

CHAPTER 17

Criminal Justice

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The powers and duties of the attorney general in the area of criminal justice vary widely among the 56 U.S. jurisdictions. While the attorneys general are universally considered to be the chief legal officer of their respective jurisdictions, they are not always considered to be the chief law enforcement officer. Powers of the attorney general range from complete original criminal jurisdiction to little or no criminal jurisdiction. Likewise, some attorneys general play a leading role in criminal investigations, and may even be the direct supervisor of statewide criminal investigative agencies, while other attorneys general have no criminal investigative role. Even in states where the attorney general has limited criminal jurisdiction, they still often play a leading role in the formation of criminal justice policy and in the crafting of criminal legislation.

PROSECUTORIAL RESPONSIBILITIES

The range of attorney general criminal authority is broken down in Chart 17-1 that accompanies this chapter. There are seven categories of criminal law jurisdiction: complete, concurrent, limited to specific areas, upon own initiative, upon request, only advisory, and no criminal jurisdiction. Attorney general criminal jurisdiction in most of the states is subject to a number of different exceptions, and therefore it is difficult to neatly fit all of the states and territories into general categories. Many of these subtleties are addressed in the chart's footnotes

In Alaska, Delaware, and Rhode Island, along with American Samoa, Guam, Northern Marianas, and the U.S. Virgin Islands the attorney general has

original jurisdiction in all criminal cases. Even within this group, each office functions somewhat differently. In Alaska, for instance, the attorney general is responsible for appointing the district attorneys, who work under the attorney general's Criminal Division.¹

In another group of states, the attorney general has concurrent criminal jurisdiction. With concurrent jurisdiction, attorneys general can initiate prosecutions in any case, but that authority is discretionary and supplements the jurisdiction of the local district attorney. Alabama, Vermont, and South Dakota are examples of attorneys general with concurrent jurisdiction. Often, the attorneys general will choose to abstain from certain categories of offenses by agreement with the local prosecutors. For example, the Nebraska attorney general has concurrent criminal jurisdiction, but chooses to limit prosecutions to categories such as drug and violent offenses and crimes against children.

The most common prosecutorial responsibility assigned to attorneys general is that which is limited by statute to a certain category of criminal offenses. This scheme is usually set out in the State Constitution, where the grant of authority to the attorney general states, for example, “[t]he attorney general shall ... [i]nvestigate, commence, and prosecute or defend any [] criminal suit or action ... which the General Assembly by law or joint resolution ... shall have directed or shall direct to be investigated, commenced and prosecuted or defended.”² The State legislature then grants the attorney general the power to prosecute specified criminal offenses, typically within the state's criminal code.

Even within this category of criminal jurisdiction, however, there is a wide variety in attorney general responsibilities. The state legislature can grant the attorney general exclusive or concurrent jurisdiction to enforce a particular criminal statute. The number of offenses that an attorney general is responsible for can be quite limited or very extensive. For instance, the District of Columbia attorney general prosecutes almost all misdemeanor level offenses, while the U.S. Attorney for the District of Columbia prosecutes all felonies. In Virginia, the attorney general is responsible for a number of different offenses, with one criminal code section detailing fifteen different offenses for the attorney general to prosecute.³ The attorney general is likely to be responsible for Medicaid fraud, computer crimes, and public corruption in most states.

1 In some states, the attorney general, by statute, “supervises” the district attorneys. The level of supervision varies from state to state. *See, e.g.*, CAL. CONST., art. V, § 13; GOV. CODE, § 12550,

2 MD. CONST., art. V, § 3(a)(2).

3 VA. CODE ANN. § 2.2-511(A).

Defendants have sometimes challenged the attorney general's authority to bring a criminal case if the attorney general's jurisdiction is granted by statute in specific areas. For example, New Mexico's Voter Action Act, provides, "If the secretary makes a determination that a violation of that act has occurred, the secretary shall impose a fine or transmit the finding to the attorney general for prosecution." Defendants argued that the attorney general could not prosecute criminally without a referral from the secretary of state. The New Mexico court of appeals held that the attorney general did have the power to prosecute, stating,

We doubt that the Legislature meant the wording in that section to place the secretary of state in an "either/or" straitjacket or by implication to hamstring the attorney general when a felony has been committed. We are unpersuaded that the Legislature would enact a criminal felony proscription intending a violation of it to be rendered unenforceable at the whim of the secretary of state.⁴

Several attorneys general have the power to bring a criminal case when they feel the state has a particular interest or when it is in the state's best interests. Generally, when states have this type of jurisdiction, local prosecutors will begin criminal proceedings, and the attorney general has discretionary power to intervene and/or assist. Sometimes this intervention requires consent from the local prosecutor, but that is not always the case. Often, the attorney general will exercise this discretionary jurisdiction when it seems that a prosecutor has not taken action when he/she should have, or because that prosecutor is unable to handle the case effectively due to a conflict of interest or similar issue.

