

# ARKANSAS PUBLIC DEFENDER COMMISSION

## Enabling Laws

Act 1223 of 2007

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.

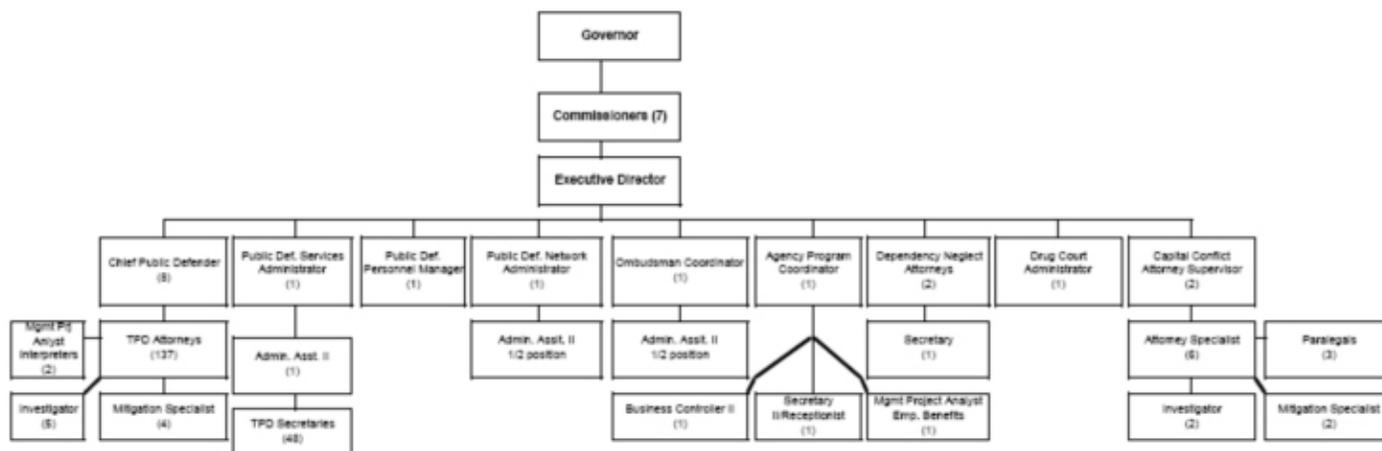
During the 2007 Session, the Commission was generously provided an additional 20 positions. These much-needed positions included: 2 interpreters, 2 mitigation specialists, 1 CCA attorney, 1 CCA paralegal, and 11 trial public defender attorneys. Also because the Legislature determined that Dependent Neglect 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 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 DHHS 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, 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 caseloads 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 85 - 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 caseloads or inadequate funding, justice is compromised for all parties.

## **Trial Public Defender**

### **Personnel**

The Commission is requesting twenty-one (21) positions: three (3) Mitigation Specialist and fifteen (15) additional Trial Public Defender attorney positions. The Dependent Neglect Division is requesting one (1) Public Defender I position, one (1) Legal Service Specialist and one (1) Legal Support Specialist.

Public Defender Attorney I, II and III - The Public Defender Attorney I works under the administrative direction and supervision of the Chief Public Defender in his or her district as well as immediate supervisors designated by the Chief Public Defender. Public defenders represent all persons at risk of loss of liberty. This includes defendants in criminal cases charged with offenses from shoplifting to capital murder. It also includes juveniles in delinquency, families in need of supervision, truancy cases, adult protective services cases, alcohol, drug and mental commitment cases, child support contempt cases and any other in which someone's liberty might be at stake.

Public defenders represent our clients from the inception of the case through direct appeal. The representation includes researching, drafting and filing all relevant motions; investigating; visiting clients in jail and prison and appearing in any and all appropriate courts.

