

# Legislative Finance Committee Meeting



NEW MEXICO  
**LAW OFFICES** OF THE  
**PUBLIC DEFENDER**

**Thomas Joseph Clear III,  
Chair, Public Defender Commission**

**Bennett J. Baur,  
Chief Public Defender**

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**LOPD 2023 Strategic Plan and  
Annual Report is located [HERE](#).**



# New Mexico Public Defender Commission

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**Thomas Joseph Clear, III, Chair (Albuquerque)**

**Raymond Sanchez, Vice Chair (Albuquerque)**

**Daniel Banks, Secretary (Artesia)**

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Hugh Dangler (Santa Fe)

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Melissa Sawyers (Hobbs)

Hon. Michael Vigil, Ret. (Santa Fe)



**FY23 Base Budget Increase Request**  
**10.7%      \$6,149,000**

<b>Expand social work and defense team by expanding direct support services to clients</b> (29 FTE = 8 attorneys, 18 direct client services, 3 investigators)	<b>\$2,248,000</b>
<b>Data analyst and organizational support of employees (6 FTE)</b>	<b>\$517,000</b>
<b>Pay equity</b>	<b>\$375,000</b>
<b>Essential compensation for contract attorneys and trial expenses</b>	<b>\$2,650,000</b>
<b>Increased support and oversight of contractors, complex case compensation, and data collection/analysis (2 FTE)</b>	<b>\$207,000</b>
<b>Other needs: Compensation for contract social workers, contract investigators, support recruitment for rural communities, and funding lease escalation</b>	<b>\$152,000</b>

**FY22-23 List of Special Appropriations and Special Language Requests**

1. Special: Case Defense (FY22-FY23)	\$230,000	For accounts to provide access to electronic discovery and software to help increase efficiency for attorneys and core staff and improve client representation.
2. Special: Case Defense (FY22-FY23)	\$845,000	To address expenses related to the delayed resolution of trial cases in previous fiscal years due to COVID-19, defense of complex cases, including increase in high profile murder cases, complex case compensation to contract attorneys, projected need to assign and overflow cases to address excessive workloads stemming from backlog of jury trials and associated trial costs including expert witnesses deferred due to COVID-19.
3. Special: Equipment needs	\$429,000	Equipment to meet needs stemming from C2 request and virtual meetings with clients and virtual court hearings.
4. BAR Language (FY23)		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.

### **Base Budget Increase #1: Expand social work and defense team by expanding direct support services to clients**

- Request for 29 FTE, including 8 attorney FTE, 18 FTE providing direct client services, comprising 4 social workers and 8 peer case managers to assess client substance abuse and mental health needs and to engage clients towards recovery.
  - Social workers develop recommendations for appropriate pretrial release, treatment options, conditions of probation, and sentencing options. Social workers are able to connect with defendants by influencing treatment and rehabilitation at the time when the individual is most likely to accept help.
  - The peer case managers will work with the social workers by maintaining consistent communication and support to assist clients navigating the criminal justice system and the path to recovery.
  - 8 attorney FTE to represent clients, with 7 being assigned to rural communities and 3 investigators to assist attorneys with case defense. 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.
- In light of the pandemic, there is an increased need for mental health support for New Mexicans and there is an expected increase in support for addiction(s) and/or other mental health diagnoses, which requires additional social work resources to connect clients with treatment and reduce the number of people reentering the criminal legal system. Drastic increase in New Mexico's unemployment rate results in increase of defendants qualifying for public defender representation and increased need for services to rural communities, and additional work to adequately represent clients in the midst of the COVID-19 pandemic.
- The cost of this request is \$2,248,000 in the 200's category.

### **Base Budget Increase #2: Provide organizational support of employees and expand data collection and analysis of LOPD data and criminal case data**

