

PUBLIC DEFENDER TASK FORCE MEETING AUGUST 24, 2017

AGENDA

WELCOME

APPROVE MINUTES OF LAST MEETING

SIXTH AMENDMENT CENTER UPDATE

NEED FOR OVERSIGHT OF INDIGENT DEFENSE SERVICES

UPDATES FROM OSPD AND CPCC

IMPACT OF NEW RULES

OTHER LOCAL DEVELOPMENTS

SEVEN PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM IN MISSISSIPPI

OSPD PLAN FOR STATEWIDE PUBLIC DEFENDER SYSTEM

Q&A

NEXT MEETING DATE

## PUBLIC DEFENDER TASK FORCE MEETING JANUARY 9, 2017

### MINUTES

WELCOME – Justice Kitchen’s (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 Professor Bob Boruchowitz also with 6AC joined by telephone.

STATE DEFENDER 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.

# DRAFT

## **SEVEN PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM IN MISSISSIPPI**

1. There should be a state-level entity responsible for promulgating evidence-based standards for qualifications and performance of indigent defense providers; compensation ranges for providers; workload limits for providers and financial qualifications of clients for services.
2. The selection of chief defenders and staff should be based on merit and the recruitment of attorneys and support staff should involve special efforts aimed at achieving diversity among service providers.
3. Every defense delivery system must have the active participation of the private bar. The private bar participation may include defenders working part-time for an established public defender office; a controlled assigned counsel panel or on a contract for services basis. There should be a circuit level public defender office in each district responsible for limited service delivery and overall system oversight including reporting to state-level entity on standards compliance.
4. There must be parity between defense counsel and the prosecution with respect to workload, compensation and resources.
5. Where possible systems should establish comprehensive representation models that incorporate client-centered and interdisciplinary programs.
6. Clients must be screened for eligibility and attorneys assigned and notified of assignment as soon as possible after arrest or request for counsel. Once attorney-client relationship is established counsel should continue representation of the client until completion of the case.
7. Defense counsel's experience and training must match the complexity of the case and the attorneys existing workload must be taken into consideration at the time of assignment of new cases. Counsel must be provided with and required to attend continuing legal education in the area of defense practice. Counsel must be subject to supervision and systematically reviewed for quality and efficiency according to adopted standards.

# Alabama



*All data is current as of 2013, unless otherwise noted.*

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Read about a particular aspect of the right to counsel in Alabama by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Alabama, then **[Collapse All]** whenever you need to do so.

## **How the right to counsel is administered and structured**

State commission: none

Branch of government: executive

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 (termination for just cause only) from three names nominated by the Alabama State Bar, Board of Commissioners.

OIDS is statutorily obligated to set standards related to, among others: fiscal responsibility and accountability; minimum attorney qualifications, 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 determinations; and recoupment.

## ALABAMA STRUCTURE

Governor

Department of Finance

Office of Indigent Defense Services



Indigent Defense Review Panel

local attorney and  
county-based  
indigent defense  
system

Each judicial circuit has a five-person advisory board that is responsible for making decisions about the delivery of services in that circuit. Each 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.

A state Indigent Defense Review Panel hears appeals of any disagreement between a local advisory board and the director of OIDS about local service delivery. The panel is a five-member body composed of appointments 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.

#### **How the right to counsel is funded**

Percentage of state funding: 54%

Percentage of local funding: 0%

Percentage of alternative funding: 46% – civil filing fees

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 the Office of Indigent Defense Services (OIDS) funding needs exceed the amount of dollars available in that fund, the state is statutorily responsible for funding the difference out of the state general fund.

