

# AR PUBLIC DEFENDER COMMISSION

## Enabling Laws

Act 1283 of 2003, Act 1193 of 1993  
A.C.A. 16-87-201 through 214

## History and Organization

The Arkansas Public Defender Commission was created by Act 1193 of 1993 (see also, Ark. Code Ann. §§ 16-87-201 through 214). The Commission was initially created to address a myriad of problems and concerns related to the representation of indigent criminal defendants in Arkansas. The Commission consists of seven members, each of who is appointed by the Governor. In 1993, the Commission's staff consisted of its Executive Director, three support personnel, and five attorneys in the Capital, Conflicts, and Appellate (CCA) Office. The attorneys in the CCA office are assigned, among other things, the task of representing capital murder defendants throughout Arkansas. Further, the CCA attorneys offer assistance and expertise to attorneys throughout the state who are providing indigent representation. Due to an ever-increasing caseload, in 1995, the staffing of the CCA office was increased. The CCA office now has seven attorneys, two investigators, two paralegals, and two mitigation specialists.

Through 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. Prior to the passage of the aforementioned Acts, the Commission was charged with monitoring county-based public defender systems throughout the State, overseeing the CCA office, and insuring that certain minimum standards established by the Commission were met by appointed counsel. With respect to the appointment of private attorneys, the Commission established a certification procedure whereby private attorneys applied for different levels of certification based upon their level of experience. After reviewing the applications and supporting documentation, the attorneys were certified to handle the types of cases commensurate with their level of experience. On an annual basis, certification applications are mailed to all attorneys in the State asking them to complete the applications if they seek appointment in indigent criminal cases. 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. When a conflict arises, the trial courts contact the Commission to make the necessary appointments. We need to add more attorneys to the list through training and education.

With the passage of Act 1341, the State began taking over the funding of the public defender system. Prior to Act 1341, the counties were responsible for paying for indigent representation. As of January 1, 1998, the State assumed the responsibility of paying the salaries for public defender attorneys, some support staff, and all private attorneys appointed to indigents. We also pay all the expenses for all expert assistance furnished to indigent defendants. As part of the State take-over, the Commission was given additional duties, including: allocating resources; recommending to the District Judges whom to employ as public defenders; taking care of all the personnel and payroll documentation; disbursing payroll; and paying any and all costs associated with indigent representation. These costs include fees for experts, investigators, court reporters, interpreters, and appointed private attorneys.

Prior to January 1, 1998, there were 147 county-paid public defender positions throughout the State. When the State initially assumed responsibility for indigent representation, State funding was allocated for 104 attorney positions, more than 40 shy of the number of positions prior to January 1, 1998. This, despite the fact that one of the factors cited for the State taking over the system, was the need to reduce caseloads of the public defenders.

On January 1, 1998, fifteen public defenders remained on county payrolls. By January 2001, the counties that were gratuitously paying the salaries of the necessary additional public defenders were warned that this gratuity was coming to an end. In order to address this concern, Act 1799 of 2001, provided an additional 22 attorney positions. By splitting some of these positions into job shares, the Commission has been able to more efficiently assure adequate representation throughout the State. The Commission's assignment of attorneys has enabled the public defenders, in most districts, the ability to have caseloads that more closely meet national standards. In other districts, however, we still have quite a way to go to meet this objective.

Since 1998, there have been several additional judicial positions created and the number of prosecuting attorneys has increased. Further, some districts have split and were automatically provided an elected prosecuting attorney, but not a public defender. The public defenders represent approximately 80% to 85% of all criminal defendants with 60 to 65% of the attorneys of the prosecution. Additionally, until recently, all public defenders were responsible for doing their own appellate work with no additional compensation. Pursuant to Act 1370 of 2001, part-time public defenders may receive additional compensation for their appellate work. Currently, full-time public defenders cannot receive additional compensation and are responsible for doing all of their own appellate work as well as trial work. In contrast, the attorney general's office prepares all of the appellate abstracts and briefs for the prosecuting attorneys throughout the State.

We have submitted a budget request for the upcoming Legislative Session that addresses our current needs in light of previous funding and staffing limitations. Since January of 1998, we have been diligently compiling caseload information so that we could more effectively address the needs of the statewide system. The additional positions allocated in 2001 have allowed us to address the intolerable caseloads in many districts and have brought them down to more manageable levels. Nevertheless, we are still far above national standards in over six districts.

The Public Defender Commission is also responsible for payment of private attorneys' fees, investigators, experts, and other expenses when the Court appoints a private attorney to represent an indigent defendant. Since 1998, \$750,000 per annum has been allocated for this purpose. Historically, these expenses have been approximately \$1.2 million dollars, significantly more than what has been allocated. This shortfall has resulted in attorneys waiting months to receive payment for their services rendered. In the fall of 2000 and winter of 2001, this shortfall reached "crisis" proportion. Attorneys began filing claims with the State Claims Commission for payment. Legislative Audit conducted a review of the cases pending and trends from previous years, and determined up to \$860,000.00 additional dollars would be needed to alleviate the past shortfall and cover costs in the future. Act 1489 of 2001 appropriated \$866,957 for this purpose with a one-time rollover provision. Also, in 2001, Act 1343 was passed, which requires the Commission, rather than the local judge, to set the fee for attorneys and experts and to set the expenses. The Commission has established guidelines for payment and there is now uniformity of payment for private attorneys

throughout Arkansas. Further, five of the twenty-two public defender positions allocated in 2001 were specifically assigned as conflicts' attorneys. Establishing local conflicts' positions has had a positive impact on expenditures by the Commission for payment of private attorneys. Rather than routinely appointing private attorneys to handle conflicts in every case, we have assigned our own conflicts lawyers. The combination of local conflicts' offices and the Commission's ability to regulate fees has resulted in the Commission's ability to return \$253,158.03 to the State Treasury in June, 2002.

