

# ARKANSAS PUBLIC DEFENDER COMMISSION

## Enabling Laws

Act 95 of 2014  
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 A.C.A. §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 ensuring indigents a right to counsel was a function of the State of Arkansas, and not a county obligation. Prior to that time, counties typically contracted with local attorneys to provide representation. Resources were limited, and seldom were there sufficient funds for counsel to engage experts or investigative services.

After passage of the Act, the Commission began the takeover of the public defender system in order to help rectify the inconsistencies in representation provided by the counties. It also began implementation of a system that would attempt to provide investigative services as well as experts in the field of mental health. This was a step toward improving the adversarial system rather than having defense counsel rely upon the testimony of State witnesses. The State began to provide support services to its Public Defenders which included paralegals, psychiatrists, psychologists, pathologists, investigators, mitigation specialists, translators, weapons experts, and handwriting experts to name a few. However, with the authority to provide these support services to its Public Defenders, the Commission also assumed the duties associated therewith, including allocating resources, recommendations to local judges whom to employ as Public Defenders, salaries, and payment to private counsel to handle conflict cases.

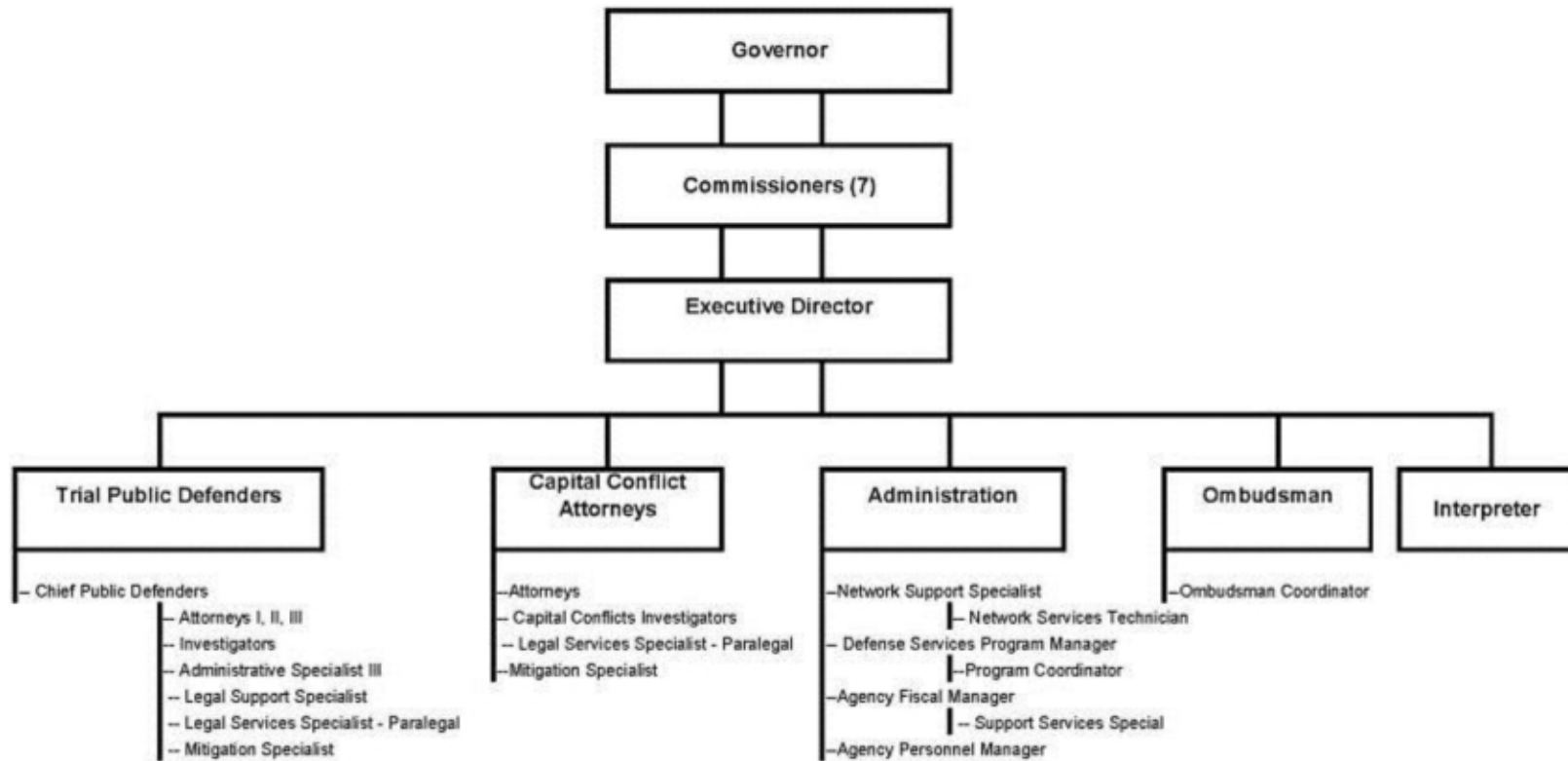
Much has changed in the legal field since the inception of the Arkansas Public Defender System. While the attrition rate for new attorneys and support staff has been minimal, the duties of the Public Defender have multiplied greatly. Crime rates have risen at a rapid pace as have the number of arrests associated with the criminal actions. Courts that at one time met once a month now meet weekly. Criminal dockets that at one time were handled by one judge in a district are now divided amongst three or four judges. The caseloads in District Courts have exploded, and with the merging of City Courts, Public Defenders frequently appear in two (2) courts in one day, in different counties. The emergence of drug courts, veteran courts, juvenile drug courts, DWI courts and domestic battery courts coupled with new sentencing programs stretch the Office of the Public Defender even further. There are even some in the judiciary who are of the belief the State of Arkansas should or will be obligated to appear in child support proceedings brought by the State as well as post-conviction proceedings.