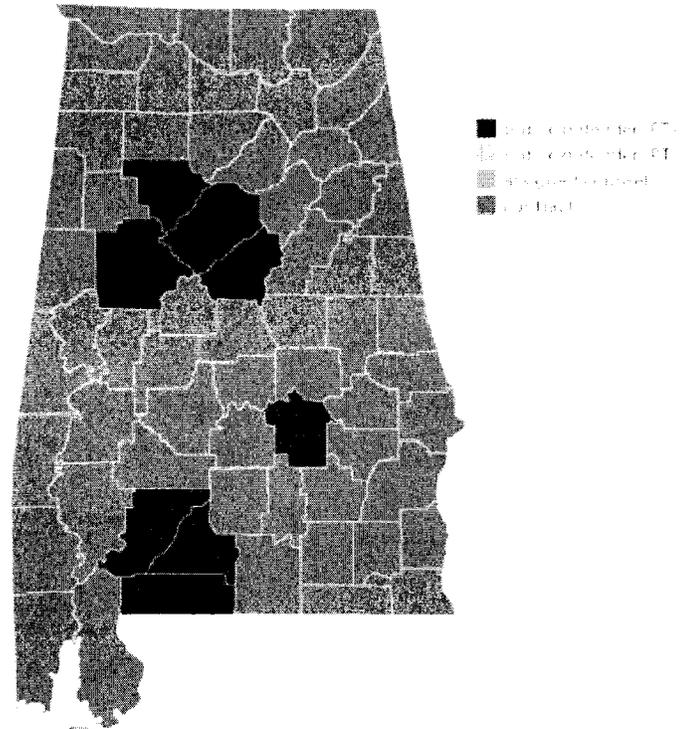
#### **The methods used to provide public counsel**

Local indigent advisory boards within each judicial circuit make decisions regarding the structure of local right to counsel services.

Because the state Office of Indigent Defense Services (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.

### ALABAMA TRIAL LEVEL SERVICES



### Legal authority

*Source of data: original research conducted by Sixth Amendment Center staff.*

# Arkansas



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Read about a particular aspect of the right to counsel in Arkansas by clicking on the heading for that issue. Or **[Expand All]** to see and print from one location all of the facts about the right to counsel in Arkansas, then **[Collapse All]** whenever you need to do so.

## How the right to counsel is administered and structured

State commission: yes

Branch of government: executive

The Arkansas **Public Defender Commission** (APDC) is an executive branch agency. APDC is composed of seven members, all appointed by the Governor. Commissioners are appointed to five-year terms. 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 standards for the qualifications, training, and performance of attorneys.

### ARKANSAS STRUCTURE

Governor

Public Defender Commission

Executive Director

District 1 Defender Office

Cross, Lee, Monroe,  
Philips, St. Francis,  
and Woodruff counties

The Commission has a central office that houses a conflict capital office, appellate services, and a training unit.

## How the right to counsel is funded

Percentage of state funding: 100%

Percentage of local funding: negligible – counties provide office space and utilities

Percentage of alternative funding: 0%

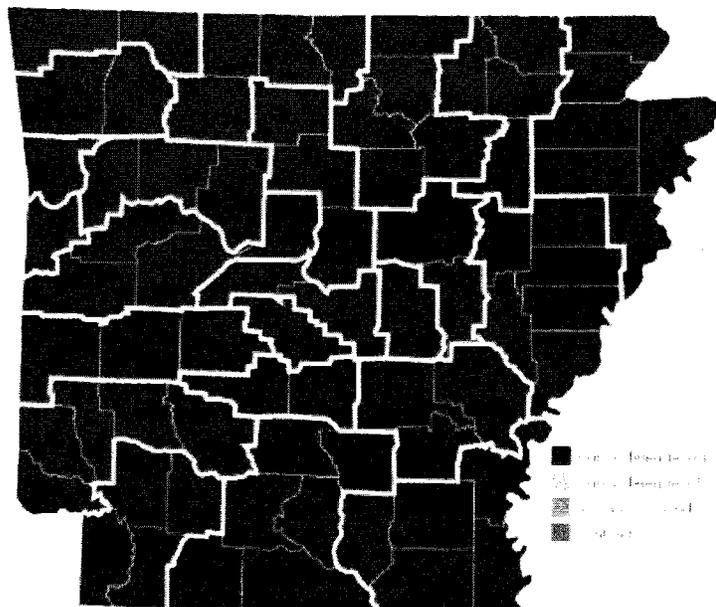
In **State v. Independence County**, 312 Ark. 472, 850 S.W.2d 842 (Ark. 1993), the Arkansas Supreme Court decided that the state is responsible for the funding of indigent defense services. However counties are responsible for some limited physical plant costs including utilities and telecommunications 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 methods used to provide public counsel**

The state level Arkansas Public Defender Commission (APDC) determines 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. 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.

