



NEW MEXICO
PUBLIC DEFENDER DEPARTMENT

**THE LAW OFFICES OF THE
PUBLIC DEFENDER
STATE OF NEW MEXICO
STRATEGIC PLAN**

FISCAL YEAR 2019

(JULY 1, 2018 TO JUNE 30, 2019)

THE LAW OFFICES OF THE NEW MEXICO PUBLIC DEFENDER
STRATEGIC PLAN
Fiscal Year 2019

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EXECUTIVE SUMMARY

General Background: The Law Offices of the New Mexico Public Defender

The mandate of the Law Offices of the New Mexico Public Defender (LOPD) is to fulfill New Mexico's constitutional and statutory guarantees of providing legal services to indigent adults and juveniles charged with criminal or delinquent acts in New Mexico. The LOPD provides legal counsel in every state court: the New Mexico Supreme Court, the New Mexico Court of Appeals, 15 District Courts, the Bernalillo County Metropolitan Court, and 25 Magistrate Courts. The New Mexico Public Defender Act, Sections 31-15-1 through 31-15-12, NMSA 1978, requires the Department to provide indigent criminal defense representation that complies with constitutional standards of effective representation under the V and VI Amendments of the United States Constitution and Article II, Sections 14, 15 and 18 of the New Mexico State Constitution.

In 2012, the citizens of New Mexico passed a constitutional amendment declaring that the New Mexico public defender department "is established as an independent state agency"... to be administered by a chief public defender and overseen by a newly-created public defender commission (Commission). The Commission is charged with the selection of the Chief Public Defender, setting fair and consistent standards for the operation of LOPD, and approval of the annual budget. The Chief Public Defender, appointed to a four-year term, is responsible for managing all day to day operations of LOPD.

Adequate funding is critical to LOPD's ability to meet its constitutional and statutory mandate of engaging its clients, training lawyers and staff, conducting investigation and discovery activities, preparing for hearings and trials, and any necessary post-conviction work including the constitutionally guaranteed appeals. LOPD serves a vital role in the criminal justice system by ensuring fairness in the criminal justice process, protecting every New Mexican's constitutional rights, and guaranteeing "equal justice under the law" for the less privileged in New Mexico. LOPD also strives to reduce criminal recidivism in New Mexico communities by providing treatment guidance through LOPD's social services, assisting clients with reintegration efforts, supporting numerous treatment courts statewide, and participating in other innovative criminal justice reforms.

LOPD provides legal services in every county and every judicial district in New Mexico. LOPD is the largest law firm in the State of New Mexico, employing approximately 200 staff attorneys, 200 support staff, and contracting the legal services of another 160 lawyers statewide. In FY2017,

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these attorneys represented clients in 50,663 cases assigned to LOPD defense lawyers and 24,592 assigned to contract defenders.

LOPD's delivery of services system has four major overlapping service components: Administration, Statewide Units, Judicial District Office Operations, and Contract Counsel Legal Services. Each of these areas is generally described as follows:

Administration

Located in Santa Fe, administrative services encompass a broad range of centralized agency management functions, including fiscal oversight and budget preparation, information technology services, personnel and human resources, physical plant operations and leasehold management, training and staff development, litigation support (expert) services, indigency and eligibility standards compliance, and contract fee reimbursement for legal services provided to non-indigent public defender clients who pay for legal services on a sliding scale.

The administration actively advocates on a broad range of governmental, public policy, and criminal justice issues affecting LOPD and its clients. In addition, the chief public defender, deputy chiefs, statewide unit coordinators and district defenders communicate LOPD's interests to criminal justice system constituents, which include local and state governments, jails, prisons, courts and local district office communities to assure the delivery of quality legal services for LOPD's adult and juvenile clients.

LOPD's administrative staff works directly with the legislature, the judiciary, and the executive branches of state government. They also prepare and submit budgets and answer questions through informal mechanisms as well as through formal legislative hearings and presentations. LOPD's administrators provide formal testimony to legislative committees and interim committees, bill analysis, and substantive written information on a full range of issues directly and indirectly impacting client representation in the trial and appellate courts. The chief and deputy chiefs serve on a number of task forces, advisory committees and councils which shape public policy, criminal justice initiatives and legislation in New Mexico and nationally. Finally, LOPD administrative staff participates in many court initiatives and programs developed and implemented by the New Mexico Supreme Court, Court of Appeals, District Courts, and the Metropolitan/Magistrate courts.

