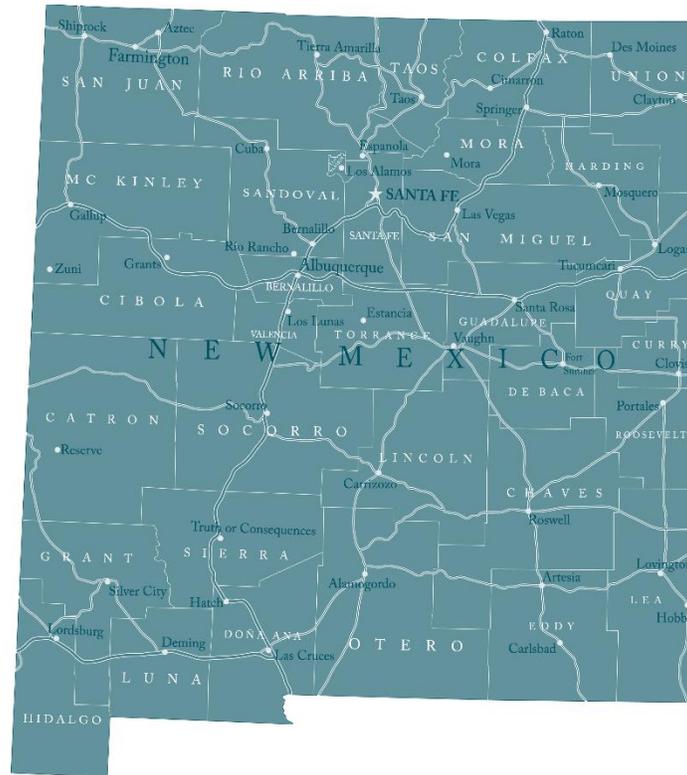


THE NEW MEXICO PROJECT

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



PREPARED BY:



AMERICAN **BAR** ASSOCIATION

Standing Committee on Legal
Aid and Indigent Defense



MOSSADAMS

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New Mexico Public Defense System
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January 2022

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The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) engaged Moss Adams LLP (Moss Adams) to collaboratively conduct a New Mexico-specific attorney workload study, utilizing the Delphi method and historical caseloads, for the New Mexico public defense system. This study was assisted by the Law Offices of the Public Defender of the State of New Mexico (LOPD).

The New Mexico Project was conducted under the leadership of Stephen F. Hanlon, J.D., Project Director for ABA SCLAID, Malia N. Brink, J.D., Counsel for Public Defense for ABA SCLAID and Deputy Director for the Public Defender Workload Study Projects, along with Scott Simpson, CPA, Partner at Moss Adams and Moss Adams colleagues Jenna McRae, CPA, Senior Manager and Emily Hayes, CIA, Manager.

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INTRODUCTION

The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) and Moss Adams LLP (Moss Adams) conducted this study on behalf of the Law Offices of the Public Defender of the State of New Mexico (LOPD) to analyze public defense historical caseloads for the State of New Mexico, to calculate the average amount of time attorneys *should* spend on specific case types to meet the minimum standards for representation, and then to compare the two to determine whether a deficiency of resources exists. This study is referred to as the New Mexico Project.

The New Mexico Project consisted of two main phases: (1) an analysis of the New Mexico public defense system's historical staffing and caseloads; and (2) the application of the Delphi method. The Delphi method is an iterative process used in this study to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal cases. In determining the amount of time an attorney *should* spend to meet the minimum standards for representation we are guided by the legal standard set out in *Strickland v. Washington*: "reasonably effective assistance of counsel pursuant to prevailing professional norms."¹ The prevailing professional norms, which anchor the Delphi process, are the Rules of Professional Conduct, the ABA Criminal Justice Standards, and the applicable national and local attorney performance standards.

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop consensus on a specific question. The New Mexico Project consisted of three different Delphi panels: Adult Criminal, Juvenile and Appeals. Participants in each panel were selected based on their substantive expertise and experience in these areas. Participants included public defenders, contract attorneys, and private defense practitioners, and they were approved by independent Selection Panels.

Each Delphi area was sub-divided into Case Types and Case Tasks, and further divided by Resolution (e.g. plea/otherwise resolve v. go to trial). For each Case Task in each Case Type, participants are surveyed about the amount of time the task takes and the frequency with which it occurs.

The Delphi process in New Mexico consisted of two rounds of online surveys, taken independently. The second-round survey was completed only by those who participated in the first round and included a summary of the responses from the first round for second round participants to consider. A third survey was then conducted in a live group setting only by those who had completed the first and second survey rounds. These participants met over a series of days to review the results of the second survey and developed a professional consensus regarding the appropriate amount of time an attorney *should* spend on a series of case tasks for

¹ *Strickland v. Washington*, 466 U.S. 688, 688 (1984).

each case type² to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of New Mexico.

The result of the Delphi process is the consensus of the expert panel on the Frequency and Time needed to complete each Case Task in compliance with applicable standards, as well as Resolution – the percentage of cases that should plead/otherwise resolve v. go to trial. These consensus decisions are then used to calculate the Delphi result, the time needed for a public defense attorney to provide reasonably effective assistance of counsel to a client in an average case of this Case Type.

Applying the Delphi results to historical caseloads, we can determine the total number of hours of public defense attorney time needed in the jurisdiction. Further, we can compare the hours of attorney time currently available in the jurisdiction's public defense system to the hours needed to determine if the current system has a deficiency or excess of attorney time and the amount of that deficiency or excess.

² See Appendix D for Case Type and Case Task definitions.

EXECUTIVE SUMMARY

Regardless of talent and experience, a public defender with too many clients cannot comply with their constitutionally-rooted professional and ethical duties. When public defenders have too many cases, they must either triage by focusing on a select group of clients at the expense of others, or they must spend less time than they should on every client's case.

As more states grapple with concerns that criminal courts are failing to meet the standard of equal justice under the law, the obligation to uphold the right to effective assistance of counsel is receiving much needed attention, and jurisdictions are recognizing the importance of reliable data to assess the needs of the public defense system. New Mexico legislators and public defense leaders had the foresight four years ago to seek to examine the caseloads of the state's public defenders. New Mexico is the sixth state to undertake such an analysis in partnership with ABA SCLAID.

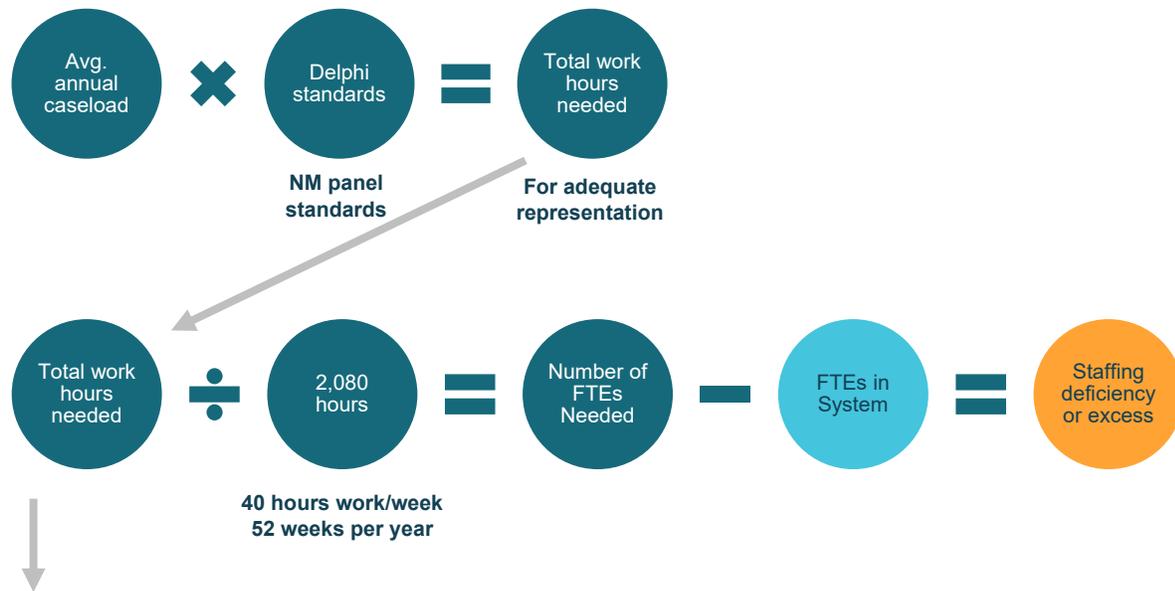
The report of the New Mexico Project provides a detailed analysis of New Mexico's current Adult Criminal, Juvenile and Appellate public defense caseload and staffing data. It is the product of more than two years of study and analysis. Additionally, the project used the Delphi method to arrive at standards reflecting the amount of time an attorney *should* spend, by Case Type, to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

The chart below show the Delphi results for Adult Criminal cases in New Mexico.

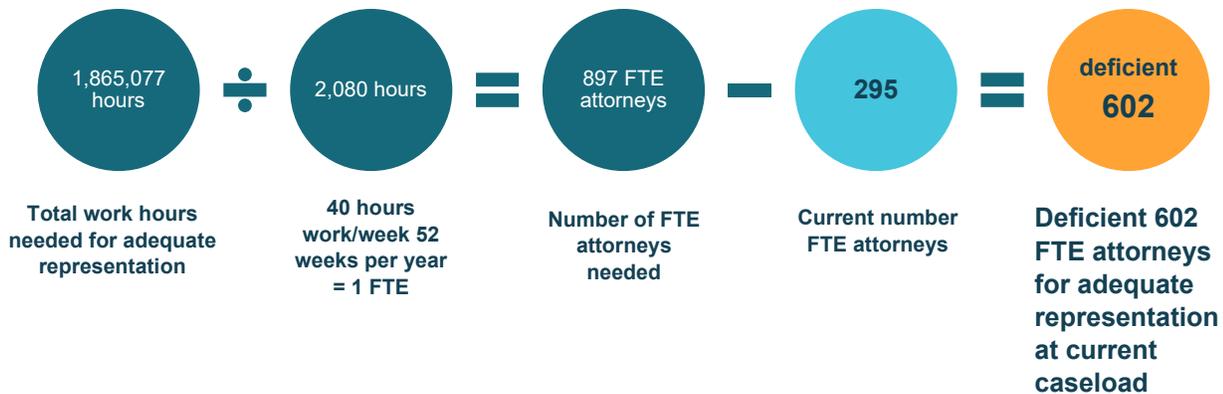
Delphi Panel Results – Adult Criminal	
Case Type	Hours Per Case
Traffic and Other Minor Crimes	7.60
DWI	21.70
Drug Crimes, Property Crimes, Status Offenses	32.53
Crimes Against Person (Adult Victim)	50.67
Child Pornography Cases	126.50
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	177.36
Murder (including CARD)	391.03
Probation Violations	5.17

When applied to the public defense system’s historical staffing and caseloads, the Delphi panel results can be used to calculate whether the system has too many (excess) or too few (deficiency) FTE attorneys.

Systemic deficiency



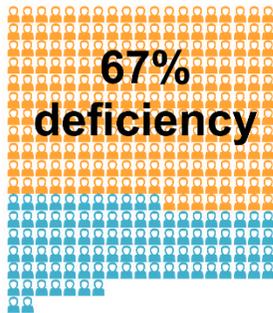
New Mexico:



At current caseloads,³ LOPD has a very significant deficiency of FTE attorneys, which includes both public defender and contract attorneys.

³ For reasons explained fully later in this report, this deficiency calculation reflects the current caseload and FTE for Adult Criminal and Juvenile cases and determines the FTE need to provide reasonably effective assistance of counsel to clients in those cases.