### ARKANSAS TRIAL-LEVEL SERVICES



For conflicts, APDS primarily contracts with private attorneys. In certain urban areas of the state, however, the commission has determined that enough conflicts exist to support conflict public defender offices. For example, the Northwest Conflict Office serves as a regional conflict office for two counties (Madison and Washington counties), while another conflict office in Little Rock serves Pulaski County.

### **Legal authority**

Arkansas Constitution, [art. 2, § 10](#)

Arkansas Code, [§§ 16-87-201 through 16-87-218](#) (public defender commission) and [§§ 16-87-301 through 16-87-307](#) (funding)

*Source of data: original research conducted by Sixth Amendment Center staff.*

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# Florida



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## **How the right to counsel is administered and structured**

State commission: none

Branch of government: executive

Florida's 67 counties are divided into 20 judicial circuits, and in each of these judicial circuits, a chief public defender is popularly elected to ensure independence from the judiciary and other governmental agencies. Chief defenders are elected every four years.



The **[Florida Public Defender Association, Inc. \(FPDA\)](#)** is a private, non-profit entity created in the early 1970s to bring a more unified voice to the **[20 independent elected circuit 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.

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 not statutorily required to exist, the elected circuit defenders are not required to participate in the Association. The 20 circuit defenders are ultimately solely responsible to the constituencies that elect them.

Statewide, Florida operates five **Regional Counsel offices** to handle trial conflicts and appeals, one in each appellate district, and three **Capital Collateral Regional Counsel offices**, one each serving the northern, central, and southern regions of the state.

### **How the right to counsel is funded**

Percentage of state funding: 100%

Percentage of local funding: negligible – counties provide office space and information technologies

Percentage of alternative funding: 0%

The right to counsel in Florida is considered state-funded, with some exceptions. Counties, for example, are required to provide office space and informational technology services for the 20 circuit public defenders. In addition, a few counties and municipalities pay the circuit public defender offices to provide representation in non-state misdemeanor cases. Counties are also not prohibited from contributing resources to circuits for special projects, for example, creating specialized units for early appointment of counsel or providing attorneys for county-based specialty courts such as a mental health court.

### **The methods used to provide public counsel**

**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), with each office overseen by a popularly elected chief public defender.

When a circuit public defender has a conflict – for example when there are multiple co-defendants or in instances of case overload – secondary representation is provided by five **regional conflict defender offices** covering each of the state's five appellate jurisdictions, which are likewise staffed by full-time employees (although the chief conflict attorney is not popularly elected).

Tertiary representation is provided by private attorneys paid on an hourly basis or under contract to the judiciary.

### **Legal authority**

Florida Constitution, **art. 1, § 16**

Florida Statutes, [§§ 27.40 through 27.61](#) (public defenders and other court-appointed counsel), and [§§ 27.7001 through 27.715](#) (capital collateral representation)

*Source of data: original research conducted by Sixth Amendment Center staff.*

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- Georgia consent decree requires competent counsel for children and adults Posted on: April 28, 2015

# Georgia



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## How the right to counsel is administered and structured

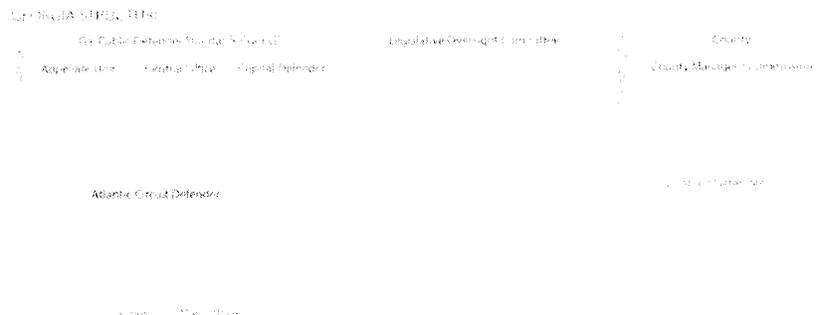
State commission: yes – limited authority

Branch of government: executive

The Georgia Public Defender Council (GPDC) is a fifteen-member commission within the executive branch. The executive branch of government has the majority of appointments to GPDC, but there is also an eight-member legislative oversight committee that reviews the council's work.

