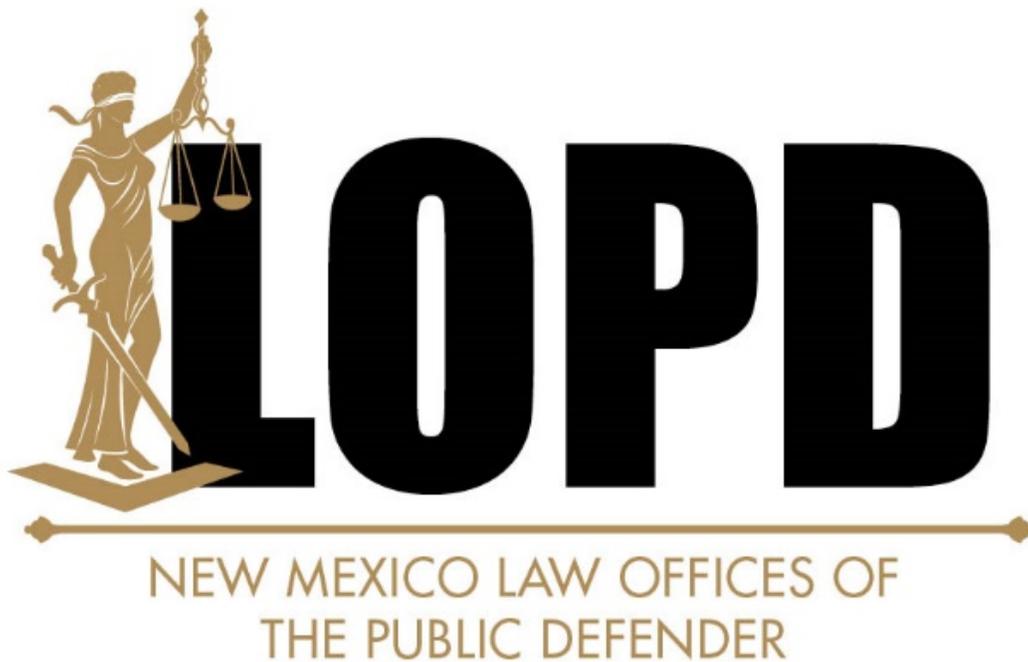


**THE LAW OFFICES OF THE
PUBLIC DEFENDER
STATE OF NEW MEXICO
STRATEGIC PLAN**



FISCAL YEAR 2021

(JULY 1, 2020 TO JUNE 30, 2021)

THE LAW OFFICES OF THE NEW MEXICO PUBLIC DEFENDER
STRATEGIC PLAN
Fiscal Year 2021

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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, including the recent transition to a new case management system. LOPD is allocating an additional part-time staff member to assist with collecting, correcting and reporting data for the quarterly report. Staff has worked diligently to double and triple check data to reduce error rate and ensure more accurate reporting. LOPD has also worked to assemble information quarterly and provides an annual summary.

LOPD’s efforts have consistently been praised by the Legislative Finance Committee, including in numerous FY2018 and FY2019 report cards and reports. The following is an excerpt from a “Selected Performance Highlights” 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) Daniel Banks - Secretary
- 4) Hon. Richard Bosson, Retired
- 5) Hugh Dangler
- 6) Traci Neff
- 7) Naomi Salazar
- 8) Melissa Sawyers
- 9) Michael Stout
- 10) Hon. Michael Vigil, Retired
- 11) Vacant

On May 2, 2014, as required by the Public Defender Act, the Commission enacted performance standards for representation of clients consistent with nationally-recognized standards. In general, those standards include steps that should be taken with respect to: 1) client relationship, 2) investigation of the case, 3) evaluation of legal issues and factual issues, 4) discussion of possible resolutions of the case with client, 5) motion practice, 6) trial preparation and trial, 7) possible sentencing arguments, and 8) possible appellate issues. Each attorney is required to satisfy the performance standards in each client's case. With too many cases, the attorney and staff do not have the physical ability to complete the steps required by the constitutions and the performance standards.

The Commission and the LOPD are taking many steps to improve excessive caseloads, including possibly refusing cases in some instances. The Commission conducted an investigation and held multiple hearings on the issue. During the hearings in May 2018, the Commission heard from nationally-recognized expert witnesses, line attorneys, staff attorneys, staff members, and members of other entities, including prosecutors. The public hearings took place over two days in Santa Fe and Ruidoso. The Commission considered, edited, and published for comment a draft rule and eventually approved the *Interim Case Refusal Protocol Rule* in FY2019.

LOPD is directed to use this rule when excessive attorney workloads would make acceptance of additional clients by the affected attorneys ethically irresponsible, or would violate

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the New Mexico Rules of Professional Conduct or the federal and state constitutional rights of LOPD clients. The Rule is a necessary but inadequate solution to funding shortfalls. But the Rule points out the need to limit workloads at some point in order to protect the constitutional rights of present clients.

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.

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 150 lawyers statewide. In FY2019, these attorneys represented clients in a total of 66,869 cases statewide, with 44,380 cases assigned to LOPD in-house attorneys and 22,489 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.

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

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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 and leadership 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 and leadership 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.

LOPD is dedicated to finding creative solutions for the problem of overwhelming caseloads of its attorneys and focusing resources on the indigent. Since the LOPD mission is to serve the indigent, an ongoing evaluation of eligibility to ensure the best use of limited resources is required. At the end of 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 Legislative Finance Committee had previously questioned eligibility determinations, and this action addressed 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.

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 the 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 or when appointed by the Supreme Court on certiorari review of a habeas corpus petition.

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In FY2019, the appellate division was assigned to represent approximately 274 cases before the appellate courts. The appellate division also provides daily “Appellate Attorney on Duty” assistance to all public defender attorneys and contract attorneys statewide. During sessions of the New Mexico Legislature, appellate division attorneys prepare the majority of LOPD agency analyses of proposed criminal legislation (Fiscal Impact Reports). 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 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. In FY 2019, the habeas corpus unit, composed of four attorneys, received 361 pre-appointment petitions for review and completed 347 initial reviews, and were appointed on 116 cases.

Major Crimes Defender 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 unit. In FY2019, the unit was designated the “Major Crimes Defender Unit” (MCDU). In addition, a managing attorney and unit composed of senior attorneys were transferred into the unit to expand its representation and services to rural communities. MCDU includes the Capital Crimes Unit (CCU), and the Mental Health Managing Attorney, which includes seven attorneys and four dedicated staff including a social worker, investigator, paralegal and an office manager. This staff is housed in offices around the state, specifically: Albuquerque, Hobbs, Las Cruces, and Roswell.

