

Legislative Finance Committee

November 15, 2022



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 FY2024 Strategic Plan and Annual Report](#)

is located on our website at

www.lopdnm.us/about-us/



New Mexico Public Defender Commission

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

Chief Public Defender
Bennett J. Baur

FY24 Base Budget Increase Request

18.8% \$12,032,000

Begin to implement ABA New Mexico Workload Study recommendations toward adequate defense team staffing to improve representation, and increase direct support and social work services to clients and reduce recidivism <ul style="list-style-type: none">❖ 60 FTE = 30 attorneys (\$3.36 million) & 30 core staff (\$2.31 million)❖ Essential and competitive compensation for contract attorneys (creating more pay parity with state civil contract attorneys), funding for complex case compensation, and increased base rates on cases requiring specialized knowledge or experience (\$4.16 million)❖ Support pay equity and pay parity with district attorneys (\$1.27 million)	\$11,112,700
Maintain adequate funding for trial and operational needs <ul style="list-style-type: none">❖ Trial expenses – expert witness costs, compensation for contract social workers, and contract investigators❖ Operational needs – lease escalations, transcription costs, and equipment	\$919,300

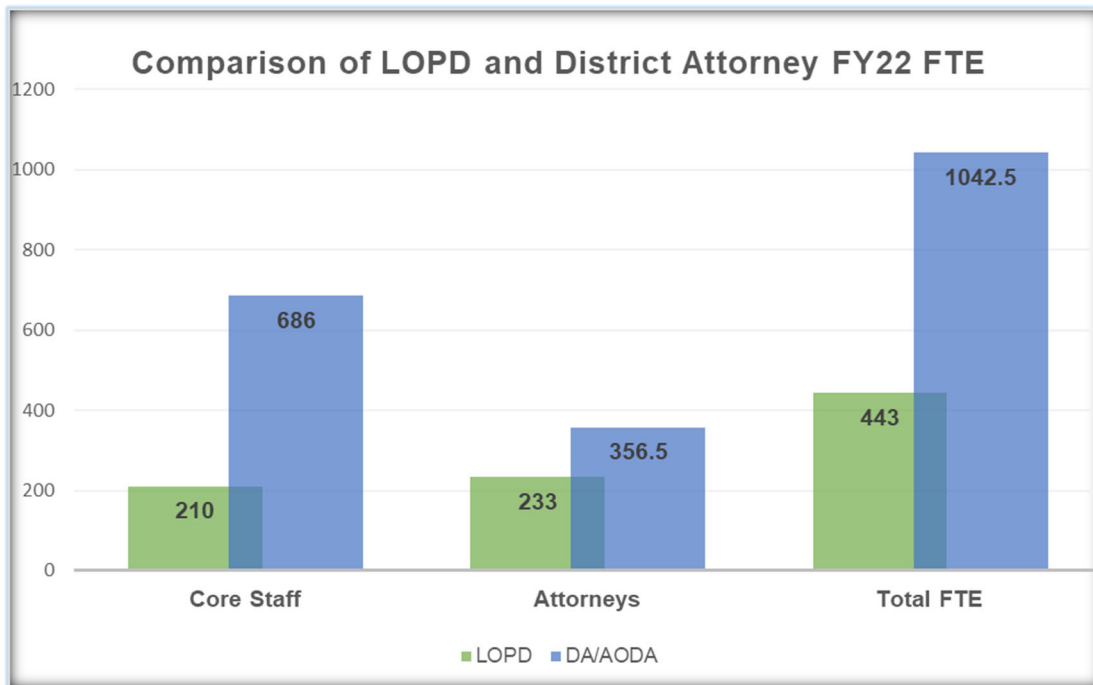
BASE BUDGET INCREASE #1:

BEGIN TO IMPLEMENT ABA NEW MEXICO WORKLOAD STUDY

RECOMMENDATIONS TOWARD ADEQUATE DEFENSE TEAM STAFFING TO IMPROVE REPRESENTATION, AND INCREASE DIRECT SUPPORT AND SOCIAL WORK SERVICES TO CLIENTS AND REDUCE RECIDIVISM.

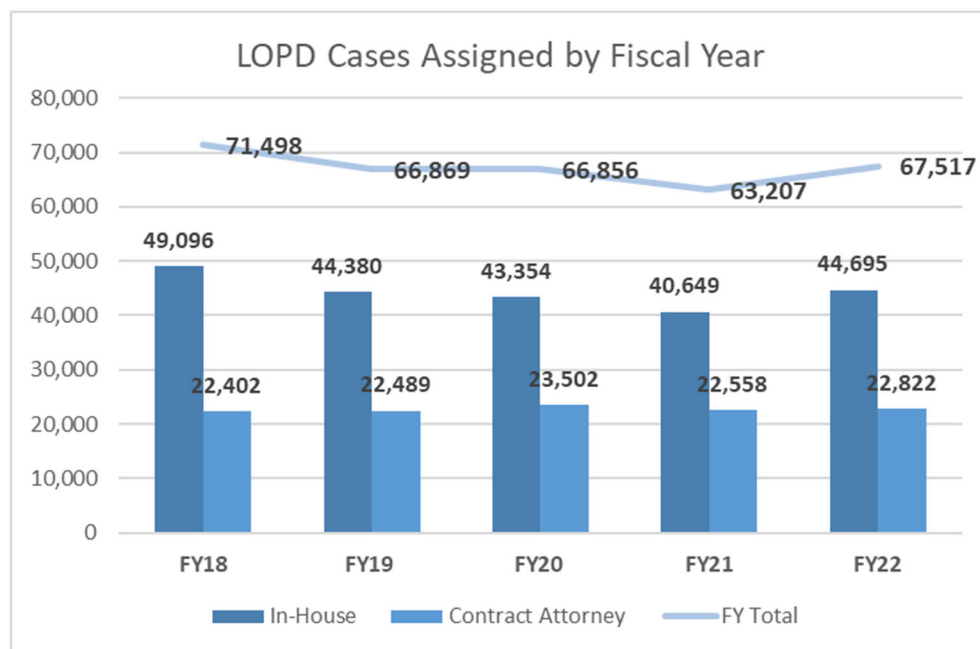
- ❖ **Request for 60 FTE, including 30 attorney FTE and 30 core staff FTE to begin to implement recommendations in [“The New Mexico Project” workload study](#) authored by American Bar Association Standing Committee on Legal Aid and Indigent Defense and Moss Adams.**

The FTE in this request does not achieve the full recommendation of an additional 602 attorneys; however, it is an initial step in improving indigent representation and providing direct client services, including social workers and case managers assessing client needs, and matching clients with available community services. The additional FTE will also bring LOPD closer to staffing parity with district attorney offices.



Request includes:

- ✓ 30 additional attorneys of which 22 attorneys will serve rural communities, as COVID-era case assignments rebound.



