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# A Broken System

Counties have substantially shouldered the costs associated with state deputy prosecutors and public defenders.

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**A**s a government system, we expect our state statutes to be upheld as our governing rules of law. For 20 years now, the counties have substantially shouldered the cost of state deputy prosecuting attorney salaries and total costs for their office operations. County government has also had to substantially fund public defender operations during this time period, even though Act 1341 of 1997 and Act 1044 of 1999 promised a “transition to state-funded” public defender and deputy prosecuting attorney systems. This should not be a county government responsibility under the law.

## Deputy Prosecuting Attorneys

Rather, under Act 1044 of 1999, it is a clearly stated responsibility of the state of Arkansas to pay for the salaries of deputy prosecuting attorneys. However, counties continue to shoulder much of this burden. Act 1044 states that in every monthly distribution of general revenues to the counties, the state shall retain “one-twelfth (1/12th) of 80 percent” of the amount that was appropriated by the counties for salaries and other benefits ascertained as the base amount in 1999.

Every year since Act 1044 was passed, the state has continued to withhold this 1/12th of 80 percent from the county’s net reduction turnback. This equates to \$5,459,621.28 being deducted from the counties on an annual basis, according to a chart created by AAC Consultant Eddie A. Jones and found on the AAC website at <https://bit.ly/2VRdXUu>. Arkansas Legislative Audit also outlines some of these spending issues in a report found online at <https://www.arklegaudit.gov/pdf.aspx?id=SPSA01315>. The state is actually using this withheld money, appropriated to counties, in order to pay the state deputy prosecuting attorneys instead of using its own state funds. Prior to 1999, deputy prosecuting attorneys were classified as county employees, but they became state employees with the enactment of Act 1044. Since these deputy prosecuting attorneys classify as state employees, the state of Arkansas should be responsible for their salaries as well.

This general turnback the state retains is allocated to the State Central Services Fund in order to help pay for the “regular salaries and personal services” of deputy prosecuting attorneys. Therefore, funds are transferred from the County Aid Fund to the Auditor of State for payment of deputy

prosecuting attorneys. Money is transferred from the Constitutional Officers Fund to the Auditor of State for a variety of payments, including the salaries and benefits of prosecuting attorneys. However, under Ark. Code § 16-21-156(1) counties are only liable for the costs of “facilities, equipment, supplies, salaries and benefits of existing support staff and other office expenses for elected prosecuting attorneys and deputy prosecuting attorneys.” The counties are also listed, in this statute, as responsible for “any and all other line item appropriations” approved in their 1999 budget, “except for deputy prosecuting attorneys’ salaries and benefits.” Based on budgeting data from the Arkansas Department of Finance and Budget Administration (DFA), in the last 10 years, the amount of County Aid allocations given per fiscal year from General Revenue has hovered between \$19 million and \$21.5 million.

There were 188 deputy prosecutors in 1999. Through Act 1044 of 1999, the state appropriated approximately \$5.3 million to cover expenses for deputy prosecuting attorneys for the last six months of FY 2000 and \$11.1 million for FY 2001. In 2001, Act 595 was enacted to set the number of deputy prosecuting attorneys and the budget for deputy prosecuting attorneys for FY 2002 and 2003. The number of deputy prosecuting attorneys was set at 190. The state budget appropriated \$11,427,486 in FY 2002 for their salaries and personal services and \$11,710,111 for FY 2003. In the year 2019, there were 258 deputy prosecutors, and the total amount appropriated became \$24,868,441 in Act 142. There has been an exponential increase in the appropriated amounts from 1999 when deputy prosecutors became state employees. Also, this \$5.5 million has continued to be withheld from the county’s general turnback annually for two decades to be applied to these state salary payments. At the same time, with an increased number of deputy prosecutors, the county funded budgets for office operations of deputy prosecutors in the state court system have skyrocketed.

### Public Defenders

Public defenders became state employees with the passing of Act 1341 of 1997, which detailed the transfer of financial responsibility from the county to the state, including counties giving to the state 85 percent of their dedicated public defender revenue through the Administration of Justice Fund. By statute, the state of Arkansas is responsible for the salaries of public defenders, the salaries of secretaries and other support staff of the public defenders, and for the payment of the costs of certain expenses. These expenses are designated to be paid by the Arkansas Public Defender Commission (Ark. Code § 16-87-302). According to data from Transparency.Arkansas.gov, since 2013 the Arkansas Public Defender Commission has routinely received between \$23 million and \$29 million in revenue. Furthermore, Act 871 of 2019 appropriated an approximate total of \$30,452,927 to the Arkansas Public Defender Commission. Arkansas law

designates the Arkansas Public Defender Commission as the entity that “allocates positions to each county or judicial district.” This includes the distribution of public defenders. The Commission is guided by factors listed in the statute in determining how many positions are necessary in a given county or judicial district (Ark. Code § 16-87-304). The state of Arkansas is also given the power to set a floor for the entry level salaries of public defenders and public defender staff (Ark. Code § 16-87-305).