The Commission anticipates each level of public defender starting at fifteen percent higher than the previous level. Additionally, level II and III public defenders who are appellate attorneys, supervisory attorneys, capital attorneys death-qualified as lead or co-counsel, or attorneys who have specific obligations of mentoring and training new lawyers should be paid between fifteen and twenty percent more than Public Defender III level co-workers who do not have similar responsibilities, training or expertise.

Mitigation Specialist - We are requesting an additional three (3) mitigation specialist positions. Although we received mitigation specialist positions during the last Legislative Session, it has become painfully apparent that these additional positions were insufficient to meet the needs of the office and to comply with *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003). In *Wiggins* the United States Supreme Court held that in all death cases, a mitigation specialist must thoroughly and exhaustively research the capital defendant's social history. The court opined that strategic defense decisions must not, and cannot, be made absent such an investigation. Indeed, *Wiggins* stands for the proposition that a defendant in a capital case who does not have the services of a mitigation specialist has received ineffective assistance of counsel and is entitled to a new trial. Thus, in no uncertain terms, *Wiggins* dictates that a mitigation specialist be appointed to each and every death penalty case.

At this time, we are unable to provide a staff mitigation specialist in every case. Because of the nature of death penalty defense and the exhaustive work required to prepare for the penalty phase, our mitigation specialists are stretched to the breaking point. Further, several of our capital cases have multiple defendants and each defendant must have his own mitigation specialist. If we cannot provide a staff mitigation specialist to each capital defendant, we are required to hire a private mitigation specialist at costs ranging from \$45 to \$75 an hour. Clearly, paying a person's salary at the rate of \$20.01 an hour is more cost effective, especially when contemplating the thousands of hours expended in the preparation

of the penalty phase of a death case. Payment records reveal that in Fiscal Year 04/05 we spent \$89,737 on private Mitigation Specialists and in Fiscal Year 06/07 that cost rose to \$171,791. Because the number of capital cases filed has drastically increased over the past several years, we anticipate that this cost will once again rise significantly.

Further, merely finding private mitigation specialists in this state is becoming exceedingly difficult. Indeed, there are very few private mitigation specialists available for hire. While we have attempted to address this problem by conducting trainings for mitigation specialists, we have still been unable to keep up with the numbers we need. Thus, in some instances we have had to go out of state to find a mitigation specialist, clearly causing our costs to rise. Finally, with respect to this request, the number of Hispanic clients facing the death penalty mandates that we make every effort to hire a bilingual mitigation specialist.

For the foregoing reasons, we are requesting the addition of three (3) mitigation specialist positions, at least one of whom should be bilingual.

During the almost 12 months that the public defender Dependent Neglect Appellate Division has been operational, 91 dependency-neglect cases have had notices of appeals filed with a total number of 96 clients seeking relief from the Court of Appeals.

The Supreme Court has adopted stringent timelines for brief preparation. From the time the Arkansas Public Defender Commission (APDC) receives the trial record, we have 20 days to abstract, research, and complete the brief; with only one 7-day extension possible. The resulting briefing schedules can be very difficult. Because the APDC has no control over when Notice Of Appeals are filed, the APDC cannot stagger due dates for appellate briefs. For instance we had 6 briefs due in an 8-day time period. Clearly this is a tremendous and nearly impossible burden, but unfortunately it is not unusual. We have only one paralegal that is responsible for abstracting every record for the two attorneys. In addition to abstracting, the same paralegal coordinates and reviews the appeals; types and puts together the abstract and brief and sees that everything is filed in a timely manner. Many of the cases we receive have some sort of error which we must address prior to even beginning the appellate process.

In an effort to address such issues, the APDC has offered four CLE (Certified Legal Education) training sessions to trial parent counsel and one training session to county circuit clerks. The level of participation by clerks at the one event was phenomenal, with an attendance rate of over 69%. The total level of participation by trial counsel at the four combined events was approximately 37%. Again, this is time consuming and adds work to our already overburdened staff but the APDC firmly believes that the training is critically important.