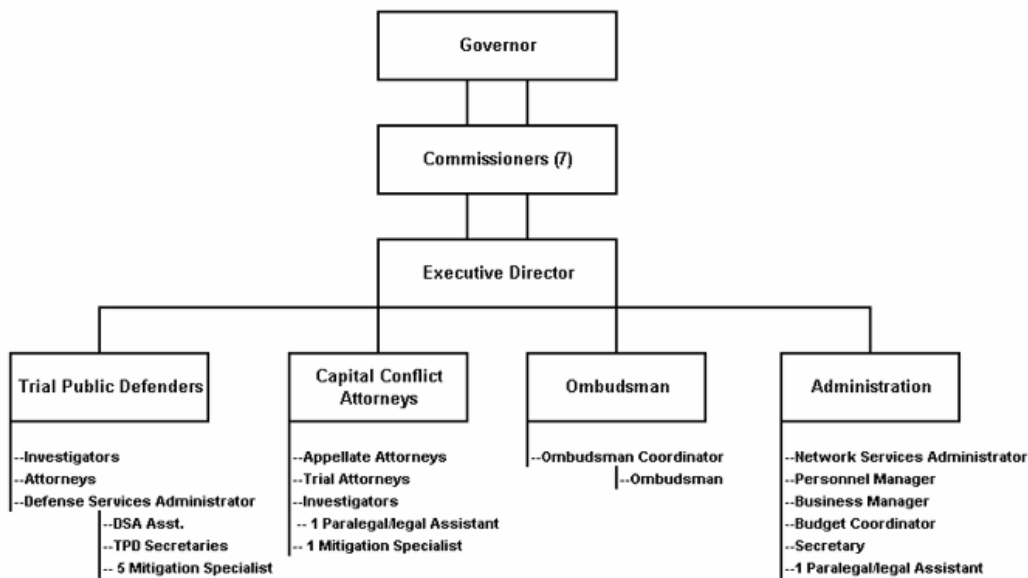
Further, pursuant to Arkansas Rules of Criminal Procedure, Rule 37.5, the Commission is charged with paying any and all expenses relating to the representation of individuals under a sentence of death who are pursuing State post-conviction relief. These expenses include attorneys' fees, investigators' 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 these types of appointments. Unlike trial fees and expenses, these fees are still set by the judges that thwart the Commission's ability 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 both for 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 the Ombudsman Division. The Ombudsmen are charged with insuring that children sentenced to State custody are safe, both physically and mentally, and that they are receiving necessary services. A move was made in the 2001 session to eliminate the Ombudsman Division and give its duties to a division of the Division of Youth Services (DYS). Ultimately, the imprudence of such a course of action was recognized and funding for the Ombudsman Division was restored; however, funding was cut by \$70,000 leaving the Commission with no other choice but to cut staffing. At the present time there are only four (4) Ombudsmen social workers and no support staff within the Division. Again, these four people are responsible for protecting the kids in State custody. They work countless hours, both during regular working hours and on nights and weekends, trying to do their jobs. The problems at DHS are continuing and DHS has entered into a consent decree with the United States Justice Department making the Ombudsman role that much more critical. Improvements have been made; nevertheless, an independent entity must remain in order to insure the safety and well being of children in the state's custody. The Ombudsmen have had a positive impact on many children's lives.

The last Legislative Session, like almost all previous sessions, expanded the duties and responsibilities of the Commission. It provided the Commission with more control over its budget. The Commission was given more control in the selection of public defenders. The Commission was given absolute discretion in the setting of fees for private attorneys, experts, and investigators for indigent defendants. The 2001 Legislature also clarified the types of cases to which a public defender may be appointed so that there is no longer any question. If one is facing a risk of loss of liberty, one is entitled to the services of a public defender. We are no longer doing divorce cases for prison inmates, custody cases, paternity cases, or post-conviction cases that do not involve the death penalty. We are, however, responsible for representing children in State custody, including foster children, subject to police questioning.

The Commission is acutely aware of funding limitations, and primarily due to these limitations, urged the enactment of Act 1564 of 1999, which allows courts to assess a fee of ten to one hundred dollars at the time of appointment of counsel in order to defray the costs of the public defender system. Again in 2003, the Commission took an active role in the enactment of Act 1778, which allows for a ten-dollar fee to be charged and collected by all bail bond companies on each bond processed with these fees payable to the Public Defender User Fee Fund. These fees, paid quarterly, are also designated to help defray the cost of the public defender system.

The Commission welcomes the additional duties, responsibilities, authority, and obligations. The objective of the Commission has been, and remains, to insure that all persons facing a risk of loss of liberty are provided effective and zealous representation. Our requests for this biennial budget are with that preeminent goal in mind.



## Agency Commentary

The Public Defender Commission’s (“Commission”) Change Level requests are all made with the goal of increasing the availability, effectiveness, and efficiency of both the Commission and the Trial Public Defender’s offices throughout the State of Arkansas. Moreover, the requests are made in furtherance of the Constitutional mandate of providing effective assistance of counsel to all criminally accused, while recognizing and respecting the limited resources of this State. Finally and more specifically, the requests are made in light of a recent United States Supreme Court decision, which fundamentally affects the role of the attorneys and their representation of clients.

Over the past several years, courts have increasingly scrutinized the effectiveness of defense counsel, and have been particularly critical of over-burdensome caseloads and the lack of resources provided to indigent defendants. It should also be noted that the United States Supreme Court has endorsed both the ABA and NLADA standards of representation. The Commission is aware of the need to provide finality to its cases, as well as to provide effective and zealous representation. Yet, despite its best efforts, the Commission is not in compliance with these standards. The standards recommend a caseload of no higher than 150 felonies per attorney per year, or 400 misdemeanors per attorney per

year, or 200 juvenile cases per attorney per year, or 200 commitment cases per attorney per year, or 25 appeals per attorney per year. At this time we have (11) eleven districts where the caseload is over 400 defendants per attorney.