Some attorneys general only have jurisdiction over criminal matters when they receive a specific request from a specified individual or political body or organization. Usually these requests are made by the governor, but state legislatures, district court judges, and local prosecutors also have the power to make such requests in certain states. Colorado, Michigan, and Ohio are states which fall into this category.

In most states with this type of jurisdiction, the attorney general still has exclusive or concurrent criminal jurisdiction in certain areas. For example, the Minnesota attorney general can prosecute any case upon request of a county attorney or the governor, but also has jurisdiction over the unauthorized practice of police duties and frauds committed against the elderly or disabled without

4 *State v. Block*, 2011 NMCA 101, (N.M. Ct. App. 2011).

receiving any request. Likewise, the Oregon attorney general can prosecute any case when requested to do so by the governor, legislature, or the police superintendent (subject to gubernatorial approval), but also prosecutes election law violations without request.

Some attorneys general have no individual control in criminal cases, but can supervise, assist, and/or advise local prosecutors. Attorneys general can often assist in certain categories of cases, or when requested to do so by the governor or the prosecutors themselves. One notable example in this category is the Montana attorney general, who directly supervises the county attorneys and can direct them to prosecute any specific case. The Connecticut attorney general has the least involvement with criminal prosecution. His criminal jurisdiction is limited to the prosecution of unlicensed home improvement contractors.

As mentioned above, attorneys general very rarely fit neatly into one of these categories, as there are numerous exceptions in each state's constitution and statutes. Also, due to limited resources, historical precedent, and respect for the autonomy of local prosecutors and other members of the criminal justice system, many attorneys general limit themselves to prosecuting certain types of criminal offenses even if they are authorized by statute to prosecute more widely. Criminal jurisdiction in practice, therefore, is often different from criminal jurisdiction by law.

CRIMINAL APPEALS

Every attorney general handles appeals and post-conviction matters stemming from criminal cases in their states to some degree, but the amount of responsibility varies greatly from jurisdiction to jurisdiction. These variations are represented in Chart 17-2 that accompanies this chapter.

In most states, the attorney general is responsible for all criminal appeals. This includes both state level appellate courts and the state supreme court, and federal proceedings (usually habeas corpus cases). The attorneys general in Colorado⁵, New Hampshire⁶ and North Carolina⁷ are among the many offices that have this authority.

5 COLO. REV. STAT. §24-31-101/

6 See N.H. REV. STAT. ANN. §7:6; N.H. REV. STAT. ANN. §21-M:8, II (b); N.H. REV. STAT. ANN. §606:10.

7 N. C. GEN. STAT. §114-2(1).

Attorneys general in a smaller group of states handle direct appeals and state post-conviction matters only for cases where their office handled the prosecution of the case at the trial level. This group includes Illinois⁸, New Jersey⁹, and Pennsylvania¹⁰. Within this second category, there are also states like Kansas¹¹ and Vermont¹², who have statutory authority in criminal appeals to handle all direct appeals, but, in practice, choose to limit themselves to appeals from cases prosecuted by their office.

In some states, the attorney general only handles criminal appeals in certain cases or circumstances. For example, the Louisiana attorney general's involvement in hearing appeals, habeas corpus cases, and post conviction matters is limited to cases in which the district attorney either recuses himself/herself, or submits a written request for assistance.¹³ Also, that office may assume control of criminal actions when authorized to do so "for cause" by the court of original jurisdiction.¹⁴ In Arkansas, the attorney general may take an interlocutory appeal to the state supreme court from a pretrial order to suppress evidence, but the court will only hear it if the appeal is narrow in scope and involves the interpretation of the criminal rules with widespread ramification.¹⁵

A decision of the U.S. Court of Appeals for the Fifth Circuit affirmed the attorney general's role as representative of the state in a federal habeas corpus proceeding, and that the district attorney could not intervene in the suit as a matter of right, even if he disagreed with the attorney general's conduct of the case. The court stated, "In every appeal, such decisions must be made as whether to appeal, . . . what points to raise, whether to confess error. . . . Some one person must make those decisions . . ." and the attorney general is authorized by law to make them. The court dismissed the District Attorney's argument that the attorney general was not adequately representing his interests because each presumably shares the interest in seeing that justice is done.¹⁶

8 15 ILL. COMP. STAT. 205/4.

9 N.J. STAT. ANN. §52:17B-107b.

10 71 PA. CODE §732-205.

