



**AGENCIES:** Administrative Office of the Courts, Public Defender Department, 2<sup>nd</sup> Judicial District Court, 2<sup>nd</sup> Judicial District Attorney

**DATE:** September 29, 2017

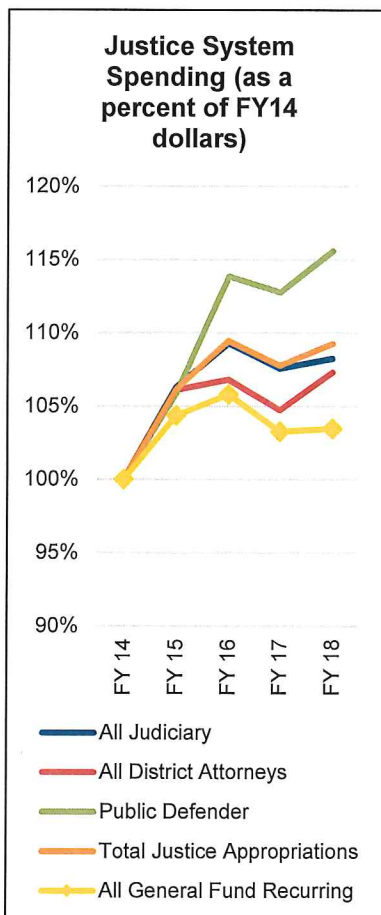
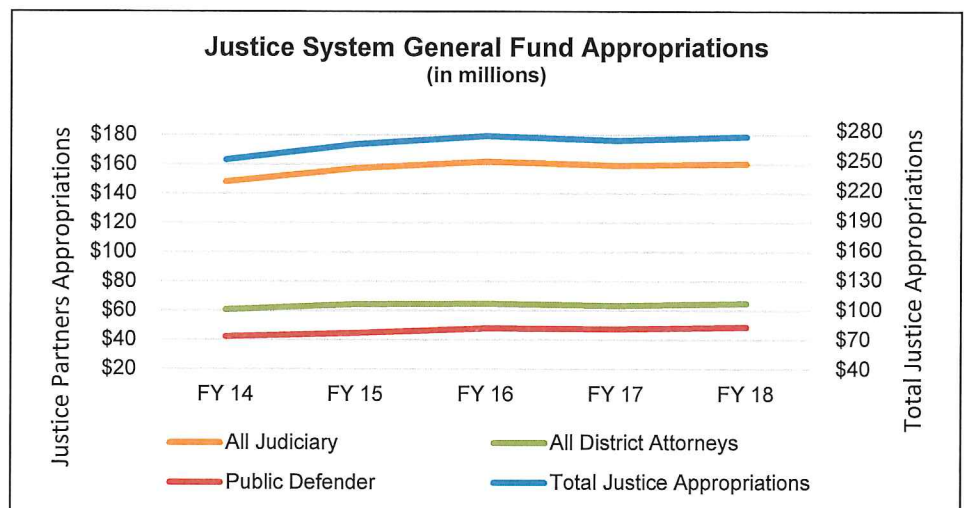
**PURPOSE OF HEARING:** Update on workloads and reforms in the justice system

**WITNESSES:** Artie Pepin, Director; Ben Baur, Chief Public Defender; Nan Nash, Chief Judge; Raul Torrez, District Attorney

**PREPARED BY:** Ismael Torres

## BACKGROUND INFORMATION

Although statewide revenues have contracted, the “three-legs of the justice system,” which include the courts, the district attorneys, and the public defenders, have collectively grown an average 2 percent per year over the last five years, and are 9 percent higher than in FY14. Increases in cases entering the system, as measured by number of cases referred to all district attorneys for the same time period year-over-year, grew an average 1 percent per year. Additionally, automation in the courts, reforms in the justice system, and high vacancy rates across departments continue to motivate these three justice partners to better manage operations within budget constraints.



Besides maintaining constitutional standards of justice, reforms in pre-trial release and detention, the Case Management Order, shifts towards intelligence-driven public safety, and crime rates all present significant challenges to the judicial system. Due to the interconnected nature of the justice partners, solutions are difficult to reach which satisfy all stakeholders involved. Recently, districts have begun to host Criminal Justice Coordinating Councils which bring together all members of the justice system to discuss existing issues and problems as they arise, in hopes of reaching consensus solutions. Additionally, better performance measures are needed to determine the success of changes within the justice system.