During the 1997 Legislative Session, this Commission's obligations and responsibilities were greatly enhanced as the State took over responsibility for funding the trial public defender system from the counties. Nonetheless, the number of attorney positions provided to public defenders during that session was actually less than the number of attorneys that had been provided by the respective counties. Further, the duties of many public defenders were greatly increased by Act 1341 of 1997.

During the 2001 Legislative Session, the Commission was provided twenty-two (22) new attorney positions in an effort to address this shortage of attorneys. These new attorney positions were a great help in reducing the individual public defender caseloads and in setting up conflicts attorneys in the most active areas of the State. Yet, due to increasing conflicts in the Northwest Arkansas area, the number of conflicts attorneys provided in 2001 is now woefully inadequate to handle the caseload. Accordingly, we are requesting additional staffing in the Northwest Arkansas area to address this need.

The Commission's Change Level requests are made after much contemplation and consternation. We have carefully analyzed and assessed the needs of the public defender system and feel that the requests made are modest, yet vital to the effective administration of the criminal justice system. As courts are increasingly recognizing, public defenders, like prosecutors, are integral to the operation of any court handling criminal cases. Approximately 80 to 85% of the persons prosecuted by the State of Arkansas are represented by public defenders. Without an effective public defender standing beside a criminal defendant, the court system in Arkansas could not, and would not, function. The inability to provide the requisite Constitutionally effective counsel and, thus, the inability for cases to proceed through the court system serves no one. If the public defender system fails, the entire court system fails. If we are unprepared due to unmanageable caseloads and inadequate funding, justice is compromised. It should be noted that during the last biennium, the Commission was held to the 2003 level of funding and appropriation. We requested a modest increase in funding and appropriation, but it was not granted. Consequently, our requests are even more pressing this year. The crime rate has again increased and thus our workload has increased, particularly with respect to Capital Murder cases. Because of the lack of additional resources provided during the 2003 session, our requests this session are vital.

## Personnel

### Grade 99 Salary Adjustments

In 1997, the Public Defender Commission consisted of less than 20 employees. There are now 256 employees. During this seven-year period, the administration delivering services has changed from a fragmented county-by-county administration to the current centralized state administration. The administrative duties and responsibilities exercised by the Executive Director have increased comparable to the agency growth. The duties of the six Chief Public Defenders (grade 99) have likewise increased. Yet, compensation for these positions has remained flat since 1999. Indeed, compensation for these positions has risen only through COLA increases. These Chief Public Defender positions are staffed by persons with 135 total years of experience, or an average of 22.5 years each.

The Commission is requesting an eight percent (8%) increase over FY05 in salary for the Executive

Director who has been the Executive Director since the Commission was created in 1993, and who managed the public defender system administrative transition. The Executive Director, an attorney who has tried as many or more death penalty cases than anyone in the State of Arkansas, manages and oversees a staff of 254. The Executive Director is the administrator over the Capital, Conflicts and Appellate Office ("CCA"), the Trial Public Defender's Office ("TPD"), and the Ombudsman's Office. Additionally, the Executive Director is responsible for the appointment of private attorneys in any and all conflict cases and Rule 37.5 cases (death post-conviction) as well as for the payment of said attorneys. Finally, the Executive Director is responsible for, and oversees payment of any and all experts, investigators, and expenses in indigent cases.

We are requesting that all other grade 99 positions within the Commission be given a six percent (6%) salary over baseline for FY05. This is, in essence, a merit increase to which persons in graded positions who perform their jobs exceptionally well may be entitled. Our grade 99's have not received any raise other than cost of living since 1998. Because of their experience, skill, caseloads, duties, and responsibilities, a modest raise of six percent (6%) is more than justified. Without some recognition of the hard work and dedication they have shown, we could very well lose one or more of our most experienced lawyers and administrators. They are simply *not* replaceable, particularly at the rate of compensation currently available. When we have had vacancies for grade 99's or for managing public defenders, we have had difficulty filling the positions due to inadequate compensation. Interest in the job quickly dissipates once those interested are told both the job duties and the level of compensation. Qualified applicants have withdrawn their applications due to the lack of adequate compensation. We have been forced to hire and place people in positions whose qualifications were less than desired, due entirely to the lack of compensation available for the position. In the long run, this costs the State more money. Indeed, if a person in a managing or Chief Public Defender position is not qualified to handle certain types of cases, we are then forced to appoint private attorneys to handle their more difficult cases. Yet, the rate of pay for private attorneys is substantially more than what we pay our staff.

These grade 99 request are made to achieve parity since at the present time, the Executive Director's compensation is only two percent (2%) more than the grade 99 attorneys within the office. Were they to receive a six percent (6%) increase, which they well deserve, they would be making more than the Executive Director, despite having significantly fewer duties and responsibilities.

### **Upgrade to 99**

We are also requesting that two of our grade 26 public defenders be changed to grade 99 public defenders. During an audit of our Craighead County office, we learned that the offices of Crittenden and Mississippi Counties operated autonomously from the Craighead County office. The managers of those offices had little or no interaction with, or direction from, the "Chief Public Defender" in Craighead County. In an effort to adequately and equitably reflect the job duties of these individuals, it is necessary that they be changed to grade 99 as well since their duties and responsibilities are identical to those of other grade 99's.