Additional staff is absolutely essential given the enormous number of appeals, the strict and extremely short scheduling and the fact that our current staff, of 2 attorneys and one paralegal, is working no less than 65 to 80 hours a week. We are requesting one additional Attorney II position and two support staff positions - one Legal Service Specialist and one Legal Support Specialist.

### **M & O Request**

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

### **Professional Fees**

The Commission is requesting additional appropriation and funds in our Professional Fee line item. This line item is used to pay our Conflict Attorneys, Expert Witnesses, additional Mitigation Specialists, Investigators and medical/psychological examiners. These line items have not had an increase in many years and for the past few years we have spent the entire amount. However, this year the accumulated effects of the increasing case load, conflicts and mitigation expenses have increased enormously.

### **Disbursement Appropriation Request**

The 2005 session saw the passage of Act 1956, which added an additional ten-dollar fee to Act 1778's Bail Bond fee. These fees, paid quarterly, are also designated to help defray the cost of the public defender system, statewide and in each individual county. Of the additional ten dollars, three dollars (\$3.00) goes to the Counties to defray the cost of the local offices.

The Commission would like to request additional appropriation in the Bail Bond County Public Defender Program line item to accommodate this disbursement to the Counties on a quarterly basis.

### **Public Defender State Operations**

#### **Professional Fees**

The Commission is requesting additional appropriation and funds in our Professional Fee line item. This line item is used to pay our Conflict Attorneys, Expert Witnesses, additional Mitigation Specialists, Investigators and medical/psychological examiners. These line items have not had an increase in many years and for the past few years we have spent the entire amount. However, this year the accumulated effects of the increasing case load, conflicts and mitigation expenses have increased enormously.

#### **Ombudsman**

##### **Personnel**

The Commission is seeking to transfer one position from the Ombudsman Program to the Trial Public Defender Office to facilitate better internal control. This position is currently paid out of the Trial Public Defender Office but the money must be transferred to the Ombudsman Program at the first of each year to fund the position.

## Audit Findings

DIVISION OF LEGISLATIVE AUDIT  
AUDIT OF :  
ARKANSAS PUBLIC DEFENDER COMMISSION

FOR THE YEAR ENDED JUNE 30, 2007

Findings	Recommendations
None	None

## Employment Summary

	Male	Female	Total	%
White Employees	143	131	274	93 %
Black Employees	9	10	19	7 %
Other Racial Minorities	0	1	1	0 %
Total Minorities			20	7 %
Total Employees			294	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	2007-2008		2008-2009		2008-2009		2009-2010					2010-2011						
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
1VA Ombudsman Program	145,852	2	143,722	2	145,227	2	171,519	2	86,165	1	86,165	1	175,213	2	88,013	1	88,013	1
337 Public Defender-Operations	1,662,899	17	1,619,911	17	1,609,350	17	1,706,946	17	1,935,946	17	1,935,946	17	1,735,077	17	1,964,077	17	1,964,077	17
530 Public Defender -Trial Office	17,315,339	214	17,771,462	214	17,831,086	214	18,528,580	214	20,823,276	236	19,105,542	219	18,882,009	214	21,205,132	236	19,465,934	219
<b>Total</b>	<b>19,124,090</b>	<b>233</b>	<b>19,535,095</b>	<b>233</b>	<b>19,585,663</b>	<b>233</b>	<b>20,407,045</b>	<b>233</b>	<b>22,845,387</b>	<b>254</b>	<b>21,127,653</b>	<b>237</b>	<b>20,792,299</b>	<b>233</b>	<b>23,257,222</b>	<b>254</b>	<b>21,518,024</b>	<b>237</b>

