MISSISSIPPI PUBLIC DEFENDER TASK FORCE

2017 REPORT TO THE MISSISSIPPI LEGISLATURE

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JUSTICES

HUBBARD T. SAUNDERS, IV
COURT ADMINISTRATOR
AND COUNSEL

December 22, 2017

VIA HAND DELIVERY

The Honorable Tate Reeves
Distinguished Members of the Senate
The Honorable Phillip Gunn
Distinguished Members of the House
The Capitol
Jackson, Mississippi

Dear Friends:

The Mississippi Public Defender Task Force was created in HB 602, 2015 Legislative Session, and is codified as §25-32-71. The Act took effect on passage and stands repealed July 1, 2018, providing the Task Force just over three years to complete its work.

The Act requires the Task Force report to the Legislature each year. As reported previously the Task Force believed that, without a data based assessment of indigent defense caseloads and a more detailed evaluation of defense services across the state, the three duties of the Task Force could not be addressed.

On our recommendation the Legislature amended data collection and reporting statutes. This has aided our work but implementation of this change has been slow. The evaluation, being conducted by the Sixth Amendment Center with funding from the United States Department of Justice, was not completed on time and this has delayed the work of the Task Force. This vital report will guide the further work of the Task Force.

The Task Force has before it a proposed reorganization plan submitted by the State Public Defender. With the anticipated report from the Sixth Amendment Center it is the consensus of the task Force that we can fully vet that proposal and submit to the 2019 Legislature comprehensive recommendations. We are scheduled to sunset June 30, 2018. We are making substantial progress toward our shared goals, and we humbly ask the 2018 Legislature to extend our mandate two years in order that we may conclude our work by June 30, 2020. Our 2017 report follows this letter.

Respectfully submitted,

James W. Kitchens

Presiding Justice James W. Kitchens, Chairman
Mississippi Public Defender Task Force

Enabling legislation

§ 25-32-71. Creation of task force; members; officer; adoption of rules; reimbursement of expenses; duties [Repealed effective July 1, 2018]

(1) There is created the Mississippi Public Defender Task Force which shall be composed of thirteen (13) members as follows:

(a) The President of the Mississippi Public Defender Association, or his designee;

(b) The President of the Mississippi Prosecutors Association, or his designee;

(c) A representative of the Administrative Office of Courts;

(d) A representative of the Mississippi Supreme Court;

(e) A representative of the Conference of Circuit Judges;

(f) A representative of the Mississippi Attorney General's Office;

(g) A representative of the Mississippi Association of Supervisors;

(h) A representative of The Mississippi Bar;

(i) A representative of the Magnolia Bar Association;

(j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;

(k) The Chairman of the Senate Appropriations Committee, or his designee;

(*l*) The Chairman of the House Judiciary En Banc Committee, or his designee;

(m) The Chairman of the House Appropriations Committee, or his designee.

(2) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the task force shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.

(3) The duties of the task force shall be to:

(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.

(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.

(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

(4) This section shall stand repealed on July 1, 2018.

HISTORY: SOURCES: Laws, 2015, ch. 424, § 2, eff from and after passage (approved March 29, 2015).

Task Force Membership

Presiding Justice James W. Kitchens (Mississippi Supreme Court) (Chair)

Demetrice Williams (Mississippi Defenders Association) (Vice Chair)

District Attorney Hal Kittrell (Mississippi Prosecutors Association)

Kevin Lackey (Administrative Office of Courts Director)

Judge Prentiss Harrell (Conference of Circuit Judges)

Jerrolyn Owens (Office of the Attorney General)

Steven Gray (Mississippi Association of Supervisors)

Jennie Eichelberger (Mississippi Bar)

Tanisha Gates (Magnolia Bar Association)

Chairman Hob Bryan (Senate Judiciary Committee, Division B)

Chairman Eugene S. Clarke (Senate Appropriations Committee)

Chairman Mark Baker (House Judiciary En Banc Committee)

Chairman John Reed (House Appropriations Committee)

PUBLIC DEFENDER TASK FORCE MEETING

JANUARY 9, 2017

MINUTES

WELCOME – Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group and impressed upon them the importance of the work they were asked to do. He then asked everyone to introduce themselves and tell who they were representing. Present were Jennie Eichelberger, Mississippi Bar; Ta'shia Gordon, AOC; Hal Kittrell, Prosecutor Association; Jerrolyn Owens, AG; Tanisha Gates, Magnolia Bar; Demetrice Williams, Public Defender Association. Absent were legislative members, representative of Supervisor Association and Circuit Judge Association. André de Gruy and Beau Rudder were present representing the Office of State Defender and David Carroll and Mike Tartaglia with the Sixth Amendment Center were present and Proffesor Bob Boruchowitz also with 6AC joined by telephone.

STATE DFENDER REPORT – Justice Kitchen's asked the State Defender to provide a recap of the work of the PDTF and developments since last meeting. The Caseload Report utilizing AOC data from 2010-14 was discussed. The 2016 Legislative change on data collection, requiring AOC to begin collection of indigence status, was discussed. De Gruy mentioned his upcoming presentation to Circuit Clerk CE program sponsored by the Judicial College. A follow-up of the caseload assessment would be done with 2015-17 data as soon as available and resources allow. OSPD reported positive developments in Lamar and Pearl River County – each county is transitioning part-time defender positions to full-time positions. Also mentioned was a setback at OSPD – as a result of SB 2362 (2016 Regular Session) the Capital Conflicts program would be phased out leaving the counties to fund any new conflict death penalty cases.

SIXTH AMENDMENT CENTER UPDATE – David Carroll, director of the Sixth Amendment Center (6AC), was asked to provide an update on their progress. 6AC has visited 10 counties and received "outstanding cooperation" from county officials: judges, prosecutors, defense lawyers and sheriffs. They have begun the drafting process of the report they will be providing the PDTF. The report will describe the varied systems they observed and include an assessment of the quality of services being delivered.

Jail officials expressed a high level of concern about prolonged pretrial detentions. 6AC reports that judicial interference does not appear to be a prevailing issue. Public defenders not getting involved early in the case (often not until after indictment) and bail that defendants cannot make are significant factors.

Public defenders piecing together contracts with no caseload limitations were a serious concern. 6AC believes there will always be a need for involvement of the private bar however state [central] oversight is needed.

Although they were not asked to assess delivery of defense services in misdemeanor cases they raised concerns about their observations of "seriously deficient" representation of misdemeanor defendants, including proceedings without defense counsel present. 6AC recommends PDTF also look at misdemeanor representation.

Justice Kitchens: The adoption of the new Rules of Criminal Procedure should influence practice. Mr. Carroll reported that they had reviewed the Rules and agreed that they will be a significant improvement. But having the rules is only a starting point. There is a need for an entity at the state level to promulgate standards for indigent defense; to train to those standards; and evaluate the performance of local defenders to ensure standards are being met. Recent efforts in other states were provided as examples of the continued national movement. Utah and Idaho have many similarities to Mississippi and have established state oversight. These new systems anticipate state grants available to counties who cannot meet standards.

DA Kittrell: Based on observation and 9 month service as an acting public defender a standard for "indigence" is needed. Mr. Carroll agreed with the need for such a standard and pointed out they observed both extremes, everyone getting the public defender and cases being continued for no lawyer but judge not appointing because he felt person could afford counsel. DA Kittrell and Justice Kitchens discussed the problem of judges denying counsel because a person made bail or denying experts because counsel was retained. Justice Kitchens pointed out recent supreme court opinions on this issue. (e.g. Levester Brown v. State). All agreed that partial contributions from defendants were a good thing and the need for a flexible standard.

Justice Kitchens: Is ineffective assistance of counsel something 6AC is looking at? Mr. Carroll responded that while Professor Boruchowitz does look at that it is not a good measure because so many cases are pled.

Justice Kitchens: (returning to the point made earlier about defenders not getting on cases early) Some counties have different lawyers handling preliminary hearing and then they change lawyers at different stages. As a former prosecutor and defense attorney the earlier I could get in a case the better representation my client received, getting on in the beginning and staying on through verdict improves quality of representation. **DA Kittrell** agreed getting public defenders on the case earlier was essential and gave examples of how that benefits the prosecution in resolving some cases pre-indictment.

Justice Kitchens made specific request of DA Kittrell to continue on as a task force member after his term as president of Prosecutor Association ended and expressing his belief that continuity was important encouraged all members to remain with the task force.

6AC estimated completion date of substantive part of report is March.

NEXT MEETING DATE – It was decided that the next meeting would be scheduled as soon as possible after the preliminary report from 6AC was available. It was agreed that everyone needs an opportunity to review the findings before the meeting so a direction with specific recommendations could flow from the meeting.

PUBLIC DEFENDER TASK FORCE MEETING

August 24, 2017

MINUTES

WELCOME – Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group and impressed upon them the importance of the work they were asked to do. He then asked everyone to introduce themselves and tell who they were representing. Present were Judge Prentis Harrell, Circuit Judge Association; Jennie Eichelberger, Mississippi Bar; Lisa Counts for Kevin Lackey, AOC; Hal Kittrell, Prosecutor Association; Jerrolyn Owens, AG; Tanisha Gates, Magnolia Bar; Demetrice Williams, Public Defender Association; Senator Hob Bryan; Steve Gray, Supervisor Association. Absent were Rep. Mark Baker and Rep. John Read and Senator Clarke. André de Gruy and Beau Rudder were present representing the Office of State Defender.

MINUTES OF JANUARY MEETING – reading of the minutes was waived, on motion and second minutes were approved.

SIXTH AMENDMENT CENTER UPDATE – [no one from the Sixth Amendment Center was present at the meeting] Justice Kitchens asked State Defender to update group on communication with Center. In January the Center reported an anticipated draft report by March. When that was not delivered contact was made with Mr. Carroll. He explained matters he was having to address but anticipated a report soon. In June after consultation with Chair we scheduled the August Task Force meeting and reached out to Mr. Carroll again. He advised that the field work on 10 counties (original plan called for only 8) had been completed and final drafting/editing was all that was needed. They were invited to attend the August meeting but were unable to attend and the draft report has not been provided.

STATE DFENDER REPORT – Miss. Code § 99-18-1(7) mandates the State Defender "develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force …." Pursuant to this mandate the State Defender presented a plan for discussion.

To address one of the specific tasks given by the Legislature OSPD provided research from the Sixth Amendment Center on the structure and funding of indigent defense in the 15 southeastern states. The primary deficiency in Mississippi compared to our neighbors is a lack of oversight. This is true even in the state funded offices as detailed in the Mississippi Auditor's Performance Audit of the Capital Post-Conviction Office. Twelve of the 15 states have some sort of state-level entity that sets standards of service delivery, workloads and the like.

Justice Kitchens raised the question of funding source and expressed a preference for funding defense like we fund prosecution and courts – primarily state funding.

It was noted that 10 of the 15 states fund primarily with state dollars. Louisiana uses unreliable criminal assessments to fund its system – a method Mississippi abandoned in 2016. Mississippi, Texas and Georgia have primarily local funding but the other two have state-level oversight.

South Carolina has a 50/50 state/county system. The South Carolina statute was provided to members for consideration.

Senator Bryan raised concerns about the impact of lack of defenders at early stages causing a need for more jail space, citing Lee County plans to build a new jail.

Judge Harrell agreed with this as a problem and pointed to a study he did in his district. He wanted to move to a primarily full-time defender system across the district but because the jail-time savings are in the future he could not justify the upfront cost to his poorer counties. He and Justice Kitchens (from his experience as a DA during the reforms of that system) discussed the difficulty in having to organize the various boards of supervisors. Judge Harrell has implemented full-time offices in the counties that can afford it and along with the new Criminal Court Rules he has seen improvement on jail time. Judge Harrell and Justice Kitchens discussed at length problems facing judges attempting to organize at district level, including funding, data collection and conflict cases.

Addressing the conflict issue the need to always include participation by the private bar and part-time defenders was emphasized by the State Defender.

While South Carolina provided the best comparison for cost sharing Arkansas was presented as the best comparison for total cost. Arkansas is most similar to Mississippi in demographics including population, poverty, and crime rates. Arkansas has an oversight commission and primarily state funding. The annual cost of indigent defense including misdemeanor cases is about $25,000,000. Roughly the amount Mississippi spends on District Attorneys.

Turning to the specifics of the OSPD plan: The Macarthur Justice Center at the University of Mississippi hosted an indigent defense meeting in June. At the meeting were law professors, activists, public defenders, legislators and a judge. Special guests were the president, immediate past-president and president elect of the National Association of Criminal Defense Lawyers, the preeminent criminal defense bar in the country. From the discussions of how to improve indigent defense delivery in Mississippi came a document – *7 Principles of Indigent Defense Delivery System in Mississippi*. This document was presented to the Task Force for consideration. The comprehensive OSPD plan was then presented and request was made that it be taken to constituent groups and any problems or concerns brought back to OSPD.

DA Hal Kittrell raised concern about moving forward without the report from the Sixth Amendment Center. He believes things are moving too fast. He wants to wait on the Sixth Amendment Center report and discuss that before moving forward.

Judge Harrell expressed understanding for DA's position but objected to further delay. He believes that everyone needs to review the plan and be prepared to make suggestions by November. "We need a public defender system."

NEXT MEETING DATE – Justice Kitchens indicated he would look for dates the conference room was available.

PUBLIC DEFENDER TASK FORCE MEETING

November 28, 2017

MINUTES - DRAFT

WELCOME – Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group. He then asked everyone to introduce themselves and tell who they were representing. Present were Jennie Eichelberger, Mississippi Bar; Lisa Counts for Kevin Lackey, AOC; Hal Kittrell, Prosecutor Association; Jerrolyn Owens, AG; Tanisha Gates, Magnolia Bar; Demetrice Williams, Public Defender Association; Senator Hob Bryan; Steve Gray, Supervisor Association. Absent were circuit Judge Harrell, Rep. Mark Baker and Rep. John Read and Senator Clarke. André de Gruy and Beau Rudder were present representing the Office of State Defender. David Carroll of the Sixth Amendment Center was present in person and Professor Bob Boruchowitz, a consultant with the center, was present via Skype.

MINUTES OF AUGUST MEETING – reading of the minutes was waived, on motion and second minutes were approved.

SIXTH AMENDMENT CENTER UPDATE – Mr. Carroll began his remarks with an apology for the considerable delay in finalizing the report. He then recapped the methodology they have employed: they spent most of 2016 in association with the Seattle University School of Law conducting site visits in 10 counties around the state, doing court observations, interviews with criminal justice stakeholders, reviewing data, and just trying to get a sense of where your system of indigent defense is. The report is not yet complete from drafting and formatting perspective but he anticipates that will be completed soon. Substantively their findings are complete. Carroll was asked to present overview of their findings.

- They documented defenders wearing multiple hats in different counties so workload cannot be assessed;
- Most defenders are not keeping caseload data;
- The State of Mississippi has no permanent institutionalized oversight mechanism to ensure that its constitutional obligation to provide effective counsel to the indigent accused is met in noncapital cases in many of its trial courts;
- What's needed is some form of organization that can promulgate standards, oversee the implementation of those standards and enforce those standards. That is the basic parameters of your Fourteenth Amendment obligation that we need to address.