As mentioned previously, the formerly know Capital Crimes Unit (CCU) was transferred to MCDU. 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. Its experience in homicide allows the unit to be a quality control for statewide practice.

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This new structure is intended to provide support and resources to improve services to clients in rural communities by improving 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 unit 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.

LOPD has attorneys that specialize in representing on **mental health** cases. The attorneys 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. One example is the support provided to defendants who participate in the Judicial Supervision Program Court (mental health court). Those who participate in the 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 these specialized attorneys, 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 in-house expertise plays an integral part in the development of Mental Health Court Standards statewide. LOPD strives to work with criminal justice partners and key community stakeholders to implement additional mental health courts statewide.

The statewide units are headed by:

- 1) Appellate Defender
- 2) Managing Attorney – Post-Conviction Unit
- 3) Director – Major Crimes Defender Unit
- 4) Managing Attorney – Mental Health Unit
- 5) Manager – Social Work Services

Regional/District Office Operations

The large majority of LOPD's services are delivered through the thirteen 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 FY2019, these lawyers represented clients in

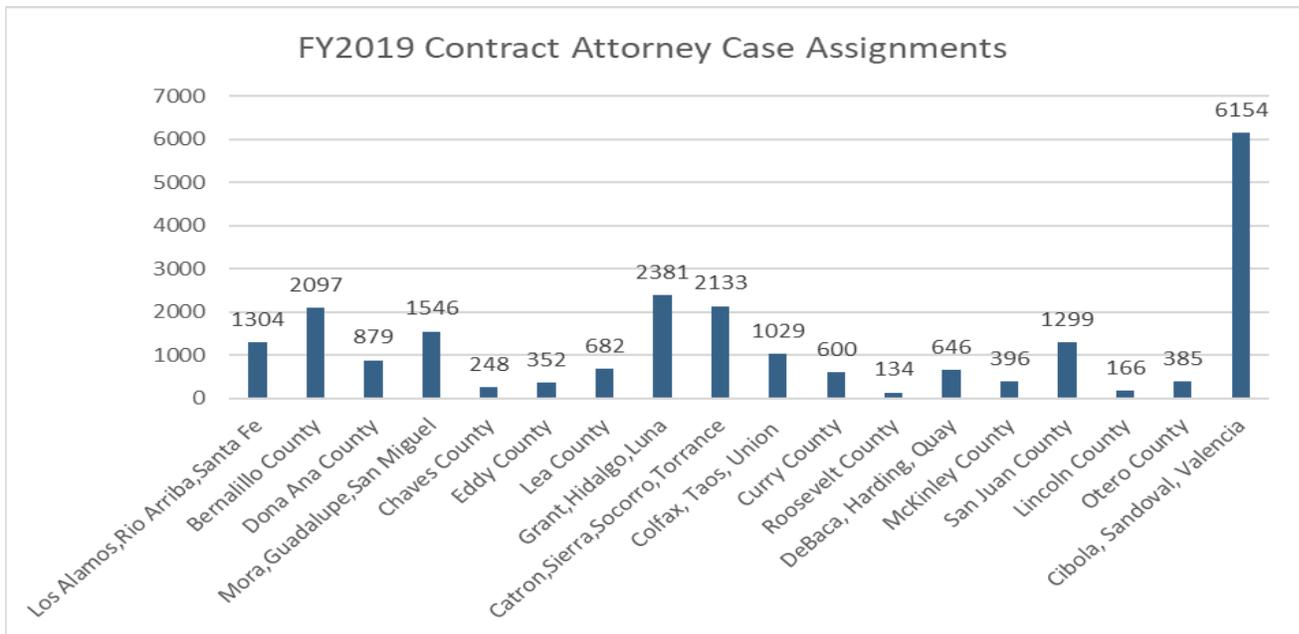
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44,380 cases throughout the state. The regional and district offices are supervised by District Public Defenders who are appointed by the Chief Public Defender. District Public Defenders’ management efforts may be supported by managing attorneys and supervising attorneys and by non-attorney law office managers. The regional office management teams are responsible for staff hiring, office systems training, local supervision, case assignments, courtroom coverage, regional attorney training, client legal representation, and participation on Criminal Justice Coordinating Councils.

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 150 private attorneys who contract to provide primary and conflict of interest case representation statewide. In FY2019, the Contract Counsel Legal Services division handled 22,489 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, and Taos Counties**
 - a) District Defender – Stationed in Santa Fe County
 - b) Managing Attorney – First Judicial District
 - c) Managing Attorney – Eighth Judicial District Taos

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

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

- 4) Fifth Judicial District Offices – Lea, Chaves, and Eddy Counties**
 - a) District Defender – Stationed in Eddy County
 - b) Managing Attorney – Eddy County
 - c) Managing Attorney – Chavez County
 - d) Managing Attorney – Lea County

- 5) Ninth Judicial District Office – Curry and Roosevelt Counties**
 - a) District Defender – Stationed in Curry County
 - b) Managing Attorney – Curry and Roosevelt

- 6) Eleventh Judicial District Office – San Juan & McKinley Counties**
 - a) District Defender – Stationed in San Juan County
 - b) Managing Attorney – San Juan County
 - c) Managing Attorney – McKinley County

- 7) Twelfth Judicial District Office – Otero and Lincoln Counties**
 - a) District Defender – Stationed in Lincoln County
 - b) Managing Attorney – Otero County

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) 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 initial appearances, 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 an additional 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.

In FY2019, nearly 1,200 motions for pretrial detention were filed in the Second Judicial District alone. This added workload requires public defender attorneys and staff to prepare and

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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 depending on the evidence presented, may last several hours. This added workload is not reflected in the agency's data on 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 motion hearings/trials; 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 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 supports 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 also advocates 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 and special and habeas corpus writs to the New Mexico Supreme Court.