- ✓ 7 investigators to assist attorneys with investigating and developing cases
- ✓ 13 core staff to assume administrative work to free up attorneys to focus on client representation, including building relationships and communicating with clients

- ✓ 10 FTE dedicated to the social work unit, including: 6 social workers and 4 case managers to assess client substance abuse and mental health needs and to engage clients towards recovery
 - Most of LOPD's licensed social workers are stationed in Albuquerque, but travel the state to work complex cases and help in overwhelmed and underserved rural areas. Many of the rural offices have just one case manager or social worker, making it difficult to provide needed services to work with clients to address underlying issues contributing to recidivism. With additional staff, the unit will be able to conduct the in-depth work needed from the very beginning of a case and provide support throughout the life of a case.

❖ **Essential and competitive compensation for contract defenders creating more pay parity with civil contract attorneys, including funding for complex case compensation, and to increase base rates on cases requiring specialized knowledge, including juvenile work or violent offenses.**

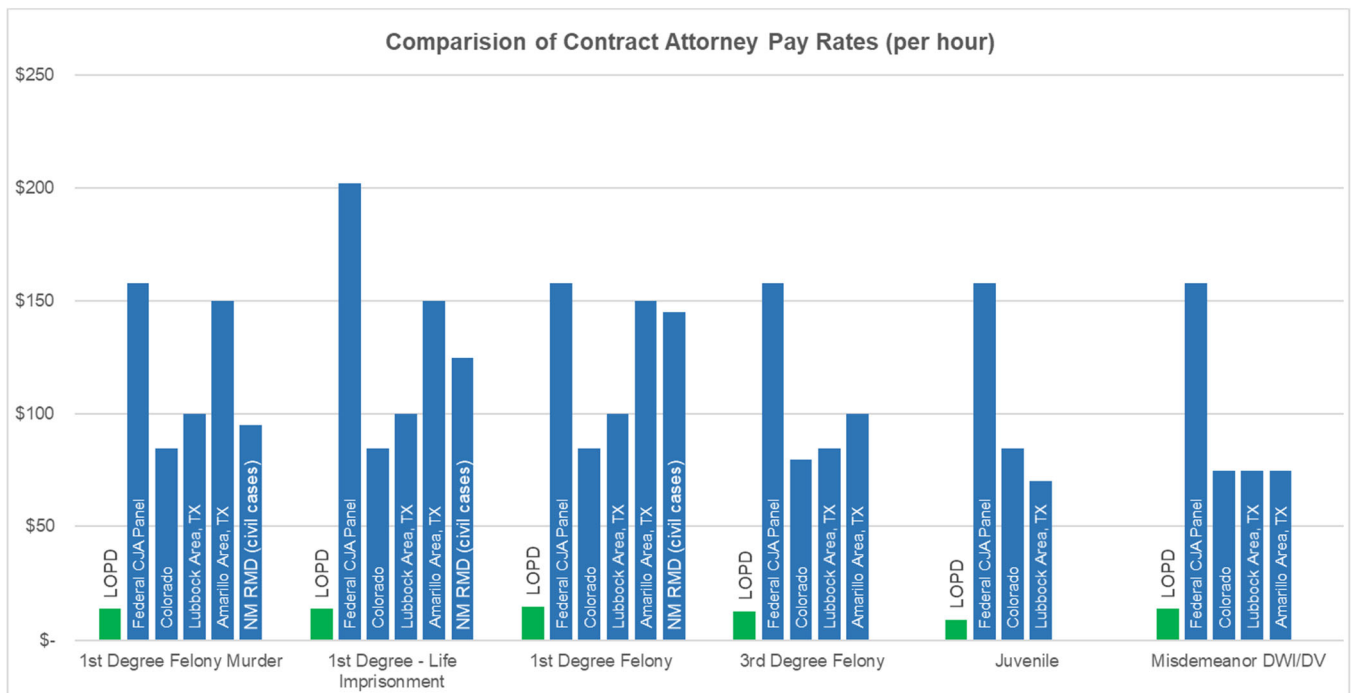
- ✓ Private attorneys who contract with LOPD are compensated at a base rate depending on the type of criminal charges. LOPD is not funded to pay rates commensurate with the hourly rates paid to attorneys that contract on civil matters to protect the State's money. State contract civil attorneys are compensated at an hourly rate based on years of experience as laid out in the chart to the right.

Other New Mexico State Contractor Comparisons	
Years of Experience	NM Risk Management Division (civil cases)
1-2 years	\$95/hour
2-5 years	\$125/hour
5-10 years	\$145/hour
10+	\$165/hour

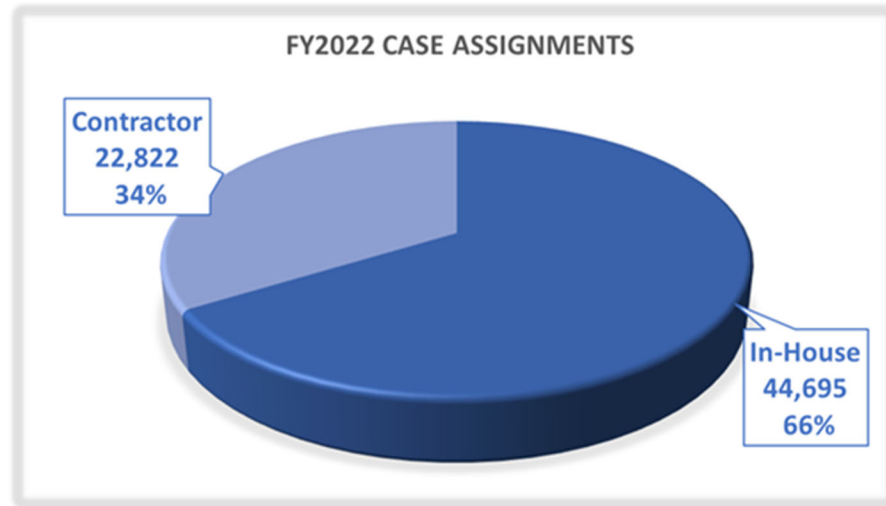
- ✓ The base rate paid PER CASE to LOPD contract defenders is far below the hourly rate paid on NM RMD civil cases, especially when comparing payment for *clients charged with first degree murder or cases that carry a sentence of life imprisonment*.
- ✓ The charts on the following page calculate a contract attorney's hourly compensation using the ABA New Mexico workload study standards for the attorney hours that *should* be spent on a type of case to provide reasonable effective assistance of counsel along with the current LOPD contract base rate. The more severe the case, the more hours worked and the less the attorney would earn per hour.

NM Law Offices of the Public Defender - Contract Rates		
Case Type	Base Rate	Hourly rates based on NM workload study Delphi panel results (2022)
1st Degree Felony Murder	\$5,400.00	\$13.81
1st Degree - Life Imprisonment	\$5,400.00	\$13.81
1st Degree Felony	\$750.00	\$14.80
2nd Degree Felony	\$700.00	\$13.81
3rd Degree Felony	\$645.00	\$12.73
4th Degree Felony	\$540.00	\$16.60
Juvenile	\$300.00	\$0.79 - \$18.94 *
Misdemeanor DWI/DV	\$300.00	\$13.82
Misdemeanor (other)	\$180.00	\$23.68
<p>* The more severe the case, the more hours worked and less the attorney is paid per hour. Data from ABA/Moss Adams Report, page 3 (chart), juvenile data from page 26 of report.</p>		

- ✓ Using the interpretation of the hourly rates above, the chart below compares LOPD with the hourly rates paid to contract attorneys by public defender departments in neighboring states, the rate on federal criminal cases, and NM Risk Management Division.
- ✓ There has been a statewide increase in assignments of murders and filing of complex cases, which 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 amount appropriate.



