



State Attorneys General Powers and Responsibilities

Edited by
Emily Myers
National Association of Attorneys General



FOURTH EDITION
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Courtesy Chapter

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*This book is dedicated to Attorneys General
and the men and women who work for them in the
56 jurisdictions. They continue to make an important
contribution to state government and the American legal
system. Without them, there would be no book to write.*

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This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

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CHAPTER 17

Criminal Justice

By Chris Toth, Executive Director, NAAG; Adam Eisenstein, former NAAG Visiting Fellow; Salini Nandipati, former NAAG Visiting Fellow

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 always considered to be the chief legal officer of their respective jurisdiction, they are not always the chief law enforcement officer. Criminal authority of the attorney general ranges 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. There are seven categories of criminal law jurisdiction: complete, concurrent, limited to specific areas, upon own initiative, upon request, advisory only, 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 Rhode Island, all prosecutions are undertaken by the attorney general's office.² In Delaware, the attorney general's Criminal Division, with a State Prosecutor appointed by the attorney general, prosecutes all criminal cases.³

In some states, the attorney general, by statute, "supervises" the district attorneys. The level of supervision varies from state to state.⁴ In New Hampshire, although state statutes give the attorney general "power to control, direct and supervise criminal law enforcement by the county attorneys," he does not have authority to remove a county attorney from office.⁵

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.⁶ 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,⁷ 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 may be 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."⁸ 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, attorney general responsibilities vary widely. The state legislature can grant the attorney

1 ALASKA STAT. § 44.23.030.

2 R.I. GEN. LAWS § 42-9-4.

3 DEL. CODE ANN. § 2505(c).

4 See, e.g., CAL. CONST., art. V, § 13; GOV. CODE, § 12550.

5 *Reams v. Attorney General*, 2014 N.H. Super. LEXIS 5 (N.H. Super. Ct. Apr. 20, 2014).

6 ALA. CODE § 36-15-14; VT. STAT. ANN. tit. 3, § 153; S.D. CODIFIED LAWS § 1-11-1.

7 NEB. REV. STAT. § 84-203.

8 MD. CONST., art. V, § 3(a)(2).

general exclusive or concurrent jurisdiction to enforce a particular criminal statute and some legislatures have authorized far more jurisdiction than others. 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.⁹ In states where the attorney general is authorized to prosecute only specified crimes, the attorney general is most likely to be responsible for Medicaid fraud, computer crimes, and public corruption.

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."¹⁰ 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.¹¹

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

9 VA. CODE ANN. § 2.2-511(A).

10 N.M. STAT. ANN. § 1-19A-17.

11 *State v. Block*, 2011 NMCA 101, (N.M. Ct. App. 2011). See also *People of the State of New York v. Miran*, 964 N.Y.S.2d 309 (N.Y. App. Div. 2013) (attorney general's authority to prosecute Medicaid fraud was not preempted by federal law authorizing creation of Medicaid Fraud Control Unit).

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. This power is limited. In Idaho, the attorney general could not take over the prosecution of murder cases over objections of the prosecuting attorney despite a state statute providing that the attorney general exercised supervisory powers over prosecuting attorneys.¹²

Some attorneys general have jurisdiction over criminal matters only 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, Minnesota, and Ohio are states which fall into this category.¹³

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 false advertising and anti-trust violations¹⁴ without 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.¹⁵

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.¹⁶ The Connecticut attorney general has the least involvement with criminal prosecution. His criminal jurisdiction is limited to the prosecution of unlicensed home improvement contractors.¹⁷

As mentioned above, attorneys general very rarely fit neatly into one of these categories, as there are numerous variations in each state's constitution and statutes. Also, due to limited resources, historical precedent, and respect for the

12 *Newman v. Vance*, 922 P.2d 395 (Idaho 1996).

13 COLO. REV. STAT. 24-31-101; MINN. STAT. § 8.01; OHIO REV. CODE ANN. § 109.02.

14 MINN. STAT. § 8.31.

15 ORE. REV. STAT. § 260.345.

16 MONT. CODE ANN. § 2-15-501.

17 CONN. GEN. STAT. § 20-417i.

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 in statute.