Carroll suggested use of the ABA 10 Principles of an Indigent defense Delivery System. He stated there are basically four things that make an effective system: (1) it must be independent so the defense functions; (2) the attorney skills must match the complexity of the case; (3) the lawyer must be appointed early enough to be effective; and (4) the lawyer must have sufficient time to be effective. He elaborated on the first principle: independence. It is never possible for a judge presiding over a case to fully assess the quality of the defense lawyer's representation. This is because the judge never, for example, reads the case file, question the defendant to his stated interests, follow the attorney to the crime scene, or sit in on witness interviews. This is not to say the judge cannot provide sound feedback to the quality of our representation, it's just that the judge's opinion of the courtroom experience cannot not be the *sole* determination of whether

there is effective representation. Yet, in some extreme circumstances the judge can determine that representation is ineffective if counsel shows up drunk, or is sleeping through trial or something. It's just that the judge's in court observations of the defense attorney cannot comprise the totality of that supervision.

In Mississippi the judge are picking the public defenders in their jurisdictions. What happens is not that the judge says "don't file any motions in my courtroom, I want to keep the docket moving" but the public defenders that are beholden to judges for their livelihood internalize what they need to do to get their next contract or to get their next assignment. The result is interference with constitutional right to conflict free counsel.

The biggest problem is felony defendants across Mississippi have no meaningful representation until after indictment which can happen many months, and, indeed, even up to two years, after the arrest. This is the main thrust of the whole report – documenting exactly how this happens. Now when you are arrested and you are brought before a magistrate, you may or may not get a public defender, even in a felony case. There are lots of ways this happens, but the problem is in every county we went to with one exception in Hinds County, there's this black hole that occurs after being bound over to a circuit court. The public defenders just, if they were assigned, they just don't see it as their responsibility to do anything. In most instances, it's a different public defender that's going to get that case in circuit court. And so nothing happens. The defendant may be sitting in jail at that point, on the public's dime because no one is working that case, no one is trying to make bail arguments, no one is doing things that could save the local government's money in trying to get that person out if they are, indeed, not a risk to commit more violent crimes.

Carroll was then asked to offer examples of what other states are doing. He offered: state funded felony representation; a Michigan system that caps county contribution; an Idaho model that empowers a state agency to withhold sales tax money if indigent defense is not properly funded based on state standards. The center compiled a 50-state guide for the Tennessee Indigent Defense Taskforce and he made this available to Mississippi.

The Taskforce began discussing potential costs of a system that would remedy deficiencies. The State Defender was asked how he calculated the $14,000,000 currently being spent by the counties. The State Defender used the 2013 report of expenditures by each county and adjusted for inflation based on the rate observed from the first indigent defense cost study in 1993 across the two reports done between 1993 and 2013 by this Taskforce. The 20 year average rate of inflation was just over 4%. He noted that the increased expenses in the past four years is likely higher than historical rate based on the significant increases in fulltime attorneys (added in Forrest, Lamar and Pearl River counties) and the reforms instituted in the four county 8th judicial district following the law suit.

Mr. Carroll suggested a pause on the money aspect and focus on the system design aspect. The Taskforce agreed with this approach. The decision was made that no recommendation to the 2018 Legislature would be made. The Taskforce agreed to convene another meeting after the Sixth Amendment Center report was in hand and formalize a system plan.

A motion was made, seconded and passed by unanimous acclamation to ask the legislature to extend the Taskforce through June of 2020 to allow for development of the plan.

The Chair asked for an update of the 2016 statutory change to require circuit clerks to report data on indigent status. The AOC reported ongoing implementation problems with capturing the data. AOC anticipates once all criminal courts are on electronic courts this will be easily accomplished but only 8 are currently on-line.

Further discussion of the lack of oversight centered on the gap in representation pre-indictment: based on comments by the District Attorney about defenders being appointed at initial appearance but once preliminary hearing is concluded they do not touch the case the Chair asked if part-time defenders who also handled retained cases came to him pre-indictment on retained cases. The District Attorney assured him that they did. Mr. Carroll injected that's an argument for oversight.

NEXT MEETING DATE – Justice Kitchens indicated he would look for dates the conference room was available after receiving the finalized report draft for Sixth Amendment Center.

OSPD PROPOSAL FOR REORGANIZATION OF INDIGENT DEFENSE DELIVERY SERVICES

"The State Defender shall … develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defender Taskforce …" *Miss. Code* Section 99-18-1 (7).

This plan to reorganize indigent defense system to provide oversight and accountability to ensure Constitutional compliance in a fiscally efficient manner is submitted to the Taskforce:

Part 1: Amend Public Defender Task Force law to create Oversight Task Force with authority to promulgate standards; evaluate performance and report findings. PDOTF would also manage capital conflict funds and training for all indigent defenders. The effective date would be July 1, 2018 for all provisions except training. To allow for start-up and transition Training Division would remain at OSPD until January 1, 2019 at which time responsibilities and funding would move to PDOTF.

Part 2: Amend State Defender law to move training and data collection and reporting requirements to PDOTF. OSPD would report to PDOTF but appointment of State Defender would remain with Governor with advice and consent of Senate. Would move capital conflicts (currently not funded) to PDOTF. Make other technical amendments. These provisions would take effect January 1, 2019 to allow time for PDOTF to become operational. To provide oversight of the local indigent defense services the Office of District Defender would be created and funded through the state general fund. This portion of the bill would be effective January 1, 2020. No state funding would be necessary until FY 2020 and full funding (approximately $4M new state funds) not until FY 2021. This would allow for transition from the existing local public defender offices. The district defender would be selected by a district selection panel comprised of members of the local bench and bar.

Part 3: Amend the local public defender law to conform to the District Defender system effective January 1, 2020. The DD offices would serve as a platform to build comprehensive public defender offices with local funding as an alternative to use of assigned counsel in criminal cases and Youth Court.

Part 4: Amend Capital Post Conviction Counsel law to transfer capital conflicts and funding to PDOTF. CPCC would report to PDOTF but appointment of director would remain with Governor with advice and consent of Senate. Effective date would be January 1, 2019.

Part 5: Amend appointment and compensation statutes to conform. Provide PDOTF oversight and limited review of funding. Effective January 1, 2019.

Part 6: Amend sections on Youth Court appointment of counsel to ensure all constitutional rights of all children are protected. Effective January 1, 2020.

Right to Counsel Services in the 50 States

An Indigent Defense Reference Guide for Policymakers

(March 2017)

David Carroll, Executive Director, Sixth Amendment Center

Introduction

The provision of Sixth Amendment indigent defense services is a state obligation through the Fourteenth Amendment.[1] However, defining how states choose to deal with that constitutional requirement defies easy categorization. Some states pass on the entirety of its right to counsel duty to local governments, while other states delegate no responsibility at all. A significant number of other states try to strike a balance between sharing a portion of the financial burden of providing a lawyer to the indigent accused with its cities and counties. However, there is wide variation in what "shared responsibility" means. Some of these states contribute the vast majority of funding while others contribute only a minimal amount.

To be clear, it is not believed to be unconstitutional for a state to delegate some or all of its constitutional responsibilities to its counties and cities, but in doing so the state must guarantee that local governments are not only capable of providing adequate representation, but that they are in fact doing so.[2] This can only be accomplished if there is some state agency charged with the oversight and evaluation of defender services. Some states have permanent statewide indigent defense commissions or boards that either oversee all indigent defense services (both primary and conflict) or are authorized to set and enforce standards on localized right to counsel services. Other states have similar commissions or boards but limit their oversight capabilities to only certain types of cases or certain regions of the state. And, in those states that do have commissions or boards, some states insolate these bodies from undue political and judicial interference in accordance with national standards, and some do not.

The variations amongst how states deal with the Sixth Amendment does not stop at funding and oversight. The number of structural approaches to providing lawyers to the poor is great. City, county or state governments may employ public attorneys on either a full-time or part-time basis[3] or pay for private lawyers to provide representation. Private lawyers may be under contract to take an unlimited number of cases for a flat fee, or be paid a single rate per case, or be paid hourly (with compensation capped at a set level, or not).

A state may have government-employed lawyers for one classification of cases (e.g., direct appeals) but use private lawyers for other types (e.g. felony cases), or they may give a first co-defendant a government-employed lawyer but assign the second co-defendant a private lawyer. A state may develop and fund a sophisticated delivery system for the representation of people charged with felony offenses, and then leave the total

responsibility for misdemeanor representation to local government - however the cities or counties choose to provide those services.

A state may require local government to design and pay for a local delivery system but then have a state-run organization reimburse the cities and counties a percentage of those costs. Not only do the percentage of reimbursement vary in each of these states, but reimbursement plans may be based on meeting state-imposed standards (or not), or be based on a percentage of criminal cases arising in a local jurisdiction (or not), or simply be based on geographical considerations (or not). And, some of these states require all counties to participate in the reimbursement plan, while others allow local governments to either opt-into, or to opt-out of, the state plan.

The Sixth Amendment Center (6AC) provides this five-part memorandum as a guide to the myriad ways in which the right to counsel is implemented in state and county courts across the United States.[4] Part I details how each state attempts (if at all) to oversee that its Sixth and Fourteenth Amendment obligations are met throughout the state. The second part explains how indigent defense services are funded in each of the 50 states. Part II then details how states/local governments deliver right to counsel trial-level services - that is, whether the state or local governments design and manage day-to-day operations of those services.[5]

Part IV takes into account the first three classifications (state oversight, funding, and delivery of trial-level services) to offer the reader a guide to which states are the most similar in the provision of right to counsel services. The fifth part is a detailed description of Sixth Amendment services in each state presented in alphabetical order as a 50-state reference guide.

PART I: STATE OVERSIGHT

Again, it is not believed to be unconstitutional for a state to delegate some or all of its constitutional responsibilities to its counties and cities, but in doing so the state must guarantee that local governments are not only capable of providing adequate representation, but that they are in fact doing so. To accomplish this, there needs to be a state-entity that has the authority to evaluate indigent defense services against the parameters for effective representation (See Appendix A, page 36, for a discussion of a state's obligations under United States v. Cronic[6] to maintain effective systems for the provision of counsel). Many states have created commissions and boards with the authority to promulgate and enforce standards.

For example, in 2014, a law was enacted banning the use of flat fee contracts in Idaho and creating the Idaho State Public Defense Commission (ISPDC). ISPDC is authorized to promulgate standards relate to attorney performance, attorney workload, and, attorney supervision, among others. All counties must comply with standards, without regard to whether they apply to the ISPDC for state financial assistance. The hammer to compel compliance with standards is significant. If the ISPDC determines that a county "willfully and materially" fails to comply with ISPDC standards, and if the ISPDC and county are unable to resolve the issue through mediation, the ISPDC is authorized to step in and rem-

edy the specific deficiencies, including taking over all services, and charge the county for the cost. And, if the cost is not paid within 60 days, "the state treasurer shall immediately intercept any payments from sales tax moneys that would be distributed to the county," and the intercepted funds will go to reimburse the commission. As stated in HB 504, the "foregoing intercept and transfer provisions shall operate by force of law."

The other reason for creating commissions is to insolate the system from undue political or judicial interference. For example, in systems where the Chief Public Defender is a gubernatorial appointee – rather than appointed by a commission -the chief understands that she must keep the Governor happy to keep her job. Thus, if a Governor puts forth a budget that is inadequate for providing effective assistance of counsel, the chief defender must either accept the budget or take a public position in opposition to the person who can terminate her employment. Indeed, this scenario took place in February of 2011 when the New Mexico governor terminate the chief public defender in the middle of the legislative session for suggesting that public defender office was underfunded.[7]

Not all commissions are created the same and not all offer the same amount of systemic protections to the indigent accused. For example, national standards[8] call for indigent defense commission members to be appointed from diverse authorities, such that no one branch of government can exert more control over the system than any other branch. Some commissions are more independent than others.

There are three broad classifications for how states oversee right to counsel services:

A. Statewide Commission: States in this classification have one or more commissions or boards that oversee all indigent defense services for all case-types for all regions of the state.

B. Limited Commission: States in this classification have commissions or boards. However, those commissions either: a) oversee some, but not all, case-types; or, b) oversee some, but not all, regions of the state.

C. No State Commission: The states in this classification have no commissions overseeing any portion of indigent defense services.

TABLE 1: STATE OVERSIGHT

	Independent Commissions		Non-Independent
A. Statewide Commission 21 States 42%	Connecticut Kentucky Louisiana Maine Maryland Massachusetts Michigan	Minnesota Montana New Hampshire New Mexico North Dakota Utah Virginia	Arkansas Colorado Hawaii Missouri Oregon West Virginia Wisconsin
	Independent Commissions		**Non-Independent**
B. Limited Commission 13 States 26%	Idaho Indiana Nebraska New York North Carolina	Ohio South Carolina Tennessee Texas	Georgia Illinois Kansas Oklahoma
C. No Commission 16 States 32%	Alabama Alaska Arizona California Deleware	Florida Iowa Mississippi Nevada New Jersey	Pennsylvania Rhode Island South Dakota Vermont Washington Wyoming

ANALYSIS: There is a direct correlation between the extent to which states authorize commissions to hold state or local services accountable to state promulgated standards, and the quality of services rendered.

A. Statewide commissions: Twenty-one states (42%) vest the oversight of all indigent defense services with one or more statewide commission or board, though the composition and authority of those commissions vary greatly. Statewide commissions in fourteen of these states meet the national standard for independence while commissions in seven states[9] do not.

B. Limited commissions: Thirteen states (26%) have commissions with limited authority, though the degree of those limitations can vary widely.

One state (North Carolina),[10] for example, has very broad authority to set and enforce standards, but other state and local entities may infringe on that power. Six states (Idaho, Illinois, Kansas, Nebraska, Oklahoma and Tennessee) have commissions that oversee only a part of services statewide. These may be commissions that oversee representation in some counties or regions or commissions that oversee a certain case-type (e.g., direct appeals).[11] Six states (Georgia, Indiana, New York, Ohio, South Carolina, and Texas) have commissions that offer state support to county-based systems. Limited commissions in nine states meet the national standard for independence while limited authority commissions in four states[12] do not.

C. No state commission: Sixteen states (32%) have no state commission overseeing indigent defense representation.

PART II: FUNDING

There are three broad classifications for how states fund the right to counsel:

A. State-funded services: This classification is defined as those states that relieve its local government of all responsibility for funding right to counsel services even if alternative revenue sources (e.g., court fines and/or fees) are used in addition to state general fund appropriations. Also included are those states that allow, but do not require, local governments to augment state indigent funding if they so choose.

B. Mixed state and local-funded services: This classification includes all states that require local governments to share the funding costs of providing the right to counsel. This category includes states that provide almost all right to counsel funding as well as those where cities and counties shoulder the majority of funding. The thing that distinguishes the states in this category that provide less than half of all indigent defense funding from those in category C (below) is that the state governments in this classification spend a significant sum of money on trial-level services in a significant number of regions in the state.

C. Minimal or no state-funded services: The states in this classification obligate their local governments to bear the vast majority of costs for indigent defense services while the state contributes minimal to no state funding. This includes those states that pay for all, or a portion of, indigent appellate services but leave all funding responsibilities for indigent trial-level services to its local governments.

