

JUVENILE INDIGENT DEFENSE DELIVERY AND OVERSIGHT SYSTEMS

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Each of the 50 states has chosen how to implement the Fourteenth Amendment's guarantee of effective counsel for youth in delinquency proceedings.¹ This chart provides an overview of states' juvenile indigent defense delivery systems and centralized oversight bodies. For statutory citations and more information relevant to juvenile indigent defense, including in-depth assessments of access to counsel in some states, please see the State Data pages on the website of the National Juvenile Defender Center, available at www.njdc.info/state_data.php.

Although every effort has been made to ensure the accuracy of this overview, state policies and institutions change constantly. To submit updates or clarifications, please contact Julia Kernochan at (202) 452.0010 x113 or jkernochan@njdc.info. NJDC welcomes your contributions.

Indigent Defense Delivery Systems:

For this overview, a statewide system is defined as one in which juvenile indigent defense is primarily provided by staff public defenders whose salaries are paid solely with state funds. It is worth noting that because the chart reflects the primary service method, this category includes some hybrid systems. In a few such states, public defenders predominate but large minorities of the population are served by assigned or contract counsel in locales where it would be impractical to establish staff defender offices.² In addition, Tennessee (where defenders are elected) and Oklahoma's juvenile appellate services are classified as statewide although two large urban counties in each state are required to fund and administer their own indigent defense.

Applying this definition, twenty-two states and the District of Columbia have jurisdiction-wide juvenile indigent defense systems that provide representation through the adjudication stage.³ This number includes Florida and Tennessee, where defenders are elected. Three of these states also have statewide alternate systems that handle cases in which the primary defenders' office has a conflict of interest.⁴ Elsewhere, conflict cases are usually handled by assigned counsel. Other than Arkansas, states with adjudication-

¹ *In re Gault*, 387 U.S. 1, 36 (1967).

² Systems that are primarily statewide but use other service methods in some counties: New Mexico, Vermont, West Virginia.

³ Statewide juvenile indigent defense delivery systems: Alaska, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Rhode Island, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming.

⁴ Statewide defense systems for conflict cases: Alaska, Arkansas, and Missouri.

phase public defense also provide appellate representation. Four states provide representation only for juvenile direct appeals through statewide offices, and not for adjudication proceedings.⁵

The non-state system category includes states where the primary responsibility for providing indigent defense services through the adjudication phase rests with county governments or with judicial circuits comprised of county groups. Counties or judicial circuits are typically empowered by statute to choose among different models of defense service delivery: public defender, assigned counsel, or contract attorney. In most such systems, counties are responsible for funding indigent defense. However, there are several states that fully or largely fund juvenile indigent defense but are classified here as non-state systems because they do not meet the definition of statewide service provision described above.⁶

Some states, classified as non-state systems in this table, provide some public defender services that are limited to certain locations or case types. Where state-supplied public defense is restricted, it tends to be unavailable to children in delinquency proceedings,⁷ reflecting the low priority that state legislators too often place on juvenile representation. Indiana is an exception to this rule in that the limited mandate of its statewide Public Defender includes juvenile parole revocation and post-conviction cases.

State Oversight Bodies:

The trend among states is toward increased central oversight of indigent defense, including delinquency representation. Fifteen states, with and without statewide defender systems, have an oversight body in some branch of state government that fully supervises the delivery of juvenile indigent defense services.⁸ For the purpose of this overview, full oversight is defined as the power to hire (or appoint) and/or fire (either for cause or at will) the attorney(s) who deliver defense services. This category includes some state oversight bodies that oversee contracts for indigent defense, but not states that merely administer programs to assign counsel to individual cases.⁹ Usually, a full oversight body is associated with a statewide defender system, but there are exceptions.¹⁰

⁵ Statewide defense systems at the appellate phase only: Illinois, Ohio, Oklahoma, and South Carolina.

⁶ Non-state defense systems that received 66% or more of their funding from the state in FY 2002: Alabama (100%), Kansas (78%), Maine (100%), Massachusetts (100%), New York (100%), North Carolina (100%), North Dakota (100% via contracts coordinated at the state level), Oklahoma (66%), Oregon (100%), South Carolina (67%), Virginia (100%), Washington (appellate only).