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Statewide Units

LOPD has the following statewide units which offer specialized, statewide legal services for public defender clients.

Appellate Division

With a main office in Santa Fe and a satellite office in Albuquerque, LOPD's appellate division provides post-conviction representation in public defender cases on direct appeal before the New Mexico Supreme Court, the Court of Appeals and "on record" appeals from the Bernalillo County Metropolitan Court heard in Second Judicial District Court. Additionally, the appellate division provides appellate counsel for interlocutory appeals of dispositive legal issues worthy of appellate review prior to final disposition in the district courts. The appellate division also provides daily "Appellate Attorney on Duty" assistance to all public defender attorneys and contract attorneys statewide. The Appellate Defender, appointed by the Chief Public Defender, hires and supervises appellate attorneys and support staff. In the fall of 2016, the Appellate Division moved out of the main Santa Fe Public Defender building into new Santa Fe office space in order to create additional space for new trial staff positions.

Habeas Corpus Unit

The Habeas Corpus Unit, based in Albuquerque, provides statewide representation to individuals in post-conviction matters that fall under two general categories of cases: conviction cases and confinement cases. Conviction cases may include claims related to actual innocence, ineffective assistance of counsel, and illegal sentences. Confinement cases may include claims related to disciplinary actions resulting in lost goodtime; medical complaints, failure to award lump sum credits and parole issues. Additionally, since the change in Rule 5-802, LOPD habeas unit conducts an initial review on all pro se petitions submitted to the court.

Capital Crimes Unit

The Department's Capital Crimes Unit (CCU) is headquartered in Albuquerque and defends first-degree murder and serious violent cases statewide. With the abolition of the death penalty in the 2009 legislative session, the Unit now focuses on defending cases carrying terms of life imprisonment: both first degree murder cases and child abuse resulting-in-death cases. The Unit's ability to do complex motions practice allows it to develop LOPD's protocol for cases which rely heavily on discovery from hospitals, and its experience in homicide, allows the Unit to be a quality control for statewide practice. Finally, the Unit continues to track those few death-eligible cases that were unaffected by the 2009 repeal of the death penalty.

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Mental Health Unit

LOPD's statewide Mental Health Unit is housed in Albuquerque and provides advisory and support services statewide. The unit's managing attorney, lawyers, social worker, and support staff work on a broad range of policy and program issues that impact people with mental illness or intellectual disabilities involved in the criminal and juvenile justice systems. Defendants who participate in the Judicial Supervision Program Court (mental health court) program are less likely to re-offend due to meeting their medication and housing needs. LOPD helps to expand mental health court programs statewide by working with local LOPD district offices, district attorneys, the district courts, the Department of Health, and community service providers. With the assistance of the Mental Health Unit, new mental health courts were established in the 1st Judicial District Court, Santa Fe County, and in the 11th Judicial District Court, San Juan County in 2012. Finally, the Mental Health Unit plays an integral part in the development of Mental Health Court Standards statewide. The Mental Health Unit strives to work with criminal justice partners and key community stakeholders to implement additional mental health courts statewide.

Regional/District Office Operations

The large majority of LOPD's services are delivered through the thirteen current regional trial offices located in key population and caseload centers. New trial offices were opened in Portales in FY2015 and in Ruidoso in FY2016. Clients are represented from arrest through resolution of the case by staff trial lawyers in District Courts, Magistrate Courts, Children's Courts, and the Metropolitan Court. In FY2017, these lawyers represented clients in 50,663 cases throughout the state. The regional and district offices are supervised by District Public Defenders and managing attorneys who are appointed by the Chief Public Defender. District Public Defenders' management efforts may be supported by managing attorneys and supervising attorneys and by non-attorney law office administrators. The regional office management teams are responsible for staff hiring, office systems training, local supervision, case assignments, courtroom coverage, regional attorney training, and client legal representation.

