



PROSECUTING ATTORNEY

STATE OF ARKANSAS | SIXTH JUDICIAL DISTRICT

LARRY JEGLEY

TO: Arkansas Independent Citizens Commission
The Hon. Larry Ross, Chairman
The Hon. Chuck Banks, Vice-Chairman
The Hon. Barbara Graves
The Hon. Stuart Hill
The Hon. Brenda James
The Hon. Stephen Tipton
The Hon. Mitch Berry

FROM: Larry Jegley, President, Arkansas Prosecuting Attorneys Association

RE: Prosecuting Attorneys

DATE: April 15, 2015

Transmitted herewith for your review is an overview of the responsibilities of Arkansas' 28 elected Prosecuting Attorneys, along with data relevant to compensation, to aid you in the discharge of your duties. We look forward to visiting with you and answering any questions you may have.

On behalf of the Arkansas Prosecuting Attorneys Association, I thank you for your consideration.

**STATE OF ARKANSAS
OFFICE OF PROSECUTING ATTORNEY**

1. GENERAL:

There are 28 Judicial Districts in the State of Arkansas, each with an elected Prosecuting Attorney, as required by the Arkansas Constitution. (Ark. Const. Article VII, § 24, Amendment 80 § 20.) Qualifications for the position of elected Prosecuting Attorney include a law degree, a minimum four years of law practice, and elector of the Judicial District. Elections for the position of Prosecuting Attorney are nonpartisan (as are judges' elections), and each term is four years. "The Office of Prosecuting Attorney is a constitutional office which operates in a quasi-judicial capacity. . . The Framers of our constitution have charged an incumbent prosecutor with the grave responsibility of filing informations against those he deems guilty and refusing to file against those he believes innocent." *Venhaus v. Brown*, 286 Ark 229 (1985). The Prosecuting Attorney alone is entrusted with many decisions only otherwise made by a judge or jury. Therefore, the designation "quasi-judicial" is appropriate.

The 28 Prosecuting Attorneys in the State of Arkansas have an average of 25 years' licensure as lawyers. They are responsible for managing and supervising 245 Deputy Prosecuting Attorneys and 401 staff members including victim assistance caseworkers, investigators, and support personnel. Funding for operations comes from both the State (\$15,346,788) and the counties (\$15,130,847) the latter amount directly managed by the elected prosecutor. In 2013 (the most recent AOC data available) the Prosecuting Attorneys were responsible for 84,460 circuit court felony cases, 26,545 juvenile court cases. 2,256 mental health commitments and 1,093,653 district court filings, plus 20,525 felony hearing in district courts.

Although the Legislature has periodically created task forces and boards to conduct studies and analyses of judicial salaries, no systemic analysis of Prosecuting Attorney salaries has ever been undertaken. All elected Prosecutors are classified as either Division "A" prosecutors or Division "B" prosecutors. There are 25 Division "A" prosecutors in the State of Arkansas; Division "A" Prosecutors are not allowed to practice private law. There are 3 Division "B" Prosecutors in the state; Division "B" prosecutors are allowed a limited civil practice, and traditionally have practiced in areas underserved by the legal profession. Division "B" prosecutors' salaries are roughly 85% of the salary of Division "A" prosecutors. The 2015 Legislature has directed an interim study of the effect of making all elected Arkansas Prosecutors Division "A".

Historically, Prosecuting Attorney salaries in both Arkansas and nationally have tracked closely with the salaries of general jurisdiction judges, traditionally falling at a point between the salaries of general and limited jurisdiction judges. Prosecutor salaries were approximately 4% less than the salaries of circuit judges in the 1970s, 7% less in the early 80's, and 9% less in the early 90's. In the early 2000's, the salaries of Arkansas Prosecutors dropped to about 17% less than the salaries of the judges. In 2009, the Legislature recognized the need to realign salaries, but was only able to close the gap by 4%, effecting salaries that were 13% less than the salaries of the circuit judges. With the implementation of Amendment 80 in 2007, State District Judge salaries moved up and ahead of prosecutors' salaries.

Prosecuting Attorney salaries in the State of Arkansas have been flat for the past several years, with COLAs of 2% and 1% the last 2 years, and no salary increases in the three years preceding those. Today, Prosecutors earn less than both State District Judges and Circuit Judges.

II. DUTIES (CRIMINAL)

GENERAL:

Prosecuting Attorneys represent the State in all matters, Capital, Felony and Misdemeanor, in the Circuit and District Courts. A defendant may only be brought to answer for an alleged offense by information, citation, or indictment, and the prosecutor has the sole authority to decide, in an act of discretion, whether and what charges go forward. Likewise, the prosecutor's authority extends to any decision not to go forward. In addition to myriad pre-charging duties and process, the office of Prosecuting Attorney is responsible for preparing all charging instruments, attending all bond hearings, numerous pretrial hearings, mental competency hearings, omnibus hearings, participating in plea negotiations, preparing extensively for all pre-trial proceedings, and conducting trials. Additionally, a significant amount of time is required of the prosecuting attorney for trial preparation with witnesses, law enforcement officers, victims and their family members.