New Mexico faces a critical shortage of public defense attorneys



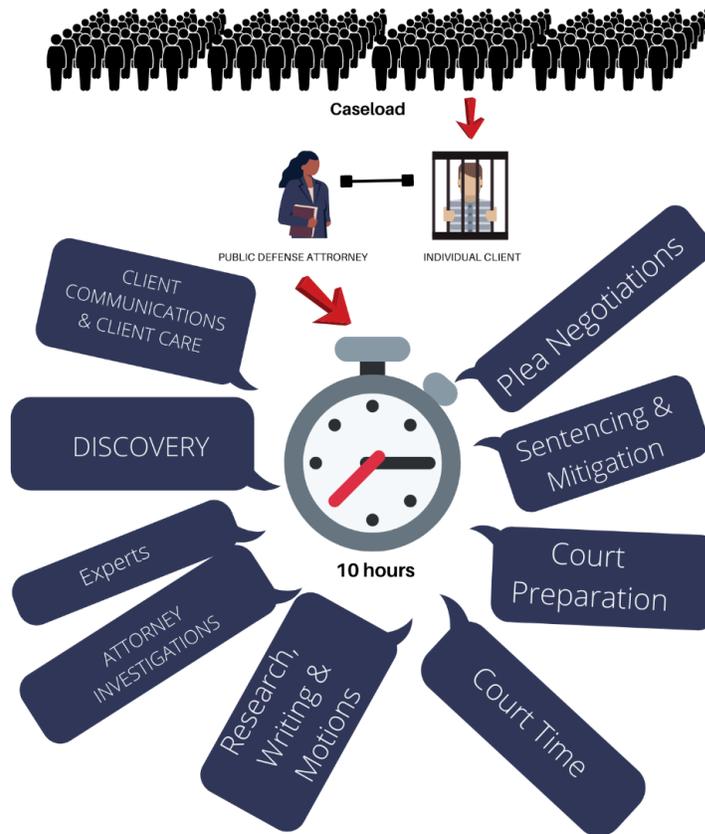
- A very conservative analysis shows that based on average annual caseload, the state needs an *additional* 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.
- In other words, with a consistent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

For those facing incarceration and for the public defense professionals who face the decision of when to cut corners, excessive caseloads have a grave human cost. Every day, attorneys must face the choice of what not to do or which clients to ignore, while enduring the stress of knowing that they are not representing their clients in a manner consistent with the oath they took when they joined the bar. Clients, in turn, must navigate the justice system without appropriate guidance, facing choices such as whether to accept a plea bargain or go to trial knowing that their attorney may not have the requisite time to fully prepare their case.

At current caseloads and staffing, LOPD attorneys must handle 203 new cases per attorney per year, regardless of whether those cases are misdemeanor cases or serious felony cases. At the center of each of these cases is a client – an individual, accused of a crime, who might be innocent, might have a legal defense or argument for lesser punishment, might need assistance to address substance abuse or mental health issues; all of which must be determined by his or her public defender. And it is the public defender’s ethical and constitutional duty to provide each such individual with reasonably effective assistance of counsel.

The New Mexico Project Executive Summary

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



The justice system's ability to function relies upon a balanced adversarial system, in which the defense tests the prosecution's evidence and exposes any flaws or errors. When public defense attorneys cannot fulfil their role, "having your day in court" becomes meaningless and the entire system becomes more prone to error. A grave deficiency, as exists at present in New Mexico, jeopardizes the integrity of the justice system and erodes the public's trust in that system.

BACKGROUND

Applicable Standards

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components to understanding both attorney workloads and our analysis of caseloads in this study. The duty of the State of New Mexico to provide representation in criminal cases for those accused individuals unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and from Section 14 of the New Mexico Constitution.

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that defendants charged with a felony in state criminal court were entitled to a lawyer at the state's expense if they were unable to afford counsel.⁴ In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases that could result in a defendant's loss of liberty.⁵

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."⁶ In 2010, the Supreme Court noted in *Padilla v. Kentucky*: "We have long recognized that 'prevailing norms of practice as reflected in American Bar Association Standards and the like are guides to determining what is reasonable.' Although they are 'only guides' and not 'inexorable commands,' these standards may be valuable measures of the prevailing professional norms of effective representation[.]"⁷

Relevant prevailing professional norms in New Mexico include:

- New Mexico Rules of Professional Conduct
- New Mexico Public Defender Commission and LOPD Performance Standards for Criminal Defense Representation
- ABA Criminal Justice Standards for the Defense Function
- IJA-ABA Juvenile Standards
- ABA Criminal Justice Standards on Criminal Appeals

⁴ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁵ *Argersinger v. Hamlin*, 407 U.S. 25 (1972); see also *Alabama v. Shelton*, 535 U.S. 654 (2002).

⁶ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

⁷ *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citations omitted). The Court went to review the ABA Standards for Criminal Justice.

New Mexico Rules of Professional Conduct

All lawyers in New Mexico are required to abide by the New Mexico Rules of Professional Conduct.⁸ The Rules not only address the responsibilities of lawyers in representing a particular client, but also concern when a lawyer is not permitted to represent a client or must withdraw. Pertinent and identical rules in the New Mexico Rules of Professional Conduct and the ABA's Model Rules of Professional Conduct⁹ applicable to this study include the following:

- Rule 16-101. Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Rule 16-103. Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.
- Rule 16-107. Conflict of Interest: Current Clients: (a) Except as provided in paragraph B of this rule, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- Rule 16-116. Declining or Terminating Representation:
 - (a) Except as stated in Paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the Rules of Professional Conduct or other law...
 - (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests...¹⁰

An ABA Ethics Opinion interprets these ethical rules to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.¹¹

⁸ New Mexico Rules of Professional Conduct, *available at* <https://nmonesource.com/nmos/nmra/en/item/5699/index.do#!fragment/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoByCgSgBplTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA>.

⁹ New Mexico first adopted the ABA Model Rules of Professional Conduct in 1986.

¹⁰ Guideline 6 of the ABA Eight Guidelines of Public Defense Related to Excessive Workloads provides in pertinent part that in such cases, in addition to moving to withdraw from representation in certain cases, a lawyer should also move to suspend new case assignments and request that charges against those clients the lawyer can no longer represent be dismissed due to the failure of the government to provide effective assistance of counsel as required by federal and state law. *Available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf.

¹¹ ABA Ethics Committee, Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf.

The Rules of Professional Conduct also place responsibility on supervising attorneys to ensure that the rules are followed within their organization.

Rule 16-501: Responsibilities of partners, managers and supervisory lawyers.

A. Necessary measures. A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

B. Compliance with rules. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

C. Responsibility for other lawyer's violations. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The Commentary to this Rule provides that it “applies to lawyers who have managerial authority over the professional work of a firm . . . includ[ing] . . . lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or governmental agency.” It requires, among other things, that the “lawyers with managerial authority . . . make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interests . . . and ensure that inexperienced lawyers are properly supervised.”¹² At LOPD, this responsibility falls to the Chief Public Defender, other supervising attorneys, and, in the case of establishing appropriate procedures, the New Mexico Public Defender Commission (Commission).

¹² This is consistent with the ABA Eight Guidelines of Public Defense Related to Excessive Workloads. Guideline 4 provides: “Persons in Public Defense Provider programs who have management responsibilities determine, either on their own initiative or in response to workload concerns expressed by their lawyers, whether excessive lawyer workloads are present” Guideline 5 then requires the provider program to take “prompt actions . . . to avoid workloads that either are or are about to become excessive.”

New Mexico Public Defender Commission and LOPD Performance Standards for Criminal Defense Representation

LOPD has adopted performance standards for criminal defense representation.¹³ These standards are explicitly “minimal standards” and not “aspirational guidelines.”¹⁴ As such they “reflect[] the steps that shall be taken in every client’s case in order to achieve constitutionally mandated representation.”¹⁵ LOPD performance standards cover not only the general role and obligations of defense counsel but provide specific detailed guidance on how to comply with the duties of the defense attorney in every case, including:

- Conducting client initial interview (Standard 2.2),
- Pretrial release advocacy (Standard 2.3),
- Case review and preparation (Standard 4.1),
- Discovery (Standard 4.2),
- Plea negotiations (Standards 6.1 and 6.2), and
- Sentencing advocacy (Standards 8.1-8.7).

Further, in all cases, defense counsel must evaluate the filing of pretrial motions (Standards 5.1, 5.2, and 5.3), and in appropriate cases, undertake comprehensive trial preparation (Standard 7.1).

ABA Criminal Justice Standards for the Defense Function

The ABA Standards for Criminal Justice are the result of a lengthy process that began in 1964, and most recently culminated with the fourth edition of these standards approved and published by the ABA in 2015. The ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process.”¹⁶

The standards cover, among other things:

- Establishing client trust (Standard 4-3.1),
- Advocacy on pretrial detention and conditions of release (Standard 4-3.2),
- Interviewing the client (Standard 4-3.3),
- Duty to keep the client informed (4-3.9),
- Duty to investigate (Standard 4-4.1),
- Court appearances (Standard 4-4.6), and
- Sentencing responsibility (Standard 4-8.3).

Today, most state-level criminal cases are resolved without a trial. In 2012, the United States Supreme Court, in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice

¹³ Performance Standards for Criminal Defense Representation, *available at* www.lopnm.us/pdf/2016PerfStand.pdf.

¹⁴ *Id.* at Preamble.

¹⁵ *Id.*

¹⁶ Martin Marcus, The Making of the ABA Criminal Justice Standards: Forty Years of Excellence, 23 CRIM. JUST. 10 (2009), *available at* www.americanbar.org/groups/criminal_justice/standards.html.

Statistics, noted that “ninety-four percent of state convictions are the result of guilty pleas.”¹⁷ In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining is not some adjunct to the criminal justice system; it is the criminal justice system.”¹⁸

The ABA Criminal Justice Standard related to the Defense Function, 4-6.1(b), Duty to Explore Disposition Without Trial (Plea), provides as follows:

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed. Such study should include:

- discussion with the client,
- analysis of relevant law,
- analysis of the prosecution’s evidence,
- analysis of potential dispositions, and
- analysis of relevant potential consequences.

Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client’s best interest.

IJA-ABA Juvenile Standards

In coordination with the Institute of Judicial Administration (IJA), drafted comprehensive standards for all aspects of juvenile proceedings.¹⁹ Though not exclusively applicable to defense attorneys, these standards contain certain core principles that influence the nature of considerations and arguments to be made by defense counsel. For example, the Standards provide that before a juvenile may accept a plea, it must be determined that the respondent “has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea.”²⁰ This Standard requires that before permitting a juvenile to plead, a defense attorney must have conducted a social history review, including understanding the juvenile’s school history, as well as any records pertaining to intellectual disability or mental illness.

¹⁷ *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).

¹⁸ *Id.* See also R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L. J. 1909, 1912 (1992).

¹⁹ IJA-ABA Standards for Juvenile Justice (1996), available at https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJ/JJ_Standards_Adjudication.pdf.

²⁰ *Id.* at Adjudication, Standard 3.1(A).

ABA Criminal Justice Standards on Criminal Appeals

The ABA Criminal Justice Standards on Criminal Appeals include standards on transitioning a criminal case from trial counsel to appellate counsel, as well as the duties of counsel during the appellate phase. For example, Standard 21-1.2 of the Criminal Appeals standards²¹ states:

The purposes of the first level of appeal in criminal cases are:

- (i) to protect defendants against prejudicial legal error in the proceedings leading to conviction and against verdicts unsupported by sufficient evidence;
- (ii) authoritatively to develop and refine the substantive and procedural doctrines of criminal law; and
- (iii) to foster and maintain uniform, consistent standards and practices in criminal process.²²

Accordingly, undertaking a first level appeal in a criminal case requires not only familiarity with the record below, but also the substantive law and procedural rules at issue in the case.

Overview of the New Mexico Public Defense System

Understanding the New Mexico public defense system's historic caseloads and personnel is also a critical component of a workload study.

In 1973, the New Mexico Legislature enacted the New Mexico Public Defender Act to meet the State's constitutional obligations to provide counsel to indigent persons charged with crimes in New Mexico state courts. The Act provided for a Public Defender structure with state appropriated funding and centralized administration.

The New Mexico Public Defender Commission is an independent body that governs the Law Offices of the Public Defender of the State of New Mexico. Formed by Section 39 of the New Mexico Constitution, the Commission is responsible for appointing the Chief Public Defender for LOPD and providing "guidance to the chief public defender in the administration of the department and the representation of indigent persons."²³ LOPD in turn, is responsible for establishing and maintaining the public defense system for all judicial districts in the State of New Mexico.

²¹ ABA Standards for Criminal Justice, Criminal Appeals (1978), *available at* https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_crimappeals_toc/.

²² *Id.* at Standard 21-1.2.

²³ New Mexico Constitution, *available at* <https://nmonesource.com/nmos/c/en/item/5916/index.do#!fragment//BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoByCgSgBplTTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA>.