According to DFA, at the beginning of 1998, there were still 15 public defenders being paid by the counties. The counties were told in 2001 that paying for those additional public defenders was to cease. Act 1799 in 2001 added 22 public defenders in order to alleviate the gap this transition would create. Despite this, counties are still paying extra for public defenders that are not their financial responsibility, because the state does not fund an adequate number of public defender positions and public defender office personnel.

The county is only legally responsible for the cost of facilities, equipment, and supplies in order to provide an efficient operation of the public defender’s office. However, for the past 20 years, the counties have also been paying for some public defenders, in addition to the counties’ original responsibility for the payment of office operations. Based on budget data provided by Transparency Arkansas Counties, approximately 27 counties across the state are paying for public defender expenses that are actually the financial responsibility of the state. These extra costs range from a low of \$1,000 in Hot Spring County to a high of \$938,531 in Benton County. A breakdown of the total unnecessary costs to each county is included in the graph on Page 35.

According to Transparency Arkansas Counties, the following counties have been paying the most for public defenders and other expenses in the public defender’s office for which a county is not legally obligated:

- Benton County — \$938,531 for personal services such as salaries and benefits;
- Washington County — \$643,609 for personal services, including salaries and benefits;
- Pulaski County — \$409,844 in salaries, fringe benefits;
- Crittenden County — \$154,202 for salaries and benefits;
- Crawford County — \$148,399 in public defender costs including a secretary, other personnel and benefits;
- Mississippi County — \$67,626 for support staff;
- Carroll County — \$28,847 for a public defender; and
- Van Buren County — \$46,644 for personnel services including a secretary.

See “**COSTS**” on Page 34 >>>

## Costs

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According to a report by the Arkansas DFA, prior to the state taking over the bulk of the public defender system, there were 147 public defender positions across the state paid for by county government. Act 51 in the 1997 Regular Legislative Session explicitly set the number of employees for the Arkansas Public Defender Commission at 18 employees, including 7 public defender attorneys. The appropriated budget for fiscal year 1997 was set at \$951,318 and for fiscal year 1998 it was set at \$948,814. However according to DFA, overall the state budgeted for a total of 104 public defenders after takeover. This level of staffing was still 40 short compared to the amount of public defenders that existed statewide before the state took over. Act 1799 in 2001 added an additional 22 public defenders. Act 145 in the 2020 Fiscal Session set the number of public defenders, public defender office employees, and appropriations for the public defender system. In 2020, the total number of public defenders totaled 171, and the total number of non-attorney employees for the public defender system totaled 103. In total, there were 274 employees in the public defender system. Furthermore, \$27,244,627 was appropriated to the Arkansas Public Defender Commission for the salaries and personal services of State Operations for public defenders and the Trial Public Defender Office.

In conclusion, not only is approximately \$5.5 million dollars being withheld from the county's general turnback, but this is county money that is being used by the state to pay for the salaries of state deputy prosecutors and associated benefit costs. To make matters worse, Pulaski County does not receive any general turnback from the state at all because it is all deducted as their share of deputy prosecutor salaries and benefits. Thus, the only remedy for this injustice is for the state to stop withholding this money and release this \$5.5 million which rightfully belongs to the counties of Arkansas. The breakdown for each judicial district can be found in the relevant codes provided in the footnotes. Furthermore, at least 27 counties in Arkansas are paying for expenses in the public defender's office that are statutorily the responsibility of the state. This is despite the fact that the counties were told in 2001 to cease spending on public defenders. In addition to paying the costs of facilities, equipment, and supplies in order to provide an efficient operation of the public defender's office, counties are spending thousands of dollars on extra costs. These extra costs include public defenders, secretaries, benefits, and other support staff. The counties should not be paying for the clearly defined responsibilities of the state listed in Ark. Code § 16-87-302. In order to cease the hemorrhaging of county funds on these expenses that are not legal obligations of the counties, the state of Arkansas should

fulfill the responsibilities they voluntarily agreed to and promoted. This can be done by the Arkansas Public Defender Commission expanding the number of public defenders, the legislature allocating more money for public defenders and support staff, and the state shifting the costs the counties are currently paying to the state.

Over 20 years ago the state of Arkansas admitted in writing through enacted legislation that the system of funding the state judicial system had created inequity in the level of judicial services available to the citizens of Arkansas and committed to phasing in the responsibility of funding the state court system from county government to the state. And almost as quickly as it started it stopped. The 1997 legislation shifted "partial" costs of the public defender system to the state, and the 1999 legislation shifted "partial" costs of the deputy prosecuting attorney system to the state. And then it stopped. The plan of transitioning to a state funded "state court system" has been on hold for the past 20 years.