## Workload Background

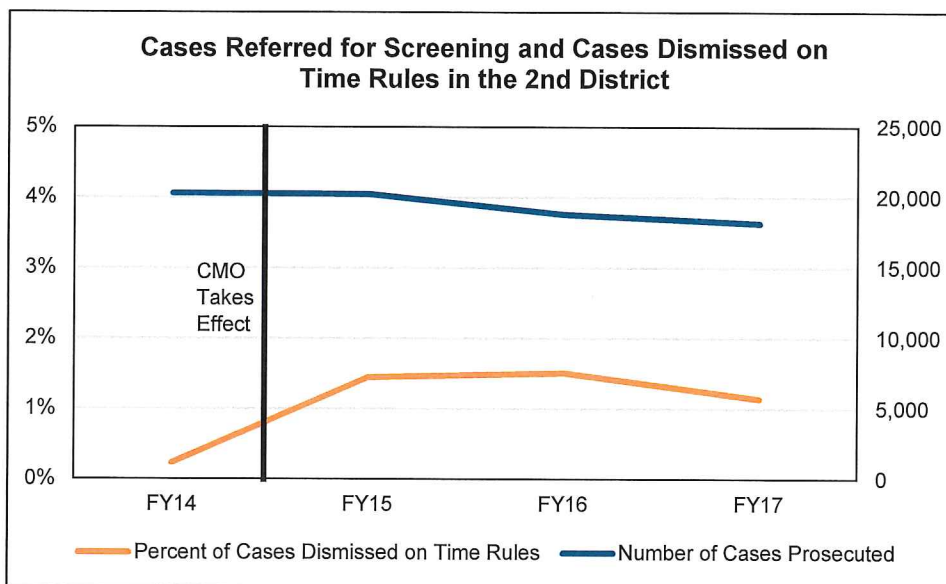
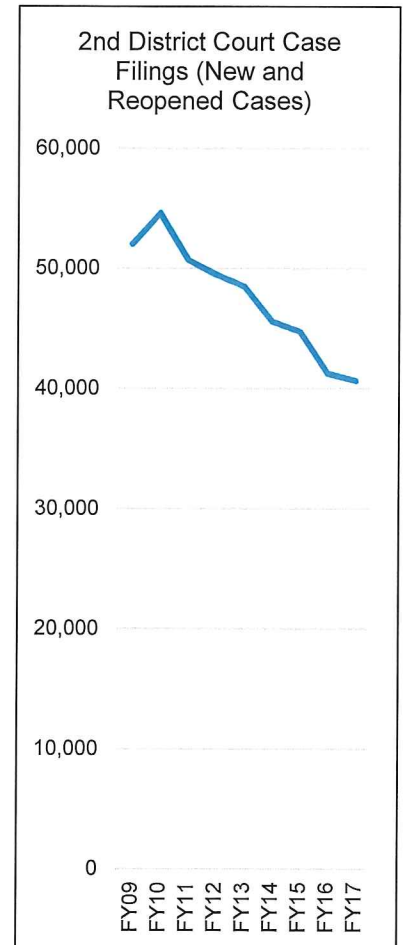
The number of cases assigned to the Law Offices of the Public Defender grew almost 9 percent between FY14 and FY17, while cases referred for screening to district attorneys throughout the state stayed mostly flat and total caseload for the district courts dropped. Total cases in the district courts declined from about 400,000 in FY14 to 350,000 in FY17, driven by a drop in the 2nd Judicial District. Caseloads are the primary driver of costs in the justice system. In the 2017 Legislative Session, a bill was passed to

remove penalties of incarceration, but was vetoed by the governor. The bill would significantly reduce caseloads for the Public Defender Department which represents indigent clients who face prison time.

## Case Management Order

The Case Management Order (CMO) took effect in the on February 2, 2015 in the 2<sup>nd</sup> Judicial District, through an order by the Supreme Court. The order is intended to ensure the delivery of fair and speedy criminal justice be afforded to those accused of crimes in Bernalillo County. Prior to the order, the 2<sup>nd</sup> Judicial District Court had 2,600 active back-logged cases, meaning cases languished for at least 18 months and sometimes several years. Today, none of those backlogged cases remain pending in the courts. Additionally, the 2<sup>nd</sup> Judicial District Court estimated approximately 4,200 inactive cases more than 18 months old (cases where a defendant failed to appear and an arrest warrant was issued) would become active if the defendant was returned to custody. More than 1,000 inactive backlogged cases were disposed and nearly 4,000 backlogged cases in total were brought to disposition between February 2015 and early 2017. In order to meet these self-imposed deadlines and dispose of backlogged cases, the court experienced a 253 percent increase in the number of trials during 2015 and 2016.

In the 2<sup>nd</sup> District Attorney’s office, the CMO is reportedly increasing the backlog of cases waiting prosecution. A report written by the 2<sup>nd</sup> District Attorney’s office in June asserts the rules offer the defense a “win by default” if the case is not brought within a timely manner, as established by CMO rules. The report argues this discourages the defense from working with the state towards early resolution, on the chance that the state is unable to comply with the time rules. Furthermore, the district attorney’s office must produce discoverable information and an indictment within 10 days of filing. The report insists that less indictments are resulting, or that more indictments are being delayed, because the district attorney would not be able to meet the deadline on those indictments.



Although the average number of cases dismissed due to rules on time statewide averaged 0.6 percent, the 2<sup>nd</sup> Judicial District Attorney’s Office reported 1.1 percent of cases were dismissed due to time rules in their jurisdiction. This was the third highest for the state, where the 8<sup>th</sup> and 13<sup>th</sup> judicial district attorneys reported a higher percentage of cases dismissed due to time rules, despite no CMO in those locations.



In order for a defendant to be held pre-trial, a prosecutor must file a written request with the court and show clear and convincing evidence that pretrial jailing is necessary for the public safety. Under previous bail practices, dangerous defendants could be released if they could afford a money bond.

Bail bonds do not incentivize meeting release conditions or dis-incentivize committing a new crime.

According to the Council of State Governments, about 17 percent of people entering jails nationally meet criteria for a serious mental illness and are suitable candidates for behavioral health treatment. In February 2015, the Bernalillo County Board of Commissioners approved a one-eighth percent gross receipts tax to generate \$20 million each year for behavioral health services in Bernalillo County.

For the Public Defender Department (PDD), the CMO has meant increased trial workloads up front, since cases require greater effort in a shorter period of time. In the 2<sup>nd</sup> Judicial District, the PDD has the highest concentration of staff, allowing for the increased workload to be distributed among staff attorneys. Should the CMO be considered for statewide adoption, the PDD may not have sufficient personnel to meet the increased burden. Prior to the CMO, the public defenders experienced higher caseloads which averaged disposition times of over one year. Since the CMO, the public defenders in the 2<sup>nd</sup> Judicial District have reported lower caseloads with quicker disposition rates, although the cases have become accelerated with an additional burden of tracking time rules and calendars for each staff attorney.