LOPD's statewide Contract Counsel Legal Services Unit organizes and oversees the contract defender representation system whereby LOPD contracts with attorneys to represent clients. 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 because of legal conflicts of interests. In judicial districts and counties 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 130 private attorneys²⁴ who contract to provide primary and conflict of interest case representation statewide.

For the purposes of this report, public defenders are attorneys employed by LOPD and who work at an LOPD office. Contract attorneys are attorneys with a contract to provide public defense services in an area where LOPD does not have an office or when an LOPD office has a conflict.

History of Public Defense Attorney Caseload Control Efforts in New Mexico

Over the years, LOPD has struggled to control public defense attorney caseloads in a manner that ensures reasonably effective assistance of counsel. In 2006, the New Mexico Sentencing Commission engaged the National Center for State Courts for a workload assessment of judges, district attorneys and public defenders in New Mexico. That study concluded that the public defender agency, then known as the New Mexico Public Defender Department, had 169 FTE attorneys and needed an additional 41 public defenders, representing a 20% deficiency (contract attorney work and needs were not analyzed in this report).²⁵ Interestingly, the report similarly concluded that the district attorneys needed an additional 41 FTE.²⁶

Since that time, a prolonged disparity in funding between prosecution and defense has persisted in New Mexico. An investigation by the NM Political Report reviewed seven state budgets from 2003 through 2016 and found that the difference in appropriations between district attorney's offices and LOPD: "hovered around 26 percent, regardless of whether the governor's seat or the legislature was held by Democrats or Republicans."²⁷

²⁴ Obtained from the LOPD FY 2023 Annual Report and Strategic Plan *available at* <http://www.lopdnm.us/pdf/LOPD%20FISCAL%20YEAR%202023%20STRATEGIC%20PLAN%20and%20ANNUAL%20REPORT.pdf>

²⁵ A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices and New Mexico Public Defender Department, National Center for State Courts (June 2007), *available at* <https://nmsc.unm.edu/reports/2007/b.%20NMSC%202006-07%20Workload%20Final%20Report.pdf>. This study has been criticized for anchoring its needed time calculations in a short-term time study of actual used time, among other things. See Hanlon, et. al. Use of the Delphi Method in ABA SCLAID Public Defender Workload Studies; A Report on Lessons Learned, ABA SCAID (2021) *available at* https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/is-sclaid-indef-delphi-method-lessons.pdf.

²⁶ *Id.*

²⁷ Andy Lyman, Overloaded public defender's office was years in the making, NM Political Report (Dec 9, 2016).

Chronic underfunding predictably led to increasingly unmanageable caseloads. In an effort to address the overload and ensure ethical representation for LOPD clients, public defense attorneys sought to limit appointments.²⁸ In 2017, in *New Mexico v. Shoobridge*,²⁹ LOPD asserted that public defense attorneys in Lea County were not able to meet their professional obligations of competency and diligence due to excessive caseloads. During oral argument, the Supreme Court suggested that LOPD needed to improve its available data to demonstrate that a caseload was excessive.³⁰ The New Mexico Supreme Court declined to intervene.³¹ Following *Shoobridge*, continued efforts to refuse cases or withdraw on the basis of excessive caseload were rejected by district judges.³² Support for providing LOPD with additional resources grew in the Legislature, but statewide budget constraints significantly limited actual appropriations.³³

The New Mexico Public Defender Commission then held hearings, gathering testimony from public defense attorneys from across New Mexico, as well as national experts about caseloads and how best to ensure compliance with the Rules of Professional Responsibility.³⁴ Following these hearings the Commission adopted a rule “to create guidelines for the department to use when excessive attorney workloads would make acceptance of additional clients by the affected attorneys ethically irresponsible or would violate the New Mexico rules of professional conduct or the constitutional rights of clients.”³⁵

The rule provided for increased data collection and monitoring of attorney caseloads.³⁶ Further, the rule authorized the Chief Public Defender to “determine[] that affected office and attorney workloads make it ethically irresponsible for affected offices and attorneys to accept additional case assignments, [and, in such circumstances] . . . prepare a notice of case refusal.”³⁷

²⁸ *Id.*

²⁹ *State of New Mexico, ex rel Bennett J. Baur and Charles Lopez v The Honorable William G. W. Shoobridge*, No. S-1-SC-36375

³⁰ Oral Argument *State, ex rel., Baur v Shoobridge* (2017), available at <https://supremecourt.nmcourts.gov/supreme-court/court-calendar-live-viewing-and-case-information/recordings-of-oral-arguments/>.

³¹ Andy Lyman, Overloaded public defender’s office was years in the making, *NM Political Report* (Dec 9, 2016).

³² *New Mexico considers limits for overworked public defenders*, Associated Press (May 21, 2018).

³³ See Letter from State of New Mexico Legislative Finance Committee to Stephen Hanlon, General Counsel, National Association for Public Defense (Oct 24, 2017). Appendix A.

³⁴ *New Mexico considers limits for overworked public defenders*, Associated Press (May 21, 2018).

³⁵ LOPD Case Refusal Protocol, available at <http://www.lopdnm.us/pdf/PDCInterimCaseRefusalProtocal.pdf>.

³⁶ *Id.* at 10.12.14.8-10.12.14.9.

³⁷ *Id.* at 10.12.14.11.

The New Mexico Project Background

In the years since the adoption of this rule, LOPD has made great strides to improve data collection, including instituting a new case management system. Every year, LOPD has sought increased funding from the Legislature citing its continuing inability to provide reasonably effective assistance of counsel to each client, and has sought reforms in the criminal justice system that would reduce the number of clients requiring LOPD representation. LOPD also sought Legislative funding to conduct a new workload study to provide updated guidance on appropriate caseload limits for public defense attorneys in New Mexico.³⁸ This funding was appropriated, and ABA SCLAID began working with LOPD to conduct this study in 2018.

³⁸ See Appendix A. The New Mexico Legislature appropriated \$50,000 for purposes of conducting this study. Additional funding for the study was obtained from the Laura and John Arnold Foundation (now Arnold Ventures).

HISTORICAL STAFFING AND CASELOAD ANALYSIS

The historical staffing and caseload analyses are comprehensive reviews of the available current and historical workload of the public defense system in New Mexico. They seek to accurately describe the current state of public defense in the jurisdiction and are integral to understand the “world of is”³⁹ to compare it to the requirements generated by the Delphi study.

Historical Staffing

Timekeeping

When attorney time can be captured with a high degree of consistency and quality, timekeeping is the best way to understand how many attorneys are spending how much time on current public defense cases. Though there are significant challenges in instituting timekeeping for a study, if there is not already timekeeping in place, this is the preferable way to gather data as long as the data is entered consistently and with a high degree of detail. In New Mexico, timekeeping was implemented and collected beginning April 2019 for this study. However, implementing timekeeping proved to be problematic on a state-wide basis, especially considering the impact of the COVID-19 pandemic, and therefore the alternative FTE method was used for the purposes of this analysis.

FTE Method

An alternative method to timekeeping is to review historical and current personnel employment data for attorneys and convert the attorney personnel to full-time equivalents (FTEs). This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time at the system level, based on the Delphi panel results and caseloads. This study assumes each FTE spends 2,080 hours annually on case work. This is a very conservative measure because it assumes all hours are allocated to legal representation of clients, without considering continuing education requirements and other training, administrative tasks, vacation, sick leave, etc. In addition, it is not unusual for public defenders to work more than eight hours per day.

Public Defender FTE

LOPD provided internal quarterly full-time equivalents (FTE) reports for the period from July 1, 2018 through March 31, 2021. These reports provided personnel data for public defenders, including, but not limited to, name, title, employment classification, assigned district, and FTE equivalent. The data was compiled using human resource department reports by LOPD, and FTEs were calculated by quarter, taking days employed (adjusted for any hires/terminations/leave of absence, etc.) divided by total days in the quarter and applying that percentage to an FTE of 1. Since FY19 (or July 2019), individual public defender calculations were adjusted for any public defenders that took more than 80 hours of FMLA related leave. For the period

³⁹ This stands in contrast to the Delphi study which describes “the world of should.”

The New Mexico Project Historical Staffing and Caseload Analysis

beginning April 2020, individual public defender FTE calculations were also adjusted for any public defenders that took more than 80 hours of FMLA or COVID-19 leave.

This study captures only attorneys with caseloads, excluding any purely supervisory or administrative attorneys, such as the Chief Public Defender, the Deputy Chief Public Defenders, General Counsel and the Training and Recruitment Director. Additionally, this study measures only attorney time against work that should be performed by attorneys, assuming that those attorneys have access to adequate investigative, secretarial, and other support services. It does not endeavor to calculate whether existing support or administrative staffing is adequate.⁴⁰

Public Defender Full Time Equivalent										
FY 2019				FY 2020				FY 2021		
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
156	164	170	165	171	178	176	177	184	184	183

On average, LOPD employed approximately 173 public defender FTEs for fiscal years 2019, 2020, and Q1-Q3 2021. As of March 31, 2021, LOPD employed approximately 183 FTE public defenders.

Contract Attorney FTE

Calculating FTE for contract attorneys is inherently complex. Contract attorneys often work less than full-time on cases assigned by the public defender, engaging the remainder of their time in private practice or other legal work. Some spend almost all of their time on public defense work; others take one public defense case every now and then. The percentage of time each contract attorney devotes to public defense work may vary year to year, or even quarter to quarter.

To calculate contract attorney FTE, LOPD provided quarterly reports for the period July 1, 2018 through March 31, 2021. These reports provided summary statistical data, which included contract attorney FTE. The contract attorney FTE figures were determined by the individual that oversees the contract attorneys, based on his experience, knowledge, and communications with the contract attorneys during the timeframe, and was the best FTE data available.

A more precise contract attorney FTE is not possible to obtain without either requiring contract attorneys to accurately keep time by recording time and event data for each of their public defense cases, or by obtaining a full understanding of the contract attorney's entire workload. For the latter, LOPD would need a reliable understanding of private legal work, other contract work and any non-legal work conducted by each contract attorney. As New Mexico continues to

⁴⁰ The LOPD offices employ, on average, approximately 151.5 FTE support staff to assist attorneys with casework. Average attorney support was derived from the FTE analysis as referenced in the LOPD Strategic Plan and Annual Report 2022, available at <http://www.lopdnm.us/pdf/FY22StratPlanAnnualReportLOPD.pdf> and the LOPD Strategic Plan 2021, available at <http://www.lopdnm.us/pdf/FY21StratPlanLOPD.pdf>, which have FTE equivalent reporting dates of July 2, 2020 and June 17, 2019, respectively.

The New Mexico Project Historical Staffing and Caseload Analysis

improve its data gathering, it will be important to also improve data from and on contract attorneys and their caseloads.⁴¹

Contract Attorney Full Time Equivalent										
FY 2019				FY 2020				FY 2021		
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
112	116	115	116	112	116	111	114	114	115	112

LOPD generally manages 115 to 130 contract attorneys at a given time and they serve approximately 35% of the historical estimated caseload. On average, based on LOPD estimates, these attorneys equate to approximately 114 contract attorney FTEs for fiscal years 2019, 2020, and Q1-Q3 2021.

Historical Caseload

Historical case data was obtained primarily⁴² from LOPD's case management system, Justice Works defenderData™, which is utilized by various public defense agencies across the nation for tracking case information, and includes case filings and tracking by district, charge type, assigned attorney, attorney type, and client identifiers. This study analyzed all new public defense cases opened from July 1, 2018 through March 31, 2021. See Exhibit 1.

The caseloads represent opened cases during the period presented. Some cases remain open for more than one year, and the analysis of caseloads does not take this carry-over into account, nor did it attempt to account for the impacts of the COVID-19 pandemic. Those impacts include court closures, suspended trials, and constant modifications to scheduling due to changing conditions. These closures and slowdowns in the courts have further increased the length from opening to closure of cases, which is expected to impact future years as the justice system works through the backlog. LOPD also anticipates that the pandemic will increase overall case openings. An increase in New Mexico's unemployment rate will likely result in an increase in the number of individuals who qualify for public defense representation, which in turn results in increased case assignments for public defense attorneys. This impact has not been quantified in this report.

A summary of new public defense cases opened statewide is below. See Exhibit 1 for breakout by type, where available, and estimated annual caseload.