The council appoints circuit public defenders to oversee trial-level indigent defense services in 49 of the state's judicial circuits, but counties can opt out of the system, meaning the state has no regulatory authority over those regions. Because of this, GPDC is defined as having limited authority.

GPDC also oversees a central office that provides training, capital support services, appellate representation, and mental health advocacy. GPDC has limited authority to enforce the standards it promulgates.

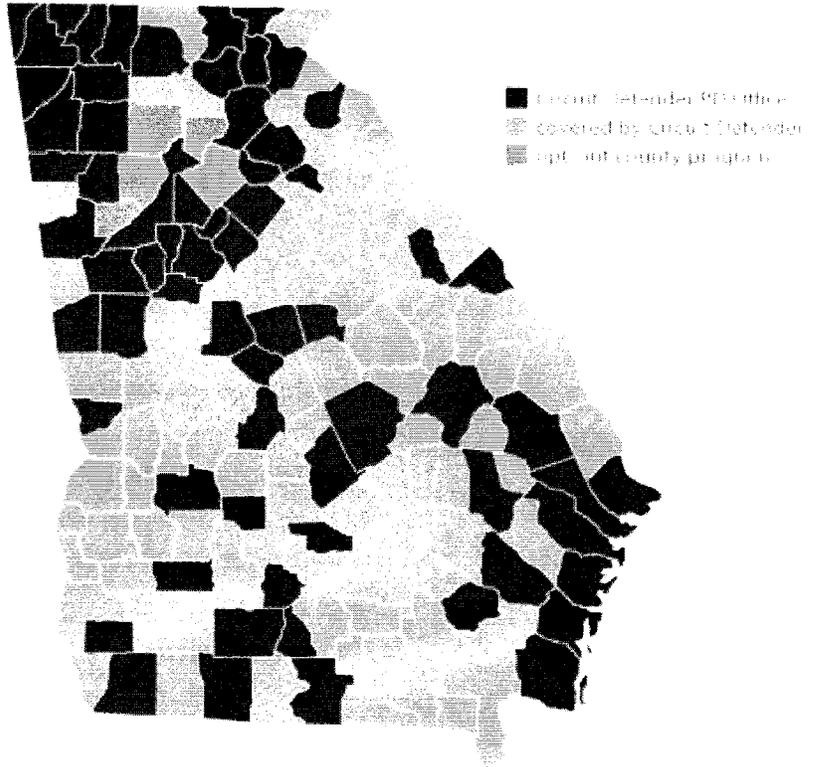


## How the right to counsel is funded

Percentage of state funding: 37%  
Percentage of local funding: 63%  
Percentage of alternative funding: 0%

### The methods used to provide public counsel

#### GEORGIA TRIAL LEVEL SERVICES



#### Legal authority

Georgia Constitution, [art. 1, § 1, ¶ XIV](#)

Georgia Code, [§§ 17-12-1 through 17-12-128](#)

*Source of data: original research conducted by Sixth Amendment Center staff, augmented by the American Bar Association, [State, County and Local Expenditures for Indigent Defense Services: Fiscal Year 2008](#), November 2010.*

# Kentucky



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## **How the right to counsel is administered and structured**

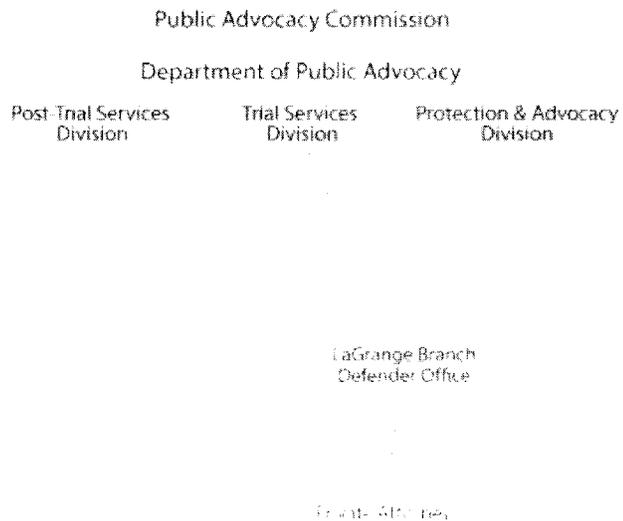
State commission: yes

Branch of government: executive

The Kentucky **[Department of Public Advocacy](#)** (DPA) is a statewide, state-funded agency in the executive branch. DPA is overseen by an independent 12-member Public Advocacy Commission appointed by diverse authorities: Governor (7 appointments: 3 lawyers recommended by Kentucky Bar Association; one child advocate; 1 recommended by DPA's Protection & Advocacy Division; and 2 others); Kentucky Supreme Court (2 appointments); dean of each law school in Kentucky (3 appointments total). 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.

