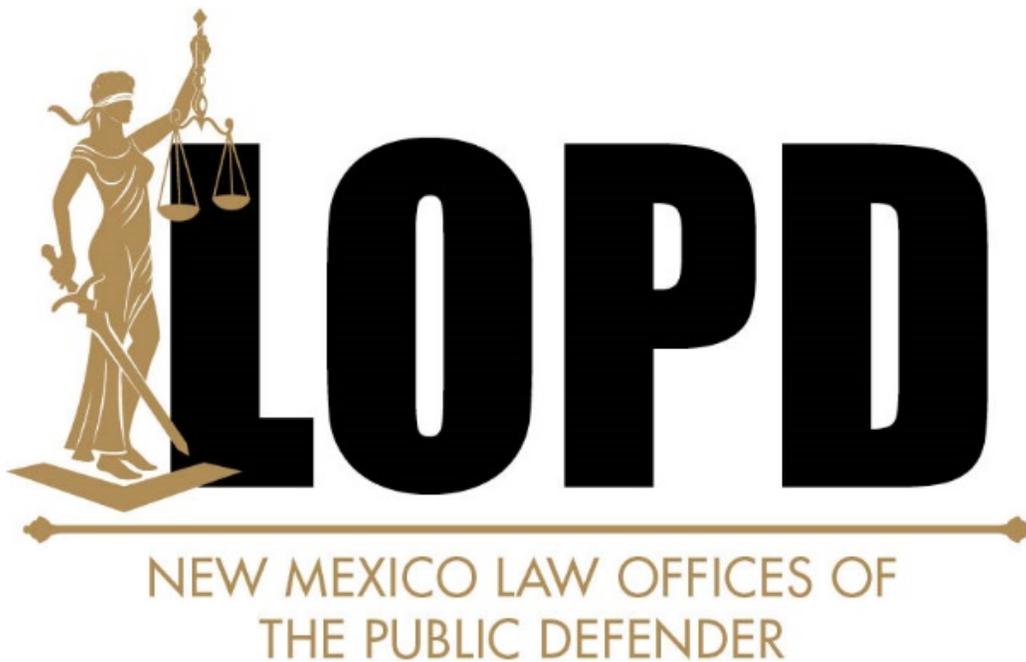


**THE LAW OFFICES OF THE
PUBLIC DEFENDER
STATE OF NEW MEXICO
STRATEGIC PLAN**



FISCAL YEAR 2020
(JULY 1, 2019 TO JUNE 30, 2020)

THE LAW OFFICES OF THE NEW MEXICO PUBLIC DEFENDER
STRATEGIC PLAN
Fiscal Year 2020

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EXECUTIVE SUMMARY

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

The mandate of the New Mexico Law Offices of the 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.

LOPD is dedicated to improving accuracy in data reporting. LOPD is also analyzing data to better understand the roles of caseloads on departmental performance measures and our role in the criminal justice system. In order to further this goal, LOPD has dedicated additional resources. The most significant example is the upcoming transition to a new case management system. A second example is allocating an additional part-time staff member to assist with collecting, correcting and reporting data for the quarterly report. Staff has worked diligently double and triple check data to reduce error rate and ensure more accurate reporting. LOPD has also worked to assemble information quarterly to provide an annual summary.

LOPD’s efforts were recently commended by the Legislative Finance Committee in its “Selected Performance Highlights” for the third quarter. The following is an excerpt from the report:

Courts and Justice (page 29)

In the third quarter of the new unified report for the justice system in New Mexico, the Public Defender continued to lead the way for quality reporting. The Public Defender Department provides thorough understanding of the department’s performance with meaningful, comprehensive measures, while the courts and district attorneys have fallen behind. Staff continues to work with both the courts and the district attorneys to improve reporting and enhance understanding of agency work.

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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.