STATEWIDE CASES OPENED BY TYPE			
	FY 2019	FY 2020	FY 2021 Q1 - Q3
Adult Criminal	60,748	59,675	37,901
Juvenile	3,014	2,564	1,110
Appeals	423	331	216
Totals	64,185	62,570	39,227

⁴¹ See Exhibit 6, Data Limitations and Assessment of Needs.

⁴² See Exhibit 1 for data source of certain Juvenile data.

DELPHI ANALYSIS

The Delphi Method

The workload study applied the Delphi method, an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of use of the Delphi method can be traced back decades, and the Delphi method is considered an appropriate methodology for weighted caseload studies.⁴³ Examples of these uses of Delphi were sponsored by both the National Association of Court Management and the National Center for State Courts.⁴⁴ These efforts were principally focused on assessing judicial and court support staff needs.⁴⁵ Additionally, the Delphi method has been implemented by ABA SCLAIID and partner accounting and consulting firms in similar workload studies of public defense systems in other states, including Missouri,⁴⁶ Louisiana,⁴⁷ Colorado,⁴⁸ Rhode Island,⁴⁹ and Indiana.⁵⁰ An overview of the Delphi method, including use of the method in determining appropriate caseloads for public defense attorneys, is summarized below and further described in Appendix B.⁵¹

⁴³ Norman Lefstein, *Securing Reasonable Caseloads: Ethics And Law Of Public Defense 140-51* (Am. Bar Assoc. 2011), *available at* https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf

⁴⁴ National Center for State Courts' reports, *available at* <http://www.ncsc.org>.

⁴⁵ Matthew Kleiman, Cythia Lee and Brian Ostrom, *Workload Assessment: A Data-driven Management Tool for the Judicial Branch* (National Center for State Courts 2013).

⁴⁶ RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Missouri Project, A Study of the Missouri Public Defender System and Attorney Workload Standards (2014)*, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf.

⁴⁷ Postlethwaite & Netterville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017)*, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf.

⁴⁸ RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017)*, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf.

⁴⁹ Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, *The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017)*, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf.

⁵⁰ Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020)*, *available at* https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf.

⁵¹ See also *Use of the Delphi method in ABA SCALAIID Public Defense Workload Studies: A Report on Lessons Learned (2021)*, *available at* https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf.

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals.

The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals that responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In the New Mexico Project, as in prior ABA SCLAIID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that *should be* required for a public defense attorney in New Mexico to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The Delphi process used in New Mexico relied upon the expertise of private practice attorneys, contract attorneys, and public defenders to develop a reliable consensus professional judgment of the amount of time defense counsel *should* expect to spend on a particular Case Tasks in particular Case Types with reference to both the Strickland standard and the ethical and substantive professional standards discussed earlier in this report.

In consultation with LOPD, ABA SCLAIID determined that three separate Delphi panels were needed in New Mexico, covering the three major areas of practice in which public defense attorneys are utilized: (1) Adult Criminal; (2) Juvenile; and (3) Criminal Appeals (Appeals). These three panels correspond to the areas of specialization most often practiced by defense attorneys in New Mexico.⁵²

⁵² Initial workload studies, such as the ones completed in Missouri and Louisiana, utilized a single Delphi panel. In later studies, it was noted that a single Delphi panel did not reflect the specialization that had developed in public defense practice. While the same attorney may represent clients in misdemeanor and felony cases, it is relatively rare that a trial defense attorney also takes appeals. As a result, many appellate attorneys participating in the single Delphi panel could only answer questions regarding one Case Type, e.g., appeals. Additionally, having only one or two Case Types in specialist areas, such as appeals or juvenile cases, did not reflect the complexity of these specialty practices. For example, a juvenile defender's caseload may range from status violations to serious assaults and even murder. Over the several ABA public defense workload studies, this recognition resulted in the number of Case Types increasing. For example, in the Colorado workload study, there were 18 Case Types, including three juvenile Case Types. This number of Case Types became difficult to manage. To address this problem, specialty Delphi panels, with separate surveys, were first utilized in Texas and proved not only more manageable, but also more reflective of current public defense practice.

Methodology Framework

The Delphi method, as used in the New Mexico Project, was a series of three survey rounds. The first and second rounds were conducted as anonymous online surveys, and the third round was conducted as a live discussion. In responding to the surveys, participants were asked to consider the ABA and LOPD standards and rules⁵³ applicable to defense representation, as well as their own expertise and experience in providing defense representation in New Mexico. The survey participants, surveys, and results are discussed below.

Survey Participants

The attorneys selected to participate in each of the Delphi panels were initially proposed by LOPD staff, public defenders, private practitioners, and court officers around the state. Consideration was given to geographic diversity within New Mexico, as well as including a mix of public defenders, contract attorneys and private practitioners. If attorneys practiced in two or more of the areas of substantive expertise (Adult Criminal, Juvenile, and Appeals), they were permitted to serve on multiple Delphi panels.

Attorneys proposed to participate in each of the Delphi panels were reviewed and approved by independent Selection Panels of highly regarded individuals in the legal community who have extensive practical experience in the area. There was one Selection Panel for each substantive area (Adult Criminal, Juvenile, Appeals). See Exhibit 4. The Selection Panel members reviewed the list of potential participants and removed any proposed participants they believed lacked the expertise, experience and respect and added participants they considered qualified to participate. Once approved by the relevant Selection Panel, the list of participants on each Delphi panel was finalized.

Case Types and Case Tasks

The first step in developing the survey tool used in the Delphi process was to establish the relevant Case Types and Case Tasks to be surveyed. Case Types and Case Tasks were developed by Consulting Panels of between eight and ten private practitioners, contract attorneys, and private practitioners in the state. A Consulting Panel was convened in each of the Delphi areas: Adult Criminal, Juvenile and Appeals. The Consulting Panels were asked to break down their practice area into Case Types that they would naturally group together. Then they broke down defense attorney work into Case Tasks that fairly encompassed all the work that defense attorneys should perform. The Consulting Panels defined each Case Type and each Case Task⁵⁴ to ensure that there was minimal overlap and that it was clear where time spent on common tasks should be allocated. The process of identifying Case Types and Case Tasks is crucial as it forms the basis for the subsequent surveys.

⁵³ See Background, *supra*.

⁵⁴ See Appendix D for definitions.

The New Mexico Project Delphi Analysis

The Delphi panels considered the following Case Types and Case Tasks (see Appendix D for detailed definitions), as determined by the Consulting Panels.

Adult Criminal	
Case Type	Case Task
Traffic and Other Minor Crimes	Pre-Indictment Work
DWI ⁵⁵	Client Communication and Care
Drug Crimes, Property Crimes, Status Offenses	Discovery/Case Preparation
Crimes Against Person (Adult Victim)	Attorney Investigation/Attorney Interviews
Child Pornography Cases	Experts
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	Legal Research, Motions Practice, Other Writing
Murder (including CARD) ⁵⁵	Negotiations
Probation Violations	Court Preparation
	Court Time
	Sentencing/Mitigation
	Post Adjudication

Juvenile	
Case Type	Case Task
Juvenile Delinquency – In-home Placement	Client Communication
Juvenile Delinquency – Out-of-home Placement/Commitment	Parent/Guardian/Custodian Communication
Youthful Offender Cases	Client Support Services
Serious Youthful Offender Cases	Discovery/Case Preparation
Post-Disposition Cases (Extensions, Parole Revocations)	Attorney Investigation/Attorney Interviews/Pre-trial Interviews
	Experts
	Legal Research, Motions Practice, Other Writing
	Negotiations
	Court Preparation
	Court Time
	Disposition
	Post-Disposition

⁵⁵ During the Delphi panels' collaboration and discussion in the final round, participants decided to include vehicular homicide cases as Murder (including CARD) cases instead of as originally represented in the DWI case type.

Appeals	
Case Type	Case Task
Summary Calendar (Support/Opposition)	Client Communication
General Calendar Ct. of Appeal – Record under 250 pages (up to 2 hours recorded)	Pre-Briefing Preparation
General Calendar Ct. of Appeal – Record 250-750 pages (2-6 hours recorded)	Record Review
General Calendar Ct. of Appeal – Record 750-1500 pages (6-12 hours recorded)	Initial Appellate Brief
General Calendar Ct. of Appeal – Record over 1500 pages (more than 12 hours recorded)	Reply Brief
Direct File in the Supreme Court (Murder 1 and Child Abuse Resulting in Death)	Oral Argument
Discretionary Review in Supreme Court (following General Calendar Review)	Motion for Rehearing
	Post-Decision Practice
	Certiorari

Delphi Surveys

The surveys were designed by ABA SCLAID and Moss Adams and produced and administered by Moss Adams. For Rounds One and Two, Moss Adams used an online surveying tool. Round Three was conducted virtually by Moss Adams. ABA SCLAID personnel were present throughout the meetings to provide guidance and clarifications on the professional norms and standards of practice anchoring the surveying process.

Round 1 Online Surveys

In the Round One survey, participants were directed to consider the following when responding:

- ABA and LOPD standards for defense representation,
- New Mexico Rules of Professional Conduct,
- their expertise and experience in the New Mexico criminal defense field.

The participant was then asked whether they had sufficient experience in a particular Case Type to respond to questions about preparing a defense for an individual charged with a crime of that Case Type. If the participant responded that they did not have sufficient experience for a certain Case Type, the survey would automatically redirect to the next Case Type. If the participant had sufficient experience with the Case Type, the survey proceeded to ask the participant the relevant questions for each Case Task for that Case Type.

The Adult Criminal and Juvenile surveys were designed to identify the following for each Case Type:

- Resolution Percentage: The percentage of each Case Type that should Plead Guilty/Otherwise Resolve vs. Go to Trial (Resolution Type).
- Frequency: In what percentage cases of that Case Type should each Case Task be performed (disaggregated by Resolution Type).

- Time: In the cases that the Case Task should be performed, how much cumulative time should an attorney spend on each Case Task to provide reasonably effective assistance of counsel pursuant to prevailing professional norms (disaggregated by Resolution Type).

The Appeals survey asked only the Frequency and Time, not Resolution Type.⁵⁶

In the context of answering the questions outlined above, participants were also provided the following instructions:

- account for the cumulative time required to complete a Case Task over the life of a case,
- presume adequate investigative, secretarial, and other support services, and
- define the time required for each Case Task in terms of the average or typical case of the Case Type, not the exceptional case.

Round 2 Online Surveys

The Round Two surveys were identical to the Round One surveys, except that the summary statistics of peer responses from the Round One survey were provided for the participants' reference.⁵⁷ Additionally, Round Two was only administered to those who completed the Round One survey.

The data collected from Round One was trimmed to eliminate outliers from both the upper and lower ends of the responses. The trimmed peer range and peer means from Round One were provided in the Round Two survey to assist in informing the participants' responses, as providing anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion. The summary statistics provided to Round Two participants were the middle 60% of responses from Round One (the trim percentage was unknown to the participants). The peer mean is a single data point showing the average responses of the peer range.

Round 3 Live Surveys

The meeting of each Delphi panel was the final iteration of the Delphi survey process in this study. In the Round Three live survey, participants were requested to use the following information for guidance:

- ABA and LOPD standards for defense representation,
- New Mexico Rules of Professional Conduct,
- their expertise and experience in the New Mexico criminal defense field,

⁵⁶ The Go to Trial or Plead/Guilty/Otherwise Resolve was not included in the Appeals survey process. As noted previously, the key time driver in Criminal Appeals cases was length of record, which was a data point used to define Case Types in the Appeals survey. See Appendix C for example surveys.

⁵⁷ See Appendix C for example surveys.

- the summary statistics from peer responses from the Round Two survey, and
- collaboration and discussion with their Delphi panel peer participants.

During the live Round Three survey, for each Case Type, Resolution Type, and Case Task the participants were asked to come to a consensus on the Resolution percentage, Time and Frequency discussed above. The live survey was conducted via the Zoom platform, due to the COVID-19 pandemic restrictions. For each Case Task presented, the definition and the summary statistics for Round Two were provided in writing in advance and discussed during the session, as were the applicable standards.

