

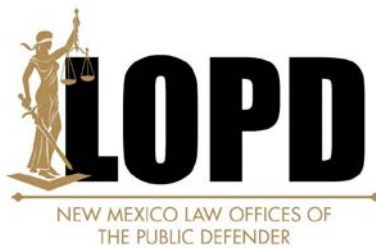
LEGISLATIVE FINANCE COMMITTEE HEARING



BENNETT J. BAUR, CHIEF PUBLIC DEFENDER
THOMAS JOSEPH CLEAR III, CHAIR, PUBLIC DEFENDER COMMISSION

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FY21 Base Budget Increase Request- \$6,569,600, 11.8%

Base Budget Increase Request 1: Compensation for Contract Counsel to Improve Client Services Statewide and Expand Legislative Pilot Project to Pay Hourly Rates to Contract Defenders in Complex Cases and Expert Witnesses.

- ✓ Paying hourly rates on serious cases and allowing for complex case compensation will ensure lawyers are compensated such that they are able to engage to fulfill the State's constitutional requirements to provide zealous representation for indigent New Mexicans.
- ✓ Increased filing of complex cases requires use of expert witnesses, which LOPD must pay for.
- ✓ Additional funding for hourly rate cases assigned to contract defenders.
- ✓ Total request for this increase is \$2,188,500, or an increase of 15.6%.

Base Budget Increase Request 2: 15 Attorneys and 30 Staff FTE to Improve Client Services Statewide and Reduce Recidivism.

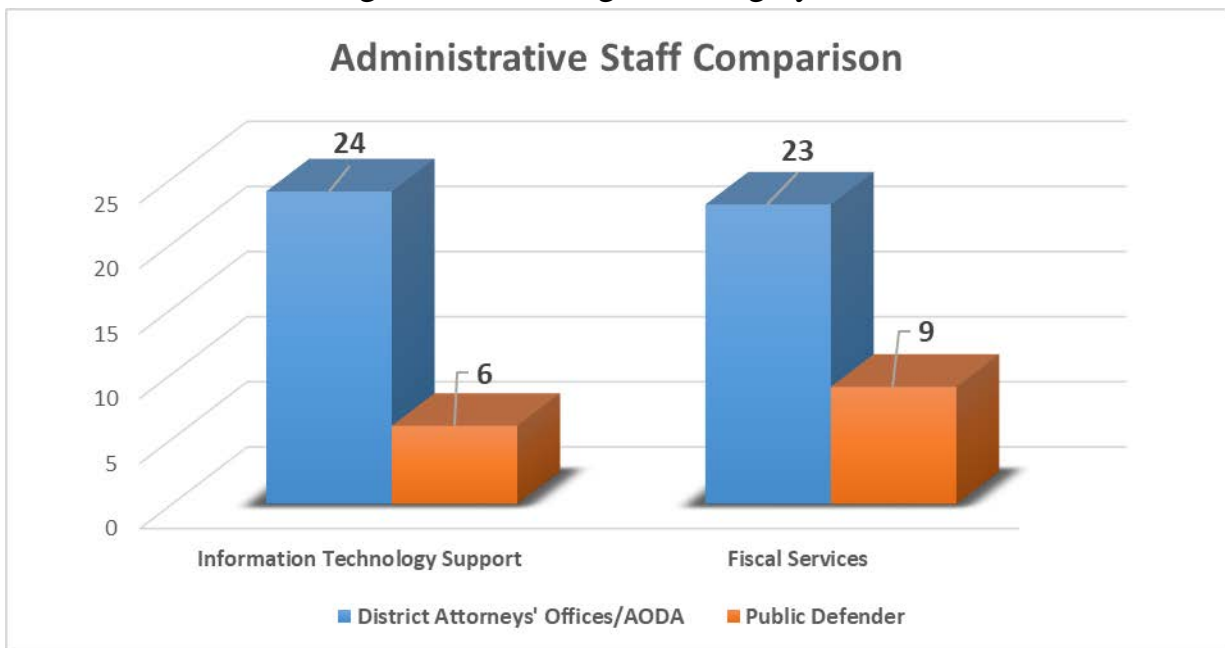
- ✓ Effective representation of clients requires attorneys to have caseloads that permit sufficient attention to defending the case, as well as familiarity with every client's mental health, addiction and other factors that lead to recidivism.
- ✓ Increased need for services to rural communities, covering pretrial detention hearings, preliminary hearings, and caseload reduction.
- ✓ The increased need is as follows:
 - Thirty staff including seven positions allocated to the statewide social work unit (social workers, mitigation specialists, and case managers), additional investigators and support staff for Alamogordo, Albuquerque, Aztec, Carlsbad, CCLS, Habeas, Hobbs, Las Cruces, Roswell, and Santa Fe.
 - Fifteen attorneys allocated between twelve offices: Alamogordo, Albuquerque, Appellate, Aztec, Carlsbad, Habeas, Hobbs/Lovington, Santa Fe/Rio Arriba, Las Cruces, Roswell, Major Crimes Defender Unit, and an attorney allocated in CCLS to audit invoices for the hourly case project.
- ✓ Despite an overall reduction in vacancy rate, there are numerous rural offices forced to operate with vacancy rates between 17% and nearly 40%.
- ✓ The total request for this increase is \$3,268,600.