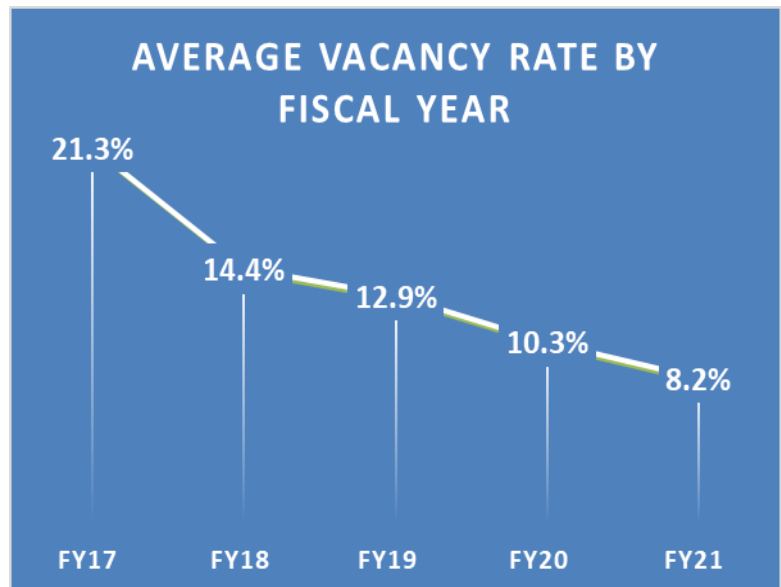
- Request includes 2 FTE to assist in serving 443 employees and 130 contractors supported by the information technology team (currently comprised of only 6 core staff FTE).
- 3 FTE to provide organizational support and services to employees including fiscal services, human resources, and a paralegal to work with general counsel on IPRA responses, client complaints, and statewide litigation.
- 1 FTE for a data analyst to assist with reporting on performance measures and assist in expanding data collection for LOPD and analysis of criminal case data.
- The cost of this request is \$517,000 in the 200's category.

### **LOPD Vacancy Rate** additional supporting data to request #1 and #2:

- LOPD has successfully reduced the vacancy rate. As a result, LOPD has the capacity to add and fill additional positions allocated statewide.
- Due to proactive recruitment, including the limited practitioner program and innovative placement of positions, LOPD has consistently reduced the vacancy rate

since FY17. LOPD has evaluated the hiring process to eliminate delays to fill positions and proactively plan for anticipated retirements or resignations.

- In FY21, the average vacancy rate was 8.2% (at its lowest, 6.2%) and 10.3% in FY20 (at its lowest, 8.6%).
- However, in FY22 LOPD has not been spared from the “Great Resignation” with 35 attorneys departing in the first 4 months of FY22, which is nearly the total loss for the entire FY21. The average vacancy rate for the first quarter of FY22 was 12.5%.
- Although LOPD’s vacancy rate has shifted, it is still well below the FY21 statewide classified service average of 20% and is still in line with prior year LOPD average vacancy rates.



**Base Budget Increase #3: Pay equity package to address disparities related to gender and time in position to address dedicated employees being left behind while new hires are hired at more competitive hourly pay**

- Package is intended to allow LOPD to address approximately 50 employees identified as needing a pay adjustment over 3 fiscal years – FY23, FY24, FY25.
- This allows LOPD to address gender equity issues, as highlighted in a recent lawsuit filed by 5 current and 2 former female employees.
- Funding also allows LOPD to maintain salaries competitive to other criminal justice partners and public defender offices as LOPD continues to struggle with retaining experienced employees that often depart for competitors. The turnover generates costs above funding the increases and also delays resolution of cases, therefore negatively impacting the client including longer incarceration time and delaying the court’s trial schedules.
- The cost of this request is \$375,000 in the 200’s category. *With additional requests for 3 fiscal years for a total cost of \$1,125,000.*

**Base Budget Increase #4: Essential compensation for contract attorneys and increasing trial costs**

- Backlog of trials due to court shutdown related to COVID-19, which deferred and transferred related expenses for trial including complex case compensation and expert witness to FY22 and FY23.
- Drastic increase in murders and filing of complex cases, which require use of expert witnesses.
- Contract attorneys are compensated at a base rate depending on the type of case. LOPD is funded for base rates that results in contract defenders being paid the following:

<b>Base Fee Rate Per Case Payment to LOPD Contract Attorneys</b>	
<b>Case Type</b>	<b>Payment Per Case</b>
First Degree Murder	\$5,400.00
First Degree Felony Life Imprisonment	\$5,400.00
1st Degree Felony	\$750.00
2nd Degree Felony	\$700.00
3rd Degree Felony	\$645.00
4th Degree Felony	\$540.00
Juvenile	\$300.00
Misdemeanor DWI/DV	\$300.00
Misdemeanor (other)	\$180.00

- In comparison, attorneys that contract on civil matters with the Risk Management Division are compensated hourly. Those hourly rates provide compensation far higher than attorneys representing clients charged with first degree murder or cases that carry a sentence of life imprisonment. The chart below lays out the current rates paid by the Risk Management Division for attorneys to consult and defend the Public Liability Fund.