## Pre-trial Release and Detention

On July 1, 2017, the pre-trial release and detention procedures for all courts in New Mexico changed in accordance with the constitutional amendment adopted by voters in 2016. The amendment was two-fold: it made clear defendants who are not dangerous or a flight risk cannot be held in jail awaiting trial solely because they cannot afford a bail bond and, for the first time in state history, district court judges could lawfully hold felony defendants in jail before trial if they were deemed too dangerous for release.

The success of pretrial reforms is difficult to determine, as data collection and performance measuring, is not well developed.

### Public Safety and Risks

Requiring defendants to post a money bond does not deter them from committing new crimes while awaiting trial. Under current state law, a money bail bond is not forfeited if a defendant is arrested for a new crime while released pretrial on another charge. Furthermore, money bonds are not forfeited if a defendant violates conditions of release such as failing a drug test, obtaining a weapon, or violating curfew. Therefore, bail bonds do not incentivize meeting release conditions or dis-incentivize committing a new crime.

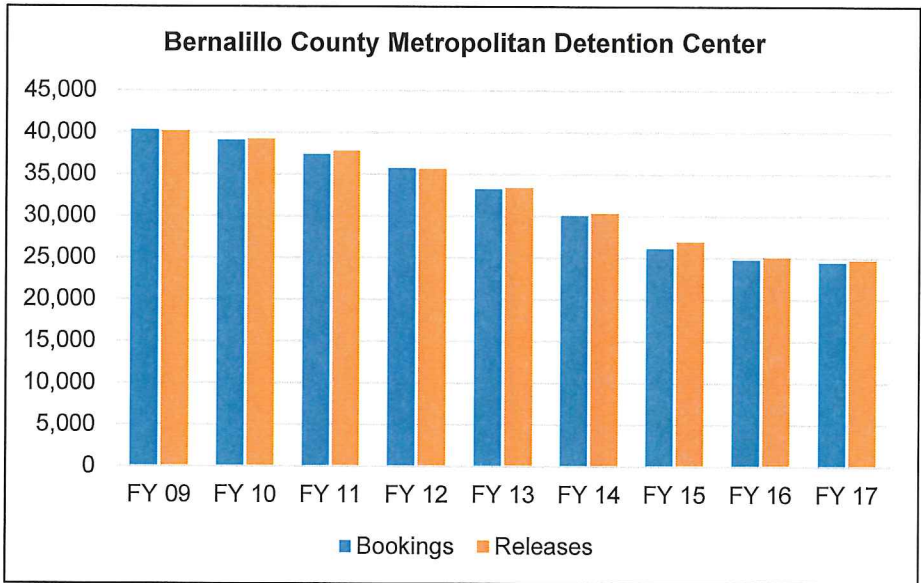
Under the new amendment, courts must consider nonfinancial bail conditions, such as requiring house arrest to confine the defendant to a residence and a GPS ankle monitor to track the person's location, and barring any contact with the crime victim. Since nonfinancial bail conditions are now prioritized, this has caused pretrial services costs to rise. Pretrial services in the 2<sup>nd</sup> Judicial District are receiving additional funding to cover such expenses from Bernalillo County. Tracking, monitoring, and drug testing are common in pretrial release conditions.

From July to September, the 2<sup>nd</sup> Judicial District Attorney has filed 304 motions for pretrial detention. Of those motions, 120 cases were granted by the court, or 39.5% of the motions were granted. Unlike in the previous system, these 120 cases will not have an opportunity to post money bail to be released while they await trial.

In a county in Maine, a similar program took effect in November 2015. Since its implementation, participants appeared in court 98% of the time, according to the Pretrial Justice Institute.

### Effects on the Justice System

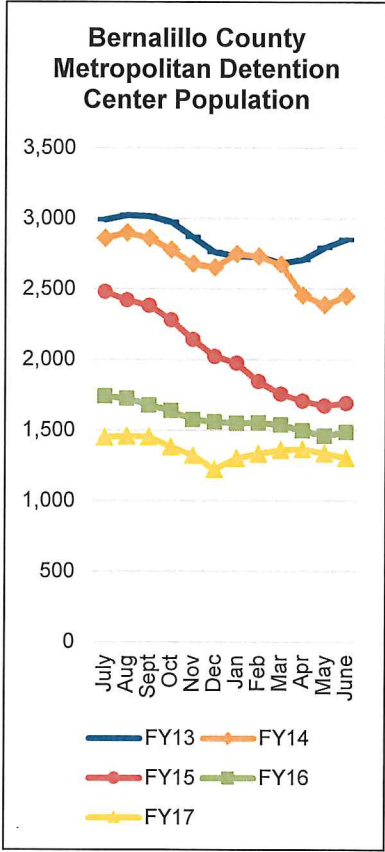
Although costs for pretrial services are expected to rise, a net savings for counties under the new amendment is projected. In Bernalillo County, early estimates project an increase of \$1 million in pretrial services is offset by an approximately \$12 million of jail costs savings. Other jurisdictions that have adopted similar practices experienced jail population declines on average 20 percent to 30 percent, as the number of incarcerated individuals who cannot afford money bail are no longer held.



Although counties are expected to experience savings from the new amendment, the courts, district attorneys, and defenders are expected to experience increasing workloads. Pretrial hearings to determine the detention of a defendant requires that a judge make a determination at the request from the district attorney’s office, which requires substantial discovery. Furthermore, the defender must work with the defendant prior to the hearing to mount a proper defense against such detentions.