JUVENILES:

The Prosecuting Attorney has sole authority to file a delinquency petition or other instrument seeking help for a juvenile who has committed an act which, if committed by an adult, would be

a criminal offense. The prosecutor is charged with the duty to seek relief, emergency or otherwise, with the Juvenile Division of Circuit Court for dependency/neglect or families in need of service (FINS). Ark Code 9-27-310. In limited, serious cases, it is the sole responsibility of the Prosecuting Attorney to determine whether a juvenile may be investigated and ultimately prosecuted as an adult in Circuit Court for particularly serious crimes enumerated by law. Ark Code 9-27-318

SPECIALTY COURTS:

Prosecutors determine whether an individual qualifies for one of several treatment-based courts, such as Drug Court, Veterans' Court, Hope Court, Sobriety Court, and other programs aimed at rehabilitation, not incarceration. The law trusts such decisions to the sole discretion of the Prosecuting Attorney. Ark Code 16-98-301.

VICTIM ASSISTANCE:

Prosecutors serve as advocates for and representatives of victims of crime and their families in criminal cases in matters of negotiating pleas, restitution, truth in sentencing, reparations claims, and in many other areas, including seeking assistance from the State Crime Victims Reparations Board and counseling services. Ark. Code § 5-4-205; § 16-21-106.

PROBATION AND PAROLE:

It is the duty of the Prosecuting Attorney to determine whether a defendant is appropriate and eligible for probation rather than incarceration, to communicate with Probation Officers and, if necessary, file petitions to revoke probation when a person violates terms and conditions of their probation. Likewise, prosecutors communicate with parole officers regarding offenders who have been released from prison, and seek revocation for violators where necessary. Prosecutors also assist victims and their families when a defendant becomes eligible for parole, and testify on the victim's behalf at parole hearings. Ark. Code § 16-93-702.

IMMUNITY AND COOPERATION AGREEMENTS:

The Prosecutor has the authority to enter into cooperation agreements with individuals who desire to assist law enforcement and, with the approval of the court, to grant immunity from prosecution where appropriate. Ark. Code § 16-43-601

INTERSTATE DETAINERS, EXTRADITIONS, AND SUBPOENAS:

The Prosecutor is responsible for matters of interstate jurisdiction regarding subpoenas of or detention and extradition of individuals outside the state's borders, including Governor's Warrants. Ark. Code § 16-95-101; 16-94-201.

ORDERS OF PROTECTION:

Prosecuting Attorneys are responsible for assisting victims of Domestic Violence in seeking Orders of Protection and enforcement under the Domestic Abuse Act. Ark. Code § 9-15-101.

SEX OFFENDERS:

Prosecutors are responsible for the review of all matters pertaining to individuals who are registered sex offenders. Ark. Code § 16-93-207

ABC PERMITS:

All applications for the granting/changing of alcohol permits by the State Alcoholic Beverage Control Board must be submitted to the Prosecutor for review and input. Ark. Code § 3-2-206.

PETITIONS TO SEAL/EXPUNGE:

All requests by individuals for expungement or sealing of their criminal convictions must be investigated and responded to by the Prosecuting Attorney. Ark. Code § 16-90-1413.

INVESTIGATIVE SUBPOENAS:

"The Prosecuting Attorneys and their deputies may issue subpoenas in all criminal matters they are investigating and may administer oaths for the purpose of taking the testimony of witnesses subpoenaed before them." Ark. Code § 16-43-212.

HOMICIDE INVESTIGATIONS:

Arkansas law requires that the Prosecuting Attorney be timely notified of all violent deaths, assist law enforcement in the investigation of any death, and is responsible for seeking exhumation of the deceased where appropriate. Ark. Code § 12-12-315; 12-12-321. The Prosecutor is also responsible for oversight and review of cases in which law enforcement officer uses deadly physical force against a citizen.

DRUG TASK FORCES:

Multi-Jurisdictional/Drug Task forces are the responsibility of the Prosecutor, who in many districts serves as the Director of the Task Force. Ark. Code § 16-21-147.

STATE CRIME LABORATORY:

Only the written authorization of the Prosecutor or court order will authorize the State Crime Lab to release any information to non-law enforcement individuals. Ark. Code § 12-12-312.

CITIZENS COMPLAINTS:

Each year the Prosecuting Attorneys handle tens of thousands of citizens' complaints, the results of which can range from no action to warning letters to arrest warrants.

CHILD SAFETY: Prosecutors are Mandated Reporters for suspected child abuse or maltreatment, and liaison with Child Advocacy Centers and medical institutions (such as Arkansas Children's Hospital) on such matters. Ark. Code § 12-18-402. The Prosecutor is also responsible for assisting in the development of safety plans to ensure the well-being of children riding school buses, and is charged with receiving reports and acting upon cases where motorists illegally pass buses loading and unloading children. Ark. Code § 6-19-110.

III. PROSECUTING ATTORNEY (CIVIL)**QUORUM COURT:**

The Prosecuting Attorney is legal counsel to the Quorum Court, unless (as in a few counties) a County Civil Attorney Office has been established. Ark. Code § 14-14-902.