**Attorneys – Standard Litigation/Assist/Consult Assignments**

<b>Years Experience Practicing Law</b>	<b>Hourly Rate</b>
0 to 1.99 years	\$ 95.00
2 to 4.99 years	\$ 125.00
5 to 9.99 years	\$ 145.00
10+ years	\$165.00

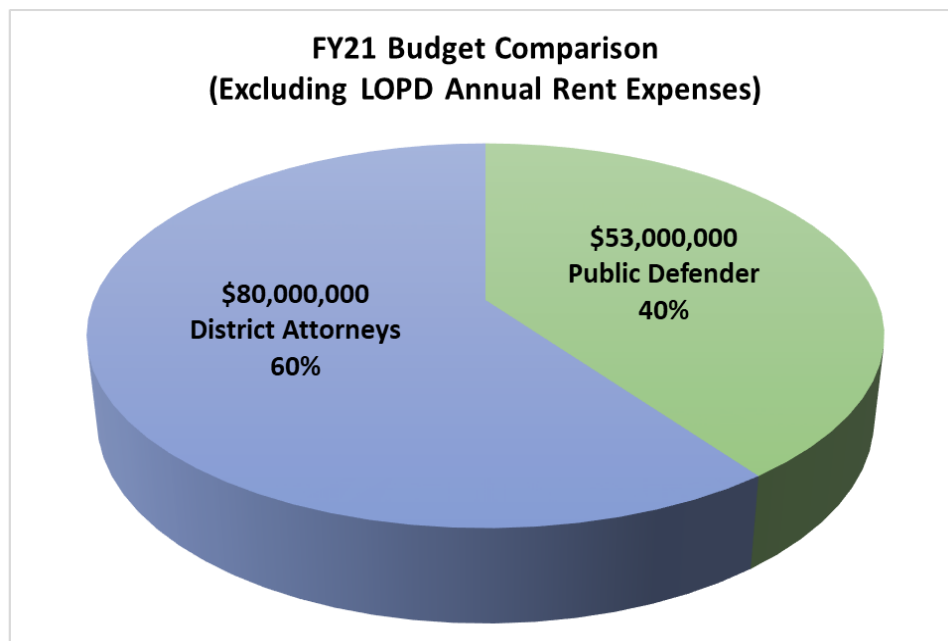
- Murders and complex cases require additional work by contract attorneys. Funding complex case compensation for contract attorneys requires the contract attorneys to provide hourly time keeping on cases. LOPD reviews the time keeping to evaluate whether additional compensation is justified and the appropriate amount.
- In addition, funding complex case compensation will ensure lawyers are compensated such that they are willing to engage to fulfill the State’s constitutional requirements to provide zealous representation for indigent New Mexicans living in rural communities.
- Total request for this increase in 300’s is \$2,650,000.

**Base Budget Increase #5: Increased support and oversight of contract attorneys, and data collection/analysis**

- 2 FTE, including 1 managing attorney and 1 senior budget analyst to provide oversight of complex case compensation, to manage hourly rate tracking and payments, improve meeting performance measures, and data collection.
- Total request for this increase in 200’s is \$207,000.

**Base Budget Increase #6: Compensation for contract social workers, support recruitment to offices serving rural communities, and funding lease escalation**

- ✓ Meet increased demand for non-professional experts (investigators and social workers) by contract defenders, which in turn assists LOPD in meeting performance measures. 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.
- ✓ LOPD previously contracted with a handful of social workers at a rate of \$35 per hour. In FY22, only one social worker is willing to contract with LOPD at the current rate, which has not been increased in at least 10 years. Numerous social workers request to contract with LOPD to work with clients in rural communities, however, LOPD is unable to meet the rates requested. This request is to fund increasing current social worker contract rate of \$35 per hour to \$50 per hour.
- ✓ Request also supports increased need for contract investigators to assist contract attorneys investigating complex cases, specifically based on the increase in murder cases.
- ✓ Facilities expenses of escalating rent - In FY21, LOPD paid over \$2.96 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. Funds are needed for the lease escalations.
- ✓ Total request for this increase is \$152,000.





### C2 Funding Request\*

Project Name and Description	Request
<p><b>Document Management System – Scanning and Survivable Storage Expansion:</b> Current funding: With the FY21 C2 funding, LOPD built a state-of-the-art document management system, which became operational in June 2021. The FY22 C2 funding will be used to scan 3,000 archive boxes with client files into the document management system.</p> <p>This FY23 funding request is needed to scan additional client files (5,000 archive boxes) and to increase the primary and backup storage systems, redundancy, and adding usable storage space for retention.</p>	<p><b>\$2,350,000</b></p>
<p><b>Advanced Online Production &amp; Reporting Enhancements – 5 part project over 5 fiscal years:</b></p> <ol style="list-style-type: none"> <li>1. Online application and payment portal</li> <li>2. Online registration and tracking of CLE and CEU credits</li> <li>3. Online wireless access for employees</li> <li>4. Expanded online attorney recruiting</li> <li>5. Expansion of data collection and reporting</li> </ol>	<p><b>\$2,262,000</b></p>