Equal Percentage Increases Worsen the Problem

LOPD greatly appreciates legislative attempts to bolster its budget. However, prosecutors have historically received more funding than public defense. Prosecutors are budgeted for higher staffing levels and are served by both their in-house local administration and state-level administration for support. Prosecutors have more latitude in deciding which and how many cases to prosecute, while public defenders must represent all qualified indigent defendants. In addition, state and local law enforcement conducts the initial investigation for prosecutors. Though the roles of the prosecution and defense are admittedly different, increasing the budgets of the prosecuting and defense entities by the same percentage not only widens the gap between the two entities but also creates greater imbalances in the entire criminal justice system, threatening constitutional processes.

Part of the disparity is fueled by the fact that each district attorney office has an in-house chief financial officer, human resources staff, and information technology support, in addition to similar statewide resources provided by the Administrative Office of the District Attorney—all of 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.



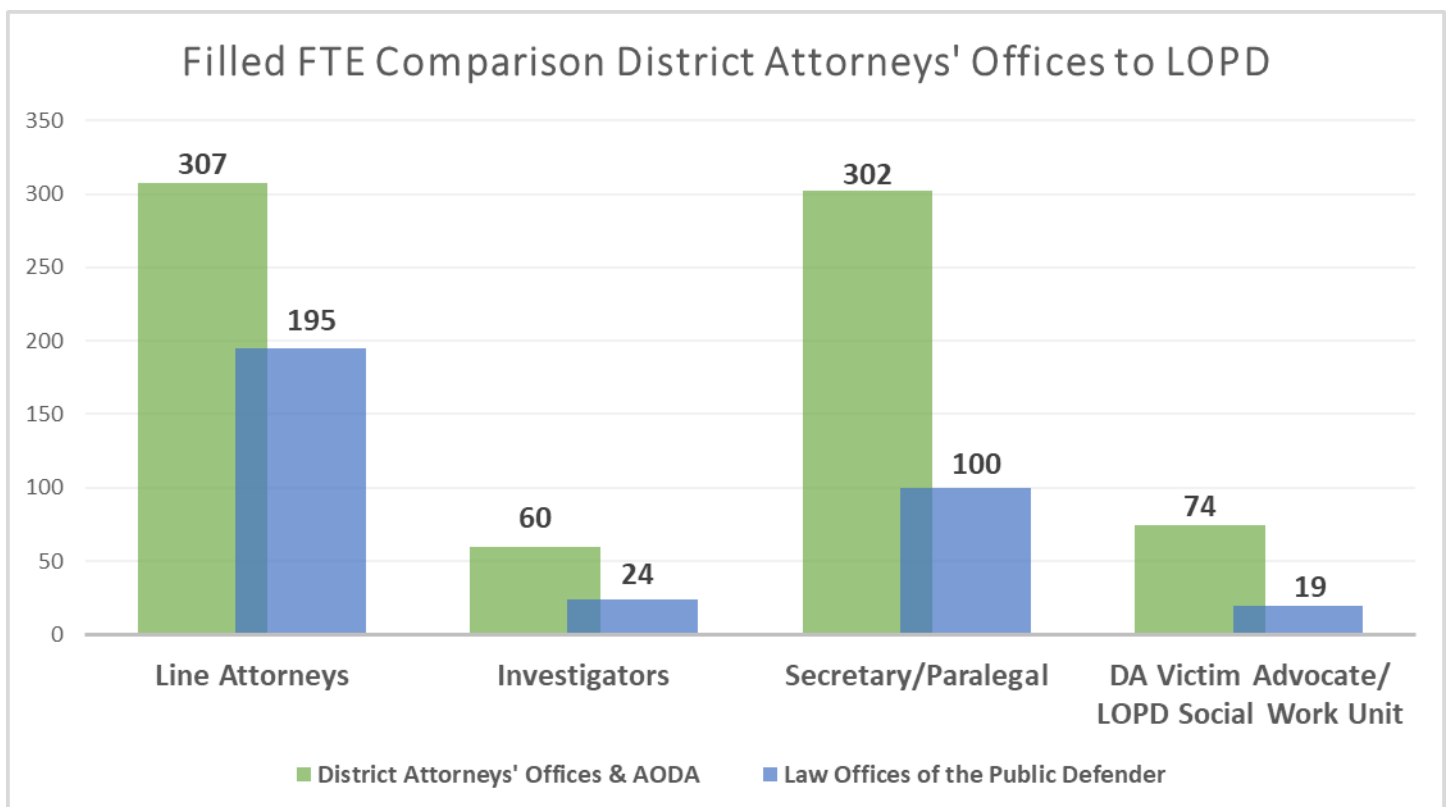
As near as we can determine from readily available resources, AODA and the district attorneys' offices have at least 183 "administrative staff". In addition, many district attorneys' offices have Deputy District Attorneys or other attorney supervisors that are not assigned cases, and do not carry an active caseload as part of their duties. When compared to data compiled from the district attorneys' offices across the state, LOPD ratios are significantly lower than DA statewide average staffing ratios, as illustrated in the