Attorneys employed by the Commission are mandated to appear in a myriad of Courts in our State, handling misdemeanors, felonies, diversions, revocations, juvenile delinquencies and family in need of services cases, adult protective services, and mental commitments. They are required to appear in Circuit Criminal, Circuit Juvenile, Circuit Probate and District Courts. Outside our metropolitan areas, travel is a daily occurrence.

The Commission now finds itself in a precarious situation. Each month, every district is required to submit statistics for the previous month outlining the number of cases acquired (new cases) and the number of cases disposed. The classification of these cases is required as well, i.e. felony, misdemeanor, etc. with an indication as to the disposition. Based upon the guidelines established by the National Advisory Committee on Criminal Justice and adopted by the American Bar Association, we know the number of cases our attorneys should be handling. Statewide, our attorneys are surpassing the guidelines sometimes by as much as 400%. The least worked of our districts is at a utilization rate of almost 200%. To come into compliance with the guidelines, the Commission would need to employ almost 400 attorneys statewide immediately.

The history of this organization is intriguing when one realizes how it has benefitted the legal system in our State in less than twenty years. It is a vital component to our adversarial system. However, the path the agency is allowed to take in the future is much more vital if we truly believe every citizen is entitled to effective legal representation (and we should have this belief as our Supreme Court has mandated). Lawsuits against states across North America challenging the funding provided by legislatures are now extremely prevalent and growing with the latest being filed in Georgia in January, 2014. A quick search of the internet will reveal litigation in Washington, Florida, New Mexico, Ohio, and New York.

The Commission's request for this biennial budget is made only after careful and deliberate thought and analysis as well as prior submission to the seven members of our Commission who are appointed by the Governor. The analytical data composed over several months only confirms what the Public Defenders in our local communities have been saying for years. They do not have sufficient time, based upon the number of cases they carry, to provide effective legal representation for their clients.