Funding Sources		%		%		%		%		%		%		%		%		%
Fund Balance 4000005	2,705,520	12.8	1,957,055	9.0			2,139,994	10.5	2,139,994	9.4	2,139,994	10.1	0	0.0	0	0.0	0	0.0
State Central Services 4000035	8,944,529	42.4	10,830,802	50.0			8,987,505	44.2	11,511,201	50.4	9,793,467	46.4	11,159,059	53.9	13,711,182	59.0	11,971,984	55.6
Bail Bond Fees 4000115	1,465,896	7.0	1,150,959	5.3			1,200,000	5.9	1,200,000	5.3	1,200,000	5.7	1,500,000	7.2	1,500,000	6.4	1,500,000	7.0
State Administration of Justice 4000470	6,908,027	32.8	6,908,027	31.9			6,908,027	34.0	6,908,027	30.2	6,908,027	32.7	6,908,027	33.4	6,908,027	29.7	6,908,027	32.1
Transfer from DHS-DYS 4000515	52,211	0.2	73,379	0.3			86,165	0.4	86,165	0.4	86,165	0.4	88,013	0.4	88,013	0.4	88,013	0.4
User / Attorney Fees 4000725	1,004,962	4.8	754,867	3.5			1,000,000	4.9	1,000,000	4.4	1,000,000	4.7	1,050,000	5.1	1,050,000	4.5	1,050,000	4.9
<b>Total Funds</b>	<b>21,081,145</b>	<b>100.0</b>	<b>21,675,089</b>	<b>100.0</b>			<b>20,321,691</b>	<b>100.0</b>	<b>22,845,387</b>	<b>100.0</b>	<b>21,127,653</b>	<b>100.0</b>	<b>20,705,099</b>	<b>100.0</b>	<b>23,257,222</b>	<b>100.0</b>	<b>21,518,024</b>	<b>100.0</b>
Excess Appropriation/(Funding)	(1,957,055)		(2,139,994)				85,354		0		0		87,200		0		0	
<b>Grand Total</b>	<b>19,124,090</b>		<b>19,535,095</b>				<b>20,407,045</b>		<b>22,845,387</b>		<b>21,127,653</b>		<b>20,792,299</b>		<b>23,257,222</b>		<b>21,518,024</b>	

The FY08 Actual amount exceeds the Authorized amount due to a higher Authorized appropriation in FY08.  
 The FY09 Budget amount exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

## Agency Position Usage Report

FY2006 - 2007						FY2007 - 2008						FY2008 - 2009					
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	
216	211	2	213	3	2.31 %	233	232	1	233	0	0.43 %	233	231	2	233	0	0.86 %

Employment Summary Report reflects higher number of total employees (294) than authorized on this report (233) for FY2009 due to 61 job share positions.

## **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 82<sup>nd</sup> 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. There is also a transfer of funds from the Public Defender's Trial Public Defender appropriation.

Base Level salaries for classified positions reflect the recommendations of the Pay Plan Study. A 2.3% Cost of Living Allowance is reflected in the second year of the biennium. The Base Level request for Regular Salaries may include Career Service payments for eligible employees. Personal Services Matching includes a \$75 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$425.

The Agency is transferring one position to appropriation 530 - Trial Public Defender, to facilitate better internal control. The position is currently paid with a transfer from Trial Public Defender fund. This move will eliminate the need to transfer funding. A negative Change Level request of \$85,354 in FY2010 and \$87,200 in FY2011 is reflected.

Executive Recommendation provides for Agency Request.