Anonymous polls were conducted based on an offered value, which generally started with the Round Two trimmed mean for the question.⁵⁸ The poll included responses of “Agree”, “Too High” or “Too Low”. If there was disparity in responses, discussion was held. Participants were encouraged to provide their rationale based on their best professional judgement and experience. As necessary, the relevant standards were revisited and discussed. After discussion, a new value was offered, and a new poll was conducted. This consensus cycle of poll, group discussion, poll, group discussion, continued until a consensus was reached.⁵⁹

Participation Attrition

Since participation in each round requires participation in all previous rounds, attrition occurs throughout the Delphi process. The below chart shows the number of participants in each round for each of the New Mexico Delphi panels:

	Adult Criminal	Juvenile	Appeals
Invited to Participate	138	39	38
Completed Round 1	60	27	25
Completed Round 2	49	20	16
Completed Round 3	29	15	13

See Appendix F for summary characteristics of the Round Three participants (the Delphi panels).

Survey Results

The consensus results for each Case Task on Time and Frequency were combined to arrive at an expected time that should be spent on each Case Task on average. The final expected times were then totaled and allocated to Resolution Type (e.g., plea/otherwise resolve vs. trial), if applicable, to calculate the final Delphi result for each Case Type. The Delphi result is a measure of the total number of attorney hours needed to provide reasonably effective assistance of counsel pursuant of professional norms in a case of that Case Type.

⁵⁸ While the Round 2 peer mean was often the starting point, the group was not constrained in seeking a consensus value. If the group determined, following discussion, that the value should be higher or lower than the Round 2 peer range, the consensus of the Round 3 group governed.

⁵⁹ Considered a consensus if approximately 66% of polled participants “Agreed” on the presented value.

The New Mexico Project Delphi Analysis

The Delphi results for each case grouping are presented below. See Exhibits 5.1, 5.2 and 5.3 for additional detail.

Delphi Panel Results – Adult Criminal	
Case Type	Hours Per Case
Traffic and Other Minor Crimes	7.60
DWI	21.70
Drug Crimes, Property Crimes, Status Offenses	32.53
Crimes Against Person (Adult Victim)	50.67
Child Pornography Cases	126.50
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	177.36
Murder (including CARD)	391.03
Probation Violations	5.17

Delphi Panel Results – Juvenile	
Case Type	Hours Per Case
Juvenile Delinquency – In-home Placement	15.84
Juvenile Delinquency – Out-of-home Placement/Commitment	36.61
Youthful Offender Cases	101.15
Serious Youthful Offender Cases	379.03
Post-Disposition Cases (Extensions, Parole Revocations)	21.38

Delphi Panel Results – Appeals	
Case Type	Hours Per Case
Summary Calendar (Support/Opposition)	39.80
General Calendar Ct. of Appeal – Record under 250 pages (up to 2 hours recorded)	89.87
General Calendar Ct. of Appeal – Record 250-750 pages (2-6 hours recorded)	123.85
General Calendar Ct. of Appeal – Record 750-1500 pages (6-12 hours recorded)	161.14
General Calendar Ct. of Appeal – Record over 1500 pages (more than 12 hours recorded)	232.07
Direct File in the Supreme Court (Murder 1 and Child Abuse Resulting in Death)	242.53
Discretionary Review in Supreme Court (following General Calendar Review)	191.37

DEFICIENCY ANALYSIS

Adult Criminal and Juvenile

To perform the deficiency analysis, the projected caseload (obtained by analysis of the historical caseloads) is multiplied by the time needed by Case Type (as determined by the Delphi panels), to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed can then be translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



A Delphi workload analysis, consisting of an estimate of New Mexico’s public defense annual workload multiplied by the Delphi panel’s consensus opinions is presented in the table below, disaggregated by attorney type for the Adult Criminal and Juvenile defense areas. See Exhibit 2 for detailed calculations of the estimated workload.

At a consistent annual workload, LOPD is deficient 602 FTE for its Adult Criminal and Juvenile caseloads for both public defenders and contract attorneys. In other words, LOPD has only 33% of the FTE attorneys needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in New Mexico to its Adult Criminal and Juvenile clients.

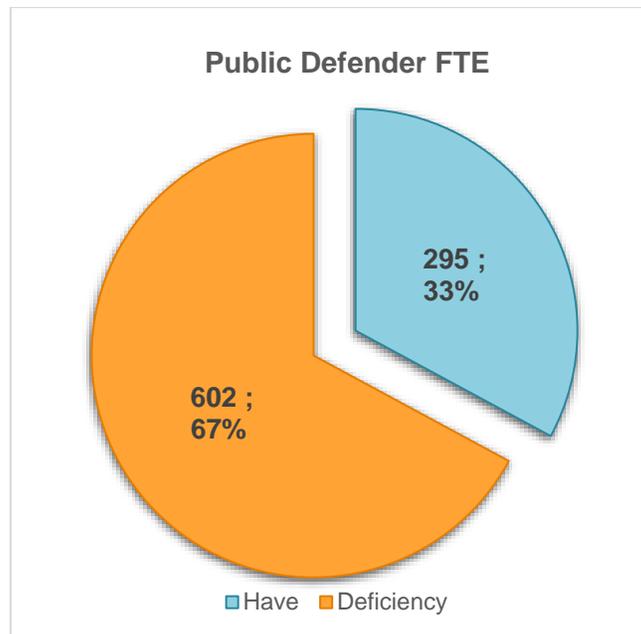


The New Mexico Project Deficiency Analysis

DEFICIENCY ANALYSIS

Area	[1] Estimated Annual Public Defender Caseload	[2] Public Defender Hours	[1] Annual Contract Attorney Caseload	[2] Contract Attorney Hours	[1] Total Estimated Annual Caseload	Total Hours
Adult Criminal	37,606	1,109,667	19,966	708,574	57,572	1,818,241
Juvenile	[5]		[5]		2,432	46,836
Total	37,606	1,109,667	19,966	708,574	60,004	1,865,077
					FTEs needed [3]	897
					FTEs have [4]	295
					FTE deficiency	602
					Deficiency %	67%

- [1] Based on the average opened cases per year for the respective case grouping and attorney type, where applicable (see Exhibit 1)
- [2] Represents the Delphi Panel Results x Estimated Annual Caseload Totals (see Exhibit 2 for detailed calculations)
- [3] Hours divided by 2,080
- [4] The average FTE by attorney type from FY Q1 2017 - Q3 2021 (See Exhibit 3)
- [5] Attorney type designation was not available for the Juvenile caseload (see Exhibit 1)

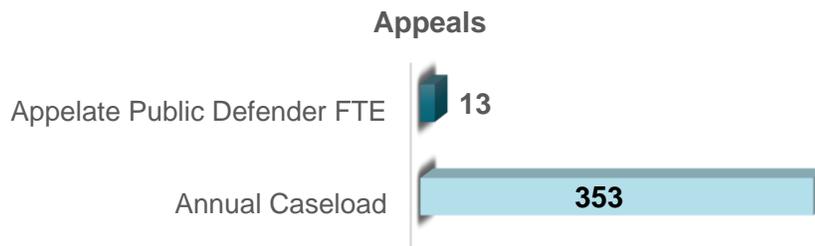


For the purposes of this report, 2,080 hours was used to calculate needed FTE (40 hours/week; 52 weeks/year). This FTE calculation is extremely conservative. It assumes **all** hours are allocated to client representation, without consideration for continuing legal education requirements and other training, administrative tasks, vacation, travel, sick leave, etc.

Beginning in April 2019, LOPD instituted timekeeping to measure actual work on time spent on cases. The compliance rate for attorneys capturing their time was not consistent, therefore timekeeping was not used in this study or its deficiency analysis.⁶⁰ However, there was a subset of attorneys who were considered quality timekeepers (Quality Timekeeping Group).⁶¹ On average this group spent 14.95% of their time on non-casework tasks, including administrative time,⁶² and 8.88% of their time on work related travel.⁶³ This averages to 496 hours annually. If this were consistent across all FTE, it would suggest that FTE hours should be 1,584 (as opposed to 2080),⁶⁴ which might still need to be reduced to account for vacation, sick time, and holidays. However, as noted previously, for purposes of this study, we used the more conservative 2,080 hours to calculate FTE.

Appeals

For appeals, the Consulting Panel determined that the Case Types should primarily be categorized based on record length. Unfortunately, record length data is not available in the historical caseload information or LOPD's case management system. Therefore, the Delphi consensus opinions were not able to be applied to the actual historical caseload to analyze any potential deficiency among appellate public defense attorneys. The annual caseload averages 353 appellate cases and is served by 13 appellate FTE (See Exhibit 3). These FTE were excluded from the deficiency analysis, as they were specifically identified as working in LOPD's appellate division.



⁶⁰ This is not uncommon when timekeeping is instituted exclusively for a study. ABA SCLAIID workload studies in Louisiana and Rhode Island, for example, had to rely exclusively on FTE analysis. For more on timekeeping issues and FTE analysis, see Hanlon, et. al., Use of the Delphi Method in ABA SCLAIID Workload Studies: A Report on Lessons Learned, *available at* https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf.

⁶¹ See Appendix E for additional details surrounding the criteria used in developing the Quality Timekeeping Group.

⁶² Administrative time included hiring/recruiting, non-case specific meetings, organizational activities, training/CLE/professional development, supervision time, etc.

⁶³ Travel time included both casework and other non-case work-related travel time.

⁶⁴ Using 1,584 hours for the FTE suggests the FTE deficiency could be as high as 75% (882 FTE).

Data Assumptions in Deficiency Analysis

As noted throughout this report, where confirmable data could not be obtained, the assumptions made were conservative. Below summarizes some of the data deficiencies encountered during this study and describes how they were resolved.

- **Juvenile In-Home/Out-of-Home Placement Data:** The Consulting Panel addressing juvenile cases divided delinquency cases into two types: in-home placement and out-of-home placement. The rationale for this division was that negotiations and litigation over a potential out-of-home placement drives a significant amount of attorney time. It may require endeavoring to fight the proposed placement and keep the individual in their home. It almost always requires additional client care time, consulting with service providers about the needs of the individual and what programs might be appropriate. It often requires additional motions, consultation with experts, negotiation with experts and hearings, which require both court preparation and court time. Unfortunately, the current data collection mechanisms at LOPD do not reliably chart whether an out-of-home placement was sought at any point during the case.

The only data available was dispositional data – data showing when the outcome of a delinquency case was a juvenile commitment. Accordingly, a case was only counted in the Delinquency Out-of-Home Placement Case Type when the dispositional data showed that the case ended in a juvenile commitment. The remainder of all Juvenile Delinquency cases were included in the Delinquency In-Home Placement Case Type. This result is conservative because it includes in the In-Home Placement Case Type all juvenile delinquency cases where an out-of-home placement was sought but not the dispositional result. In other words, it downgrades all juvenile delinquency cases in which LOPD attorneys were successful in obtaining in-home placements for their clients after an out-of-home placement was proposed.

- **Serious Youthful Offender (SYO) cases** currently are not tracked effectively within the case management system. While the number of juvenile cases in which the client faced a homicide charge could be ascertained from defenderData™, we were unable to confirm the number of these cases in which cases SYO was sought.⁶⁵ Accordingly, despite knowing that LOPD has handled SYO cases in each of the years studied, we made the conservative assumption that all of these cases were YO, rather than SYO cases.

⁶⁵ There were 9 such cases in FY2019, 9 such cases in FY2020, and 12 such cases through Q3 FY2021.

- For Appeals, the caseload data could not be broken into Case Types because the critical information – length of record – is not currently collected in a systematic and reliable fashion. Additionally, at present, cases are tracked by defendant. One defendant could, in fact, have several Case Types as the case moves from Summary Calendar to General Calendar to seeking Supreme Court review. In other words, one case in defenderData™ could equate to three case counts in our caseload analysis. Because of these data problems, neither a caseload analysis or a deficiency analysis could be conducted for Appeals.
- As noted above, 2,080 hours for an annual work year was used to calculate 1 FTE. This represents an attorney working 8 hours per day, 5 days per week, 52 weeks of the year ($8 \times 5 \times 52 = 2,080$). No time is deducted for continuing education or other trainings, administrative tasks, vacation, sick leave, etc., although we know that full time public defense attorneys must and do devote time to such events.

For all of these reasons, the LOPD attorney FTE deficiency could be more significant than presented.