Contract Counsel Legal Services (CCLS) Unit

LOPD's statewide Contract Counsel Legal Services Unit organizes and oversees the contract attorney representation system. In those counties where LOPD maintains district office operations, the unit's responsibility is assigning contract counsel in cases where the public defender attorney staff cannot represent the client for legal conflicts of interests. In judicial districts and counties¹ lacking district office operations, the unit must assign both

¹ Counties and Judicial Districts completely serviced through Contract Counsel Legal Services operations include:

1. Fourth Judicial District (San Miguel, Mora, Guadalupe)
2. Sixth Judicial District (Grant, Luna, Hidalgo)
3. Seventh Judicial District (Sierra, Socorro, Torrance, Catron)

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primary and conflict of interest contract counsel. At any one time, LOPD may monitor and manage approximately 160 private attorneys who contract to provide primary and conflict of interest case representation statewide. In FY2017, the Contract Counsel Legal Services division handled 24,592 cases (approximately 36% of the cases represented by LOPD), with most of those cases being in areas without LOPD offices.⁴

District/Regional Offices Locations:

- 1) First & Eighth Judicial Districts - Santa Fe (Rio Arriba, Los Alamos, Taos counties)**
 - a) District Defender – First and Eighth Judicial Districts
 - b) Santa Fe Managing Attorney– First Judicial District, Santa Fe & Los Alamos
 - c) Managing Attorney – Eighth Judicial District, Taos

- 2) Second Judicial District Office – Albuquerque (Bernalillo County)**
 - a) District Defender
 - b) Three Felony Managing Attorneys
 - c) Two Metropolitan Court Managing Attorneys
 - d) Children’s Court Managing Attorney
 - e) Supervising Attorneys in Felony and in Metropolitan Court

- 3) Third Judicial District Office – Las Cruces (Dona Ana County)**
 - a) District Defender
 - b) Three Managing Attorneys
 - c) Children’s Court Supervising Attorney

- 4) Fifth Judicial District Offices – (Lea, Chaves, and Eddy Counties)**
 - a) District Defender, Carlsbad
 - b) Managing Attorney – Carlsbad
 - c) Managing Attorney – Roswell
 - d) Managing Attorney – Hobbs
 - e) Managing Attorney – Southeast Serious Violent Unit (5th and 9th Judicial Districts)

- 5) Ninth Judicial District Office – Clovis (Curry and Roosevelt Counties)**
 - a) District Defender, Clovis
 - b) Managing Attorney – Clovis and Portales

4. Two of the counties in the Eighth Judicial District (Union, Colfax)
5. Tenth Judicial District (Harding, De Baca, Quay)
6. Thirteenth Judicial District (Sandoval, Valencia, Cibola)

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- 6) **Eleventh Judicial District Office – Aztec (San Juan & McKinley Counties)**
 - a) District Defender – Aztec
 - b) Managing Attorney – Aztec
 - c) Managing Attorney – Gallup

- 7) **Twelfth Judicial District Office – Alamogordo (Otero and Lincoln Counties)**
 - a) District Defender, Alamogordo
 - b) Managing Attorney – Ruidoso (Opened FY2016)

These district and regional offices provide legal counsel to the majority of LOPD's clients in a cost-effective and efficient manner. Our district/regional office operations deliver highly competent, quality legal services through the direct supervision and mentoring of staff lawyers by experienced trial attorneys.

AGENCY PROGRAMS

Agency Mission

To provide holistic legal representation of the highest quality to persons charged with criminal offenses in New Mexico, to protect constitutional rights, to advocate zealously for our clients, and to reduce criminal recidivism and redirect clients from the criminal justice system throughout the State of New Mexico.

Program Name

The Law Offices of the Public Defender(Public Defender Department) State of New Mexico Public – Indigent Criminal Defense Legal Services.

Program Purpose

LOPD's purpose is to meet New Mexico's federal and state constitutional mandates by providing effective legal and holistic representation and advocacy for indigent juveniles and criminal defendants, serving the community as a justice partner to guarantee a fair and efficient legal system that reduces recidivism.