### Intelligence-Driven Public Safety

Although the Case Management Order and the Pretrial amendment have increased workloads on the justice system, an opportunity remains from more efficiently utilizing existing resources to produce desirable public safety outcomes. Since courts may now detain dangerous defendants, district attorneys have an opportunity to prioritize the most violent crimes to encourage their detention. Tools used by the 2<sup>nd</sup> Judicial District Court such as the Arnold Foundation Public Safety Assessment (PSA), use data models to assess the dangerousness of defendants based on crime history, and other information. This tool is one of the methods that can help identify cases that may require additional resources so the justice system can efficiently prioritize cases within given resources. The PSA is provided by the Arnold Foundation at no cost to the 2<sup>nd</sup> Judicial District Court.



Since July, the public defenders in the 2<sup>nd</sup> Judicial District have defended 200 pretrial detention motion hearings. The Public Defender Department is estimating that there will be 1,125 pretrial detention hearings in the 2<sup>nd</sup> Judicial District in one calendar year. Each hearing requires about three to four attorney hours, which projects an additional 3,375-4,500 attorney hours in the 2<sup>nd</sup> Judicial District in one calendar year as a result of the pretrial amendment.



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Bloomberg philanthropies recently sponsored a delegation of New Mexico government officials, legislators, and Albuquerque business leaders to visit the San Francisco District Attorney's office to learn about their experience with intelligence-driven prosecution. Staff from San Francisco shared tools and strategies of their Crime Strategies Unit (CSU), a group of more than 20 staff whose mission is to improve public safety. The CSU, established in 2014, uses cellular phone data, mapping software, criminal network mapping technology and other tools to investigate and prosecute criminals identified as being central to crime patterns. The CSU indicated startup costs of their unit were minimal, since resources were the result of repurposing staff, external grants, and National Guard analysts. The New Mexico 2<sup>nd</sup> Judicial District Attorney indicated his office will be pursuing the implementation of a similar unit with the added goal of implementing a data driven risk assessment tool to focus resources from low risk offenders to high risk offenders, and to utilize behavioral health treatment for lower risk offenders.

## **Suggested Performance Measures:**

- Appearance rate: the percentage of supervised defendants who make all scheduled court appearances.
- Reoffenders: number (or percentage) of supervised defendants who are not charged with a new offense during the pretrial stage.
- Concurrence rate: the ratio of defendants whose supervision level or detention status corresponds with their assessed risk.
- Success rate: the percentage of released defendants who don't violate conditions of their release, appear for all scheduled court appearances, and are not charged with a new offense during pretrial supervision.
- Pretrial detainee length of stay: the average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.
- Pretrial detention rate: proportion of pretrial defendants who are detained throughout pretrial case processing, or proportion of pretrial detention motions granted.

## **Performance Measures**

In order accurately measure the effectiveness of pretrial reforms and the Case Management Order, new data needs to be collected. Although some information relevant to these topics exists in various locations such as jails, police departments, sheriffs' offices, or corrections department, the justice system should measure those relevant within departmental purview. LFC has requested expanded measures and quarterly reports from the Public Defender Department and all district attorneys for several years. Although the courts have already been reporting quarterly, the other two justice partners are set to begin quarterly reports this fiscal year.

## **Questions**

1. What is the conviction rate of those that make it to trial?
2. Are cases currently being prioritized for their seriousness, or danger to the public?
3. How can the court, the district attorney, and the public defender coordinate to focus resources on the most serious cases?
4. What is Bernalillo County doing with the savings from lowered jail populations? Can Bernalillo County use those savings to invest in behavioral health services to alleviate the burden on the justice system in the 2<sup>nd</sup> Judicial District?
5. How are the courts, the public defender, and district attorney working to fill vacant positions?
6. What grants and outside resources are available to your court/agency/department? Currently, what is being done to secure outside funding?
7. What is the 2<sup>nd</sup> District Attorney's Office doing to electronically file old and backlogged cases into the statewide Case Management System?



# PERFORMANCE REPORT CARD

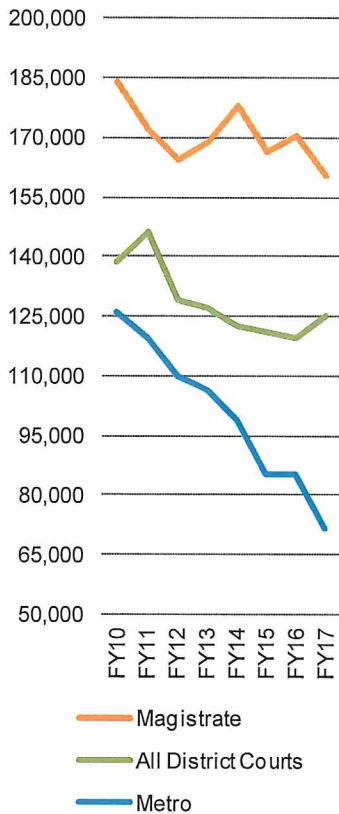
Administrative Office of the Courts  
Fourth Quarter, Fiscal Year 2017

### AGENCY IMPROVEMENT PLANS

Submitted by agency? Partial  
Timeline assigned by agency? No  
Responsibility assigned by agency? No

The judiciary implemented new jury management software which will allow for more detailed performance reporting in the coming years. Due to the software implementation, new and more detailed measures will be reported annually for FY18 before moving to quarterly for FY19.

**Total Court Case Filings by Fiscal Year (New and Reopened Cases)**



Source: AOC

The Judicial branch was challenged in many ways in FY17, including a new constitutionally mandated pretrial release and detention policy, budget shortfalls that threatened to partially shut courthouses one or two days a week, allegations of inadequate or inability to provide proper defense counsel, and questions about whether every case should be prosecuted. However, any effort to address these judicial challenges is complicated by a lack of performance data and high-profile media coverage.