⁷ States with limited public defense systems: California (capital appeals and postconviction proceedings only), Idaho (state appellate defender barred by statute from handling delinquency cases), Kansas (trial representation provided and funded by the state in adult felony cases only), Michigan (up to 25% of appeals), Mississippi (capital cases only), and Oregon (limited state appellate representation does not extend to juveniles).

⁸ States with full oversight bodies: Arkansas, Colorado, Connecticut, District of Columbia, Hawaii, Kansas, Maryland, Minnesota, Missouri, Montana, New Hampshire, North Dakota, Oklahoma, Virginia, and Wisconsin.

⁹ States with full oversight bodies that administer contract attorney programs: Kansas, North Dakota, and Oklahoma.

¹⁰ For example, under North Dakota's reform law slated to take effect in July 2006, a statewide body will oversee services provided overwhelmingly by contract attorneys.

An additional fifteen states have bodies that provide partial or advisory oversight.¹¹ Partial oversight describes bodies that are merely advisory or standard-setting, or any centralized organization or commission that lacks the power to hire, dismiss, or otherwise control the performance of defenders. There is wide variation in the powers and duties of these bodies, summarized in the farthest right column of the table. While some oversight groups are merely advisory, others promulgate standards that are mandatory or are associated with substantial financial incentives.

Twenty-one states, with and without statewide service provision, have not established bodies to supervise indigent defense delivery. Twelve of them also have non-state public defense delivery systems.¹² In these states, counties or other lower-level jurisdictions are expected to assure the quality of juvenile indigent defense in addition to providing services. Moreover, of twenty-three jurisdictions that do provide statewide juvenile indigent defense at the adjudication stage, nine have no separate oversight institution.¹³ In these states, indigent defense delivery is generally supervised by the chief defender. The elected defenders of Florida and Tennessee lack true oversight bodies but have professional associations that provide some centralized training and coordination.

STATE	PERCENT STATE FUNDED*	ADJUDICATION REPRESENTATION		STATE-WIDE APPELLATE	STATE-WIDE CONFLICT	STATE OVERSIGHT BODY FOR PRIMARY DEFENSE SERVICES SYSTEM			Powers & Duties of Partial Oversight Body
		Non-State System	Statewide System			Full Oversight	Partial Oversight	No Oversight	
Alabama	100%	X						X	
Alaska	100%		X	X	X			X	
Arizona	0%	X						X	
Arkansas	100%		X		X	X			
California	6%	X						X	
Colorado	100%		X	X		X			
Connecticut	100%		X	X		X			

¹¹ States with partial oversight bodies: Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Nebraska, North Carolina, Ohio, Oregon, South Carolina, Texas, Washington, and West Virginia.

¹² Lacking statewide public defender systems or oversight: Alabama, Arizona, California, Idaho, Maine, Michigan, Mississippi, Nevada, New York, Pennsylvania, South Dakota, and Utah.

¹³ Lacking independent oversight of indigent defense: Alaska, Delaware, Florida, New Jersey, New Mexico, Rhode Island, Tennessee, Vermont, and Wyoming.

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		Non-State System	Statewide System			Full Oversight	Partial Oversight	No Oversight	
Delaware	100%		X	X				X	
District of Columbia	100% federal		X	X		X			
Florida	80%		X (elected)					X	
Georgia	40% ¹⁴	X					X		Set mandatory standards.
Hawaii	100%		X	X		X			
Idaho	14%	X						X	
Illinois	25%	X		X			X		Approve budget, may recommend dismissal of Appellate Defender.
Indiana	up to 40%	X					X		Reimburse counties up to 40% of delinquency counsel costs.

¹⁴ Major reforms to Georgia's indigent defense system took effect on January 1, 2005. Indigent defense is delivered by public defenders selected by appointed panels in each judicial circuit. The system is centralized at the state level through a Standards Council, but is not classified here as statewide because it receives only 40% state funding and 60% county funding. Moreover, although Georgia law requires every defender office to establish a juvenile division, no dedicated state funding has been set aside for juvenile defenders. Some counties fund defenders devoted to juvenile practice, and in other locations juvenile defense is supplied by an attorney who splits time with adult defense. The exact proportion of state funding for juvenile defense is therefore difficult to determine, and may actually fall below 40%.