Public Defender Commission

- 1) Thomas Joseph Clear III - Chairperson
- 2) Raymond Sanchez - Vice Chairperson
- 3) Molly Schmidt-Nowara - Secretary
- 4) Ahmad Assed
- 5) Daniel Banks
- 6) Hugh Dangler
- 7) Leo Romero
- 8) Naomi Salazar
- 9) Michael Stout
- 10) Jennifer Romero
- 11) Hon. Michael Vigil, Retired

The Public Defender Commission shares LOPD’s concern with attorney caseloads that consistently exceed constitutionally established limits for the effective and ethical representation of indigent clients statewide. The Commission held public hearings in Santa Fe and Ruidoso in May 2018 to consider an *Interim Case Refusal Protocol Rule* and then voted to adopt the rule at its July 13, 2018 meeting. LOPD is directed to use this rule when excessive attorney workloads make acceptance of additional clients by the affected attorneys ethically irresponsible or violative of the Rules of Professional Conduct established by our New Mexico Supreme Court.

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 work services, assisting clients with reintegration efforts, supporting numerous treatment courts statewide, and contributing to other innovative criminal justice reforms.

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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 attorneys, 200 support staff, and contracting the legal services of another 160 lawyers statewide. In FY2018, these attorneys represented clients in 49,096 cases assigned to LOPD in-house attorneys and 22,420 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

With offices located in Santa Fe and Albuquerque, 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, deputy chiefs, and district defenders 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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LOPD is dedicated to finding creative solutions for the problem of overwhelming caseloads of its attorneys. LOPD continues to evaluate eligibility and the best use of resources. During FY2018, LOPD significantly changed its *Eligibility Policy* to no longer offer reimbursement contracts to defendants who do not qualify for a public defender. Qualification for a Public Defender requires that the prospective client's income not exceed 200% of the federal poverty guidelines. The LFC has questioned eligibility determinations for some time, and this action addresses those concerns. Effective April 2018, a defendant who does not qualify as indigent will not be represented and instead is strongly urged to retain a private attorney.

Statewide Units

LOPD has several statewide units which offer specialized, statewide legal services for public defender clients. These units are headed by:

- 1) Appellate Defender
- 2) Managing Attorney – Post-Conviction Unit
- 3) Director – Serious Violent Offense Unit
- 4) Managing Attorney – Capital Crimes Unit
- 5) Managing Attorney – Mental Health Unit
- 6) Manager – Social Work Services

Appellate Division

With a main office in Santa Fe and a satellite office in Albuquerque, LOPD's appellate division provides representation on direct appeal to indigent individuals before the New Mexico Supreme Court, the New Mexico 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 when a request for interlocutory appeals of dispositive legal issues has been granted by an appellate court prior to final disposition. In FY2018, the appellate division was assigned to represent approximately 257 people before the appellate courts. The appellate division also provides daily "Appellate Attorney on Duty" assistance to all public defender attorneys and contract attorneys statewide. The statutorily created position of Appellate Defender, appointed by the Chief Public Defender, hires and supervises appellate attorneys and support staff with the assistance of an appellate managing attorney. In the fall of 2016, the Appellate Division moved out of the main Santa Fe Public Defender building into new Santa Fe office space.

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

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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 recent change in Rule 5-802, LOPD habeas unit conducts a pre-appointment 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.

Serious Violent Offense Unit

In late FY2018, LOPD initiated a statewide reorganization of the structure through which LOPD provides representation to clients charged with serious offenses by creating a statewide Serious Violent Offense Unit (SVO). LOPD has imposed a new structure to support and resources to ensure retention and training of attorneys. The goal is to ensure that every rural client's representation is as experienced and professional as that given to clients in more populous areas.

This new structure will tap experienced attorneys to foster mentorships and training opportunities for rural attorneys while working complex cases together. One of the principal objectives of this effort is to intervene for the client at the earliest stage possible working in collaboration with the local offices. This unit's director will work closely on case assignments with other statewide units, including the Capital Crimes Unit and Mental Health Unit. In addition, the statewide director will coordinate with managers in rural areas to provide support in offices that often do not have attorneys with the requisite experience to try complex cases.

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

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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. 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 FY2018, these lawyers represented clients in 49,096 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.