## Agency Commentary

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. These requests are mindful of our Constitutional mandate of providing effective representation, and are made in an effort to more efficiently and effectively expend the State’s limited resources. Finally, the requests are made in light of recent United States Supreme Court decisions, and Arkansas Supreme Court opinions which substantially affect the role of the attorneys and their representation of clients. Courts have increasingly scrutinized the effectiveness of counsel and have been particularly critical of over-burdensome case-loads and the lack of resources provided for the representation of indigent defendants. The Commission is aware of the need to provide finality to its cases as well as to provide effective assistance to counsel; hence, the following requests are made with those objectives in mind.

Public Defenders, like prosecutors, are essential to the workings of the Judicial System. It is estimated based upon the monthly numbers reported by our local offices, that the Public Defender system represents approximately 90-95% of those persons prosecuted by the State of Arkansas. 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.

In 2001, this agency maintained 138 attorney positions. At that time, the Arkansas Crime Information Center, in its Crime Index by Month for the calendar year, reported an offense total of 109,829. These figures include the offenses of Murder, Rape, Aggravated Assault, Burglary, Theft, Motor Vehicle Theft and Arson. At the end of fiscal year 2013, the Arkansas Public Defender Commission employed 160 attorney positions. The statistics from the Arkansas Crime Information Center report offense totals for the calendar year at 253,300. While one might look at these numbers and compute the acquisition of twenty-two (22) positions by this agency, consideration has to be given to the fact this agency has also acquired more court responsibilities in the areas of drug court, veterans court, domestic battery court as well as an explosion of criminal case offenses.

### **Trial Public Defender**

#### **Personnel**

The Commission is requesting the addition of forty-six (46) attorneys, five (5) paralegals and five (5) capital conflict investigators. By adding these positions, the agency would be making steps to comply with the national standards proscribed by the National Advisory Commission on Criminal Justice and Goals (NAC), a U. S. Department of Justice funded initiative which has been adopted by the American Bar Association. The NAC standard, 13.2, states that an attorney, on a yearly basis, should not exceed the following representation:

- 150 felonies per year; OR
- 400 misdemeanors per year; OR
- 200 juvenile delinquencies per year; OR
- 200 mental health commitments per year; OR
- 25 appeals per year.

This agency has compiled utilization rates for its attorneys per district based upon reported adjudications. The districts, on a monthly basis, are obligated to report the number of new cases the office receives, the number of disposed cases, and the nature of the case. As of May, 2014, for the fiscal year ending June 30, 2014, the utilization rates for the districts throughout the state ranged at a minimum of 110.41% to 367.91%. These numbers did not factor in vacation, sick leave, travel, court preparation or court appearances. There are numerous areas of the State of Arkansas where public defenders are and have been for years handling over 300 active felony cases simultaneously.

The investigator and paralegal positions are vital to assisting the attorney in his/her ability to adequately provide effective assistance of counsel as mandated by the United States Supreme Court. Presently, this agency has three (3) capital conflict investigators. Most of our districts throughout the State have only one (1) paralegal responsible for handling the work throughout up to six (6) counties.

The need for these positions is a grave reality. The number requested will still not bring our State into compliance with the NAC standards, but is a realistic step toward addressing the serious problems that bestow the Arkansas Public Defender system. The number of serious felony offenses, including capital murder cases, continues to grow as evidenced by the ACIC statistics referred to herein. According to the Substance Abuse and Mental Health Services Administration (SAMHSA.gov), the serious mental health issues in Arkansas are prevalent. The mental health issues are inherently high in those charged with violent criminal acts. Trial public defenders are constantly trying to divide their time between the criminal act and the mental health issues affecting their clients. This trend continues to grow annually.

Changes in our court systems occur on a yearly basis. Courts typically schedule court appearances a year in advance, and attempt to accommodate prosecutors and public defenders with the schedule. Inherently, throughout the year, courts add more court appearance dates which strains the local public defender's offices further. They likewise schedule their calendars in compliance with the Court's initial calendar. When more court dates are added, there are not a sufficient number of public defenders to accommodate another court date, ultimately resulting in displeasure from a member of the judiciary. Every attempt is made by the public defender to accommodate the desires of the Court, but oftentimes, there just are not sufficient personnel to accommodate every setting.

