

ARKANSAS PUBLIC DEFENDER COMMISSION

Enabling Laws

Act 255 of 2012
A.C.A. §16-87-201 - 214; Act 1193 of 1993

History and Organization

The Arkansas Public Defender Commission was created by Act 1193 of 1993 (codified at Ark. Code Ann. §§ 16-87-201 through 214) in response to the Arkansas Supreme Court's ruling in Independence County v. State, 312 Ark. 472, 850 S.W.2d 842 (1993). In that case, the Court held that insuring indigents a right to counsel was a function of the State of Arkansas, and not a county obligation.

Prior to passage of the Act, each of Arkansas' seventy-five counties bore the responsibility of providing and paying for the representation of indigent criminal defendants within their district. The county system resulted in a myriad of systems, providing varying levels of representation among the counties. After passage of the Act, the Commission began the takeover of the public defender system in order to help rectify this inconsistency in representation, as well as to address a number of other problems regarding the representation of indigent criminal defendants in Arkansas.

Initially, the Commission was only charged with monitoring county-based public defender systems throughout the State, overseeing a small Capital, Conflict and Appellate Office (CCA), and insuring that certain minimum standards established by the Commission were met by appointed counsel. However, since its creation, almost without exception, the Commission's duties and responsibilities have been expanded at each Legislative Session.

In 1995, the staffing of the CCA office was increased to better meet the needs of capital murder defendants throughout the state.

With the passage of Act 1341 of 1997, the State began taking over the funding of the public defender system. Prior to the passage of this Act, the counties were still responsible for paying for indigent representation. However, pursuant to Act 1341, as of January 1, 1998, the State assumed the responsibility of paying the salaries of public defender attorneys, some support staff, and all private attorneys appointed to represent indigent criminal defendants. The Commission also began paying all expenses for expert assistance furnished to indigent defendants, including: psychiatrists, psychologists, pathologists, investigators, mitigation specialists, translators, weapons experts and handwriting experts, just to name a few. As a part of the State take-over, the Commission was likewise given additional duties. Those new duties included: allocating resources; recommending to the Judges whom to employ as public defenders; assuming control over and

maintaining all personnel and payroll documentation; disbursing payroll; and paying any and all costs associated with indigent representation by private attorneys whom the Commission certified to handle various types of cases and then appointed in the appropriate case.

The Commission's duties and responsibilities in connection with the appointment and compensation of private attorneys appointed to represent indigent criminal defendants are numerous, costly and time-consuming. However, these appointments are necessary for several reasons. For example: the local public defender may have a conflict; the case may be such that the local public defender does not have the necessary skills to handle it; or caseloads and scheduling may require the appointment of outside counsel.

With respect to the appointment of private attorneys, the Commission has established a certification procedure whereby private attorneys apply for differing levels of certification based upon their level of experience. After reviewing the applications and supporting documentation, the attorneys are certified to handle the types of cases commensurate with their level of expertise.

When a conflict arises, the trial courts contact the Commission director to make the necessary appointments. The Commission maintains up-to-date lists of attorneys certified for and interested in appointments for various types of cases in various regions of the state, and continually adds more attorneys to the list through training and education. Additionally, the Commission requires detailed invoices from these attorneys which are reviewed very carefully by the Commission staff prior to compensation. While the trial court signs the order for payment of these fees, except with respect to Rule 37.5 appointed counsel (as discussed below), the amount paid is set by the Commission based on numerous factors, including the type of case involved.

Also with the passage of Act 1341 of 1997, and Act 925 of 1997 (now Arkansas Rules of Criminal Procedure, Rule 37.5), the Commission's duties and responsibilities were greatly expanded to include qualifying attorneys and paying any and all expenses relating to the representation of individuals under a sentence of death who are pursuing State post-conviction relief. These expenses include attorneys' fees, investigators' fees, experts' fees, and any other fees or expenses incurred during post-conviction proceedings. In an effort to assist the trial courts, the Commission has created a list of attorneys willing, and qualified, to accept this type of appointment. However, unlike trial fees and expenses discussed above, these fees are still set by the various judges throughout the State. Thus, an over-generous trial judge may thwart the Commission's efforts to maintain fiscal responsibility. Just as the Commission now sets the fees for indigent representation of those whose loss of liberty is at stake, the Commission needs to establish the fees to be paid in Rule 37.5 cases. Such a procedure allows for both uniformity and fiscal responsibility.

During the 1999 Legislative Session, the Ombudsman Division was created within the Commission. At the time of its creation, there were eight (8) social workers and three (3) support staff within this division. However, due to budget cuts, there is now only one (1) Ombudsman position and no support staff within the Division. The Ombudsman is charged with insuring that children sentenced to Division of Youth Services' (DYS) custody are safe, both physically and mentally, and are receiving necessary services. The Ombudsman works closely with the courts, providers, DYS and children's families to ensure the best outcome for the child; hence, the State. Importantly, this is the one area where the Commission is allowed to take a pro-active stance by guiding children and their parents in hopes of preventing these children from becoming future clients of the Commission.

The Legislative Session of 2001 was a very busy one for the Commission. Due to the enormously heavy caseload of defendants per public defender, twenty-two (22) additional attorney positions were authorized by Act 1799 of 2001. By splitting some of these positions into job shares, the Commission has been able to more efficiently and effectively provide adequate representation throughout the State. However, despite the Commission's best efforts, in some Judicial Districts, attorney/defendant caseloads remain untenable and well beyond the standard recommended by the American Bar Association.