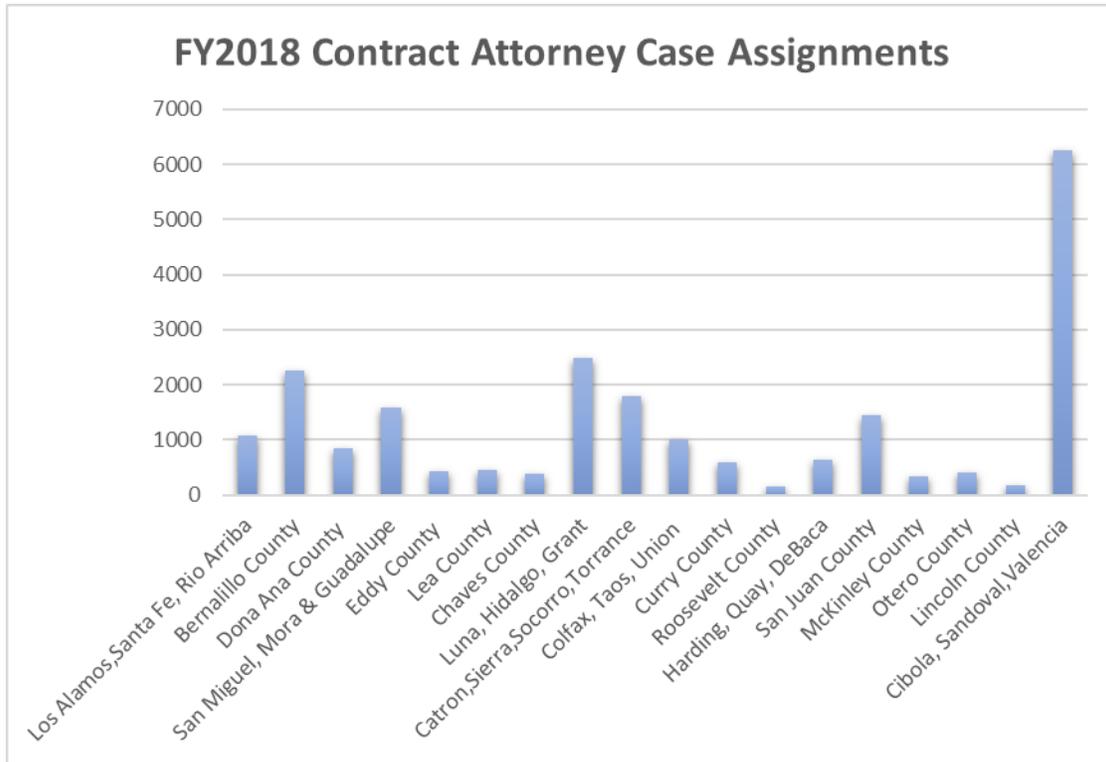
Contract Counsel Legal Services (CCLS) Unit

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 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 FY2018, the Contract Counsel Legal Services division handled 22,420 cases (approximately 31% of the cases represented by LOPD), with most of those cases being in areas without LOPD offices.¹

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)
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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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) Managing Attorney, Rio Arriba
 - c) Managing Attorney – Eighth Judicial District Taos

- 2) Second Judicial District Office – Albuquerque (Bernalillo County)**
 - a) District Defender
 - b) Four Felony Managing Attorneys
 - c) Juvenile Managing Attorney
 - d) Two Metro Managing Attorneys

- 3) Third Judicial District Office – Las Cruces (Dona Ana County)**
 - a) District Defender
 - b) Three Managing Attorneys

- 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

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- 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

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

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

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.

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Program Activities

Pre-Indictment Representation Tasks

Pre-Indictment representation tasks include, but are not limited to: 1) Counseling and advising clients on eligibility for pre-prosecution programs, drug court diversion 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; 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 additional hearings are held monthly 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; and 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

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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.