### **Conflicts Office**

When the Commission took over the public defender system on January 1, 1998, it quickly discovered that the system was seriously and substantially understaffed, both as to attorneys and support staff. This under-staffing caused many of the public defenders to carry an horrendous caseload. This under-staffing and inadequate pay further has caused a turnover rate of seventeen

percent (17%) over the last few years. This means that of the attorneys who were on our payroll at the time of the take-over by the State in 1998, thirty-seven percent (37%) are no longer with us. The additional positions appropriated during the 2001 Session certainly alleviated some of this problem. These positions allowed us to place additional attorneys in areas where the caseloads were most seriously over national standards. These positions also allowed us to place attorneys in areas of the State where we routinely had conflicts and where the appointment of private counsel to handle these conflicts had become prohibitively expensive. While these conflicts offices have been of great help in reducing the number of private attorney appointments, which again, are clearly more expensive than hiring an attorney into a staff position, it has proved inadequate in one specific area of the State. That area of the State is the Northwest section of Arkansas. Sebastian, Benton, Washington, and Carroll counties have proven difficult to cover with part-time conflict attorneys. The Commission has been receiving between 4-6 appointment requests per day from this area of the State. For this reason, the Commission is requesting the funds to staff an office in that area of the State staffed with two full-time attorneys and a paralegal. When the Commission first took over representing all indigent defendants in the State, it set up a conflicts office within the Sixth Judicial District, Pulaski County. This was done in recognition of the fact of the enormous number of conflicts within Pulaski County. Because the Commission had the wisdom to set up such an office in 1998, the number of conflict appointments within Pulaski County has been reduced significantly. Unfortunately, the needs for such a conflicts office for Northwest Arkansas was not apparent in 1998, nor were the funds available to set up such an office. Because of the success of the conflicts office in the Sixth Judicial District, the Commission feels a similar office established in Northwest Arkansas would save the State of Arkansas substantial funding in the long run. Furthermore, it would provide an easy, and effective, method of providing representation for the conflict defendants within Northwest Arkansas. The judges within this area would know to whom their conflicts were going, and could consult the office directly. At the present time, the judges within the District must contact the Commission on a case-by-case basis rather than having the independence of directly contacting the conflicts attorneys.

For these reasons, the Commission is requesting the establishment of a conflicts office for Northwest Arkansas, staffed by two full-time attorneys and one paralegal. During the first year, this office will require Maintenance and Operations budget of \$37,500 for FY06 and \$32,700 for FY07. Additionally, the salary and estimated matching for these positions would be \$142,315 in FY06 and \$146,237 in FY07.

### **CLIP Availability**

The Commission is also requesting the ability to clip the grade 24 public defender positions to grade 25 in the appropriate cases. The Commission has experienced an inordinate rate of turnover in the past several years. The reasons for the turnover are two-fold. The first reason, and the most easily addressed reason, is lack of adequate pay for the position. The second reason, and the more difficult one, is the incredible amount of work expected of our public defenders. Because of the inability to pay adequately, we have lost numerous attorneys to prosecutors' offices and to the private sector. In an effort to keep the more skilled and more trained attorneys, we would like to have the ability and the authority to clip these attorneys from a grade 24 to a grade 25.

### **Mitigation Specialists**

The Commission is requesting four mitigation specialist positions. In *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, (Jun 26, 2003), the United States Supreme Court held that in any and all death

cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. Strategic and trial decisions cannot be made absent such a thorough and global investigation. *Wiggins* stands for the proposition that if an attorney does not have such a sweeping and all-encompassing investigation done, he or she is ineffective. Because of *Wiggins*, it is clear that each and every capital case requires a mitigation specialist. Not providing a mitigation specialist will be tantamount to asking for a reversal of a case. Again, the Commission is aware of a need for finality in cases and is aware that re-trying cases is good for neither the State nor the defense. At the present time, the Commission has been required to pay private mitigation specialists at a rate of approximately \$75.00 an hour. Clearly, it would be more efficient and cost effective for the Commission to employ mitigation specialists on staff at a rate substantially less than \$75.00 an hour. For this reason, the Commission is requesting the authority and the appropriation to employ four mitigation specialists. This number of mitigation specialists is not only justified, but essential since mitigation specialists spend anywhere from 800 to 1000 hours on any one particular case. Over the last year, the Commission has experienced a surge in capital murder cases. During FY03-04 the Commission has represented 87 defendants in capital cases. Of these, 70 were represented by local and capital conflicts staff. The remaining 17 were represented by private counsel, hired by the Commission either due to conflicts or workload considerations. People hired for these four positions would assist trial public defenders in representing capital murder defendants; assist the Capital, Conflicts Office in representing capital murder defendants; and assist private attorneys in representing capital murder defendants. In the long run, establishing these positions would save the State a great deal of money. More importantly, their services are required pursuant to the Supreme Court of the United States. Thus, the question is truly how we will pay for them, not whether we will have them. The Commission urges the General Assembly to allow us to obtain positions and funding so that we may put mitigation specialists on staff rather than paying independent contractors at a much higher rate.

We are asking for \$145,687 and \$150,058 in salary and estimated matching for FY06 and FY07 respectively. We are asking for \$24,000 in Maintenance and Operation for FY06, and \$23,500 for FY07.

### **M & O**

With the exception of a rent increase, the Commission has maintained the same maintenance and operating expenses since 2001. The Commission is requesting an additional \$40,000.00 per year to address the increased costs of operating the Commission. The mileage paid for personal vehicles has risen from \$0.29 to \$0.31. The rate for the Westlaw subscription has risen substantially. Additionally, other travel related expenses such as lodging rates, cost of meals have increased. In order to compensate employees for travel at the rates allowed by the State, we will clearly need additional monies. Additionally, the number of capital cases that have been assigned in the last few years has increased our travel expenses so much that the \$40,000 will just barely cover these expenses. In other words, without this additional funding we will not be able to defend the capital murder defendants in the four corners of the State. Finally, the Commission's everyday costs for supplies and other incidental expenses have risen sharply. In sum, the Commission cannot effectively represent clients nor effectively and efficiently operate without this additional funding for maintenance and operating costs.

