



## Arkansas Advisory Committee to the U.S. Commission on Civil Rights

# Civil Rights and the Right to Counsel in Arkansas

Access to effective counsel, guaranteed by the Sixth Amendment to the U.S. Constitution,<sup>1</sup> is critical to ensuring equal protection of the laws and equal protection in the administration of justice. The Arkansas Public Defender Commission (APDC) was established to “assure adequate, effective, and zealous representation of all indigent persons who are at risk of loss of life or liberty in a court proceeding.”<sup>2</sup> Despite this importance, with the seventh highest poverty rate in the country and one of the lowest number of attorneys per capita, the APDC has been overloaded for decades. This and related ongoing challenges have led to claims of an “unethical and unconstitutional” system of public defense in Arkansas.<sup>3</sup>

In 2024, the Arkansas Advisory Committee to the U.S. Commission on Civil Rights conducted a study to evaluate the right to counsel for indigent defendants in Arkansas. [The resulting report](#)<sup>4</sup> discusses the role of public defenders in ensuring equal protection of the laws; and the impact of adequate counsel on persistent disparities in the criminal justice system related to race, color, sex, disability, and national origin.

### Why is public defense important, and why is the system so chronically overloaded?

Public defenders are critical not only to upholding constitutional protections, but also to ensuring public legitimacy and trust in the criminal justice system.<sup>5</sup> Perceived fairness engenders confidence in the outcomes of cases; and assures prosecutors, defense attorneys, and community members that fairness and justice have been achieved.

Despite this importance, it has proven difficult for lawmakers to gain public support to prioritize spending on public defense.<sup>6</sup> Low pay and high workloads resulting from funding challenges make recruiting and retaining public defenders difficult and exacerbate attorney shortages. High turnover means that new attorneys must start over learning

### Key Points:

- Access to effective counsel is a constitutional right and is critical for maintaining the integrity of the criminal justice system.
- The public defense system in Arkansas is chronically underfunded. This has led to overworked and underpaid public defenders facing caseloads that far exceed professional standards.
- Excessive caseloads reduce the ability of attorneys to provide effective counsel and may result in defendants facing long periods of incarceration without representation. These challenges may lead to constitutional due process violations and ultimately wrongful convictions.
- Excessive caseloads and chronic underfunding have also resulted in high turnover among public defenders, exacerbating caseload challenges and resulting in the loss of some of the most experienced attorneys.
- Since the inception of the APDC, the Arkansas Legislature has attempted to address the issues at hand through temporary funding, but they have yet to establish long-lasting solutions.

case facts, causing delays and continuances in court and compounding existing backlogs. High turnover also limits the number of attorneys with the necessary training and experience to work on some of the most serious cases.

### What constitutional and civil rights protections are at stake if these issues remain unaddressed?

Inadequacies in Arkansas’ public defender system may compromise constitutional protections such as the Sixth Amendment right to a fair and speedy trial and the Fourteenth Amendment rights to due process and equal

<sup>1</sup> U.S. Const. Amend. VI.

<sup>2</sup> Arkansas Public Defender Commission, “About Us” at: <https://apdc.arkansasadmin.net/about-us/>. (Accessed Feb. 24, 2025.)

<sup>3</sup> Mulder, Brandon. *Little help available for rising caseloads*.

Northwest Arkansas Democratic Gazette, June 19, 2016.

<sup>4</sup> Report available at:

<https://www.usccr.gov/reports/2024/right-counsel-arkansas>.

<sup>5</sup> See Committee Report, Finding 1.