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

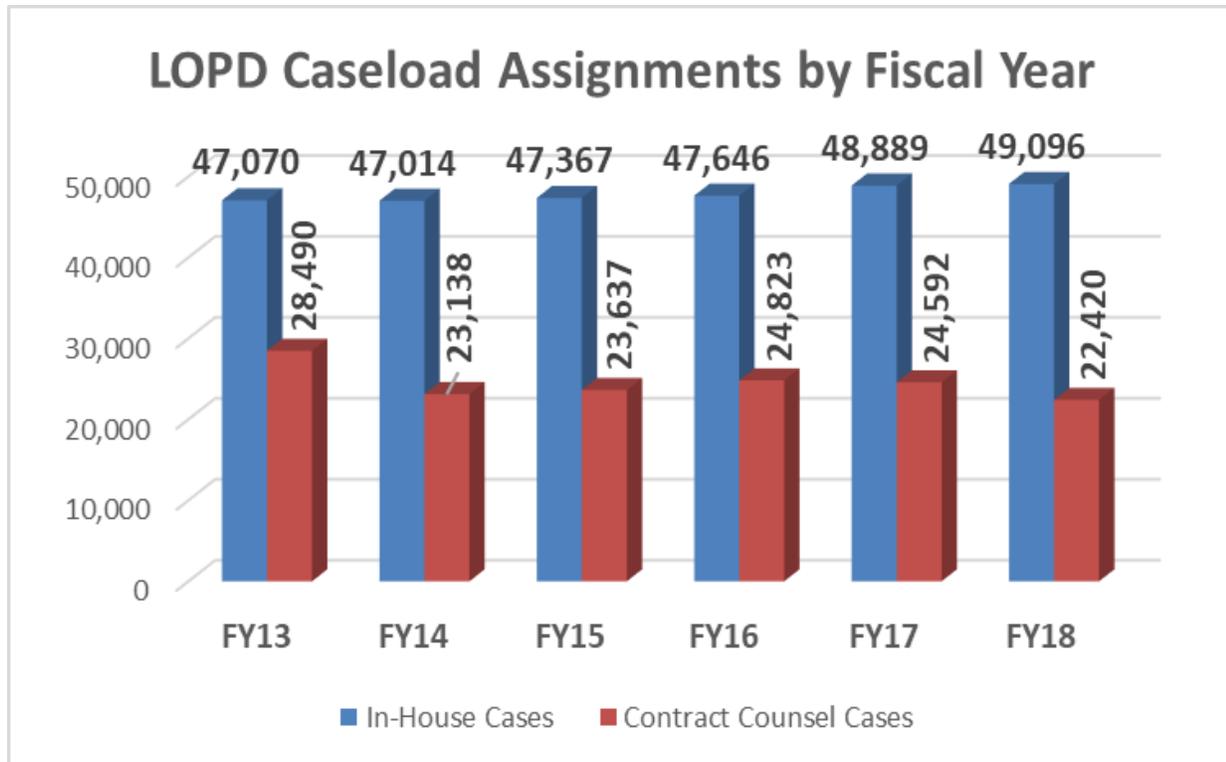
Post-conviction representation includes: adult and juvenile probation violation hearings; habeas corpus petitions and hearings, and probation and parole review hearings for convicted sex offenders. By statute, LOPD is charged with providing legal representation at review hearings every 2.5 years for 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