11 KAN. STAT. ANN. §75-702.

12 VT. STAT. ANN. tit. 3, §152.

13 LA. CONST. of 1974, art. IV, §8.

14 *Id.*

15 *State v. Threadgill*, 2011 Ark. 91 (Ark. 2011).

16 *Saldano v. Roach*, 363 F.3d 545 (5th Cir. 2004).

INVESTIGATIVE POWERS

As in the case of criminal jurisdiction, the role the attorney general plays in investigating criminal offenses varies widely and depends on the statutory scheme in each state. In several states, the attorney general directly supervises or controls the state police and law enforcement officers. This can include a state bureau of investigation. In other states the attorney general may employ investigators in the attorney general's office; these investigators are often law enforcement officers with full arrest authority. Attorneys general will sometimes have the power to investigate potential criminal activity on their own. This authority may be limited to certain subsets of crimes, or may be contingent on a request by the governor or another public official or institution.

AUTHORITY OVER LAW ENFORCEMENT AGENCIES

There are many different state agencies and departments that conduct investigations into suspected criminal activities and the attorney general often has some supervisory powers over these entities. In several states, such as California, Delaware, and Montana the attorney general has direct control over the state police.¹⁷ In other states, such as New Hampshire, the attorney general exercises general supervision over the state police department to make sure they comply with the law.¹⁸ In a small number of states, the attorney general has no independent authority over law enforcement officers unless the attorney general is in charge of a specific task force. For example, the Idaho attorney general's office is the lead agency of the Idaho Internet Crimes Against Children Task Force, which comprises local, state, and federal law enforcement and prosecutors.

Several state attorneys general also maintain a supervisory role over state bureaus of investigation and identification. Again, the relationship differs from state to state. The North Dakota attorney general has authority to control the activities of the North Dakota Bureau of Criminal Investigation.¹⁹ In states such as North Carolina and Kansas, the bureau of investigation is a department within the attorney general's office. Even in these states, however, the setup is not identical; although the attorney general appoints the bureau of investigation's director

17 CAL. CONST. art V, § 13; DEL. CODE ANN. tit. 29, § 2504(5); MONT. ADMIN. R. § 23.1.101.

18 N.H. REV. STAT. ANN. § 7:8.

19 N.D. CENT. CODE § 12-60-01.

in each state, employees of the Kansas Bureau of Investigation are classified as “civil servants” instead of full law enforcement officers like those in North Carolina.²⁰ The Wisconsin Division of Criminal Investigations, an agency within the Department of Justice, is the only state agency charged with a purely criminal investigative mission.²¹

State bureaus of identification are often part of the bureau of investigation, but not always. In either case, these forensic laboratories and databases are under the control of the attorney general in several jurisdictions. The Wisconsin attorney general, in addition to overseeing the Investigations Division, also oversees the State Crime Laboratories.²² States such as Ohio and Rhode Island control the state bureaus of identification.²³ The Hawaii Criminal Justice Data Center, an agency of the attorney general’s office, is responsible for maintaining the statewide criminal history records, the statewide Automated Fingerprint Identification System, the statewide Sex-Offender Registry, the Adult Criminal Conviction Information web site, as well as oversight of the FBI’s National Crime Information Center (NCIC) system.²⁴

INVESTIGATIONS BY THE ATTORNEY GENERAL’S OFFICE

Apart from directing police officers to initiate an investigation, attorneys general themselves often have the ability to lead investigations into criminal activities. Several attorneys general offices employ experienced in-house investigators. An example is the Nevada attorney general’s office, which has approximately forty investigators in their offices located in Reno, Carson City, and Las Vegas. These investigators are distributed amongst the various units in the offices and have full arrest power and peace-officer status. The Virgin Islands attorney general’s office also has a special investigations unit with arrest power.

Attorney general offices themselves do not generally have broad investigatory powers; rather, their ability to investigate criminal activity is usually limited to certain specific offenses or contingent on a request from the governor, legislature, or another public officer/agency. Some grants of investigatory powers can be

20 KAN. STAT. ANN. § 75-711; N.C. GEN. STAT. § 114-12.

21 WIS. STAT. § 15.253.

22 *Id.* at § 20.455.

23 OHIO REV. CODE ANN. § 109.51; R.I. GEN. LAWS § 12-1-4.

24 HAW. REV. STAT. ANN. § 846-2.

fairly specific. For example, the Mississippi attorney general can investigate official corruption, white collar, and computer crimes, while the Minnesota attorney general can only look into violations respecting unfair or discriminatory business practices.²⁵ Other states have broader, more open-ended grants of authority, such as the Illinois attorney general, who can investigate alleged violations of any statute “which the attorney general has a duty to enforce.”²⁶ In any of these cases, the attorney general’s authority to investigate a certain offense can be concurrent with a separate law enforcement agency, or exclusive to the attorney general.