TABLE 2: FUNDING

Funding Classification	States			
A. State Funded 27 States 54%	Alabama Alaska Arkansas Colorado Connecticut Delaware Florida	Hawaii Iowa Kentucky Louisiana Maine Maryland Massachusetts	Minnesota Missouri Montana New Hampshire New Mexico North Carolina North Dakota	Rhode Island Oregon Vermont Virginia West Virginia Wisconsin
B. Mixed Funding 11 States 22%	Georgia Indiana Kansas	New Jersey New York Ohio	Oklahoma South Carolina Tennessee	Texas Wyoming
C. Minimal State Funds 12 States 24%	Arizona California Idaho	Illinois Michigan Mississippi	Nebraska Pennsylvania South Dakota	Utah Washington

ANALYSIS: State funding of indigent defense services has proven to be the most stable for two principle reasons. First, local governments have significant revenue-raising restrictions placed on them by the state while generally being statutorily prohibited from deficit spending. Second, the jurisdictions that are often most in need of indigent defense services are the ones that are least likely to be able to a afford it. That is, in many instances, the same indicators of limited revenues – low property values, high unemployment, high poverty rates, limited house- hold incomes, limited higher education, etc. – are often the exact same indicators of high crime. And those same counties have a greater need for broader social services, such as unemployment or housing assistance, meaning the amount of money to be dedicated to upholding the Sixth Amendment to the Constitution is further depleted.

State-funded services: Twenty-seven states (54%) relieve all local government of the financial burden to fund the right to counsel. Three of these states (Arkansas, Kentucky and Virginia) allow local governments to augment state funding with local funding if they so choose.[13]

Two other states (Alabama and Louisiana) use alternative revenue streams as their primary funding method. Alabama assesses a filing fee in civil court matters that is collected in a central fund dedicated to indigent defense services.[14] By statute, if the amount in the fund is insufficient to cover the annual costs of indigent defense representation, the difference must be covered by the state General Fund.[15]

The majority of funding for trial-level indigent defense services in Louisiana comes from non-governmental generated revenue in the form of court fines and fees.[16] The single greatest revenue generator for indigent defense is a special court cost (currently $45) assessed against every criminal defendant convicted after trial, pleads guilty or no contest, or who forfeits his or her bond for violation of a state statute or a local ordinance other than a parking ticket. The result is that the most significant funding for trial-level defense services in Louisiana comes from fees assessed on traffic tickets.[17]

All other states in this classification provide right to counsel funding through a state general fund appropriation.[18]

Mixed state and local-funded services: Eleven states (22%) require shared funding for the right to counsel indigent defense services between state and local governments. Two states (Oklahoma and Tennessee) provide almost all funds for indigent defense representation, but each state has counties that fall outside of full state funding.[19] As the result of a class action settlement, another state (New York) provides all funding for trial-level services in five counties.[20] Two states (South Carolina and Wyoming) have state-administered indigent defense services but ask all of their counties to fund a portion of the cost.[21] Two states (Kansas and New Jersey) split the cost of representation by case-type.[22] In four states (Georgia, Indiana, Ohio, and Texas), counties are required to fund trial-level services, but the state then provides some amount of funding to reimburse some portion of the counties' costs.[23]

Minimal or no state-funded services: In twelve states (24%) there is negligible to no funding of trial-level services by the state, leaving local government to bear the vast majority of costs for indigent defense services. Three states (Idaho, Michigan and Utah) recently enacted statutes that when fully implemented will provide significant state money to local jurisdictions to meet state-imposed standards. Each of these three states will be re-classified as "mixed state and local-funded" states whenever implementation occurs.

Two states (Illinois and Mississippi) provide minimal funding for a minimal portion of trial-level indigent defense services while providing state-funded appellate services.[24] One state (Nevada) provides representation in counties that opt-into a state-run public defender office, though counties must still pay a significant portion of the cost of that program (80%).[25] Another state (Nebraska) has a limited state-funded office that provides direct representation in some capital trials, appeals, some serious non-capital felonies involving drugs and violent crime, and otherwise serves as a resource and training center for the county-based systems. Three other states (Arizona, California and Washington) provide no state funding of trial-level services but provide state funding for some other services.[26] Two states (Pennsylvania and South Dakota) provide no funding of any indigent defense representation.

PART III: DELIVERY OF TRIAL-LEVEL SERVICES

The "delivery of trial-level services" differs from "funding" in that the delivery model classifications are concerned with how services are organized and regardless of whether state or local government pays for those services. For example, a state may pay all costs of representing the indigent accused but leave local governments or local courts responsible for the manner in which those services are delivered (public or private attorneys) and/or operated (i.e., on a court-by-court basis or on a multi-county, regional basis). Conversely, a state may require local governments to help pay for the Sixth Amendment services, but gives the choice of delivery system and the responsibility for daily management of trial-level services entirely with the state.

There are three broad classifications for how states administer right to counsel trial-level services:

A. State-run services: This classification is defined as those states that relieve its local government and courts of all responsibility for administering trial-level right to counsel services.

B. Mixed state and local-run services: This classification includes all states that require the shared administration of indigent defense services with state and local governments. This includes states with a state-run agency for certain case-types (felony), but where local government administers other case types (misdemeanor). Also included in this classification are those states where a state-run agency administers indigent defense services in certain regions of the state, but where local governments administer defender services in all other regions.

C. Minimal or no state-run services: The states in this classification obligate their local governments to administer the vast majority of indigent defense services. This includes those states that may administer all, or a portion of, indigent appellate services but leave all administration of indigent defense trial-level services to its local governments.

TABLE 3: ADMINISTRATION OF TRIAL-LEVEL SERVICES

Administration Classification	States			
A. State-run services 24 States 48%	Alaska Arkansas Colorado Connecticut Delaware Hawaii	Iowa Kentucky Maine Maryland Massachusetts Minnesota	Montana New Hampshire New Mexico North Dakota Oregon Rhode Island	Vermont Virginai West Virginia Wisconsin Wyoming
B. Mixed-run services 7 States 14%	Florida Kansas	New Jersey Navada	New York Oklahoma	Ohio
C. Local-run services 19 States 38%	Alabama Arizona California Georgia Idaho	Illinois Indiana Indiana Louisiana Michigan	Mississippi Nebraska North Carolina Pennsylvania South Carolina	South Dakota Tennessee Texas Utah Washington

ANALYSIS: Whether indigent defense trial-level services are organized at the state or local-level, or a combination of both, has less of an impact on the quality of services as either state-funding or state oversight of services.

State-run services: Twenty-four states (46%) administer all trial-level indigent defense services at the state-level. Twenty-one states[27] vest a single public defense agency with the administration of all indigent defense services (both primary and conflict) for all case-types.[28] Two states (Alaska and Colorado) have two separate state public defense agencies, one for primary services and one for conflict services. One state (Rhode Island) has a state-administered public defender office for primary services. Conflict representation is provided by a panel of private attorneys, paid hourly on a per-case basis, and administered by the Rhode Island Supreme Court. Only 23 of the 27 "state-funded" states identified in Part I administer all trial-level services at the state-level.[29] Additionally, one state (Wyoming) administers all indigent defense services at the state-level despite being categorized as a "mix state and local-funded" state in the above funding section.[30]

Mixed state and local-run services: Seven states (14%) have mixed state and local-run indigent defense services. Two states (Kansas and New Jersey) split the administration of trial-level services representation by case-type.[31] Four states (Nevada, New York, Oklahoma and Ohio) administer trial-level representation for a portion of their counties.[32] One state (Florida) elects chief public defenders on a circuit basis that have sole authority for the operations of primary right to counsel services in each circuit, and is therefore considered to have local-administration. Florida's conflict trial-level representation is shared between the state and the local courts. Five state-run regional conflict defender offices covering each of the state's five appellate jurisdictions provide representation when a circuit

public defender has a conflict, Tertiary representation is provided by private attorneys paid on an hourly basis or under contract to the local judiciary.

Minimal or no state-run services: Nineteen states (38%) administer trial-level indigent defense at the local level. Thirteen states require local government to administer all services.[33]

PART IV: INDIGENT DEFENSE SERVICES IN THE 50 STATES

Taking into account indigent defense service funding, administration, and state oversight, there are 27 possible permutations that states can use to implement their Sixth and Fourteenth Amendment obligations.[34] If states were spread out evenly over these classifications it would make comparisons virtually meaningless.

However, states fall into six broad categories, as detailed in Table 4 on the next page:

TABLE 4: 50 STATE OVERVIEW

OVERVIEW	States		
A. State Funded, State Administered	**Independent Commissions**	**Non-Independent**	**No Commission**
24 States 48%	Connecticut Kentucky Maine Maryland Massachusetts Michigan Minnesota Montana New Hampshire New Mexico North Dakota Utah Virginia	Arkansas Colorado Hawaii Missouri Oregon West Virginia Wisconsin	Alaska Deleware Iowa Vermont
B. State-Funded, Mixed Administered	**Statewide Commission**	**Limited Commission**	**No Commission**
2 States 4%			Florida Rhode Island
C. State-Funded, Local Administered	**Statewide Commission**	**Limited Commission**	**No Commission**
3 States 6%	Louisiana	North Carolina	Alabama
D. Mixed-Funded, State Administered	**Statewide Commission**	**Limited Commission**	**No Commission**
1 States 2%			Wyoming
E. Mixed- Funded, Mixed Administered	**Statewide Commission**	**Limited Commission**	**No Commission**
14 States 16%	Michigan Utah	Georgia Idaho Indiana Kansas New York Oklahoma Ohio Tennessee Texas	Mississippi Nevada New Jersey
F. Local-Funded, Local Administered	**Statewide Commission**	**Limited Commission**	**No Commission**
6 States 22%		Nebraska	Arizona California Pennsylvania South Dakota Washington

PART V: STATE DESCRIPTIONS

ALABAMA	The Office of Indigent Defense Services (OIDS) is an executive branch agency housed in the Department of Finance, responsible for overseeing all indigent defense services, both primary and conflict. The Finance Director appoints the OIDS Director to a three-year term from three names nominated by the Alabama State Bar, Board of Commissioners. OIDS is statutorily obligated to set standards related to: fiscal responsibility and accountability; minimum attorney qualification, training and other standards by case type; caseload management; attorney performance standards; the independent, efficient and competent representation of conflict defendants; indigency and partial-indigency; and recoupment; among others. However, local indigent advisory boards within each judicial circuit make decisions regarding the structure of local right to counsel services. Each circuit's five-person advisory board is composed of: the presiding circuit court judge; the president of the local circuit bar association; and three lawyers selected by the circuit bar association commission (in multi-county circuits these appointments are made by the president of local county bar associations). Advisory boards must reflect the racial and gender diversity of the circuit. But, because OIDS is ultimately responsible for all contracting, payment of assigned counsel, and oversight of staff public defenders, the director of OIDS has an important say over the decisions of the local advisory boards. First, if a local advisory board fails to recommend a delivery service model at all, then the OIDS director determines how to provide services in that county. If the OIDS director disagrees with the recommendation of the local advisory board, the director can appeal the recommendation to a state Indigent Defense Review Panel.[35] Counties do not contribute to the funding of indigent defense services. Instead, money from a filing fee in civil court matters is collected in a central fund dedicated to indigent defense services. If OIDS exceeds the amount of dollars available in that fund, the state is statutorily responsible for funding the difference out of the state general fund.
ALASKA	Alaska has two parallel systems providing right to counsel services across the state. The governor appoints the chief attorneys of both agencies. The primary system, the Public Defender Agency, has branch offices located across the state, with direct trial services provided by a mixture of full time staff attorneys and contracts with private attorneys. In cases of conflict, the Office of Public Advocacy provides services in structure similar to the primary system, but with a greater emphasis on contracting with private counsel for direct representation.

ARIZONA	The state of Arizona delegates to the counties its Sixth Amendment right to counsel obligations. Each county determines on its own how best to provide such services, with the majority of counties (10) establishing county public defender offices (in some urban counties, there are two or more such offices for conflict and overflow representation) and others relying entirely on contracts with private attorneys to handle cases on behalf of indigent clients. And each county is similarly responsible for determining on its own what amounts to an adequate level of funding. For many years, the county-based defender systems together have maintained a statewide public defender association to provide training and support resources. But county-level systems are not compelled to participate. Meanwhile, the state provides no assistance to counties, and with no oversight it has no means of knowing whether each county is in fact capable of fulfilling its federal obligation, and then that each county actually does so.
ARKANSAS	The Arkansas Public Defender Commission (APDC) is an executive branch agency. APDC is composed of seven members, all appointed by the Governor. Four commissioners must be attorneys; one must be a county judge, and one a district judge. APDC has ultimate statutory authority to set standards and policies related to the delivery of indigent defense services, including the power to determine how best to deliver services throughout the state. For the most part, APDC delivers indigent defense services through staffed public defender offices in each of the state's 23 judicial circuits (covering 75 counties), although they have determined that certain circuits require two or more offices.[36] In State v. Independence County, 312 Ark. 472, 850 S.W.2d 842 (1993), the Arkansas Supreme Court decided that the state is responsible for the funding of indigent defense services. However counties are responsible for some limited physical plant costs including utilities and telecommunications for public defender offices. Additionally, counties and municipalities can – if they so desire – contribute to an office to increase staff and augment state funding (though only the city of Little Rock has chosen to do so). The authority to be flexible in how services are delivered extends to the APDC's oversight of conflict services. For the most part, APDC sets standards for the qualification, training and performance of private attorneys paid under contract for conflict representation and pay them $60-$90 per hour (felonies) and $50-$80 (misdemeanors). However, the Commission has determined that enough conflicts exist in certain urban areas of the state to support conflict public defender offices. For example, the Northwest Conflict Office serves as a regional conflict office serving two counties (Madison and Washington counties), while another conflict office in Little Rock only serves Pulaski County. In addition to the trial-level offices, the Commission has a central office that houses a conflict capital office, appellate services and training unit.

CALIFORNIA

In 1976, the California legislature created the Office of the State Public Defender as part of the judicial branch of government. Originally designed as a state appellate defender office the SPD was defunded in the 1980s and now handles only a limited number of post-conviction death penalty cases each year.

This means that local governments shoulder the entire burden of providing trial-level public attorneys to the poor. For California's more affluent counties, this has not proven to be a problem for the most part, and some of the most respected public defender offices and assigned counsel systems in the country are in California.

As opposed to trial-level indigent defense services, which are the responsibility of county governments in California, the representation of individuals in direct appeals and post-conviction proceedings, in both capital and non-capital cases, is a function of the California courts system with private attorneys handling the vast majority of direct services to clients. The state courts contract with a number of non-profit corporations to provide oversight and training on its behalf.

In death penalty matters, the non-profit California Appellate Project (CAP-SF) was established in San Francisco by the State Bar of California in 1983 as a resource center for private attorneys taking capital cases on direct appeal and onward through habeas corpus proceedings. CAP-SF operates under contract from the Judicial Council of California. The state of California supplemented CAP-SF in 1998 with the creation of the Habeas Corpus Resource Center, an arm of the state courts that provides direct representation to individuals in death penalty habeas proceedings before the Supreme Court of California and the federal courts. HCRC also provides training and accreditation assistance for private attorneys looking to become qualified to handle appointments in capital post-conviction proceedings.

Appellate representation in non-capital cases is divided among the state's six appellate districts, with direct services administered by one of the state's six appellate projects: the First District Appellate Project, the California Appellate Project of Los Angeles, the Central California Appellate Program, Appellate Defenders Incorporated, and the Sixth District Appellate Program.