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Post-Conviction Representation

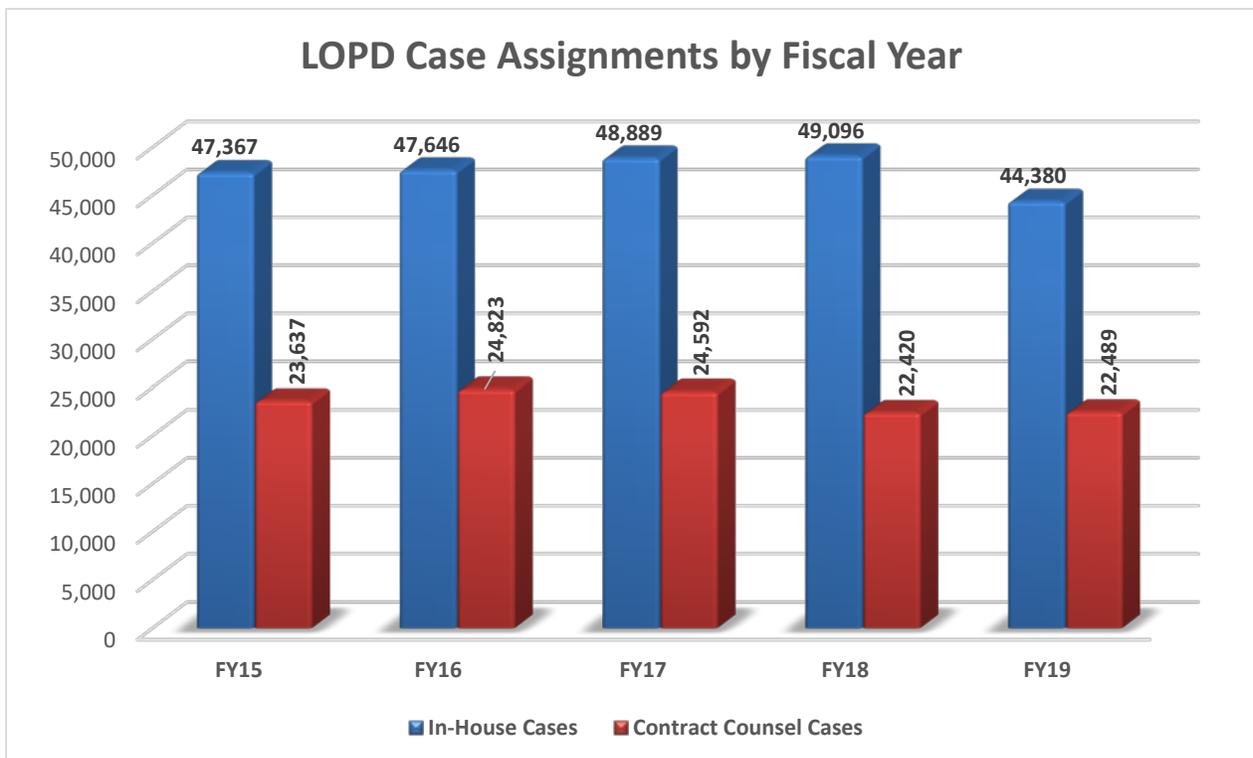
Post-conviction representation includes: adult and juvenile probation violation hearings; habeas corpus petitions and hearings, and probation and parole review hearings for convicted sex offenders. By statute, LOPD is charged with providing legal representation at review hearings every 2.5 years for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