The District Court system, which includes their expanded jurisdiction and the addition of full time Judges and staff, has and will continue to increase the workload and responsibility of public defenders. When City Courts merge into District Courts, the number of appointments for a public defender rises substantially, and has increased the number of locations an attorney has to appear. Further, the advent of the Hope Court, Diversion Courts, more Drug Courts, Juvenile Drug Courts, Veterans Courts and Swift Courts, while all good things, has vastly increased the time commitments on our staff. Rather than have court a few days a week, many of our public defenders have to be in various courts nearly all day every day.

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

The addition of attorneys and staff to the commission is further implicated by the recent US Supreme Court cases *Jackson v. Hobbs* and *Miller v. Aabama* where it was held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of

parole for juvenile homicide offenders. These cases necessitate a review of each and every case in Arkansas where a juvenile homicide offender was tried as an adult and sentenced to life in prison without possibility of parole. In each of these cases, mitigation specialists will be required to perform a thorough review and present their findings through defense counsel in order for these sentences to be reconsidered and altered where necessary. As these cases continue to wind their way to the Arkansas Supreme Court and back to the trial court, we can now ascertain of fifty-six (56) pending cases, the majority of the Commission will have to address at some time in the near future.

### **M & O Request**

We are requesting a small increase to allow for the necessary start up equipment for the fifty-six (56) new employees requested in this same budget. We will need office furniture, supplies, membership fees, subscription dues, and computers.

### **Audit Findings**

DIVISION OF LEGISLATIVE AUDIT  
AUDIT OF :  
ARKANSAS PUBLIC DEFENDER COMMISSION  
FOR THE YEAR ENDED JUNE 30, 2012

Findings

Recommendations

None

None

### **State Contracts Over \$50,000 Awarded To Minority Owned Businesses Fiscal Year 2014**

None

## Employment Summary

	Male	Female	Total	%
White Employees	147	131	278	93 %
Black Employees	11	9	20	7 %
Other Racial Minorities	1	1	2	0 %
Total Minorities			22	7 %
Total Employees			300	100 %

## Publications

### A.C.A. 25-1-201 et seq.

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution	Unbound Black & White Copies Produced During the Last Two Years	Cost of Unbound Copies Produced During the Last Two Years
		Governor	General Assembly				
Annual Reports	ACA §16-87-203	Y	Y	40	Required by Law	0	0.00

# Department Appropriation Summary

## Historical Data

## Agency Request and Executive Recommendation

Appropriation	2013-2014		2014-2015		2014-2015		2015-2016					2016-2017						
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
1VA Ombudsman Program	92,763	1	90,054	1	89,962	1	90,636	1	90,636	1	90,636	1	90,636	1	90,636	1	90,636	1
337 Public Defender-Operations	2,689,980	19	2,805,509	19	2,676,028	18	2,697,708	18	2,820,186	19	2,820,186	19	2,698,567	18	2,821,166	19	2,821,166	19
530 Public Defender -Trial Office	20,686,627	225	21,016,743	225	21,016,743	225	21,096,055	225	26,813,638	281	21,377,755	228	21,104,755	225	26,508,738	281	21,372,025	228
<b>Total</b>	<b>23,469,370</b>	<b>245</b>	<b>23,912,306</b>	<b>245</b>	<b>23,782,733</b>	<b>244</b>	<b>23,884,399</b>	<b>244</b>	<b>29,724,460</b>	<b>301</b>	<b>24,288,577</b>	<b>248</b>	<b>23,893,958</b>	<b>244</b>	<b>29,420,540</b>	<b>301</b>	<b>24,283,827</b>	<b>248</b>