Data-driven allocation of resources could help alleviate some of the challenges the judicial branch faces and the Administrative Office of the Courts (AOC) implemented new systems to track cases, dispositions, jury costs, workload, and case outcomes. AOC will report more robust measures and data beginning in FY18 and efforts to include data from district attorney offices and the Public Defender Department show more promise than ever before.

Initial judicial reforms, such as the new pretrial release and detention policy, use of the Arnold Foundation assessment tool, and the case management order in the 2nd Judicial District have added additional burdens to the courts. Despite such challenges, changes to the courts present an opportunity to improve the justice system and public safety.

**Administrative Support.** The number of jurors paid increased because payments were delayed in FY16, which carried over into FY17. Taking the delay into account, the number of jurors paid in FY17 remains on average with other years. The average cost per juror decreased in FY17, but exceeded the target by almost 20 percent. Legislation passed in the 2017 regular legislative session restricted mileage reimbursements to over 40 miles round-trip, which is expected to lower the average cost per juror further in FY18.

**Budget:** \$12,400.3 **FTE:** 49.2

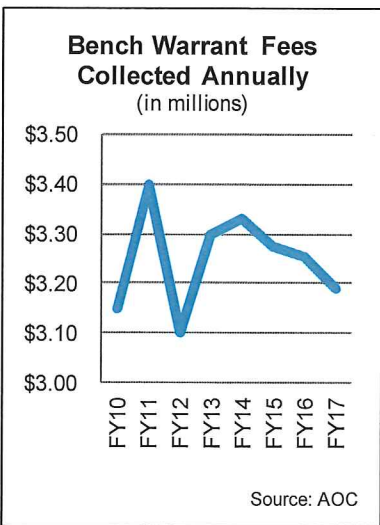
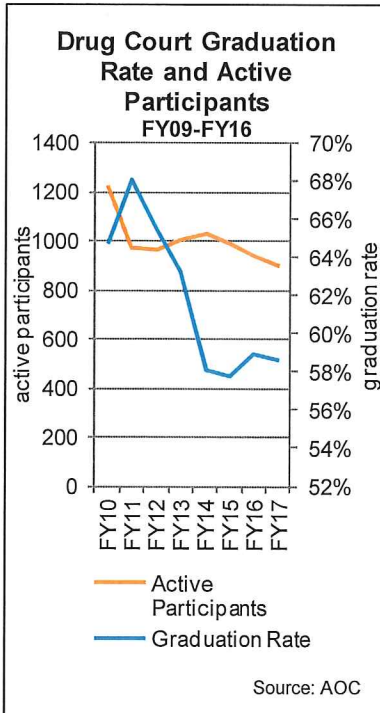
Measure	FY15 Actual	FY16 Actual	FY17 Target	FY17 Actual	Rating
Number of jurors paid	59,876	53,562	n/a	63,940	Y
Average cost per juror	\$59.85	\$67.44	\$50.00	\$59.72	Y
<b>Program Rating</b>					<b>Y</b>

**Statewide Judiciary Automation.** At the end of FY16, the AOC updated its helpdesk application into new help topics, began logging every issue, and implemented a new triage and request distribution process. This process provides more detailed information for each individual ticket, but resulted in increased time to resolve calls over the FY16 average by 391 percent.

Attorneys and members of the press must be registered in the Secure Odyssey Public Access system which eases online access to court records, but places additional burdens on the helpdesk staff. Additional staff is needed to address the issue.



The slight increase in the number of cases assigned a Court Appointed Special Advocate volunteer in FY17 reflects the increase in the number of open child abuse and neglect cases in the state. However, Cibola County which experienced above average staff turnover in the past year, reported lower numbers of volunteers, participation, and training.



**Budget:** \$9,175.9 FTE: 53.5

**Measure**

Average time to resolve calls for assistance, in hours  
 Help desk calls resolved  
 Judicial computer user qualitative rating of help desk support

	FY15 Actual	FY16 Actual	FY17 Target	FY17 Actual	Rating
Average time to resolve calls for assistance, in hours	3.9	16.2	4.0	79.6	R
Help desk calls resolved	n/a	27,376	n/a	30,122	G
Judicial computer user qualitative rating of help desk support	97.5%	97.2%	n/a	96.8%	G
<b>Program Rating</b>					Y

**Special Court Services.** The AOC supplements the administration of the Court Appointed Special Advocates (CASA) program in order to strengthen local programs by providing resources to aide in recruitment, supervision, training, and retention of advocates. Performance results for FY17 for the average number of children, cases, and child visitations remained about the same as previous years.

**Budget:** \$12,181.4 FTE: 6.5

**Measure**

Children assigned to Court Appointed Special Advocate volunteers  
 Cases assigned to Court Appointed Special Advocate volunteers  
 Monthly supervised child visitations and exchanges conducted.

	FY15 Actual	FY16 Actual	FY17 Target	FY17 Actual	Rating
Children assigned to Court Appointed Special Advocate volunteers	1,855	1,741	1,200	1,809	G
Cases assigned to Court Appointed Special Advocate volunteers	1,010	993	1,000	1,019	G
Monthly supervised child visitations and exchanges conducted.	1,047	1,049	1,000	1,102	G
<b>Program Rating</b>					G

**Magistrate Court.** Despite high vacancies and nearly 30 percent turnover rates for court clerks this fiscal year, magistrate courts accomplished a disposition rate greater than 100 percent. This indicates that the courts closed every case filed in the year as well as a portion of the backlogged cases on the docket. Furthermore, bench warrant revenue exceeded the target of \$3.1 million.