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 Colorado, New Hampshire, and North Carolina are among the many offices that have this authority.¹⁸

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 Illinois, New Jersey, and Pennsylvania.¹⁹ Within this second category, there are also states like Kansas²⁰ and Vermont,²¹ in which the attorneys general 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.²² Also, that office may assume control of criminal actions when authorized to do so "for cause" by the court of original

18 COLO. REV. STAT. § 24-31-101(1)(a); N.H. REV. STAT. ANN. § 7:6; N. C. GEN. STAT. § 114-2(1). See also N.H. REV. STAT. ANN. § 21-M:8, II (b); N.H. REV. STAT. ANN. § 606:10.

19 15 ILL. COMP. STAT. 205/4; N.J. STAT. ANN. § 52:17B-107(b); 71 PA. STAT. ANN. § 732-205.

20 KAN. STAT. ANN. § 75-702.

21 VT. STAT. ANN. tit. 3, § 152.

22 LA. CONST. art. IV, § 8.

jurisdiction.²³ 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.²⁴

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 . . ."²⁵ 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.²⁶

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.

²³ *Id.*

²⁴ *State v. Threadgill*, 2011 Ark. 91 (2011).

²⁵ *Saldano v. Roach*, 363 F.3d 545, 552 (5th Cir. 2004) (citing *Ex Parte Taylor*, 36 S.W.3d 883, 887 (Tex. Crim. App. 2001) (per curiam)).

²⁶ *Id.* at 553.

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.²⁷ 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.²⁸ 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.²⁹

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.³⁰ 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 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.³¹

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.³² Attorneys general in Ohio and Rhode Island control the state bureaus of identification.³³ 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

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

28 N.H. REV. STAT. ANN. § 7:8.

29 <http://www.icacidaho.org/index.html>.

30 N.D. CENT. CODE § 12-60-01.

31 KAN. STAT. ANN. § 75-711; N.C. GEN. STAT. § 143B-915.

32 *Id.* at § 20.455(2).

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

Identification System, the statewide Sex-Offender Registry and the Adult Criminal Conviction Information web site.³⁴

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 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.³⁵ Other states have broader or more open-ended grants of authority, such as the Illinois attorney general, who can investigate alleged violations of any statute "which the [A]ttorney [G]eneral has a duty to enforce."³⁶ 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.³⁷ The North Dakota attorney general can launch an investigation when the office deems it necessary,

34 HAW. REV. STAT. ANN. § 846-2.

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

36 15 ILL. COMP. STAT. ANN. 205/4.

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

but also upon the request of a county board of commissioners, 25 taxpaying citizens, or any district court judge.³⁸

The attorney general's authority to investigate drug trafficking without a request from the local prosecutor was upheld by the Kentucky supreme court. Defendants argued that the Attorney General did not have jurisdiction to conduct an investigation within the relevant counties because local law enforcement was not involved in the investigation, and the attorney general was not invited by the local prosecutor to participate. The Kentucky supreme court examined Kentucky's general jurisdictional statute for controlled substances violations, which provides that the various city, county and Commonwealth attorneys, "and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter." The supreme court held that this phrase meant, for the attorney general, the entire state. The court also held that the attorney general's common law authority to investigate had been in existence since the 1500s, and if it comports with relevant criminal and civil statutory directives, is extensive.³⁹

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 criminal law. 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.⁴⁰ 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. Attorneys general have focused their efforts on, among other things, prescription drug trafficking, cybercrime, and 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.

38 N.D. CENT. CODE §§ 54-12-03 to -04.

39 *Commonwealth v. Johnson*, 423 S.W.3d 718 (Ky. 2014).

40 OHIO REV. CODE ANN. § 109.71.

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.

CRIMINAL LAW POLICY

The NAAG Criminal Law Committee/s mission 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 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.

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 together. The EWG has traditionally consisted of the officials from the U.S. Department of Justice Criminal Division, six U.S. 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 U.S. 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.

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.⁴¹

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."

41 *Commonwealth v. Powers Fasteners, Inc.*, No. 07-10802, 2007 WL 5022411, *1 (Mass. Super. Dec. 12, 2007) (citations omitted).