It is well documented by a Special Report compiled by Arkansas Legislative Audit in 2015 that the state's court system costs more than it raises in court derived revenues. The report also concluded that the \$36 million deficit is primarily absorbed at the county level through the counties' general funds. No doubt, that deficit is even larger today. The transition to a state-funded state court system should be taken off hold.

### Footnotes

- Judicial District #01 – A.C.A. 16-21-601
- Judicial District #02 – A.C.A. 16-21-701 through 16-21-703
- Judicial District #03 – A.C.A. 16-21-801
- Judicial District #04 – A.C.A. 16-21-901
- Judicial District #05 – A.C.A. 16-21-1001
- Judicial District #06 – A.C.A. 16-21-1101 through 16-21-1109
- Judicial District #07 – A.C.A. 16-21-1201 through 16-21-1204
- Judicial District #08 – A.C.A. 16-21-1301
- Judicial District #09 – A.C.A. 16-21-1401 through 16-21-1402
- Judicial District #10 – A.C.A. 16-21-1501 through 16-21-1503
- Judicial District #11 – A.C.A. 16-21-1601 through 16-21-1603
- Judicial District #12 – A.C.A. 16-21-1701 through 16-21-1704
- Judicial District #13 – A.C.A. 16-21-1801
- Judicial District #14 – A.C.A. 16-21-1901 through 16-21-1905
- Judicial District #15 – A.C.A. 16-21-2001 through 16-21-2007
- Judicial District #16 – A.C.A. 16-21-2101
- Judicial District #17 – A.C.A. 16-21-2201 through 16-21-2203
- Judicial District #18 – A.C.A. 16-21-2301
- Judicial District #19 – A.C.A. 16-21-2401 through 16-21-2403
- Judicial District #20 – A.C.A. 16-21-2501
- Judicial District #21 – None
- Judicial District #22 – A.C.A. 16-21-2701

**County Extra Spending on Public Defender’s Office/Indigent Services**

County	Total Cost and Spending
Benton	\$938,631 (2020) — Personal Services (salaries and benefits)
Boone	\$10,080 (2020) — Salaries of public defenders and/or staff \$7,200 (2020) — Contract Labor
Carroll	\$27,598 (2019) — Salaries of public defender’s \$28, 847 (2020 estimated) — Salaries of public defender’s
Clay	\$5,200 (2020) — Personal Services
Cleburne	\$11,000 (2020) — Public Defender/Indigent Services, Contract Labor
Cleveland	\$3,700 (2020) — Public Defender Reimbursement
Craighead	\$40,256.33 (2020) — Secretary Salary in Public Defender’s Office
Crawford	\$29,981.00 (2020) — Secretary Salary in Public Defender’s Office \$16,218.76 (2020) — Benefit Costs \$28,000 (2020) — “Extra Help”
Crittenden	\$74,199.00 (2020) — Personal Services \$105,845.00 (2020) — Full Time Salaries in Public Defender’s Office \$48,357 (2020) — Benefit Costs
Dallas	\$12,478.80 (2020) — Personal Services
Grant	\$13,800.00 (2020) — Part Time Salaries in Public Defender’s Office
Greene	\$14,461.20 (Requested 2020) — Part Time Salaries in Public Defender’s Office
Hot Spring	\$1,000.00 (2020) — For “Court Appointed Lawyers” in the Public Defender’s Office
Independence	\$11,000.00 (2020) — Personal Services
Izard	\$7,000.00 (2018 - 2020) — “Extra Help” \$1,200.00 (2018 - 2020) — “Special Legal Services”
Lincoln	\$34,500.00 (2020) — Personal Services
Miller	\$21, 307.00 (2020) — Salaries in Indigent Defense Fund
Mississippi	\$67,626.00 (2020) —Part Time Support Staff in Public Defender’s Office
Montgomery	\$7,253.00 (2020) — Indigent Defense Attorney
Phillips	\$7,399.00 (2020) — Personal Services
Pulaski	\$409,844 (2020) — Salaries and Fringe Benefits
Sebastian	\$109,106.00 (2020) — Salaries and Fringe Benefits
Stone	\$16,500 (2020) — Public Defender
Union	\$26,255.73 (2020) — Full Time Salaries in Public Defender’s Office (Secretary) \$12,528.00 (2020) — “Extra Help” \$7,392.89 (2020) — Fringe Benefits
Van Buren	\$46,643.89 (2020) — Personal Services (includes Secretary’s salary of \$31,190.40)
Washington	\$643,609.00 (2020) — Personal Services (includes salaries and benefits)
Yell	\$9,750.00 (2020) — Public Defender