## Appropriation Summary

**Appropriation:** 1VA - Ombudsman Program

**Funding Sources:** HSC - State Central Services

### Historical Data

### Agency Request and Executive Recommendation

Commitment Item		Historical Data			2009-2010			2010-2011		
		2007-2008 Actual	2008-2009 Budget	2008-2009 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	114,316	114,042	113,785	135,883	68,283	68,283	138,993	69,839	69,839
<b>#Positions</b>		<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>
Personal Services Matching	5010003	31,536	29,680	31,442	35,636	17,882	17,882	36,220	18,174	18,174
<b>Total</b>		<b>145,852</b>	<b>143,722</b>	<b>145,227</b>	<b>171,519</b>	<b>86,165</b>	<b>86,165</b>	<b>175,213</b>	<b>88,013</b>	<b>88,013</b>
<b>Funding Sources</b>										
Fund Balance	4000005	47,097	14,926		0	0	0	0	0	0
Bail Bond Fees	4000115	61,470	55,417		0	0	0	0	0	0
Transfer from DHS-DYS	4000515	52,211	73,379		86,165	86,165	86,165	88,013	88,013	88,013
<b>Total Funding</b>		<b>160,778</b>	<b>143,722</b>		<b>86,165</b>	<b>86,165</b>	<b>86,165</b>	<b>88,013</b>	<b>88,013</b>	<b>88,013</b>
Excess Appropriation/(Funding)		(14,926)	0		85,354	0	0	87,200	0	0
<b>Grand Total</b>		<b>145,852</b>	<b>143,722</b>		<b>171,519</b>	<b>86,165</b>	<b>86,165</b>	<b>175,213</b>	<b>88,013</b>	<b>88,013</b>

The FY09 Budget amount in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

## Change Level by Appropriation

**Appropriation:** 1VA - Ombudsman Program

**Funding Sources:** HSC - State Central Services

### Agency Request

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>171,519</b>	<b>2</b>	<b>171,519</b>	<b>100.0</b>	<b>175,213</b>	<b>2</b>	<b>175,213</b>	<b>100.0</b>
C07	Agency Transfer	(85,354)	(1)	86,165	50.2	(87,200)	(1)	88,013	50.2

### Executive Recommendation

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>171,519</b>	<b>2</b>	<b>171,519</b>	<b>100.0</b>	<b>175,213</b>	<b>2</b>	<b>175,213</b>	<b>100.0</b>
C07	Agency Transfer	(85,354)	(1)	86,165	50.2	(87,200)	(1)	88,013	50.2

### Justification

C07	The Commission is seeking to transfer one position from the Ombudsman Program to the Trial Public Defender Office to facilitate better internal control. This position is currently paid out of the Trial Public Defender Office but the money must be transferred to the Ombudsman Program at the first of each year to fund the position. This would eliminate the need for funds to be transferred and put the position in the proper fund in which it is being paid.
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## **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 salaries for classified positions reflect the recommendations of the Pay Plan Study and unclassified positions reflect similar adjustments in line item salaries. Also reflected are changes from unclassified to classified positions. A 2.3% Cost of Living Allowance is reflected in the second year of the biennium. The Base Level request for Regular Salaries may include Career Service payments for eligible employees. Personal Services Matching includes a \$75 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$425.

The Base Level Request is \$1,706,946 in FY10 and \$1,735,077 in FY11.

The Agency requests an additional \$229,000 each year for Professional Fees due to an increase in the number of capital cases. The Commission has increased the number of appointed conflict attorneys which lends to additional cost for hiring expert witnesses, mitigation specialist, investigators, and medical/psychological examiners.

The Executive Recommendation provides for Agency 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		
	2007-2008 Actual	2008-2009 Budget	2008-2009 Authorized	2009-2010			2010-2011		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	999,589	1,012,526	990,350	1,072,432	1,072,432	1,072,432	1,096,130	1,096,130	1,096,130
<b>#Positions</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>	<b>17</b>
Extra Help 5010001	11,698	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
<b>#Extra Help</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
Personal Services Matching 5010003	263,519	261,257	272,872	288,386	288,386	288,386	292,819	292,819	292,819
Operating Expenses 5020002	272,403	218,438	218,438	218,438	218,438	218,438	218,438	218,438	218,438
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	96,000	96,000	96,000	96,000	325,000	325,000	96,000	325,000	325,000
Data Processing 5090012	0	0	0	0	0	0	0	0	0
Capital Outlay 5120011	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>1,662,899</b>	<b>1,619,911</b>	<b>1,609,350</b>	<b>1,706,946</b>	<b>1,935,946</b>	<b>1,935,946</b>	<b>1,735,077</b>	<b>1,964,077</b>	<b>1,964,077</b>
<b>Funding Sources</b>									
State Central Services 4000035	1,662,899	1,619,911		1,706,946	1,935,946	1,935,946	1,735,077	1,964,077	1,964,077
<b>Total Funding</b>	<b>1,662,899</b>	<b>1,619,911</b>		<b>1,706,946</b>	<b>1,935,946</b>	<b>1,935,946</b>	<b>1,735,077</b>	<b>1,964,077</b>	<b>1,964,077</b>
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
<b>Grand Total</b>	<b>1,662,899</b>	<b>1,619,911</b>		<b>1,706,946</b>	<b>1,935,946</b>	<b>1,935,946</b>	<b>1,735,077</b>	<b>1,964,077</b>	<b>1,964,077</b>

