



Colorado

Counties. 64

Indigent defense system. Colorado is the only state with two state commissions that oversee trial-level indigent defense statewide: the Public Defender Commission (primary) and the Alternate Defense Commission (conflict).

The Public Defender Commission was statutorily created in 1979 and is comprised of five members who are appointed by the Chief Justice of the Colorado Supreme Court: three members are attorneys who cannot be from the same political party and two members are public members. The commission oversees the Office of the Colorado State Public Defender and appoints the state public defender for a five-year term. The Office of the Colorado State Public Defender administers 21 regional defender offices across the state (some branch offices cover multiple counties), and an Appellate Division that serves all counties. Each regional defender office is staffed with full-time salaried attorneys and support staff who are government employees. All administrative and support functions for these regional offices are handled by a central administrative office in Denver.

The Alternative Defense Commission is a separate, statutorily created nine-member commission – all appointed by the Chief Justice of the Colorado Supreme Court – that oversees the Office of the Alternate Defense Counsel (OADC). The OADC provides representation to indigent defendants in criminal and juvenile delinquency cases in which the Office of the Colorado State Public Defender has a conflict of interest. Representation is provided through private attorneys that contract with OADC and are paid a rate of \$80/hour.

Municipal court representation. State law requires each municipality to provide counsel to an indigent defendant charged with a municipal ordinance violation for which there is a possible sentence of incarceration. The cities of Denver and Aurora created public defender offices to provide representation in municipal courts. Municipalities can also meet this requirement by contracting with OADC lawyers directly, requesting a list of OADC lawyers who can provide these services, using a law school clinic, or ensuring that the selection of court-appointed counsel is independent through an OADC evaluation or other independent evaluation. The OADC evaluates municipal courts at no cost to municipalities to determine whether the selection of counsel is transparent and merit-based; counsel is free from political and judicial influence; and counsel meets minimum qualifications and provides effective representation.

Indigency determination. The state public defender determines indigency, subject to review by the court. When someone requests a public defender, they are given an application that they must sign under oath. There is a non-refundable \$25 processing fee, which the defendant must pay at sentencing, adjudication, or other final disposition of the case. The court may waive the fee if it

finds that the person does not have the financial means to pay \$25.

The Office of the Colorado State Public Defender and the Alternate Defense Counsel are funded 100% at the state level.

Idaho

Counties. 44

Indigent defense system. Idaho has two separate indigent defense systems: one for appellate services and another for trial-level services.

Appellate. The State Appellate Defender's Office (SAPD) is an executive branch agency in the Department of Self-Governing Agencies. Under Idaho's constitution, this means that although the commission is housed in the executive branch, it does not answer directly to the Governor. The head of SAPD is appointed by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. SAPD has full-time state-employed public defenders to represent most cases, and contracts with private attorneys to represent cases on an as-needed basis.

For most of its existence, the SAPD provided representation of indigent defendants convicted at the trial level (felonies only), in state post-conviction proceedings (felonies only), in state habeas corpus cases (felonies only), and in petitions for post-conviction relief in capital cases. In 2020, SAPD expanded its mission to include misdemeanor and juvenile appeals. The SAPD can only provide representation to indigent defendants convicted in counties that participate in the state capital crimes defense fund, which is essentially an insurance fund for participating counties. Currently, all counties participate except Jefferson County (population of approximately 32,000).

Trial Level, pre-2022. Until very recent changes enacted in the 2023 legislative session, trial-level indigent defense services had primarily been a county obligation. The board of county commissioners in each county decided how its county would provide trial-level services, choosing either to maintain a public defender office (individually, or jointly with one or more other counties) or to contract with a private attorney or private law firm. Statutorily, counties are banned from employing flat fee contracts. As of 2022, Idaho has 12 public defender offices serving 14 counties; the remaining 30 counties contract with private attorneys or private law firms to provide trial-level indigent defense services.

The county systems were overseen by the Idaho Public Defender Commission (PDC), also a state-level executive-branch agency within the Department of Self-Governing Agencies. The nine members of the commission were appointed by diverse authorities, and no member was allowed to be a current prosecutor or employee of a law enforcement agency.

PDC had the authority to hire an executive director. PDC was responsible for promulgating statewide standards in seven primary areas: (1) providing the effective right to counsel to indigent people; (2) implementing and enforcing standards in all indigent defense systems and evaluating compliance with standards; (3) training and education for public attorneys and systems to promote competency and consistency; (4) uniform data reporting requirements and model forms that counties can use to annually report at least caseloads, workloads, and expenditures; (5) model contracts that counties can use to contract for the provision of services

and comply with standards; (6) procedures and forms for counties to apply for state grant funds, overseen and distributed by the commission; and (7) procedures for administrative review and fair hearings.