In other states, attorneys general can investigate any crime when called upon to do so by a specified public official or institution. Who can make such a request depends on the jurisdiction in question, for example, in Oregon and Washington only the governor can make such a request.²⁷ The North Dakota attorney general can launch an investigation when the office deems it necessary, but also upon the request of a county board of commissioners, 25 taxpaying citizens, or any district court judge.²⁸

TRAINING AND PUBLIC EDUCATION

Many attorneys general play a significant role in training law enforcement officers and local prosecutors, as well as educating the public on the important current topics in the criminal law realm. Apart from direct control or supervision of law enforcement agencies, several attorneys general are responsible for preparing law enforcement officers to discharge their duties. The Ohio attorney general oversees the Ohio Peace Officer Training Commission, which is responsible for training peace officers throughout the state.²⁹ In several states, such as Texas, Pennsylvania, and Oregon, the attorneys general also help provide general or specific training to local prosecutors.

Attorneys general have also launched a number of public education initiatives, through which they can often shape the overall crime prevention policy. In 2009, the Kentucky attorney general established the Kentucky Prescription Drug Abuse Task Force. This task force is accompanied by an increased emphasis by the

25 MISS. CODE ANN. § 7-5-59; MINN. STAT. § 8.31(1).

26 15 ILL. COMP. STAT. ANN. 205/4 (LexisNexis).

27 OR. REV. STAT. § 180.070; WASH. REV. CODE § 43.10.090.

28 N.D. CENT. CODE §§ 54-12-03, 54-12-04.

29 OHIO REV. CODE ANN. § 109.71.

local prosecutors on combating prescription drug trafficking and related criminal offenses.³⁰ Another prevalent example of this public education and crime prevention initiative pairing is in the area of cyber crime, particularly internet crimes against children. A number of attorneys general, including Illinois and New Mexico, have established task forces aimed at preventing sexual predators from using the internet to target children. In addition to focusing prosecutorial efforts on this area, the attorneys general also provide a number of different resources educating parents on the dangers on the internet and steps they can take to prevent their children from being harmed.

NAAG CRIMINAL LAW COMMITTEE

The NAAG Criminal Law Committee is one of NAAG's standing committees. Typically co-chaired by at least one member from each party, the mission of the Criminal Law Committee is to monitor and analyze current and emerging criminal justice issues of importance to the attorney general community, advise NAAG membership when it may be appropriate for the organization to weigh-in on policy and legislative issues involving the federal government, and provide a forum for attorney general criminal law contacts to share information and consult with each other.

The Criminal Law Committee has frequently taken the lead on NAAG policy sign-on letters involving criminal justice matters. Examples of this in the past few years include sign-on letters on congressional funding for local law enforcement, prescription drug abuse, sex offender registration, and federal funding of DNA database testing.

EXECUTIVE WORKING GROUP ON PROSECUTORIAL RELATIONS

The Executive Working Group on Prosecutorial Relations (EWG) is a joint federal, state, and local effort to periodically bring together law enforcement officials from all three levels of government to discuss ways they can better work

³⁰ However, the attorney general is still bound by Kentucky statues requiring that he be invited to participate in a criminal investigation or litigation, even in cases involving prescription drugs. *Johnson v. Kentucky*, 2012 Ky. App. LEXIS 10 (Ky. Ct. App. 2012)

together. The EWG has traditionally consisted of the officials from the US Department of Justice Criminal Division, six US Attorneys, six state attorneys general, and six local district attorneys. Both NAAG and National District Attorneys Association (NDAA) senior staff also play roles in the organization and structure of the meetings. EWG meetings are usually attended by the US attorney general and his/her senior staff. Meetings are usually held three times each year.

EWG meetings have taken different approaches with different goals depending on the particular focus of the members at a given time. Some meetings have centered on a particular problem or theme such as the growing problem of internet crimes. Other meetings have taken a broader roundtable approach and have involved EWG members each presenting on an important issue they are facing, followed by discussion among all members.

EMERGING ISSUE—PARALLEL CIVIL AND CRIMINAL PROCEEDINGS

When an attorney general has criminal jurisdiction over a certain area, for example, environment or antitrust, there is the possibility that the attorney general will want to bring both criminal and civil proceedings against the same defendant. Parallel criminal and civil proceedings raise issues of conflict and timing.