COLORADO	The Office of the Colorado State Public Defender administers 21 regional defender offices across the state, each staffed with full time attorneys and substantive support staff. All administrative and support functions for these offices are handled by a central administrative office in Denver. A five-member commission selects the system's chief attorney, the state public defender, who is responsible for implementing and enforcing the commission's policies throughout the regional offices. In cases of conflict, the Office of the Alternate Defense Counsel (OADC) oversees an assigned counsel system. The conflict system operates completely independent of the primary system, reporting to a second independent, nine-member statewide defender commission, which is responsible for implementing and enforcing the commission's policies. Both the primary and conflict systems are funded entirely by state general fund appropriation and both are judicial branch agencies. The state Supreme Court appoints all members of both commissions.
CONNECTICUT	The Division of Public Defender Services (DPDS) in Connecticut is a state-funded agency in the judicial branch that oversees both primary and conflict defender services throughout the state. The independence of Connecticut's public defense system is ensured through an independent seven-person commission appointed by diverse authorities.[37] Trial-level services are provided throughout the state by branch offices staffed with full-time government attorneys serving all state courts. DPDS provides conflict representation through a panel of private attorneys paid hourly.
DELEWARE	The Office of the Public Defender is a statewide, state-funded public defender system in the executive branch led by a chief public defender appointed directly by the governor. Full time staff attorneys represent juvenile and adult clients in all levels of court from branch offices located in each of Delaware's three counties. The public defender office also oversees the Office of Conflicts Counsel to oversee the state's conflict program, which is generally provided by private bar attorneys working under contract for an annual flat rate (though certain conditions trigger counsel to earn an hourly rate above and beyond the annual flat fee).

FLORIDA	Public defender offices staffed with full time employees provide primary representation to indigent defendants in each of the state's 20 judicial circuits (covering 67 counties). Each office is overseen by a popularly elected chief public defender[38] to ensure independence from the judiciary and other government agencies. The Florida Public Defender Association (FPDA) is a private, non-profit entity created in the early 1970s to bring a more unified voice to the 20 independent elected public defenders. Its executive director is selected by vote of the elected circuit defenders. FPDA provides training, lobbying, and other technical assistance services where cost efficiencies can be had through centralized services among the distinct offices. FPDA also disseminates state funding to each of the circuit defender offices.[39] Five regional conflict defender offices covering each of the state's five appellate jurisdictions provide representation when a circuit public defender has a conflict, Tertiary representation is provided by private attorneys paid on an hourly basis or under contract to the judiciary. Beyond the elected public defender system to provide for trial level services, Florida maintains three Capital Collateral Resource Offices, one office each serving the northern, central, and southern regions of the state. Lastly, the state maintains five appellate offices, one in each appellate district, to handle direct appeals arising out of the 20 trial circuits. Directors of all of these offices are direct gubernatorial offices. All services are state-funded.
GEORGIA	The Georgia Public Defender Standards Council (GPDSC) is a fifteen-member commission within the executive branch that appoints circuit public defenders to oversee trial-level indigent defense services in 49 of the state's judicial circuits. GDPSC also oversees a central office providing training, capital support services, appellate representation, and mental health advocacy. GPDSC has limited authority to enforce standards it promulgates. Though the executive branch of government has the majority of appointments to GPDSC, there is an eight-member legislative oversight committee that reviews the Council's work. And, although this appears to be a structured system, counties can opt out of the system, meaning the state has no regulatory authority over those regions. Because of this, GPDSC is defined as a commission with limited authority.
HAWAII	The Office of the Public Defender (OPD) is a state-funded, state-administered agency in the executive branch responsible for right to counsel services across Hawaii. The state public defender is appointed by the Defender Council, a commission of five members with each member selected by and serving at the pleasure of the governor. Five branch offices, each staffed with full time public defenders, handle direct services. Private attorneys handle conflicts on individual cases diverted away from the public defender offices.

IDAHO	In 2014, a law was enacted banning the use of flat fee contracts and creating a seven-person public defense commission within the Department of Self-Governing Agencies – a constitutional provision in Idaho that means that though the commission is still located in the Executive Branch, the commission would not have to answer directly to the Governor. Diverse authorities appoint the members of the Idaho Public Defense Commission such that no one branch of government has undue influence over the actions of the commission.[40] ISPDC is authorized to promulgate standards, which are consistent with many of the ABA's Ten Principles. All counties must comply with standards, without regard to whether they apply to the ISPDC for state financial assistance. ISPDC must create grant policies and procedures to assist counties in meeting those standards. The hammer to compel compliance with standards is significant. If the ISPDC determines that a county "willfully and materially" fails to comply with ISPDC standards, and if the ISPDC and county are unable to resolve the issue through mediation, the ISPDC is authorized to step in and remedy the specific deficiencies, including taking over all services, and charge the county for the cost. And, if the cost is not paid within 60 days, "the state treasurer shall immediately intercept any payments from sales tax moneys that would be distributed to the county," and the intercepted funds will go to reimburse the commission. As stated in HB 504, the "foregoing intercept and transfer provisions shall operate by force of law." The Office of the State Appellate Public Defender (SAPD) is an executive branch government agency that provides all appellate services. The head of SAPD is a direct gubernatorial appointee.
ILLINOIS	The Office of the State Appellate Defender is a state-funded, statewide agency in the judicial branch representing indigent persons in criminal appeals. Although an appellate defender commission exists, it only serves to advise the chief appellate attorney on budgetary and policy matters. The justices of the state supreme court, in fact, select the State Appellate Defender. By state statute, counties with populations above 35,000 must maintain a county public defender office; 42 of the state's 102 counties meet this threshold. The remaining 60 select whatever method they so choose. In counties maintaining public defender offices (whether compelled or by choice) the chief public defender is selected either by the president of the county's board of supervisors (in counties with more than 1 million residents) or by the presiding circuit court judge (everywhere else). The state covers only 66.6% of the cost of the chief defender's salary in each county with a standing public defender office.

INDIANA	The state of Indiana has three state-funded right to counsel agencies – the Indiana State Public Defender, the Indiana Public Defender Council, and the Indiana Public Defender Commission – but none provides direct trial-level services, and none holds authority to ensure quality at the county level. The Indiana State Public Defender provides representation in post-conviction proceedings (i.e., indigent adults and juveniles who are incarcerated and are challenging a sentence or a commitment). All other direct representation services are county-based, provided through a mixture of traditional public defender offices, contracts with private attorneys, or attorneys appointed on a per-case basis. The Indiana Public Defense Council is a public defense support center, providing training and help-desk assistance to approximately 1,100 public defenders, assigned counsel and contract defenders across the state. Limited state assistance is provided to counties to help defray costs through the Indiana Public Defender Commission (IPDC) – an eleven-member commission appointed by a diversity of factions.[41] The IPDC promulgates standards related to workload, attorney qualifications, and pay parity, among others, for both capital and non-capital representation. Those counties that meet the IPDC standards are eligible to be reimbursed up to 50% of their capital representation costs and up to 40% of their non-capital costs. State funding for the reimbursement plan has not always kept pace with its intended effect. For example, reimbursements to counties for non-capital representation dropped to a low of 25.1% in 2003-2004. In the 2009-2010 fiscal year, however, the Commission was able to raise the reimbursement rate for participating counties back up to the state's intended 40%. But part of the explanation for why the state was able to reimburse counties 40% of their non-capital representation costs is due to the fact that the number of counties receiving reimbursements has decreased over the past decade from a high of 57 counties in 2006-2007 to a low of 48 in 2008-2009. In short, more and more counties have chosen to forego state assistance, opting to cut costs without complying with standards, through flat fee contracts.
IOWA	The Iowa State Public Defender Office is a statewide, state-funded executive branch agency that oversees representation services in all 99 counties for appeals, felonies, misdemeanors, juvenile delinquency and dependency cases. Most direct services are provided through 18 branch offices, with each office staffed by full time attorneys and support staff. The agency also contracts with more than 1,000 private attorneys and several nonprofit organizations throughout Iowa to provide court-appointed representation in counties without public defender offices, as well as conflict matters.

KANSAS	The Kansas Board of Indigents' Defense Services (BIDS) is a statewide, state-funded commission administratively housed in the state's executive branch. The Board itself is composed of nine members, each selected by the governor (with consent of the senate). BIDS' authority at the trial level, however, is limited to felonies; counties maintain the responsibility for funding and administering right to counsel services on behalf of defendants in adult misdemeanor and juvenile delinquency matters. BIDS has a central administrative office responsible for overseeing and implementing its policies. Defendants in 43 counties receive services through staffed public defender offices. BIDS contracts with private attorneys to BIDS provide services in the balance of counties, with attorneys receiving a single, flat rate per case-type. Though some public defender offices share conflicts (mostly serious felonies) the majority of conflict representation is handled through judicially controlled assigned counsel panels in which BIDS is obligated to pay the amount authorized by the local judge. Such an arrangement often leads to the most egregious abuses of judicial interference because judges can assign cases to friends or campaign contributors without being financially beholden locally for their actions.
KENTUCKY	The Kentucky Department of Public Advocacy (DPA) is a statewide, state-funded agency in the executive branch overseen by an independent 12-member Public Advocacy Commission appointed by diverse authorities.[42] The Commission appoints the state public advocate who, in turn, is responsible for executing the Commission's policy directives including the proper administration of right to counsel services across the state. DPA oversees 32 branch offices whose chief attorneys, in turn, are responsible for direct client representation by full time government attorney staff and by local panels of private attorneys handling individual case assignments in conflict matters. The indigent defense system in Jefferson County (Louisville) operates outside of, but in cooperation with, the statewide system. Having been in existence long before the creation of the Department of Public Advocacy, Jefferson County opted to retain its method of contracting with a nonprofit public defender office, the Louisville Metro Public Defender Corporation (MPDC). The MPDC also subcontracts with private counsel to represent clients in cases of conflict. MPDC must meet all DPA policies and standards. Though funding is principally from the state, Jefferson County is allowed to, and does, augment the state funding with local dollars.

LOUISIANA	The Louisiana Public Defender Board (LPDB) is an eleven-member commission housed in the executive branch that is statutorily required to promulgate indigent defense standards. Diverse authorities appoint LPDB members.[43] Though indigent defense is organized at the state-level, trial-level services are still delivered with some local autonomy. LPDB contracts with local chief defenders in each of the state's 41 judicial districts who make decisions about local delivery methods. However, LPDB has the statutory authority to not only promulgate standards but, importantly, to enforce them as well. LPDB ombudsmen are required to evaluate services in each district on a regular basis. If services are found to be deficient, LPDB is authorized to remove the chief defender and remedy services under any model the Board sees fit. As structured as the Louisiana system is, the state stands alone in the nation as the only jurisdiction with a statewide indigent defense system that relies to a large extent on locally generated, non-government general fund appropriations to fund the right to counsel. The majority of funding for trial-level services comes from a combination of fines and fees (e.g., bail bond revenue, criminal bond fees, revenue form forfeitures, and indigency screening fees, among others). The single greatest of these revenue generators for indigent defense in Louisiana is a special court cost ($45) assessed against every criminal defendant convicted after trial, pleads guilty or no contest, or who forfeits his or her bond for violation of a state statute or a local ordinance other than a parking ticket. The result of this funding scheme is that a significant part of funding for trial-level representation in Louisiana comes from fees assessed on traffic tickets. There is no correlation between what can be collected through traffic tickets and the resources needed to provide effective representation.
MAINE	The Maine Commission on Indigent Legal Services (MCILS) is an independent five-member commission in the judicial branch that is statutorily charged with providing "efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations." Though the Governor makes all five appointments, diverse authorities make nominations to the Governor from which he must appoint.[44] The appointments are made from nominations. MCILS oversees a statewide assigned counsel system that pays attorneys on an hourly basis.
MARYLAND	The Office of the Public Defender (OPD) is a state-funded, executive branch agency responsible for providing right to counsel services in all courts across the state, and overseen by an independent, 13-person commission known as the Board of Trustees.[45] Direct trial-level client services are provided primarily by staffed government attorneys in twelve district public defender offices (many cover multiple counties). In cases of conflict, each district defender maintains a roster of local private attorneys handling individual case assignments on an hourly basis. Private attorneys are paid at the same rate as federal Criminal Justice Act (CJA) attorneys with total attorney compensation capped at $3,000 (felonies) and $750 (misdemeanors).

MASSACHUSETTS	The Committee for Public Counsel Services (CPCS) is a judicial branch agency overseeing the delivery of indigent defense services in all courts across the state of Massachusetts. CPCS is a 15-member board appointed by diverse authorities.[46] The board appoints CPCS's chief counsel to run the agency. CPCS runs an assigned counsel model to provide the bulk of its representational needs, with public defender offices handling only the most serious cases in the more urban areas of the state. Of the 2,000+ attorneys participating in the statewide panel, more than 600 are certified to handle cases in Superior Court (more serious cases which carry potential sentences exceeding 2.5 years in jail). Of those certified for Superior Court work, 150 attorneys are certified even further still to handle murder cases. Attorneys are paid $60 per hour (felonies) and $50 per hour (misdemeanors) with no compensation caps. CPCS maintains annual contracts with non-profit bar advocate programs in each county. Those bar advocate programs in turn select a volunteer board to review attorney applications using CPCS' minimum statewide qualification standards. To further ensure that all representation is provided locally, the county bar programs are responsible for the actual assignment of cases to individual attorneys. Private attorneys accepting public case-assignments agree to abide by CPCS' "Performance Guidelines Governing Representation of Indigents in Criminal Cases," but as with most everything else in the Massachusetts assigned counsel program, the direct review of ongoing attorney performance is also handled locally. Each county bar program maintains contracts with private attorneys who handle no cases, and instead act solely as supervisors for other private attorneys handling direct case-assignments.
MICHIGAN	The Michigan Indigent Defense Commission (MIDC) is a 15-member commission in the executive branch appointed by diverse authorities with the power to develop and oversee the implementation of binding performance standards for trial-level right to counsel services in each of the state's 83 counties.[47] While each county determines the delivery methods it will use to provide direct services (public defender office, contracts, or assigned counsel panel), the county must submit a plan for compliance with MIDC's standards, and MIDC has authority to investigate, audit and review the operation of local county right to counsel services to assure compliance. Counties must contribute a set amount of money each year (based on pre-MIDC spending levels), and all additional funding necessary to meet standards comes from the state. Appellate representation is provided under the purview of the state's Appellate Defender Commission, a seven-member commission of the judicial branch that oversees the State Appellate Defender Office (SADO) and the Michigan Appellate Assigned Counsel System (MAACS). Diverse authorities appoint the commission.48 Both SADO and MAACS are entirely state-funded. SADO is a traditional public defender office with full time attorneys and support staff. As its name suggests, MAACS is a coordinated roster of private attorneys appointed to individual cases who are paid an hourly fee for their services.