Also in 2001, the Commission: (1) set up conflict offices around the State to save on costs for conflicts appointments; (2) helped secure legislation so that part-time public defenders could receive additional compensation for appellate work; (3) gained the authority to set compensation for private attorney appointments rather than having local judges attend to same (a much-needed cost saving measure) and (4) helped secure legislation setting forth the types of cases in which a public defender may or may not be appointed. Indeed, due to the Commission's assumption of the responsibility of setting the compensation for private attorney appointments, it was able to return \$253,158.03 to the State Treasury in June of 2002.

In 2003, the Commission was instrumental in the passage of Act 1778 which assessed a ten dollar fee to be charged and collected on each and every bail bond written by the various bail bond companies doing business in the State. This money is deposited into the Public Defender User Fee Fund.

With the passage of Act 2093 of 2005, two new positions in the Washington County Drug Court were added allowing the Commission to provide a public defender and drug court administrator for Washington County. These positions, previously federally funded, are now being funded out of fees collected by the various courts from criminal defendants given probation or a suspended sentence, as well as from the bail bond user fees.

The Legislative Session of 2005 was also very beneficial for the Commission. Act 2093 provided the commission with two additional attorney positions and one paralegal position so that a conflicts office could be established in Northwest Arkansas to serve Benton, Washington, Carroll, Madison, Crawford and Sebastian counties. This office has proven very beneficial not only in saving the State money, but by helping the Courts run more smoothly in these counties. However, due to the ever increasing caseload of these new employees, additional positions are needed to continue and expand the benefits achieved by this conflicts office.

In 2005, the Commission also received two of the four mitigation specialist positions requested in order to comply with the unequivocal directive of the United States Supreme Court in *Wiggins v. Smith*, 539 U.S. 510 (2003). In *Wiggins*, the Supreme Court made it absolutely clear that all cases involving the death penalty require the use of a mitigation specialist.

Finally, during the 2005 Session, the Commission, in conjunction with the Counties, was able to advance legislation adding an additional ten (10) dollar fee on all bail bond collections. Of this additional fee, seven (7) dollars goes to the Commission and three (3) dollars goes to the Counties to help them defray the costs they contribute for indigent defense.

During the 2007 Session, the Commission was provided an additional 20 positions. These much-needed positions included: 2 interpreters, 2 mitigation specialists, 1 CCA attorney, 1 CCA paralegal, and 11 trial public defender attorneys. Also because the Legislature determined that Dependent Neglect Appeals could best be handled by the Commission, two additional attorney positions and one paralegal position were added to the Commission. Finally, because the Commission had never done this type of case due to its civil, rather than criminal nature, the Commission was instrumental in securing special language in legislation allowing the Commission to assume this responsibility.

In the 2009 Legislative Session, the Commission received one legal support specialist and three Public Defenders positions.

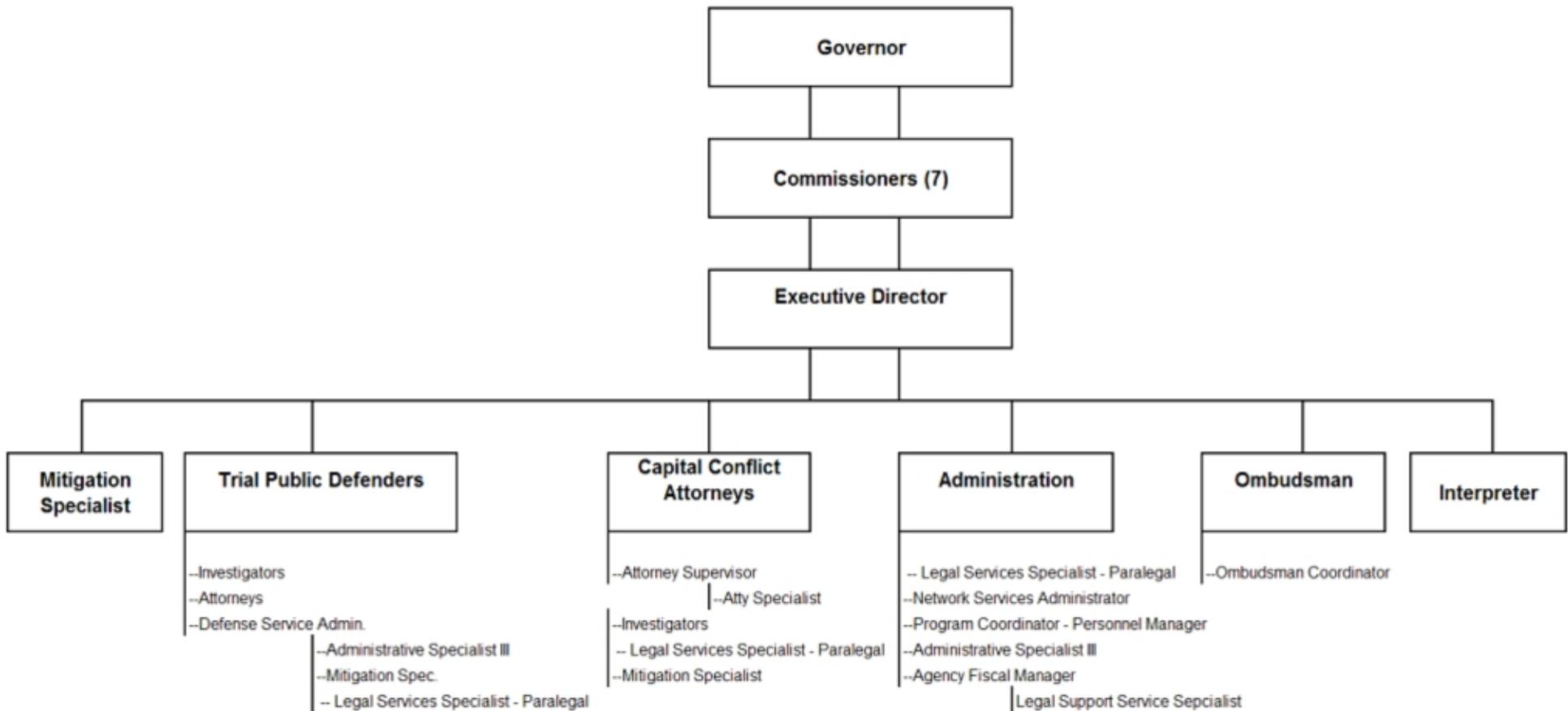
In Fiscal Year 2010, the Arkansas Supreme Court ruled in *Arkansas Public Defender Commission v. Muhammad, et al.*, 2010 Ark. 120 that the APDC was statutorily obligated to pay all reasonable and necessary expenses in cases wherein a defendant is found to be indigent regardless of whether his or her attorney was retained or appointed.