TABLE 17-1—Criminal Jurisdiction

State	Complete	Concurrent	Specific Areas	Upon Request/ Own Initiative	Very Limited	Citations
Alabama		x				ALA. CODE §§ 36-14-12 to 36-14-14; § 12-17-186
Alaska	x					ALASKA STAT. § 44.23.020
Arizona			x			ARIZ. REV. STAT. §§ 41-192, 193
Arkansas			x			ARK. CODE § 5-55-106; § 5-41-107
California		x	x			CAL. GOV. CODE § 12550; § 15025 <i>et seq.</i>
Colorado		x	x			COLO. REV. STAT. § 12-61-909 § 39-27-116; § 1-13-101; § 10-1-129; § 11-51-603.5; § 11-53-204; § 11-59-115; § 25-1-112; § 13-73-101.
Connecticut					x	CONN. GEN. STAT. § 3-125
Delaware	x					DEL. CODE ANN. tit. 29, § 2504
District of Columbia			x			D.C. CODE ANN. § 1-301.81 ¹
Florida			x			FLA. STAT. § 16.56.
Georgia			x	x		GA CODE ANN. § 45-15-10.
Guam	x					
Hawaii		x				HAW. REV. STAT. §§ 28-1, 28-2, 28-2.5
Idaho			x	x		IDAHO CODE § 56-226, § 67-140; § 18-7805; § 67-6625; § 41-295
Illinois		x				15 ILL. COMP. STAT. ANN. 205/4.
Indiana			x	x		IND. CODE ANN. § 4-6-2-1; § 4-6-1-6.
Iowa		x				IOWA CODE § 13.2.
Kansas		x		x		KAN. STAT. ANN. § 12-189; § 75-5133; § 75-702, § 75-703.
Kentucky		x	x	x		KY. REV. STAT. ANN. § 15.242-243; § 15.715; § 205.8469; § 15.225; § 15.190; § 15.200

1 Although the D.C. attorney general has the statutory authority to prosecute, D.C. Code § 23-101 provides that the majority of felony cases are brought by the U.S. Attorney for the District of Columbia.

TABLE 17-1—Criminal Jurisdiction

State	Complete	Concurrent	Specific Areas	Upon Request/ Own Initiative	Very Limited	Citations
Louisiana		x		x		LA. CODE CRIM. P. art. 62; LA. CONST. art. IV, § 8.
Maine		x	x			ME. REV. STAT. ANN. tit. 21-A § 33; ME. REV. STAT. ANN. tit. 5, § 200-A
Maryland				x		MD. CONST. art. V, § 3
Massachusetts		x				MASS. GEN. LAWS ch.12, § 27
Michigan				x		MICH. COMP. LAWS § 14.28
Minnesota				x		MINN. STAT. § 8.01
Mississippi		x				MISS. CODE ANN. § 7-5-1
Missouri				x		MO. REV. STAT. tit. IV, § 27.030
Montana			x	x		MONT. CODE ANN. § 53-6-156; § 2-15-501
Nebraska		x				NEB. REV. STAT. § 84-204
Nevada				x		NEV. REV. STAT. § 228.120
New Hampshire		x				N.H. REV. STAT. ANN. §§ 7.6, 7:34
New Jersey		x				N.J. REV. STAT. §§ 52:17B-107 to 17B-108
New Mexico				x		N.M. STAT. ANN. § 8-5-3
New York			x	x		N.Y. EXEC. LAW § 63; § 74; N.Y. GEN BUS. LAW § 352; § 347
North Carolina			x	x		N.C. GEN. STAT. § 75-13; § 78D-24; § 114-11.6
North Dakota				x		N.D. CENT CODE § 54-12-03
Northern Mariana Islands	x					MP CODE tit 1, div 2 § 2153
Ohio			x	x		OHIO REV. CODE ANN. § 109.83; § 177.01; § 177.03; § 309.08; § 109.85; § 109.02
Oklahoma				x		74 OKLA. STAT. § 18b
Oregon		x		x		ORE. REV. STAT. § 166.725; § 180.070

