

ARKANSAS PUBLIC DEFENDER COMMISSION

Enabling Laws

Act 285 of 2010
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.

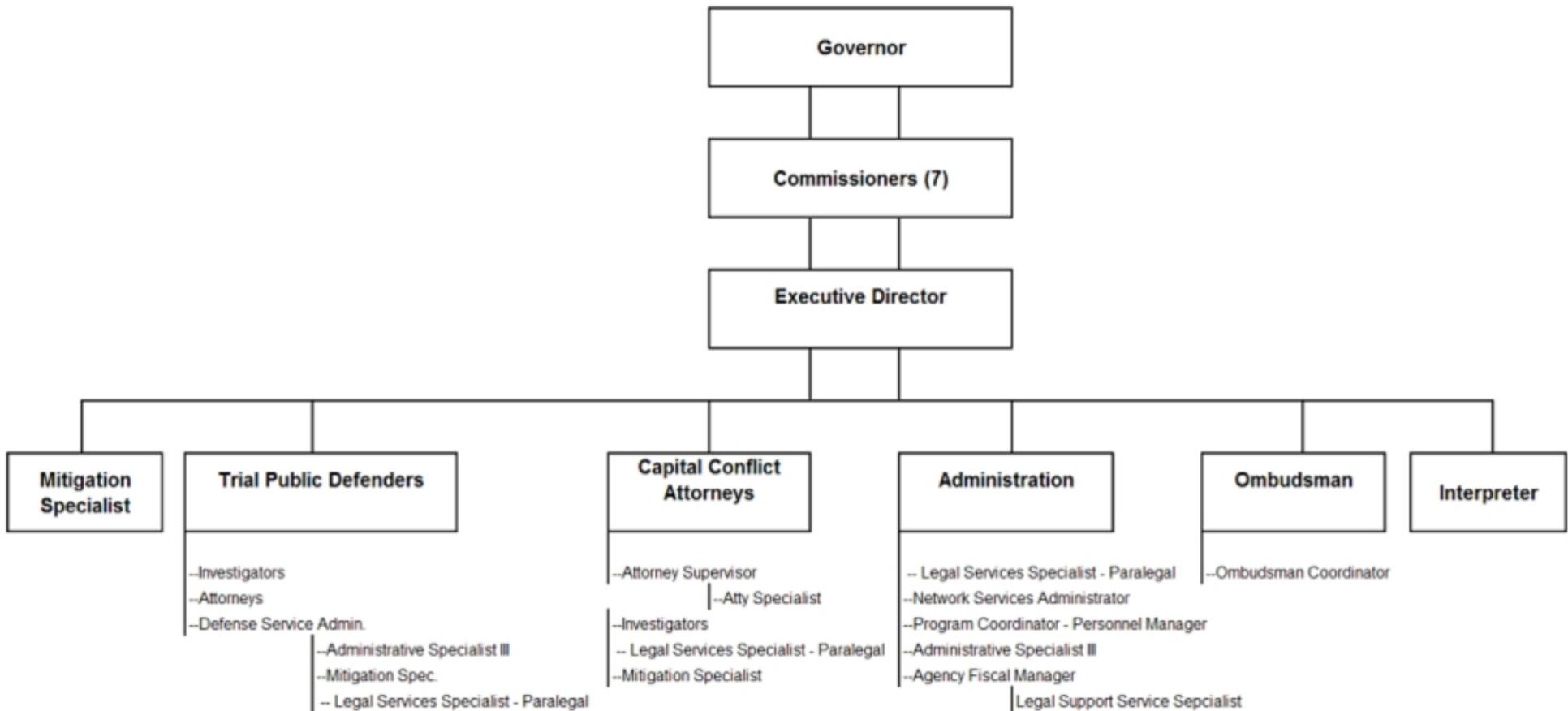
In the 2009 Legislative Session, the Commission received one legal support specialist and three Public Defenders positions.

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.