Funding Sources		%		%		%		%		%		%		%		%		%	
Fund Balance 4000005	907,458	3.7	1,265,267	5.3		0	0.0		0	0.0		0	0.0		0	0.0		0	0.0
State Central Services 4000035	15,435,052	62.4	13,448,958	56.2		14,685,736	61.5	20,525,797	69.1	15,089,914	62.1	14,695,295	61.5	20,221,877	68.7	15,085,164	62.1		
Bail Bond Fees 4000115	1,235,272	5.0	1,200,000	5.0		1,200,000	5.0	1,200,000	4.0	1,200,000	4.9	1,200,000	5.0	1,200,000	4.1	1,200,000	4.9		
State Administration of Justice 4000470	5,852,732	23.7	6,908,027	28.9		6,908,027	28.9	6,908,027	23.2	6,908,027	28.4	6,908,027	28.9	6,908,027	23.5	6,908,027	28.4		
Transfer from DHS-DYS 4000515	92,763	0.4	90,054	0.4		90,636	0.4	90,636	0.3	90,636	0.4	90,636	0.4	90,636	0.3	90,636	0.4		
User / Attorney Fees 4000725	1,211,360	4.9	1,000,000	4.2		1,000,000	4.2	1,000,000	3.4	1,000,000	4.1	1,000,000	4.2	1,000,000	3.4	1,000,000	4.1		
<b>Total Funds</b>	<b>24,734,637</b>	<b>100.0</b>	<b>23,912,306</b>	<b>100.0</b>		<b>23,884,399</b>	<b>100.0</b>	<b>29,724,460</b>	<b>100.0</b>	<b>24,288,577</b>	<b>100.0</b>	<b>23,893,958</b>	<b>100.0</b>	<b>29,420,540</b>	<b>100.0</b>	<b>24,283,827</b>	<b>100.0</b>		
Excess Appropriation/(Funding)	(1,265,267)		0			0		0		0		0		0		0			
<b>Grand Total</b>	<b>23,469,370</b>		<b>23,912,306</b>			<b>23,884,399</b>		<b>29,724,460</b>		<b>24,288,577</b>		<b>23,893,958</b>		<b>29,420,540</b>		<b>24,283,827</b>			

FY15 Budgeted amount in FC (1VA) Ombudsman Program exceeds the authorized amounts due to matching rate adjustments during the 2013-2015 Biennium.

FY15 Budgeted amount in FC (337) Public Defender - Operations exceeds the authorized amounts due to transfers from the Agency Growth Pool during the 2013-2015 Biennium.



## Agency Position Usage Report

FY2012 - 2013						FY2013 - 2014						FY2014 - 2015					
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			Total	Total	Filled	Unfilled			Total	Total	Filled	Unfilled	
239	240	1	241	-2	-0.42 %	244	242	2	244	0	0.82 %	244	242	3	245	-1	0.82 %

Budgeted Number of Positions exceed the Authorized Number due to transfers from the Agency Growth Pool during Fiscal Years 2013 and 2015.

## **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.

Base Level Regular Salaries and Personal Services Matching include the continuation of the previously authorized 2015 1% Cost of Living Adjustment and Career Service Payments for eligible employees. Personal Services Matching also includes a \$10 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$420 per month. Base Level salaries and matching do not include appropriation for Merit Pay Increases.

The Commission's Request provides for Base Level for the 2015-2017 Biennium.

The Executive Recommendation provides for the 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			2015-2016			2016-2017		
		2013-2014 Actual	2014-2015 Budget	2014-2015 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	71,667	69,735	69,735	69,735	69,735	69,735	69,735	69,735	69,735
<b>#Positions</b>		<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Personal Services Matching	5010003	21,096	20,319	20,227	20,901	20,901	20,901	20,901	20,901	20,901
<b>Total</b>		<b>92,763</b>	<b>90,054</b>	<b>89,962</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>
<b>Funding Sources</b>										
Transfer from DHS-DYS	4000515	92,763	90,054		90,636	90,636	90,636	90,636	90,636	90,636
<b>Total Funding</b>		<b>92,763</b>	<b>90,054</b>		<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
<b>Grand Total</b>		<b>92,763</b>	<b>90,054</b>		<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>	<b>90,636</b>

FY15 Budget amount in Personal Services Matching exceeds the authorized amount due to matching rate adjustments during the 2013-2015 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.