- ✓ There are 3 New Mexico counties with zero attorneys residing in the county, and 10 counties with fewer than 10 resident attorneys. Increased funding will ensure lawyers are compensated such that they are willing to travel to fulfill the State's constitutional requirements to provide zealous representation for indigent New Mexicans living in rural communities and legal deserts.
- ✓ LOPD is often tasked with paying more than one attorney on a given case because there are often co-defendants –sometimes as many as six – which requires LOPD to pay several different attorneys, investigators, experts, on a case while the prosecution costs are relatively fixed.



❖ **Funding for Phase 2 of pay equity package to address pay disparities related to gender, and time in position, and pay equity with district attorneys.**

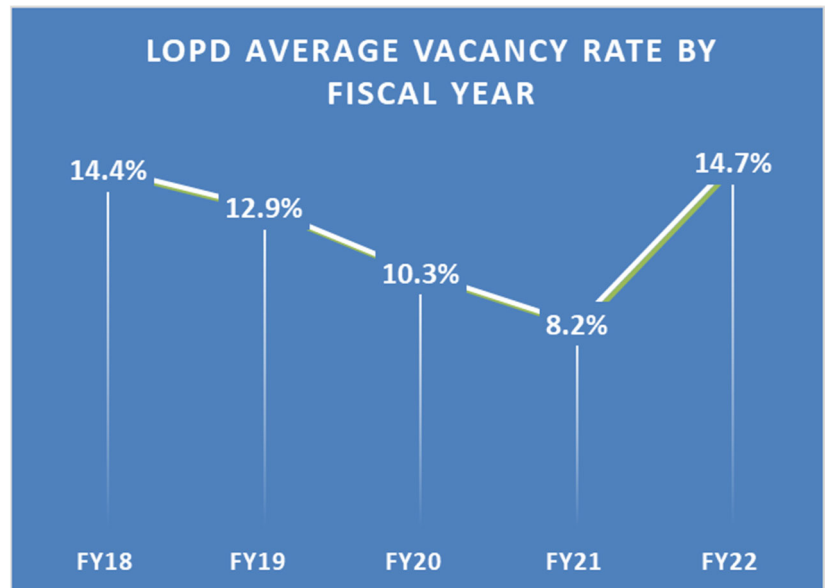
- ✓ A pay equity package was proposed and partially funded in the FY23 budget request and is intended to allow LOPD to address employees identified as needing a pay adjustment over 3 fiscal years: FY23, FY24, and FY25. This allows LOPD to address gender equity issues, and address inequities that may develop between established employees and new hires.
- ✓ Funding also allows LOPD to maintain salaries competitive with other criminal justice partners and public defender offices as LOPD continues to struggle with retaining experienced employees. Turnover generates additional costs and delays resolution of cases, therefore negatively affecting clients, including longer incarceration time and delaying trial schedules.

LOPD Vacancy Rate – data to support appropriation request:

- ❖ LOPD has successfully maintained low vacancy rates. 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 had a consistently low vacancy rate since FY17. LOPD has evaluated processes to streamline hiring 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, LOPD was not spared from the “Great Resignation” with 65 attorneys and 57 core staff departing in FY22. Regardless, LOPD prioritized hiring and the average vacancy rate for FY22 was 14.7%, which is still well below the FY22 statewide classified service average of 22.8% and is in line with prior year LOPD average vacancy rates.



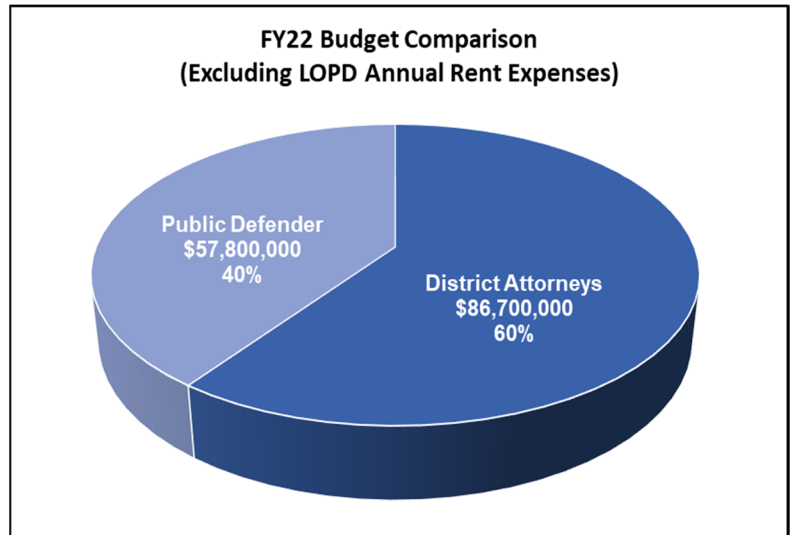
- ❖ The average vacancy rate for the first quarter of FY23 is 16.8% (439 FTE) and 22.5% with the additional 26 FTE allocated or a total of 465 FTE.
- ❖ The vacancy rate was reduced further at the start of the second quarter with the vacancy rate reducing to 14.8% (439 FTE) and 18.8% (465 FTE).

BASE BUDGET INCREASE #2:

FUNDING FOR INCREASED TRIAL COSTS AND OPERATIONAL EXPENSES, INCLUDING EXPERT WITNESSES, COMPENSATION FOR CONTRACT SOCIAL WORKERS AND INVESTIGATORS, TRANSCRIPTION COSTS, EQUIPMENT AND LEASE ESCALATIONS.

- ✓ Budget request will help meet increased demand for investigators and social workers by contract defenders, which 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 must request funding for social workers or investigators to assist on a case, especially when a case is complex, likely to be tried or when clients have mental health or substance abuse issues. This request will fund increased social worker and investigator contract hourly rates.
- ✓ In FY22 and currently in FY23, only one social worker is willing to contract with LOPD at the current rate, which has not been increased in 10 years. Numerous social workers have expressed interest in contracting with LOPD to work with clients in rural communities; however, LOPD is unable to meet the rates requested.

- ✓ Budget request will help manage increased assignments of murders and filings of complex cases, which also require use of expert witnesses.
- ✓ Request also addresses the increased need for contract investigators to assist contract attorneys investigating complex cases, in part based on the increase in murder cases.
- ✓ Funding to address escalating rent. LOPD leases and pays rent for space at all of its 15 offices with its General Fund Appropriation. All other criminal justice partners, specifically the courts and district attorneys, are provided facilities by the state or county. In FY23, lease costs are estimated to exceed \$3 million. Funds are needed to meet lease escalations in FY24.