During the 2012 and 2013 Legislative Session, the Commission received two new positions, a program coordinator and a mitigation specialist. The Commission was given additional professional fees to help with cost incurred from retained or appointed attorneys due to the Arkansas Public Defender Commission v. Muhammad, et al. 2010 Ark. 120 case.

In addition to the duties set forth above, the Commission has myriad other duties which may be less familiar to the general public. For example, the Commission is responsible for representing children in state custody, including foster children, who are subject to police interrogation. The Commission also handles adult protective services cases in which DHS seeks to take custody of an elderly person, as well as alcohol and mental commitments, as needed. Further, the Commission has a full-time attorney at the Arkansas State Hospital to represent persons who have been committed to the institution. Finally, the Commission has been called upon to represent children in truancy proceedings, and persons charged with failure to pay child support.

Obviously, the Arkansas Public Defender Commission's duties cover a broad spectrum. Indeed, it is often said that Public Defenders are the third leg of the Criminal Justice system, with Judges and Prosecutors being the other two. The Commission welcomes these additional duties, responsibilities, authority, and obligations as the Commission's objective has been, and remains, to insure that all persons facing a risk of loss of liberty are provided effective and constitutionally-mandated representation. The Commission's requests for this biennial budget are made with this preeminent goal in mind.

The Commission consists of seven members who are attorneys, a County Judge and a Circuit Judge. Each of the Commissioners is appointed by the Governor.



Agency Commentary

All of the Public Defender Commission’s (“Commission”) change level requests are made with the goal of increasing the availability, the effectiveness, and the efficiency of both the Commission, the Trial Public Defender’s Offices throughout the State of Arkansas, the Capital Conflicts Office and the Dependent Neglect Appellate Office. While being mindful of our Constitutional mandate of providing effective representation, these requests are made in an effort to more efficiently and effectively expend the State’s limited resources. Finally, the requests are made in light of recent United States Supreme Court decisions, and Arkansas Supreme Court opinions which substantially affect the role of the attorneys and their representation of clients. Courts have increasingly scrutinized the effectiveness of counsel and have been

particularly critical of over-burdensome case-loads and the lack of resources provided for the representation of indigent defendants. The Commission is aware of the need to provide finality to its cases as well as to provide effective assistance to counsel; hence, the following requests are made with those objectives in mind.

Public Defenders, like prosecutors, are essential to the workings of the Judicial System. Approximately 90% of the persons prosecuted by the State of Arkansas are represented by public defenders or appointed counsel. Without an effective public defender standing beside a criminal defendant, the court system in Arkansas could not function properly. Obviously, our public defenders do more than merely stand beside their clients. An inability to function effectively as a public defender or to proceed on cases would serve no one. If the public defender system fails, the entire court system fails. If we are unprepared due to unmanageable case-loads or inadequate funding, justice is compromised for all parties.

Public Defender State Operations

M & O Request

The Commission is requesting to relocate, renovate and increase our lease space. Currently our offices are located on two different floors. Additional space that is adjacent to our main office will become available. This would allow us to open up our main office and the adjacent space so that we could have one large office and house more of our staff in the same area. At the present time, there is no supervisor located in the first floor space, nor is there a secretary or receptionist. Relocating this staff to the adjacent offices would alleviate these issues. Further, the additional space would give extra room for attorneys, and provide an additional conference area and provide much needed storage space for our massive files.

