conflict services. Private attorneys are paid on a flat fee basis. For local ordinance violations, counties and cities either provide their own services with no state oversight or contract with a circuit public defender for those services.

The state of Florida is the primary funder of indigent defense services. Counties must pay all overhead costs for the circuit public defender. Counties may choose to pay some overhead for regional conflict offices. Counties and cities must fund indigent defense services in local ordinance violation cases. The state Justice Administrative Commission (JAC) manages contracts with private attorneys on behalf of the state, and

it provides bill processing and human resource support to public defender and conflict offices.

## Indiana

Counties in Indiana are responsible for administering indigent defense services. Public defender offices and private attorneys under contract provide services. Counties are primarily responsible for funding indigent defense services, though they can choose to receive some state reimbursements in exchange for complying with state standards. Depending on available funding, the state may reimburse up to 50% of costs in capital cases and up to 40% of costs in non-capital felonies (and temporarily, up to 40% of costs in misdemeanors in a select small number of counties).

The Indiana Commission on Court Appointed Attorneys provides limited oversight of local indigent defense services. Diverse authorities appoint the commission's eleven members. The commission has standards-setting authority, though standards only apply to those counties that have opted in for capital and non-capital felonies (and temporarily, in select counties in misdemeanors). There are two other state agencies: (1) the Public Defender of Indiana provides representation in post-conviction proceedings, and (2) the Indiana Public Defender Council provides support and training to all indigent defense attorneys in the state. Neither entity provides direct representation in trial-level adult criminal cases.

## Michigan

Every trial court district in the state of Michigan administers its own indigent defense system and is required by state law to pay a minimum share of the associated costs, calculated based on historical spending. The state funds local systems for any additional costs necessary to comply with state standards. Because many jurisdictions historically spent very little on indigent defense, the state is the predominant funder in those jurisdictions and statewide. Local systems provide services through public defender offices or private attorneys paid on an hourly or flat fee basis, or through a combination of the two.

The Michigan Indigent Defense Commission (MIDC) is responsible for providing statewide oversight of adult trial-level indigent defense across Michigan. The governor appoints MIDC's 18 members based on recommendations from diverse groups. The commission members appoint an executive director to carry out daily operations with a staff. The commission collects data on local systems and promulgates and enforces standards. There is a separate state agency, the State Appellate Defender Office, responsible for appellate representation, which is overseen by a separate commission, the Appellate Public Defender Commission.

## Nevada

The state of Nevada delegates to its counties the responsibility for administering indigent defense services. State law requires Nevada's two largest counties (Clark and Washoe) to establish public defender offices. Other counties can choose to create public defender offices, contract with private attorneys paid on an hourly basis, or contract with the state-administered Nevada State Public Defender. The board of county commissioners must appoint county public defenders. For the state-administered system, the Nevada State Public Defender administers services through public defenders or private attorney contracts. The Nevada State Public Defender is also authorized to provide appellate representation.

The Department of Indigent Defense Services (DIDS) is a state agency overseeing the Nevada State Public Defender and local systems. The governor appoints an executive director to lead DIDS, from recommendations by the Nevada Board of Indigent Defense Services (BIDS). BIDS is a state commission, which oversees DIDS. Diverse authorities appoint the board's 13 voting and three non-voting members. BIDS is responsible for setting and enforcing statewide standards. State law requires counties to pay a minimum amount for indigent defense based on historical spending. The state reimburses any expenses beyond this amount if counties comply with standards.

## New York

Counties in New York are responsible for funding and administering indigent defense services. Counties provide representation through public defender offices, conflict defender offices, contracts with nonprofit organizations, panels of private attorneys paid on an hourly basis, or a combination. In counties with a public defender office, the county's board of supervisors or legislature must appoint the chief public defender. Counties that administer panels of private attorneys must receive approval of their delivery plan by the state. The city of New York, which encompasses five counties, is responsible for determining how services are provided within its limits.

The Office of Indigent Legal Services (ILS) provides limited oversight through monitoring, studying, and making efforts to improve local indigent defense systems. A director leads ILS, and a nine-member board oversees the office. The governor appoints most of the board's nine members from diverse groups' recommendations. The board nominates the ILS director, and the governor ratifies the nomination. ILS can set standards for the local delivery of indigent defense services and enforce the standards through grant funding. ILS's enforcement authority is limited to withholding state funds. While localities may receive state funds, the localities remain the primary funder of indigent defense.