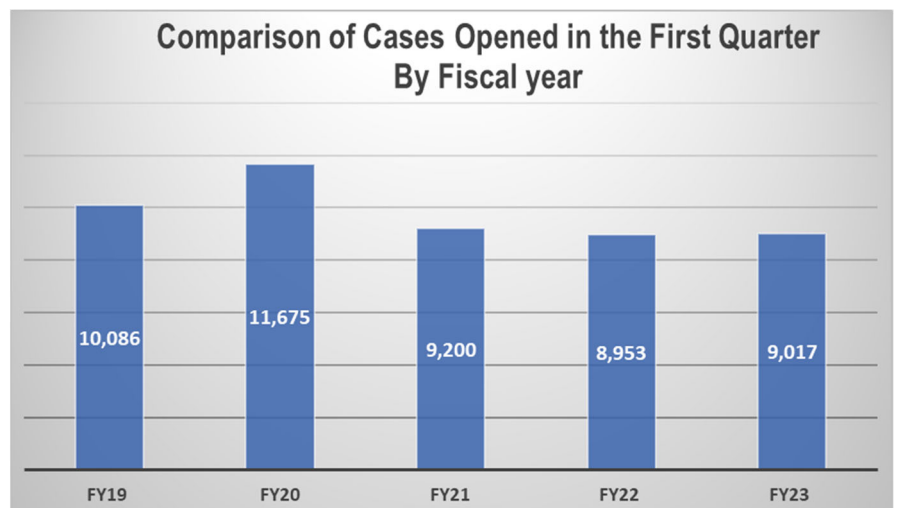
Caseload and Historical Budget Information

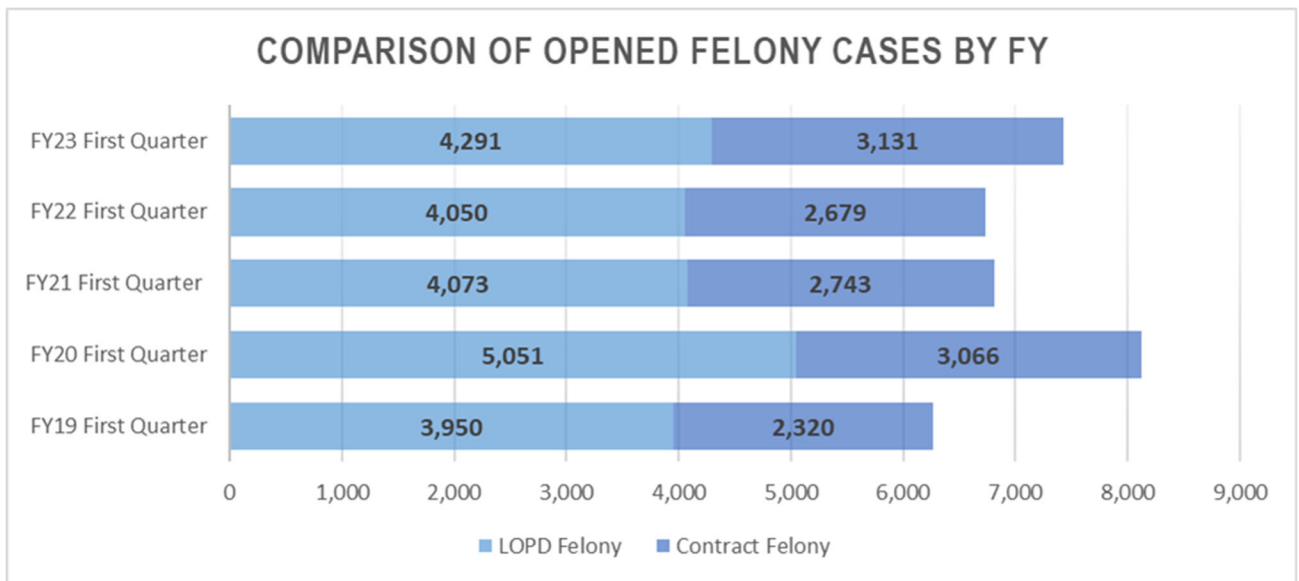
The first quarter of FY23 required the assignment of more felony and juvenile cases to in-house attorneys than in FY22 or FY21, while misdemeanor cases remained steady.

First Quarter Totals by Fiscal Year	FTE	Felony Assignments	Juvenile Assignments	Misdemeanor Assignments
FY23 Totals	149.3	6441	289	5311
FY22 Totals	173.0	6057	186	5607
FY21 Totals	172.5	4463	214	5216

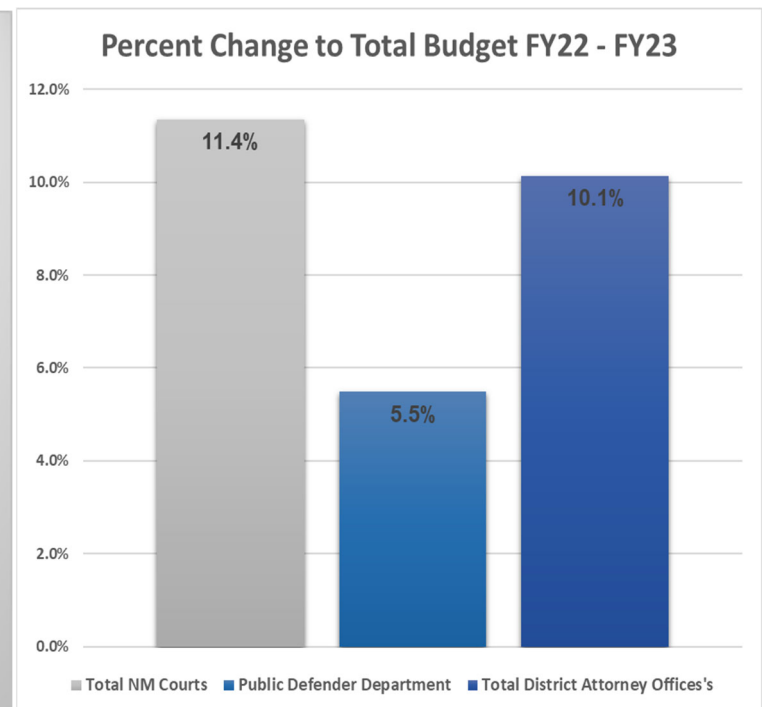
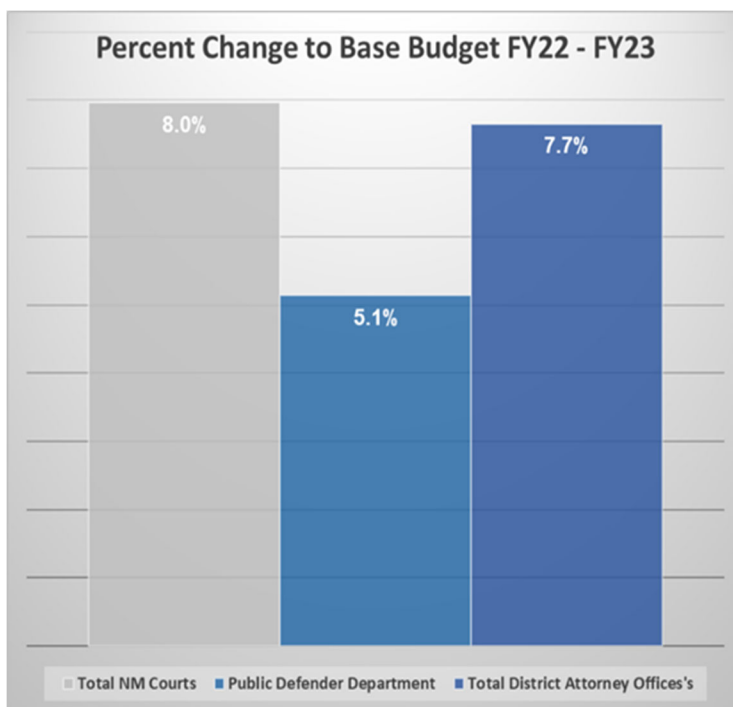
The charts to the right and on the following page compare cases opened by LOPD in the first quarter by fiscal year for all cases and for felony cases, which shows that the number of opened cases is getting closer to pre-pandemic volume.