Trial Public Defender

Personnel

The Commission would like to restore the two positions that were received in FY2011 & FY2012. These two positions are very valuable to the operations of the commission. One position, a public defender III currently has an attorney with over twenty years legal experience including trial and appellate practice, litigation and capital murder counsel in this position. We would hate to lose all this experience and credentials. The position has the responsibility of handling death penalty cases over the State, supervising support staff and assisting other attorneys in capital and conflict cases. The addition of a qualified and experienced Capital / Conflict Public Defender Attorney is critical to the efficient and effective operation of our office and the court system. The other position, a capital conflicts investigator has over twenty-five years as a practicing attorney and over five years as a capital murder investigator. We have a tremendous need for this position that has the responsibility of working with attorneys on death penalty cases over the State and assisting other attorneys in capital and conflict cases. The addition of a qualified and experienced Capital / Conflict Investigator is critical to the efficient and effective operation of our office and the court system. The addition of this investigator position helps in reducing the need and expense in hiring private investigators for court appointed cases.

Also the Commission is requesting sixteen (16) positions: twelve (12) Public Defender II positions, four (4) Legal Service Specialist. These positions are essential to provide Constitutionally required effective representation of indigent persons in the courts of Arkansas. The need arises for a variety of reasons. The number of serious felony offenses, including capital murder cases, remains at an all-time high.

Changes in the District Court system, which includes their expanded jurisdiction and the addition of full time Judges and staff, has increased the workload and responsibility of public defenders. Prior to this, we were not required to represent individuals in city courts. Merger of these courts into the District Courts has resulted in more Public Defender appointments and increased the number of court sites. While locating District Courts in more places makes them more accessible to the public, it also increases the demand for the number of attorneys required to appear in those courts, which often meet simultaneously and in wide-ranging geographic locations. Further, the advent of the Hope Court, Diversion Courts, more Drug Courts, Juvenile Drug Courts, Veterans Courts and Swift Courts, while all good things, has vastly increased the time commitments on our staff. Rather than have court a few days a week, many of our public defenders have to be in various courts nearly all day every day.

The United State's Supreme Court has now specifically ruled attorneys must provide effective assistance of counsel at plea bargains, *Laffler v. Cooper*, 566 U.S. 132S. Ct. 1376, No. 10-209, 2012 WL 932019 (March 21, 2012); and must explain immigration consequences to pleas as well, *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). *Laffler* is common sense but its effect now that it is formally recognized is that high caseloads are extremely problematic. The Commission needs attorneys with expertise in immigration law to serve as a resource to all of our staff. We propose adding two attorneys for this purpose.

The addition of attorneys and staff to the commission is further implicated by the recent US Supreme Court cases Jackson v. Hobbs and Miller v. AL where it was held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders. These cases necessitate a review of each and every case in Arkansas where a juvenile homicide offender was tried as an adult and sentenced to life in prison without possibility of parole. In each of these cases, mitigation specialists will be required to perform a thorough review and present their findings through defense counsel in order for these sentences to be reconsidered and altered where necessary. It is estimated at this time by the Commission that there are ninety (90) such cases where these reviews will need to take place in a timely manner.

In nearly every District our caseloads far exceed national and American Bar Association (ABA) standards. These standards have been recognized by Courts throughout the United States and by the United States Supreme Court. Final caseload numbers for FY 2011-2012 are still being accumulated. However, using the previous year's (FY2010-2011) totals, application of the national standards would require approximately 361 full time equivalent attorneys to meet the standard of "effective assistance of counsel". By comparison, the Commission employs 158 attorneys for trial work - or, 203 attorneys short of the ABA Standards.

The hourly rates, established by the Commission, and paid when private attorneys are necessary, are from \$60 to \$110. The range is in recognition of the differing degrees of severity of cases. Because our staff attorneys are paid at a significantly lower rate, we have found it is cost effective to hire people rather than appoint private attorneys to handle every conflict. Further, there is an ability to contain and project costs if a staff attorney handles a case rather than a private attorney. The efficacy of this method has been proven by the establishment of conflicts offices in Northwest Arkansas, and Pulaski and Jefferson Counties.

Often, due to the lack of local lawyers, we have to send qualified private attorneys from distant regions of the State - further exacerbating costs. While we cannot anticipate where the demand will arise in the coming biennium, locating these conflict staff attorneys in Central Arkansas would allow us the flexibility to assign attorneys to meet the demand statewide. If the need changes from the present time we will still be able to cover it.

The ratio of attorneys to staff is very disproportionate. We have few support staff to assist in handling our ever-growing case-loads. This lack of support staff often causes attorneys to do most of their own secretarial type work rather than being able to concentrate on attorney duties. Many districts have only one legal services specialist though the district may have four or five counties and five or six attorneys making the coordination of resources much more difficult. While attorneys may only be responsible for one court or one county, district secretaries must handle the work of all attorneys in all seventy-five counties. Additional support staff is needed to help better manage the high case-loads and more efficiently process the cases. The need is especially acute in districts where staff to attorney ratio is excessive and where the district has many counties. A ratio of one (1) secretary/paralegal to two attorneys (1:2) is usually acceptable. There are fourteen (14) of the twenty-eight (28) districts that exceed this ratio. Additionally, there are six districts where the ratio exceeds 1:4. One of those districts has four counties and the other two have six counties. Clearly, additional staffing resources are needed. For the foregoing reasons, the Commission respectfully requests the additional attorney and paralegal support staff positions.

M & O Request

We are requesting a small increase to allow for the necessary start up equipment for the sixteen new employees requested in this same budget. We will need office furniture, supplies, membership fees, subscription dues, and computers.