<sup>6</sup> See Committee Report, Finding 4.

protection of the laws.<sup>7</sup> Current professional guidance recommends caseloads as low as 63 cases per year for some of the most serious felonies. Yet, the average public defender in Arkansas is managing 200 felony cases or more at any given time.<sup>8</sup> Caseloads such as these may compromise attorneys' ability to provide a "meaningful defense;" and lead to delays, extended pre-trial incarceration, and even some defendants being forced to represent themselves, especially in rural areas where resources are even more scarce.<sup>9</sup>

Crippled by chronic underfunding, in 2022 the Chief Public Defender of the Sixth Judicial District began refusing cases on the grounds that attorneys were unable to meet ethical obligations to provide competent, diligent, and prompt resolution of clients' cases.<sup>10</sup> These ongoing challenges have led experts to warn of a "looming constitutional crisis" that if unaddressed could result in federal courts stepping in and declaring Arkansas' entire public defender system unconstitutional.<sup>11</sup> Because people of color are disproportionately likely to rely on public representation, deficiencies within this system may also implicate federal civil rights law.<sup>12</sup>

## What has the Arkansas legislature done to address growing concerns?

In 2022, the Arkansas legislature appropriated temporary additional funding for the APDC to hire 40-45 new, part-time public defenders. This funding was intended to help clear a COVID-related backlog of approximately 11,000 cases. In August of 2024 this backlog had been reduced to 5,000 cases, and the legislature appropriated an estimated six months of additional funding for temporary attorneys to continue working.<sup>13</sup>

Beyond these measures, lagging public support for increased spending has limited legislative action. Improved data collection to accurately determine the number of public defenders needed to meet professional standards is critical to sustainable intervention. When temporary COVID-relief funding runs out, the APDC expects to lose 30-37% of part-

time attorneys statewide.<sup>14</sup> Advocates have urged the State Supreme Court and the Arkansas Bar Association to provide guidance to the legislature on meeting the state's constitutional obligations to provide all indigent defendants with adequate access to counsel.<sup>15</sup> Absent significant legislative action, some advocates predict that litigation may ultimately be necessary to achieve sustainable reform.

### Recommendations (*selected*)

#### The Arkansas Governor and Arkansas Legislature should:

- (1) Prioritize additional and continuous funding for the public defender commission and appointed counsel, appropriate support staff, investigators, and language interpreters based on constitutional obligations to provide effective counsel.
- (2) Incentivize training programs for lawyers to handle complex-criminal defense cases, including obtaining death-penalty certification.
- (3) Evaluate additional investment opportunities in evidence-based various social programs thought to reduce crime as a way of easing the burden on the public defender system overall, whilst also improving community wellbeing.

#### The Arkansas Supreme Court should:

- (1) Issue ethical guidance for attorneys regarding their duty to manage or refuse cases if their caseload prevents them from providing effective counsel to their clients.
- (2) Direct the CLE Board in the Office of Professional Programs to offer Continuing Legal Education (CLE) credits for attorneys willing to take on pro-bono defense cases.

<sup>7</sup> See Committee Report, Finding 3.

<sup>8</sup> See Committee Report, Finding 2.

<sup>9</sup> See Committee Report, Finding 3.

<sup>10</sup> January 7, 2022, letter to the Gregg Parrish, Executive Director of the Arkansas Public Defender Commission: Appointments in Pulaski and Perry Circuit Courts.

<sup>11</sup> See Committee Report, Findings 3&4.

<sup>12</sup> See Committee Report, Finding 3.

<sup>13</sup> Thweatt, Carter. *Additional Funds Approved for Arkansas Public Defenders*. THV11 local news, August 2024. Available at: <https://www.thv11.com/article/news/local/funds-approved-for-arkansas-public-defenders/91-12100e55-8fc9-4f35-b2e2-0d1e84d25f8c>.

<sup>14</sup> See Committee Report, Finding 4.

<sup>15</sup> See Committee Report, Finding 4.

The United States Commission on Civil Rights maintains 56 Advisory Committees, one for each state and territory, and the District of Columbia. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its factfinding, investigative, and information dissemination functions. This brief is the work of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights. The brief and its accompanying report may rely on testimony, studies, and data generated from third parties. Advisory reports are reviewed by Commission staff only for legal sufficiency and procedural compliance with Commission policies. The views, findings, and recommendations expressed in this brief and its accompanying report are those of a majority of the Arkansas Advisory Committee, and do not necessarily represent the views of the Commission, nor do they represent the policies of the U.S. Government. For more information, please contact Melissa Wojnaroski: [mwojnaroski@usccr.gov](mailto:mwojnaroski@usccr.gov) or 202-618-4158.