Consistently High Caseloads

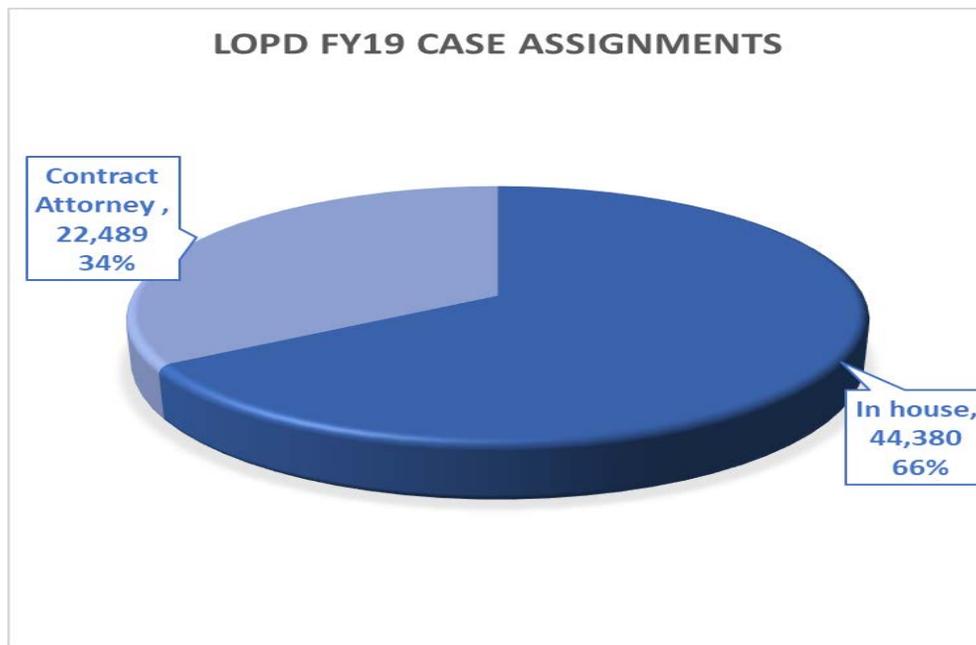


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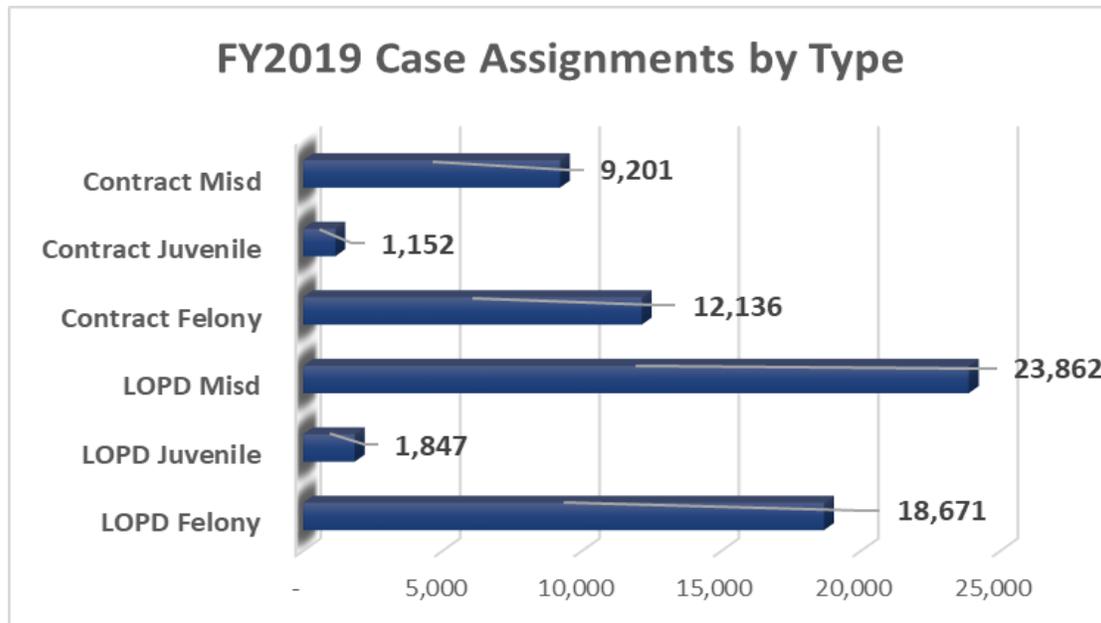
In FY2019, LOPD assigned 66,869 cases. Due to increased retention and stability in staffing, combined with implementation of statewide data entry standards, case assignments have reduced slightly. Regardless, the resulting caseload for both LOPD attorneys and contract attorneys is high enough to cause 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.

The systemic problems with contract defense in the hybrid model are exacerbated by the excessive workloads carried by many in-house attorneys (of course, contract defenders may suffer from excessive caseloads as well). In FY2019, LOPD attorneys were assigned an average total of 266 (112 felony, 11 juvenile, and 143 misdemeanor) cases each. LOPD has few options to ease excessive caseloads. One is “overflowing” in-house cases to contract defenders, however, the problem is simply transferred to the contractors who also have excessive caseloads. Time spent traveling to court and jail in rural New Mexico exacerbates workload issues for both public and contract defenders. Caseload measurement does not account for travel time or in-court waiting time but is critical to evaluating workloads.



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

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LOPD will compare workloads nationally and accurately assess the resources needed for every type of case and assess 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.

LOPD is analyzing data to better understand the role of caseloads on departmental performance measures and the public defender’s role in the criminal justice system. In order to further this goal, LOPD has launched a new case management system. At the end of FY2019, LOPD officially transitioned from the case management system used for the last seventeen years and converted to defenderData. DefenderData is a public defender-tailored case management system used by all federal public defender offices nationwide and numerous public defender departments across the nation. This is another step in ensuring the workload study produces reliable data and improves accuracy in data when reporting on performance measures. This case management system also has the capability of collecting time keeping data for the workload study.

The Legislature’s previous commitment to adequately fund the LOPD was unfortunately truncated with the most recent downturn in New Mexico’s economy. However, in FY2018, the Legislature provided funding to support a 6.5% salary increase for LOPD employees. Then again in FY2019, the Legislature provided funding for a 4% salary increase for LOPD employees. 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 ongoing insufficiencies in base funding.

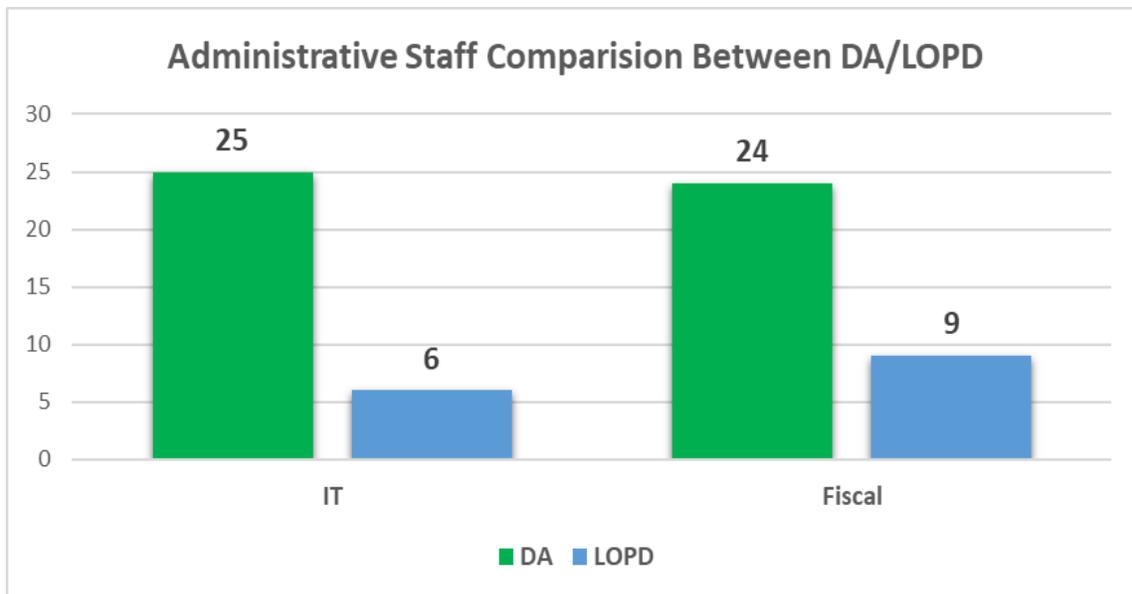
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Equal Percentage Increases Worsen the Problem

LOPD greatly appreciates legislative attempts to bolster its budget and help its clients. Though the roles of the prosecution and defense are admittedly different, it is generally agreed that the prosecutors receive more funding than public defense. They are budgeted for higher staffing levels and are served by both their in-house administration and state-level administration for support. In addition, state and local law enforcement conducts the initial investigation for the cases. So, it must be noted that increasing the budget of the prosecuting entity by the same percentage not only widens the gap between the two entities but also imbalances the entire criminal justice system, threatening constitutional processes.

Part of the disparity is fueled by the fact that district attorney offices have in-house chief financial officers, human resources staff, and information technology support, in addition to similar statewide resources at the Administrative Office of the District Attorney, which far exceeds resources within LOPD.