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
AUDIT OF :
ARKANSAS PUBLIC DEFENDER COMMISSION
FOR THE YEAR ENDED JUNE 30, 2011

Findings

Ark. Code Ann. § 19-4-1604 and the APDC's Personnel Handbook state that full or part-time attorneys may teach temporarily at state-supported institutions of higher education even though their combined salaries will exceed the line item maximum, subject to approval of the Chief Fiscal Officer of the State. To obtain this approval of concurrent employment, the Department of Finance and Administration (DFA) requires that the employee provide a statement describing how he or she will make up the time missed from the primary employer while teaching at the secondary employer in order to verify that the additional duties performed for the secondary employer will not interfere with the proper and required performance of the employee's primary duties.

Two Agency attorneys taught a one-hour daytime course and maintained a one-hour office period once weekly at a state-supported institution of higher education in the spring 2012 and fall 2011. However, the Chief Fiscal Officer of the State did not approve these concurrent employment positions.

Controls were not operating effectively to ensure proper recording of employee absences from work. During our testing, we noted an Agency employee submitted two time sheets totaling 11 hours of annual leave at the District Office that were not recorded in AASIS.

The Agency did not comply with Governor's Policy Directive #5, which states that "all State offices shall be open for business between 8:00 a.m. and 4:30 p.m. However, department directors shall have flexibility to establish other working hours for their department personnel so long as all employees work an eight-hour day. Deviations from the five-day, 40-hour work week shall be approved by the Governor."

We noted that it is standard practice for Agency attorneys to work outside of the 8:00 a.m. to 4:30 p.m. timeframe due to the nature of the work performed. However, an alternative work schedule policy was not approved by the Governor as required by Governor's Policy Directive #5.

Recommendations

Include in its policy a requirement for employees to provide supporting documentation for concurrent employment as required by DFA and ensure this policy is communicated to all division offices.

Review its controls over recording leave to ensure that all leave requests submitted at the district level are received by the Administration offices for processing.

Obtain approval from the Governor for an alternative work schedule policy.

State Contracts Over \$25,000 Awarded To Minority Owned Businesses Fiscal Year 2012

None

Employment Summary

	Male	Female	Total	%
White Employees	145	131	276	92 %
Black Employees	12	8	20	7 %
Other Racial Minorities	1	3	4	1 %
	Total Minorities		24	8 %
	Total Employees		300	100 %

Publications

A.C.A. 25-1-204

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution
		Governor	General Assembly		
Annual Reports	ACA §16-87-203	Y	Y	40	Required by Law

Department Appropriation Summary

Historical Data

Agency Request and Executive Recommendation

Appropriation	2011-2012		2012-2013		2012-2013		2013-2014					2014-2015						
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
1VA Ombudsman Program	93,070	1	87,909	1	89,640	1	88,189	1	88,189	1	88,189	1	88,313	1	88,313	1	88,313	1
337 Public Defender-Operations	2,556,231	18	2,468,326	18	2,588,811	18	2,521,741	18	2,582,451	18	2,582,451	18	2,521,863	18	2,551,073	18	2,551,073	18
530 Public Defender -Trial Office	20,722,784	222	19,983,180	222	20,366,127	221	19,893,585	220	21,505,669	238	20,053,164	222	19,901,634	220	21,443,318	238	20,061,213	222
Total	23,372,085	241	22,539,415	241	23,044,578	240	22,503,515	239	24,176,309	257	22,723,804	241	22,511,810	239	24,082,704	257	22,700,599	241

Funding Sources		%		%		%		%		%		%		%		%		%
Fund Balance	4000005	4,091,234	17.2	361,997	1.6		361,997	1.6	361,997	1.5	361,997	1.6	361,997	1.6	361,997	1.5	361,997	1.6
State Central Services	4000035	10,773,330	45.4	14,586,924	63.7		14,550,744	63.6	16,223,538	66.1	14,771,033	64.0	14,558,915	63.6	16,129,809	66.0	14,747,704	63.9
Bail Bond Fees	4000115	1,359,816	5.7	1,200,000	5.2		1,200,000	5.2	1,200,000	4.9	1,200,000	5.2	1,200,000	5.2	1,200,000	4.9	1,200,000	5.2
M & R Sales	4000340	113	0.0	0	0.0		0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
State Administration of Justice	4000470	6,236,168	26.3	5,664,582	24.7		5,664,582	24.8	5,664,582	23.1	5,664,582	24.5	5,664,582	24.8	5,664,582	23.2	5,664,582	24.6
Transfer from DHS-DYS	4000515	90,534	0.4	87,909	0.4		88,189	0.4	88,189	0.4	88,189	0.4	88,313	0.4	88,313	0.4	88,313	0.4
User / Attorney Fees	4000725	1,182,887	5.0	1,000,000	4.4		1,000,000	4.4	1,000,000	4.1	1,000,000	4.3	1,000,000	4.4	1,000,000	4.1	1,000,000	4.3
Total Funds		23,734,082	100.0	22,901,412	100.0		22,865,512	100.0	24,538,306	100.0	23,085,801	100.0	22,873,807	100.0	24,444,701	100.0	23,062,596	100.0
Excess Appropriation/(Funding)		(361,997)		(361,997)			(361,997)		(361,997)		(361,997)		(361,997)		(361,997)		(361,997)	
Grand Total		23,372,085		22,539,415			22,503,515		24,176,309		22,723,804		22,511,810		24,082,704		22,700,599	

Budgeted positions exceed Authorized in (530) Public Defender - Trial Office due to positions authorized through the Central Growth Pool.