MINNESOTA	The Minnesota Board of Public Defense (BPD) is a state-funded, seven-member commission whose members are appointed by diverse authorities.[49] The BPD oversees the delivery of public defense services in the state's 10 judicial districts. In each district, the BPD appoints a chief public defender that manages all public defense services within that district, whether through public defender offices or contracts with private assigned counsel. In other words, the Board sets policy, and it is each chief public defender's responsibility to ensure compliance with such policies.
MISSISSIPPI	In 2011, the state legislature took initial steps toward state oversight of indigent defense services by establishing the Mississippi Office of the State Public Defender (OSPD). OSPD combined the previously existing state Office of Indigent Appeals and the Office of Capital Defense Counsel into one administrative unit in the executive branch. In addition to providing the direct client-representation services for which the two newly merged offices were previously responsible, the legislature also mandated that this new office examine the delivery of trial-level indigent defense services across the state. Specifically, the OSPD is to "coordinate the collection and dissemination of statistical data" and to "develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force." A third state agency, the Office of Capital Post-Conviction, continues to exist outside of OSPD's purview (it was not merged together along with the Office of Indigent Appeals and Office of Capital Defense Counsel in 2011). The Office of Capital Post-Conviction represents indigent individuals on Mississippi's death row in state post-conviction proceedings. Unlike many states where municipal courts only hear local ordinance violations, Mississippi's 246 municipal courts adjudicate misdemeanors and hold preliminary hearings on felonies. This makes cities and towns a primary funder of right to counsel services. Local governments, however, have significant revenue-raising restrictions placed on them by the state while being statutorily prohibited from deficit spending. There are three revenue sources available to local government: real estate taxes; fees for permits/services; and assessments on ordinance violations, traffic infractions and criminal convictions. But, because the state of Mississippi's low tax burden, local governments must rely more heavily on unpredictable revenue streams, such as court fees and assessments, to pay for their criminal justice priorities. It comes as no surprise then that there is wide inconsistency on indigent defense cost-per-capita spending across the state. Contract defender services are the predominant delivery model in Mississippi (29.27%, or 24 of 82 counties). Attorneys working under fixed rate contracts are generally not reimbursed for overhead or for out-of-pocket case expenses, such as mileage, experts, or investigators. In short, the more work an attorney does on a case, the less money that attorney would make, giving attorneys a clear financial incentive to do as little work on their cases as possible.

MISSOURI	Missouri statute places oversight of the right to counsel with a seven-member commission appointed by the governor with advice and consent of the Senate. MSPD has 33 trial-level public defender offices providing services to adult and juvenile clients in 45 judicial circuits covering the state's 115 counties. Unlike almost every other state public defender system that has a separate system for conflict representation, the Missouri public defender system assigns a neighboring public defender office to provide representation in multiple defendant and other conflict cases. Missouri uses assigned counsel or contract defenders in less than 2% of all cases assigned to the system.
MONTANA	The Montana Public Defender Commission (MPDC) is an 11-member public defender commission appointed by diverse authorities.[50] The MPDC oversees the Office of the State Public Defender (OSPD). OSPD employs 11 regional directors to oversee trial-level services. MPDC is statutorily authorized to promulgate standards related to the qualification and training of attorneys, performance guidelines, and supervision. MPDC is statutorily required to set standards related to manageable caseloads and workloads, to establish protocols for dealing with excessive caseloads, and to collect, record and report caseload data to support strategic planning, including proper staffing levels. MPDC is entirely state-funded. The regional directors determine the indigent defense delivery model employed in their respective regions in consultation with OSPD. Over time, the system gravitated to one in which each region now has staff attorneys and then qualified attorneys willing to accept cases enter into memoranda of understanding with OSPD to handle conflict cases and overload cases from the primary system.

NEBRASKA	Each county in Nebraska determines, without state input and with only minimal restrictions, the method it uses to provide Sixth Amendment right to counsel services. Those counties with populations exceeding 100,000 are required to establish public defender offices with popularly elected chief defenders at the helm [Douglas County (Omaha), Lancaster County (Lincoln) and Sarpy County (Papillion)]. Should any county with less than 100,000 residents voluntarily establish such an office, their chief public defender must likewise be locally elected. Approximately one-quarter of all counties have done so (23 elected defender systems in Nebraska's 93 counties. Not all of the elected defenders, however, work full time; many have private practices in addition). All others use a combination of public defenders, contracts, and assigned counsel systems to provide direct representation. The Nebraska Commission on Public Advocacy (NCPA) is a 9-member commission of the executive branch appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. NCPA employs a small, six-attorney office that provides direct representation only in capital trials, appeals, some serious non-capital felonies involving drugs and violent crime, and otherwise serves as a resource and training center for the county-based systems. And while the commission has attempted to craft standards and guidelines for trial-level representation, including workload standards, the commission lacks authority to enforce those standards and to otherwise examine the provision of right to counsel services at the county level.
NEVADA	Nevada statutes require all counties whose population is 100,000 or more to create a county-funded office of the public defender – Clark County (Las Vegas) and Washoe County (Reno) are the only two counties that qualify. Each of these counties also has a conflict defender office, though the Clark County Office of the Special Public Defender handles just conflict death penalty cases, other murder cases and representation of parents in termination of parental rights proceedings. An independent, coordinated assigned counsel system in Clark County handles all other conflict matters. The remaining fourteen counties and one independent city (Carson City) may if they so desire also establish a county public defender office, though only one other (Elko County) has done so. The State Public Defender is under the Department of Human Services in the executive branch. Counties may choose to have the SPD administer indigent defense services but must foot 805 of the cost. Over time, counties learned that, by simply opting out of the state system, they could spend less money to provide the services and exercise local power over their public defense systems. In most instances, the county governments establish systems in which the lowest bidder is contracted to provide representation in an unlimited number of cases for a single flat fee. The attorneys are not reimbursed for overhead or for out-of-pocket case expenses such as mileage, experts, investigators, etc. Today, the state public defender serves only two counties.

NEW HAMPSHIRE	The New Hampshire Judicial council is a 24-member statewide board created to provide information/assistance regarding the New Hampshire Courts.[51] The indigent defense fund provides state money for all right to counsel criminal services and funding for civil matters for which there is a state right to counsel. Since 1972, the judicial council has contracted the provision of all criminal right to council services to an independent, non-profit organization called the New Hampshire Public Defender (NHPD). An independent 9-member Board of Directors oversees the NHPD.[52] The NHPD has independent authority to provide primary services as they see fit. The NHPD has the authority to qualify private counsel and make the direct appointment when conflicts are identified. The executive director and staff of the Judicial Council exert supervision of the conflict attorneys to ensure quality representation.
NEW JERSEY	The provision of Sixth Amendment right to counsel services in the state of New Jersey has two distinct tiers: adult felony and juvenile delinquency cases handled by the statewide Office of the Public Defender, funded entirely by state general fund appropriation; and "non-indictable" misdemeanor cases handled by whatever method and funded at whatever level each individual municipality deems best. The chief public defender is a direct gubernatorial appointee. The municipal public defenders, in general, are private attorneys working part time under contract with the city government.
NEW MEXICO	The New Mexico Law Offices of the Public Defender (LOPD) is a statewide, state-funded agency of the judicial branch overseen by an independent, 11-member commission appointed by diverse authorities.[53] The commission selects the state's chief public defender. The LOPD is responsible for the provision of right to counsel throughout the state's trial and appellate courts, and provides direct client services through a mixture of traditional public defender offices and contracts with private attorneys. The agency's 11 branch public defender offices are located in and serve the state's more urban areas. In rural parts of the state, the agency's Contract Counsel Legal Services division administers contracts with private attorneys on a flat-fee-per-case basis. LOPD's Chief Defender is statutorily required to "formulate a fee schedule for attorneys who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act." LOPD currently pays contract counsel on a per case basis by case severity: misdemeanor ($180); juvenile ($250); 4th degree felony ($540); 3rd degree felony ($595); 2nd degree felony ($650); and 1st degree felony ($700). Contracts that pay a flat fee per case are detrimental to the indigent accused because attorneys have a financial self-interest to both dispose of cases quickly and contemporaneously seek appointment in as many cases as possible.[54]

NEW YORK	The state of New York has delegated to its counties the responsibility for administering the provision of right to counsel services at the trial level, along with almost the state's entire obligation for funding those services. As a result, there is no consistency from one county to the next in the method employed, nor is their consistency in the level of funding provided across the state. As a result, the level of quality delivered varies dramatically across the state, with numerous recent reports finding services in general to be substandard, if not altogether unconstitutional. The Office of Indigent Legal Services (ILS) is a state agency of the executive branch, overseen by a nine-member board, with limited authority to assist the state's county-based indigent defense systems to improve the quality of services provided. It does so primarily through funding assistance grants to counties. Diverse authorities appoint the Board.[55]
NORTH CAROLINA	The North Carolina Office of Indigent Defense Services (IDS) is a judicial branch agency that oversees the provision of right to counsel services throughout the state. An independent 13-member commission with the authority to promulgate standards related to training, attorney qualification and performance, among others, governs IDS. Diverse authorities appoint the Commission.[56] IDS also houses centralized representation units: appellate defender, office of parent representation, capital defender, and the juvenile defender. Trial-level representation is provided by staff public defenders, assigned counsel, and contract defenders throughout the state. The authority to determine the delivery model used in each judicial district is a legislative decision with input from local actors (county bars, judiciary, etc.). Because of the undue political interference to choose local delivery models only 16 judicial districts have established public defender offices. And, the presiding judge of the Superior Court in the district has the authority to hire the chief public defender, not IDS. In 2011, the state legislature directed IDS to move away from assigned counsel representation in favor of flat fee contract representation, and currently 18 counties provide services through such contracts.
N. DKOTA	The North Dakota Commission on Legal Counsel for Indigents (CLCI) is an independent seven-person commission of the executive branch responsible for developing standards governing the representation of indigent persons. Diverse authorities appoint Commission members.[57] CLCI has established six full-time public defender offices. Private counsel under contract to CLCI handles conflict cases in these six regions, as well as all indigent defense services in regions where there is no full-time public defender office. Private attorneys are paid at a rate of $75 per hour.

OHIO	The state of Ohio, for the most part, passes onto its county governments the responsibility for funding and administering the provision of Sixth Amendment right to counsel services. Ohio has a nine-member statewide indigent defense commission overseeing an executive branch state public defender agency.[58] However, unlike statewide defender agencies in other jurisdictions, the Ohio State Public Defender (OSPD) provides direct representation in only certain case types statewide. OSPD's Legal Division handles non-death adult appeals and post-conviction cases. Trial-level services are the responsibility of the state's 88 counties, though a county may opt to contract with the OSPD to provide these services (only 10 counties have done so). OSPD reimburses counties a portion of the cost of trial-level representation. The commission is responsible for promulgating standards, and the office responsible for disbursing state funds to counties meeting those standards. If counties complied with state-promulgated standards of quality, as originally conceived, the state would reimburse up to 50% of the county's costs made available in the next fiscal year. But state funding never reached the promised 50% level, dropping in some years to as low as 25%. At the same time, for decades, the state commission failed to promulgate any standards whatsoever, meaning there was no minimum threshold of quality against which to attach the state dollars. As a result, counties have little incentive to provide constitutionally adequate services.
OKLAHOMA	The Oklahoma Indigent Defense System is a state-funded agency in the executive branch that provides trial-level, appellate and post-conviction criminal defense representation to the indigent accused in 75 of the state's 77 counties. Both Tulsa County (Tulsa) and Oklahoma County (Oklahoma City) established public defender offices prior to statewide reform and were allowed to continue to provide services outside of the OIDS system. OIDS is overseen by a 5-person Board of Directors appointed by the governor with advice and consent of the Senate. Trial-level services are provided by staff public defenders operating out of one of six regional offices. Private attorneys under contract to OIDS provide services in conflict cases.

OREGON	The Oregon Public Defender Services Commission (OPDC) is an independent body in the judicial branch responsible for overseeing and administering the delivery of right to counsel services in each of Oregon's counties. The Chief Justice appoints all seven members. The commission is statutorily responsible for promulgating standards regarding the quality, effectiveness, and efficiency by which public counsel services are provided. With all funding for direct services provided by the state, the commission's central Office of Public Defense Services handles the day-to-day management of the system. Oregon is the only statewide system in the country that relies entirely on contracts for the delivery of public defense services. The statewide office lets individual contracts with private not-for-profit law firms (which look and operate much like the public defender agencies of many counties with full time attorneys and substantive support personnel on staff), smaller local law firms, individual private attorneys, and consortia of private attorneys working together. The actual contracts are the enforcement mechanism for the state's standards, with specific performance criteria written directly into the contracts. Should any non-profit firm or group of attorneys fail to comply with their contractual obligations, the contract simply will not be renewed.
PENNSYLVANIA	The Commonwealth of Pennsylvania provides no statewide administration or funding of right to counsel services. Its county-based systems remain entirely decentralized with no oversight by state government. In fact, the state's only statutory requirement is that each county must operate a county public defender office. In most counties, the local public defender office is a mixture of full time and part time attorneys. In the smallest counties, however, the defender office is a system of one or two attorneys who represent publicly appointed clients purely on a part time basis. And in the city and county of Philadelphia, the nonprofit law firm "the Defender Association of Philadelphia" is not a county agency, but operates as the city's primary right to counsel service provider under contract with the city. In all counties, private attorneys who accept appointments on an hourly basis or under annual contract, depending on the county handle conflict representation.
RHODE ISLAND	Rhode Island is home to the nation's first-ever statewide, state-funded public defender office. The Rhode Island Public Defender remains to this day as the state's primary system for providing right to counsel services. The chief public defender is a direct gubernatorial appointee, and is responsible for directing the agency's services to indigent defendants in adult criminal and juvenile delinquency trials and appeals. Being a geographically small state, the agency has but five satellite offices located across the state. Conflict representation is provided by a panel of private attorneys, paid hourly on a per-case basis, and administered by the Rhode Island Supreme Court.

SOUTH CAROLINA	The South Carolina Commission on Indigent Defense is a statewide, state-funded body of the executive branch charged with overseeing the state's delivery of indigent defense services. The commission is comprised of thirteen members.[59] The commission has the authority to promulgate standards regarding the provision of indigent defense services, including, among others: attorney qualification, performance, workload, training, data collection, attorney compensation, and indigence determinations. The commission also oversees the state's Office of Indigent Defense, a central office that: (1) provides day-to-day management of the statewide system; (2) processes and pays vouchers submitted by appointed counsel (Family court Abuse and Neglect cases, Termination of Parental Rights cases, other Family court matters, and Post Conviction Relief cases, and criminal conflicts); (3) operates an Appellate Division (handling all indigent appeals); and, (4) maintains a Capital Trial Division that provides death penalty representation throughout the state (usually alongside a local public defender) as first chair or second chair. At the trial level, the commission employs 16 circuit public defenders that serve four-year terms and that are selected through a complex process that begins at the county Bar level. Circuit defenders maintain salary and benefits parity with both the state's circuit judges and the state's 16 elected Circuit Prosecutors (called Solicitors in SC). The circuit defenders have broad flexibility as to how they run their day-to-day operations within the parameters of commission policy and standards. However, though the circuit defenders are state employees, the assistant public defenders are employees of one of the counties within their circuits.
SOUTH DAKOTA	State statutes require government to pay public lawyers a "reasonable and just compensation for his services." South Dakota Unified Judicial System Policy 1-PJ-10, issued by the state supreme court, interprets this statute to ban all flat fee. In 2000, the Court set public counsel compensation hourly rates at $67 per hour and mandated that "court-appointed attorney fees will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature." In 2014, assigned counsel compensation in South Dakota stands at $84 per hour. The State of South Dakota has no involvement in the oversight of indigent defense services and very limited involvement in the funding of the right to counsel. The vast majority of South Dakota's counties rely on private attorneys for indigent defense services, with only three counties electing the public defender model.

