



The U.S. Supreme Court determined that the Sixth Amendment right to counsel is a state – not local – government obligation through the Fourteenth Amendment. The U.S. Supreme Court has never been asked whether it is constitutional for the state to pass its obligation onto local governments. However, when a state chooses to delegate its right to counsel responsibilities to local governments, the state must guarantee not only that those local governments and officials are able to provide effective representation, but that they are in fact doing so.

There is currently no constitutional requirement as to how public defense services must be funded and administered. Some states pass on the entirety of their obligations to local governments, while other states delegate no responsibility at all. A significant number of other states strike a balance by sharing their constitutional duty with local governments. Because states have chosen a myriad of ways to fund and administer the right to counsel, 6AC uses the following terminology for clarity.

## Terms

**Administration of public defense services** is the government entity authorized to determine and operate the structure of indigent defense services, including the responsibility to decide the selection, qualification, compensation, training, and supervision of attorneys representing indigent defendants. A **public defender** is a government-employed attorney who provides indigent defense services. A public defender may be part-time or full-time and compensated by the hour, salary, or any other method. A **private attorney** is not a government-employed attorney but is appointed to provide indigent defense services. A private attorney can provide indigent defense services under contract or on a case-by-case basis. A private attorney who represents indigent defendants on a case-by-case basis is typically called **assigned counsel**.

There is no constitutional requirement as to the indigent defense delivery model that a government must employ.

**Oversight of public defense services** is the government entity authorized to ensure that the state's constitutional obligation to provide effective representation is met, regardless of whether services are administered by the state or local government.

The state is responsible for ensuring uniform quality statewide. A state government is able to oversee representation in all case types in all courts by creating either an indigent defense commission to oversee a centralized office, or a centralized state government indigent defense office, that manages daily operations and carries out the duties of the commission or office.

**Funding of public defense services** is the way that government pays for indigent defense services. Funding can come through a state government appropriation; a local government appropriation; a hybrid of state and local government appropriation; or some alternative funding source. An **alternative funding source** is any means of funding indigent defense that is not a state or local government appropriation (e.g., court filing fees, reimbursement of costs by defendants, traffic ticket revenue, etc.).

The American Bar Association calls for state government funding because local jurisdictions most in need of indigent defense services are often the ones least able to afford them. A government that primarily relies on an alternative funding source to fund indigent defense is not sustainable because there is no predictability or correlation between the resources necessary to ensure effective representation and the revenue raised through the alternative funding source.

## Overview

### Funding

State government funding	Colorado, Idaho, Maine, Minnesota, Montana
Local government funding	
Hybrid government funding	Nebraska, North Dakota, Wyoming

### Administration

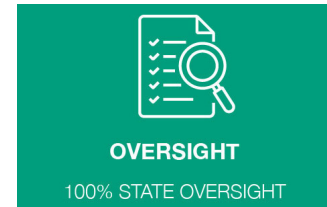
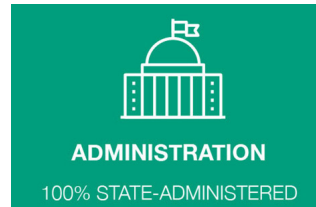
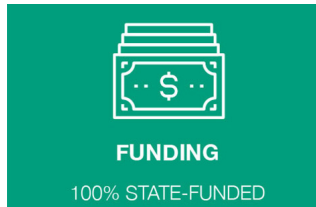
State government administration	Colorado, Idaho, Maine, Minnesota, Montana
Local government administration	
Hybrid government administration	Nebraska, North Dakota, Wyoming

### Oversight

Statewide oversight	Colorado, Maine, Minnesota
No statewide oversight	
Limited statewide oversight	Idaho, Montana, Nebraska, North Dakota, Wyoming

## Colorado

Indigent defense services are funded and administered by the state in some courts, and by local governments in other courts. Two state judicial branch commissions, the Public Defender Commission and Alternate Defense Commission, oversee state-administered services.