Agency Position Usage Report

FY2010 - 2011						FY2011 - 2012						FY2012 - 2013					
Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused
	Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total	
237	236	2	238	-1	0.42 %	239	239	2	241	-2	0.00 %	239	240	1	241	-2	-0.42 %

Total Budgeted Positions exceed Authorized due to positions received from the Central Growth Pool.

Analysis of Budget Request

Appropriation: 1VA - Ombudsman Program

Funding Sources: HSC - State Central Services

The Ombudsman Division of the Arkansas Public Defender Commission was created during the 82nd General Assembly for the purpose of insuring that children placed within the custody of the Department of Human Services (DHS) - Division of Youth Services are receiving necessary services designed to keep them safe both mentally and physically. One position in the Ombudsman Division of the Arkansas Public Defender Commission is funded from funds transferred by the DHS. This transfer is for the benefit of the Juvenile Ombudsman Program of the Public Defender Commission.

Base Level Regular Salaries and Personal Services Matching includes Career Service payments for eligible employees. Personal Services Matching also includes a \$20 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$410 per month. Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Merit Pay Increases. The Base Level salary of unclassified positions reflects the FY13 line item maximum.

The Commission's Request provides for Base Level for the 2013-2015 Biennium.

The Executive Recommendation provides for the Commission's Request.

Appropriation Summary

Appropriation: 1VA - Ombudsman Program

Funding Sources: HSC - State Central Services

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			2013-2014			2014-2015		
		2011-2012 Actual	2012-2013 Budget	2012-2013 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	72,917	68,282	70,708	68,282	68,282	68,282	68,382	68,382	68,382
#Positions		1	1	1	1	1	1	1	1	1
Personal Services Matching	5010003	20,153	19,627	18,932	19,907	19,907	19,907	19,931	19,931	19,931
Total		93,070	87,909	89,640	88,189	88,189	88,189	88,313	88,313	88,313
Funding Sources										
Fund Balance	4000005	14,760	12,224		12,224	12,224	12,224	12,224	12,224	12,224
Transfer from DHS-DYS	4000515	90,534	87,909		88,189	88,189	88,189	88,313	88,313	88,313
Total Funding		105,294	100,133		100,413	100,413	100,413	100,537	100,537	100,537
Excess Appropriation/(Funding)		(12,224)	(12,224)		(12,224)	(12,224)	(12,224)	(12,224)	(12,224)	(12,224)
Grand Total		93,070	87,909		88,189	88,189	88,189	88,313	88,313	88,313

Analysis of Budget Request

Appropriation: 337 - Public Defender-Operations

Funding Sources: HSC - State Central Services

The Arkansas Public Defender Commission was established in 1993 to address a variety of problems and concerns related to the representation of indigent criminal defendants in Capital Conflicts and Appeals to the Supreme Court in the State of Arkansas. The State Operations appropriation is funded from the State Central Services Fund.

Base Level Regular Salaries and Personal Services Matching includes Career Service payments for eligible employees. Personal Services Matching also includes a \$20 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$410 per month. Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Merit Pay Increases. The Base Level salary of unclassified positions reflects the FY13 line item maximum.

The Commission's Change Level Request in Operating Expenses totals \$60,710 in FY2014 and \$29,210 in FY2015 to cover the costs of renovations and rental expenses in the acquisition of approximately 2200 additional sq. ft. of office space.

The Executive Recommendation provides for the Commission's Request.

Appropriation Summary

Appropriation: 337 - Public Defender-Operations

Funding Sources: HSC - State Central Services

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2011-2012 Actual	2012-2013 Budget	2012-2013 Authorized	2013-2014			2014-2015		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	1,161,386	1,073,131	1,188,283	1,112,857	1,112,857	1,112,857	1,112,957	1,112,957	1,112,957
#Positions		18	18	18	18	18	18	18	18	18
Extra Help	5010001	3,858	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
#Extra Help		1	3	3	3	3	3	3	3	3
Personal Services Matching	5010003	330,183	320,067	325,400	333,756	333,756	333,756	333,778	333,778	333,778
Operating Expenses	5020002	218,551	218,438	218,438	218,438	279,148	279,148	218,438	247,648	247,648
Conference & Travel Expenses	5050009	19,690	19,690	19,690	19,690	19,690	19,690	19,690	19,690	19,690
Professional Fees	5060010	822,563	825,000	825,000	825,000	825,000	825,000	825,000	825,000	825,000
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
Total		2,556,231	2,468,326	2,588,811	2,521,741	2,582,451	2,582,451	2,521,863	2,551,073	2,551,073
Funding Sources										
State Central Services	4000035	2,556,118	2,468,326		2,521,741	2,582,451	2,582,451	2,521,863	2,551,073	2,551,073
M & R Sales	4000340	113	0		0	0	0	0	0	0
Total Funding		2,556,231	2,468,326		2,521,741	2,582,451	2,582,451	2,521,863	2,551,073	2,551,073
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
Grand Total		2,556,231	2,468,326		2,521,741	2,582,451	2,582,451	2,521,863	2,551,073	2,551,073