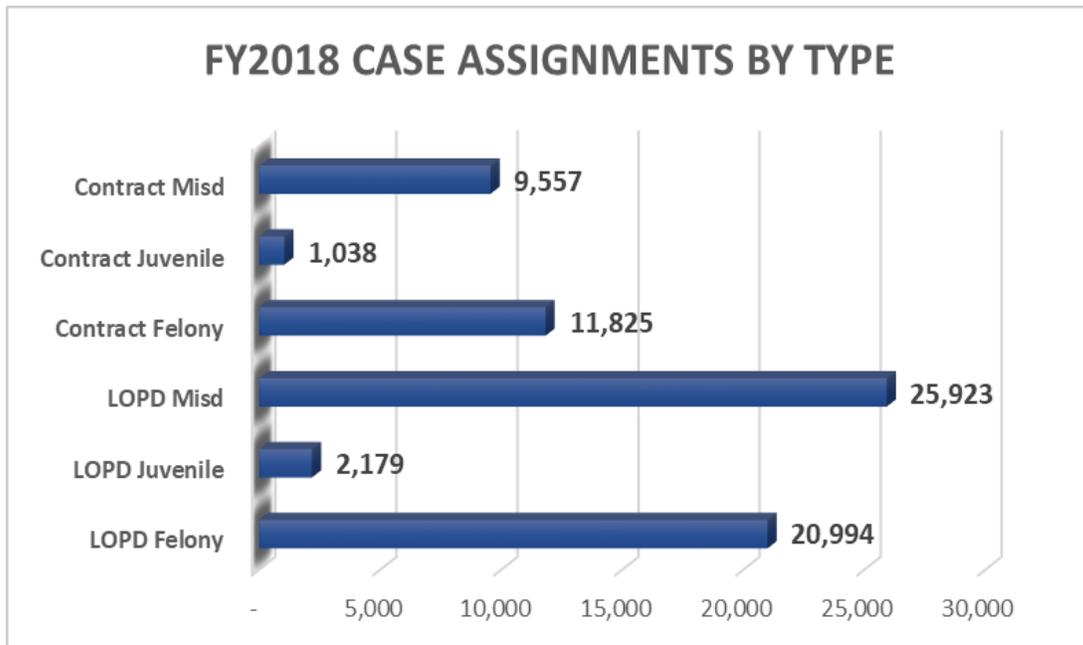
High Caseloads Continue



In FY2018, LOPD assigned 71,516 cases. This is similar to the annual case numbers from FY2012 to FY2018, as exhibited in the chart above. 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. Litigation seeking to flesh-out constitutional mandates regarding caseloads has been pursued in the state Supreme Court and District Courts.

In FY2019, LOPD is following the lead of public defenders in other states by pursuing a workload study and instituting time-keeping for attorneys and staff to measure actual work time spent on cases. Assessing workload will provide data to assist LOPD in increasing efficiency and will accurately identify where attorneys are being assigned too many cases for effective assistance of counsel, as evidenced in the chart below.

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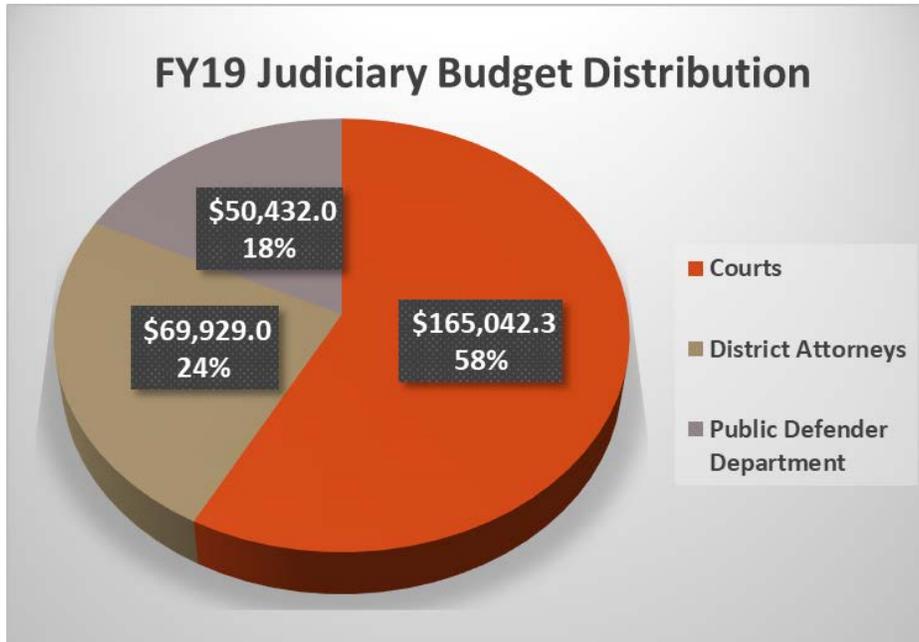


The workload study will allow LOPD to compare workloads nationally and accurately assess the resources needed for every type of case, identifying inefficiencies in the system and reliably supporting future requests for additional resources. The Legislative Finance Committee’s letter of support to the National Association for Public Defense for a workload study was crucial in obtaining a substantial grant for the American Bar Association to work with LOPD on this New Mexico study.