### **IT Services**

This agency would like to request an additional \$12,000.00 each year to pay for internet services. For the last seven years, this agency has been piggybacked on the Arkansas Public School computer network router and has paid no fee. DIS discovered that we were not paying a fee and now says tha



we will be charged \$1,000.00 per month.

This agency is requesting 114 computers for FY06 and 52 computers for FY07. This will allow at least one computer per public defender office in the State for offices who do not have computers or are using computers supplied by the counties that are now five years old or older.

These offices are not able to key in time sheets, use the Internet for legal research, or receive e-mails from the Commission. Furthermore, they are unable to access AASIS. The Commission is also requesting software and software licenses for these computers.

These figures also include the seven computers, software and license needed for the four Mitigation Specialist and the Northwest Conflicts Office.

### **Ombudsman Division**

The Ombudsmen are charged with insuring that children sentenced to state custody are safe, both physically and mentally, and that they are receiving necessary services. At the present time there are only four (4) Ombudsmen social workers and no support staff within the Division. Again, these four people are responsible for protecting the kids in state custody. They work countless hours, both during regular working hours and on nights and weekends, trying to do their jobs. The problems at DYS are continuing. DYS has entered into a consent decree with the United States Justice Department making the Ombudsman role that much more critical. Improvements have been made; nevertheless, an independent entity must remain in order to insure the safety and well being of children in the state's custody. We are requesting that we be allowed to restore three positions in this division.

### **Audit Findings**

DIVISION OF LEGISLATIVE AUDIT  
AUDIT OF :  
ARKANSAS PUBLIC DEFENDER COMMISSION  
FOR THE YEAR ENDED JUNE 30, 2001

Findings	Recommendations
None	None

### **Employment Summary**

	Male	Female	Total	%
White Employees	136	105	241	95 %
Black Employees	5	6	11	4 %
Other Racial Minorities	0	2	2	1 %
Total Minorities			13	5 %
Total Employees			254	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 / Program Summary

		Historical Data						Agency Request and Executive Recommendation							
Appropriation / Program		2003-2004		2004-2005		2004-2005		2005-2006				2006-2007			
		Actual	Pos	Budget	Pos	Authorized	Pos	Agency	Pos	Executive	Pos	Agency	Pos	Executive	Pos
1VA	Ombudsman Program	229,998	5	230,000	4	295,535	7	335,412	7	231,358	4	344,828	7	237,999	4
337	Public Defender-Operations	1,223,144	15	1,343,644	15	1,222,941	15	1,761,873	15	1,378,237	15	1,643,743	15	1,406,403	15
530	Public Defender -Trial Office	13,012,407	189	13,685,154	189	13,259,412	189	15,380,925	196	14,678,981	189	15,726,543	196	15,019,654	189
Total		14,465,549	209	15,258,798	208	14,777,888	211	17,478,210	218	16,288,576	208	17,715,114	218	16,664,056	208

Funding Sources			%		%		%		%		%		%	
Fund Balance	4000005	553,612	3.7	332,171	2.2		0	0.0	0	0.0	0	0.0	0.0	
State Central Services	4000035	5,957,108	40.3	6,368,600	41.7		8,814,771	50.4	7,629,191	47.1	8,992,259	50.8	7,948,030	48.0
Bail Bond Fees	4000115	524,180	3.5	770,000	5.0		770,000	4.4	770,000	4.8	770,000	4.3	770,000	4.6
State Admn of Justice	4000470	6,908,027	46.7	6,908,027	45.3		6,908,027	39.5	6,908,027	42.7	6,908,027	39.0	6,908,027	41.7
Transfer from DHS-DYS	4000515	229,998	1.6	230,000	1.5		335,412	1.9	231,358	1.4	344,828	1.9	237,999	1.4
User / Attorney Fees	4000725	624,795	4.2	650,000	4.3		650,000	3.8	650,000	4.0	700,000	4.0	700,000	4.3
Total Funds		14,797,720	100.0	15,258,798	100.0		17,478,210	100.0	16,188,576	100.0	17,715,114	100.0	16,564,056	100.0
Excess Appropriation/(Funding)		(332,171)		0			0		100,000		0		100,000	
Grand Total		14,465,549		15,258,798			17,478,210		16,288,576		17,715,114		16,664,056	

## **Analysis of Budget Request**

**Appropriation / Program:** 1VA - Ombudsman Program

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

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

The Base Level for this appropriation includes a graduated salary increase of 3.0% to 1.5% each year over the FY05 salary levels, along with related Personal Services Matching cost for 4 Base Level positions. This includes a \$600 minimum increase for employees earning \$20,000 or below. Included in Personal Services Matching is a \$40 increase in the monthly contribution for State employee's health insurance for a total State contribution of \$320 per month per budgeted employee.

Change Level requests include Personal Services costs to reauthorize two (2) Public Defender Ombudsman Grade 20 and one (1) Public Defender Secretary II Grade 15 totaling \$104,054 for FY06 and \$106,829 for FY07. These positions are requested to meet demands associated with the increased number of Juvenile commitments and to fulfill the mission of the Ombudsman Division.

Executive Recommendation provides for the Base Level.