MENTAL HEALTH COMMITMENTS:

It is the Prosecutor's responsibility to represent the Petitioner (and the community) in cases seeking the involuntary commitment of persons due to serious mental disease or defect. Ark. Code § 20-47-208. The Prosecutor also has the responsibility to seek the commitment for treatment of those who are homicidal, suicidal, or gravely disabled due to mental illness or substance addiction. Ark. Code § 20-64-815.

CIVIL FORFEITURE:

Where law enforcement officers seize instruments or proceeds of felonious criminal activity, especially in illegal drug trafficking, the Prosecutor is responsible for reviewing the case and, if appropriate, seeking forfeiture of such assets constituting the fruits of crime.

Ark. Code § 5-64-505.

COUNTY COMMISSIONS:

The Prosecuting Attorney is legal counsel to the county board of election commissions. Ark Code § 7-4-106. The Prosecutor also serves as counsel the County in all Tax Assessment Appeals. Ark Code § 16-27-318.

REMOVAL OF ELECTED OFFICIALS:

Where it may become necessary to remove an elected official from office, it is the responsibility of the Prosecuting Attorney. Ark. Code § 14-14-1308.

IV. MISCELLANEOUS

TRAINING/PROFESSIONAL STANDARDS:

Not only are Prosecuting Attorneys responsible for the training and continuing education of their Deputy Prosecutors, Victim Assistance Caseworkers, Investigators and other staff, but they also assist in training law enforcement and other agencies striving for the highest professional standards.

LAW ENFORCEMENT COUNSEL:

Within limits, Prosecutors advise frontline law enforcement on many issues involved with criminal investigations, including Search Warrants, Probable Cause Affidavits, questioning of suspects, interviews witnesses and the like. In addition, Prosecutors have the authority to authorize the release (upon a citation to appear) of individuals who have been arrested, or to make a recommendation of an appropriate bond, along with conditions of release. Ark Rule Criminal Pro 5.2.

SPECIAL RESPONSIBILITIES:

Prosecuting Attorneys are the only attorneys singled out as having “special responsibilities” as lawyers in the Rules of Professional Conduct for Attorneys. ARPC Rule 3.8. In brief, the Rule requires Prosecutors to seek to insure that justice and fairness prevail in all cases.

ARKANSAS CITIZENS SALARY COMMISSION
PROSECUTING ATTORNEYS: SUMMARY

• **SALARY**

<u>A. Actual</u>	<u>Circuit Judge</u>	<u>Pros. Atty.</u>	<u>%</u>
FY 2003-04	118,128	99,258	84%
FY 2014-15	140,372	123,162	87.7%

B. Adjusted (avg. state emp)

FY 2003-04	118,782	99,808	84%
FY2014-15	165,406	147,891*	89.4%

*includes actual FY 09-10 P.A. adjustment of 8%

C. Commission

2015 actual/request	160,000	152,000	95%
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• **Other Jurisdictions**

A. Prosecutor Salary Keyed to Judge Salary

Alabama-	\$ 1000 less than Judge (99.3%/149,500)
Kansas-	100%(awaiting information)
Missouri-	100% (133,032)
Oklahoma-	98% (129,198)
S.Carolina-	100% (awaiting information)
Texas-	100% (140,00)
Pennsylvania-	\$ 1000 less than Judge (99.4%/174,000)
New York-	100% (152,000-190,000)
(Georgia & Montana have keyed salaries under study)	

B. Other States

Iowa-	61,346 – 179,757
Louisiana-	90,000-190,000
Tennessee-	144,180

C. United States Attorney (Federal Prosecutor)

158,700

- **Retirement**

	<u>Plan</u>	<u>Contribution</u>	<u>Eligibility</u>	<u>Benefit</u>
Prosecuting Attorney	APERS	6%	28 yrs	50% +/-
Circuit Judges	AJRS	5%	25 yrs	80%

- **Of Note**

- Out of 121 circuit judges, 49 were Prosecuting Attorneys or Deputy Prosecutors (40+%).

State Employee and Prosecuting Attorney Comparison

FY	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14	14-15
Actual	99,258	101,498	103,930	106,398	108,256	110,696	119,552	119,552	119,552	119,552	121,943	123,162
	2.23%	2.21%	2.35%	2.32%	1.97%	1.97%	8%	0%	0%	0%	2.0%	1.0%
Adjusted	99,808	102,503	105,578	108,745	114,182	119,891	125,286	129,261	132,264	136,232	141,681	143,098
	2.7%	2.7%	3.0%	3.0%	5%	5%	4.5%	3.5%	2.0%	3.0%	4.0%	1.0%
Adjusted, but with FY 09-10 actual increase of 8%												
							8%	3.5%	2.0%	3.0%	4.0%	1.0%
Adjusted, with proposed FY 09-10 increase of 15%												
							15%	3.5%	2.0%	3.0%	4.0%	1.0%
							137,875	142,700	145,554	149,921	155,918	157,477