TENNESSEE

The Tennessee District Public Defender Conference (TDPDC) is a state-funded organization that coordinates training, provides assistance, and disseminates state funding to each of the state's 31 judicial districts (encompassing 95 counties). With the exception of Shelby County (Memphis), whose chief defender is appointed by the county mayor, the heads of each of the remaining 30 district defender offices are popularly elected. All serve eight-year terms, except the chief public defender in Davidson County (Nashville) who is elected every four years.

Under Tenn. Code Ann. § 8-14-402, the 31 district defenders vote to elect the executive director of TDPDC to a four-year term by simple majority vote. It may be tempting to think of the TDPDC executive director as analogous to a statewide chief public defender in another state, but that would be incorrect. The TDPDC executive director carries out policies as determined by the district public defenders. To facilitate more efficient decision-making, the 31 district defenders annually elect an executive committee that runs the day-to-day operation of the Conference through the executive director. Similar to the election of the TDPDC executive director, the election of the executive committee and policy positions (including budget) are determined by majority vote of the district defenders. The executive director then presents and defends TDPDC's budget at the state level. All TDPDC funding comes from a state appropriation.

However, because the public defender offices in Shelby and Davidson counties predated the creation of TDPDC, state funding for those offices is statutorily required to increase at the same percentage equal to the cost of living.

Additionally, although the State of Tennessee funds prosecutors throughout the state (called "district attorney generals"), local jurisdictions may augment that state prosecution funding if they so choose. However, Tenn. Code Ann. § 16-2-518 requires that any "increase in local funding for positions or office expense for the district attorney general shall be accompanied by an increase in funding of seventy-five percent (75%) of the increase in funding to the office of the public defender in such district for the purpose of indigent criminal defense." Knox County (Knoxville) is one of the few jurisdictions in the Tennessee that augments its state funding through the "75% rule." More than a quarter of the budget of the Knox County Community Law Office is local funding.

Tennessee Supreme Court Rule 13 establishes the rules for the appointment, qualification and payment of attorneys in those cases where the public defender has a conflict of interest. Tenn Sup. Ct. Rule 13(1)(e)(4)(A-D) directs the court to appoint the district public defender unless there is a conflict of interest or unless the district defender "makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards." Tenn. Sup. Ct. Rule 13(1)(b) directs each trial court to "maintain a roster

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of attorneys from which appointments will be made." Although the court rule lists extensive qualifications for lead and co-counsel in capital cases, there are no qualification parameters set out for the trial-level representation of adults and juveniles in non-capital cases. In short, discretion is left to the local courts about which lawyers are or are not qualified.

The same court rule delineates how such attorneys will be compensated. Attorneys can bill the court $40 per hour for out-of-court case preparation and $50 per hour for in-court work, though total compensation cannot exceed pre-set limits (e.g., the maximum an attorney can bill for a juvenile delinquency case is $1,000). Though the local judge is responsible for approving the voucher – and for approving case-related expenses – the state Administrative Office of Courts (AOC) pays the attorney out of state funds.

The Tennessee Office of the Post-Conviction Defender (TPCD) is a state-funded agency of the judicial branch providing representation to death row inmates in state collateral proceedings. The TPDC also provides training and assistance to district defenders on death penalty cases. A statewide nine-member commission oversees the TPCD. Diverse authorities make the appointments.[60] However, this commission does not satisfy the state's obligation to ensure that its Sixth and Fourteenth Amendment obligations are being met at the local level.

TEXAS	Texas' 254 counties are responsible for funding and administering the right to counsel, with limited support from the state. The vast majority of counties rely on assigned counsel systems administered by the judiciary, in which private attorneys are paid either on an hourly rate or at a set rate per case. The state's limited oversight and fiscal support is directed through the Texas Indigent Defense Commission (TIDC). TIDC is a standing committee of the Texas Judicial Council – a statewide criminal justice coordinating body. TIDC itself is a 13-member commission.[61] TIDC is authorized to set standards and policies related to, among others: attorney performance; attorney qualifications; training; caseload controls; indigence determinations; contracting; and attorney compensation. Counties are required to submit an annual indigent defense plan to TIDC indicating how the county meets TIDC standards, and in return TIDC disseminates state funding to offset the cost of meeting standards. TIDC serves as a compliance monitor for state standards, acts as a clearinghouse for Texas indigent defense data, and provides technical assistance to counties looking to improve right to counsel services. Importantly, TIDC also awards single- and multi-year grants to fund innovative direct client services. More so than any other state, Texas has increasingly experimented with providing indigent defense services on a regional (multi-county) basis, and often such regional defender systems are exclusive to certain types of cases. For example, the Lubbock Regional Capital Defender Office represents clients in death penalty cases in 94 counties scattered across the state. Perhaps based in part on the Lubbock regional office model, Bee County likewise has combined resources with neighboring Live Oak County and McMullen County to create a regional defender office to handle adult felonies and misdemeanors, while juvenile delinquency and mental health matters are still handled by the private attorney model so prevalent in the rest of the state. In 2010, the state of Texas created the Office of Capital Writs, a capital post-conviction state agency charged with representing death sentenced persons in state post-conviction habeas corpus and related proceedings.
UTAH	In 2016, the Utah legislature created the Utah Indigent Defense Commission (UIDC) – an 11-member commission made up of members appointed from diverse appointing authorities.[62] The principal duty of the UIDC is to adopt guiding principles for the oversight and assessment of public criminal defense services. The UIDC is additionally charged with ensuring that service providers are adequately compensated and to develop data collection procedures to ensure uniformity from jurisdiction to jurisdiction regarding attorney performance. The UIDC has express statutory authority to accomplish these aims, along with the authority to review, investigate, and enforce UIDC standards on local systems. UIDC is statutorily required to develop policies and procedures for how best to disseminate state new monies to help counties meet standards. However, it is important to note that all local governments are bound by UIDC standards whether they seek state funding or not.

VERMONT	The Vermont Defender General is a direct gubernatorial appointee that oversees primary and conflict indigent defense services related to criminal matters, as well as juvenile cases (delinquencies and dependencies). The central office houses an administrative office, the state appellate defender, a juvenile unit and a prisoners' rights unit. Primary trial-level services are provided through a combination of public defender offices with fulltime staff attorneys and contracts with private law firms. Vermont has 14 counties, eight of which are served by public defender offices. Private law firms provide services in the remaining six counties. When any one of these counties needs relief from caseload, the Office of the Defender General has three "caseload relief" contracts. One attorney handles caseload in the northern part of the state, one in the South, and one handling serious felonies anywhere in the state. The Defender General also contracts with a private attorney to run the managed assigned counsel system for conflict representation. The managing attorney appoints cases to other private attorneys qualified to handle different cases by case type.
VIRGINIA	The Virginia Indigent Defense Commission (VIDC) is an independent, state-funded body in the judicial branch responsible for the delivery of right to counsel services across the state. Diverse authorities appoint VIDC members.[63] VIDC has authority to set standards and to enforce compliance against those standards through its central office. The VIDC's executive director administers a statewide roster of qualified assigned counsel handling all cases where there is no public defender office, and handling conflicts where there is such an office. Virginia pays private attorneys an hourly rate ($90/hour). However, attorney compensation is capped at some of the lowest rates in the nation: Felonies ($445); Misdemeanors ($158).
WASHINGTON	Indigent defense services in the state of Washington are, for the most part, entirely county funded. The Office of Public Defense (OPD) provides direct representation, through contracts with private attorneys in direct appeals and civil commitment cases, as well as dependency and termination of parental rights in a limited number of counties. The OPD director is an appointee of the Supreme Court, though there is a legislatively derived 11-person advisory committee made up of diverse appointing authorities to assist in the promulgation of policies. Though there is no statewide commission overseeing the effectiveness of representation, the Washington Supreme Court has promulgated a number of rules impacting how services are provided, including banning flat fee contracting, establishing performance standards, and implementing caseload controls.

WEST VIRGINIA	West Virginia Public Defender Services (WVPDS) is a state-funded executive branch agency housed in the Department of Administration. Though WVPDS has an 11-member commission authorized to set standards related to attorney qualification, performance and training, the executive director of WVPDS is an at-will, direct gubernatorial appointee.[64] WVPDS also has total authority to decide how services are delivered in the state's 55 counties. Twenty-nine counties currently provide primary trial-level services through non-profit public defender corporations. Though each corporation has a Board of Directors – appointed jointly by the Governor, the county commission, and the local bar association – WVPDS has the authority to hire and fire (for just cause) the chief of each public defender corporation. Another 15 counties are slated to open public defender offices under a strategic plan currently being implemented. Though WVPDS provides no direct trial-level services, it does oversee an appellate defender office and a trial-level resource center. WVPDS also has an administration department that oversees contracts with non-profit public defender corporations and pays assigned council vouchers with 100% state funds. Conflict services in all counties and primary services in those counties with no public defender corporation are provided by private attorneys. The commission sets compensation levels for public defenders, experts, and investigators, though statutory language sets assigned counsel compensation at $65 (in court) and $45 (out of court).
WISCONSIN	Primary indigent defense services in Wisconsin are provided by government staff attorneys working in 35 local public defender offices to handle trial-level services, plus another two offices for appellate work, all overseen by the system's central administration. A state public defender serves as the system's chief attorney, who is appointed by an independent, nine-person commission, and who is responsible for carrying out the commission's policies and directives. The Governor appoints commission members with advice and consent of the Senate. SPD, through a division set apart from the primary system through ethical screens, is also responsible for overseeing representation of conflict defendants. SPD oversees certification, appointment, and payment of private attorneys who represent indigent clients. Private attorneys are paid in two ways: (1) an hourly rate; or (2) a flat, per case contracted amount (misdemeanor cases only).

WYOMING

The Wyoming Office of the Public Defender (OPD) is an executive branch agency whose chief executive, the state public defender, directs the delivery of all right to counsel services across the state, both primary and conflict services, from the central OPD office. Fourteen branch public defender offices (with full time and part time staff attorneys) provide the majority of services, although the agency also contracts with private attorneys to handle conflict cases.

Statutory language requires the funding of indigent defense services to be a hybrid state and county responsibility, with 85% of the OPD appropriation coming from state general funds and 15% from counties. But, whereas most hybrid state-county systems require budgets to be advocated for on many fronts, the same Wyoming statute authorizes OPD to bill individual counties a prorated share of their state budget based upon an equitable formula that takes into account such factors as population, property valuation, and level of serious crime. Thus all indigent defense budget battles occur at the state level.

1 *Gideon v. Wainwright*, 372 U.S. 335 (1963) at 343-45.

2 *Cf. Robertson v. Jackson*, 972 F.2d 529, 533 (4th Cir. 1992) (although administration of a food stamp program was turned over to local authorities, "'ultimate responsibility' . . . remains at the state level."); Claremont School Dist. v. Governor, 794 A.2d 744 (N.H. 2002) ("While the State may delegate [to local school districts] its duty to provide a constitutionally adequate education, the State may not abdicate its duty in the process."); Osmunson v. State, 17 P.3d 236, 241 (Idaho 2000) (where a duty has been delegated to a local agency, the state maintains "ultimate responsibility" and must step in if the local agency cannot provide the necessary services); Letter and white paper from American Civil Liberties Union Foundation et al to the Nevada Supreme Court, regarding Obligation of States in Providing Constitutionally-Mandated Right to Counsel Services (Sept. 2, 2008) ("While a state may delegate obligations imposed by the constitution, 'it must do so in a manner that does not abdicate the constitutional duty it owes to the people.'") available at http://www.nlada.net/sites/default/ les/ nv_delegationwhitepaper09022008.pdf.

3 On top of this, two states (Florida and Tennessee) give the electorate the right to vote into office a full-time chief public defender on either a circuit or district basis. Another state (Nebraska) requires counties of a certain population threshold to elect defenders while allowing all other counties the option of electing chief defenders. California authorizes a single county (San Francisco County) to elect its chief public defender.

4 This analysis only includes defender services in state and/or county prosecutions and does not include municipal court cases in which the right to counsel attaches. The one exception is New Jersey where municipal courts hear the equivalent of most misdemeanor cases in other states' courts of general jurisdiction.

5 Because trial-level services constitute the vast majority of state criminal and delinquency cases, this section focuses exclusively on that part of a state's Sixth and Fourteenth Amendment obligations.

6 466 U.S. 648 (1984).

7 The undue political interference on the right to counsel in New Mexico was not a partisan issue as Governors from both the Republican and Democratic parties have seen fit to replace sitting public defenders. In fact, former Governor Bill Richardson, a democrat, vetoed a bill passed on an overwhelmingly bi-partisan basis that would have created an independent statewide public defender commission, as required under national criminal justice standards. All of this political interference prompted the electorate to pass a state constitutional amendment requiring the creation of an independent right to counsel commission. Just as the creation of a commission moved

New Mexico out of this classification, many of the states in this classification could greatly improve their systems by also creating independent commissions.

8 The first of the American Bar Association Ten Principles of a Public Defense Delivery System explicitly requires that the "public defense function, including the selection, funding, and payment of defense counsel, is independent." In the commentary to this standard, the ABA notes that the public defense function "should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel" noting specifically that "[r]emoving oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense." The ABA Principles cite to the National Study Commission on Defense Services' (NSC) Guidelines for Legal Defense Systems in the United States (1976). The Guidelines were created in consultation with the United States Department of Justice (DOJ) under a DOJ Law Enforcement Assistance Administration (LEAA) grant. NSC Guideline 2.10 (The Defender Commission) states in part: "A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented. Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director. (a) The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics. (b) No single branch of government should have a majority of votes on the Commission."

9 In five of the states the governor makes all appointments (Arkansas, Hawaii, Missouri, West Virginia, and Wisconsin.) In two states (Colorado and Oregon) the judicial branch makes all of the appointments.

10 The North Carolina commission has apparent broad authority to oversee both primary and conflict services. Despite this the authority to change local delivery service models statutorily requires a legislative act after input from local actors (county bar associations, judiciary, etc.). Additionally, the presiding judge of the Superior Court in the North Carolina district has the authority to hire the local chief public defender.

11 The six states are: Idaho (trial-level only); Illinois (appellate only); Kansas (felony and appellate only); Nebraska (capital trials/appeals, and limited non-capital felonies); Oklahoma (rural counties only; Tulsa and Oklahoma City are outside the commission's authority); and Tennessee (capital post-conviction only).

12 The governor appoints all commission members in three states (Georgia, Kansas and Oklahoma). The judiciary appoints the embers of Illinois' limited authority commission.

13 In Kentucky, Jefferson County (Louisville) augments state funding of the right to counsel. Arkansas counties and municipalities both may augment state funding although only the city of Little Rock has chosen to do so. No Virginia counties contribute to indigent defense funding though they are statutorily allowed to augment state funds.

14 ALA CODE § 12-19-251 establishes the "Fair Trial Tax Fund" ("Fund"). ALA CODE § 12-19-72 requires circuit and district courts to assess, collect and remit civil filing fees to the Fund in the following manner: a) For cases filed on the small claims docket of the district court in which the matter in controversy, exclusive of interest, costs, and attorney fees, totals one thousand five hundred dollars ($1,500) or less, seventeen dollars ($17) to the Fair Trial Tax Fund; b) For cases on the small claims docket of the district court in which the matter in controversy, exclusive of interest, costs, and attorney fees, exceeds one thousand five hundred dollars ($1,500), twenty-one dollars ($21) to the Fair Trial Tax Fund; and, c) For cases filed in circuit court, twenty-five dollars ($25) to the Fair Trial Tax Fund.