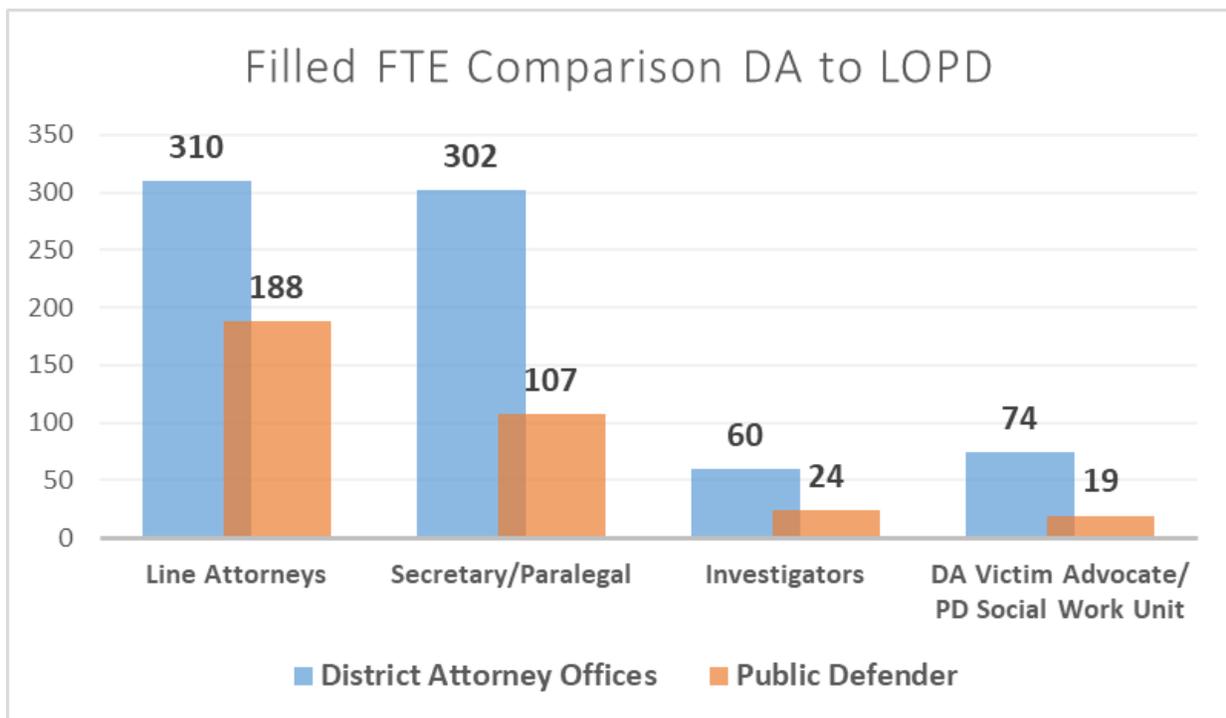
LOPD has 45 administrative staff dedicated to serving the 439 FTE and 150 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and administrative support staff. AODA and the district attorney’s offices have a total of 223 “administrative staff.” In addition, many district attorney offices have Deputy District Attorneys or other attorney supervisors that are not assigned cases, nor carry an active caseload as part of their duties. When compared to data compiled from the district attorney offices across the state, LOPD ratios are significantly lower than their indicated statewide average staffing ratios, as illustrated in the following charts and graphs.

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Filled FTE	DA	LOPD
Attorneys	310	188
Clerical	200	46
Investigators	60*	24
Paralegals/Specialists	102	61
Victim Advocates/SW	74	19
IT	25	6
Fiscal	24	9

**This total does not include the resources provided by local and state law enforcement.*

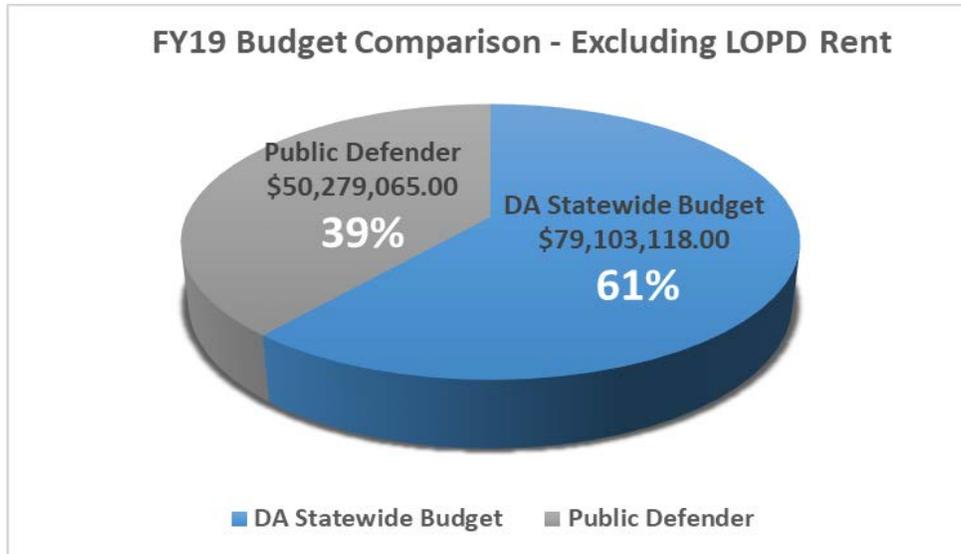
LOPD continues to advocate for the legislature to increase funding necessary for LOPD to "catch up" with others in the system, especially the prosecution. The greater the gap between the two, the more harm to constitutional representation.



The gap is further widened due to the fact that LOPD is burdened with the expense of paying leases for its facilities, unlike the district attorneys, whose offices are provided by the counties. The following graph demonstrates how this additional expense depletes the budget and shows the difference in the remaining amount dedicated to client services.

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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 it unethical for the affected attorneys to accept additional clients or would violate the New Mexico Rules of Professional Conduct or the federal and state constitutional rights of LOPD clients.

In light of the recent opinion in *Yazzie and Martinez, et al., v. State of New Mexico et al.*, LOPD is preparing for the possibility that litigation regarding excessive attorney workloads is filed against the Department by interest groups. LOPD is firmly committed to the New Mexico Constitution's separation of powers doctrine. As the judge in *Yazzie* 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.