## Appropriation / Program Summary

**Appropriation / Program:** 1VA Ombudsman Program  
**Funding Sources:** HSC-State Central Services

Commitment Item	Historical Data			Agency Request and Executive Recommendation					
	2003-2004 Actual	2004-2005 Budget	2004-2005 Authorized	2005-2006			2006-2007		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	161,060	176,647	233,484	181,832	259,729	181,832	187,423	267,656	187,423
<b>#Positions</b>	<b>5</b>	<b>4</b>	<b>7</b>	<b>4</b>	<b>7</b>	<b>4</b>	<b>4</b>	<b>7</b>	<b>4</b>
Personal Services Matching 5010003	68,938	53,353	62,051	49,526	75,683	49,526	50,576	77,172	50,576
<b>Total</b>	<b>229,998</b>	<b>230,000</b>	<b>295,535</b>	<b>231,358</b>	<b>335,412</b>	<b>231,358</b>	<b>237,999</b>	<b>344,828</b>	<b>237,999</b>
<b>Funding Sources</b>									
Transfer from DHS-DYS 4000515	229,998	230,000		231,358	335,412	231,358	237,999	344,828	237,999
<b>Total Funding</b>	<b>229,998</b>	<b>230,000</b>		<b>231,358</b>	<b>335,412</b>	<b>231,358</b>	<b>237,999</b>	<b>344,828</b>	<b>237,999</b>
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
<b>Grand Total</b>	<b>229,998</b>	<b>230,000</b>		<b>231,358</b>	<b>335,412</b>	<b>231,358</b>	<b>237,999</b>	<b>344,828</b>	<b>237,999</b>

## Change Level by Appropriation

**Appropriation / Program:** 1VA-Ombudsman Program  
**Funding Sources:** HSC-State Central Services

### Agency Request

Change Level		2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>231,358</b>	<b>4</b>	<b>231,358</b>	<b>100.0</b>	<b>237,999</b>	<b>4</b>	<b>237,999</b>	<b>100.0</b>
C01	Existing Program	104,054	3	335,412	144.9	106,829	3	344,828	144.8

### Executive Recommendation

Change Level		2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>231,358</b>	<b>4</b>	<b>231,358</b>	<b>100.0</b>	<b>237,999</b>	<b>4</b>	<b>237,999</b>	<b>100.0</b>
C01	Existing Program	0	0	231,358	100.0	0	0	237,999	100.0
C06	Restored Position	0	0	231,358	100.0	0	0	237,999	100.0

### Justification

C01 The Commission's only request for 1VA is to restore three positions in our baseline and for COLA raises.

## **Analysis of Budget Request**

**Appropriation / Program:** 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.

The Base Level for this appropriation includes a graduated salary increase of 3.0% to 1.5% each year over the FY05 salary levels, along with related Personal Services Matching costs for 15 Base Level positions. This includes a \$600 minimum increase for employees earning \$20,000 or below. Included in Personal Services Matching is a \$40 increase in the monthly contribution for State employee's health insurance for a total State contribution of \$320 per month per budgeted employee.

The Base Level Request is \$1,378,237 in FY06 and \$1,406,403 in FY07.

The Change Level Requests submitted are \$383,636 in FY06 and \$237,340 in FY07 and are summarized as follows:

1. \$40,000 each year of the biennium for increased operating expenses. The operating expenses are for a subscription to Westlaw, mileage and meals and lodging. This is due to number of capital cases through out the State and the increase cost of lodging and gas reimbursements.
2. Extraordinary 8% increase for the Executive Director's salary.
3. Requesting 114 new computers and software licenses for FY06 and 52 new computers and software licenses for FY07. This increase will allow at least one computer per district office. Several offices do not have computers or have computers acquired from the counties that are seven (7) years old or older. Network service expense of \$12,000 each year of the biennium with the Department of Information Systems (DIS) is included in the request. This will allow the Commission to access the Internet for legal research and correspondence between Attorneys and the General Public. Total request for Technology Equipment is \$338,103 in FY06 and \$191,714 in FY07.

The Executive Recommendation provides for the Base Level for both years of the biennium. Further, the Executive recommends a total of \$100,000 in Operating Expenses for the Westlaw subscription and various technology expenses. The Executive has recommended Special Language that provides that the additional appropriation shall only be funded by the revenue sources other than State Central Services. While this additional appropriation was requested in the Public Defender Operations appropriation, the Executive is recommending the amount in the Public Defender Trial Office appropriation.

## Appropriation / Program Summary

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

Commitment Item	Historical Data			Agency Request and Executive Recommendation					
	2003-2004 Actual	2004-2005 Budget	2004-2005 Authorized	2005-2006			2006-2007		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	777,020	831,011	741,305	854,234	858,898	854,234	877,972	882,715	877,972
<b>#Positions</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>
Extra Help 5010001	6,941	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
<b>#Extra Help</b>	<b>1</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	186,404	207,540	176,543	218,910	219,779	218,910	223,338	224,221	223,338
Operating Expenses 5020002	182,808	180,093	180,093	180,093	558,196	180,093	180,093	411,807	180,093
Travel-Conference Fees 5050009	8,882	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000
Professional Fees and Services 5060010	61,089	96,000	96,000	96,000	96,000	96,000	96,000	96,000	96,000
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>1,223,144</b>	<b>1,343,644</b>	<b>1,222,941</b>	<b>1,378,237</b>	<b>1,761,873</b>	<b>1,378,237</b>	<b>1,406,403</b>	<b>1,643,743</b>	<b>1,406,403</b>
<b>Funding Sources</b>									
State Central Services 4000035	1,223,144	1,343,644		1,378,237	1,761,873	1,378,237	1,406,403	1,643,743	1,406,403
<b>Total Funding</b>	<b>1,223,144</b>	<b>1,343,644</b>		<b>1,378,237</b>	<b>1,761,873</b>	<b>1,378,237</b>	<b>1,406,403</b>	<b>1,643,743</b>	<b>1,406,403</b>
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
<b>Grand Total</b>	<b>1,223,144</b>	<b>1,343,644</b>		<b>1,378,237</b>	<b>1,761,873</b>	<b>1,378,237</b>	<b>1,406,403</b>	<b>1,643,743</b>	<b>1,406,403</b>

The FY05 Budgeted amount in Regular Salaries and Personal Services Matching exceeds the authorized amount due to salary and matching rate adjustments during the 2003-05 biennium.