A more complete analysis of data limitations and an assessment of data needs is included in the Exhibits to this report.⁶⁶ Continuing to upgrade and improve data collection processes will require additional resources. For example, improving case opening and case closing forms and integrating them into defenderData™ will likely require customization, and monitoring compliance and data analysis may require additional personnel. Nevertheless, the ability to improve data collection, and through it, the accuracy of caseload and FTE analysis should remain a priority for LOPD.

⁶⁶ See Exhibit 6.

CONCLUSION

Annually, LOPD opens an average of 57,572 new Adult Criminal cases and 2,432 new Juvenile cases. LOPD has 295 full time equivalent attorneys. Right now, LOPD attorneys must handle 203 new cases per attorney per year, regardless of whether those cases are misdemeanor cases or serious felony cases. This would equate to only 10 hours per case, be it a trespass, a DWI, a sexual assault of a minor or a homicide. Put another way, to meet the Delphi standards for New Mexico, current public defense attorneys would need to spend 6,322 hours per year 25.4 hours per working day⁶⁷ during a calendar year working on cases. It simply is not possible.

LOPD has a serious public defense attorney staffing deficit. At current caseloads, LOPD 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.

There are many ways to address a deficiency. The most obvious is to seek additional funding from the New Mexico Legislature. Failure to provide adequate assistance of counsel risks costly errors and erodes public trust in the justice system. Accordingly, New Mexico's political leaders have a multitude of reasons to support expansion of LOPD's capacity. It should be noted, however, that adding attorney FTEs alone will not be sufficient. The Delphi process assumes that attorneys have adequate support staff and supervision. An increase in attorney FTE must therefore be accompanied by additional support staff, such as secretaries, paralegals, investigators, social workers, as well as attorney supervisors and trainers.

Some portion of the deficiency could be addressed through other criminal justice reforms, which would reduce the need for public defense attorney time. Many states have, for example, legalized some drug offenses, which removes cases from the criminal justice system. With its recent efforts to improve data collection and analysis capacities, LOPD can more accurately assess the impact of changes in criminal justice policy on its caseloads and staffing needs.

LOPD could again seek to limit its caseloads to what it can reasonably handle given its current staffing. In other words, it could seek to reduce its caseloads by refusing new cases and/or withdrawing from existing cases until the caseloads of its attorneys meet the Delphi standards.⁶⁸

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.

⁶⁷ Working days is defined as 249 days per year (removing weekend and public holiday days).

⁶⁸ See ABA Eight Guidelines of Public Defense Related to Excessive Workloads: ABA Ethics Opinion 06-441.

Appendices

The New Mexico Project

Appendix A: State of New Mexico Legislative Finance Committee Letter

Representative Patricia A. Lundstrom
Chairwoman

Representative Paul C. Bandy
Representative Randal S. Crowder
Representative George Dodge, Jr.
Representative Jimmie C. Hall
Representative Larry A. Larrafiaga
Representative Nick L. Salazar
Representative Jim R. Trujillo

State of New Mexico
LEGISLATIVE FINANCE COMMITTEE

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David Abbey
Director



Senator John Arthur Smith
Vice-Chairman

Senator William F. Burt
Senator Pete Campos
Senator Carlos R. Cisneros
Senator Carroll H. Leavell
Senator Howie C. Morales
Senator George K. Munoz
Senator Steven P. Neville

October 24, 2017

Stephen F. Hanlon, General Counsel
National Association for Public Defense
2101 N St. NW, Ste. 203
Washington, DC 20037-3045

Dear Mr. Hanlon,

We appreciate the time and effort you have invested on behalf of the New Mexico Law Offices of the Public Defender, and respectfully request that we join together to develop workload data to assist us in a comprehensive review of the Office's resource requirements.

The New Mexico Legislature has recognized the need to provide additional legislative support for some time. Several years ago, we committed to providing additional resources incrementally over a period of years, and we abided by that commitment, gradually increasing the appropriation to the Law Offices of the Public Defender. Regrettably, plunging oil and gas prices decimated our state revenues and compromised our ability to continue the additional funding. The Law Offices of the Public Defender remains a legislative priority. In a year when most agency budgets were reduced, \$1.2 million in additional funding was appropriated for expert witnesses and reducing attorney vacancies. Our most recent revenue projection suggests a scant \$25 million available in the next fiscal year to address all of the requests statewide in a \$6-billion-dollar budget.

It is increasingly apparent that legislators will require additional data regarding the workload of our public defenders to further inform funding decisions in these times of budgetary austerity. As you know, our New Mexico Supreme Court recently denied the Public Defender's Writ in *State of New Mexico ex rel. Baur v. Shoobridge* in which you graciously participated. Our Director, David Abbey, and his staff attended the oral argument and came away with the realization that the Court would also require additional data with which to inform its future deliberations, as a condition precedent to providing any real guidance to the Law Offices of the Public Defender and the State of New Mexico.

The New Mexico Project

Appendix A: State of New Mexico Legislative Finance Committee Letter

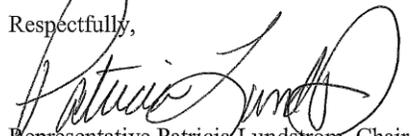
Public Defender Workload Study – October 24, 2017
Page 2 of 2

It is clear that a workload study is crucial as New Mexico struggles to fulfill its responsibility to adequately fund the Law Offices of the Public Defender, so that it can provide the constitutionally required effective assistance of counsel, as well as helping our public defenders comply with the ethical principles they have sworn to uphold.

We understand that the Law Offices of the Public Defender will request a \$50,000 special appropriation from non-recurring revenues to help fund a workload study.

We will make every effort to secure the State's share in order to partner with you in this endeavor. While we cannot speak for the entire Legislature, nor can we speak to Governor Martinez's support, rest assured that we stand in full support of the workload study, and thank you in advance for your focus on New Mexico as our nation struggles to provide effective representation for indigent defendants.

Respectfully,


Representative Patricia Lundstrom, Chair


Senator John Arthur Smith, Vice-Chair

Delphi Method⁶⁹

The Delphi method was introduced in 1962 by researchers at the RAND Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.⁷⁰ The Delphi method requires that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”⁷¹ At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”⁷² Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by the experts, or of factors and considerations suggested as potentially relevant by one or another respondent.”⁵⁰

⁶⁹ This literature review on the Delphi method is derived from *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the ABA’s Standing Committee on Legal Aid and Indigent Defendants. The Missouri Project provided a national blueprint for workload studies such as this one. Available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf.

⁷⁰ Norman Dalkey and Olaf Helmer, An Experimental Application of the Delphi Method to the Use of Experts, 1962, available at http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf.

⁷¹ Gene Rowe and George Wright, The Delphi Technique as a Forecasting Tool: Issues and Analysis, 15 INT’L J. FORECASTING 35354 (1999) (hereafter Rowe and Wright, *The Delphi Technique*).

⁷² Olaf Helmer and Nicholas Rescer, On the Epistemology of the Inexact Sciences P-1513 42 (The RAND Corporation 1958), available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.

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Appendix B: The Delphi Method

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.⁷³

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.⁷⁴ In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.⁷⁵

Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."⁷⁶

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.⁷⁷ In addition to its use in forecasting, the Delphi method has been used for "program planning, needs assessment, policy determination, and resource utilization."⁷⁸ Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades. Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.⁷⁹

⁷³ *Id.*

⁷⁴ Rowe and Wright, *The Delphi Technique*, supra note 52.

⁷⁵ Chia-Chien Hsu and Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus* (2007) (hereafter Hsu and Sandford, *The Delphi Technique*), available at <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1177&context=pape>.

⁷⁶ Rowe and Wright, *The Delphi Technique*, supra note 52, at 353-54.

⁷⁷ Harold Linstone and Murray Turoff, *The Delphi Method: Techniques and Applications* (2002); Rowe and Wright, *The Delphi Technique*, supra note 52, at 353-54.

⁷⁸ Hsu and Sandford, *The Delphi Technique*, supra note 57.

⁷⁹ See, e.g., Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996).

The New Mexico Project

Appendix B: The Delphi Method

In seeking to undertake a public defender caseload study in Missouri, ABA SCLAIID partnered with RubinBrown to both select a methodology and execute an analysis that would, using data and analytics, result in reliable caseload standards. After an exhaustive literature review, RubinBrown concluded that the Delphi method was a reliable research tool to determine the appropriate workload for a public defender office because it could generate a reliable consensus of expert opinion. The experts in a public defender workload Delphi study are experienced defense attorneys, both private practitioners and public defenders, with in depth knowledge of practice in the jurisdiction. These individuals serve as panelists in the Delphi process.

RubinBrown and ABA SCLAIID utilized the Delphi method to complete The Missouri Project, a public defender workload study, which included a National Blueprint for conducting future workload studies.⁸⁰ In these studies, the Delphi process is driven, not by actual time data provided to the Delphi panel participants, but by the Standards applicable to public defense practice discussed above – the ABA Criminal Justice Standards and the state Rules of Professional Responsibility.⁸¹

⁸⁰ *The Missouri Project*, *supra* note 36.

⁸¹ These standards are included in the Delphi surveys and are also discussed at length prior to the start of the live meeting of the Delphi panel.

The New Mexico Project Appendix B: The Delphi Method

In the years since The Missouri Project, ABA SCLCID has conducted four additional public defender workload studies in collaboration with three additional accounting and consulting firms:

- Louisiana (Postlethwaite and Netterville, APAC)⁸²
- Colorado (RubinBrown)⁸³
- Rhode Island (Blum Shapiro)⁸⁴
- Indiana (Crowe LLP).⁸⁵

In each instance, the accounting and consulting firm reviewed and approved the use of the Delphi process, and conducted their services in accordance with the Standards for Consulting Services, as established by the American Institute of Certified Public Accountants.

In 2020, ABA SCLCID published a report on its use of the Delphi method to conduct public defense workload studies. That report, *Use of the Delphi method in ABA SCLCID Public Defense Workload Studies: A Report on Lessons Learned*, is available on the ABA SCLCID website.⁸⁶

⁸² Postlethwaite & Netterville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017)*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf.

⁸³ RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017)*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf.

⁸⁴ Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, *The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017)*, available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf.

⁸⁵ Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020)*, available at https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf.

⁸⁶ Available at https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf.

Round 1 Survey Example

Youthful Offenders

Defined as any case in which there is the potential for adult sentencing (except Serious Youthful Offender, which is its own Case Type).

What percentage of **Youthful Offender** cases do you believe should:
(must total 100%)

% Go to Trial

% Plead or Otherwise Resolve

Youthful Offenders

Defined as any case in which there is the potential for adult sentencing (except Serious Youthful Offender, which is its own Case Type).

Below, you will be asked to complete two charts about specific tasks in **Youthful Offender** cases. The first chart is about cases that PLEAD OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT, ON AVERAGE to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

The New Mexico Project
Appendix C: Survey Examples

Round 1 Survey Example (continued)

Youthful Offenders: Plead or Otherwise Resolved

Includes all cases that resolve prior to trial including dismissals, etc.

	PLEAD	PLEAD			PLEAD
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

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Appendix C: Survey Examples

Round 2 Survey Example

Youthful Offenders

	<u>Time Needed</u>	Peer Mean	Peer Range	<u>% Cases Performed</u>	Peer Mean	Peer Range
PLEAD OR OTHERWISE RESOLVE						
Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Parent/Guardian/Custodian Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Client Support Services	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Discovery/Case Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Experts	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Legal Research, Motions Practice, Other Writing	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Negotiations	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Disposition	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Disposition	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%

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Appendix D: Case Types and Task Definitions

Case Type Definitions – Adult Criminal

Case Type	Description
Traffic and Other Minor Crimes	All criminal traffic cases and other minor cases, including disorderly conduct, nuisance, prostitution, resisting arrest, etc.
DWI	All categories of driving while intoxicated excluding vehicular homicide.
Drug Crimes, Property Crimes, Status Offenses	Including felony and misdemeanor drug cases, breaking and entering, larceny, embezzlement, fraud, shoplifting and status offenses such as felon in possession and failure to register.
Crimes Against Person (Adult Victim)	All crimes of violence with an adult victim including rape, sex assault, robbery, domestic violence, and all categories of battery and assault.
Child Pornography Cases	All child pornography cases with an actual victim.
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	Child abuse cases NOT INCLUDING Child Abuse Resulting in Death, which is included in the murder case type, and child sex crime cases NOT INCLUDING child pornography cases with an actual victim, which is its own case type.
Murder (including CARD)	All types of murder cases (1st Degree, 2nd Degree, Voluntary Manslaughter and Involuntary Manslaughter), including Child Abuse Resulting in Death (CARD), including vehicular homicide.
Probation Violations	Probation violation cases.