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 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 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 one mitigation specialist position to be located in Northwest Arkansas to work with the Fourth (Washington & Madison County), Twelfth (Sebastian County), Nineteenth - East & West (Benton & Carroll County), and Northwest Conflicts offices' death penalty cases. At the present time there is no mitigation specialist specifically assigned to this area nor do any of the offices have a county funded mitigation specialist position.

In *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003), 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, the Commission is 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. Because the number of capital cases filed has drastically increased over the past several years, it is anticipated 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 training 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.

M & O Request

We are requesting a small increase to allow for the necessary equipment for the one new employee requested. We will need office furniture, supplies, membership fees, subscription dues, and computer.

Public Defender State Operations

Personnel

The Commission is requesting five (5) positions: three (3) Public Defender I positions, one (1) Legal Service Specialist and one (1) Public Defender Coordinator.

In an effort to contain and control costs the Commission proposes to establish an actual "conflicts" office in the Capital, Conflicts and Appeals (CCA) division within the office. In FY10, the cost of providing Professional Services exceeded \$1,600,000. These overall costs include attorneys appointed due to a conflict, various experts, investigators and mitigation specialists. Of this amount, approximately 56%, or \$900,000 represents the cost of hiring private attorneys to take the cases of defendants with whom the local public defenders have a legal and ethical conflict of interest. Usually these cases involve serious felonies, such as where multiple people are arrested for murder, aggravated robbery or delivery of controlled substances. There were nearly 300 such appointments in FY10. An attorney can't represent defendants who have conflicting interests for any reason, to do so is unethical and would require reversal of the cases of any defendant represented by the conflicted attorney. Several years ago the Arkansas Supreme Court reversed a death penalty because the trial attorney had an actual conflict of interest, *Shendan V. State* 959 s.w.2d 29(1998).

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.

For the foregoing reasons, the Commission would like to expand the CCA office to cover conflicts other than capital murder. With the present staffing in the CCA office and the number of Capital cases filed each year, our CCA attorneys can represent no one other than those

defendants charged with Capital murder. By adding three attorneys and a paralegal to the office here we would be able to more efficiently and economically provide representation for the myriad of conflicts we get. Three attorneys cannot be expected to handle significant caseloads from all over the state without support staff to assist them. Most of the conflicts we are seeing at this time arise from the following districts: 6th (Pulaski + Perry Counties), 9E (Clark County), 10th (Ashley, Bradley, Chicot, Desha and Drew Counties), 16th (Cleburne, Fulton, Independence, Izard and Stone Counties), 18W (Montgomery and Polk Counties), and 19W (Benton). Of the approximately 300 conflict appointments mentioned earlier, almost 180 were from these districts alone. The locations of these districts vary widely as does the availability of access to local private attorneys to appoint. 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.

M & O Request

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

Professional Fees

The Commission is requesting additional appropriation and funds in our Professional Fee line item. The Professional Fee line item is used to pay our Conflict Attorneys, Expert Witnesses, additional Mitigation Specialists, Investigators and medical/psychological examiners. It is anticipated that from the Arkansas Supreme Court ruling in Arkansas Public Defender Commission v. Muhammad, et al., 2010 Ark. 120 will generate hundreds of requests annually. The opinion ruled that the Arkansas Public Defender Commission (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. For the foregoing reason, the APDC is requesting an appropriation of \$500,000 for each year of the biennium to cover anticipated Professional Services Expenses relating to the Muhammad opinion.

The request includes one (1) Public Defender Coordinator position with related Regular Salaries, Personal Services Matching and Operating Expenses to help manage, verify and ensure accountability for the anticipated requests. Currently the Executive Director shares a secretary with all eight Capital Conflicts attorneys. This new position would assist the Executive Director.

The Commission is developing a procedure to deal solely with retained attorney requests. This procedure will be in place to evaluate qualifications, type of cases and fees charged and expenses collected. Because of the current lack of sufficient support staff, it is absolutely essential that a Program Coordinator is obtained to handle this enormous task and to ensure that resources are providently expended. This person would make certain that all information required by the Commission in its new procedure was provided and accurate before

submitting it to the Executive Director for review. He or she would contact the requesting attorney to supply any missing information or data. Again, it is anticipated that there will be a great many requests and, at present, the Commission simply does not have a staff person with time available to assume this responsibility.