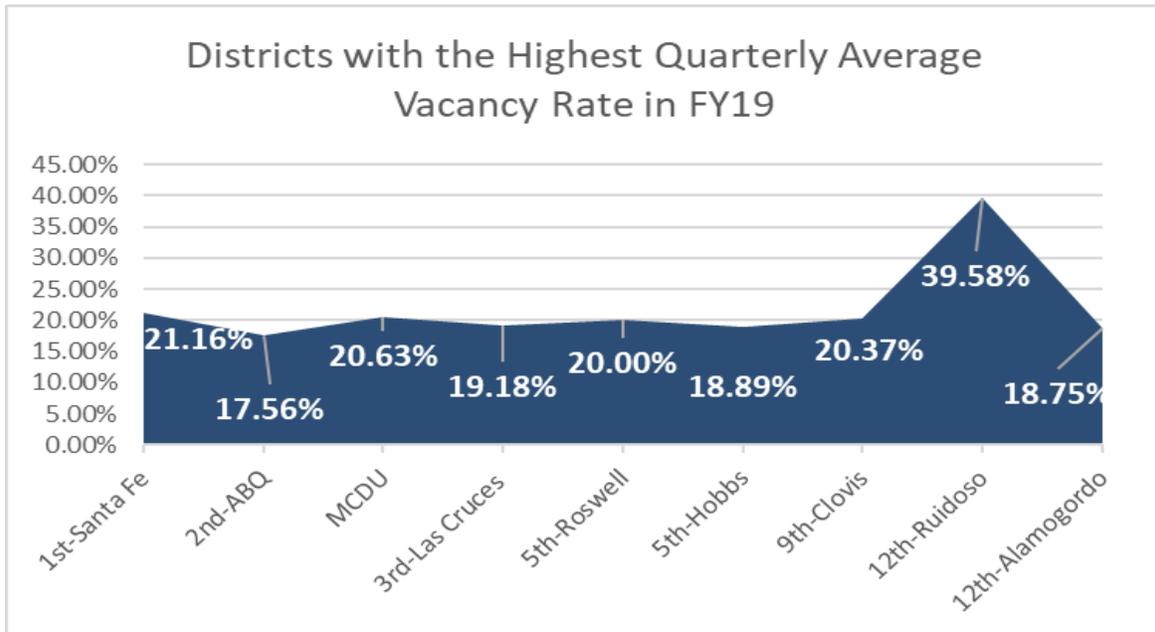
Recruitment and Retention Efforts

LOPD has experienced firsthand the increased competition in the legal community for attorneys with criminal experience. During FY19, forty-two in-house attorneys left the department for various reasons, specifically: three retired, one received a judicial appointment, one attorney was recruited by the Department of Defense, four joined the Federal Public Defender, seven relocated, seven moved to the district attorney or attorney general's office, four continued state employment with another agency, thirteen resigned

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to move into private practice or other reasons, and two were terminated. In the third quarter alone, LOPD lost fifteen attorneys, and nine (or 60%) of those attorneys were from locations proving most difficult to recruit and retain attorneys. The graph includes districts with the highest quarterly average vacancy rate in FY2019.



Issues with staffing are not isolated to attorney positions. In FY2019, forty-seven non-attorney staff employees left the department, specifically: eight retired, twelve transferred to another state agency, one transferred to federal employment, nineteen resigned, seven were terminated, and one passed.

LOPD continues to struggle to maintain attorney staffing levels statewide, but most especially in more rural areas such as Eddy, Lea, Curry, Chaves, Roosevelt, Lincoln, and Otero Counties. While LOPD adopted a new pay scale effective July 1, 2015, which was based upon the pay scale maintained by District Attorneys, LOPD still lacks 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 implemented the recommendations in FY2019.

LOPD has expanded its active recruitment of attorneys. This allows LOPD to proactively address the inevitable attrition of in-house attorneys and contract attorneys in the “legal deserts” in New Mexico where there are few lawyers. Over the last two years, LOPD has pinpointed law schools with strong public interest programs and funding allocated for internships or externships. The goal is to develop pipelines by securing students dedicated to indigent defense for a summer externship. In addition, LOPD has shifted to focus recruitment on hiring law school students immediately prior to or during the beginning of their final year of law school. This early

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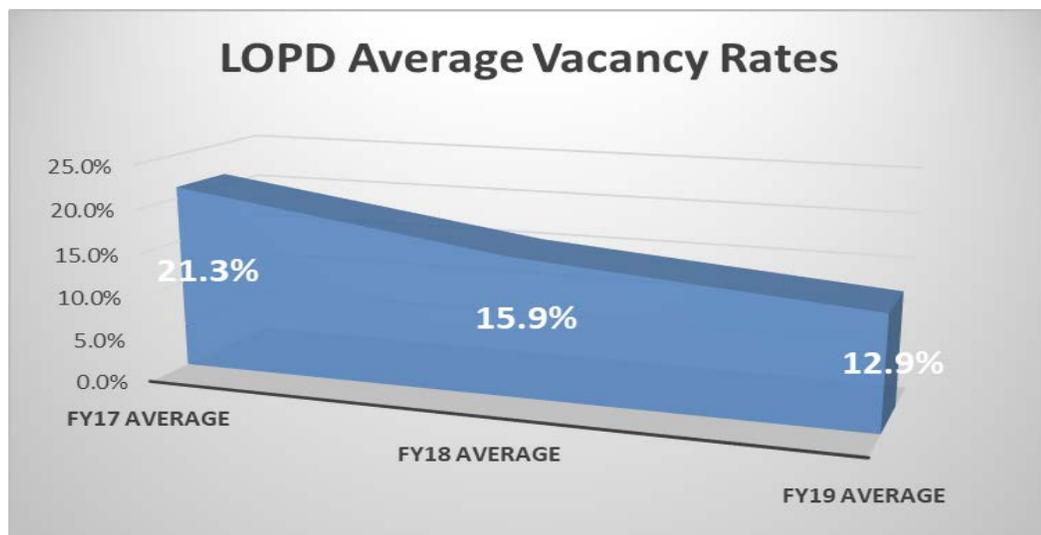
recruitment allows LOPD to secure top notch candidates, while allowing the student to receive an offer long before their colleagues which provides stability during their last year of law school and while studying for the bar exam. These new hires are “limited practitioners,” which means they have a legal education, but are not sworn into the bar and therefore unable to represent clients in court.

LOPD brings the limited practitioners onboard for training starting immediately after the bar exam. This time provides the department and the new hire between eight and ten weeks of training so that as soon as the limited practitioners are sworn into the bar, they are able to be assigned cases and represent clients in court. In FY2019, LOPD secured fourteen limited practitioners placed in five offices statewide. In FY2020, the program has successfully expanded and twenty-one limited practitioners were hired for seven LOPD offices.