following charts and graphs. Administrative staff includes fiscal, human resources, information technology, and administrative support staff.

Filled FTE	District Attorneys' Offices & AODA	LOPD
Attorneys	307	195
Clerical	200	46
Investigators	60 *	24
Paralegals/Specialists	102	61
Victim Advocates/SW	74	19
Information Technology	24	6
Fiscal Services	23	9

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

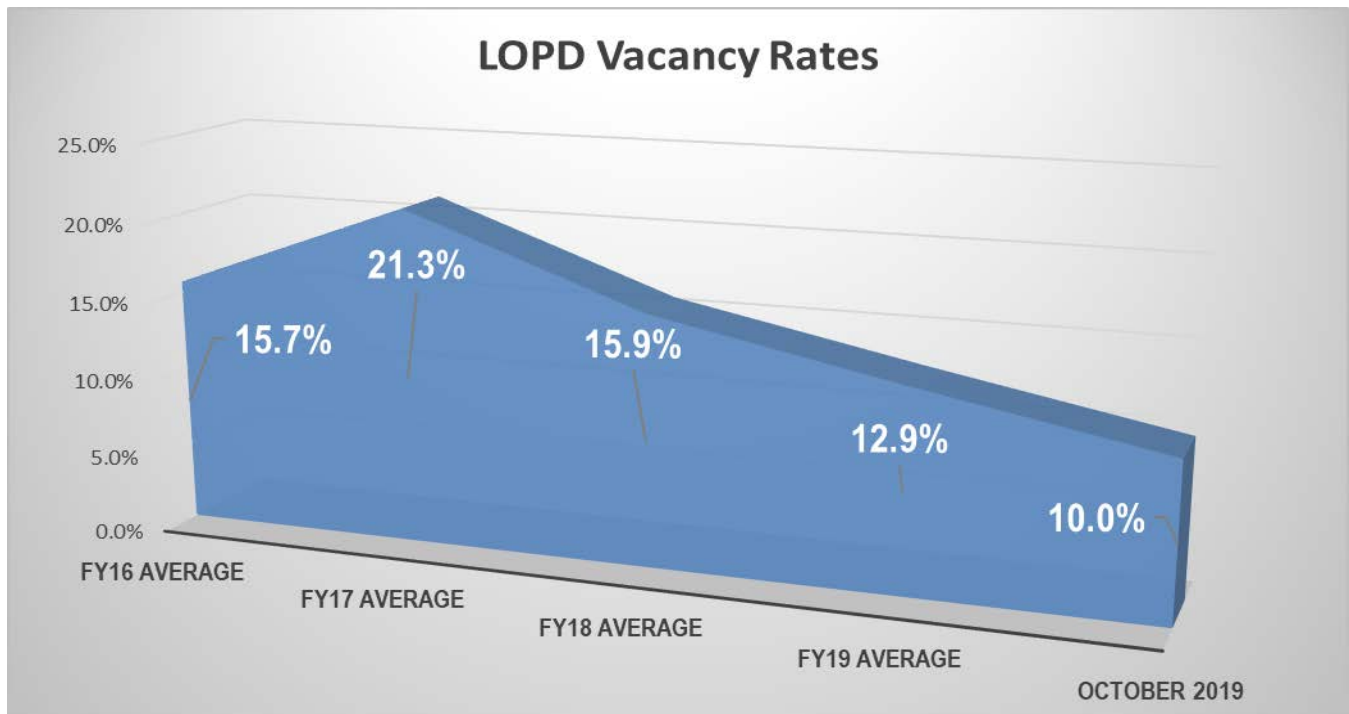
LOPD continues to advocate for the legislature to increase funding necessary for LOPD to "catch up" with others in the system, especially the prosecution. The greater the gap between the two, the more harm to constitutional representation.