Base Level Regular Salaries and Personal Services Matching include the continuation of the previously authorized 2015 1% Cost of Living Adjustment and Career Service Payments for eligible employees. Personal Services Matching also includes a \$10 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$420 per month. Base Level salaries and matching do not include appropriation for Merit Pay Increases. The Base Level salary of unclassified positions reflects the FY15 line item maximum plus the previously authorized 2015 1% Cost of Living Adjustment.

The Base Level Request is \$2,697,708 in FY16 and \$2,698,567 in FY17.

The Agency's Change Level Request provides for \$122,478 in FY16 and \$122,599 in FY17 in Regular Salaries and Personal Services Match appropriation associated with one (1) Public Defender III added from the Growth Pool during FY14 that the Commission wishes to continue.

The Executive Recommendation provides for the 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		
	2013-2014 Actual	2014-2015 Budget	2014-2015 Authorized	2015-2016			2016-2017		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	1,215,532	1,229,807	1,133,419	1,144,074	1,239,925	1,239,925	1,144,774	1,240,725	1,240,725
<b>#Positions</b>	<b>19</b>	<b>19</b>	<b>18</b>	<b>18</b>	<b>19</b>	<b>19</b>	<b>18</b>	<b>19</b>	<b>19</b>
Extra Help 5010001	11,985	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
<b>#Extra Help</b>	<b>2</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	365,166	371,364	338,271	349,296	375,923	375,923	349,455	376,103	376,103
Operating Expenses 5020002	253,571	247,648	247,648	247,648	247,648	247,648	247,648	247,648	247,648
Conference & Travel Expenses 5050009	19,690	19,690	19,690	19,690	19,690	19,690	19,690	19,690	19,690
Professional Fees 5060010	824,036	925,000	925,000	925,000	925,000	925,000	925,000	925,000	925,000
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>2,689,980</b>	<b>2,805,509</b>	<b>2,676,028</b>	<b>2,697,708</b>	<b>2,820,186</b>	<b>2,820,186</b>	<b>2,698,567</b>	<b>2,821,166</b>	<b>2,821,166</b>
<b>Funding Sources</b>									
State Central Services 4000035	2,689,980	2,805,509		2,697,708	2,820,186	2,820,186	2,698,567	2,821,166	2,821,166
Total Funding	2,689,980	2,805,509		2,697,708	2,820,186	2,820,186	2,698,567	2,821,166	2,821,166
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
Grand Total	2,689,980	2,805,509		2,697,708	2,820,186	2,820,186	2,698,567	2,821,166	2,821,166

FY15 Budget amounts in Regular Salaries, Personal Services Matching and Positions exceed the authorized amounts due to transfers from the Agency Growth Pool during the 2013-2015 Biennium.

## Change Level by Appropriation

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

### Agency Request

Change Level		2015-2016	Pos	Cumulative	% of BL	2016-2017	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>2,697,708</b>	<b>18</b>	<b>2,697,708</b>	<b>100.0</b>	<b>2,698,567</b>	<b>18</b>	<b>2,698,567</b>	<b>100.0</b>
C06	Restore Position/Approp	122,478	1	2,820,186	104.5	122,599	1	2,821,166	104.5

### Executive Recommendation

Change Level		2015-2016	Pos	Cumulative	% of BL	2016-2017	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>2,697,708</b>	<b>18</b>	<b>2,697,708</b>	<b>100.0</b>	<b>2,698,567</b>	<b>18</b>	<b>2,698,567</b>	<b>100.0</b>
C06	Restore Position/Approp	122,478	1	2,820,186	104.5	122,599	1	2,821,166	104.5

### Justification

C06	The Commission would like to restore/continue this public defender III position which was received as a growth pool position in FY2014. The attorney currently in this position has over twenty (20) years legal experience including trial and appellate practice as well as litigation in the capital murder area. The loss of this experience and credentials affiliated with this attorney would create a hardship on the Commission and its local office. The position has the responsibility of handling the most complex of felony cases and assisting other less-experienced attorneys in trial preparation and plea negotiations. With the number of years of experience and qualifications, it would be extremely difficult, if not impossible, to replace.
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## **Analysis of Budget Request**

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

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

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

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

Base Level Regular Salaries and Personal Services Matching include continuation of the previously authorized 2015 1% Cost of Living Adjustment and Career Service Payments for eligible employees. Personal Services Matching also includes a \$10 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$420 per month. Base Level salaries and matching do not include appropriation for Merit Pay Increases.