PDC was authorized to make grants to each county of up to \$25,000 or 15% of the average the county spent on indigent defense services in the first three of the five years preceding a grant application – whichever was the greater amount. For example, if a small rural county spent on average \$50,000 annually on right to counsel services, that county could get a grant for \$25,000 (or 50% of its spending). Meanwhile, a large county that spent \$3 million annually on indigent defense could receive up to \$450,000 from the state (15% of its three-year average spending). Importantly, state grants could only augment, and could not supplant, existing local funding.

Trial Level, post-2022. In 2022, the state legislature passed legislation to take over 100% of all indigent defense funding (appellate, trial, capital, etc.). This ended the state capital crimes defense fund. In 2023, the state legislature enacted statutory language to remove the responsibility of administering indigent defense from county government. The new statutes terminate the PDC and replace it with a statewide public defender system that is administered by a Chief Public Defender who is appointed by the governor, with the advice and consent of the senate, for a four-year term removable only for good cause. The new system anticipates 16 regional public defender offices covering the state's 44 counties.

Maine

Counties. 16

Indigent defense system. The Maine Commission on Indigent Legal Services (MCILS) is comprised of nine members who are appointed by the Governor and confirmed by the legislature. Seven of the nine commission members have voting power; one must have administration and finance experience; one must have child protection proceeding experience; and five must be chosen from a list of recommendations by the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Judicial Court. The two non-voting members are attorneys who primarily provide indigent legal services: one must be chosen from a list of recommendations by the Maine State Bar Association President, and the second must be chosen by the president of a different statewide organization representing criminal defense attorneys.

MCILS is statutorily obligated to (1) provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants, and children and parents in child protective cases, (2) ensure delivery of indigent legal services by qualified and competent counsel in a manner that is consistent throughout the state, and (3) ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

MCILS oversees indigent defense services by creating and enforcing standards. These standards include: governing eligibility for indigent legal services; prescribing minimum experience, training, and other qualifications for contract and assigned counsel; maximum caseloads; evaluation of assigned and contract counsel; independent, quality, and efficient representation of clients whose cases present conflicts of interest; and reimbursement of expenses incurred by assigned and contract counsel. MCILS' Executive Director is appointed by the commission and manages daily operations.

If an attorney fails to comply with a standard, the MCILS Executive Director may remove indefinitely or suspend that attorney from its roster. The maximum compensation a private attorney can be paid for each case is capped based on the type of case, which can be waived by the MCILS Executive Director. MCILS may fund the use of experts, investigators, travel, and non-routine expenses. Finally, MCILS operates a program to provide representation at the 48-hour hearing for in-custody defendants and the initial appearance for out-of-custody defendants.

Until recently, Maine was the only state in the country that provided all indigent defense services through private attorneys. In 2022, Maine hired full-time state-employee public defenders to provide representation in its most rural counties and in appellate cases.

Indigency determination. MCILS determines indigency to assess whether to appoint counsel to a defendant. If the “cash assets” of the defendant and their family are more than a specified amount based on the most serious crime with which the defendant is charged, MCILS automatically

recommends the defendant be denied an appointed attorney (\$1,000 for class D or E; \$2,000 for class C, \$3,000 for class B, and \$4,000 for class A).

The Maine Commission on Indigent Legal Services is funded 100% at the state level.

Minnesota

Counties. 87

Indigent defense system. A state judicial branch commission, the Minnesota Board of Public Defense (MBPD), oversees all indigent defense services statewide. Indigent defense services are directly administered by a chief district public defender in each of Minnesota's ten judicial districts through public defender offices and private attorney assigned counsel panels. The state also contracts with non-profit corporations to provide indigent defense services to Native American populations (Regional Native Public Defender Corporation and Duluth Indian Legal Assistance Program) and supplement services in urban areas (Neighborhood Justice Center and Legal Rights Center).

The MBPD is composed of seven members: the Minnesota Supreme Court appoints four members who must be attorneys familiar with indigent defense but not employed as prosecutors, and the Governor appoints three public members. Judges cannot be appointed to the board. The MBPD is responsible for (1) appointing the state public defender to a four-year term, (2) selecting a district chief public defender for each of the ten judicial districts and a chief appellate defender, (3) distributing appropriations from the legislature to state and district public defenders, and (4) setting standards for the delivery of indigent defense services across the state. The MBPD also appoints a chief administrator who is responsible, among other things, for policy development, fiscal management, and information systems.