Since LOPD has struggled with recruiting experienced attorneys, the focus has shifted to a “grow your own” model. This model allows LOPD to hire and train law school graduates to continue to develop in-house expertise in the expectation they will stay onboard as experienced attorneys or potentially work with the department as contract attorneys.

Innovative Recruitment and Retention Results in Reduced Vacancy Rate

Due to proactive recruitment, such as the limited practitioner program and innovative placement of positions, LOPD has consistently reduced the vacancy rate since FY2017. LOPD has evaluated the hiring process to eliminate delay, proactively plan for anticipated retirements or resignations, and diligently hire new employees. As a result, in FY 2019 the lowest vacancy rate was 11.1%. In addition, the vacancy rate held at 11% for nine different pay periods. The fiscal year average vacancy rate was reduced to 12.9%.



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The efforts to reduce vacancy rate and proactively plan for attorney losses is evident in the increase in average attorney FTE from 162.5 in FY2018 to 167 in FY2019. The increased stability statewide has positively impacted caseloads by reducing the number of reassigned cases and in turn reducing the average number of cases assigned to attorneys. It is important to emphasize that, although LOPD is helping to reduce the numbers, caseload numbers remain far too high to provide effective assistance of counsel in all cases.

Difficulty Recruiting an Adequate Number of Competent Contract Defenders

Due to funding levels forcing 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 constitutional requirements and performance standards for attorneys apply equally to contractors as to in-house attorneys. Unfortunately, contractors are often less able to meet these requirements because of lack of resources. Contractors often receive less support due to having no support staff, including investigators, paralegals, social workers, and secretaries; whereas in-house attorneys have those supports. Competition for attorneys with criminal experience impacts the defense of indigent clients in communities without local public defender offices. In FY2019, LOPD lost twenty contract attorneys for various reasons, including: six joined various district attorney offices, judicial appointments, or other state agencies, eight stopped accepting cases, four due to retirement or suspension, and two passed.

The current **base rate** compensation for contract defenders is \$750 for first degree felonies (except capital crimes which are compensated at \$5,400), \$700 for second degree felonies, \$645 for third degree felonies, \$540 for fourth degree felonies, \$300 for juvenile cases, and \$300 for misdemeanor driving while intoxicated and domestic violence cases. 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

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

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experienced contract lawyers receive for serious violent felony trials. By contrast, federal contract public defenders are paid an hourly rate of \$148.

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 November 2015 and November 2018 provide 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. In FY2020, the Legislature authorized limited expenditures for hourly rate cases up to \$1,500,000. LOPD invites and encourages the Legislature to reconsider the restrictive cap and increase funding for hourly rate cases.

In FY2019, thirteen contractors did not submit a proposal for a new contract with LOPD. The increased competition in the legal field has required LOPD to reassign a significant amount of in-house and contractor cases. The loss of attorneys quickly dilutes resources because attorneys must get up to speed on reassigned cases, while working on existing cases, and in addition, the department must invest in additional recruitment, training, and other associated costs.

The FY2021 Budget Requests seeks an additional \$2,188,500 in funds to pay contract defenders an hourly rate in designated cases, compensate for complex case litigation and fund use of expert witnesses in complex cases. If funded, this would place LOPD closer to providing enough contract lawyers to meet constitutional mandates. 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 125 attorneys and 76 support staff to cover indigent defense adequately in New Mexico. This calculation takes into

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account the 150 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 the addition of 45 FTE, which includes 15 attorneys and 30 staff for FY2021.**

New Mexico Public Defender Department Comparative Analysis of Actual FY2019 FTE Staffing Levels and the New Mexico Sentencing Commission Workload Study Recommendations*			
	FY2019 Filled Full Time Equivalents (FTE's) as of June 17, 2019	2016 Workload Study Recommendation*	Deficiency in Staffing Levels
Attorney	188	313	125
Attorney Support	150	226	76
Total Direct Client Services FTEs	338	539	201
Administrative Support**	37	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.

**Administrative support FTE needs were excluded in the Sentencing Commission's workload study. The Department currently has 37 FTEs that are considered Administrative support – not client services – including seven administrative positions that require law degrees (Chief Public Defender, four Deputy Chiefs, General Counsel, 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, including auditing invoices.

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, and 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 to be competitive with the

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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. Four-hundred and four 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, which LOPD adopted in FY2019. The plan includes appropriately placing employees within their pay ranges based on experience, education and other factors, in accordance with NMAC 10.12.4. The study gives LOPD a method for making those adjustments, as budget allows.

FY2021 GOALS AND OBJECTIVES

- I. **GOAL/OBJECTIVE: Strengthen statewide network of Public Defender Attorneys and Contract Defenders and improve rural representation and ensure effective indigent defense.**
 - a. **Action Step: Recruit and retain in-house attorneys, social workers, investigators, and support staff by expanding current innovative and proactive recruitment program targeting in-house employees statewide.** Current recruitment efforts have been focused on attorneys. Expanding those efforts to include prospective employees for the social work unit, investigators, and other support staff positions will improve retention and decrease vacancy rate.

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- v. 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.
 - vi. In FY2020, Training and Recruitment Director will coordinate a two-day conference for all LOPD employees to provide essential training and required continuing legal education.
- d. **Action Step: Evaluate processes and procedures for efficient management of scarce LOPD budgetary and personnel resources.**
- i. Since FY2017, LOPD continues to evaluate statewide eligibility, data entry, and procedures to standardize processing within each district office which has increased accuracy in data reporting and improved efficiency.
 - ii. Since FY2015, LOPD has regularly assessed client service needs in our regional offices and divisions and has reallocated positions and human resources as needed. Factors such as caseloads and economic and population increase or decline are considered in long-term trends.
 - iii. LOPD has been awarded funds to support data sharing between LOPD and the Judiciary's Odyssey system. LOPD has requested access and as soon as access is granted, the LOPD case management vendor will work with Tyler Technologies on developing a program to share data. 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 determinations.

II. GOAL/OBJECTIVE: Attain parity in staffing by bringing Public Defender staffing levels similar to those of the District Attorneys.

- a. **Action Step: Obtain funding in FY2021 budget request to hire an additional 15 attorneys and 30 staff, which if funded, would get LOPD slightly closer to parity.** Additional staff and attorney positions would be distributed statewide to address the most critical areas of need, including adequate coverage of southern and eastern New Mexico, reduction of caseloads statewide to manageable levels, employee support, and auditing hourly rate invoices.
- b. **Action Step: Educate Legislators and criminal justice partners about the disparity in staffing.**
 - i. Compile reliable and accurate comparisons between district attorney offices, administrative office of the district attorney, and LOPD.