Program Activities

Pre-Indictment Representation Tasks

Pre-Indictment representation tasks include, but are not limited to: 1) Counsel and advise clients on eligibility for pre-prosecution programs, drug court diversion programs, programs, and Judicial Supervision Program Courts (veterans court, mental health courts), and the Early Plea Programs; 2) Conducting pre-indictment investigations, interviews and plea negotiations;

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3) Handling pre-indictment interaction with juvenile probation and parole officers; and 4) Advising individuals “under investigation” for criminal offenses. This activity also covers preliminary hearings and grand jury representation, including regular submission of Evidence Alert Letters to grand jurors pursuant to New Mexico Court rules.

Most recently, pre-indictment tasks have expanded to include representation at pre-trial detention hearings which has created a new responsibility for the department. A new bond rule established after a constitutional amendment allows district attorneys to file a motion requesting that the court detain a defendant charged with a felony pending trial. The new rule requires the court to set a hearing on the motion within five days of filing. Public defenders now must represent defendants at the pre-trial detention hearings.

Since the new bond rule went into effect, approximately 100 hearings a month have been held in the Second Judicial District alone. This additional workload requires additional public defender attorneys and staff to prepare and represent clients at the hearings. Approximate preparation time is based on the type of charge and criminal history; however, at a very basic level, the hearing itself requires due process and lasts from one to three hours. This new increase in workload is not reflected in the agency’s documentation of attorney caseloads but is additional work required to properly defend and advocate for clients under constitutional mandates.

Case Preparation and Courtroom/Trial Work and Sentencing Advocacy

Case preparation and courtroom advocacy tasks include: 1) obtaining and evaluating discovery from the prosecution; 2) interviewing and counseling clients; 3) directing and managing case investigations; 4) interviewing witnesses; 5) conducting legal research; 6) pretrial litigation of substantive legal issues 7) brainstorming and collaborating with colleagues on case defenses; 8) preparing trial materials; 9) researching scientific evidence; 10) requesting appropriate expert analysis and testimony; 11) engaging in plea negotiations where appropriate; 12) preparation and presentation of necessary trials; and 13) sentencing mitigation and presentation; 14) preparation of appellate docketing statements or post-trial motions where appropriate.

Sentencing advocacy includes requesting and obtaining dangerousness and forensic evaluations from expert psychologists and psychiatrists; and obtaining internal social needs assessments conducted by LOPD social workers, case workers, and alternative sentencing advocates. Sentencing recommendations and treatment assessments are presented to the court as an alternative to incarceration designed to address any underlying addiction or mental health issues whereby recidivism is reduced.

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LOPD continues its long term goal to reduce the number of persons cycling through the criminal justice system. Social Workers have long been a critical part of that mission by diverting people at sentencing from jail or prison into treatment and housing programs of various types. LOPD will continue to support mental health court, drug court, and veteran's court programs. Specialized programs help address the issues that bring the individual to the criminal justice system which in turn reduces recidivism. These programs help clients, help families and increase public safety. LOPD will also continue to advocate for secure housing for the severely and persistently mentally ill as a representative on the Behavioral Health Purchasing Collaborative.

Post-Trial Appeals

LOPD's post-trial work includes appeals in: 1) District Courts which hear de novo trials from the Bernalillo County Metropolitan Court or Magistrate Courts; 2) appeals and special writs to the New Mexico Court of Appeals; and 3) appeals, special and habeas corpus writs to the New Mexico Supreme Court.

Post-Conviction Representation

Post-conviction representation includes: Adult and juvenile probation violation hearings; habeas corpus petitions and hearings, and probation and parole review hearings for convicted sex offenders. By statute, LOPD is charged with providing legal representation at review hearings every 2.5 years for every individual convicted of a sex offense in New Mexico and serving an indeterminate term of probation or parole.

Administrative/ Community/ Legislative Functions

Administrative, Community and Legislative Functions of LOPD include: eligibility determinations; human resources management; procurement; payroll; fiscal and budget management; training; policy development; legislative consultation and testimony; clerical and secretarial support; information system resources; contract management; strategic planning; maintenance of information and property; quality assurance; policy interaction with legal associations, courts, and the criminal justice community; and service to client advocacy groups and related initiatives by state, county, and municipal entities.