The FY09 Budget amount in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

The FY08 Actual amount for Operating Expenses exceeds the Authorized amount due to a higher Authorized appropriation in FY08.

## Change Level by Appropriation

**Appropriation:** 337 - Public Defender-Operations

**Funding Sources:** HSC - State Central Services

### Agency Request

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>1,706,946</b>	<b>17</b>	<b>1,706,946</b>	<b>100.0</b>	<b>1,735,077</b>	<b>17</b>	<b>1,735,077</b>	<b>100.0</b>
C01	Existing Program	229,000	0	1,935,946	113.4	229,000	0	1,964,077	113.2

### Executive Recommendation

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>1,706,946</b>	<b>17</b>	<b>1,706,946</b>	<b>100.0</b>	<b>1,735,077</b>	<b>17</b>	<b>1,735,077</b>	<b>100.0</b>
C01	Existing Program	229,000	0	1,935,946	113.4	229,000	0	1,964,077	113.2

### Justification

C01	Due to the increase of capital cases, the Commission has increased the number of appointed conflict attorneys. The cost of hiring expert witnesses, mitigation specialist, investigators and medical/psychological examiners has risen substantially.
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## **Analysis of Budget Request**

**Appropriation:** 530 - Public Defender -Trial Office

**Funding Sources:** HCS - 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 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 salaries for classified positions reflect the recommendations of the Pay Plan Study and unclassified positions reflect similar adjustments in line item salaries. Also reflected are changes from unclassified to classified positions. A 2.3% Cost of Living Allowance is reflected in the second year of the biennium. The Base Level request for Regular Salaries may include board member Stipend payments and Career Service payments for eligible employees. Personal Services Matching includes a \$75 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$425.

Special Language authorized in Act 1637 of 2001 restricted funding support for certain levels of Personal Services, Maintenance and Operation, and Extra Help costs to the extent that fees generated through the provisions of Arkansas Code §5-4-303(g) and §16-87-213 (User & Attorney Fees) are available.

The Base Level Request is \$18,528,580 in FY10 and \$18,882,009 in FY11.

During the last biennium, the Commission received three Dependency Neglect positions. The number of appeals filed is more than the current staff can handle. The need for three additional Dependency Neglect Appeal positions and Operating Expenses to support these positions is being requested. Fifteen new Public Defender positions are needed in order to meet the rising number of caseloads. Pursuant to *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d471, (2003), the United States Supreme Court has said that in any and all death cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. Thus the request for three Mitigation Specialist is needed. Having more staff will more than pay for itself in the long run.

The Change Level Requests submitted are \$2,294,696 in FY10 and \$2,323,123 in FY11 and are summarized as follows:

- Requesting a total of 21 new positions - three (3) Mitigation Specialist, five (5) Public Defenders Attorney I, five (5) Public Defender II, five (5) Public Defender III, one (1) Legal Support Specialist, and one (1) Legal Specialist, one (1) Public Defender I with Regular Salaries, Personal Service Matching and Operating Expenses totaling \$1,559,342 and \$1,585,923.