A Massachusetts case reaffirmed the power of the attorney general to bring parallel civil and criminal proceedings. A person was killed when a section of ceiling tile fell from a tunnel in Boston's "Big Dig" road project. The Attorney General convened a grand jury to investigate the design, construction and maintenance of that section of the tunnel. Shortly thereafter, the state's Highway Department, which is represented by the attorney general, sued the epoxy manufacturer and other defendants, alleging gross negligence and contract and warranty claims. The court held that there was no reason to prevent the attorney general from pursuing the criminal case. Although Massachusetts statutes say that the prosecutor shall not be involved as counsel or attorney for either party in a civil action based on the same facts, the court held that this is meant to apply to situations where the prosecutor has private clients, as was the practice many years ago. Massachusetts prosecutors are now prohibited by law from having private clients. The court stated,

The Attorney General is 'empowered, and perhaps required . . . to set a unified and consistent legal policy for the Commonwealth' and has

a ‘common law duty to represent the public interest.’ . . . Bringing the parallel criminal and civil cases is consistent with these roles. (citations omitted)³¹

The court also held that the Attorney General’s interests in the civil and criminal cases are the same: the interests of the people of Massachusetts. The court concluded, “When the Attorney General represents the Commonwealth in parallel criminal and civil cases, she represents the same *public* interest in both, without the dangers that come with concurrent representation of a private party.”

31 *Commonwealth v. Powers Fasteners*, Crim. No. 07-10802 (Sup. Ct. Suffolk Cty. Dec. 12, 2007).

CHART 17-1—Criminal Jurisdiction

| State | Complete Criminal Jurisdiction | Concurrent Criminal Jurisdiction | Specific Areas | Upon Request/Own Initiative | Only Advises/ Assists | Extremely Limited Criminal Jurisdiction |
|----------------------|--------------------------------|----------------------------------|----------------|-----------------------------|-----------------------|---|
| Alabama | | X | | | | |
| Alaska | X | | | | | |
| American Samoa | X | | | | | |
| Arizona | | | X | | | |
| Arkansas | | | X ¹ | | | |
| California | | | X | | | |
| Colorado | | | X ² | | | |
| Connecticut | | | | | | X ³ |
| Delaware | X | | | | | |
| District of Columbia | | | X ⁴ | | | |
| Florida | | | X | | | |
| Georgia | | | X | | | |
| Guam | X ⁵ | | | | | |

1 Generally, in order to prosecute, attorney general must be appointed as special prosecutor, but does have the power to independently investigate cybercrime cases and Medicaid fraud and abuse cases.

2 Attorney general has statutory authority to prosecute specifically enumerated crimes, including environmental violations, tax fraud, mortgage fraud, election fraud, workers compensation fraud, and other types of fraud related offenses. The attorney general also operates as legal advisor to the Statewide Grand Jury, which allows the attorney general to investigate and prosecute complex criminal cases that occur in multiple judicial districts.

3 Attorney general has jurisdiction to prosecute misdemeanor home improvement contractor cases.

4 Most offenses are either regulatory or penal with a regulatory nature except as otherwise designated by Congress. See generally D.C. Code Ann. §23-101 (2012).

5 The government of Guam and the federal government are considered to be a single sovereign for double jeopardy purposes. See *United States v. Wheeler*, 435 U.S. 313, 319, 98 S. Ct. 1079, 55 L. Ed. 2d 303 (1978) (“[S]uccessive prosecutions by federal and territorial courts are impermissible because such courts are creations emanating from the same sovereignty.”)

CHART 17-1—Criminal Jurisdiction

| State | Complete Criminal Jurisdiction | Concurrent Criminal Jurisdiction | Specific Areas | Upon Request/Own Initiative | Only Advises/ Assists | Extremely Limited Criminal Jurisdiction |
|-----------|--------------------------------|----------------------------------|-----------------|-----------------------------|-----------------------|---|
| Hawaii | | X ⁶ | | | | |
| Idaho | | | X ⁷ | | | |
| Illinois | | | X ⁸ | | | |
| Indiana | | | X ⁹ | | | |
| Iowa | | | | X ¹⁰ | | |
| Kansas | | | | X | | |
| Kentucky | | | X ¹¹ | | | |
| Louisiana | | | | X | | |

6 In practice, the attorney general limits the type of cases the office takes, but does have full authority to prosecute any criminal violation occurring within the state. The county prosecutors, who handle a majority of the criminal cases in the state, get their authority to prosecute from the attorney general through county charters. See Haw. Rev. Stat. §§28-1, 28-2, 28-2.5 (2009)

7 Most of the attorney general's jurisdiction is based on special requests; however, attorney general has original jurisdiction under several statutes (election law, antitrust, racketeering, etc.).

8 Most of attorney general's jurisdiction is based on special requests; however, attorney general has original jurisdiction over election law matters and cases that can be investigated and indicted under state-wide grand jury (e.g. multi-county drug conspiracies).