*\*Supplemental funding for IT needs from the Computer Systems Enhancement Fund.*



**CONTRACT COUNSEL BASE RATES**  
**Contract Period: November 1, 2020 – October 31, 2022**

**FELONY RATES**

JUDICIAL DISTRICT:	1st Degree	2nd Degree	3rd Degree	4th Degree
1st Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
2nd Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
3rd Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
4th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
5th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
6th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
7th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
8th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
9th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
10th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
11th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
12th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
13th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00

JUDICIAL DISTRICT:	JUVENILE	MISDEMEANOR*	MISDEMEANOR DWI & DV
1st Judicial District	\$300.00	\$180.00	\$300.00
2nd Judicial District	\$300.00	\$180.00	\$300.00
3rd Judicial District	\$300.00	\$180.00	\$300.00
4th Judicial District	\$300.00	\$180.00	\$300.00
5th Judicial District	\$350.00	\$180.00	\$300.00
6th Judicial District	\$300.00	\$180.00	\$300.00
7th Judicial District	\$300.00	\$180.00	\$300.00
8th Judicial District	\$300.00	\$180.00	\$300.00
9th Judicial District	\$300.00	\$180.00	\$300.00
10th Judicial District	\$300.00	\$180.00	\$300.00
11th Judicial District	\$300.00	\$180.00	\$300.00
12th Judicial District	\$300.00	\$180.00	\$300.00
13th Judicial District	\$300.00	\$180.00	\$300.00

\**Misdemeanor Trial Performance Fee*: \$100.00 [Paid IF case goes to trial AND a court order of judgment and sentence, acquittal, or dismissal is submitted with invoice]

**Probation Violations: Felony:** 4th Degree Felony rates, Juvenile and Misdemeanor: regular fee [only one fee per P.O.V. regardless of case numbers or number of violations charged.]

**Witness Representation:** 4th Degree Felony rate.

**Retrial of any case:** One-half the original rate invoiced.

1. METROPOLITAN OR MAGISTRATE APPEALS
  - Flat rate: \$500.00
  - Trial de Novo: \$250.00
2. FIRST DEGREE MURDER FLAT RATE:
  - 1<sup>st</sup> Chair \$5,400.00
  - 2<sup>nd</sup> Chair \$2,700.00
 (Unless as outlined in Section XI(B) above)
3. FIRST DEGREE FELONY LIFE IMPRISONMENT RATES: 1<sup>st</sup>
  - 1<sup>st</sup> Chair \$5,400.00
  - 2<sup>nd</sup> Chair \$2,700.00
 (Unless as outlined in Section XI(B) above)

First degree Child Abuse Resulting in Death, 30-6-1(H),  
 Aggravated Criminal Sexual Penetration, 31-18-15(A) (3), 31-18-25, and  
 Any other First Degree Felony resulting in Life Imprisonment.

**RATE SCHEDULE FOR DISTRICT COURT APPEALS & POST CONVICTION  
 HABEAS CORPUS RELIEF**

DISTRICT COURT APPEALS (at the discretion of the Appellate Defender, based on complexity of case):

1. First Degree Murder
  - a. Brief in Chief or Answer Brief: .....\$2,700.00 to \$5,000.00
  - b. Reply Brief: .....\$162.00 to \$540.00
  - c. Certiorari Petitions: .....\$162.00 to \$540.00
2. Summary Calendar
  - a. Memorandum in Opposition:.....\$540.00 to \$1,080.00
  - b. Subsequent Memorandum: .....\$216.00
3. General Calendar (Non-Summary) in the Court of Appeals or on Certiorari:
  - a. Brief in Chief or Answer Brief: ..... \$1,080.00 to \$3,240.00
  - b. Reply Brief .....\$162.00 to \$540.00
4. Oral Argument (except Capital First Degree Murder).....\$162.00 to \$540.00
5. Certiorari Petitions (U.S. Supreme Court upon approval of the Appellate Defender and the Director of Contract Counsel Legal Services)..... \$1,890.00
6. Special Motion (i.e. Reconsideration of Sentence or Appeal Bonds) ..... \$297.00