The state public defender creates and enforces standards, which must include standards on attorney qualification, training, size of legal and support staff, caseload, contracting, indigency, conflicts of interest, and data recording/reporting. The state public defender is also responsible for supervising, evaluating, and training the district chief public defenders and chief appellate defender; representing the board at the Legislature, in the media, with the courts, and in various committees and task forces; resolving client complaints; and developing statewide training programs.

The MBPD, with the advice of the state public defender, appoints a chief public defender for each of the ten judicial districts. The chief public defender manages all public defense services within that district, including hiring and firing assistant public defenders, and is responsible for complying with MBPD policies. The chief public defender is permitted, subject to board approval, to use independent contract attorneys to handle direct services. When a person qualifies for counsel in an adult criminal case, the court appoints the chief district public defender of that judicial district, who then assigns the case to an assistant district public defender. If no district public defender can handle the case, the chief district public defender can, subject to the state public defender's approval, appoint other counsel. Appointed counsel must document the time worked and expenses incurred and will be paid with funds from the county aid program received from the MBPD.

Indigency determination and recoupment. A person accused of a crime is automatically considered "financially unable to obtain counsel" if they, or any dependent who resides in the same household "receives means-tested governmental benefits." Otherwise, it is the court's determination. Upon disposition of the case, an individual who has received public defender

services shall pay the court a \$75 co-payment for representation provided by a public defender, unless the co-payment has been reduced or waived by the court. The court may also determine that a defendant should partially pay or reimburse legal costs.

The Minnesota Board of Public Defense is funded 100% at the state level. All indigent defense services is funded by the state, with the exception of the Fourth Judicial District (Hennepin County), which is required to partly fund indigent defense in the county.

Montana

Counties. 56

Indigent defense system. Montana has a state executive branch agency, the Office of the State Public Defender (OPD), that oversees and delivers indigent defense services in all courts statewide, including the supreme, district, youth, justice, municipal, and city courts. OPD is headed by the Director who is appointed by the Department of Administration's Director, a governor appointee. The Director may be removed by the Director of the Department of Administration only for cause. The statute does not preclude a non-lawyer from holding the position of OPD Director.

OPD has four divisions: Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Service Division. The OPD Director is charged with appointing an administrator to oversee each division; establishing the qualifications, duties, and compensation for each position; and regularly evaluating the performance of all four administrators. The Director must also (1) construct statewide standards that apply to full-time government employees and contracted private attorneys, including standards for early appointment of counsel, attorney qualification and training, attorney workloads, and attorney performance, and (2) review and approve each administrator's strategic, operational plan and proposed budgets.

Services are primarily provided by public defender offices staffed with full-time state employees (Public Defender Division). Conflict cases are handled by conflict offices, also staffed with full-time state employees, but generally smaller in size (Conflict Defender Division). Both public defender and conflict offices are divided into three regions, with a Regional Deputy Public Defender overseeing public defender offices, and a Managing Public Defender overseeing conflict offices. Overflow cases are handled by private attorneys through contracts with OPD (Central Services Division). Generally, public defender offices represent most cases, especially serious felonies, while contracted private attorneys handle misdemeanors, municipal court cases, and justice court cases.

OPD mostly contracts on an hourly rate basis with private attorneys. As of December 2022, the hourly rate is \$71 per hour (\$45 for travel, and \$25 for administrative support work, with a 150-hour monthly cap, which can be waived). Prospective contractors must apply to OPD and will be certified only for specific cases and region(s). Attorney performance is evaluated every two years. OPD has some flat-fee contracts with private attorneys for municipal and justice courts (valued at approximately \$215 – \$400 per case), and sometimes to reduce backlogs, it will bundle misdemeanor cases and contract them out to a private attorney for a flat fee.

Indigency determination. A defendant is indigent if: “(a) the applicant’s gross household income is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or (b) the disposable income and assets of the applicant and the members of the applicant’s household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant’s household.” In establishing the eligibility determination process, OPD has

promulgated a policy creating a presumption of eligibility for an individual who is a current verified or documented recipient of a state or federally administered public assistance.

The Office of the State Public Defender is funded 100% at the state level.

Nebraska

Counties. 93

Indigent Defense System. A state executive branch commission, the Nebraska Commission on Public Advocacy (NCPA), provides direct services at state expense only in capital trials, some serious felonies, and appeals. Almost all defense services are administered, overseen, and funded at the county level.