9 Attorney general can assist in any criminal case upon request. Also has concurrent jurisdiction with prosecuting attorneys in cases involving: 1) homicides by a member of an unlawful assembly, 2) people who assisted those who committed homicides while a member of an unlawful assembly, 3) sheriffs accused of any offense involving the failure to protect the life of someone in the sheriff's custody.

10 Attorney general has authority to represent the state in any criminal case, but routinely defers to local prosecutors in county-based criminal justice system. Attorney general accepts referrals from county prosecutors when local resources or conflicts necessitate. Attorney general also has original jurisdiction under various statutes (environmental crime, securities fraud, etc.)

11 Attorney general can also prosecute any case at the request of various state officials.

CHART 17-1—Criminal Jurisdiction

| State | Complete Criminal Jurisdiction | Concurrent Criminal Jurisdiction | Specific Areas | Upon Request/Own Initiative | Only Advises/ Assists | Extremely Limited Criminal Jurisdiction |
|---------------|--------------------------------|----------------------------------|----------------|-----------------------------|-----------------------|---|
| Maine | | | X | | | |
| Maryland | | | X | | | |
| Massachusetts | | X ¹² | | | | |
| Michigan | | | | X | | |
| Minnesota | | | | X | | |
| Mississippi | | X | | | | |
| Missouri | | | | X ¹³ | | |
| Montana | | | | X ¹⁴ | | |
| Nebraska | | X | | | | |
| Nevada | | | X | | | |
| New Hampshire | | X ¹⁵ | | | | |

12 “District attorneys within their respective districts shall appear for the commonwealth in the superior court in all cases, criminal or civil, in which the commonwealth is a party or interested, and in the hearing, in the supreme judicial court, of all questions of law arising in the cases of which they respectively have charge, shall aid the attorney general in the duties required of him, and perform such of his duties as are not required of him personally; but the attorney general, when present, shall have the control of such cases. They may interchange official duties.” Mass. Gen. Laws ch.12, §27.

13 Attorney general has original jurisdiction in cases of consumer fraud. Governor can appoint attorney general in major cases as co-prosecutor, and attorney general can be appointed anytime by a state judge as a special prosecutor

14 Upon request of county attorneys and when there is a conflict of interest.

15 The “attorney general shall have and exercise general supervision of the criminal cases pending before the supreme and superior courts of the state, and with the aid of the county attorneys, the attorney general shall enforce the criminal laws of the state.” N.H. Rev. Stat. Ann. §7:6. However, the attorney general has exclusive jurisdiction by statute in specific areas such as homicides, election law violations, and violations of consumer protection law.

CHART 17-1—Criminal Jurisdiction

| State | Complete Criminal Jurisdiction | Concurrent Criminal Jurisdiction | Specific Areas | Upon Request/Own Initiative | Only Advises/ Assists | Extremely Limited Criminal Jurisdiction |
|--------------------------|--------------------------------|----------------------------------|-----------------|-----------------------------|-----------------------|---|
| New Jersey | | | X ¹⁶ | | | |
| New Mexico | | | X ¹⁷ | | | |
| New York | | | | X ¹⁸ | | |
| North Carolina | | | | X ¹⁹ | | |
| North Dakota | | | | X | | |
| Northern Mariana Islands | X | | | | | |
| Ohio | | | | X ²⁰ | | |
| Oklahoma | | | | X | | |
| Oregon | | | | X | | |
| Pennsylvania | | | X | | | |
| Puerto Rico | X | | | | | |

16 Criminal business of the state is prosecuted by the attorney general and the county prosecutors, but the attorney general can also supersede a county prosecutor in any case, as well as being designated the chief law enforcement officer of the state.

17 Attorney general's criminal jurisdiction is concurrent in general and primary, by statute, in some instances.

18 Attorney general can bring own criminal cases under the Martin (financial fraud) and Donnelly (antitrust) Acts.

19 Primary criminal jurisdiction rests with independently elected district attorneys. Jurisdiction is conferred upon the attorney general by request of district attorneys if certain criteria are met. The attorney general has original jurisdiction in a limited number of matters that are statutorily defined.

20 Attorney general has concurrent jurisdiction for organized crime, worker's compensation, Medicaid fraud, and patient abuse and neglect.

CHART 17-1—Criminal Jurisdiction

| State | Complete Criminal Jurisdiction | Concurrent Criminal Jurisdiction | Specific Areas | Upon Request/Own Initiative | Only Advises/ Assists | Extremely Limited Criminal Jurisdiction |
|----------------|--------------------------------|----------------------------------|-----------------|-----------------------------|-----------------------|---|
| Rhode Island | X | | | | | |
| South Carolina | | X | | | | |
| South Dakota | | X | | | | |
| Tennessee | | | X | | | |
| Texas | | | X | | | |
| Utah | | X | | | | |
| Vermont | | X | | | | |
| Virgin Islands | X | | | | | |
| Virginia | | | X | | | |
| Washington | | | | X | | |
| West Virginia | | | | | X | |
| Wisconsin | | | X ²¹ | | | |
| Wyoming | | | | X ²² | | |

21 Most of the attorney general’s jurisdiction is based on special prosecution requests; however, attorney general has original jurisdiction under several statutes (election law, antitrust, racketeering, etc.).