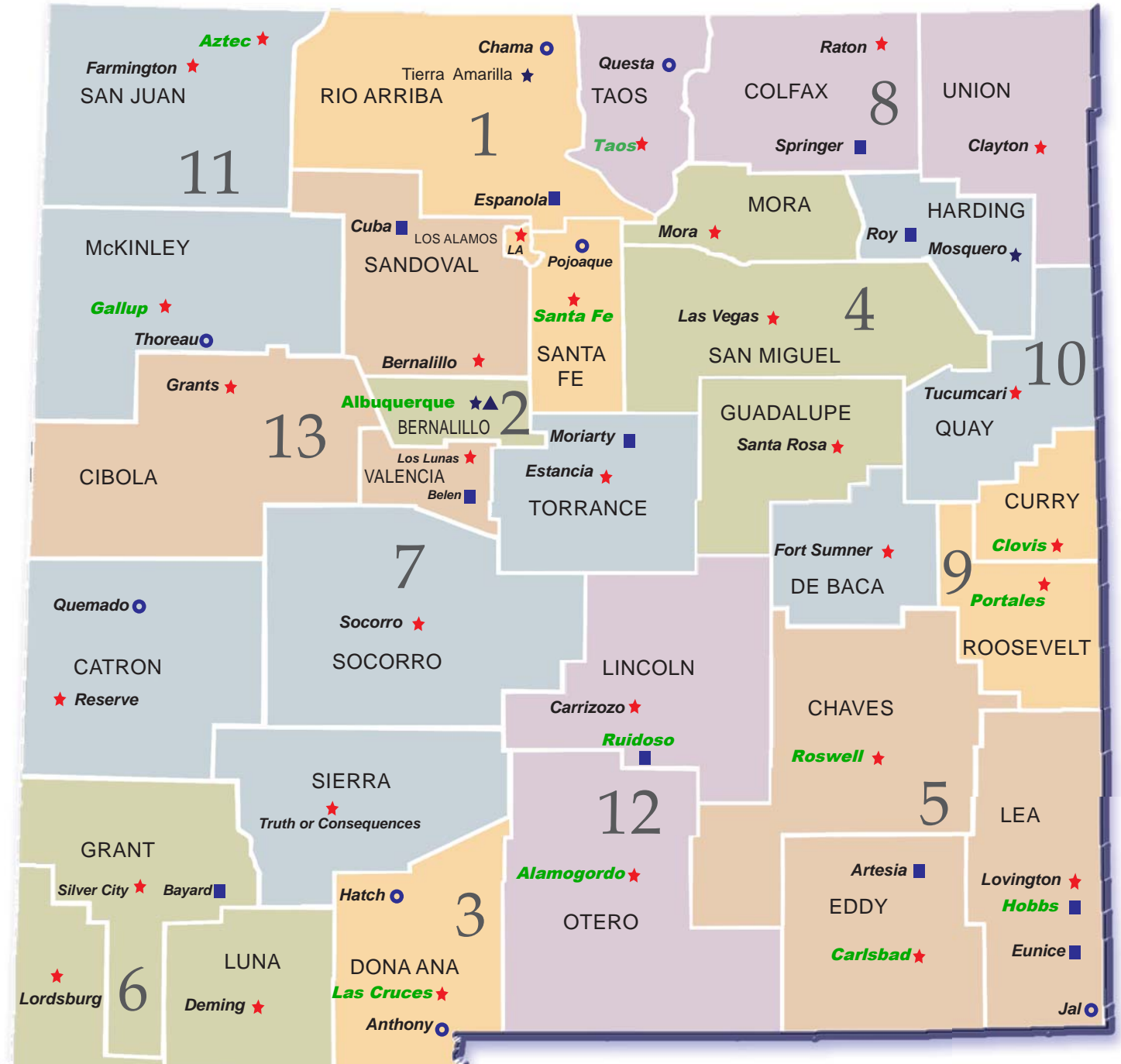
*\*Under extraordinary circumstances, cases may be eligible for Complex Litigation Compensation.*

HABEAS PETITIONS (at the Discretion of the Habeas Unit Managing Attorney, based on the complexity of the case):

1. First Degree Murder and First Degree Felony (18-yr. sentence) up to \$7,500.00 (based on complexity)
2. Good Time Forfeiture Petition (based on complexity) \$1,000.00 - \$3,000.00
3. Conditions of Confinement Petition (based on complexity) \$1,000.00 - \$3,000.00
4. All other State Habeas Petitions (based on complexity) \$2,000.00 to \$6,000.00

*\*Under extraordinary circumstances, cases may be eligible for Complex Litigation Compensation.*

# NEW MEXICO COURTS and LOPD OFFICES



- 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

**LOPD Offices in Green**

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



## New Mexico Counties without LOPD Offices

## New Mexico Counties with LOPD Offices