Case Task Definitions – Adult Criminal

Case Task	Description
Pre-Indictment Work	Any and all work by the attorney before the filing of indictment including conducting preliminary investigations, research and writing, client communication and appearances, including felony first appearance, preliminary hearings and preventative detention hearings that occur pre-indictment. Grand jury work including preparation of Bort-Jones letter.
Client Communication and Care	All client communication (mail, phone, in-person, etc.) as well as communication with client family members related to the criminal case (except communication of an investigatory nature, which falls under Interviews/Field Investigation) including communications regarding plea and sentencing. Client care and support done by the trial attorney, including working with social services, treatment providers or outside agencies on behalf of clients; referrals for legal aid or other services; handling medical/family/other issues affecting client during criminal case; attending other proceedings related to or potentially impacting criminal charges.
Discovery/Case Preparation	Requesting, receiving and reviewing discovery materials and other case-related documents, including public records requests, nonparty record production, priors and habitual enhancement documents, and materials and records related to competency. Reviewing, analyzing or organizing case-related materials/evidence including any video evidence, social media evidence, jail communications, etc.; requesting necessary support personnel via LSR, working with and supervising investigators; writing/editing case related-memos; defense team meetings (except in preparation for Court, which falls under Court Preparation); documenting case file.
Attorney Investigation/Attorney Interviews	Case-related investigation activities conducted by the attorney, including viewing the scene and physical evidence, canvassing for witnesses, preparing for witness interviews, and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (NOTE: Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Preparation).

The New Mexico Project

Appendix D: Case Types and Task Definitions

Case Task Definitions – Adult Criminal (continued)

Case Task	Description
Experts	Locating, interviewing, corresponding with (including preparing case file), consulting with and reviewing reports of experts for the defense, including experts for competency hearings (except Experts exclusively related to Sentencing/Mitigation, which should be recorded under Sentencing/Mitigation).
Legal Research, Motions Practice, Other Writing	Research; Drafting of motions, pleadings, briefs, etc. related to pretrial, motions, or trial, including any written submission to the prosecutor related to negotiations (except research or writing exclusively related to Sentencing/Mitigation which falls under Sentencing/Mitigation).
Negotiations	Discussions with a prosecutor or officer in an effort to resolve a case, including referrals or screenings for specialty courts.
Court Preparation	Preparing for any and all post-indictment and pre-sentence hearings or a trial including defense team meetings or other consultation with colleagues in preparation for court, time spent prepping for direct exams, cross-exams, voir dire etc., client preparation, subpoenaing and preparing witnesses, preparing materials for courts including exhibits and presentations, moot arguments and mock examinations, and other elements of trials and court hearings (except preparation for hearings exclusively related to Sentencing/Mitigation which falls under Sentencing/Mitigation).
Court Time	Time spent in court at post-indictment and pre-sentencing hearings or trial (bench or jury) including status hearings, pretrial hearings, competency proceedings, dangerousness proceedings, suppression hearings, specialty court settings, etc.
Sentencing/Mitigation	Developing or collecting evidence to be used in sentencing, witness preparation for sentencing hearings, consulting with sentencing/mitigation experts, preparing for sentencing including review and rebuttal of prosecutorial sentencing materials, preparing for and attending sentencing hearings, remands/specialty court violations, habitual trials, and addressing restitution.
Post Adjudication	Work performed post-adjudication including filing appropriate motions or notices, such as DNA expungement motion, notice of intent to appeal/waiver of appeal, and motion for appellate counsel; preparing and filing docketing statement or statement of issues; preparing file for appeal/transition to appellate attorney; communication with appellate attorney; and troubleshooting lingering case-related matters.

Case Type Definitions – Juvenile

Case Type	Description
Juvenile Delinquency – In-home Placement	Any juvenile delinquency case, including probation violations, in which no party is seeking out-of-home placement/ commitment.
Juvenile Delinquency – Out-of-home Placement/Commitment	Any juvenile delinquency case in which either the probation officer/prosecutor is seeking out-of-home placement/commitment or circumstances might require such a placement, e.g. parent(s)/guardian(s) unwilling to house.
Youthful Offender Cases	Any case in which there is the potential for adult sentencing (except Serious Youthful Offender, which is its own Case Type).
Serious Youthful Offender Cases	Any first degree or open count murder case (juvenile age 15-17 at time of incident).
Post-Disposition Cases (Extensions, Parole Revocations)	Including judicial reviews/hearings, commitment extensions, supervised release/parole revocations, etc.

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Appendix D: Case Types and Task Definitions

Case Task Definitions – Juvenile

Case Task	Description
Client Communication	All client communication (mail, email, phone, in-person, etc.).
Parent/Guardian/Custodian Communication	All communications with the client's parent(s)/ guardian(s)/custodian(s) (except communication of an investigatory nature, which falls under Attorney Interviews).
Client Support Services	Working with social workers and social services, treatment providers or outside agencies on behalf of clients, including the Juvenile Probation Officer; dual status work; handling medical/family/educational/other issues affecting client during juvenile delinquency case; attending other proceedings related to or potentially impacting juvenile charges, including triage and treatment team meetings (excluding preparation for Court or Trial).
Discovery/Case Preparation	All discovery and case preparation occurring in office except in preparation for Court or Trial. This includes: ordering and obtaining discovery materials and other case-related documents, including CYFD records, medical records, educational records, treatment records, public records requests and nonparty record production; reviewing, analyzing or organizing case-related materials/evidence including any court-ordered evaluations, video evidence, social media evidence, etc.; working with investigators; writing/editing case related-memos; defense team meetings; documenting case file. This includes discovery and preparation for Amenability hearing.
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	Case-related investigation activities that occur out-of-office, including visits for social history investigations, viewing the scene and physical evidence, canvassing for and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney).
Experts	Locating, retaining, corresponding, consulting with and reviewing reports of experts for the defense, including experts needed for competency, amenability hearings and trial.
Legal Research, Motions Practice, Other Writing	Research; Drafting of motions, pleadings, briefs, etc. related to pretrial, motions, amenability, or trial.
Negotiations	Communications and discussions with prosecutor and/or probation in an effort to resolve a case.
Court Preparation	Preparing for any and all pre-trial or pre-disposition hearing and trial including competency: defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., preparing subpoenas, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and pre-adjudication hearings.
Court Time	In court at hearings and trial (excluding Disposition hearing).
Disposition	Developing or collecting evidence to be used in disposition, consulting with experts for disposition, preparing for disposition hearing including review and rebuttal of prosecutorial materials, and addressing restitution. Attending disposition hearing.
Post-Disposition	Work performed post-disposition including filing appropriate motions or notices, such as sealing, notice of intent to appeal/waiver of appeal; preparing and filing docketing statement or statement of issues; obtaining and delivering record and other materials; preparing file for appeal/transition to appellate attorney; communication with appellate attorney; and troubleshooting lingering case-related matters.

The New Mexico Project

Appendix D: Case Types and Task Definitions

Case Type Definitions – Appeals

Case Type

Summary Calendar (Support/Opposition)
General Calendar Ct. of Appeal – Record under 250 pages (up to 2 hours recorded)
General Calendar Ct. of Appeal – Record 250-750 pages (2-6 hours recorded)
General Calendar Ct. of Appeal – Record 750-1500 pages (6-12 hours recorded)
General Calendar Ct. of Appeal – Record over 1500 pages (more than 12 hours recorded)
Direct File in the Supreme Court (Murder 1 and Child Abuse Resulting in Death)
Discretionary Review in Supreme Court (following General Calendar Review)

Case Task Definitions – Appeals

Case Task	Description
Client Communication	All client communication related to appeal (mail, email, phone, in-person, etc.) including explanation of appellate process.
Pre-Briefing Preparation	Consultation with trial attorney; Requesting missing exhibits, transcripts or other materials; Motions practice to complete record; Maintaining file; Preparing and filing motion(s) for extension of time as necessary.
Record Review	Review of transcript/CDs, exhibits and other materials in record.
Initial Appellate Brief	Research to determine appellate strategy including legal research, brainstorming/consultation; Writing, editing and filing initial brief whether Memorandum in Opposition or Brief in Chief or Answer Brief.
Reply Brief	Review of State Brief; Research, writing and editing reply brief.
Oral Argument	Preparation for oral argument; moot court, brainstorming and consultation; attending/presenting oral argument in court.
Motion for Rehearing	Researching, preparing for, drafting and filing motion for rehearing.
Post-Decision Practice	Any and all work following decision including, but not limited to, preparing and filing motion for release, motion for expedited mandate, or other steps to ensure trial court compliance (not including Petition for Certiorari or Response to Petition for Certiorari which falls under Certiorari).
Certiorari	Preparing and filing a Petition or Response to Petition for Certiorari to the New Mexico Supreme Court.

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Appendix E: Quality Timekeeping Group Analysis

The Quality Timekeeping Group was derived from the timekeeping data captured from April 2019 through April 2021. The Quality Timekeeping Group included individual attorneys who met the following criteria:

- Recorded a minimum of 3 months of timekeeping data
- 80% compliance of weekday hours entered compared to calculated expected hours entered (expected hours were 7.5 daily hours for public defenders and 5 daily hours for contract attorneys)
- 50% compliance rate of number of days' time was entered (calculated from first date of attorney entered time to last day of time entry)

Quality Timekeeping Group

	Public Defender	Contract Attorney	Total
Attorneys	57	12	69
Total Timekeeping Hours	149,055	18,775	167,830
Administration Coded Hours	23,266	1,826	25,092
Travel Coded Hours	11,223	3,685	14,908
Administration Rate	15.61%	9.73%	14.95%
Travel Rate	7.53%	19.63%	8.88%

Impact to a 2,080 work year (Rate x 2,080)

Administration (In Hours)	325	202	311
Travel (In Hours)	157	408	185
Total Hour Impact	482	610	496
Administration (In Days)	41	25	66
Travel (In Days)	20	51	71
Total Days Impact	61	76	137

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Appendix F: Delphi Panel Characteristics

Delphi Panel Characteristics

The below charts summarizes the experience of the Round 3 participants (the Delphi panels):

Years as Practicing Attorney	Adult Criminal	Juvenile	Appeals
Less than 5 years	2	1	-
5 to 15 years	15	4	9
16 to 25 years	6	7	2
More than 25 years	6	3	2

Category	Adult Criminal	Juvenile	Appeals
Public Defender at an LOPD office	21	13	11
Contract Attorney – attorney who provides public defense services via a contract	6	2	
Other / Private Practice Attorney	2	-	2

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Adult Criminal Case Intake Form – Los Angeles, California County Bar Association

Effective as of 07/27/21

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY
APPOINTMENT BAR ASSOCIATION

CLIENT INTAKE SHEET

Attorney Name: _____

Duty Date: _____ / Non-Duty Day Pick-Up Date: _____

Case #: _____ Court: _____ Court Dept #: _____

Client Information

Name: _____ AKA/Booked as: _____

DOB: _____ / Age: ____ Gender: M F Race/ Ethnic Origin ^{Please select:} _____

Client's Place of Birth (City, Country): _____

Whether or not your client is impacted by US immigration policy, please check this box affirming that you have considered their eligibility for expulsion/citizenship and documented this in their file.

Contact Information

Client Address: _____

Client Phone Number: (____) _____

Name of Family Contact: _____

Please indicate this person's relationship to client: _____

Family Number: (____) _____

Interpreter Required: Yes No Preferred Language: _____

Charging Document

Complaint/Information Status: New PV

Complaint Date: _____, and/or Next Hearing Date: _____

The New Mexico Project
Appendix G: Example Opening and Closing Forms

**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association
(continued)**

Next Hearing Type: _____ Filing Date: _____

Case Information

Was this an instance of witness representation? Yes No

If yes, you may skip the Detention Status and Charges sections.