TABLE 17-1—Criminal Jurisdiction

State	Complete	Concurrent	Specific Areas	Upon Request/ Own Initiative	Very Limited	Citations
Pennsylvania			x	x		71 PA. CONS. STAT. § 732-205; § 732-205
Puerto Rico	x					3 P.R. LAWS ANN. § 292
Rhode Island	x					R.I. GEN. LAWS § 42-9-4
South Carolina		x				S.C. CONST. art. V, § 24, S.C. CODE ANN. § 7-25-200.
South Dakota		x				S.D. CODE ANN. § 1-11-1
Tennessee				x		TENN. CONST. art. VI, § 5
Texas			x			TEX. PENAL CODE § 1.09; § 31.03; § 32.32; § 32.32; § 5.02; § 39.015
Utah		x				<i>State v. Jiminez</i> , 588 P.2d 707 (Utah 1978); <i>State v. Robertson</i> , 886 P.2d 85 (Utah App. 1994)
Vermont		x				VT. STAT. ANN. tit. III, § 151
Virgin Islands	x					
Virginia			x			VA. CODE ANN. § 2.2-511
Washington				x		WASH. REV. CODE § 43.10.232
West Virginia					x	W. VA. CODE § 5-3-2
Wisconsin		x	x			WIS. STAT. § 946.87; § 13.69; § 133.17; § 165.25
Wyoming				x		WYO. STAT. ANN. § 9-1-603

TABLE 17-2—Criminal Appeals

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.

State	Citation/Comment
Alabama	ALA. CODE § 36-15-1(2), “He or she shall attend, on the part of the state, to all criminal cases pending in the Supreme Court or Court of Criminal Appeals, and to all civil actions in which the state is a party in the Supreme Court or Court of Civil Appeals.”
Alaska	ALASKA STAT. § 44.23.020(b). 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 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.
Arizona	ARIZ. REV. STAT. § 41-192(A). Attorney general represents the State in all courts when criminal defendants appeal their non-capital felony convictions and in habeas proceedings. Attorney general also handles state post-conviction proceedings in all death penalty cases throughout state, although not statutorily required to do so.
Arkansas	ARK. CODE § 25-16-702. Attorney general represents the State in all appeals and post-conviction proceedings.
California	CAL. CONST. art. V, § 13; Cal. Gov’t Code § 11157 “Upon request... Attorney General... shall aid in any investigation, hearing, prosecution or trial... and shall institute and prosecute all necessary actions or proceedings.” Attorney general prosecutes felony criminal appeals in state court, including habeas corpus petitions and prosecutes death penalty appeals.
Colorado	COLO. REV. STAT. § 24-31-101(1)
Delaware	DEL. CODE ANN. tit. 29, § 2504(6)
Florida	FLA. STAT. § 16.01(4)
Hawaii	HAW. REV. STAT. § 26-7; HAW. REV. STAT. § 28-2.5. 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.
Idaho	IDAHO CODE § 67-1401
Indiana	IND. CODE § 4-6-2-1
Iowa	IOWA CODE § 13.2(1)(b)

TABLE 17-2—Criminal Appeals

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.

State	Citation/Comment
Kentucky	KY. REV. STAT. §§ 15.020, 15.090
Maine	ME. STAT. §§ 191, 200-A
Maryland	MD. CODE § 6-106.1(b); MD. CONST. art. V, § 3(a); MD. CRIM. PROC. § 14-109(b). 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.
Michigan	MICH. COMP. LAWS § 14.28
Mississippi	MISS. CODE §§ 7-5-1, 7-5-37
Missouri	Attorney general represents the State in all felony appeals and felony post-conviction appeals, and in cases where sexually violent predators have been committed to the Department of Mental Health.
Montana	MONT. CODE § 2-15-501. City attorneys have the right to handle appeals from misdemeanor convictions in city or municipal court, attorney general handles virtually all criminal appeals in Montana Supreme Court involving cities and municipalities.
Nebraska	NEB. REV. STAT. § 84-203
New Hampshire	N.H. REV. STAT. ANN. §§ 7:6, 21-M:8(II), 606:10; N.H. REV. STAT. ANN. § 7:6 ; N.H. REV. STAT. ANN. § 21-M:8(II); N.H. REV. STAT. ANN. § 606:10.
New Mexico	N.M. STAT. ANN. § 8-5-2(B)
New York	N.Y. EXEC. LAW § 63(1)-(3). Unless district attorney chooses otherwise, attorney general handles all federal habeas petitions that challenge criminal convictions obtained by district attorneys.
North Carolina	N.C. GEN. STAT. § 114-2 “duty to represent the State in criminal appeals shall not be delegated to any district attorney’s office or any other entity”
Oklahoma	OKLA. STAT. tit. 74, § 18b(1), (3); § 18e; OKLA. STAT. tit. 74, § 18d. 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.