## Change Level by Appropriation

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

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

### Agency Request

Change Level		2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>1,378,237</b>	<b>15</b>	<b>1,378,237</b>	<b>100.0</b>	<b>1,406,403</b>	<b>15</b>	<b>1,406,403</b>	<b>100.0</b>
C01	Existing Program	40,000	0	1,418,237	102.9	40,000	0	1,446,403	102.8
C08	Technology	338,103	0	1,756,340	127.4	191,714	0	1,638,117	116.4
C15	Ex Salary Increase	5,533	0	1,761,873	127.8	5,626	0	1,643,743	116.8

### Executive Recommendation

Change Level		2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>1,378,237</b>	<b>15</b>	<b>1,378,237</b>	<b>100.0</b>	<b>1,406,403</b>	<b>15</b>	<b>1,406,403</b>	<b>100.0</b>
C01	Existing Program	0	0	1,378,237	100.0	0	0	1,406,403	100.0
C08	Technology	0	0	1,378,237	100.0	0	0	1,406,403	100.0
C15	Ex Salary Increase	0	0	1,378,237	100.0	0	0	1,406,403	100.0

### Justification

C01	The Commission is requesting an additional \$40,000 for M&O. This request is due to the increased subscription rates for Westlaw, and the increase in mileage, meals and lodging. The Commission has cut back on the Westlaw services but the subscription rate has still risen considerably. The increased number of capital cases is the reason for the requested increase for mileage, meals and lodging. Gas, food and lodging prices have all increased dramatically in the last two years along with the amount of travel our attorneys are having to do.
C08	This request is made with the hope of installing computer equipment for the use of every Public Defender within the State of Arkansas. We would like to interconnect equipment in order for attorneys to be in contact with our main office and with the other offices throughout the state. We will replace or update inadequate software to ensure proper workflow and to expedite data gathering. We will be able to also pay DIS for the monthly bandwidth charges.
C15	The Commission is requesting an eight percent increase over FY05 salary for the Executive Director who has been the Executive Director since the Commission was created in 1993, and who managed the public defender system administrative transition. The Director oversees a staff of 254 and is responsible for the appointment of private attorneys in any and all conflict cases and Rule 37.5 cases (death post-conviction) as well as for the payment of said attorneys. Also, the responsibility for payment of any and all experts, investigators, and expenses in indigent cases totaling approximately \$846,000 per year.

## **Analysis of Budget Request**

**Appropriation / Program:** 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 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.

The Base Level for this appropriation includes a graduated salary increase of 3.0% to 1.5% each year over the FY05 salary levels, along with related Personal Services Matching cost for 189 Base Level positions. This includes a \$600 minimum increase for employees earning \$20,000 or below. Included in Personal Services matching is a \$40 increase in the monthly contribution for State employee's health insurance for a total State contribution of \$320 per month per budgeted employee.

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. According to the Commission, the majority of costs applicable to funding restrictions are not budgeted due to the sporadic nature of collections and the need to exercise due caution in the expenditure of fee revenue.

The Base Level Request is \$14,578,981 in FY06 and \$14,919,654 in FY07.

The Change Level Requests submitted are \$801,944 in FY06 and \$806,889 in FY07 and are summarized as follows:

1. Requesting four (4) Mitigation Specialist Grade 20 with salary and match and operating cost totaling \$181,534 and \$179,529.
2. Requesting to open a Northwest Arkansas Conflicts Office with three (3) new positions for \$184,745 and \$179,938.
3. Requesting a 6% Extraordinary increase for six (6) Chief Public Defenders Grade 99 salaries and reclass ninety-two (92) Class C Public Defenders grade 24 to Class B Public Defenders grade 25. Requesting forty-four (44) PD Secretary I be reclassified to PD Secretary II for a total of \$435,665 for FY06 and \$447,422 in FY07.

The Executive Recommendation provides for the Base Level for both years of the biennium. Further, the Executive recommends a total of \$100,000 in Operating Expenses for the Westlaw subscription

and various technology expenses. The Executive recommends Special Language providing that the additional appropriation be funded by the revenue sources other than State Central Services. While this additional appropriation was requested in the Public Defender Operations appropriation, the Executive is recommending the amount in the Public Defender Trial Office appropriation.