The Base Level Request is \$21,096,055 in FY16 and \$21,104,755 in FY17.

The Change Level Requests submitted are \$5,717,583 in FY16 and \$5,403,983 in FY17 and are summarized as follows:

- A total of 56 new positions - twenty-three (23) Public Defender III positions, twenty-three (23) Public Defender II positions, five (5) Capitol Conflicts Investigators, and five (5) Legal Services Specialists with Regular Salaries, Personal Service Matching totaling \$4,756,239 for both years of the biennium.
- Operating Expenses to support the overhead associated with these fifty-six (56) positions totaling \$809,544 in FY16 and \$495,944 in FY17. These expenses include parking, office furniture, computer equipment, associated office expenses, subscriptions and dues. The technology-related portion of this request is in compliance with the Agency's IT Plan.
- Conference Fee and Travel for the forty-six (46) newly requested attorney positions totaling \$151,800 for both years of the biennium to support their required continuing education training requirements.

The Executive Recommendation provides for Base Level with the addition of the following:

- Three (3) Public Defender III positions
- Operating appropriation of \$43,677 in FY16 and \$29,247 in FY17
- Conference Fees and Travel of \$9,900 in both years of the biennium.



# 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		
		2013-2014 Actual	2014-2015 Budget	2014-2015 Authorized	2015-2016			2016-2017		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	14,359,156	14,305,142	14,305,142	14,384,454	18,036,102	14,612,577	14,393,154	18,044,802	14,621,277
<b>#Positions</b>		<b>225</b>	<b>225</b>	<b>225</b>	<b>225</b>	<b>281</b>	<b>228</b>	<b>225</b>	<b>281</b>	<b>228</b>
Extra Help	5010001	6,059	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	4,359,128	4,538,150	4,538,150	4,538,150	5,642,741	4,538,150	4,538,150	5,642,741	4,538,150
Operating Expenses	5020002	318,084	327,551	327,551	327,551	1,137,095	371,228	327,551	823,495	356,798
Conference & Travel Expenses	5050009	10,900	10,900	10,900	10,900	162,700	20,800	10,900	162,700	20,800
Professional Fees	5060010	744,579	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	707,017	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
Bail Bond Co. Public Def. Prgm.	5900047	181,704	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
<b>Total</b>		<b>20,686,627</b>	<b>21,016,743</b>	<b>21,016,743</b>	<b>21,096,055</b>	<b>26,813,638</b>	<b>21,377,755</b>	<b>21,104,755</b>	<b>26,508,738</b>	<b>21,372,025</b>
<b>Funding Sources</b>										
Fund Balance	4000005	907,458	1,265,267		0	0	0	0	0	0
State Central Services	4000035	12,745,072	10,643,449		11,988,028	17,705,611	12,269,728	11,996,728	17,400,711	12,263,998
Bail Bond Fees	4000115	1,235,272	1,200,000		1,200,000	1,200,000	1,200,000	1,200,000	1,200,000	1,200,000
State Administration of Justice	4000470	5,852,732	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	1,211,360	1,000,000		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>Total Funding</b>		<b>21,951,894</b>	<b>21,016,743</b>		<b>21,096,055</b>	<b>26,813,638</b>	<b>21,377,755</b>	<b>21,104,755</b>	<b>26,508,738</b>	<b>21,372,025</b>
Excess Appropriation/(Funding)		(1,265,267)	0		0	0	0	0	0	0
<b>Grand Total</b>		<b>20,686,627</b>	<b>21,016,743</b>		<b>21,096,055</b>	<b>26,813,638</b>	<b>21,377,755</b>	<b>21,104,755</b>	<b>26,508,738</b>	<b>21,372,025</b>