Performance Audit Findings

Use of Commission Staff and Private Attorneys for Indigent Defense Representation

Arkansas Public Defender Commission

(July 1, 2008 – June 30, 2009) - Issued 01-08-2010

Findings and Conclusions:

- Professional development, employee turnover, and large attorney caseloads are not significant factors in the Commission’s need to retain private attorneys.
- The Commission lacked supporting documentation of their assertion that the appointment of private attorneys was necessary because of conflicts of interest within the office. However, our review of court dockets for selected cases at 4 district offices selected for site visits supported the assertion.
- Private attorney hours charged comprised 3.69% of the Commission’s total attorney hours and private attorney fees paid were within the prescribed fee range of the Commission.
- The Attorney Certification List, used to identify private attorney certification levels, was incomplete with 8.5% of the listed attorneys not having a certification level identified.

Recommendations:

- The Commission retain documentation of why private attorneys are necessary.
- Document the reasoning for employing a particular private attorney(s) when a private attorney(s) is retained repetitively.
- Verify the accuracy of and update the Attorney Certification List on an annual basis.

Employment Summary

	Male	Female	Total	%
White Employees	144	130	274	93 %
Black Employees	9	8	17	6 %
Other Racial Minorities	2	2	4	1 %
Total Minorities			21	7 %
Total Employees			295	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	2009-2010		2010-2011		2010-2011		2011-2012					2012-2013						
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
1VA Ombudsman Program	87,610	1	86,845	1	88,013	1	86,122	1	86,122	1	86,122	1	86,122	1	86,122	1	86,122	1
337 Public Defender-Operations	1,911,487	17	1,961,652	17	1,964,077	17	1,960,481	17	2,875,156	22	2,510,082	18	1,960,481	17	2,853,156	22	2,510,082	18
530 Public Defender -Trial Office	18,934,931	219	19,286,515	219	19,465,934	219	19,258,957	219	19,319,320	220	19,319,320	220	19,258,957	219	19,314,920	220	19,314,920	220
Total	20,934,028	237	21,335,012	237	21,518,024	237	21,305,560	237	22,280,598	243	21,915,524	239	21,305,560	237	22,254,198	243	21,911,124	239

Funding Sources		%		%		%		%		%		%		%		%		%
Fund Balance 4000005	2,896,598	11.9	3,343,932	13.8			2,977,657	13.1	2,977,657	12.5	2,977,657	12.7	1,495,758	7.0	1,495,758	6.7	1,495,758	6.8
State Central Services 4000035	11,817,994	48.7	12,069,443	49.6			10,924,712	47.9	11,899,750	50.0	11,534,676	49.3	10,929,112	51.3	11,877,750	53.3	11,534,676	52.6
Bail Bond Fees 4000115	1,458,124	6.0	1,100,000	4.5			1,100,000	4.8	1,100,000	4.6	1,100,000	4.7	1,100,000	5.2	1,100,000	4.9	1,100,000	5.0
State Administration of Justice 4000470	6,908,027	28.5	6,908,027	28.4			6,908,027	30.3	6,908,027	29.1	6,908,027	29.5	6,908,027	32.4	6,908,027	31.0	6,908,027	31.5
Transfer from DHS-DYS 4000515	95,963	0.4	86,467	0.4			86,122	0.4	86,122	0.4	86,122	0.4	86,122	0.4	86,122	0.4	86,122	0.4
User / Attorney Fees 4000725	1,101,254	4.5	804,800	3.3			804,800	3.5	804,800	3.4	804,800	3.4	804,800	3.8	804,800	3.6	804,800	3.7
Total Funds	24,277,960	100.0	24,312,669	100.0			22,801,318	100.0	23,776,356	100.0	23,411,282	100.0	21,323,819	100.0	22,272,457	100.0	21,929,383	100.0
Excess Appropriation/(Funding)	(3,343,932)		(2,977,657)				(1,495,758)		(1,495,758)		(1,495,758)		(18,259)		(18,259)		(18,259)	
Grand Total	20,934,028		21,335,012				21,305,560		22,280,598		21,915,524		21,305,560		22,254,198		21,911,124	

Agency Position Usage Report

FY2008 - 2009						FY2009 - 2010						FY2010 - 2011					
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	
233	231	2	233	0	0.86 %	237	235	2	237	0	0.84 %	237	236	1	237	0	0.42 %

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. There is also a transfer of funds from the Public Defender's Trial Public Defender appropriation.

Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments.

The Commission's Request provides for Base Level for the 2011-2013 biennium.

The Executive Recommendation provides for the Commission Request.

Appropriation Summary

Appropriation: 1VA - Ombudsman Program

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		
		2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	69,755	68,282	69,839	67,682	67,682	67,682	67,682	67,682	67,682
#Positions		1	1	1	1	1	1	1	1	1
Personal Services Matching	5010003	17,855	18,563	18,174	18,440	18,440	18,440	18,440	18,440	18,440
Total		87,610	86,845	88,013	86,122	86,122	86,122	86,122	86,122	86,122
Funding Sources										
Fund Balance	4000005	10,284	18,637		18,259	18,259	18,259	18,259	18,259	18,259
Transfer from DHS-DYS	4000515	95,963	86,467		86,122	86,122	86,122	86,122	86,122	86,122
Total Funding		106,247	105,104		104,381	104,381	104,381	104,381	104,381	104,381
Excess Appropriation/(Funding)		(18,637)	(18,259)		(18,259)	(18,259)	(18,259)	(18,259)	(18,259)	(18,259)
Grand Total		87,610	86,845		86,122	86,122	86,122	86,122	86,122	86,122

The FY11 Budget amount in Personal Services Matching exceeds the authorized amount due to matching rate adjustments during the 2009-2011 biennium.

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.

In *Arkansas Public Defender Commission v. Muhammad, et al.*, 2010 Ark. 120., the Arkansas Supreme Court ordered that the Public Defender Commission was responsible for expenses in cases where the defendant is found to be indigent, regardless of whether his or her attorney was retained or appointed.

Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments. The Base Level salary of the unclassified position reflects the FY11 line item maximum.

The Commission's Change Level Request totaling \$914,675 in FY2012 and \$892,675 in FY2013 reflects the following:

- Regular Salaries and Personal Services Matching increases of \$341,770 each year to support three (3) Public Defender I (G025N/N901) positions, one (1) Public Defender Program Coordinator (G122C/C120) and one (1) Legal Services Specialist (G179C/C117). The Public Defender positions would be used to reduce the amount currently being spent on contract attorneys for cases where the local public defender has a conflict of interest. The Public Defender Program Coordinator would analyze, coordinate, and ensure accountability for retained attorney requests for public assistance as required by the Muhammad opinion. Currently, the Executive Director shares a secretary with eight Capital Conflicts attorneys. The Legal Services Specialist position would be assigned to assist the Executive Director, allowing the existing staff secretary to better serve these attorneys.
- Reclassification of one (1) Drug Court Administrator (X019C/C124) to Administrative Services Manager (G076C/C124) to more accurately reflect the work being performed. This change will result in no additional appropriation or funding.
- Operating Expenses of \$64,505 in FY2012 and \$42,505 in FY2013 to provide support for additional staff, including computers and related software, telecommunications and network expenses, rent, mileage, meals & lodging, office supplies and subscription dues.
- Conference & Travel Expenses increase of \$8,400 each year for conference & seminar fees, meals and lodging for the additional positions requested.
- Professional Fees of \$500,000 each year in anticipation of hundreds of annual requests for expenses resulting from the Muhammad opinion.

The Executive Recommendation provides for increases above Base Level totaling \$549,601 each year as follows:

- Regular Salaries and Personal Services Matching of \$49,601 each year for one (1) Public Defender Program Coordinator (G122C/C120) to ensure accountability for retained attorney requests for public assistance resulting from the Muhammad opinion.
- Reclassification of one (1) Drug Court Administrator (X019C/C124) to Administrative Services Manager (G076C/C124).
- Professional Fees of \$500,000 each year for requests for expenses resulting from the Muhammad opinion.