- Requesting to move one position from Ombudsman program to the Trial Public Defender program. This will facilitate better internal accounting control. The position's funding is currently transferred from this appropriation. This would eliminate the need for a transfer of funding of \$85,354 in FY10 and \$87,200 in FY11.
- Requesting a \$500,000 increase each year in Professional Fees due to an increase of capital and felony cases. The cost of hiring expert witnesses, mitigation specialist, investigators and medical/psychological examiners has risen substantially.
- Arkansas Code §17-19-301 (e) gives the Commission an additional ten dollars collected by the Bail Bond Commission to help defray the cost of the Public Defender system. The Commission pays the counties three dollars of the ten dollars collected to defray the cost of the county public defender's offices. The Commission is requesting an increase for the Bail Bond County Public Defender line item of \$150,000 in appropriation specifically for the quarterly payments to the seventy-five counties.

The Executive Recommendation provides for the Base Level for both years of the biennium; with the following increases:

1. Four additional positions:
  - (a.) One (1) Legal Support Specialist
  - (b.) Three (3) Public Defender III
2. Operating Expenses of \$18,883 for FY10 and \$17,050 for FY11
3. Transfer of one position form the Ombudsman Program to the Trial Public Defender Program
4. \$150,000 each year to assist with quarterly payments to county public defender's offices

## Appropriation Summary

**Appropriation:** 530 - Public Defender -Trial Office

**Funding Sources:** HCS - State Central Services

### Historical Data

### Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2007-2008 Actual	2008-2009 Budget	2008-2009 Authorized	2009-2010			2010-2011		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	12,149,573	12,574,847	12,455,989	13,043,988	14,287,120	13,366,242	13,341,689	14,613,397	13,671,351
<b>#Positions</b>		<b>214</b>	<b>214</b>	<b>214</b>	<b>214</b>	<b>236</b>	<b>219</b>	<b>214</b>	<b>236</b>	<b>219</b>
Extra Help	5010001	13,295	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
<b>#Extra Help</b>		<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
Personal Services Matching	5010003	3,272,312	3,246,415	3,424,897	3,534,392	3,879,306	3,620,217	3,590,120	3,940,385	3,677,333
Operating Expenses	5020002	216,189	262,700	262,700	262,700	319,350	281,583	262,700	313,850	279,750
Conference & Travel Expenses	5050009	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500
Professional Fees	5060010	750,000	750,000	750,000	750,000	1,250,000	750,000	750,000	1,250,000	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	700,981	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
Bail Bond Co. Public Def. Prgm.	5900047	210,489	150,000	150,000	150,000	300,000	300,000	150,000	300,000	300,000
<b>Total</b>		<b>17,315,339</b>	<b>17,771,462</b>	<b>17,831,086</b>	<b>18,528,580</b>	<b>20,823,276</b>	<b>19,105,542</b>	<b>18,882,009</b>	<b>21,205,132</b>	<b>19,465,934</b>
<b>Funding Sources</b>										
Fund Balance	4000005	2,658,423	1,942,129		2,139,994	2,139,994	2,139,994	0	0	0
State Central Services	4000035	7,281,630	9,210,891		7,280,559	9,575,255	7,857,521	9,423,982	11,747,105	10,007,907
Bail Bond Fees	4000115	1,404,426	1,095,542		1,200,000	1,200,000	1,200,000	1,500,000	1,500,000	1,500,000
State Administration of Justice	4000470	6,908,027	6,908,027		6,908,027	6,908,027	6,908,027	6,908,027	6,908,027	6,908,027
User / Attorney Fees	4000725	1,004,962	754,867		1,000,000	1,000,000	1,000,000	1,050,000	1,050,000	1,050,000
<b>Total Funding</b>		<b>19,257,468</b>	<b>19,911,456</b>		<b>18,528,580</b>	<b>20,823,276</b>	<b>19,105,542</b>	<b>18,882,009</b>	<b>21,205,132</b>	<b>19,465,934</b>
Excess Appropriation/(Funding)		(1,942,129)	(2,139,994)		0	0	0	0	0	0
<b>Grand Total</b>		<b>17,315,339</b>	<b>17,771,462</b>		<b>18,528,580</b>	<b>20,823,276</b>	<b>19,105,542</b>	<b>18,882,009</b>	<b>21,205,132</b>	<b>19,465,934</b>