22 If the district attorney fails to prosecute, then the attorney general can prosecute the case.

CHART 17-2: Criminal Appeals

| State | Handle all direct appeals, including state post-conviction appeals, and all federal habeas corpus petitions, regardless of which prosecuting authority handled the case at trial | Handle direct appeals and state post-conviction matters only for cases where their office prosecuted the case at the trial level, and federal habeas corpus petitions | Generally do not handle any appeals, with limited exceptions |
|----------------------|--|---|--|
| Alabama | X | | |
| Alaska | X ¹ | | |
| Arizona | X ² | | |
| Arkansas | X | | |
| California | X ³ | | |
| Colorado | X ⁴ | | |
| Connecticut | | | X ⁵ |
| Delaware | X | | |
| District of Columbia | | X ⁶ | |

1 Attorney general handles all felony appeals, except where the state has ceded that authority, and handles only selected appeals arising solely from misdemeanors, if issue has statewide ramifications, or to help misdemeanor trial attorneys. Attorney general has authority to pursue state appeals, as well as interlocutory or discretionary state petitions in both the Alaska court of appeals and Alaska supreme court, regardless of whether the case involves felony or misdemeanor prosecution. The attorney general does not handle appeals in the Alaska Court of Appeals that are limited strictly to challenging the defendant's sentence, unless there is statewide issue.

2 Individual counties are responsible for responding to state post-conviction relief petitions and other collateral relief. However, attorney general is responsible for responding to state petitions for post conviction relief if the attorney general actually prosecuted the case. Attorney general also handles state post-conviction proceedings in all death penalty cases throughout state, although not statutorily required to do so.

3 Local prosecutors frequently handle habeas proceedings that are initiated in their local superior courts. Attorney general generally handles all litigation after the completion of superior court proceedings.

4 Also handle occasional civil cases, such as appeal from civil forfeiture, denial of sealing records etc.

5 Attorney general handles appeals from the limited criminal cases it is authorized to prosecute (home repair fraud). Attorney general also handles state and federal habeas claims in which an inmate challenges conditions of confinement, and any appeals stemming from those claims.

6 Attorney general does not handle habeas corpus proceedings

CHART 17-2: Criminal Appeals

| State | Handle all direct appeals, including state post-conviction appeals, and all federal habeas corpus petitions, regardless of which prosecuting authority handled the case at trial | Handle direct appeals and state post-conviction matters only for cases where their office prosecuted the case at the trial level, and federal habeas corpus petitions | Generally do not handle any appeals, with limited exceptions |
|-----------|--|---|--|
| Florida | X | | |
| Georgia | | X ⁷ | |
| Guam | X | | |
| Hawaii | | X ⁸ | |
| Idaho | X | | |
| Illinois | | X | |
| Indiana | X | | |
| Iowa | X | | |
| Kansas | | X ⁹ | |
| Kentucky | X | | |
| Louisiana | | | X ¹⁰ |
| Maine | X | | |

7 Attorney general handles all direct appeals in murder cases. Also handles all state post conviction and federal habeas corpus cases filed by state inmates in custody of the Department of Corrections, and handles all appeals in those cases. Attorney general represents the state in all cases in the U.S. Supreme Court, in addition to habeas corpus cases.

8 In criminal cases where counties handled the original prosecution, the attorney general handles state and federal post conviction relief or habeas petitions, and any appeals that challenge the actions of state departments involving parole setting, release, or conditions of confinement. County prosecutors handle post conviction or habeas challenges attacking the validity of the underlying conviction and sentence itself.

9 By statute, attorney general handles all criminal appeals, but in practice, county and district attorneys handle the bulk of their own appeals under the supervision of the attorney general. However, the attorney general will take appeals from county or district attorneys when an issue of statewide importance is raised, and when an appeal reaches the Supreme Court.

10 Attorney general involvement in hearing appeals, habeas corpus cases, and post-conviction matters is limited to cases in which the district attorney either recuses herself/himself, or submits a written request for assistance. Attorney general may assume control of criminal actions when authorized to do so “for cause” by the court of original jurisdiction.