Since 2023, New York State has reimbursed counties and New York City for 50% of the

increase to the statutory assigned counsel hourly rates that took effect that year. ILS makes available over \$500 million annually to counties and New York City to support New York's public defense providers. The majority of this funding is disbursed via cost-reimburse contracts that are issued non-competitively or through a competitive RFP process.<sup>xxiv</sup>

## Ohio

For each county in Ohio, the local board of county commissioners determines how indigent defense services are delivered in their county, whether by a public defender office, a non-profit corporation, private attorneys, or through contract with the Office of the Ohio Public Defender (OPD). For counties that contract with OPD, the state delivers services through public defenders or contract attorneys. The OPD also provides case-by-case representation at county request in serious felony and capital trials, as well as statewide representation in appeals and post-conviction cases. Municipalities are responsible for providing services in municipal ordinances but may contract with the county to have a county public defender office provide services.

Indigent defense is locally funded, though the state reimburses a portion of the costs. The amount reimbursed by the state is not set by law, so it varies year by year. Historically, the state of Ohio did not reimburse counties for more than 50% of costs but in recent years has reimbursed as much as 100% of counties' costs. The state does not exercise oversight of county or municipal run systems. The Ohio Public Defender Commission oversees services provided by OPD. The governor appoints most of the commission's nine members. The commission appoints the state public defender to head OPD and has the authority to establish standards.

## Tennessee

In 30 of Tennessee's 32 judicial districts, voters elect a chief public defender to head a public defender office, which provides primary representation across the district. In the other two districts, representing the state's two largest counties (Shelby and Davidson Counties), locally established county-administered public defender offices provide primary services. Shelby and Davidson Counties can decide whether to appoint or elect the chief public defender. For conflict and overflow cases, every trial court in the state maintains a list of private attorneys to appoint based on rules set by the state supreme court. Private attorneys are paid hourly at state expense.

The state of Tennessee funds the 30 district public defender offices, though counties can supplement funds. The two locally established public defender offices are jointly funded by the state and county. The 30 district chief public defenders and two local chief public defenders form the Tennessee District Public Defenders Conference

(DPDC), an organization that advocates for funding before the state legislature. DPDC also provides statewide appellate services. There is also the Office of the Post-Conviction Defender (OPCD), which provides services in capital post-conviction cases. Both DPDC and OPCD support indigent defense providers across the state, but neither exercise oversight of the delivery of trial-level services.

## Fully Local Model

### Arizona

Every county in Arizona is responsible for determining how it funds and administers indigent defense services. Most counties have established one or more public defender offices, while the more rural counties rely on contracts with private attorneys. Arizona's two biggest cities—Phoenix and Tucson—have their own indigent defense systems, which the cities fund and administer themselves.

The state of Arizona does not have a state commission or agency responsible for providing oversight of indigent defense.

### Illinois

Illinois counties are responsible for administering trial-level indigent defense services. State law requires Illinois's larger counties to have a public defender office; smaller counties can choose to have a public defender office (every county has done so). Counties are responsible for funding their public defender offices, though the state reimburses two-thirds of the county chief public defender's salary (About \$10 million annually statewide), subject to funding by the state legislature (all other staff are county funded). Counties can also contract with private attorneys to provide representation in conflict cases. Local judges appoint private attorneys and local courts pay them on an hourly basis at county expense.

In all counties except for Cook County (Chicago), the circuit court judges of the county select the public defender, determine the number of staff in the public defender office, and review all expenses. In Cook County, the county board appoints the public defender. The state of Illinois has no entity providing oversight of trial-level indigent defense. There is the Office of the State Appellate Defender, which provides appellate representation statewide; this agency is also authorized to provide training, investigative, and expert support to county indigent defense systems, subject to funding by the state legislature.

## Mississippi

The state of Mississippi delegates to its local governments the responsibility to fund and administer all indigent defense services, with a few exceptions where the state takes over. Counties and municipalities choose how to deliver indigent defense services, whether through public defender offices, private attorney contracts, or both. If a county has a public defender office, the circuit court judge appoints the chief public defender from recommendations by the local bar association. The state, through the Office of the State Public Defender (OSPD), takes over administration and funding in capital cases when requested by a county (and most do). The state also reimburses some costs to counties in narrow circumstances.

The governor appoints a state defender to lead OSPD. The state office provides training to all indigent defense providers and is responsible for gathering data. OSPD also provides appellate representation in felony appeals. A separate state entity, the Office of Capital Post-Conviction Counsel, is responsible for representing individuals in capital post-conviction matters. The state has no commission to oversee the two state agencies and does not exercise oversight of local indigent defense.