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- ii. Spread awareness of detrimental effects in our communities caused by the disparity.

- c. **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 Executive for an additional 15 attorneys and 30 staff for FY2021.**

III. GOAL/OBJECTIVE: Reduce recidivism and support community needs by positively impacting public safety.

- a. **Action Step: Dedicate resources to equip LOPD social work unit and other front-line staff with essential training to work with clients to address underlying issues impacting their interaction with the criminal justice system.**

- b. **Action Step: Educate legislators and criminal justice partners about the limited mental health and substances abuse treatment resources statewide.**

- c. **Action Step: Advocate for additional support and resources to allow clients to address underlying issues and become contributing members of society.**

- d. **Action Step: Continue leadership and active involvement in criminal justice reforms.**
 - i. 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.
 - ii. LOPD continues to advocate for reforms in the criminal justice system which would allow LOPD to work more efficiently and effectively.
 - iii. Participate in community policy conversations about criminal justice reform and garner community participation.

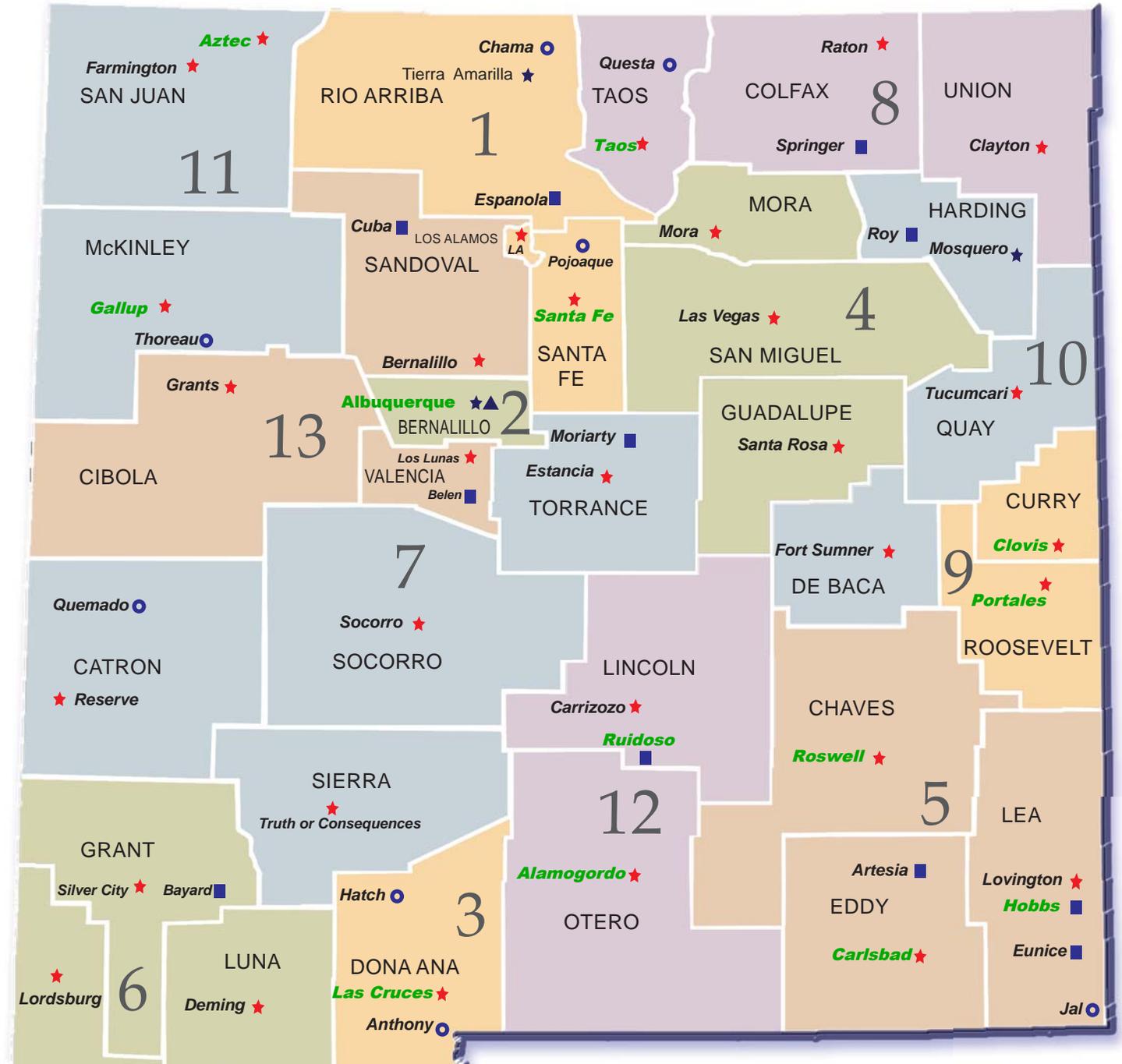
SUMMARY OF PERFORMANCE MEASURES

FY2021 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*) (provided measurers of days and 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) *

* *Performance Measures added in FY2020.*

NEW MEXICO COURTS and LOPD OFFICES



08/27/19-CJS

- 1st Judicial District Court**
Santa Fe, Rio Arriba & Los Alamos
- 2nd Judicial District Court**
Bernalillo
- 3rd Judicial District Court**
Doña Ana
- 4th Judicial District Court**
San Miguel, Mora & Guadalupe
- 5th Judicial District Court**
Chaves, Eddy & Lea
- 6th Judicial District Court**
Grant, Hidalgo & Luna
- 7th Judicial District Court**
Torrance, Socorro, Catron & Sierra

- 8th Judicial District Court**
Taos, Colfax & Union
- 9th Judicial District Court**
Curry & Roosevelt
- 10th Judicial District Court**
Harding, De Baca & Quay
- 11th Judicial District Court**
San Juan & McKinley
- 12th Judicial District Court**
Otero & Lincoln
- 13th Judicial District Court**
Cibola, Sandoval & Valencia
- Bernalillo County Metropolitan Court**
Albuquerque

- Supreme Court**
Santa Fe
- Court Of Appeals**
Santa Fe & Albuquerque

- LOPD Offices in Green**
- ★ District & Magistrate Courts
- ★ District Courts
- ▲ Metropolitan Court
- Magistrate Full Courts
- Magistrate Circuit Courts