In fact, the number of opened felony cases for FY23 has surpassed three of the four past fiscal years.

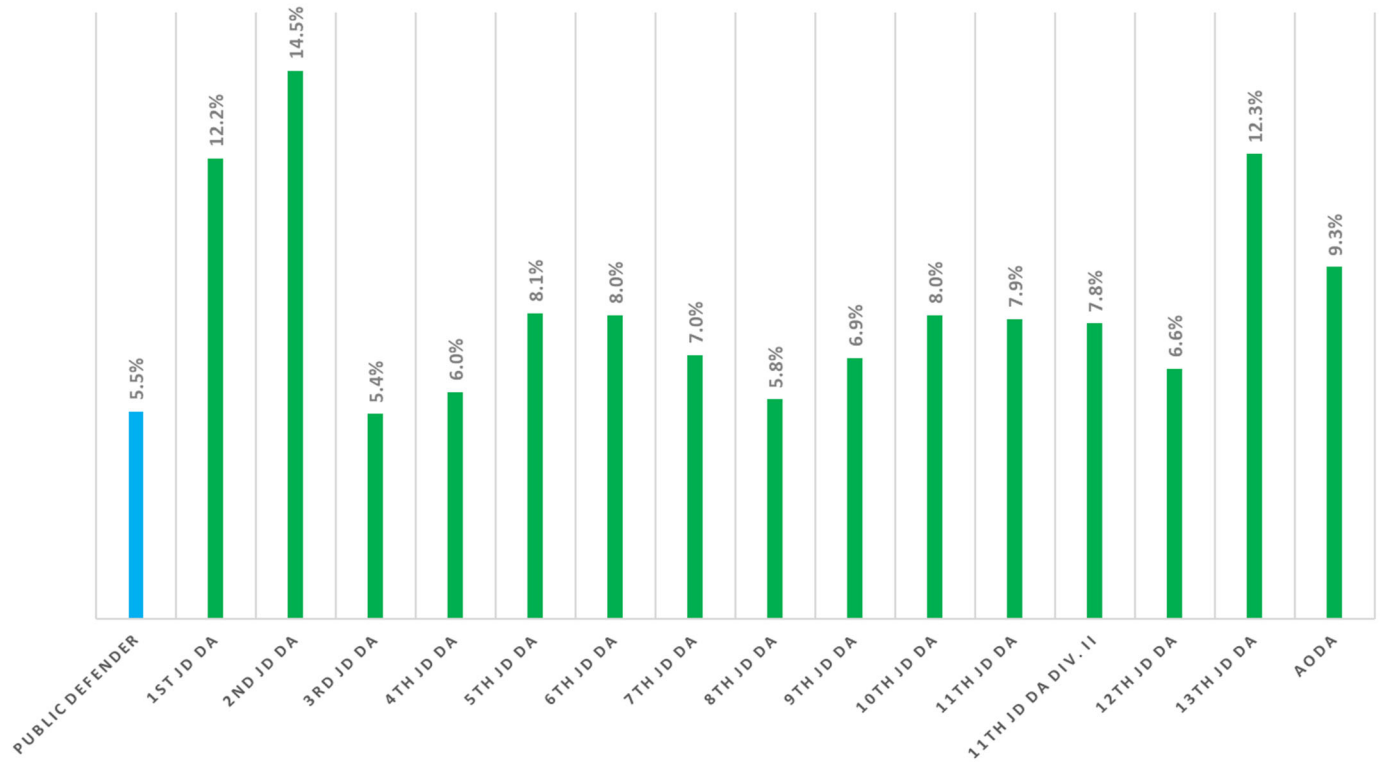




LOPD appreciates LFC’s incremental increases to the base budget and recent support in supporting funding for the workload study “[The New Mexico Project](#).” LFC has assisted LOPD in making strides forward; however, LOPD still has budgetary needs specific to representation of indigent clients and to fulfill our ethical obligation. Regardless of the strides made to stabilize the “three-legged stool,” the New Mexico Project made clear the deficit of 602 FTE for LOPD to effectively represent our clients. LOPD is still lagging behind criminal justice partners in terms of FTE, pay, ratio of core staff to attorneys, and budget parity, as is demonstrated on the graph on page 2 and in the following graphs.



**COMPARISON OF LOPD AND DA TOTAL BUDGET INCREASE
PERCENT CHANGE FY22-FY23**



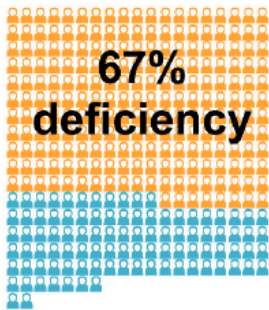
FY24 C2 Funding Request for IT Needs*

Project Name and Description	Request
Project #1: Provide for appropriate defense against cyber-attacks, increase production, and ensure secured telework access by replacing LOPD servers, deploying new computers, and converting remaining employee computers to Windows 11 and provide training to ensure employees utilize new resources to improve workflow and increase efficiencies. Also includes support for imaging of new equipment.	\$2,450,000
Project #2: Includes enhancements to case management system to improve efficiency with increased accessibility to social worker and expert witness information, upgraded calendaring, and website buildout to improve communication and education of clients and in recruitment. Also provides access to intra-office remote training communication tools, digital forensic resource for additional offices (reducing reliance on certain contract experts), contract tracking software, email archiving, and expanding Wi-Fi access to additional offices.	\$1,240,000