Vacancy Rate

LOPD has consistently reduced the vacancy rate. Over the last several years, LOPD has changed recruitment strategy and worked diligently to hire new employees. And as a result, the average vacancy rate was reduced to 12.9% in FY19. Additionally, at the end of

October 2019, the vacancy rate was as low as 10.0%. This is a tremendous feat considering LOPD has 439 FTE spread out among 15 offices around the state. The chart below compares the average vacancy rate by fiscal year since 2016, including the recent vacancy rate.

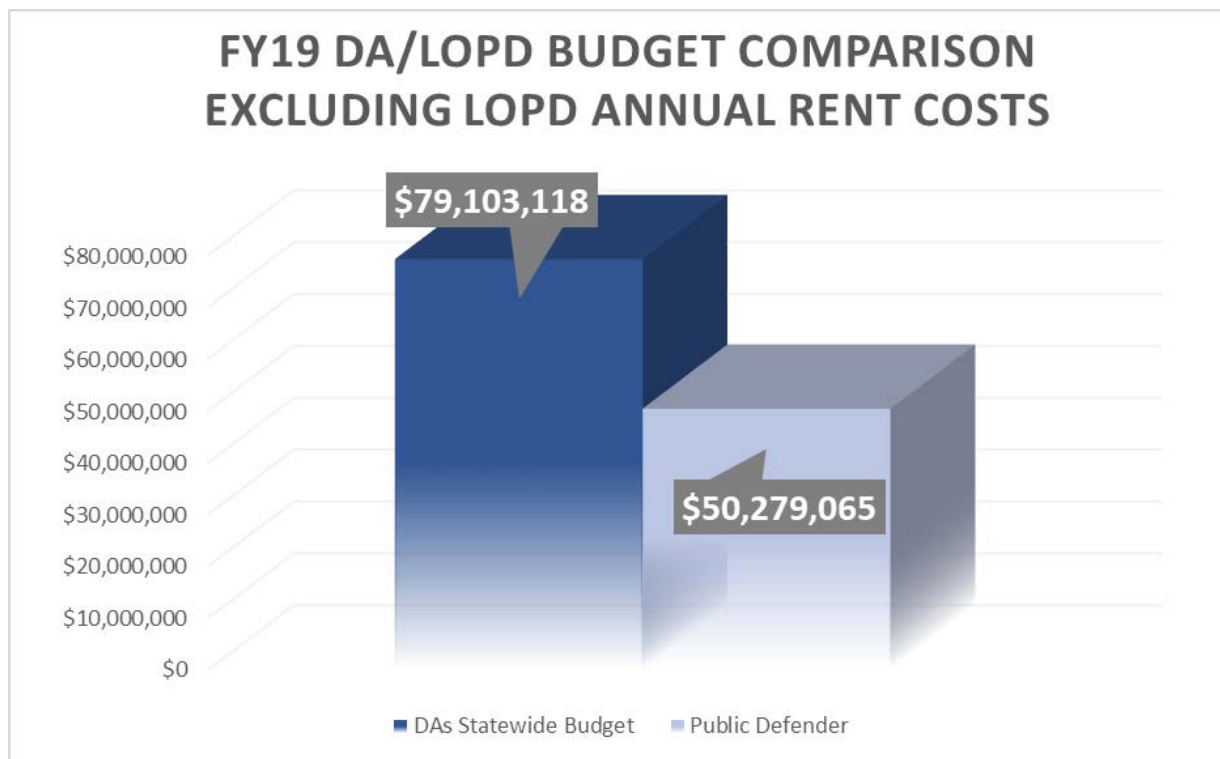


Base Budget Increase Request 3: Facilities Expenses of Escalating Rent, Additional Office Space, and Vehicles. Meet Demand for Non-Professional Experts.