## Nebraska

The state of Nebraska delegates to its counties the responsibility to fund and administer indigent defense services in all trial-level adult criminal case types, except for some capital and serious felony cases where the state is appointed at county request. State law requires Nebraska's largest counties (Sarpy, Lancaster, and Douglas counties) to have a public defender office with an elected public defender; other counties can choose to have an office (in which case they must also elect their public defender) or they can contract with private attorneys. Generally, all counties can also appoint private attorneys on a case-by-case basis.

The Nebraska Commission on Public Advocacy (NCPA) can be appointed to provide representation in all 93 Nebraska counties in capital and serious felony cases involving violence when requested by counties. NCPA also provides services in appeals and DNA testing cases. The governor appoints the commission's nine members from a list of attorneys prepared by the Nebraska Bar Association. The commission members appoint a chief counsel to carry out daily operations with a staff. NCPA does not exercise oversight of local indigent defense services.

## Pennsylvania

Every county in Pennsylvania is responsible for administering and primarily funding indigent defense services. Pursuant to state law, every county in the state except for Philadelphia County must deliver services through a county-run public defender office.

County governments are responsible for appointing a public defender, who can hire public defender staff as needed. Philadelphia County is the only county in the state that is not obligated under state law to have a county-run public defender office. Instead, Philadelphia contracts with a non-profit law firm, the Defender Association of Philadelphia, to deliver indigent defense services.

In every county, including Philadelphia County, private attorneys under contract handle conflict cases. Private attorneys are paid an annual fee or an hourly fee, depending on the county. The Indigent Defense Advisory Committee, working within the Pennsylvania Commission on Crime and Delinquency, is tasked with, among other things, providing training, proposing minimum statewide standards, and awarding state-funded grants to counties to supplement local funding.

Until 2023, Pennsylvania was one of only two states in the country that did not provide state funding for indigent defense. Last year, \$7.5 million in the 2023-24 budget was appropriated for indigent defense services across the Commonwealth.

## South Dakota

Every county in South Dakota is responsible for administering and funding trial-level indigent defense services, though in 2024, the state made a one-time appropriation of \$3 million for county reimbursement (about 12% of statewide expenditures)<sup>xxv</sup>. The state limits county board of commissioners to providing indigent defense services through one, or a combination, of three ways: public defender offices, contracts with private attorneys, or private attorneys appointed on a case-by-case basis.

The Commission on Indigent Legal Services (CILS) is responsible for providing oversight of local indigent defense services. CILS can set and enforce standards on caseload, training, and conflict of interests and can collect data from local systems. Diverse authorities appoint the commission's nine members, who in turn appoint a chief defender to head the Office of Indigent Legal Services. The office administers CILS' day-to-day oversight responsibilities and provides direct representation in some appellate cases.

## Texas

Counties in Texas are responsible for funding and administering indigent defense services. The state provides some grant funding to local systems (less than 10% of statewide costs as of 2023<sup>xxvi</sup>), but the localities remain the primary funder. The authority to determine indigent defense delivery models lies with local district and county court judges, who administer services through public defender offices, contracts with private attorneys, or private attorneys appointed on a case-by-case basis.

The Texas Indigent Defense Commission (TIDC) is responsible for providing oversight of local indigent defense services. TIDC can set standards, but its enforcement authority is limited to withholding grant funding. The governor designates or appoints most of the commission's 15 members, who in turn appoint an executive director to carry out daily operations. There are two other state agencies: the Office of Capital and Forensic Writs, which provides services for capital habeas corpus petitions, and the State Counsel for Offenders, which represents indigent defendants charged with an offense committed while in prison.

## Utah

Counties and municipalities in Utah are responsible for administering indigent defense services. Out of Utah's 29 counties, one county provides services through a governmental public defender agency and two counties contract with non-profit organizations. The remaining 26 counties contract with private attorneys or law firms. Counties are the primary funders of indigent defense services, with limited state funding available to supplement local funding through a voluntary, competitive, standards-based grant program managed by the Utah Indigent Defense Commission (IDC).

The Utah IDC comprises 15 members who represent stakeholders specified in statute. The governor appoints eleven of the members. The Office of Indigent Defense Services, whose executive director is appointed by the Utah IDC, carries out the commission's statutory duties, including setting standards, providing training, and managing the grant program. The office is responsible for overseeing local indigent defense services, though its authority is limited to withholding grant funds. The office also provides direct trial services in narrow circumstances and appellate services in rural counties.

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