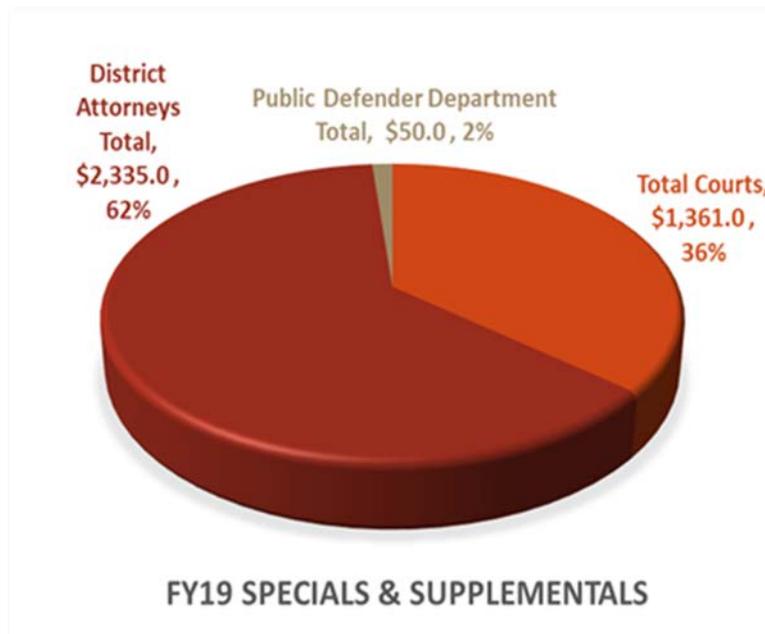
The substantial budget increase in FY2019 for the District Attorney in the Second Judicial District will increase the demands on both attorneys and staff at LOPD. As the Second District Attorney begins to address the “backlog” of cases, the demand for public defenders will increase commensurately. In addition, the creation of a new “Preliminary Hearings” unit to respond to recent court changes will also require additional LOPD resources to address that increased demand for representation.

The Legislature’s previous commitment to adequately fund the LOPD was unfortunately truncated with a recent downturn in New Mexico’s economy. In FY2018, the Legislature provided partial funding to support a 6.5% salary increase. Similar increases were afforded to the District Attorney offices and other public safety related agencies. While the raises were welcome and greatly appreciated, that did not address insufficiencies in base funding.

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LOPD recognizes its shared responsibility with the Legislative and Executive Branches to provide constitutionally adequate representation statewide. Because of continuing concerns about caseloads, the Public Defender Commission has promulgated a new rule to address excessive attorney workloads. The objective of the rule is to establish guidelines for the Department to use when excessive attorney workloads would make acceptance of additional clients by the affected attorneys ethically irresponsible or would violate the New Mexico Rules of Professional Conduct or the federal and state constitutional rights of LOPD clients.



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It has never been this Department's objective to sue the State for additional funding. In light of the recent opinion in *Martinez, et al., v. State of New Mexico et al.*, LOPD is concerned with the possibility of litigation against the Department by interest groups. LOPD is firmly committed to the New Mexico Constitution's separation of powers" doctrine. As the judge in *Martinez* noted, "We are, of course, mindful...of the responsibility...to defer to the Legislature in matters of policymaking, particularly in a matter so vital as education financing...We have neither the authority or the ability, nor the will, to micromanage education financing." If litigation is filed in federal court by an interest group, a federal judge would not be as likely to defer to the Legislature.

Attorney Recruitment Efforts

LOPD continues to struggle to maintain attorney staffing levels statewide, but most especially in more rural areas such as Eddy, Lea, Curry, Chavez, Roosevelt, Lincoln, and Otero Counties. Recruitment efforts have been expanded to tap regional law schools and other national public defender offices to recruit the most qualified candidates. While LOPD adopted a new pay scale effective July 1, 2015, which was based upon the pay scale maintained by District Attorneys, but we still lack adequate funding to fill positions at a competitive level. To attempt to address recruitment and retention issues, LOPD completed a Classification and Compensation Study in FY2017 and will be implementing the recommendations in FY2019.

Difficulty Recruiting an Adequate Number of Competent Contract Defenders

Due to the meager 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 **base 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

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

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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 the minimum possible amount to start compensating 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 achieve the goal of providing true legal services to each client as guaranteed under the New Mexico and United States Constitutions.

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. LOPD has completed the RFP process to establish new contractual provisions for its contractors effective November 1, 2018. In FY2019, the Legislature authorized limited expenditures for hourly rate cases up to \$1,000,000. LOPD invites and encourages the Legislature to reconsider its rationale for the restrictive cap on hourly rate cases.