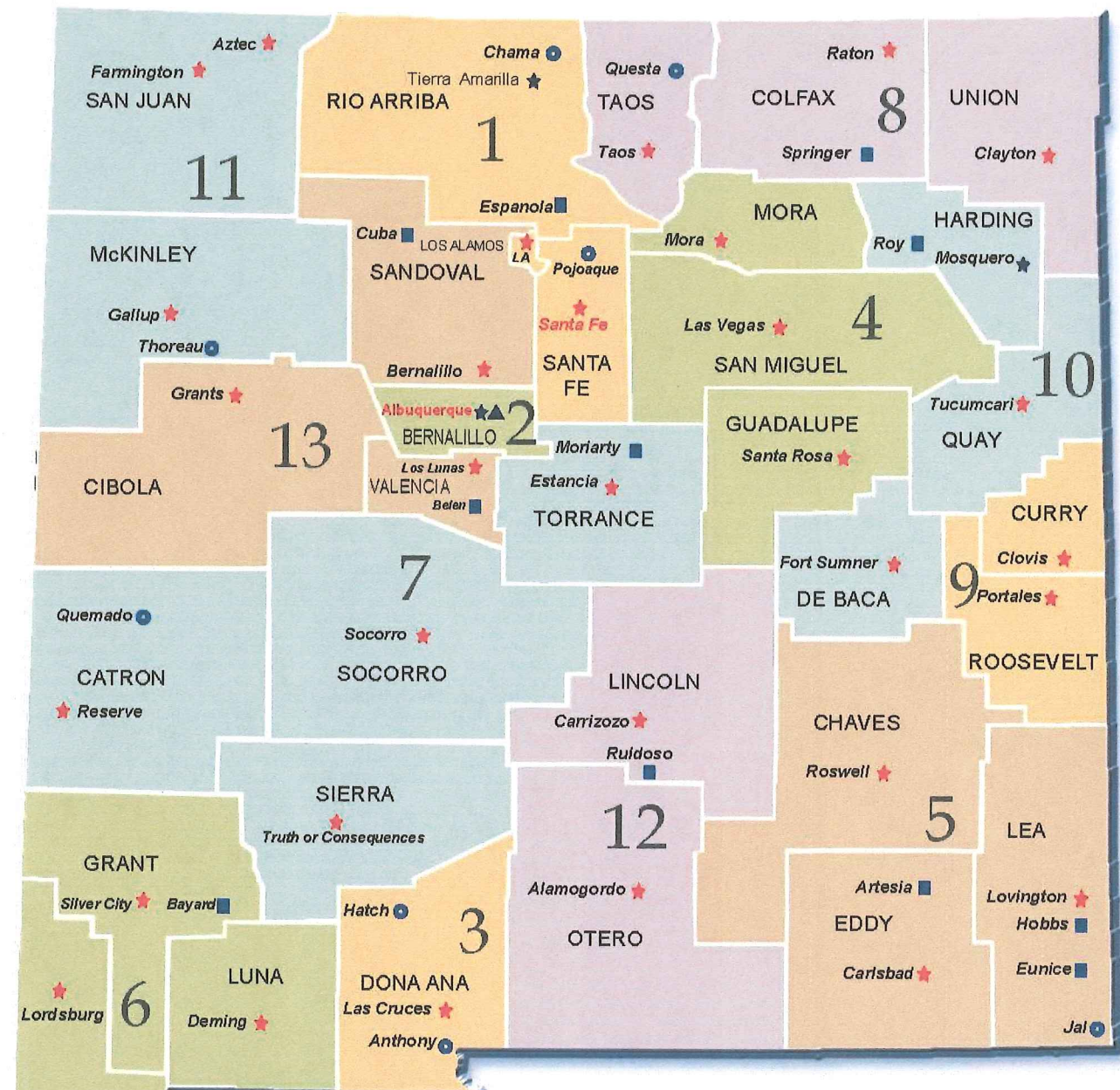
**Budget:** \$31,046.0 FTE: 343.5

**Measure**

Cases disposed as a percent of cases filed  
 Bench warrant revenue collected annually, in millions

	FY15 Actual	FY16 Actual	FY17 Target	FY17 Actual	Rating
Cases disposed as a percent of cases filed	102%	102%	95%	101%	G
Bench warrant revenue collected annually, in millions	\$3.27	\$3.25	\$3.10	\$3.19	G
<b>Program Rating</b>					G