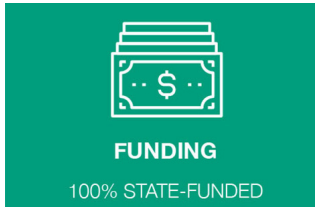
The state funds and administers indigent defense services in every court, except in municipal courts. The state administers services through two agencies: the Office of the Colorado State Public Defender provides primary services in adult and juvenile cases through regional public defender offices, and the Office of the Alternate Defense Counsel provides conflict services in adult and juvenile cases through contracts with private attorneys paid on an hourly basis.

Cities fund and administer indigent defense services in municipal courts and cannot contract with either state agency to provide these services. However, the Office of the Alternate Defense Counsel offers an evaluation program at no cost to the municipalities to support municipalities in providing indigent defense services in municipal courts.

The Public Defender Commission, composed of five members appointed by the chief justice of the state supreme court, oversees the Office of the Colorado State Public Defender and appoints the state public defender. The Alternate Defense Commission, composed of nine members appointed by the chief justice of the state supreme court, oversees the Alternate Defense Counsel and appoints its director.

## Idaho

Indigent defense services are funded and administered by the state. Two state executive branch agencies, one for appellate services and one for trial-level services, are housed in the Department of Self-Governing Agencies.

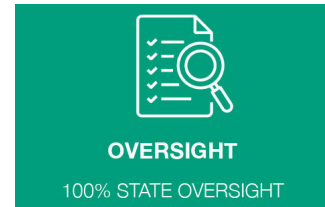
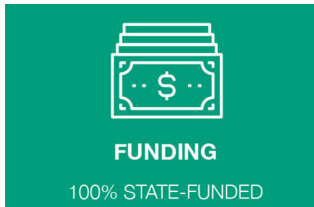


The State Appellate Public Defender is appointed by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. The State Appellate Public Defender has full-time state-employed attorneys to handle the majority of cases, and contracts with private attorneys to provide representation as needed on a case-by-case basis.

In March of 2023, the Idaho legislature enacted statutory measures that changed trial-level services from a hybrid state and county system to a full statewide system. The statewide trial-level indigent defense system will be overseen by a Chief Public Defender appointed directly by the governor, with the advice and consent of the senate, for a four-year term and is removable only for good cause. The new legislation envisions that the Chief Public Defender will oversee a regional public defender system of state-employed attorneys in 16 regional offices covering the state's 44 counties. The Chief Public Defender will also oversee conflict services provided by private attorneys paid hourly or under contract. Flat fee contracting is banned in Idaho.

## Maine

Indigent defense services are funded and administered by the state. A state judicial branch commission, the Maine Commission on Indigent Legal Services, oversees indigent defense services statewide.

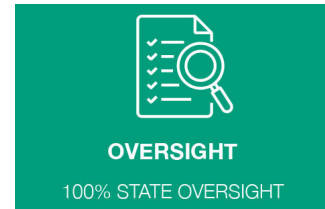
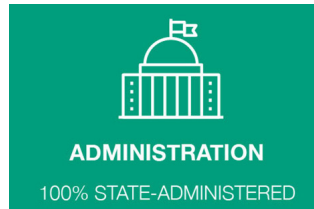
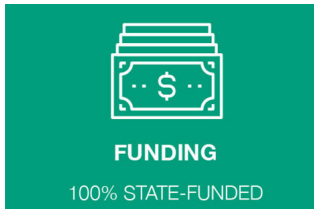


The state funds and administers indigent defense services statewide. The Maine Commission on Indigent Legal Services provides representation in all adult and juvenile cases. The commission administers indigent defense services mainly through private attorneys paid on an hourly basis. The commission provides courts with its list of private attorneys and judges assign cases to individual attorneys. The commission also employs a small number of full-time state-employee public defenders to provide indigent defense services in rural areas.