The FY2020 Budget Requests seeks an additional \$600,000 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. Paying hourly rates on serious cases and allowing for complex case compensation appears to be the only way for LOPD to ensure lawyers are compensated such that they are willing to contract to fulfill the State's constitutional requirements to provide zealous representation for indigent New Mexicans charged with crimes in rural New Mexico.

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 is currently short 111 attorneys and 80 support staff to cover indigent defense adequately 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 72 FTE, which includes 37 attorneys and 35 staff for FY2020.**

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New Mexico Public Defender Department Comparative Analysis of Actual FY2018 FTE Staffing Levels and the New Mexico Sentencing Commission Workload Study Recommendations*			
	FY2018 Filled Full Time Equivalents (FTE's) as of July 31, 2018	2016 Workload Study Recommendation*	Deficiency in Staffing Levels
Attorney**	202	313	111
Attorney Support	146	226	80
Total Direct Client Services FTEs	348	539	191
Administrative Support***	38	n/a	n/a

* 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 11 recent law school graduates in limited practitioner positions awaiting 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 38 FTEs that are considered Administrative support – not client services – including seven administrative positions (six currently filled) that require law degrees (Chief Public Defender, three Deputy Chiefs, General Counsel, Managing Attorney of Contract Counsel Services, and Director of Training and Recruitment). Each of these seven positions is able to represent clients as needed. Additional staff are necessary to fully implement the tasks that used to be performed by the Executive Branch (IT, Fiscal, HR) and properly oversee the Contract Counsel services.

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 in July 2015, LOPD adopted the District Attorney salary structure in order 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

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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. 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 Court of Appeals and the same eight states included in the executive branch study. Similar jobs were compared to those within public defender organizations of similar size in Arizona, Colorado, Kansas, Oklahoma, Utah, Wyoming, Texas, and Nevada. A recommended grade and salary structure was provided by Kenning Consulting and LOPD is implementing in FY2019. The plan includes appropriately placing employees within their pay ranges based on experience, education and other factors. The study gives LOPD a method for making those adjustments, as budget allows.

FY2020 GOALS AND OBJECTIVES

1. **GOAL/OBJECTIVE:** Collaboration among the Legislature, the Governor, and the Public Defender Commission to address inadequate compensation for contract counsel in order to ensure constitutionally effective indigent defense, compensation that will attract and retain committed contract counsel, while balancing 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 base 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.

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In FY2016, LOPD needed to offer double and triple the current base 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 severely limited. Consequently, there was increased difficulty in finding lawyers willing to accept cases and an avoidable delay in providing counsel and case resolution in several counties around the state.

- b. **Action Step:** LOPD will engage the Public Defender Commission and the criminal defense bar to advocate for statewide implementation of an hourly rate for contract counsel, starting with cases with life sentences in FY2020.
- c. **Action Step:** In FY2018, LOPD will continue to analyze the previous hourly rate pilot project to determine how best to proceed. In addition, LOPD has earmarked \$600,000 in FY2019 to support an existing hourly rate program in serious cases. LOPD will limit the type of cases and conclude the project when the allocated funds have been expended. LOPD will analyze the data from these cases to project future funding requirements to further expand the pilot program.
- d. **Action Step:** Based upon the FY2016 appropriation, LOPD has instituted a procedure to provide additional compensation beyond the currently inadequate base fee to contract attorneys for representation in complex cases. This procedure is an interim measure to address this problem with currently available resources until an hourly rate system can be fully 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 111 attorneys and 80 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 advocate support from the Legislature and Governor for an additional 37 attorneys and 35 staff for FY2020.
- b. **Action Step:** Upon receiving additional staff and attorney positions, LOPD will begin the process of increasing our facilities and technology infrastructure required 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,

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adequate coverage of southern and eastern New Mexico, and reduction of caseloads statewide to manageable levels.

3. **GOAL/OBJECTIVE: Uniform implementation of the Public Defender Commission's Performance Standards to require effective representation for indigent clients.**

- a. **Action Step:** The Public Defender Commission has adopted Performance Standards in accordance with the statutory mandate that defines 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 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 to ensure that the Performance Standards compliance issues are identified and addressed through additional training and the responsible allocation of additional resources.