THE NEW MEXICO PROJECT

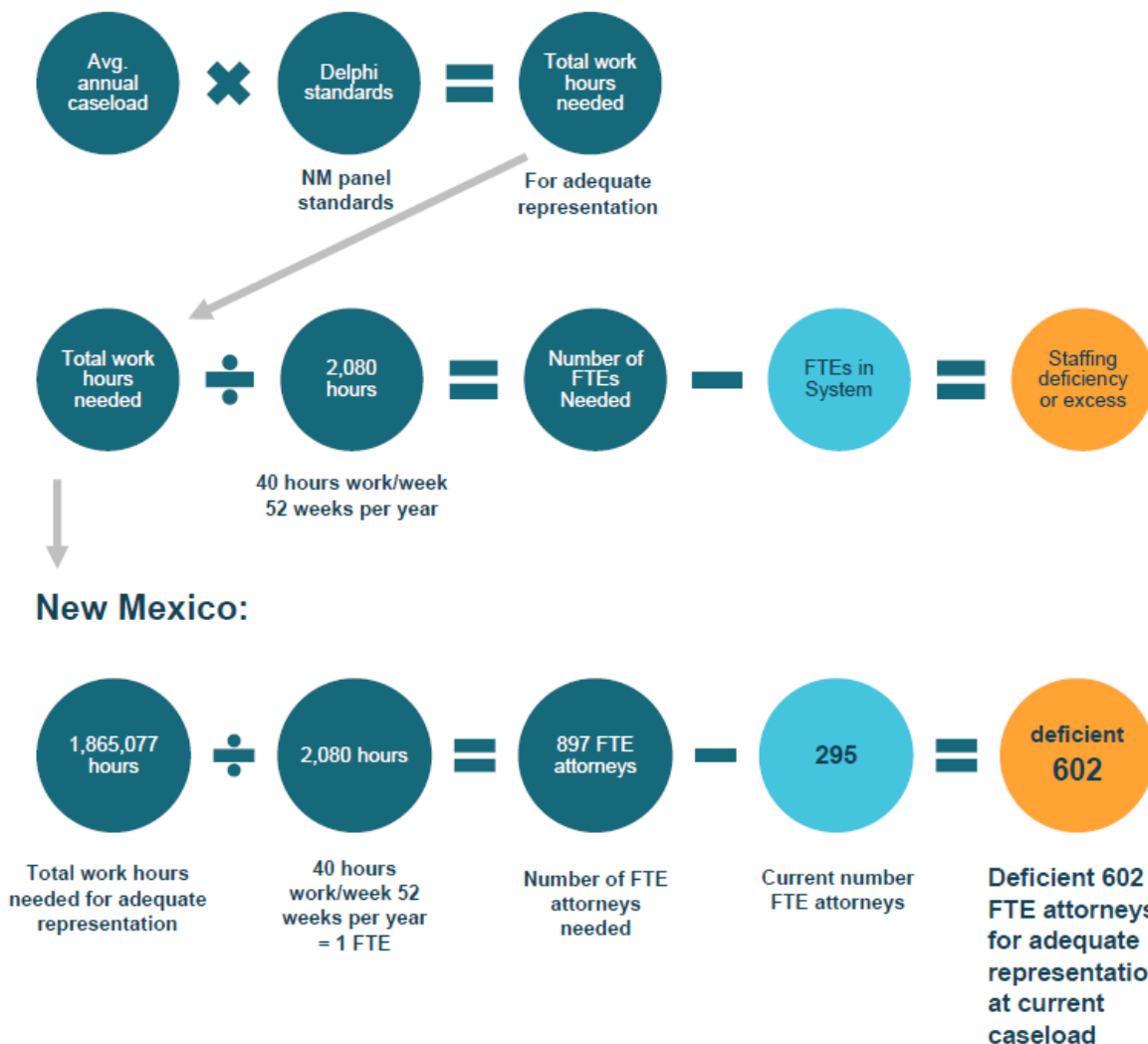
An Analysis of the New Mexico Public Defense System and Attorney Workload Standards

New Mexico faces a critical shortage of public defense attorneys



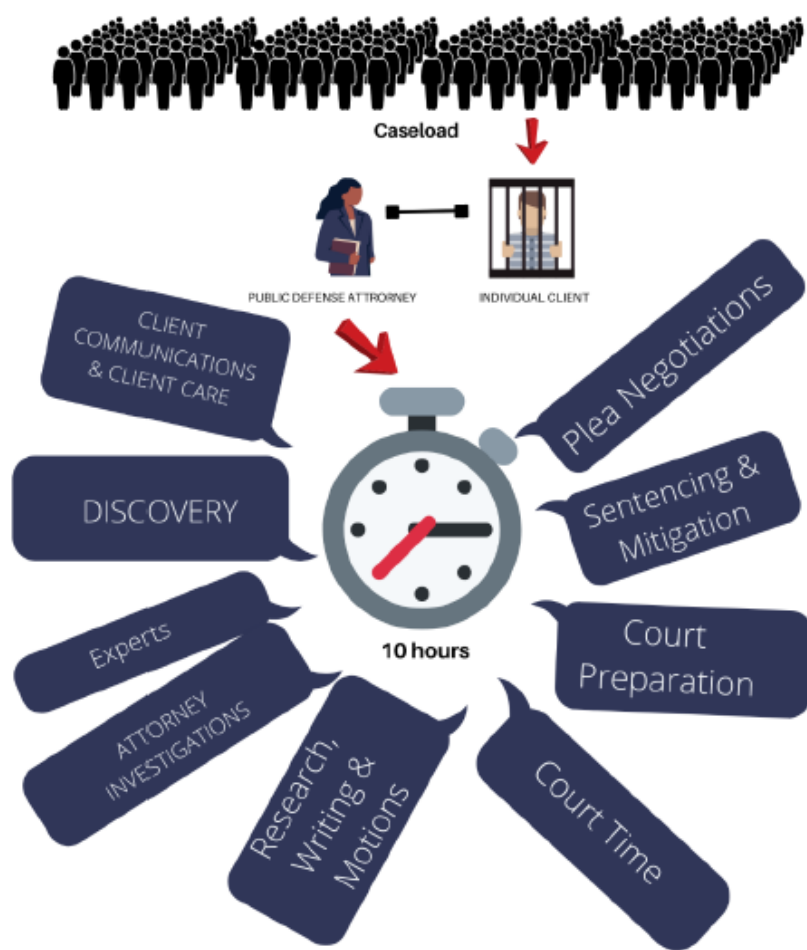
- A very conservative analysis shows that based on average annual caseload, the state needs an *additional* 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.
- In other words, with a consistent annual workload, New Mexico has only 33% of the public defense attorneys it needs to handle its adult and juvenile caseloads.

Systemic deficiency



The New Mexico workload report released January 2022 can be found [HERE](#).

Given current caseloads, LOPD lawyers, have, on average, about 10 hours to take all the steps necessary to provide each client with this assistance.



Overall, the single most important conclusion from this report is that LOPD has an attorney staffing deficiency that must be addressed. Until it is, LOPD attorneys are at significant risk of breaching their ethical and constitutional obligations to their clients. Their clients are at heightened risk of unjust outcomes. In short, the integrity and trustworthiness of the New Mexico justice system depend upon addressing the current LOPD deficit.