15 ALA CODE § 12-19-252.

16 Each judicial district has a Judicial District Indigent Defender Fund that receives money collected by the courts within that jurisdiction from a $45 fee assessed on convictions for all offenses other than parking violations and on bond forfeitures. La. Rev. Stat. Ann. §§ 15:168 (2015). Clients seeking appointed counsel are also assessed a nonrefundable $40 application fee that deposits to the local Judicial District Indigent Defender Fund. La. Rev. Stat. Ann. §§ 15:175.A.(1)(f)-(h) (2015). Clients who are financially able may also be ordered to make

reimbursement for their representation, and payments are deposited to the local Judicial District Indigent Defender Fund. La. Rev. Stat. Ann. §§ 15:176(2015). The funds deposited to the Judicial District Indigent Defender Fund are non-reverting and remain permanently within the judicial district where they are collected. La. Rev. Stat. Ann. §§ 15:168 (2015).

17 There is no correlation between what can be collected through traffic tickets and the resources needed to provide effective representation. Reliance on fee-generated funding of public defense places law enforcement officers in the unenviable position of dramatically decreasing indigent defense revenue when they uphold public safety concerns. For example, a Louisiana Sheriff may determine it is in the community's best interest to focus his own limited resources on the prevention of a particular type of crime (e.g., the spread of opioids or methamphetamines). Objectively, that decision to shift police personnel from traffic enforcement to drug prevention may be the exact best thing for public safety. At the very least, it is a public policy that local voters in Louisiana can either support or reject when re-electing a Sheriff in a future election. However, the rededication of police resources in such a hypothetical would result in a decrease in public defense revenue while contemporaneously causing an increase in the need for public defense attorneys to represent those accused of drug crimes. Putting law enforcement in this position simply makes no sense.

18 Even this statement is not entirely accurate. Fourteen states have other (minimal) funding sources: 1) Arkansas: The Arkansas Public Defender Commission is state-funded except "[t]he cost of facilities, equipment, supplies, and other office expenses" and "additional personnel" beyond public defenders, secretaries, and support staff, which costs are borne by the counties. See ARK . CODE ANN .§ 16-87-302; 2) Florida: Funding for all public defenders' offices "shall be provided from state revenues appropriated by general law" and counties are not required to provide any funding other than for the local facilities, utilities, and communications services. FLA . CONST . art. V, § 14; 3) Kentucky: The funding for the Department of Public Advocacy (DPA) comes predominantly from the state general funds, but also from three special funds: court-ordered partial fees paid by clients who are financially able to pay toward the cost of their representation, KY . REV .STAT . ANN . §31.211 (West 2010); DUI services fees assessed on every person convicted of a DUI, KY . REV . STAT . ANN . §189A.050 (West 2010); and court costs of which DPA receives 3.5% capped at a maximum of $1.75 million, KY . REV . STAT . ANN . §43.320(2)(f) (West 2010); 4) Massachusetts: The Committee for Public Counsel Services funding is a general appropriation, although a portion of the appropriation comes from fees assessed on indigent clients to defray the cost of public representation. MASS . GEN . LAWS ANN . ch. 211D § 2A (West 2010); 5) Minnesota: A general fund appropriation is augmented through a non-reverting special revenue fund that comes from fees assessed on indigent clients to defray the cost of public representation, MINN . STAT . ANN .§ 611.20 (West 2012); 6) Missouri: Funding for all public defense services is provided through a general appropriation, except that cities and counties provide office space and utilities. MO . REV . STAT . § 600.040 (2015). There is also a "Legal Defense and Defender Fund" that holds receipts from fees assessed on indigent clients to defray the cost of public representation, which are used for designated defense-related expenses. MO . REV . STAT . § 600.090, .093 (2015); 7) Montana: Funding is predominantly through a general appropriation, but the state also has a special revenue fund that holds a public defender account that receives various assessments, MONT . CODE ANN . § 47-1-110 (2015); 8) New Mexico: Funding is through a general fund appropriation, N.M. STAT . ANN . § 31-15-5 (West 2010), plus a small Public Defender Automation Fund, N.M. STAT . ANN . § 31-15-5.1 (West 2010), that receives application fees collected from those seeking to have a public defender appointed, N.M. STAT . ANN . § 31-15-12.C. (West 2010); 9) North Carolina: Funding is through three line items in the general appropriation budget: the Indigent Defense Service fund; the Public Defender Service fund; and the Indigent Persons' Attorney Fee Fund. Every person applying for counsel in trial-level criminal cases is also assessed a mandatory $60 fee, of which $55 is remitted to the state Indigent Persons' Attorney Fee Fund. N.C. GEN . STAT . §§ 7A-455.1. Convicted clients who are capable of paying for some portion of their representation can be assessed a fee, which is collected by the local court and deposited to the state treasury. N.C. GEN . STAT . §§ 7A-455. A small amount of funds is collected by the county or municipal court as a facility fee, imposed as a cost assessed against criminal defendants, and the collected funds remain in the coffers of the locality to defray facility costs. N.C. GEN . STAT . §§ 7A-304(a)(2); 10) North Dakota: Funding is primarily through a general fund appropriation, though there is also a small special fund that receives money from court administration fees and indigent defense application fees; 11) Oregon: The state provides all funding, and 98% of that is through a general fund appropriation, while the remaining 2% is through the Public Defense Services Account, which is continuously appropriated to the Commission, OR . REV .STAT . ANN . § 151.225 (West 2013).The Public Defense Services Account receives: reimbursements from public defense services clients who are financially able to pay a portion of the cost of their representation, OR . REV . STAT . ANN . §§ 135.050(8), 151.487,151.505, 419A.211, 419B.198, 419C.203, 419C.535 (West 2013); 12) Rhode Island: Funding is predominantly through a general appropriation, R.I. GEN . LAWS §

12-15-7 (2010), although the Office of the Public Defender is authorized to accept grants and funds from other than the state, which are deposited into a restricted receipt account for the use of the public defense system, R.I. GEN . LAWS § 12-15-5 (2010); 13) Vermont: The largest portion of the funding is through a general fund appropriation. Additionally, there is a Public Defender Special Fund that receives money from: indigent clients who are financially able are required to reimburse the state for their representation, VT . STAT . ANN . tit. 13 § 5238 (2015); and, a surcharge assessed against every person convicted of operating a vehicle under the influence of alcohol, VT . STAT . ANN . tit. 23 § 1210(j) (2015); 14) Virginia: Funding is provided by almost entirely from a general fund appropriation. Counties and cities may, but are not required to, supplement the compensation of the public defender attorneys. Va. Code Ann. § 19.2-163.01:1 (2010). Convicted clients are assessed the cost of their representation as a cost of prosecution and collections go to the Commonwealth.Va. Code Ann. §§ 19.2-163, -163.4:1 (2010).

19 Oklahoma County (Oklahoma City) and Tulsa County (Tulsa) fund their own indigent defense services. Services in the rest of Oklahoma are state-funded. Public defender offices in Davidson County (Nashville) and Shelby County (Memphis) receive some state funding but each county must contribute significant local funding as well. All other indigent defense representation in Tennessee is state-funded.

20 In October 2014, the State of New York settled a class action lawsuit, Hurrell-Harring v. New York, that alleged defendants were being deprived of their right to counsel in five upstate counties. As part of that settlement, the state is required to fund and administer defender services in those five counties. The state of New York also currently provides some limited resources to improve defender services in other counties through a centralized grant-making office. In June 2016, the New York General Assembly and Senate both unanimously passed a bill to have the state of New York state reimburse its counties and New York City for all expenses for the right to counsel phased in over seven years: 25% in 2017; 35% in 2018; 45% in 2019; 55% in 2020; 65% in 2021; 75% in 2022; and full reimbursement as of April 1, 2023 and every year after. If signed by the Governor, New York will be reclassified as "state-funded" if and when that statutory promise is fulfilled.

21 The South Carolina Commission on Indigent Defense is a statewide, state-funded organization charged with overseeing the state's delivery of indigent defense services. The commission hires and pays the salary of chief public defenders in the16 state court circuits. However, although the circuit defenders are state employees, the assistant public defenders are employees of one of the counties within their circuits. The Wyoming Office of the Public Defender (OPD) directs the delivery of all right to counsel services across the state. However, counties are statutorily required to reimburse the state 15% of costs based upon an equitable formula that takes into account such factors as population, property valuation, and level of serious crime. Thus all indigent defense budget decisions occur at the state level.

22 Kansas pays for all appellate and felony representation while its counties pay for misdemeanor and juvenile delinquency representation. New Jersey funds appellate, felony and delinquency representation while municipalities fund misdemeanor representation.

23 The Georgia Public Defender Standards Council (GPDSC) does not directly provide services to clients but rather it provides support of various types and serves as the fiscal officer for circuit public defender offices, GA .CODE ANN . § 17-12-6 (2015). Under certain circumstances, single county judicial circuits can elect to "opt-out" of the circuit public defender system and instead use an alternative delivery system if: (1) the existing system had a full-time director and staff and had been operational for at least two years on July 1, 2003; (2) GPDSC determined the system meets or exceeds standards; (3) the county submited a resolution to the GPDSC by September 30, 2004 requesting to opt out; and (4) the county fully funds the system, though the Council will still provide some funds to that county. GA . CODE ANN . § 17-12-36 (2015). Indiana reimburses those counties that opt to meet state-standards up to 45% of the cost of providing indigent defense representation in non-capital trial services (excluding misdemeanors) and 50% for capital trial services. However, thirty-seven of Indiana's 92 counties do not choose to participate in the state's non-capital case reimbursement program as of the end of 2015. And, while any county with an indigent death penalty case can apply for reimbursement of 50% of their defense expenses, only 43 counties have ever done so.

The Ohio State Public Defender (OSPD) provides direct representation in only non-death adult appeals and post-conviction cases. Trial-level services are the responsibility of the state's 88 counties, though a county may opt to contract with the OSPD to provide these services (only 10 counties have done so). OSPD also reimburses counties up to 50% of the costs of providing trial-level representation. The Texas Indigent Defense Commission (TIDC)

disseminates state funding to counties to offset the cost of meeting TIDC standards. Additionally, TIDC has increasingly provided state funding for regional (multi-county) delivery systems for certain case-types. For example, the Lubbock Regional Capital Defender Office represents clients in death penalty cases in 94 counties scattered across the state. TIDC funds a regional defender office to handle adult felony and misdemeanor cases in Bee County, Live Oak County and McMullen County, while juvenile delinquency and mental health matters are still funded locally.

24 55 ILCS 5/3-4004.2 requires Illinois counties with populations above 35,000 must maintain a county public defender office; 42 of the state's 102 counties meet this threshold. The remaining 60 select whatever method they so choose. In counties maintaining public defender offices (whether compelled or by choice) the state covers 66.6% of the cost of the chief defender's salary (55 ILCS 5/3-4007I). The Mississippi Office of the State Public Defender (OSPD) houses an Office of Capital Defense Counsel that handles some trial-level capital representation.

25 Currently only White Pine county and the independent city of Carson City participate.

26 Arizona pays "a portion of the fees incurred" by a county when appointed counsel is designated to present a capital defendant in state post-conviction relief. California funds the representation of individuals in direct appeals and post-conviction proceedings, in both capital and non-capital cases. The state funded Office of Public Defense in Washington contracts with private counsel to provide direct representation in direct appeals and civil commitment cases, as well as dependency and termination of parental rights in a limited number of counties.

27 Arkansas, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Mexico, North Dakota, Oregon, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

28 All case-types include: appellate, felony, misdemeanor, juvenile delinquency and, if applicable, state civil right to counsel cases (e.g., termination of parental rights, children in need of services, etc.).

29 The four other states (Alabama, Florida, Louisiana, and North Carolina) are classified here as either "mixed state and local-run services" or "minimal or no state-run services," as discussed in the next sections.

30 Wyoming requires its counties to reimburse that state 15% of the costs for administering all services at the state-level.

31 Kansas administers all appellate and trial-level felony representation while its counties administer all misdemeanor and juvenile delinquency representation. New Jersey manages all appellate, felony and delinquency representation while municipalities operate misdemeanor trial-level representation.

32 Nevada administers public defender services in those counties that opts-into the state systems and agrees to share the costs. New York administers services in five counties. Oklahoma provides services for all rural counties outside of Oklahoma Coty and Tulsa. Ohio provides services to those counties opting to have services administered by the state.

33 Arizona, California, Idaho, Illinois, Indiana, Michigan, Mississippi, Nebraska, Pennsylvania, South Dakota, Texas, Utah, and Washington.

34 State-funded, state administered services under a commission; 2) State-funded, state administered services under a limited commission; 3) State-funded, state administered services under no commission; 4) State-funded, mixed administered services under a commission; 5) State-funded, mixed administered services under a limited commission; 6) State-funded, mixed administered services under no commission; 7) State-funded, local administered services under a commission; 8) State-funded, local administered services under a limited commission; 9) State-funded, local administered services under no commission; 10) Mixed-funded, state administered services under a commission; 11) Mixed-funded, state administered services under a limited commission; 12) Mixed-funded, state administered services under no commission; 13) Mixed-funded, mixed administered services under a commission; 14) Mixed-funded, mixed administered services under a limited commission; 15) Mixed-funded, mixed administered services under no commission; 16) Mixed-funded, local administered services under a commission; 17) Mixed-funded, local administered services under a limited commission; 18) Mixed-funded, local administered services under no commission; 19) Local-funded, state administered services under a commission; 20) Local-fund-

ed, state administered services under a limited commission; 21) Local-funded, state administered services under no commission; 22) Local-funded, mixed administered services under a commission; 23) Local-funded, mixed administered services under a limited commission; 24) Local-funded, mixed administered services under no commission; 25) Local-funded, local administered services under a commission; 26) Local-funded, local administered services under a limited commission; and, 27) Local-funded, local administered services under no commission.

35 The Indigent Defense Review Panel is a five-member body composed of appointees made by: the president of the Alabama State Bar (two appointees); the state's Association of Circuit Court Judges (one appointee); the Association of District Court Judges (one); and the president of the Alabama Lawyers Association (the state's African-American Bar). Appeals to the review board by OIDS may be either standards-based or based on fiscal concerns. The decision of the review board is final.

36 For example, Arkansas' second judicial circuit is composed of six counties. Rather than have a single office, the Commission authorized one office to serve four counties (Clay, Craighead, Greene, and Poinsett), a second office to serve Crittenden County, and a third to serve Mississippi County.

37 Conn. Gen. Stat. 887 §51-289: "(1) The Chief Justice shall appoint two judges of the Superior Court, or a judge of the Superior Court and any one of the following: A retired judge of the Superior Court, a former judge of the Superior Court, a retired judge of the Circuit Court, or a retired judge of the Court of Common Pleas; (2) the speaker of the House, the president pro tempore of the Senate, the minority leader of the House and the minority leader of the Senate shall each appoint one member; (3) the Governor shall appoint a chairman."

38 Chief defenders are elected every four years.

39 It may be tempting to think of the FPDA executive director as analogous to a statewide chief public defender in another state, but that would be incorrect. The FPDA executive director carries out policies as determined by the elected circuit public defenders. And, because FPDA is a non-statutorily required entity, the elected circuit defenders are not required to participate in the Association. The 20 circuit defenders are ultimately solely responsible to the constituencies that elected them.