CHART 17-2: Criminal Appeals

| State | Handle all direct appeals, including state post-conviction appeals, and all federal habeas corpus petitions, regardless of which prosecuting authority handled the case at trial | Handle direct appeals and state post-conviction matters only for cases where their office prosecuted the case at the trial level, and federal habeas corpus petitions | Generally do not handle any appeals, with limited exceptions |
|---------------|--|---|--|
| Maryland | X ¹¹ | | |
| Massachusetts | | X ¹² | |
| Michigan | X | | |
| Minnesota | | | X ¹³ |
| Mississippi | X | | |
| Missouri | X | | |
| Montana | X ¹⁴ | | |
| Nebraska | X | | |
| Nevada | | X | |
| New Hampshire | X | | |

11 The attorney general occasionally allows prosecutors to handle their own appeals, but to do so must designate them Special Assistant Attorney General. The only appeals the attorney general does not handle are cases under the jurisdiction of the Office of State Prosecutor, i.e. state election law, state public ethics law, state bribery cases involving public officials or employees, and extortion, perjury, or obstruction of justice involving public officials or employees.

12 Attorney general handles all criminal matters in the U.S. Supreme Court, i.e. petitions for writ of certiorari, oppositions to petitions for writ of certiorari, and appeals from decisions of the U.S. Court of Appeals.

13 Attorney general only handles appeals, state post-conviction cases, and federal habeas petitions upon request of county attorneys.

14 City attorneys have the right to handle appeals from misdemeanor convictions in city or municipal court, but at the request of city attorneys. Attorney general handles virtually all criminal appeals in Montana Supreme Court involving cities and municipalities.

CHART 17-2: Criminal Appeals

| State | Handle all direct appeals, including state post-conviction appeals, and all federal habeas corpus petitions, regardless of which prosecuting authority handled the case at trial | Handle direct appeals and state post-conviction matters only for cases where their office prosecuted the case at the trial level, and federal habeas corpus petitions | Generally do not handle any appeals, with limited exceptions |
|----------------|--|---|--|
| New Jersey | | X ¹⁵ | |
| New Mexico | X | | |
| New York | | X ¹⁶ | |
| North Carolina | X | | |
| North Dakota | | X ¹⁷ | |
| Ohio | | | X ¹⁸ |
| Oklahoma | X ¹⁹ | | |

15 On a discretionary basis, the attorney general will handle any similar proceeding arising out of a prosecution by a county prosecutor. Attorney general reviews all defense briefs filed in any appeals and applications for post conviction remedies, and will determine whether to represent the state or instead refer the appeal to the county prosecutor’s office that originally prosecuted the case.

16 Attorney general handles all federal habeas petitions that challenge criminal convictions obtained by district attorneys, except for convictions obtained by district attorneys who have elected to defend some or all of their convictions in federal habeas proceedings.

17 Attorney general handles state post-conviction matters upon request in cases where attorney general did not handle the appeal.

18 When cases are handled by the attorney general as “special prosecutor” for the county or when cases are handled by the attorney general pursuant to its concurrent jurisdiction (for example, organized crime, workers’ compensation, Medicaid, and patient abuse and neglect), attorney general handles appeal. Also, attorney general handles state habeas corpus appeals and federal habeas appeals challenging state convictions.

19 In state post-conviction appeals, there is a different process for capital and non capital cases. In capital cases, the attorney general represents the state in all stages. In non-capital cases, the district attorney handles cases in which application for post-conviction relief is filed in the local district court. If denial of post-conviction relief is appealed, the attorney general will represent the state on appeal.

CHART 17-2: Criminal Appeals

| State | Handle all direct appeals, including state post-conviction appeals, and all federal habeas corpus petitions, regardless of which prosecuting authority handled the case at trial | Handle direct appeals and state post-conviction matters only for cases where their office prosecuted the case at the trial level, and federal habeas corpus petitions | Generally do not handle any appeals, with limited exceptions |
|----------------|--|---|--|
| Oregon | X ²⁰ | | |
| Pennsylvania | | X | |
| Rhode Island | | | |
| South Carolina | X | | |
| South Dakota | X | | |
| Tennessee | X | | |
| Texas | X | | |
| Utah | | | X ²¹ |
| Vermont | X | | |
| Virginia | | | |
| Washington | X ²² | | |
| West Virginia | | X ²³ | |
| Wisconsin | X | | |
| Wyoming | X | | |

20 Only exceptions are with special authorization from the attorney general.

21 Attorney general represents the state in federal court in federal habeas corpus proceedings. Attorney general occasionally represents the state before the U.S. Supreme Court where a direct appeal or state post-conviction decision presents one or more federal questions.

22 Attorney general does not handle cases when defendant challenges validity of misdemeanor conviction, because such defendants are usually local rather than state prisoners.

23 Attorney general will handle state court collateral proceedings (habeas petitions) challenging conviction or sentence where the attorney general did not originally prosecute upon prosecutor request.