The Maine Commission on Indigent Legal Services is composed of nine members appointed by the governor from recommendations by various groups and only seven of the nine members have voting power. The commission appoints an executive director, who manages daily operations, and sets and enforces the commission's standards.

## Minnesota

Indigent defense services are funded and administered by the state. A state judicial branch commission, the Minnesota Board of Public Defense, oversees all indigent defense services statewide.

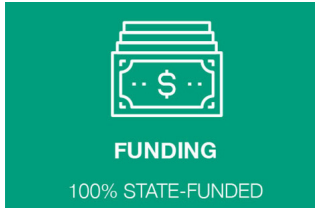


The state funds all indigent defense statewide and administers services through a regionalized system: in each of the state's ten judicial districts, a chief district public defender delivers services through public defender offices and private attorney assigned counsel panels. The state also contracts with non-profit corporations to provide indigent defense services to Native American populations and supplement services in urban areas. 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.

The Minnesota Board of Public Defense is composed of seven members that are appointed by the state supreme court and governor. The commission appoints a state public defender and the ten chief district public defenders. The state public defender manages daily operations, sets standards, and supervises all ten districts.

## Montana

Indigent defense services are funded and administered by the state. A state executive branch agency, the Office of the State Public Defender, oversees all indigent defense services statewide.

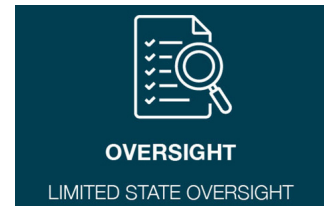


The Office of the State Public Defender delivers indigent defense services in all courts statewide. Public defender offices, grouped into three regions, provide primary services. Conflict public defender offices, also grouped into three regions, represent conflict cases. Overflow cases are represented by private attorneys under contract with the Office of the State Public Defender and are paid on an hourly or flat fee basis.

The Office of the State Public Defender is headed by the Director who is appointed by the Department of Administration's Director, a governor-appointee. The Director sets standards, appoints and supervises division heads, and oversees indigent defense statewide. The state does not have a commission that oversees the Director.

## Nebraska

Indigent defense services are funded and administered by local governments for some case types and by the state for other case types. A state executive branch commission, the Nebraska Commission on Public Advocacy, oversees only state-administered services. The commission has no oversight of local indigent defense services.



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

The Nebraska Commission on Public Advocacy, composed of nine members that are appointed by the governor, appoints a chief counsel to manage daily operations with a staff. The commission does not oversee local indigent defense services and it is funded entirely through court fees.



## North Dakota

Indigent defense services are funded and administered by the state in some courts and by local governments in other courts. A state executive branch commission, the North Dakota Commission on Legal Counsel for Indigents, oversees only state-administered indigent defense services.



The state funds and administers all indigent defense services, except for violations of county ordinances and some municipal matters. The state provides services through public defender offices and monthly contracts with private attorneys. Local governments may request the state to provide services in cases for which the local governments are responsible, but the localities must still pay for the services received.

The North Dakota Commission on Legal Counsel for Indigents oversees all state-administered indigent defense services. The commission, composed of seven members appointed by all three branches of government, appoints a director who is responsible for setting standards. The commission does not oversee local-administered services unless a locality has chosen to contract with the state for services.

## Wyoming

Indigent defense services are funded and administered by the state in some courts and by local governments in other courts. A state executive branch agency, the Office of the State Public Defender, oversees only state-administered indigent defense services.



Indigent defense services are administered by the state in district and circuit courts, and by municipalities in municipal courts. State-administered services must be funded 85% by the state and 15% by the county. The state appropriates all necessary funding and then bills each county for its prorated share. Municipalities must fund all representation in the municipal courts.

The Office of the State Public Defender provides trial-level adult criminal representation through public defender offices primarily and private attorneys under contract in conflict cases. Overflow cases are represented by private attorneys appointed by local judges.

The state public defender, who is a governor-appointed, heads the state agency and oversees all state-administered services. The state agency does not oversee municipal representation. The state does not have a commission to oversee the state public defender.