Change Level by Appropriation

Appropriation: 337 - Public Defender-Operations
Funding Sources: HSC - State Central Services

Agency Request

Change Level		2013-2014	Pos	Cumulative	% of BL	2014-2015	Pos	Cumulative	% of BL
BL	Base Level	2,521,741	18	2,521,741	100.0	2,521,863	18	2,521,863	100.0
C01	Existing Program	60,710	0	2,582,451	102.4	29,210	0	2,551,073	101.2

Executive Recommendation

Change Level		2013-2014	Pos	Cumulative	% of BL	2014-2015	Pos	Cumulative	% of BL
BL	Base Level	2,521,741	18	2,521,741	100.0	2,521,863	18	2,521,863	100.0
C01	Existing Program	60,710	0	2,582,451	102.4	29,210	0	2,551,073	101.2

Justification

C01	The Commission is requesting to relocate, renovate, and increase our lease space. Currently our offices are located on two different floors. Additional space that is adjacent to our main office will become available. This would allow us to open up our main office and the adjacent space so that we could have one large office and house more of our staff in the same area. At the present time, there is no supervisor located in the first floor space, nor is there a secretary or receptionist. Relocating this staff to the adjacent offices would alleviate these issues. Further, the additional space would give extra room for attorneys, and provide an additional conference area to staff cases and provide much needed storage space for our massive files.
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Analysis of Budget Request

Appropriation: 530 - Public Defender -Trial Office

Funding Sources: HSC - State Central Services

The Trial Public Defender Office of the Arkansas Public Defender Commission was created by Act 1341 of 1997 and provides for the establishment of a statewide public defender system in Arkansas. The Trial Public Defender Office operates under the supervision of the Executive Director of the Arkansas Public Defender Commission. Duties of all public defenders are to provide for competent, effective, and uniform representation of indigent criminal defendants throughout the State. The Commission utilizes over sixty-one (61) job share positions.

The Trial Public Defender Office is funded in part from a share of those funds remitted by the cities and counties from court costs and filing fees for deposit into the State Administration of Justice Fund. A portion of those funds is then allocated for deposit into the State Central Services Fund for the benefit of the Public Defender Commission per Arkansas Code §16-10-310. Arkansas Code §17-19-301 (e) allows for a fee to be charged and collected by all bail bond companies on each bond. The additional revenue helps defray the cost of the public defender system, both statewide and in each individual county.

Base Level Regular Salaries and Personal Services Matching includes Career Service payments for eligible employees. Personal Services Matching also includes a \$20 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$410 per month. Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Merit Pay Increases. The Base Level salary of unclassified positions reflects the FY13 line item maximum.

The Commission's Change Level Request totaling \$1,612,084 in FY2014 and \$1,541,684 in FY2015 reflects the following:

- Regular Salaries and Personal Services Matching increases of \$1,384,868 each year for restoration of two (2) growth pool positions, four (4) new G179C Legal Service Specialist positions, twelve (12) new G002N Public Defender II positions, and the reclassification of one (1) position.
- Operating Expenses increases of \$193,616 in FY2014 and \$123,216 in FY2015 for purchase of a computer and related software, telecommunications and network expenses, rent, mileage, meals & lodging, office supplies and subscription dues to support sixteen (16) new employees.
- Travel and Conference Expenses increases of \$33,600 each year for training and continuing education requirements for the twelve (12) new G002N Public Defender II positions.

The Executive Recommendation provides for Base Level plus \$159,579 annually in Regular Salaries and Personal Services Matching appropriation and State Central Services Fund funding for the restoration of two (2) growth pool positions and the reclassification of one (1) position.

Appropriation Summary

Appropriation: 530 - Public Defender -Trial Office

Funding Sources: HSC - State Central Services

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			2013-2014			2014-2015		
		2011-2012 Actual	2012-2013 Budget	2012-2013 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	14,656,571	13,797,129	14,317,442	13,681,242	14,744,225	13,804,029	13,687,842	14,750,825	13,810,629
#Positions		222	222	221	220	238	222	220	238	222
Extra Help	5010001	12,284	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
#Extra Help		3	3	3	3	3	3	3	3	3
Personal Services Matching	5010003	4,077,211	4,060,300	3,922,934	4,086,592	4,408,477	4,123,384	4,088,041	4,409,926	4,124,833
Operating Expenses	5020002	284,004	288,251	288,251	288,251	481,867	288,251	288,251	411,467	288,251
Conference & Travel Expenses	5050009	2,500	2,500	2,500	2,500	36,100	2,500	2,500	36,100	2,500
Professional Fees	5060010	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
Public Defender Comm. Prgms.	5900046	736,424	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
Bail Bond Co. Public Def. Prgm.	5900047	203,790	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
Total		20,722,784	19,983,180	20,366,127	19,893,585	21,505,669	20,053,164	19,901,634	21,443,318	20,061,213
Funding Sources										
Fund Balance	4000005	4,076,474	349,773		349,773	349,773	349,773	349,773	349,773	349,773
State Central Services	4000035	8,217,212	12,118,598		12,029,003	13,641,087	12,188,582	12,037,052	13,578,736	12,196,631
Bail Bond Fees	4000115	1,359,816	1,200,000		1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
State Administration of Justice	4000470	6,236,168	5,664,582		5,664,582	5,664,582	5,664,582	5,664,582	5,664,582	5,664,582
User / Attorney Fees	4000725	1,182,887	1,000,000		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total Funding		21,072,557	20,332,953		20,243,358	21,855,442	20,402,937	20,251,407	21,793,091	20,410,986
Excess Appropriation/(Funding)		(349,773)	(349,773)		(349,773)	(349,773)	(349,773)	(349,773)	(349,773)	(349,773)
Grand Total		20,722,784	19,983,180		19,893,585	21,505,669	20,053,164	19,901,634	21,443,318	20,061,213

FY13 Budget amounts in Regular Salaries, Personal Services Matching and Positions exceed the authorized amounts due to transfers from the Central Growth Pool during the 2011-2013 Biennium.

