

Ten Principles of a Public Defense Delivery System, American Bar Association
 Summary of Practices in Eight Jurisdictions, Compiled by Dave Bohyer, Legislative Services Division, Dec. 2015

ABA Principle	Montana	Other States					Other Jurisdictions	
		Alaska	Colorado	New Mexico	Rhode Island	Vermont	Clark Co., Nevada	Washington, D.C.
1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.	The Public Defender Commission and OPD "offices" are independent from the Judiciary, Sections 2-15-1028, 47-1-202, and 47-1-205, MCA.	The Public Defender is appointed by the governor from two or more nominees submitted by the Judicial Council. Governor's appointee is subject to confirmation by the legislature in joint session. The Public Defender Office is housed within the Department of Administration. AS 18.86.030, et seq. The Office of Public Advocacy provides indigent defense services when the Public Defender has a conflict of interest. AS 44.21.400, et seq.	The 5-member Public Defender Commission, 9-member Alternate Defense Counsel Commission and OPD "offices" are only semi-independent from the Judiciary. All of the commissioners on both Commissions are appointed by the Supreme Court. Sections 21-1-101 and 21-2-101, CRS.	The 11-member Public Defender Commission is mostly autonomous from the Judiciary. The Chief Justice appoints three members. NMSA, Section 31-15-2.1. The Commission hires and has general oversight over the Chief Public Defender. NMSA, Section 31-15-2.3.	The Public Defender is appointed by the Governor. The only qualifications are that the PD is a member of the RI bar and has practiced law for at least 5 years.	The Defender General is appointed by the Governor, subject to senate confirmation. 13 VSA Section 5252.	The County Public Defender serves at the pleasure of the county commissioners. NRS 260.010.	Generally independent. Appointed by an 11-member Board of Trustees that is appointed by three D.C. judges and the mayor of D.C. The Board appoints the Director and Deputy Director to administer the agency, i.e., the District of Columbia Public Defender Service. DC Code Section 2-1603.
2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.	The chief defender and chief appellate defender may contract with private attorneys for public defender services. Section 47-1-201(2), 47-1-202(1)(h); 47-1-205(3)(d), (3)(e), and (3)(g), MCA.	The Public Defender may contract with private attorneys. AS 18.85.130. The Commissioner of Administration, on behalf of the Office of Public Advocacy, may contract with private attorneys. AS 44.21.420.	CO has an Alternate Defense Counsel to assume cases in which the Public Defender has a conflict. Sections 2-2-101, et seq., CRS. The Alternate Defender may contract with the private bar, but the Public Defender does not appear to have statutory authority to contract with the private bar.	In general, the chief public defender may contract with the private bar, but not specifically for caseloads. NMSA, Sections 31-15-7, et seq.	Contracts with the private bar are not specifically allowed or prohibited by statute.	The Defender General may contract with investigators or attorneys. 13 VSA Section 5253.	The County Public Defender may contract with the State Public Defender. A judge may appoint private counsel. NRS 260.060.	Authority provided, but subject to Court approval. DC Code Section 2-1602.
3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.	Sections 47-1-104(3), 47-1-111(1), and 47-1-205(3)(b), MCA.	Eligibility screening is required. AS 18.85.120 et seq. Prompt notification to Public Defender is required. AS 18.85.110.	Clients are screened for eligibility. Section 21-1-103, CRS. There is no statutory direction for the timing of appointment of public defense counsel.	Clients are screened under representation standards adopted by the Commission and "a standard to determine indigency". NMSA, Sections 31-15-2.4 and 31-5-217.	Eligibility depends on a defendant's ability to pay for counsel after deducting the "necessary expenses for food, shelter, and medical costs" from the defendant's income. RI Gen. L., Section 12-15-9 (2013).	Eligibility determined by statute. 13 VSA Sections 5235 and 5236. Timing of assignment of public defender is as soon as feasible. 13 VSA Section 5233.	Limited eligibility benchmarks, except for a delinquent child or child in need of supervision and other limited circumstances.	Clients are screened for eligibility. DC Code Section 2-1602. Time of appointment not specifically addressed.