Critical Program Challenges

High Caseloads Continue

In FY2017, LOPD assigned 75,225 cases. This is similar to the annual cases from FY2012 to FY2016 (73,334, 75,560, 70,152, 71,004 and 72,469 respectively). The resulting caseload for both LOPD attorneys and contract attorneys is high enough to cause serious doubt whether most defendants are receiving constitutionally adequate representation.

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Litigation seeking to flesh-out constitutional mandates regarding caseloads is underway in the state Supreme Court and District Courts.

Attorney Recruitment Efforts

LOPD continues to struggle to maintain attorney staffing levels statewide, but most especially in more rural areas: Curry, Lea, Eddy, Chavez, Roosevelt, Lincoln, and Otero Counties. While LOPD adopted a new pay scale effective July 1, 2015, which is based upon the pay scale maintained by District Attorneys, we still lack adequate funding to fill these positions at a competitive level. To attempt to address recruitment and retention issues, LOPD completed a Classification and Compensation Study in FY2017.

Difficulty Recruiting an Adequate Number of Competent Contract Defenders

Due to the extremely low compensation paid to LOPD contract attorneys, LOPD has struggled to find and retain an adequate number of contractors to provide a constitutionally appropriate level of defense. This is especially true in Curry, Eddy, Lea, Lincoln, Luna, Roosevelt, and San Juan counties. Both LOPD staff attorneys and contract defenders in these counties are carrying untenable caseloads.

The current **flat rate** compensation for contract defenders is \$700 for first degree felonies (except capital crimes which are compensated at \$5,400), \$650 for second degree felonies, \$595 for third degree felonies, \$540 for fourth degree felonies, \$250 for juvenile cases, and \$180 for misdemeanors. Comparing these rates to the \$300 to \$400 per case paid in 1968 under the Indigent Defense Act, it becomes evident that inflation has devalued² the compensation rate dramatically over the past four decades.

The State of New Mexico pays contract lawyers in civil cases \$90 (for those with zero to two years of experience) to \$160 (for over ten years of experience) **per hour** to defend it through the Risk Management Division's contracts. These civil contract lawyers defending the state are able to receive greater compensation for their paralegals than even our most experienced contract lawyers receive for serious violent felony trials. By contrast, federal contract public defenders are paid an hourly rate of \$125.

Accordingly, the New Mexico Public Defender Commission has determined that adequate compensation for contract defenders should be \$85 per hour. This hourly rate would better provide for constitutionally effective indigent defense, ensure accountability through their billing invoices and achieves the goal of providing true legal services to each client as guaranteed under the New Mexico and United States Constitutions.

² An inflation calculator shows 1968 dollars to be worth just over seven times 2017 dollars.

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The contracts that went into effect on November 1, 2015 provided a mechanism for additional compensation for complex case representation, although funding to fully implement this mechanism is currently lacking. This mechanism is an interim step to address the inadequate compensation of contract defenders until a system to compensate contract counsel on an hourly basis for the actual work performed can be funded.

The FY2019 Budget Requests seeks an additional \$947,000 in funds to pay contract defenders an hourly rate in designated felony cases. If funded, this would place LOPD closer to providing enough contract lawyers to meet constitutional mandates, something that is presently very much in doubt.

Inadequate Support Staff Levels

The New Mexico Sentencing Commission does an annual evaluation of staffing levels to determine the outstanding needs of LOPD in comparison to court case levels. According to the 2016 Sentencing Commission calculations, LOPD was short 116 attorneys and 68 support staff to adequately cover indigent defense in New Mexico. This calculation takes into account the 160 contractors currently representing on cases statewide. The Sentencing Commission further suggested that if LOPD were to cease using contract attorneys, LOPD would need to hire an additional 131 lawyers and 100 support staff. **LOPD is seeking expansion of 37 attorneys and 12 staff for FY2019.**

New Mexico Public Defender Department Comparative Analysis of Actual FY2018 FTE Staffing Levels and the New Mexico Sentencing Commission Workload Study Recommendations*			
	FY2016 Filled Full Time Equivalents (FTE's) as of July 31, 2017	2016 Workload Study Recommendation*	<u>Deficiency in</u> Staffing Levels
Attorney**	197	313	116
Attorney Support	158	226	68
Total Direct Client Services FTEs	355	539	
Administrative Support***	40	n/a	n/a

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* The New Mexico Sentencing Commission utilizes data from a 2007 comprehensive workload study and current case statistics in their annual update of LOPD's FTE needs. The above staffing recommendation is based on the New Mexico Sentencing Commission's 2016 update.