The FY09 Budget amount in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

Actual Expenditures for FY08 for the Bail Bond County Public Defender line item exceeds Authorized due to special language which provides Appropriation Transfer authority.

## Change Level by Appropriation

**Appropriation:** 530 - Public Defender -Trial Office

**Funding Sources:** HCS - State Central Services

### Agency Request

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>18,528,580</b>	<b>214</b>	<b>18,528,580</b>	<b>100.0</b>	<b>18,882,009</b>	<b>214</b>	<b>18,882,009</b>	<b>100.0</b>
C01	Existing Program	2,203,842	21	20,732,422	111.9	2,235,923	21	21,117,932	111.8
C07	Agency Transfer	85,354	1	20,817,776	112.4	87,200	1	21,205,132	112.3
C08	Technology	5,500	0	20,823,276	112.4	0	0	21,205,132	112.3

### Executive Recommendation

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>18,528,580</b>	<b>214</b>	<b>18,528,580</b>	<b>100.0</b>	<b>18,882,009</b>	<b>214</b>	<b>18,882,009</b>	<b>100.0</b>
C01	Existing Program	489,775	4	19,018,355	102.6	496,725	4	19,378,734	102.6
C07	Agency Transfer	85,354	1	19,103,709	103.1	87,200	1	19,465,934	103.1
C08	Technology	1,833	0	19,105,542	103.1	0	0	19,465,934	103.1

### Justification

C01	This Change Level request includes Salary and Personnel Service Match for a total of twenty-one (21) new positions. The twenty-one (21) positions include three (3) new Dependency Neglect Appeals positions, fifteen (15) additional Public Defender positions and three (3) Mitigation Specialist positions. The Operating Expense of \$51,150 in both FY10 and FY11 is for additional rent, office furniture, office supplies, membership fees, subscription and dues and printing cost associated with the three new Dependency Neglect Appeals positions. Currently public defenders carry a higher client caseloads than recommended by the national caseload standards, thus the need for fifteen (15) additional Public Defender positions. Pursuant to Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d471, (2003), the United States Supreme Court has said that in any and all death cases, one must have a mitigation specialist, thus the request for three (3) Mitigation Specialist is needed. Additional Professional Fees of \$500,000 each year of the biennium is requested. Due to the increase of capital and felony cases the Commission has increased the number of appointed conflict attorneys. The cost of hiring expert witnesses, mitigation specialist, investigators and medical/psychological examiners has risen substantially. Additional appropriation for the Bail Bond County Public line item of \$150,000 is requested to accommodate the increase in collections, to be disbursed to the Counties, on a quarterly basis. The 2005 session saw the passage of Act 1956, which added an additional ten-dollar fee to Act 1778's Bail Bond fee. These fees, paid quarterly, are also designated to help defray the cost of the public defender system, statewide and in each individual county. Of the additional ten dollars, three dollars (\$3.00) goes to the Counties to defray the cost of the local offices.
C07	The Commission is seeking to transfer one position from the Ombudsman Program to the Trial Public Defender Office to facilitate better internal control. This position is currently paid out of the Trial Public Defender Office but the money must be transferred to the Ombudsman Program at the first of each year to fund the position. This would eliminate the need for funds to be transferred and put the position in the proper fund that it is being paid.
C08	C08 – Technology Related Items – The three new positions for the Dependency Neglect Appeals Division, in FY10, will require a computer, software, and connection to the internet. The estimate for this is request is \$5,500. This request will not be needed if 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.