## Change Level by Appropriation

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

### Agency Request

Change Level		2015-2016	Pos	Cumulative	% of BL	2016-2017	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>21,096,055</b>	<b>225</b>	<b>21,096,055</b>	<b>100.0</b>	<b>21,104,755</b>	<b>225</b>	<b>21,104,755</b>	<b>100.0</b>
C01	Existing Program	5,542,807	56	26,638,862	126.3	5,386,007	56	26,490,762	125.5
C08	Technology	174,776	0	26,813,638	127.1	17,976	0	26,508,738	125.6

### Executive Recommendation

Change Level		2015-2016	Pos	Cumulative	% of BL	2016-2017	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>20,932,450</b>	<b>225</b>	<b>20,932,450</b>	<b>100.0</b>	<b>20,943,109</b>	<b>225</b>	<b>20,943,109</b>	<b>100.0</b>
C01	Existing Program	1,474,040	3	22,406,490	107.0	1,466,051	3	22,409,160	107.0
C08	Technology	9,363	0	22,415,853	107.1	963	0	22,410,123	107.0
C13	Not Recommended	(1,038,098)	0	21,377,755	102.1	(1,038,098)	0	21,372,025	102.0

### Justification

C01	<p>The Arkansas Public Defender system serves a vital role in the State of Arkansas. The United States Supreme Court has mandated, beginning with Gideon v. Wainright, 372 U.S. 335 (1963) legal counsel be afforded to those facing incarceration. The Supreme Court has broadened the obligations of court-appointed counsel over the years. For instance, the decision in Padilla v. Kentucky, 559 U.S. 356 (2010), requires defense counsel to provide effective representation with regard to potential deportation to immigrant clients in the event of a plea or finding of guilt at trial. In 2012, the United States Supreme Court expanded the role of a defense attorney to mandate effective assistance of counsel at all stages of representation. See Lafler v. Cooper, 556 U.S. 1376 (2012). According to the Arkansas Crime Information Center, in 2000, the yearly offense total for the State of Arkansas was 110,052. By 2006, the offense total had increased to 155,846. By 2009, we saw an increase to 250,629. In 2012, cases totals were 253,300. While the totals for 2013 are still preliminary, indications are certain we will continue to approximate previous numbers. Our agency estimates it handles approximately 90-95% of all criminal actions in Arkansas in which an attorney appears on behalf of a client. These courts include Circuit Criminal, Circuit Juvenile and Circuit Probate (mental commitments and Adult Protective Service cases brought by Arkansas Department of Human Services). We likewise appear in District Courts where actions are brought not only by the State of Arkansas, but also by the city municipalities. Rule 8.2 of the Arkansas Rules of Criminal procedure requires the appointment of counsel to represent the indigent unless a) the client waives the appointment of counsel, or b) the court has determined that under no circumstances will incarceration be a possibility of sentence in the event guilt is determined. By adding forty-six (46) attorneys, five (5) paralegals and five (5) capital conflict investigators to this agency, this office would operate more efficiently and economically handling the myriad of conflict appointments we make annually. The request for the new additional positions includes Salary and Personnel Service Match and Operating Expenses. The Operating and Training Expense of \$786,568 and \$647,744 respectively in FY2016 and FY2017 is for additional office furniture, office supplies, membership fees, subscriptions and dues, telephone and parking costs associated for the overall fifty-six (56) new positions.</p>
C08	<p>The fifty-six (56) new positions in FY2016 will require a computer, software and connection to the internet. The estimate for this request is \$174,776 in FY2016. This request will not be needed if the positions are not added. The computers can be found in the Commission IT Plan in the IT Support Cost section for Future Hardware Purchases, and the software is found in the IT Support Cost under section Future Software Purchases.</p>