** The Attorney positions currently include seven recent law school graduates in limited practitioner positions that are awaiting their bar exam results who will become attorneys if admitted to the bar.

**Administrative support FTE needs were excluded in the Sentencing Commission's workload study. The Department currently has 40 FTEs that are considered Administrative support – not client services – including eight administrative positions (seven currently filled) that require law degrees (Chief Public Defender, two Deputy Chiefs, Administrative Services Director, General Counsel, Managing Attorney of Contract Counsel Services, Managing Attorney of the Alternate Public Defender Office, and the Training and Recruitment Manager). Each of these eight positions is able to represent clients as needed.

Implementation of Classification and Compensation Study

To attempt to address recruitment and retention issues, LOPD contracted with Kenning Consultants to complete a Classification and Compensation Study in FY2017. The purpose of the study was to develop a plan that would be specific to LOPD, in alignment with our mission and values; that would enable LOPD to attract, retain and reward the quantity and quality of employees needed to meet the LOPD mission while striking a balance between internal equity and external competitiveness.

As mentioned earlier, upon transitioning from the executive to the judicial branch on July 4, 2015, LOPD adopted the District Attorney salary structure in order to be competitive with the District Attorney's office in each district through equivalent compensation. During the transition of LOPD from the executive branch, only those classifications that existed at the time of transition were built into the LOPD classification plan. This strategy prevented LOPD from modifying a classification or adding a classification to the agency plan. The adopted DA salary structure did not precisely match the executive classification plan, creating numerous difficulties in identifying appropriate compensation. Kenning Consultants were asked to perform a complete classification and compensation study.

All LOPD employees were asked to provide descriptions of their job duties. (Statewide participation helped to ensure a complete study, rather than just a "sampling" from each job classification.) Position Description Questionnaires (PDQ) were specifically designed by Kenning Consultants for LOPD employee responses. Three different PDQ's were developed: Administrative/Support Staff; Supervisors/Managers; and Attorneys. PDQs were provided to all employees during March, April and May 2017. 404 PDQs were returned and every single PDQ was reviewed by a committee composed of LOPD employees. The committee identified the appropriate classification based on the job duties. The classification was ultimately matched up with a compensation level.

The compensation study conducted by Kenning Consultants included comparisons with the federal 10th Judicial Circuit and the same 8 state comparator utilized by the executive branch. Similar jobs were compared to those within public defender organizations of similar size in

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Arizona, Colorado, Kansas, Oklahoma, Utah, Wyoming, Texas, and Nevada. A recommended grade and salary structure was provided by Kenning Consulting and LOPD is presently developing a plan for implementation. The plan includes appropriately placing employees within their pay ranges based on experience, education and other factors but the study does give LOPD a method for making those adjustments as budget allows.

FY2019 GOALS AND OBJECTIVES

1. **GOAL/OBJECTIVE: Work with the Public Defender Commission, Legislature, and Governor to address inadequate compensation for contract counsel in order to ensure both constitutionally effective indigent defense and the sound oversight of the expenditure of public funds.**

- a. **Action Step:** In FY2014, the Public Defender Commission decided that an hourly rate of \$85 for LOPD contract counsel was the appropriate means for ensuring that indigent clients would receive a constitutionally adequate public defense. Compared to the existing low flat rate detailed above, an hourly rate contract is more likely to garner interest from skilled criminal defense attorneys in the private sector. With appropriate level of attorney representation and reduction of unnecessary delays, resolution of cases will be timely and efficient; with increased efficiency, unnecessary delays will be reduced; with more timely resolution of cases, court backlogs are eliminated and jail overcrowding is reduced - and justice is served. By “frontloading” the appropriate representation of clients, time is saved, justice is more appropriately reached and money is saved.