- ✓ In FY2019, LOPD paid over \$2.4 million dollars in rent.
- ✓ LOPD leases and pays rent for space at all of its fifteen different offices. All other criminal justice partners, specifically the courts and district attorneys, are provided facilities by the state or county. In addition, due to proactive recruitment and innovative placement of positions to reduce vacancy rates, additional office space is needed in several cities. Funds are needed for additional space and the lease escalations.
- ✓ Purchase of eight vehicles to be distributed statewide to reduce personal vehicle use to limit liability for the state and employees subsidizing costs.
- ✓ Clients in the counties with LOPD offices have access to an integrated defense team with paralegals, investigators, social workers, and other staff assisting public defender attorneys with cases. Contract defenders request funding for social workers or investigators to assist on a case, especially when a case is unusually complex, likely to be tried or includes a mental health or substance abuse issue.
- ✓ This request will assist to meet increased demand for non-professional experts (investigators and social workers) by contract defenders, which in turn enables

LOPD in meeting performance measures.

- ✓ Total request for this increase is \$657,300.

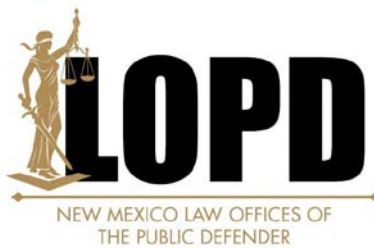


Base Budget Increase Request 4: Continue Data Sharing with Criminal Justice Partners.

- ✓ Data Sharing initiative was funded in FY20 and is underway. The case management interface with SOPA requires annual funding for ongoing implementation due to annual changes in programming established by the Court's SOPA vendor.
- ✓ Data sharing assists in eliminating duplication of work by justice partners, increasing accuracy and improving timeliness on individual cases.
- ✓ The total request for this increase is \$40,000.

Base Budget Increase Request 5: Address Recruitment and Retention Difficulties in Underserved Communities.