# NEW MEXICO STATE COURTS



09/16/13-clr

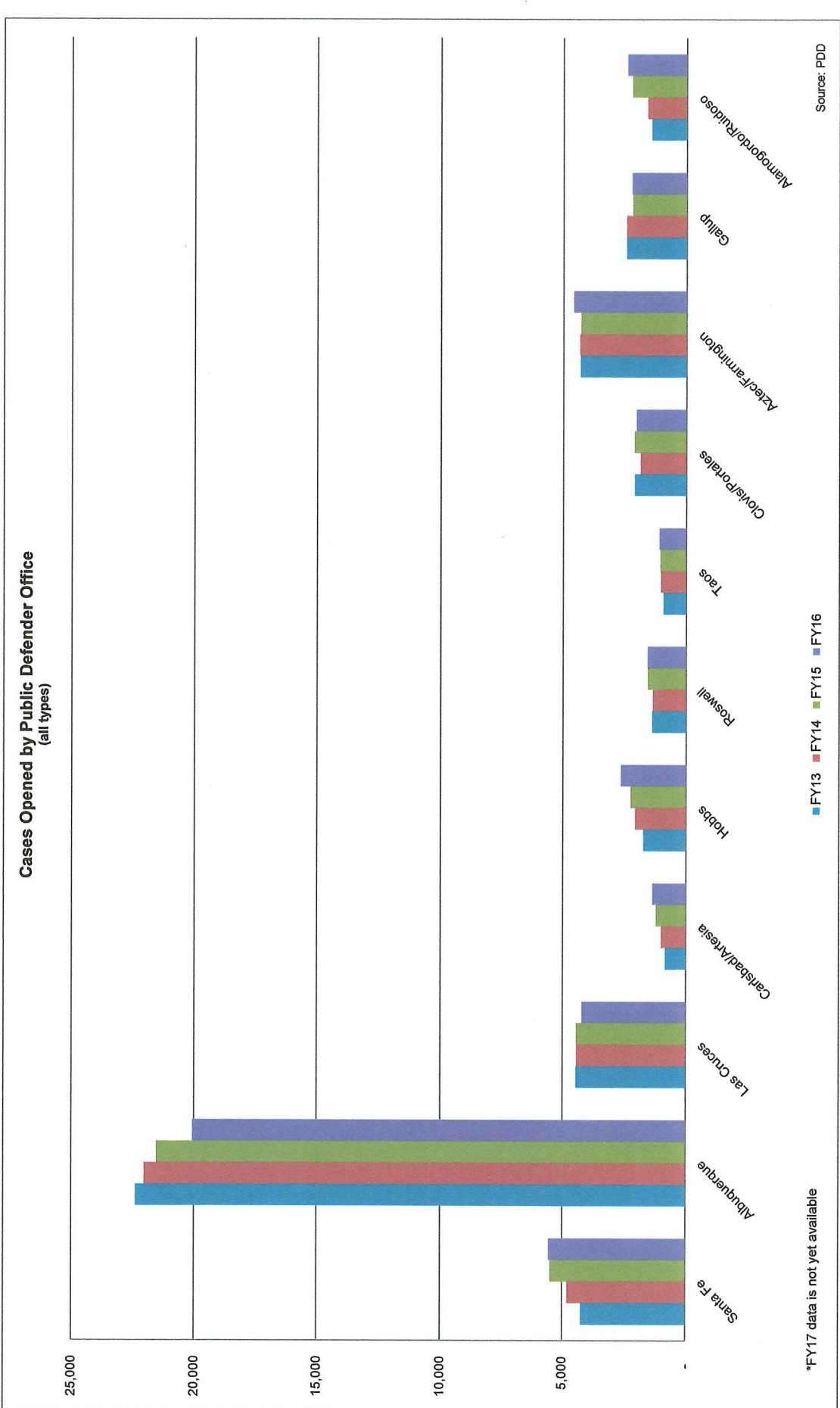
- 1<sup>st</sup> Judicial District Court**  
Santa Fe, Rio Arriba & Los Alamos
- 2<sup>nd</sup> Judicial District Court**  
Bernalillo
- 3<sup>rd</sup> Judicial District Court**  
Doña Ana
- 4<sup>th</sup> Judicial District Court**  
San Miguel, Mora & Guadalupe
- 5<sup>th</sup> Judicial District Court**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

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

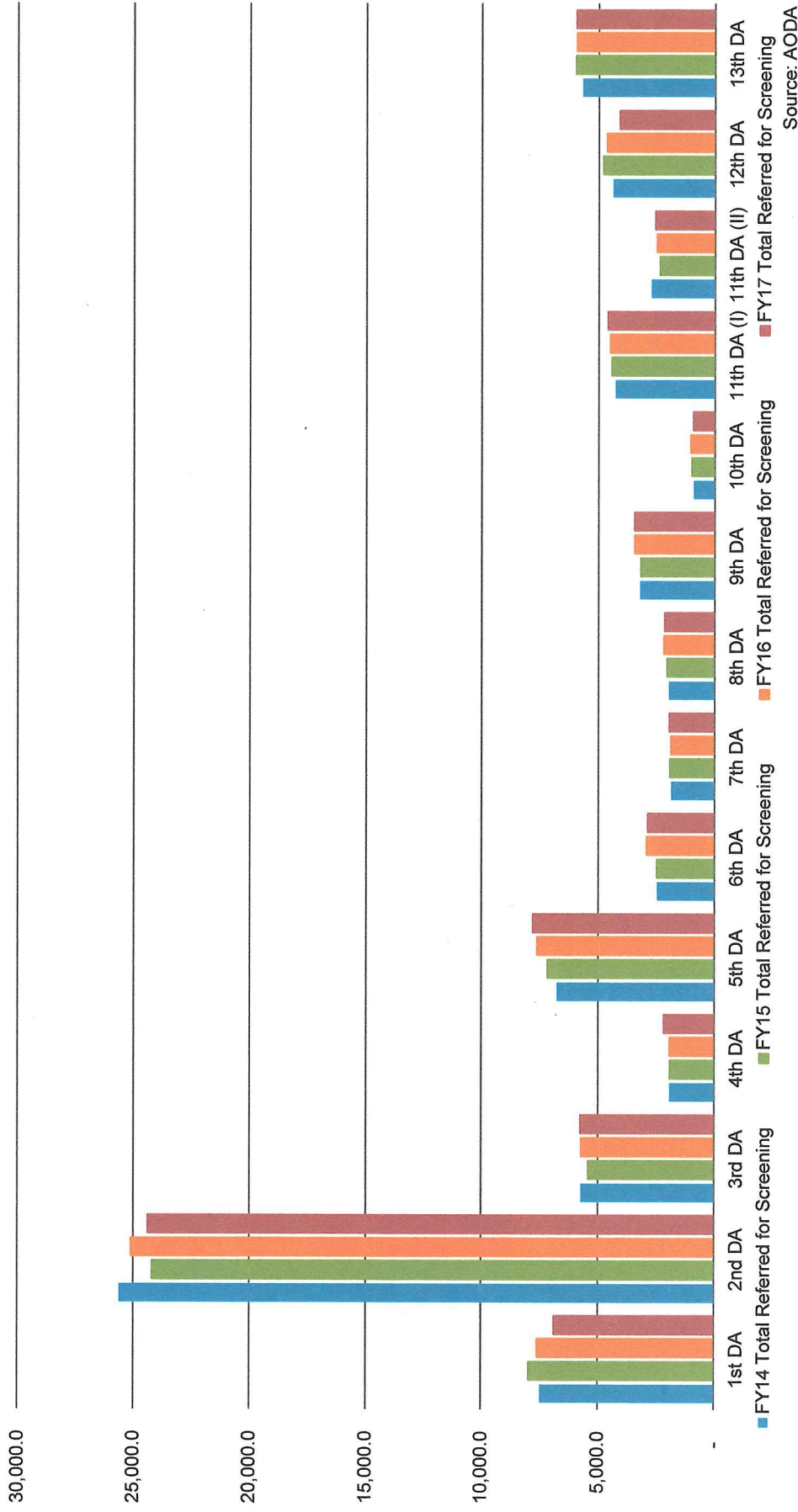
- Supreme Court**  
Santa Fe
- Court Of Appeals**  
Santa Fe & Albuquerque