In FY2016, LOPD decided to offer double and triple the current flat rates in order to secure contract defenders for clients without counsel in specific counties. Due to the \$1.5 million dollar cut to LOPD’s FY2017 budget, these increased payments were strictly limited. As a result, there was increased difficulty in finding lawyers willing to accept cases and an avoidable delay in providing counsel and case resolution in counties around the state.

- b. **Action Step:** LOPD will seek advocacy assistance from the New Mexico Public Defender Commission and the criminal defense bar to gain support for statewide implementation of an hourly rate for contract counsel, starting with cases with life sentences in FY2019.
- c. **Action Step:** In FY2018, LOPD will continue to review the past hourly rate pilot project conducted in Roosevelt, Lea, Luna, Lincoln, and Eddy counties to determine lessons learned. In addition, LOPD has earmarked \$400,000 in FY2018 to pilot an hourly rate program in serious cases. LOPD will limit the type of cases and cease the project when allocated money is expended. LOPD expects to use the data from these cases to assess funding needs to further expand the program.

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d. **Action Step:** Based upon the FY2016 appropriation, LOPD has instituted a procedure to provide additional compensation beyond the inadequate flat fee to contract attorneys for representation in complex cases. This procedure is an interim measure to address the problem with available resources until an hourly rate system can be funded.

2. **GOAL/OBJECTIVE:** Work with the Public Defender Commission, Legislature, and Governor to bring Public Defender staffing levels in accord with those of the District Attorneys and into compliance with the New Mexico Sentencing Commission's Workload Study recommendations.

According to the New Mexico Sentencing Commission, LOPD needs an additional 116 attorneys and 68 staff to provide a constitutionally adequate defense to all indigent clients.

a. **Action Step:** LOPD will seek advocacy assistance from the New Mexico Public Defender Commission and the criminal defense bar to gain support from the Legislature and Governor for an emergency addition of 37 attorneys and 12 staff for FY2019.

b. **Action Step:** Upon receiving additional staff and attorney positions, LOPD will begin the process of increasing our facilities and technology infrastructure to accommodate the increased FTE.

c. **Action Step:** Additional staff and attorney positions will be distributed statewide to address the most critical areas of need, including statewide juvenile defense, adequate coverage of southern and eastern New Mexico, and reduction of caseloads statewide to manageable levels.

d. **Action Step:** LOPD will seek advocacy assistance from the New Mexico Public Defender Commission and the criminal defense bar to gain support from the Legislature and Governor for an additional 77 attorneys and 55 staff in future fiscal years.

3. **GOAL/OBJECTIVE:** Uniform implementation of Public Defender Commission's performance practice standards for staff attorneys and contract attorneys throughout the state.

a. **Action Step:** The Public Defender Commission has adopted Performance Practice Standards that define the minimum requirements of constitutional representation.

b. **Action Step:** In FY2019, LOPD is seeking additional fiscal resources to fully implement these standards with both LOPD attorneys and contract counsel. The most pressing issue is the reduction of caseloads to ensure that each client

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receives appropriate level of attention to present their defense in accordance with constitutional mandates.

- c. **Action Step:** In FY2019, LOPD will continue to develop a plan for ensuring that the performance practice standards compliance issues are identified and rectified through either additional training or resources.

4. **GOAL/OBJECTIVE:** Work with the Public Defender Commission, Legislature, and Governor to address pay inequity and incorporate recommendations from the Classification and Compensation Study the within LOPD.

- a. **Action Step:** LOPD implemented Personnel Rules effective July 1, 2016, and now administers its own policies. Our objective is to develop into a more career focused law firm where all employees are adequately compensated for their level of responsibility.
- b. **Action Step:** LOPD seeks to build a team of professionals who support the mission of the organization with a commitment to the long term benefit of the protection of constitutional rights.
- c. **Action Step:** LOPD will work to establish and secure funding to provide a rate of equitable and competitive pay, increased levels of accountability, training and performance for attorneys and staff.

5. **GOAL/OBJECTIVE:** Improve the cost and operational efficiency of LOPD's information technology services provided to all LOPD offices.