4 Defense counsel is provided sufficient time and a confidential space with which to meet with the client.	Not specifically addressed in statute.	Not specifically addressed in statute.	Not addressed in statute.	Not specifically addressed in statute, but alluded to. NMSA, Sections 31-15-2.4 and 31-15-7.	Not specifically addressed in statute.	Not addressed in statute.	Not addressed in statute.	Not addressed in Code.
5 Defense counsel's workload is controlled to permit the rendering of quality representation.	Sections 47-1-202(1)(d) and 47-1-216(5)(d) and (e), MCA.	Not specifically addressed in statute.	Only indirectly by statute, referring to adherence to the ABA standards for the defense function. Section 21-2-102, CRS.	Yes. NMSA, Section 31-15-2.3	Not specifically addressed in statute.	Not addressed in statute.	Not addressed in statute.	Not specifically addressed in Code.
6 Defense counsel's ability, training, and experience match the complexity of the case.	Section 47-1-202(1)(f) and 47-1-205(3)(c), MCA.	Not necessarily by statute; Public Defender or assistant public defender must be licensed to the Alaska bar when hired or within 10 months after hire. AS 18.85.060.	No statutory requirement. May be addressed by Supreme Court policies or guidelines.	Yes. The Commission is required to adopt standards. NMSA, Section 31-15-2.4.	Not specifically addressed in statute.	Not specifically addressed in statute, but law calls for licensure to the bar and "competent to counsel and defend". 13 VSA Section 5273.	Not addressed in statute.	Not addressed in Code. The only qualification is admission to the D.C. bar.
7 The same attorney continuously represents the client until completion of the case.	No statutory requirement. If case is appealed, a new attorney will prosecute the appeal.	Not specifically addressed in statute.	Yes. Sections 21-1-104 and 21-2-104, CRS.	Yes. NMSA, Section 31-15-10.	Not specifically addressed in statute.	Not specifically addressed in statute.	Implied by statute. NRS 260.050.	Not addressed in Code.
8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.	Data is limited and objective comparisons difficult to make.	Data is limited and objective comparisons difficult to make.	Unable to discern answer from statutory language. Some professional investigative support may be available. Section 21-2-105, CRS.	Unable to discern answer from statutory language. The chief public defender must certify expenditures for experts, investigators, witness fees, and contracts for litigation expenses. NMSA, Section 31-15-7.	Not specifically addressed in statute. Funds are to be appropriated and the Public Defender may expend appropriations for clerical assistance, office expenses, and other actual expenses. RI Gen. L., Section 12-15-7.	Defender General may contract for services. Reimbursement for "all reasonable expenses, including mileage and other travel expenses, lodging, and subsistence incurred" in executing duties. 13 VSA Sections 5253 and 5257.	Objective comparison is difficult to make. Provision of resources to County Public Defender is statutorily required but undefined and may be limited by budget authority. NRS 260.040.	Not addressed in Code.
9 Defense counsel is provided with and required to attend continuing legal education.	Sections 47-1-105 and 47-1-216, MCA.	Not specifically addressed in statute.	No statutory requirement. May be addressed by Supreme Court or Commission policies or guidelines.	NMSA, Sections 31-15-2.4 and 31-15-7.	Not specifically addressed in statute.	In general. 13 VSA Section 5253.	Not addressed in statute.	Not addressed in Code.
10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.	Sections 47-1-105, 47-1-202, 47-1-205, and 47-1-216, MCA.	Not specifically addressed in statute.	Not by statute, but may be by Supreme Court or Commission policy or guidelines. Statutory procedure for complaints against contract attorneys. Section 21-2-207, CRS.	The Commission is required to adopt standards for monitoring and evaluating appointed, contract, and staff attorneys. NMSA, Section 31-15-2.4.	Not specifically addressed in statute.	General supervision of public defenders by Defender General is provided for. 13 VSA Section 5251, et seq. "Quality and efficiency" not addressed in statute.	Not addressed in statute.	Not specifically addressed in Code. Director and Deputy Director provide general supervision of employees. DC Code Section 2-1604.