Change Level by Appropriation

Appropriation: 530 - Public Defender -Trial Office
Funding Sources: HSC - State Central Services

Agency Request

Change Level		2013-2014	Pos	Cumulative	% of BL	2014-2015	Pos	Cumulative	% of BL
BL	Base Level	19,893,585	220	19,893,585	100.0	19,901,634	220	19,901,634	100.0
C01	Existing Program	1,404,169	16	21,297,754	107.1	1,376,969	16	21,278,603	106.9
C06	Restore Position/Approp	159,579	2	21,457,333	107.9	159,579	2	21,438,182	107.7
C08	Technology	48,336	0	21,505,669	108.1	5,136	0	21,443,318	107.7
C10	Reclass	0	0	21,505,669	108.1	0	0	21,443,318	107.7

Executive Recommendation

Change Level		2013-2014	Pos	Cumulative	% of BL	2014-2015	Pos	Cumulative	% of BL
BL	Base Level	19,893,585	220	19,893,585	100.0	19,901,634	220	19,901,634	100.0
C01	Existing Program	0	0	19,893,585	100.0	0	0	19,901,634	100.0
C06	Restore Position/Approp	159,579	2	20,053,164	100.8	159,579	2	20,061,213	100.8
C08	Technology	0	0	20,053,164	100.8	0	0	20,061,213	100.8
C10	Reclass	0	0	20,053,164	100.8	0	0	20,061,213	100.8

Justification

C01	The United State's Supreme Court has ruled attorneys must provide effective assistance of counsel at plea bargains, Lafler v. Cooper, 566 U.S. 132S. Ct. 1376, No. 10-209, 2012 WL 932019 (March 21, 2012); and must explain immigration consequences to pleas as well, Padilla v. Kentucky, 130 S.Ct. 1473 (2010). The request includes two (2) positions with related Salary and Personal Service Match and Operating Expenses to be expert in immigration law and to serve as a resource to all our staff. The addition of full time District Judges has increased our obligation substantially. Prior to this development we were not required to represent individuals in city courts. We now have to do so which puts a severe strain on our already overworked lawyers. These positions are essential to provide Constitutionally required effective representation of indigent persons in the courts of Arkansas. The need arises for a variety of reasons. Our overall caseload has increased in almost every district. Additionally, the number of homicides and class Y felonies has greatly increased our obligations. By adding twelve (12) attorneys and four (4) paralegal to the office we would be able to more efficiently and economically provide representation for the myriad of conflicts appointments we make annually. The request for the new additional positions includes Salary and Personnel Service Match and Operating Expenses. The Operating Expense of \$227,216 and \$156,816 in FY2014 and FY2015 is or additional office furniture, office supplies, membership fees, subscription and due, telephone and parking cost associated for the overall sixteen (16) new positions. Travel & Conference increase of \$33,600 each year is needed to cover the costs of training and CLE for the new attorney positions.
C06	The Commission would like to restore / continue the two growth pool positions that were received in FY2011 & FY2012. The Commission would like to retain two highly qualified employees. Public Defender III position. Currently in this position, there is an attorney with over twenty years legal experience including trial and appellate practice, litigation and capital murder counsel in this position. Losing all this experience and credentials would create such hardship on the Commission. This position is used as our Capital / Conflicts Attorney. The position has the responsibility of handling death penalty cases over the State, supervising support staff and assisting other attorneys in capital and conflict cases. The addition of a qualified and experienced Capital / Conflict Public Defender Attorney is critical to the efficient and effective operation of our office and the court system. Capital Conflicts Investigator position. Currently there is an investigator with over twenty-five years as a practicing attorney and over five years as a capital murder investigator. We have a tremendous need for this position that has the responsibility of working with attorneys on death penalty cases over the State and assisting other attorneys in capital and conflict cases. The addition of a qualified and experienced Capital / Conflict Investigator is critical to the efficient and effective operation of our office and the court system. The addition of this investigator position helps in reducing the need and expense in hiring private investigators for court appointed cases.
C08	The sixteen new positions in FY2014 will require a computer, software and connection to the internet. The estimate for this is request is \$48,336 in FY2014. The internet connection is \$26.75 per month or \$1,605 per year. This request will not be needed if the positions are not added. The computers can be found in the Commission's IT Plan in the IT Support Cost section Future Hardware Purchases, and the software is found in the IT Support Cost under section Future Software Purchases.
C10	The needs of the agency have changed since the Pay Plan Implementation and the Commission has implemented some minor internal reorganization changes in duties, responsibilities, and reporting structure to better facilitate internal controls.