- ★ District & Magistrate Courts
- ★ District Courts
- ▲ Metropolitan Court
- Magistrate Full Courts
- Magistrate Circuit Courts





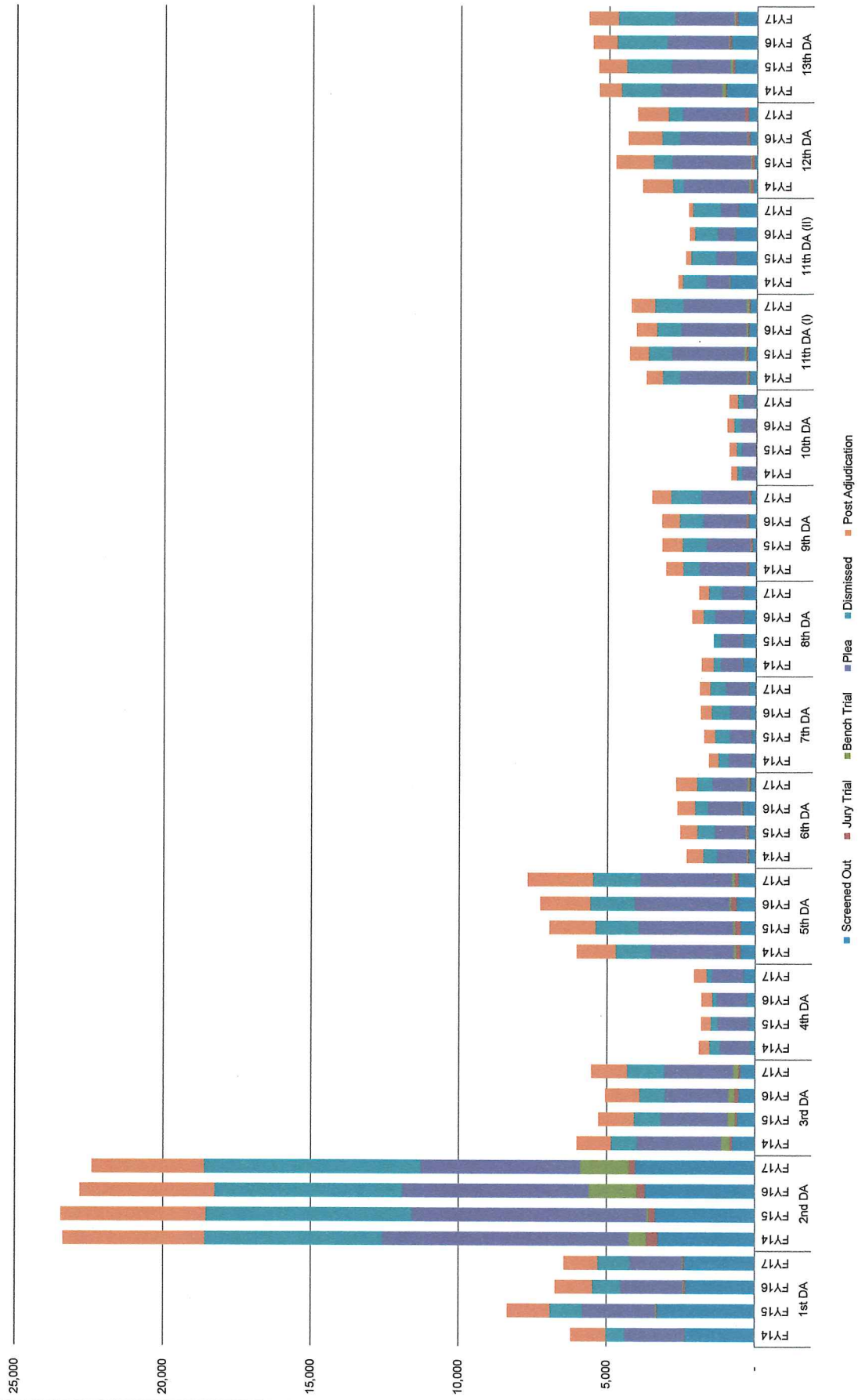
### Total Cases Referred to District Attorneys Offices FY14-FY16



Source: AODA



Cases Disposed by Disposition Type  
(FY14-FY17)



Source: AODA

**Total Court Case Filings by Fiscal Year  
(New and Reopened Cases)**