40 The commission consists of: a member of the state senate; a member of the house of representatives; an appointee of the chief justice; four gubernatorial appointees. Three of the members appointed by the governor must be chosen from names submitted by the Idaho Association of Counties, the State Appellate Defender and the Idaho Juvenile Justice Commission, and must be confirmed by the senate; the fourth gubernatorial appointee must be an experienced criminal defense attorney. None of the appointees may be a prosecuting attorney or a current employee of a law enforcement agency.

41 Governor (3 appointments); Chief Justice (3); Speaker of the House (2); Senate President Pro Tempore (2); and the Indiana Criminal Justice Institute, which is the state's criminal justice planning committee (1).

42 Ky. Rev. Stats. 31.015 (1)(a): "The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor, law enforcement official, or judge, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided: 1. Two (2) members appointed by the Governor; 2. One (1) member appointed by the Governor. This member shall be a child advocate or a person with substantial experience in the representation of children; 3. Two (2) members appointed by the Kentucky Supreme Court; 4. Three (3) members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of three (3) persons submitted to him or her for each individual vacancy by the board of governors of the Kentucky Bar Association; 5. The dean, ex officio, of each of the law schools in Kentucky or his or her designee; and, 6. One (1) member appointed by the Governor from a list of three (3) persons submitted to him or her by the joint advisory boards of the Protection and Advocacy Division of the Department for Public Advocacy."

43 In June 2016, the governor signed legislation to restructure the composition of LPDB to more closely meet national standards. La. R.S. 15 §146 will authorize the Governor to appoint five members, one from each appellate court district. The five members shall be appointed from a list of three nominees submitted to the governor by a majority of the district public defenders providing public defender services in each appellate district. The chief justice of the Supreme Court of Louisiana appoints four members (a juvenile justice advocate; a retired judge with

criminal law experience; and two members at large.) The president of the Senate and the speaker of the House of Representatives shall each appoint one member.

44 M.R.S.A. Title 4, Chap. 37 §1803: "1. Members; appointment; chair. The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate. One of the members must be appointed from a list of qualified appointees provided by the Speaker of the House of Representatives. One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court. In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall consider input from persons and organizations with an interest in the delivery of indigent legal services. 2. Qualifications. Individuals appointed to the commission must have demonstrated a commitment to quality representation for persons who are indigent and have the skills and knowledge required to ensure that quality of representation is provided in each area of law. No more than 3 members may be attorneys engaged in the active practice of law."

45 MD Crim Pro Code §16-301(c): "(2) 11 members of the Board of Trustees shall be appointed by the Governor with the advice and consent of the Senate and shall include a representative of each judicial circuit of the State. (3) All members of the Board of Trustees shall be active attorneys admitted to practice before the Court of Appeals of Maryland. (4) One member shall be appointed by the President of the Senate. (5) One member shall be appointed by the Speaker of the House of Delegates. (6) Each member appointed to the Board of Trustees shall: (i) have significant experience in criminal defense or other matters relevant to the work of the Board of Trustees; or (ii) have demonstrated a strong commitment to quality representation of indigent defendants, including juvenile respondents. (7) A member of the Board of Trustees may not be: (i) a current member or employee of: 1. the Judicial Branch; or 2. a law enforcement agency in the State; or (ii) 1. a State's Attorney of a county or municipal corporation of the State; 2. the Attorney General of Maryland; or 3. the State Prosecutor."

46 Mass. Gen. Laws Ann. Ch. 211D §1:"The committee shall consist of 15 persons: 2 of whom shall be appointed by the governor; 2 of whom shall be appointed by the president of the senate; 2 of whom shall be appointed by the speaker of the house of representatives; and 9 of whom shall be appointed by the justices of the supreme judicial court, 1 of whom shall have experience as a public defender, 1 of whom shall have experience as a private bar advocate, 1 of whom shall have criminal appellate experience, 1 shall have a background in public administration and public finance, and 1 of whom shall be a current or former dean or faculty member of a law school. The court shall request and give appropriate consideration to nominees for the 9 positions from the Massachusetts Bar Association, county bar associations, the Boston Bar Association and other appropriate bar groups including, but not limited to, the Massachusetts Black Lawyers' Association, Inc., Women's Bar Association of Massachusetts, Inc., and the Massachusetts Association of Women Lawyers, Inc. All members of the committee shall have a strong commitment to quality representation in indigent defense matters or have significant experience with issues related to indigent defense. The committee shall not include presently serving judges, elected state, county or local officials, district attorneys, state or local law enforcement officials or public defenders employed by the commonwealth."

47 MI Comp. L. § 780.987: "(1) [T]he governor shall appoint members under this subsection as follows: (a) Two members submitted by the speaker of the house of representatives. (b) Two members submitted by the senate majority leader. (c) One member from a list of 3 names submitted by the supreme court chief justice. (d) Three members from a list of 9 names submitted by the criminal defense attorney association of Michigan. (e) One member from a list of 3 names submitted by the Michigan judges association. (f) One member from a list of 3 names submitted by the Michigan district judges association. (g) One member from a list of 3 names submitted by the state bar of Michigan. (h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name. (i) One member from a list of 3 names submitted by the prosecuting attorney's association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney. (j) One member selected to represent the general public. (k) One member selected to represent local units of government. (2) The supreme court chief justice or his or her designee shall serve as an ex officio member of the MIDC without vote. (3) Individuals nominated for service on the MIDC as provided in subsection (1) shall have significant experience in the defense or prosecution of criminal proceedings or have demonstrated a strong commitment to providing effective representation in indigent criminal defense services. Of the members appointed under this section, the governor shall ap-

point no fewer than 2 individuals who are not licensed attorneys. Any individual who receives compensation from this state or an indigent criminal defense system for providing prosecution of or representation to indigent adults in state courts is ineligible to serve as a member of the MIDC. Not more than 3 judges, whether they are former judges or sitting judges, shall serve on the MIDC at the same time. The governor may reject the names submitted under subsection (1) and request additional names."

48 MI Comp. L. § 780.712: "(1) An appellate defender commission is created within the office of the state court administrator. The appellate defender commission consists of 7 members appointed by the governor for terms of 4 years. Of the 7 members, 2 members shall be recommended by the supreme court of this state, 1 member shall be recommended by the court of appeals of this state, 1 member shall be recommended by the Michigan judges association, 2 members shall be recommended by the state bar of Michigan, and 1 member, who shall not be an attorney, shall be selected from the general public by the governor. A member of the commission shall not be at the time of appointment a sitting judge, a prosecuting attorney, or a law enforcement officer."

49 Minn. Stat. § 611.215(1): "(a) The State Board of Public Defense is a part of, but is not subject to the administrative control of, the judicial branch of government. The State Board of Public Defense shall consist of seven members including: (1) four attorneys admitted to the practice of law, well acquainted with the defense of persons accused of crime, but not employed as prosecutors, appointed by the Supreme Court; and (2) three public members appointed by the governor. The appointing authorities may not appoint a person who is a judge to be a member of the State Board of Public Defense, other than as a member of the ad hoc Board of Public Defense. (b) All members shall demonstrate an interest in maintaining a high quality, independent defense system for those who are unable to obtain adequate representation. Appointments to the board shall include qualified women and members of minority groups. At least three members of the board shall be from judicial districts other than the First, Second, Fourth, and Tenth Judicial Districts."

50 Mont. Code Ann. § 2-15-1028(2): "The commission consists of 11 members appointed by the governor as follows: (a) two attorneys from nominees submitted by the supreme court; (b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows: (i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender; (ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and (iii) one attorney who represents criminal defense lawyers; (c) two members of the general public who are not attorneys or judges, active or retired, as follows: (i) one member from nominees submitted by the president of the senate; and (ii) one member from nominees submitted by the speaker of the house; (d) one person who is a member of an organization that advocates on behalf of indigent persons; (e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana; (f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and (g) one person who is employed by an organization that provides addictive behavior counseling. (3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants."

51 N.H. Rev. Stat. Ann. § 494:1: "There is hereby established a judicial council which shall consist of the following: I. The 4 members of the judicial branch administrative council, appointed pursuant to supreme court rules. II. The attorney general or designee. III. A clerk of the superior court, selected by the chief justice of the superior court. IV. A clerk of the circuit court, selected by the administrative judge of the circuit court. V. The president-elect of the New Hampshire Bar Association. VI. The chairperson of the senate judiciary committee or a designee from such committee appointed by the chairperson. VII. The chairperson of the house judiciary committee or a designee from such committee appointed by the chairperson. VIII. Eight other members appointed by the governor and council, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 5 of whom shall be members of the public who are not lawyers. IX. Five other members appointed by the chief justice of the supreme court, 3 of whom shall be members of the New Hampshire Bar Association of wide experience who have been admitted to practice in the state for more than 5 years, and 2 of whom shall be members of the public who are not lawyers."

52 The President of the New Hampshire State Bar Association appoints three members and the Board elects the other six.

53 NMSA § 31-15-2.1. "A. The public defender commission, created pursuant to Article 6, Section 39 of the consti-

tution of New Mexico, consists of eleven members. Members shall be appointed as follows: (1) the governor shall appoint one member; (2) the chief justice of the supreme court shall appoint three members; (3) the dean of the university of New Mexico school of law shall appoint three members; (4) the speaker of the house of representatives shall appoint one member; (5) the majority floor leaders of each chamber shall each appoint one member; and (6) the president pro tempore of the senate shall appoint one member. B. The appointments made by the chief justice of the supreme court and the dean of the university of New Mexico school of law shall follow the appointments made by the other appointing authorities and shall be made in such a manner so that each of the two largest major political parties, as defined in the Election Code, shall be equally divided on the commission."

54 One June 2, 2016 the New Mexico Supreme Court handed down a decision in Kerr v. Parson in which assigned counsel rates and compensation caps were detailed. To read more see: http://sixthamendment.org/calm-down-the-nm-supreme-court-did-not-say-flat-fee-contracts-are-always-constitutional/.

55 The chief justice serves a chairman of the Board with the Governor appointing other members based on recommendations by: President of the Senate; the Speaker of the Assembly, the New York State Bar Association; state association of counties (2); and, the Chief Justice (judge or retired judge). The Governor also appoints one attorney and one other person of his choosing.

56 .C. Gen. Stat.§ 7A-498.4: "(b) The members of the Commission shall be appointed as follows: (1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary. (2) The Governor shall appoint one member, who shall be a no attorney. (3) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the President Pro Tempore of the Senate. (4) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the Speaker of the House of Representatives. (5) The North Carolina Public Defenders Association shall appoint member, who shall be an attorney. (6) The North Carolina State Bar shall appoint one member, who shall be an attorney. (7) The North Carolina Bar Association shall appoint one member, who shall be an attorney. (8) The North Carolina Academy of Trial Lawyers shall appoint one member, who shall be an attorney. (9) The North Carolina Association of Black Lawyers shall appoint one member, who shall be an attorney. (10) The North Carolina Association of Women Lawyers shall appoint one member, who shall be an attorney. (11) The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.... (d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys."

57 N.D.C.C. § 54-61-01: "(2) The commission consists of the following members: a)Two members appointed by the governor, one of whom must be appointed from a county with a population of not more than ten thousand. b) Two members of the legislative assembly, one from each house, appointed by the chairman of the legislative management. C) Two members appointed by the chief justice of the supreme court, one of whom must be appointed from a county with a population of not more than ten thousand. d) One member appointed by the board of governors of the state bar association of North Dakota... (5) Individuals appointed to the commission should have experience in the defense of criminal cases or other cases in which appointed counsel services are required or should have demonstrated a commitment to quality representation in indigent defense matters. Membership of the commission may not include any individual, or the employee of that individual, who is actively serving as a judge, state's attorney, assistant state's attorney, contract counsel or public defender, or law enforcement officer."

58 The Governor appoints 5 members (2 each from the major political parties) and the Supreme Court appoints 4 members (2 each from the major political parties).

59 The governor appoints nine members. Five gubernatorial appointments are based on the recommendations of the South Carolina Bar Association, and four are based on recommendations of the South Carolina Public Defender Association (and must reflect geographic diversity based on the state's four Judicial Regions). The chief justice of the South Carolina Supreme Court makes two appointments: one must be a retired circuit court judge, and one must be a retired judge with either family court or appellate experience. The Senate and House Judiciary chairs each appoint one person from their respective committees.

60 Governor (2); Lieutenant Governor (2); Speaker of the House (2); and Supreme Court (3).

61 Eight members are ex officio members of the Judicial Council as follows: the chief justice of the Supreme Court of Texas (the state court of last resort on civil matters); the presiding judge of the Court of Criminal Appeals (the state court of last resort on criminal matters); the chair of the House Criminal Jurisprudence Committee; two members of the Senate appointed by the lieutenant governor; one member of the House of Representatives appointed by the House speaker; one Court of Appeals justice appointed by the governor; and one county court judge also appointed by the governor. The governor appoints five additional members with the advice and consent of the Senate: one presiding district court judge; two county court judges or county commissioners (one of which must represent a county with a population greater than 250,000); one practicing criminal defense attorney; and one chief public defender.

62 Specifically, the Utah commission is composed of 11 voting and two ex officio nonvoting members. The governor, with the consent of the Senate, appoints nine members recommended by the following: The Utah Association of Criminal Defense Lawyers (3 members; two must be practicing criminal defense attorneys and one must be a director of a county public defender agency); The Utah Minority Bar Association (recommends an attorney); The Utah Association of Counties (two commission members, one from a more populated county and one from a more rural county); Utah League of Cities and Towns (recommends two members); and, The Utah Legislature (one member selected jointly by the Speaker of the House and the President of the Senate). The Utah Judicial Council and the Commission on Criminal and Juvenile Justice (UCCJJ) appoint the remaining two voting members. The Utah Judicial Council – a 14-member body of the judicial branch charged with the promulgation of uniform rules and standards to ensure the proper administration of justice across the state – directly appoints a retired judge to the UIDC. The Executive Director of the UCCJJ, or his designee, also serves on the UIDC. The UCCJJ is a governmental entity made up of 22 criminal justice stakeholders created to achieve broad philosophical agreement concerning the objectives of the criminal justice system. Finally, the two non-voting members of the new commission are a representative from the Administrative Office of Courts (appointed by the Judicial Council) and the Executive Director of the UIDC itself. All members appointed to the commission are to have significant experience in criminal defense proceedings or have demonstrated a strong commitment to providing effective representation in indigent criminal defense services.

63 VA Code § 19.2-163.02: "The Virginia Indigent Defense Commission shall consist of 14 members as follows: the chairmen of the House and Senate Committees for Courts of Justice or their designees who shall be members of the Courts of Justice committees; the chairman of the Virginia State Crime Commission or his designee; the Executive Secretary of the Supreme Court or his designee; two attorneys officially designated by the Virginia State Bar; two persons appointed by the Governor; three persons appointed by the Speaker of the House of Delegates; and three persons appointed by the Senate Committee on Rules. At least one of the appointments made by the Governor, one of the appointments made by the Speaker, and one of the appointments made by the Senate Committee on Rules, shall be an attorney in private practice with a demonstrated interest in indigent defense issues."

64 The Director of WVPDS serves as the commission chairperson with the Governor appointing the remaining members as follows: one former or retired circuit judge; three experienced criminal defense lawyers (one from each of the state's Congressional districts); one sitting chief public defender; one non-lawyer; one mental health or developmental disability advocate; and, one juvenile justice advocate.