Jefferson County's indigent defense system — the **[Louisville – Jefferson County Public Defender Corporation](#)** — 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 existing system, rather than join the state system. Jefferson County must nonetheless comply with DPA standards in providing the right to counsel.

## KENTUCKY STRUCTURE



### **How the right to counsel is funded**

Percentage of state funding: 95%

Percentage of local funding: 5%

Percentage of alternative funding: 0%

Funding for the Jefferson County system comes from a combination of county and state dollars. The state fully funds the right to counsel in all other counties.

### **The methods used to provide public counsel**

The Kentucky Department of Public Advocacy (DPA) oversees 32 branch offices. The chief attorneys are responsible for direct client representation by full-time public defender staff and by local panels of private attorneys handling individual case assignments in conflict matters.

In Jefferson County, the nonprofit public defender office, Louisville-Jefferson County Public Defender Corporation, provides direct representation in all right to counsel matters in the county's criminal and juvenile courts. The Louisville nonprofit also subcontracts with private counsel to represent clients in cases of conflict.

## KENTUCKY TRIAL-LEVEL SERVICES



### Legal authority

Kentucky Constitution, [§ 11](#)

Kentucky Revised Statutes, [§§ 31.010 through 31.241](#)

*Source of data: original research conducted by Sixth Amendment Center staff, augmented by the Department of Public Advocacy, [Fiscal Year 2013 Annual Litigation Report](#), September 2013.*

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# Louisiana



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## **How the right to counsel is administered and structured**

State commission: yes

Branch of government: executive

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. LPDB members are appointed by diverse authorities: Governor (5 – one representing each appellate court district); Chief Justice (4 – one juvenile justice expert; one retired judge; two members at large); Senate President (1); and Speaker of the House(1).

Statutes make clear that LPDB must promulgate standards related to, among others, reasonable caseloads, attorney qualifications, training, and performance. LPDB appoints a State Public Defender who oversees a central office providing statewide training.

### LOUISIANA STRUCTURE

Louisiana Public Defender Board

Executive Director

District Defender

Catahoula and  
Concordia parishes

## **How the right to counsel is funded**

Percentage of state funding: 33%

Percentage of local funding: negligible – New Orleans augments state funding

Percentage of alternative funding: 67% – criminal fines and fees

Louisiana 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-governmental funding for 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 from 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 who is 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. The City of New Orleans augments state funding with limited local funding.

### **The methods used to provide public counsel**

Louisiana's trial-level right to counsel services are delivered with some local autonomy. Louisiana has 42 judicial districts covering its 64 parishes (the equivalent of counties in other states). Prior to the creation of the Louisiana Public Defender Board (LPDB) in 2007, each district had a "chief defender" of the district, and those existing chiefs were grandfathered in under the 2007 statute, allowing them to continue to determine how best to deliver services in their district (assigned counsel, contract defender, staffed public defender offices, or a combination). The legislative reform of 2007 created LPDB ombudsmen who are required to evaluate services in each district on a regular basis. If services are found to be deficient, LPDB is authorized to provide services under any model the Board sees fit, including regionalizing the provision of services.

The LPDB central office contracts with non-profit public defender agencies for appellate services and capital conflict representation.

### **Legal authority**

Louisiana Constitution, art. 1, § 13

Louisiana Revised Statutes, §§ 15:141 through 15:183 (public defender act), and §§ 15:185.1 through 15:185.9 (indigent parents in child abuse and neglect cases), and §§ 15:186.1 through 15:186.6 (indigent children in custody)

*Source of data: original research conducted by Sixth Amendment Center staff, augmented by the Louisiana Public Defender Board. 2013 Annual Board Report.*

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