PREPARED BY:



AMERICAN BAR ASSOCIATION
Standing Committee on Legal
Aid and Indigent Defense



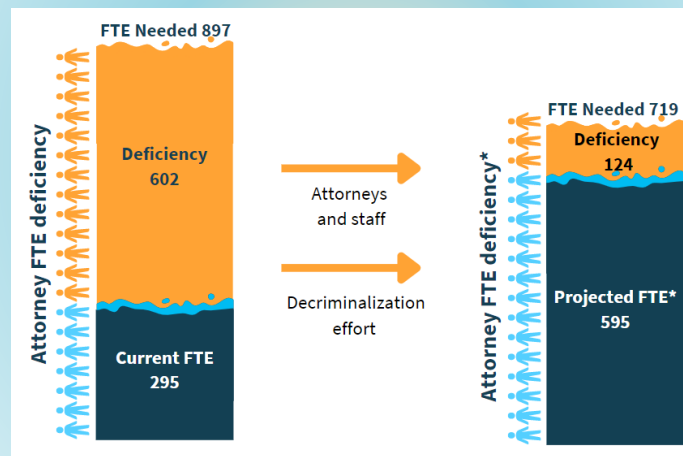
MOSS ADAMS

The New Mexico Public Defense System 5-Year Plan to Reduce Representation Deficiency

The five-year plan proposes tackling New Mexico's verified public defense resource deficiency from two sides:

- **Supply side factors** — adding to and reallocating resources within LOPD
- **Demand side factors** — reducing the caseload through decriminalization of non-violent crimes with no victim and sentencing reform

Ultimately, by adding additional attorney resources and reducing the average caseloads through the decriminalization process the attorney deficiency would be reduced from the current 602 Full Time Equivalent (FTE) attorneys to 124 FTE attorneys, as shown in the next graph.



**Projected based on five-year plan*

Supply Side Factors – Staff and Attorney Needs

LOPD is requesting funding for a five-year plan to fund additional needed attorneys and support staff. This five-year plan increases LOPD's budget from 0.39% to 0.72% of the entire state budget by Year 5, increasing from the FY23 \$64.2M general fund appropriation to \$147.4M by FY28.

BUDGET IMPACTS

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
LOPD Operating Budget Trend	\$ 64,294,500	\$ 67,027,016	\$ 69,875,664	\$ 72,845,380	\$ 75,941,309	\$ 79,168,815
Additional annual attorney FTE		60	60	60	60	60
Additional annual core staff FTE		90	90	90	90	90
Cost to fund additional attorney FTE	\$ 8,730,120	\$ 17,460,240	\$ 26,190,360	\$ 34,920,480	\$ 43,650,600	
Cost to fund additional core staff FTE	4,917,870	9,835,740	14,753,610	19,671,480	24,589,350	
Total Funding Needs by Year	\$ 80,675,006	\$ 97,171,644	\$ 113,789,350	\$ 130,533,269	\$ 147,408,765	
Additional budget to be requested from State	\$ 13,647,990	\$ 27,295,980	\$ 40,943,970	\$ 54,591,960	\$ 68,239,950	

Demand Side Factors – Effects of Decriminalization on Caseload

New Mexico could decide to legislate and decriminalize certain charges to reduce the demand on the public defense system. Reducing the demand for public defense via reduced case filings would in turn reduce the need for additional attorneys.

Assuming that any legislative decriminalization effort focuses on misdemeanor charges which are non-violent with no victim, this simulation shows a caseload reduction of about 30% and a reduction in needed attorneys by 15%, or 133 fewer attorneys needed over five years. The chart below simulates the effect of a decriminalization effort on New Mexico caseloads and thus attorney workload.

ESTIMATED ANNUAL WORKLOAD

	[1]	[2]	[2]	[5]			[6]
Case Type	Delphi Hours Per Case	Total Estimated Annual Caseload	Total Hours by Case Type	Decriminalization - Reduction in Caseload	Revised Annual Caseload	Revised Hours	FTE Reduction
Traffic and Other Minor Crimes	7.60	10,696	81,290	(5,134)	5,562	42,271	19
DWI	21.70	5,345	115,986	-	5,345	115,987	-
Drug Crimes, Property Crimes, Status Offenses	32.53	19,347	629,357	(6,238)	13,109	426,436	98
Crimes Against Person (Adult Victim)	50.67	12,643	640,620	(43)	12,600	638,442	-
Child Pornography Cases	126.50	53	6,705	-	53	6,705	-
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	177.36	1,300	230,568	-	1,300	230,568	-
Murder (including CARD)	391.03	185	72,340	-	185	72,341	-
Probation Violations	5.17	8,003	41,375	(6,308)	1,695	8,763	16
Total Adult Criminal		57,572	1,818,241	(17,723)	39,849	1,541,513	133
Total Juvenile		2,432	46,836	-	2,432	46,836	-
GRAND TOTAL		60,004	1,865,077		42,281	1,588,349	133
		Hours	2,080			2,080	
		FTEs needed [3]	897		FTEs needed [3]	764	
		FTEs have [4]	295		FTEs have [4]	295	
		FTE deficiency	602		Revised FTE deficiency	469	
					Caseload reduction	30%	
					FTE need reduction	15%	