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		
	2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	1,065,233	1,085,364	1,096,130	1,084,391	1,348,972	1,121,723	1,084,391	1,348,972	1,121,723
#Positions	17	17	17	17	22	18	17	22	18
Extra Help 5010001	2,120	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
#Extra Help	2	3	3	3	3	3	3	3	3
Personal Services Matching 5010003	280,256	301,160	292,819	300,962	378,151	313,231	300,962	378,151	313,231
Operating Expenses 5020002	219,189	218,438	218,438	218,438	282,943	218,438	218,438	260,943	218,438
Conference & Travel Expenses 5050009	19,689	19,690	19,690	19,690	28,090	19,690	19,690	28,090	19,690
Professional Fees 5060010	325,000	325,000	325,000	325,000	825,000	825,000	325,000	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	1,911,487	1,961,652	1,964,077	1,960,481	2,875,156	2,510,082	1,960,481	2,853,156	2,510,082
Funding Sources									
State Central Services 4000035	1,911,487	1,961,652		1,960,481	2,875,156	2,510,082	1,960,481	2,853,156	2,510,082
Total Funding	1,911,487	1,961,652		1,960,481	2,875,156	2,510,082	1,960,481	2,853,156	2,510,082
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
Grand Total	1,911,487	1,961,652		1,960,481	2,875,156	2,510,082	1,960,481	2,853,156	2,510,082

The FY11 Budget amount in Personal Services Matching exceeds the authorized amount due to matching rate adjustments during the 2009-2011 biennium.

Change Level by Appropriation

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

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	1,960,481	17	1,960,481	100.0	1,960,481	17	1,960,481	100.0
C01	Existing Program	899,570	5	2,860,051	145.9	891,070	5	2,851,551	145.5
C08	Technology	15,105	0	2,875,156	146.7	1,605	0	2,853,156	145.5
C10	Reclass	0	0	2,875,156	146.7	0	0	2,853,156	145.5

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	1,960,481	17	1,960,481	100.0	1,960,481	17	1,960,481	100.0
C01	Existing Program	549,601	1	2,510,082	128.0	549,601	1	2,510,082	128.0
C08	Technology	0	0	2,510,082	128.0	0	0	2,510,082	128.0
C10	Reclass	0	0	2,510,082	128.0	0	0	2,510,082	128.0

Justification

C01	On May 13, 2010, the Arkansas Supreme Court ruled in Arkansas Public Defender Commission v. Muhammad, et al., 2010 Ark. 120, that the Arkansas Public Defender Commission (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. For the foregoing reason, the APDC is requesting an appropriation of \$500,000 for each year of the biennium to cover anticipated Professional Services Expenses relating to the Muhammad opinion. The request includes one (1) position with related Salary and Personal Service Match and Operating Expenses to help manage, verify and ensure accountability for the anticipated requests. In an effort to contain and control costs the Commission proposes to establish an actual "conflicts" office in the Capital, Conflicts and Appeals (CCA) division within the office. These overall costs include attorneys appointed due to a conflict with the local public defenders. Usually these cases involve serious felonies, such as where multiple people are arrested for murder, aggravated robbery or delivery of controlled substances. With the present staffing in the CCA office and the number of Capital cases filed each year, our CCA attorneys can represent no one other than those defendants charged with Capital Murder. By adding three (3) attorneys and one (1) 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 \$64,505 and \$42,505 in FY2012 and FY2013 is for additional office furniture, office supplies, membership fees, subscription and due, telephone and parking cost associated for the overall five (5) new positions.
C08	The five new positions in FY2012 will require a computer, software and connection to the internet. The estimate for this request is \$15,105 in FY2012. The internet connection is \$26.75 per month or \$1,605 per year for the five positions. 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.

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 salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments.