The NCPA is comprised of nine members, all appointed by the governor from a list of attorneys prepared by the Nebraska Bar Association. The commission appoints a Chief Counsel, who hires and supervises attorneys and support staff to provide services in five divisions: capital litigation division, violent crime and drug defense division, appellate division, DNA testing division, and the major case resource center (which provide training and resources to indigent defense attorneys across the state). The NCPA must be appointed to all DNA testing cases whereas its appointment to other cases depends on local rules. All divisions are subject to the commission's caseload standards. In FY 2019-2020, NCPA's six lawyers represented 20 first-degree murder cases, 27 violent crime and drug defense cases, 11 appeals, and 4 DNA testing cases. The direct services provided by NCPA are at no cost to counties.

The commission is also required to adopt standards and guidelines for county indigent defense systems on the expenditure of funds appropriated by the legislature to counties that qualify for reimbursement, attorney qualifications, attorney compensation, caseloads, the appointment of counsel, awarding defense contracts, reimbursing defense expenses, conflicts of interest, training and continued legal education, and availability of expert witnesses and supportive services. Standards are only binding on counties that choose to opt into the commission's reimbursement program.

In 2003, NCPA became entirely funded through alternative revenues, specifically, money remitted through the indigent defense fee (\$3 for each case filed in the county court or district court, and for each appeal). In FY 2019-2020, NCPA received \$839,313.22 from indigent defense fees. Since 2008, case filings have steadily decreased, thus reducing NCPA's budget.

County systems. Nebraska delegates the provision of the right to counsel to its counties. Counties provide representation through public defender offices and contracts with private attorneys. In total, 22 counties have public defender offices.

Counties with more than 100,000 residents must establish a public defender office, and the chief public defender of that county must be elected. Only three counties are in this category: Sarpy (Omaha suburbs), Lancaster (Lincoln), and Douglas (Omaha) counties.

Counties with fewer than 100,000 residents may choose to establish a public defender office; if the county chooses to, the chief public defender must be elected. Nineteen counties (not including the three counties required to have a public defender office) have chosen to create a public defender office. Public defender offices must represent all indigent defendants charged with a felony, a jailable misdemeanor offense, and where a petition has been filed against an indigent defendant by the mental health board. County boards set the compensation and budget

of their respective county public defender office.

In all counties with fewer than 100,000 residents that also elect not to have a public defender office, the county board contracts with an attorney to serve as the county “public defender.” Counties must form a policy board (two attorneys and one layperson) to ensure the independence of the “public defender” and provide the county board with expertise. The policy board reviews applications for the “public defender” and forwards qualified applicants to the county board. The policy board also recommends compensation rates and specific contract provisions, and monitors compliance with the contract. The contract between the county board and “public defender” must be for at least two years, must specify which cases are covered, and must include a maximum caseload (either for full-time or part-time work).

Counties must fund their county indigent defense systems. There exists in state statute a reimbursement program where counties could get up to 25% of the costs associated with defending felonies reimbursed by the state if they comply with NCPA’s standards. However, this program has never been funded by the legislature and thus has never been operational.

Nebraska law allows judges of one or multiple districts to establish judicial district public defenders (subject to the Governor’s approval). 6AC is not aware of any such judicial district public defender in Nebraska, but if this ever occurs, any county public defender offices within the judicial district would be automatically abolished.

Indigency determination and reimbursement. There is no statutory or uniform standard for determining whether an individual qualifies for indigent defense services. “Indigent” is defined under state law as “the inability to retain legal counsel without prejudicing one’s financial ability to provide economic necessities for one’s self or one’s family.” The court may order that a defendant reimburse some or all the reasonable costs of representation, but only if the court determines that the defendant was never, or no longer is, indigent.

North Dakota

Counties. 53

Indigent defense system. The North Dakota Commission on Legal Counsel for Indigents (CLCI) is an executive branch commission that administers and oversees nearly all indigent defense services statewide.

CLCI, statutorily created in 2005, is governed by a seven-member board whose members serve staggered terms and are appointed by: the chief justice (two members, one from a county with a population of not more than 10,000), the legislature (two members, one from each house), the governor (two members, one from a county with a population of not more than 10,000), and the state bar association (one member). CLCI is responsible for creating standards, including standards for indigency determination, management of public defender offices, attorney qualifications, caseloads, performance, and conflicts.

The commission appoints a director, who oversees the delivery of indigent defense services and supervises compliance with commission standards. All indigent defense services are provided by public defender offices or private attorneys under monthly flat-fee contracts with the commission. The number of contracts entered each month is based on the number of case assignments in a judicial district. CLCI contracts provide that private attorneys agree to act in accordance with the performance standards promulgated by CLCI. Although CLCI has the authority to enforce this provision and monitor contractor performance, the commission does not exercise this authority.