[1] Results from The New Mexico Project Adult Criminal Panel

[2] Average statewide opened cases by type for FY2019 through Q3 FY 2021

[2] Delphi Hours Per Case x Estimated Annual Caseload

[3] Hours divided by 2,080

[4] Average FTE from The New Mexico Project

[5] Average caseload recommended to be decriminalized by type

[6] Change in hours divided by 2,080

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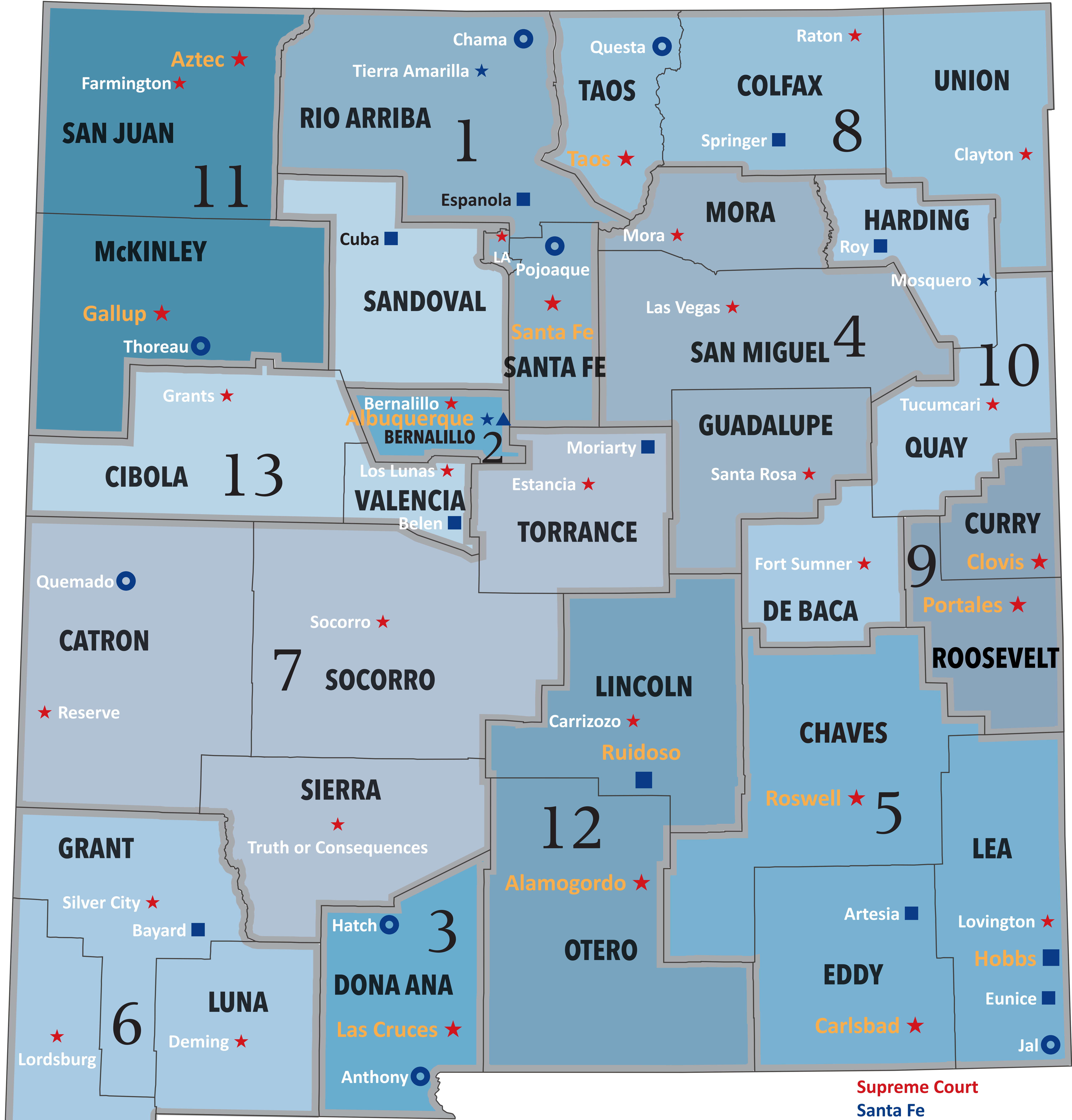


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LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS



Supreme Court
Santa Fe
Court of Appeals
Santa Fe & Albuquerque

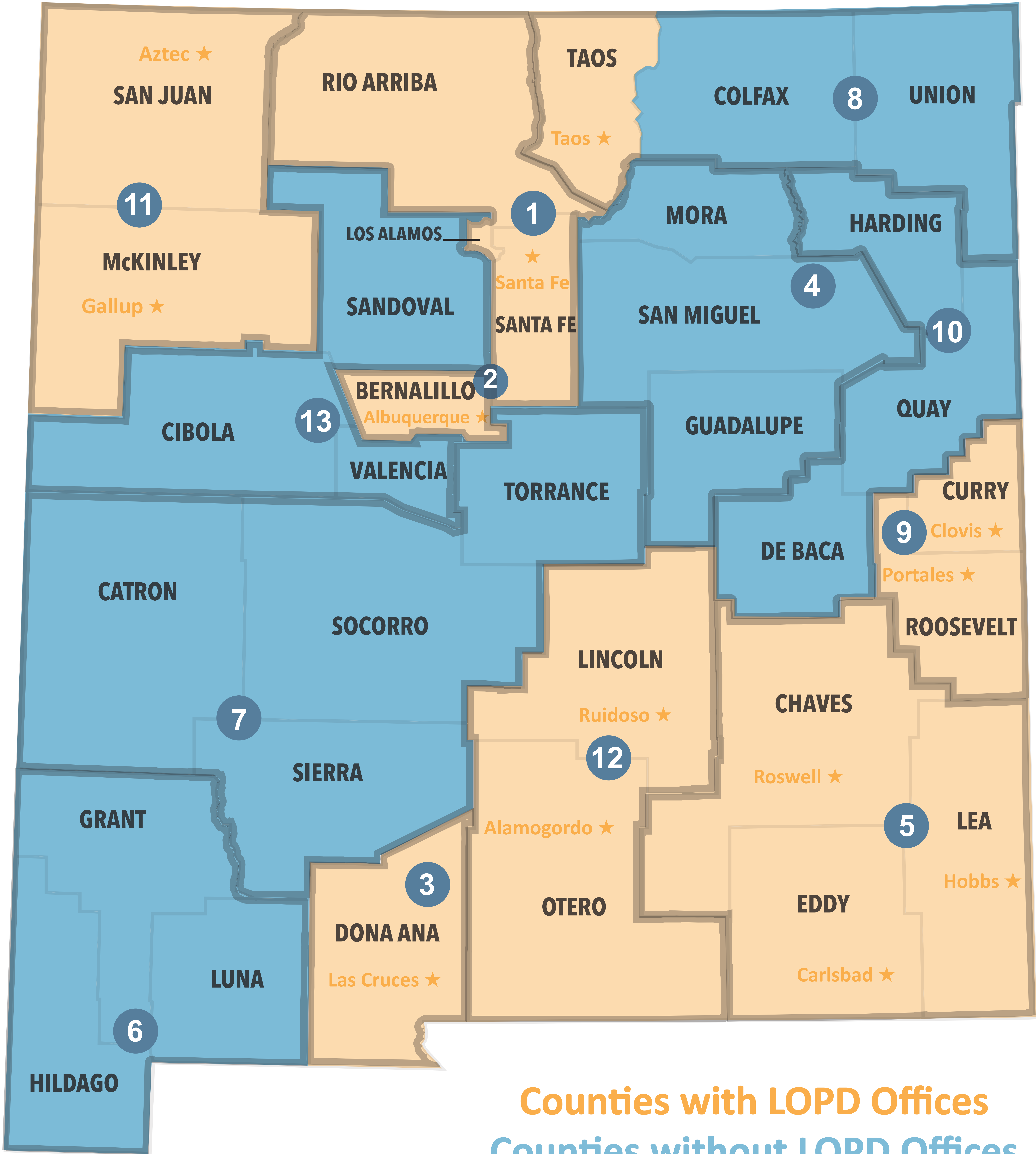
LOPD Offices in Gold

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

- | | | |
|--|---|---|
| 1st Judicial District Court
Santa Fe, Rio Arriba & Los Alamos | 6th Judicial District Court
Grant, Hidalgo & Luna | 11th Judicial District Court
San Juan & McKinley |
| 2nd Judicial District Court
Bernalillo | 7th Judicial District Court
Torrance, Socorro, Catron & Sierra | 12th Judicial District Court
Otero & Lincoln |
| 3rd Judicial District Court
Doña Ana | 8th Judicial District Court
Taos, Colfax & Union | 13th Judicial District Court
Cibola, Sandoval & Valencia |
| 4th Judicial District Court
San Miguel, Mora & Guadalupe | 9th Judicial District Court
Curry & Roosevelt | Bernalillo County Metropolitan Court
Albuquerque |
| 5th Judicial District Court
Chaves, Eddy & Lea | 10th Judicial District Court
Harding, De Baca & Quay | |



LAW OFFICES OF THE PUBLIC DEFENDER and NEW MEXICO COURTS



Counties with LOPD Offices
Counties without LOPD Offices