The Commission's Change Level Request totaling \$60,363 in FY2012 and \$55,963 in FY2013 reflects the following:

- Regular Salaries and Personal Services Matching of \$47,462 each year for one (1) Mitigation Specialist (G146C/C119) to serve in Northwest Arkansas. Pursuant to the U.S. Supreme Court decision in *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003), each capital defendant must have their social history thoroughly researched by counsel, or they may be entitled to a new trial. Currently, the Commission outsources this research in the northwest region at two to three times the hourly rate of an equivalent state employee. However, in cases where multiple capital defendants are charged in the same crime, the Commission would still be required to contract this research for all but one defendant in order to avoid a conflict of interest.
- Operating Expenses increases of \$12,901 in FY2012 and \$8,501 in FY2013 for purchase of a computer and related software, telecommunications and network expenses, rent, mileage, meals & lodging, office supplies and subscription dues to support this new employee.

The Executive Recommendation provides for the Commission Request.

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			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
	2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	13,408,906	13,460,010	13,671,351	13,392,842	13,428,396	13,428,396	13,392,842	13,428,396	13,428,396
#Positions	219	219	219	219	220	220	219	220	220
Extra Help 5010001	11,894	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
#Extra Help	2	3	3	3	3	3	3	3	3
Personal Services Matching 5010003	3,494,341	3,709,255	3,677,333	3,748,865	3,760,773	3,760,773	3,748,865	3,760,773	3,760,773
Operating Expenses 5020002	280,257	279,750	279,750	279,750	292,651	292,651	279,750	288,251	288,251
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	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	769,734	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
Bail Bond Co. Public Def. Prgm. 5900047	217,299	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
Total	18,934,931	19,286,515	19,465,934	19,258,957	19,319,320	19,319,320	19,258,957	19,314,920	19,314,920
Funding Sources									
Fund Balance 4000005	2,886,314	3,325,295		2,959,398	2,959,398	2,959,398	1,477,499	1,477,499	1,477,499
State Central Services 4000035	9,906,507	10,107,791		8,964,231	9,024,594	9,024,594	8,968,631	9,024,594	9,024,594
Bail Bond Fees 4000115	1,458,124	1,100,000		1,100,000	1,100,000	1,100,000	1,100,000	1,100,000	1,100,000
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	1,101,254	804,800		804,800	804,800	804,800	804,800	804,800	804,800
Total Funding	22,260,226	22,245,913		20,736,456	20,796,819	20,796,819	19,258,957	19,314,920	19,314,920
Excess Appropriation/(Funding)	(3,325,295)	(2,959,398)		(1,477,499)	(1,477,499)	(1,477,499)	0	0	0
Grand Total	18,934,931	19,286,515		19,258,957	19,319,320	19,319,320	19,258,957	19,314,920	19,314,920

The FY11 Budget amount in Personal Services Matching exceeds the authorized amount due to matching rate adjustments during the 2009-2011 biennium.

Change Level by Appropriation

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

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	19,258,957	219	19,258,957	100.0	19,258,957	219	19,258,957	100.0
C01	Existing Program	57,342	1	19,316,299	100.3	55,642	1	19,314,599	100.3
C08	Technology	3,021	0	19,319,320	100.3	321	0	19,314,920	100.3

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	19,258,957	219	19,258,957	100.0	19,258,957	219	19,258,957	100.0
C01	Existing Program	57,342	1	19,316,299	100.3	55,642	1	19,314,599	100.3
C08	Technology	3,021	0	19,319,320	100.3	321	0	19,314,920	100.3

Justification

C01	The Commission is requesting one (1) new position, a Mitigation Specialist for our north west conflict's office. This request reflects the Salary and Personnel Service Match and the Operating Expenses for this one position. The Operating Expenses of \$9,880 and \$8,180 in FY12 and FY13 is for office furniture, office supplies, telephone, parking, and mileage reimbursement for the one additional position. Pursuant to Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d471, (2003), the United States Supreme Court mandated that any and all death cases must have a mitigation specialist, thus the request for the additional position. This request will not be needed if the position is not added.
C08	The one new position in FY2012 will require a computer, software and connection to the internet. The estimate for this is request is \$3,021. The internet connection is \$26.75 per month or \$321 per year. This request will not be needed if the position is 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.