- a. **Action Step:** In FY2014 and FY2015, LOPD instituted new technology operation plans in accordance with the move to the judicial branch. These plans include a statewide independent computer network, email, internet, and voice-over-internet telephone system.
- b. **Action Step:** In FY2018, LOPD will conduct training to ensure that staff and attorneys are using improved technology to maximize efficiency and effective advocacy in the courtroom.
- c. **Action Step:** In FY2019, LOPD will seek an appropriation for the development of a new case management system designed specifically for public defender work that will interface with the Judiciary's Odyssey system.

6. **GOAL/OBJECTIVE :** Continue development of LOPD's Training Division with an expanded emphasis on staff training and a continued emphasis on trial practice and trial skills workshops for attorneys

- a. **Action Step:** Training and Recruitment Managing Attorney will coordinate with LOPD regional managers to ensure that all staff receives ongoing training for their particular job duties.

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- b. **Action Step:** Training and Recruitment Managing Attorney will coordinate with LOPD's regional managers to ensure that all new attorneys are provided a beginning trial skills class and an advanced trial skills class. Beginning trial skills classes will be provided internally by LOPD Training Division. Advanced training courses will be provided by local and national training programs contracted by LOPD. These trainings will be designed to meet the requirements of the Public Defender Commission's performance practice standards.
- c. **Action Step:** Coordinate with the New Mexico Criminal Defense Lawyers Association and the National Criminal Defense College on participation of LOPD lawyers at trial skills courses throughout the year. Primary emphasis will be on a fall beginning trial skills course and a spring advanced trial skills workshop.
- d. **Action Step:** Request a significant increase in LOPD training budget for FY2019 to accommodate the increased training costs for attorneys and staff.

7. **GOAL/OBJECTIVE:** Increase in management training for all LOPD District Defenders, Managing Attorneys and regional Office Administrators.

- a. **Action Step:** In FY2018, LOPD will conduct a needs assessment of management training needs from supervisory personnel. Based upon the findings of the assessment, LOPD will contract with a public administration management specialist to provide annual training for all District Defenders, Managing Attorneys and Administrators.
- b. **Action Step:** In FY2018, LOPD will sponsor attorney and support staff managers to attend regional and national management training courses if budget allows. Sponsored participants would then be required to conduct internal trainings and briefings on learned management skills.
- c. **Action Step:** LOPD will conduct quarterly District Defender and Managing Attorney meetings to address LOPD, office and attorney management challenges.

8. **GOAL/OBJECTIVE:** Enhance the efficient management of LOPD budgetary and personnel resources.

- a. **Action Step:** In FY2015, LOPD started assessing client services needs in our regional offices and divisions and reallocating positions and human resources as needed. Factors such as economic and population increase or decline are considered in long-term crime trends in each region.
- b. **Action Step:** LOPD will continue to reach out to District Attorneys and courts statewide to create and utilize more diversion programs, keeping low

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risk offenders out of the criminal justice system and reducing jail and prison populations.

- c. **Action Step:** In FY2017, LOPD implemented statewide eligibility and case opening procedures to standardize processing within each district office. In FY2018, LOPD will continue to evaluate eligibility processes and procedures to ensure resources are allocated appropriately
- d. **Action Step:** LOPD will continue to strictly comply with procedures for private defense attorney requests for LOPD expert funds via “Schoonmaker Requests” to ensure that all tax payer funds are allocated only to cases that meet the requirements of *State v. Schoonmaker*, 2006-NMSC-010, and *State v. Brown*, 2006-NMSC-023.

SUMMARY OF PERFORMANCE MEASURES

FY 2019 Performance Measures

1. Number of alternative sentencing treatment placements in felony, misdemeanor, and juvenile cases. (Quarterly)
2. Percent of cases resulting in a reduction of the original formally filed charges. (Quarterly)
3. Percent of total cases taken by contract attorneys reported by county. (Bi-Annually)
4. Average cases assigned to attorneys yearly, comparing staff and contract attorney assignments in each county. (Annually)
5. Average time to case disposition, comparing staff and contract attorneys in each county (measured in months at close of case). (Bi-Annually)
6. Number of cases dismissed in felony, misdemeanor, and juvenile cases. (Annually)
7. Number of cases closed by attorneys yearly.
8. Average number of open cases for staff attorneys by county. (Bi-Annually)