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Iowa	100% ¹⁵		X	X			X		Recommend assigned counsel rates.
Kansas	0% ¹⁶	X				X			
Kentucky	95%		X	X			X		Recommend nominees for state public defender.
Louisiana	25%	X					X		Qualify assigned counsel and give out state money.
Maine	100%	X						X	
Maryland	100%		X	X		X			
Massachusetts ¹⁷	100%	X					X		Set standards for assigned counsel.
Michigan	not available	X						X	

¹⁵ Iowa Code § 815.11 (West 2005).

¹⁶ Overall, Kansas funds 78% of indigent defense costs statewide. However, state funds are limited to felony trials and subsequent appeals, while the counties are wholly responsible for misdemeanor and juvenile cases.

¹⁷ Massachusetts has a Public Defender that handles serious cases, including some juvenile court cases. In addition, there is a Youth Advocacy Project in Boston's Roxbury neighborhood that provides all juvenile delinquency representation. However, Massachusetts is not classified here as a statewide system since the bulk of delinquency cases are handled by assigned counsel under partial state oversight.

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		Non-State System	Statewide System			Full Oversight	Partial Oversight	No Oversight	
Minnesota	100%		X	X		X			
Mississippi	11%	X						X	
Missouri	100%		X	X	X ¹⁸	X			
Montana (as of 7/1/06)	100%		X	X		X			
Nebraska	0% ¹⁹	X					X		Advisory only.
Nevada	3%	X						X	
New Hampshire	100%		X	X		X			
New Jersey	100%		X	X				X	
New Mexico	100%		X	X				X	
New York	100% ²⁰	X						X	
North Carolina	100%	X					X		Select methods of defense delivery, set standards.
North Dakota	100%	X				X			
Ohio	45%	X		X			X		Some contract

¹⁸ Conflict cases are usually handled by a state defender from a different office.

¹⁹ Nebraska provides some state money for felony defense, but these are defined as offenses with a possibility of incarceration in an adult correctional facility. In FY 2002, no state money was directed toward the defense of juveniles in delinquency cases.

²⁰ New York provides only partial state funding for adult criminal defense in non-capital cases, but fully funds the representation of children in delinquency and dependency proceedings.

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									programs, partially reimburse in other counties.
Oklahoma	66%	X		X		X			
Oregon	100%	X					X		Administer defense and set standards.
Pennsylvania	0%	X						X	
Rhode Island	100%		X	X				X	
South Carolina	67%	X		X			X		Give out state funds.
South Dakota	32%	X						X	
Tennessee	87%		X (elected)					X	
Texas	7%	X					X		Set policies with which counties must comply to get state funds.
Utah	0%	X						X	

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		Non-State System	Statewide System			Full Oversight	Partial Oversight	No Oversight	
Vermont	100%		X	X				X	
Virginia ²¹	100%	X				X			
Washington	5%	X					X		Advisory only.
West Virginia ²²	100%		X	X			X		Make grants to defender corporations and evaluate.
Wisconsin	100%		X	X		X			
Wyoming	85%		X	X				X	
TOTAL: 51	--		23						

* Unless otherwise noted, figures in this column are taken from *State and County Expenditures for Indigent Defense Services in Fiscal Year 2002* (September 2003), prepared by The Spangenberg Group for the American Bar Association Bar Information Program, available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf> (last visited November 30, 2005). The percentage figure indicates what proportion of all indigent defense services are funded by the state, rounded to the nearest whole number; with some exceptions, it is assumed that the same proportion of juvenile defense is state funded.

²¹ In Virginia, indigent defense is funded by the state but supplied by a combination of regional public defender offices and assigned counsel panels. Public defender offices are established by state statute but do not constitute state agencies.

²² Indigent defense in West Virginia is supplied by public defenders or assigned counsel. Public defenders are employees of legal entities organized at the judicial circuit level. However, West Virginia is classified here as a statewide system because public defenders are fully paid by the state and serve the majority of counties.