4. **GOAL/OBJECTIVE: Work with the Public Defender Commission, Legislature, and Governor to secure funding to address internal pay inequities arising from obsolete compensation strategies by incorporating recommendations from the Classification and Compensation Study by 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 FY2018, LOPD conducted training to ensure that staff and attorneys are using improved technology to maximize efficiency and effective advocacy in the courtroom. This training will continue and expand in FY2019.
- b. **Action Step:** In FY2019, LOPD will convert to a new case management system designed specifically for public defender offices nationwide, including all federal public defender offices.

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- c. **Action Step:** At the end of FY2018, LOPD requested greater access to court data from the Administrative Office of the Courts Judicial Information Division (JID). LOPD will fully advocate for that request in FY2019. The goal is to obtain permission for Tyler Technology to work with the new case management vendor to develop a program that will interface with the Judiciary's Odyssey system. This will improve efficiencies for both the LOPD and the courts by reducing delays in LOPD case assignments and entries of appearance and reduce errors in data entry and related filings with the court. In turn, LOPD has information that would increase efficiencies for JID and the Courts, including assigned attorney and eligibility determination.
- d. **Action Step:** In FY2020, LOPD will seek funding to support the implementation of the interface with the Judiciary's Odyssey system. The effective interchange of essential data will facilitate the timely resolution of pending cases. In addition, the data-driven analytics resulting from this enhanced information exchange will assist the Legislature in evaluating required funding levels.

6. **GOAL/OBJECTIVE:** Continue investing in the development of LOPD's Training Division with an expanded emphasis on staff training and a continued emphasis on training for attorneys to hone trial skills and keep abreast of developments in criminal law, criminal procedure and the forensic sciences.

- a. **Action Step:** Training and Recruitment Director will coordinate with LOPD District Defenders and regional managers to ensure that attorneys and staff are offered training necessary to comply with the statutorily required Performance Standards.
- b. **Action Step:** Training and Recruitment Director will continue to conduct an annual beginning trial skills training for new attorney hires recently sworn into the New Mexico Bar.
- c. **Action Step:** Training and Recruitment Director will coordinate with LOPD's District Defenders and regional managers to designate attorneys to participate in an advanced trial skills class. 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 Standards.
- d. **Action Step:** Request a significant increase in LOPD training budget for FY2020 to support the need to expand training for attorneys and staff.
- e. **Action Step:** Training and Recruitment Director will coordinate a two-day conference for all LOPD attorneys, investigators, and the Social Work Unit to provide required continuing legal education.

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7. **GOAL/OBJECTIVE: Increase management training for all LOPD District Defenders, Managing Attorneys and regional Office Administrators.**
- a. **Action Step:** LOPD will conduct an assessment to determine training needs for management and supervisory personnel. Based upon the findings of the assessment, LOPD will create a plan to provide training for all District Defenders, Managing Attorneys and Administrators.
 - b. **Action Step:** LOPD will continue to 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 regular District Defender, Managing Attorney, and Administrator meetings to address LOPD, office and attorney management challenges.
8. **GOAL/OBJECTIVE: Refine techniques for efficient management of scarce LOPD budgetary and personnel resources.**
- a. **Action Step:** Since 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 trends.
 - b. **Action Step:** In FY2017, LOPD implemented statewide eligibility and case opening procedures to standardize processing within each district office which has increased accuracy in data reporting in FY2018.
 - c. **Action Step:** After evaluating eligibility processes and procedures FY2018, LOPD significantly changed its *Eligibility Policy* to no longer offer reimbursement contracts to defendants who do not qualify for a public defender. In FY2019, LOPD will continue to evaluate eligibility to ensure resources are dedicated only to those who are indigent.
 - d. **Action Step:** LOPD will continue to collaborate with District Attorneys and courts statewide to create and utilize more diversion programs, keeping low risk offenders out of the criminal justice system and reducing jail and prison populations.
 - e. **Action Step:** LOPD will continue to strictly comply with the legal requirement to provide expert witnesses for defendants represented by private attorneys. Strict application of procedures for private defense attorney requests for LOPD expert funds via “Schoonmaker Requests” ensures 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

FY2020 Performance Measures

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

** New Performance Measures added for FY2020.*