CLCI has an assignment team of three staffers who assign cases across the state. Public defenders and full-time private attorneys (contracted to take around 24 cases per month) are considered primary providers and will follow a specific judge to reduce calendar conflicts. Part-time private attorneys (contracted to take around 8-10 cases per month) will handle overflow and conflict cases. As of November 2022, the commission has seven public defender offices staffed by twenty full-time state-employed attorneys, and contracts with 70 private attorneys.

Indigency determination and recoupment. Defendants automatically qualify for CLCI representation if they are receiving TANF (Temporary Aid to Needy Families), SSI (Supplemental Security Income), or Medical Assistance for the Elderly. A defendant will generally be considered indigent if their income is less than 125% of the federal poverty guidelines and their assets do not exceed \$20,000. To secure services from CLCI, a prospective client must submit an application with a \$35 fee to the court, which can be waived. At the conclusion of a case, the court may order a defendant to pay some or all the costs of representation, with flat rates ranging depending on the type of case (from \$300 for a misdemeanor case to \$2,250 for an appeal case).

Indigent defense services provided by the commission are 100% state funded. Approximately 10% of CLCI's 21-million-dollar budget in FY21-23 consists of fees (court administration fee, which can be waived for indigent defendants, and an indigent defense fee, addressed below). Expenses necessary for indigent defense services in violation of a county ordinance must be paid by the county, and expenses necessary for the defense of an indigent person prosecuted in

municipal court must be paid by the city in which the offense took place. However, a county or city may request that the commission provide indigent defense services in these cases. Under such an agreement, the locality would pay the commission for the services provided.

Wyoming

Counties. 23

Indigent defense system. Trial-level indigent defense services are provided in one of three ways: administered and funded by the state (majority of cases in district and circuits courts); administered by local judges and funded by the state (cases in district and circuits courts when the state agency is unavailable); or administered and funded by municipalities (in municipal courts). Wyoming does not have an indigent defense commission.

State system. The Office of the State Public Defender (OSPD) is a state executive agency that delivers indigent defense services to adult indigent defendants in district and circuit courts. OSPD is led by the state public defender, who is directly appointed by the governor. The state public defender administers the public defender program of the state, which consists of a primary public defender system and a secondary conflict system. For FY2021, the office had 90 authorized positions (including 16 part-time positions) for its primary public defender system and contracted with 25 mostly part-time contract private attorneys for its secondary conflict system.

Primary services are provided by state-employee OSPD attorneys in twelve public defender offices, or “field offices.” Some field offices serve more than one county; others have satellite offices. For conflict representation, OSPD contracts with private attorneys in each of its field offices or may hire a conflict attorney on an as-needed basis. If OSPD’s primary and secondary systems are unavailable, the court can appoint private counsel to the case. As of 2022, the rates are no more than \$100 per hour for in-court work and between \$35 and \$60 per hour for out-of-court work. Payment for private counsel assigned by OSPD is made by OSPD and no court approval is required. Payment for private attorneys appointed by the court must be approved by the court before being submitted to OSPD for payment.

Funding for indigent defense services must be shared by the state and counties, with 85% of the total appropriation coming from state general fund and 15% from counties. OSPD advocates at the state legislature for the entirety of the budget needed to provide all services. OSPD then bills each individual county for its prorated share of that statewide budget, based on an equitable formula that considers factors such as population, property valuation, and level of serious crime. This funding scheme eliminates the need for budgetary advocacy on multiple fronts (at the state legislature and in every county) and instead allows a single consideration of budgeting needs at the state level.

Local system. OSPD does not provide representation in municipal courts. Unless otherwise provided by ordinance, municipal courts must appoint private counsel to be paid by the municipality.

Indigency determination and reimbursement. A person is indigent when their annual gross income is less than 125% of the current federally established poverty level for his immediate family unit. If the income is between 125% and 218%, the person *may* be deemed indigent. If the income is greater than 218%, the person “shall not be deemed” indigent. There are two exceptions to this three-part test: (1) if the person is charged with a felony and the court finds

that there are extraordinary circumstances such that the person is entitled to representation; or (2) a person is presumed needy if they receive at least one six listed types of public assistance; *or* reside in a public mental health facility, is serving a sentence, or is in custody in county jail and has no available funds or liquid assets. Indigent defendants may be ordered to reimburse the state for the costs associated with the legal representation if the court finds that they have the ability to do so.