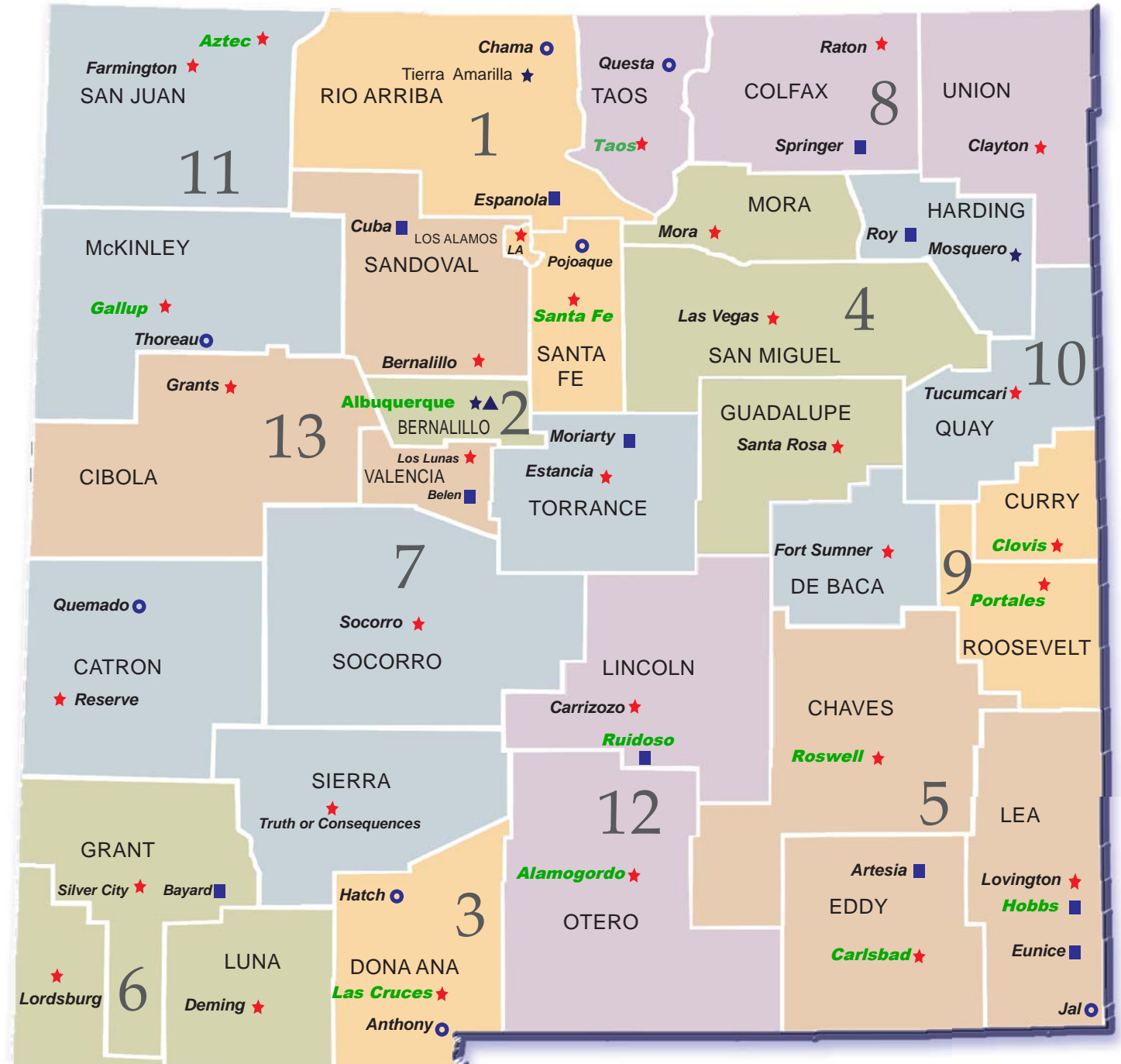
- ✓ Recruitment and retention of attorneys and social workers in underserved communities is an ongoing challenge.
- ✓ LOPD has creatively used geographic pay differentials as a way to reward and acknowledge the willingness to serve New Mexico's rural communities.
- ✓ This funding will support the pay differential which provides an additional incentive to attorneys and social workers interested in dedicating their career to underserved communities.
- ✓ The total request for this increase is \$415,200.



FY20 and FY20-21 List of Special and Supplemental Appropriation and Special Language Requests

1. FY20 Supplemental –Case Defense	\$883,000	To assign cases statewide to provide contract defense attorneys and address excessive workloads stemming from law enforcement initiatives and provide defense litigation expert services for complex, high-profile cases.
2. Special (FY20-FY21)	\$300,000	To increase staffing to decrease recidivism by hiring case managers and a paralegal to allow social worker unit to work directly with clients. Additional staff will also increase efficiency in departmental operations, including recruitment, hiring, contracts, invoicing, auditing, and maximize administrative efficiency to match increased workload.
3. Special (FY20-FY21)	\$100,800	LOPD is reliant on the statewide court system case management interface, known as SOPA Public Access. The courts software developer set up a tiered system where LOPD is required to pay for various types of access. This special funding will be used to pay for approximately 400 employees to access court case information to represent LOPD clients.
4. Deficiency (FY20)	\$154,500	To resolve a negative fund balance from previous years that the public defender department has in the general fund.
5. Special (FY20-FY21)	\$49,700	For legal software to help increase efficiency for attorneys and support staff. To purchase access for entire agency to legal search engine and web based search engine for discovery research.
6. Special (FY20-FY21)	\$200,000	The LOPD will purchase 8 vehicles to replace leased vehicles. Vehicles will be distributed statewide to reduce personal vehicle use, limit liability for the state and employees, and reduce employees strapped with subsidizing costs.
7. FY20 BAR Language	-	The public defender department may request budget increases up to five hundred thousand dollars (\$500,000) in other state funds from the public defender automation fund and from other grant agreements for operating expenses.
8. FY20 BAR Language	-	The period of time for expending the one hundred thirty thousand dollars (\$130,000) appropriated from the enterprise equipment replacement fund in Subsection 25 of Section 5 of Chapter 27 of Laws 2019 to integrate the public defender department's case management system with the administrative office of the court's odyssey system is extended through fiscal year 2021.

NEW MEXICO COURTS and LOPD OFFICES



- 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

Law Offices of the Public Defender

New Mexico Counties without LOPD Offices are marked in Orange

New Mexico Counties with LOPD Offices are marked in Blue