TABLE 17-2—Criminal Appeals

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.

State	Citation/Comment
Oregon	OR. REV. STAT. § 180.060(1), (5). Only exceptions are with special authorization from the attorney general
Rhode Island	R.I. GEN. LAWS §§ 42-9-3, 42-9-8.1
South Carolina	S.C. CODE ANN. § 1-7-40
South Dakota	S.D. CODIFIED LAWS § 1-11-1(1)-(2)
Tennessee	TENN. CODE ANN. § 8-6-109(b)(2), § 8-6-110
Texas	TEX. GOV'T CODE § 402.021
Vermont	VT. STAT. ANN. tit. 3, §§ 152, 153(a), 157
Virginia	VA. CODE ANN. § 2.2-500; Va. Code Ann. § 2.2-511(A)
Washington	WASH. REV. CODE § 43.10.030(1). Attorney general does not handle cases when defendant challenges validity of misdemeanor conviction, because such defendants are usually local rather than state prisoners.
Wisconsin	WIS. STAT. § 165.25(1)
Wyoming	WYO. STAT. § 9-1-603(a)(ii)

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

State	Citation/Comment
District of Columbia	D.C. CODE § 1-301.81(a). Attorney general does not handle habeas corpus proceedings.
Georgia	GA. CONST. art. V, § III, ¶ IV; GA. CODE ANN. § 45-15-3(3); 1968 Op. Att'y Gen. No. 68-171. Attorney general handles all direct appeals in murder cases and state post-conviction and federal habeas corpus cases filed by state inmates in custody of the Department of Corrections and appeals in those cases.
Illinois	15 ILL. COMP. STAT. 205/4

TABLE 17-2—Criminal Appeals

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	
State	Citation/Comment
Kansas	KAN. STAT. ANN. § 75-702. Attorney general statutorily authorized to handle all criminal appeals, but in practice, county and district attorneys handle the bulk of their own appeals under attorney general's supervision. 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.
Massachusetts	MASS. GEN. LAWS ch. 12, § 3. Attorney general handles all criminal matters in the U.S. Supreme Court, including cert petitions and appeals from decisions of the U.S. Court of Appeals.
Nevada	NEV. REV. STAT. § 228.120
New Jersey	N.J. STAT. § 52:17B-107(b). Attorney general “may in his discretion act for any county prosecutor in representing the interests of the State in any and all appeals and applications for post-conviction remedies.”
North Dakota	N.D. CENT. CODE § 54-12-01(1)-(2), (5). Attorney general handles state post-conviction matters upon request in cases where attorney general did not handle the appeal.
Pennsylvania	71 PA. CONS. STAT. § 732-205(c). Attorney general, in his discretion upon the request of the DA, may prosecute the appeal.
West Virginia	W. VA. CODE § 5-3-2. Attorney general will handle state court collateral proceedings challenging conviction or sentence upon prosecutor request
Generally do not handle appeals, with limited exceptions	
State	Citation/Comment
Connecticut	CONN. GEN. STAT. § 3-125. 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.
Louisiana	LA. CONST. art. IV, § 8. 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.

TABLE 17-2—Criminal Appeals

Generally do not handle appeals, with limited exceptions	
State	Citation/Comment
Minnesota	MINN. STAT. § 8.01. Attorney general only handles appeals, state post-conviction cases, and federal habeas petitions upon request of county attorney.
Ohio	OHIO REV. CODE ANN. § 109.02. When cases are handled by the attorney general as “special prosecutor” for the county or pursuant to concurrent jurisdiction (e.g., organized crime, workers’ compensation, Medicaid, and patient abuse and neglect), attorney general handles appeal. Also, attorney general handles state and federal habeas corpus appeals.
Utah	UTAH CODE ANN. § 67-5-1(2). Attorney general represents the state in federal court in federal habeas corpus proceedings and sometimes represents the state before the U.S. Supreme Court where a direct appeal or state post-conviction decision presents federal questions.