## Appropriation / Program Summary

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

Commitment Item	Historical Data			Agency Request and Executive Recommendation					
	2003-2004 Actual	2004-2005 Budget	2004-2005 Authorized	2005-2006			2006-2007		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	9,795,870	10,037,659	9,433,755	10,318,266	10,909,276	10,318,266	10,605,051	11,212,684	10,605,051
<b>#Positions</b>	<b>189</b>	<b>189</b>	<b>189</b>	<b>189</b>	<b>196</b>	<b>189</b>	<b>189</b>	<b>196</b>	<b>189</b>
Extra Help 5010001	8,270	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
<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	2,350,863	2,522,495	2,230,657	2,665,715	2,803,646	2,665,715	2,719,603	2,860,659	2,719,603
Operating Expenses 5020002	60,000	60,000	60,000	60,000	133,003	160,000	60,000	118,200	160,000
Travel-Conference Fees 5050009	0	0	0	0	0	0	0	0	0
Professional Fees and Services 5060010	731,048	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 Commission Prc5900046	66,356	300,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
<b>Total</b>	<b>13,012,407</b>	<b>13,685,154</b>	<b>13,259,412</b>	<b>14,578,981</b>	<b>15,380,925</b>	<b>14,678,981</b>	<b>14,919,654</b>	<b>15,726,543</b>	<b>15,019,654</b>
<b>Funding Sources</b>									
Fund Balance 4000005	553,612	332,171		0	0	0	0	0	0
State Central Services 4000035	4,733,964	5,024,956		6,250,954	7,052,898	6,250,954	6,541,627	7,348,516	6,541,627
Bail Bond Fees 4000115	524,180	770,000		770,000	770,000	770,000	770,000	770,000	770,000
State Admn 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	624,795	650,000		650,000	650,000	650,000	700,000	700,000	700,000
<b>Total Funding</b>	<b>13,344,578</b>	<b>13,685,154</b>		<b>14,578,981</b>	<b>15,380,925</b>	<b>14,578,981</b>	<b>14,919,654</b>	<b>15,726,543</b>	<b>14,919,654</b>
Excess Appropriation/(Funding)	(332,171)	0		0	0	100,000	0	0	100,000
<b>Grand Total</b>	<b>13,012,407</b>	<b>13,685,154</b>		<b>14,578,981</b>	<b>15,380,925</b>	<b>14,678,981</b>	<b>14,919,654</b>	<b>15,726,543</b>	<b>15,019,654</b>

The FY05 Budgeted amount in Regular Salaries and Personal Services Matching exceeds the authorized amount due to salary and matching rate adjustments during the 2003-05 biennium.

# Change Level by Appropriation

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

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

## Agency Request

Change Level	2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL Base Level</b>	<b>14,578,981</b>	<b>189</b>	<b>14,578,981</b>	<b>100.0</b>	<b>14,919,654</b>	<b>189</b>	<b>14,919,654</b>	<b>100.0</b>
C01 Existing Program	354,776	7	14,933,757	102.4	357,467	7	15,277,121	102.4
C08 Technology	11,503	0	14,945,260	102.5	2,000	0	15,279,121	102.4
C09 CLIP Reclass	393,336	0	15,338,596	105.2	404,295	0	15,683,416	105.1
C10 Reclass	14,997	0	15,353,593	105.3	15,282	0	15,698,698	105.2
C14 Title Change	0	0	15,353,593	105.3	0	0	15,698,698	105.2
C15 Ex Salary Increase	27,332	0	15,380,925	105.5	27,845	0	15,726,543	105.4

## Executive Recommendation

Change Level	2005-2006	Pos	Cumulative	% of BL	2006-2007	Pos	Cumulative	% of BL
<b>BL Base Level</b>	<b>14,578,981</b>	<b>189</b>	<b>14,578,981</b>	<b>100.0</b>	<b>14,919,654</b>	<b>189</b>	<b>14,919,654</b>	<b>100.0</b>
C01 Existing Program	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C08 Technology	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C09 CLIP Reclass	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C10 Reclass	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C14 Title Change	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C15 Ex Salary Increase	0	0	14,578,981	100.0	0	0	14,919,654	100.0
C19 Executive Changes	100,000	0	14,678,981	100.6	100,000	0	15,019,654	100.6

## Justification

C01	The Commission is requesting four new positions (Mitigation Specialist) and the operation money to set these positions up. We will need office space, furniture, office equipment and travel expenses. These new positions will be required to travel the whole state of Arkansas. These positions are required due to a US Supreme Court case, Wiggins v. Smith, 539 U.S. 510, 123 S.Ct 2527 (June 26, 2003). The US Supreme Court held that in any and all death cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. B. The Commission is requesting two new Class A Attorney positions and one paralegal/legal secretary position. These three positions would be responsible for opening a Conflicts Office in Northwest Arkansas. The Commission will have to rent space and purchase furniture and office equipment; there will also be some travel expenses. The Commission feels that an office established in Northwest Arkansas would save the State of Arkansas substantial funds in the long run. Furthermore, it would provide an easy, and effective, method of providing representation for the conflict defendants within that district. The judges within this area would know to whom their conflicts were going, and could consult the office directly.
C08	With the above seven new positions we will need seven new computers and the software.
C09	The Commission is also requesting the ability to clip the grade 24 public defender positions to grade 25 in the appropriate cases. The Commission has experienced an inordinate rate of turnover in the past several years. The reasons for the turnover are two-fold. The first reason is the lack of adequate pay for the position. The second reason is the incredible amount of work expected of our public defenders. Because of the inability to pay adequately, we have lost numerous attorneys to prosecutors' offices and to the private sector. In an effort to keep the more skilled and more trained attorneys, we would like to have the ability and the authority to clip these attorneys from a grade 24 to a grade 25.
C10	The Commission is requesting that two of our grade 26 public defenders be reclassified to grade 99 public defenders. During an audit of our Craighead County office, we learned that the offices of Crittenden and Mississippi Counties operated autonomously from the Craighead County Office. In an effort to adequately and equitably reflect the job duties of these individuals, it is necessary that they be changed to grade 99 as well since their duties and responsibilities are identical to those of other grade 99's.
C14	The Commission would like to request that all Class B Chief Public Defenders have their titles changed to Class B Public Defender. We are attempting to realign our positions so that all attorney positions will be reflected either by an A, B or C or 99 classification. This will cost the State nothing.
C15	We are requesting that all grade 99 positions within this fund center be given a six percent salary over baseline for FY05. This is, in essence, a merit increase to which persons in graded positions who perform their jobs exceptionally well may be entitled. Our grade 99's have not received any raise other than the cost of living since 1998. Because of their experience, skill, caseloads, duties, and responsibilities, a modest raise of six percent is more than justified.
C19	The Executive recommends a total of \$100,000 in Operating Expenses for Westlaw Subscription and various technology expenses to be appropriated out of Public Defender Trial Office Appropriation instead of Public Defender Operations Appropriation.