What stage were you appointed? _____

DCFS or Dependency Court/Mental Health Court Involvement? Yes No

If yes,

Name/ Contact of service provider: _____

Name/ Contact of service-related Attorney: _____

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):	Enhancements:
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____

Max Exposure: _____

Detention Status

My client is currently detained: Yes No

If no, please enter NA for the following fields.

If Detained After Arraignment: House Arrest (CDP) County Jail: Please select:

Other: _____ Detention Location: _____

Bail Review Date: _____ Preliminary Hearing Date: _____ Other: _____

The New Mexico Project
Appendix G: Example Opening and Closing Forms

**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association
(continued)**

Co-Defendant Information

If there was no co-defendant involvement, please enter NA

Names of Co-Defendant(s):	Case Number	Co-Attorneys of Co-Defendants
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Open Cases

Charges:

Case Numbers:

Attorney: _____

Probation Officer: _____

Next Court Date: _____

Court/ Judge: _____

Notes

INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association

Effective as of 07/30/21

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY
APPOINTMENT | BAR ASSOCIATION

CASE RESOLUTION FORM

Date of Resolution: _____ Attorney Name: _____

Client Name: _____ Case Number: _____

Court: _____ Department: _____

Judicial Officer: _____

Ancillary Resources Used:

ICDA Team: _____ Investigator: _____

Social Worker: _____ Expert Witness: _____

Additional Names: _____

Is this a Prop 57 or a Transfer Case? Yes No

Case Status: Please select:

Result: Please select:

Sustained Max:

Length: _____ Period: Please select:

Client's Location: Please select:

Facility: _____

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)

INDIGENT CRIMINAL DEFENSE APPOINTMENT		LOS ANGELES COUNTY BAR ASSOCIATION
Charges		
1. Count 1: _____	Charge(s) Sustained: _____	Disposition: Please select: <input type="button" value="v"/>
	Select: <input type="button" value="v"/>	
Enhancements: _____	Dispo. Date: _____	
Notes: _____	Sentence: Please select: <input type="button" value="v"/>	
	Sentence Date: _____	
	Alleged Max: _____	Period: Please select: <input type="button" value="v"/>
2. Count 2: _____	Charge(s) Sustained: _____	Disposition: Please select: <input type="button" value="v"/>
	Select: <input type="button" value="v"/>	
Enhancements: _____	Dispo. Date: _____	
Notes: _____	Sentence: Please select: <input type="button" value="v"/>	
	Sentence Date: _____	
	Alleged Max: _____	Period: Please select: <input type="button" value="v"/>
3. Count 3: _____	Charge(s) Sustained: _____	Disposition: Please select: <input type="button" value="v"/>
	Select: <input type="button" value="v"/>	
Enhancements: Please select: <input type="button" value="v"/>	Dispo. Date: _____	
Notes: _____	Sentence: Please select: <input type="button" value="v"/>	
	Sentence Date: _____	
	Alleged Max: _____	Period: Please select: <input type="button" value="v"/>
2		

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Adult Criminal Case Resolution Form – Los Angeles County Bar Association
(continued)

INDIGENT CRIMINAL DEFENSE APPOINTMENT		LOS ANGELES COUNTY BAR ASSOCIATION	
Charges			
4. Count 1: _____	Select: <input type="button" value="v"/>	Charge(s) Sustained: _____	Select: <input type="button" value="v"/>
Enhancements: Please select: <input type="button" value="v"/>		Disposition: Please select: <input type="button" value="v"/>	
Notes:		Dispo. Date:	
		Sentence: Please select: <input type="button" value="v"/>	
		Sentence Date:	
		Alleged Max: Period: Please select: <input type="button" value="v"/>	
5. Count 2: _____	Select: <input type="button" value="v"/>	Charge(s) Sustained: _____	Select: <input type="button" value="v"/>
Enhancements: Please select: <input type="button" value="v"/>		Disposition: Please select: <input type="button" value="v"/>	
Notes:		Dispo. Date:	
		Sentence: Please select: <input type="button" value="v"/>	
		Sentence Date:	
		Alleged Max: Period: Please select: <input type="button" value="v"/>	
6. Count 3: _____	Select: <input type="button" value="v"/>	Charge(s) Sustained: _____	Select: <input type="button" value="v"/>
Enhancements: Please select: <input type="button" value="v"/>		Disposition: Please select: <input type="button" value="v"/>	
Notes:		Dispo. Date:	
		Sentence: Please select: <input type="button" value="v"/>	
		Sentence Date:	
		Alleged Max: Period: Please select: <input type="button" value="v"/>	

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)

INDIGENT CRIMINAL DEFENSE APPOINTMENT	LOS ANGELES COUNTY BAR ASSOCIATION	
 Schedule		
Contested Hearings Conducted:		
Description	Date	
1. Please select: <input type="text"/>	_____	
2. Please select: <input type="text"/>	_____	
3. Please select: <input type="text"/>	_____	
4. Please select: <input type="text"/>	_____	
 *Please indicate results or any other notable information in the Notes section below.		
 Motions		
Types of Motions	Date	Ruling
1. Please select: <input type="text"/>		Please select: <input type="text"/>
2. Please select: <input type="text"/>		Please select: <input type="text"/>
3. Please select: <input type="text"/>		Please select: <input type="text"/>
4. Please select: <input type="text"/>		Please select: <input type="text"/>
 Did you file a notice of appeal?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No Contested Issue of Law or Fact
 4		

Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)

INDIGENT CRIMINAL DEFENSE APPOINTMENT | LOS ANGELES COUNTY BAR ASSOCIATION

Notes

Please indicate any notable effort put into the case, not covered elsewhere on this form:

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Juvenile Case Intake Form – Los Angeles, California County Bar Association

Effective as of 09/01/18

INDEPENDENT JUVENILE DEFENDER PROGRAM | LOS ANGELES COUNTY BAR ASSOCIATION

CLIENT INTAKE SHEET

Attorney Name: _____

Duty Date: _____ / Non-Duty Pick-Up Date: _____

Case #: _____ Court: _____ Court Dept. #: _____

EMAIL TO:

North	South	East	West
Bethany Judson (213) 896-6472 bjudson@lacba.org	Tracy Andrade (213) 896-6505 tandrade@lacba.org	Shanice Hawthorne (213) 833-6706 shawthorne@lacba.org	Sarah Fiskin (213) 896-6430 sfiskin@lacba.org

Client Information

Name: _____ AKA/Booked as: _____

DOB: _____ / AGE: ____ Gender: M F Race/ Ethnic Origin: Select: _____

Minor's Place of Birth (City, Country): _____

Whether or not your client is a potential candidate, please check this box affirming that you have considered their eligibility for SIJS and that this is sufficiently documented in their file.

Contact Information

Client Phone Number: (____) _____

Address/ Placement Location: _____

Name of Parent/ Legal Guardian/ DCFS Placement: _____

Please indicate this person's relationship to client: _____

Parent/ Guardian/ Placement Phone Number: (____) _____

Interpreter Required? (Including Parents) : Yes No Preferred Language: _____

Petition Information

Petition Status: New Active Petition Type: Detained Non-Detained

Petition Date: _____ Next Hearing Date: _____ Next Hearing Type: _____

The New Mexico Project
Appendix G: Example Opening and Closing Forms

**Juvenile Case Intake Form – Los Angeles, California County Bar Association
(continued)**

Case Information

Was this an instance of witness representation? Yes No
If yes, you may skip the Detention Status and Charges sections.

WIC 450/ AB12/212 appointment? Yes No
If yes, you may skip the Detention Status section.

Were you appointed post-disposition? Yes No

Is this a 601 status offense? Yes No

Is your client facing a transfer motion to adult court? Yes No

Is this a Prop 57 return case? Yes No

Was there any DCFS or Dependency Court Involvement? Yes No

If yes,

Name/ Contact of Social Worker: _____

Name/ Contact of Dependency Court Attorney: _____

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):		Enhancements:
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony	<input type="checkbox"/> Misdemeanor	_____

Max Exposure: _____

Detention Status

My client is currently detained: Yes No
If no, please enter NA for the following fields.

If Detained After Arraignment:

House Arrest (CDP) Juvenile Hall/ Camp Jail Other: _____

Detention Location: _____
Please provide full name.

Dennis "H" Hearing Date: _____ William "M" Hearing Date: _____ Other: _____

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Juvenile Case Intake Form – Los Angeles County Bar Association (continued)

Co-Minor Information

If there was no co-minor involvement, please enter NA.

Names of Co-Minor(s):	Case Number:	Co-Attorney for Co-Minors:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Open Petitions/ Probation

If there are no other open petitions, please enter NA.

Charges:	Petition Date:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Attorney: _____ Probation Officer: _____

Next Court Date: _____ Court/ Judge: _____

Notes

INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Juvenile Case Resolution Form – Los Angeles County Bar Association

Effective as of 05/01/18

INDEPENDENT JUVENILE DEFENDER PROGRAM | LOS ANGELES COUNTY BAR ASSOCIATION

CASE RESOLUTION FORM

Date of Resolution: _____ Attorney Name: _____

Client Name: _____ Case Number: _____

Court: _____ Department: _____

Judicial Officer: _____ Petition Date: _____

Ancillary Resources Used:

Investigator Social Worker Writ Attorney Resource Attorney

Expert Witnesses Appointed: _____

Charges in Petition: _____ Charges Sustained: _____

MAX: _____ MAX: _____

Basis of Charges Sustained:

Admission

Adjudication

If your client admitted the charges, check this box if you have sufficiently documented your rationale for admission as opposed to adjudicating the matter.

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Juvenile Case Resolution Form – Los Angeles County Bar Association (continued)

Disposition at time of Admission/Resolution:

- | | | |
|------------------------------|---|---------------------------------------|
| <input type="checkbox"/> 654 | <input type="checkbox"/> Suitable Placement | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> 725 | <input type="checkbox"/> CCP Term: _____ | <input type="checkbox"/> Transferred |
| <input type="checkbox"/> 790 | <input type="checkbox"/> DJF Term: _____ | Dept: _____ |
| <input type="checkbox"/> HOP | <input type="checkbox"/> Dismissed | Attorney: _____ |

Contested Hearings Conducted:

- William M.
Witnesses Called: _____
- Dennis H.
Witnesses Called: _____
- Motion to Suppress
Witnesses Called: _____
- Adjudication
Witnesses Called: _____
- Disposition
Witnesses Called: _____
- Other: _____

Did you file a notice of appeal?

- Yes No No Contested Issue of Law or Fact

The New Mexico Project
Appendix G: Example Opening and Closing Forms

Juvenile Case Resolution Form – Los Angeles County Bar Association (continued)

Written Motions Filed

700.1 (WIC analog to PC 1538.5)

Other: _____

Oral Motions Argued

701.1

Other: _____

How many times did you meet with the client outside of court appearances? _____

Please indicate any notable effort put into the case, not covered elsewhere on this form:

Exhibits

The New Mexico Project
Exhibit #1

New Mexico Public Defense Opened Cases Per Fiscal Year and Estimated Caseload

STATEWIDE CASES OPENED BY TYPE AND ESTIMATED CASELOAD

Adult Criminal															
Public Defender	FY 2019					FY 2020					FY 2021				Estimated Caseload
Case Type	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	TOTAL	
Traffic and Other Minor crimes	2,043	1,586	1,722	2,117	7,468	2,387	2,519	2,819	1,603	9,328	2,135	1,663	1,515	5,313	8,040
DWI	1,188	889	1,090	1,038	4,205	1,162	1,065	1,196	791	4,214	970	853	756	2,579	3,999
Drug Crimes, Property Crimes, and Status Offenses	4,343	3,072	3,360	3,332	14,107	3,449	2,500	2,559	1,725	10,233	2,003	1,623	1,826	5,452	10,833
Crimes against person (adult victim)	2,385	1,756	1,991	2,035	8,167	2,337	2,057	2,284	2,114	8,792	2,253	1,991	1,951	6,195	8,420
Child Porn Cases	8	7	7	10	32	19	15	9	6	49	9	13	8	30	40
Child Abuse (not CARD) / Child Sex Crimes (Sex crimes with a child victim)	253	179	201	223	856	184	152	149	112	597	134	134	124	392	671
Murder	14	16	18	16	64	34	23	21	19	97	24	12	15	51	77
Probation Violations	2,142	1,348	1,606	1,588	6,684	1,670	1,400	1,468	883	5,421	1,148	971	972	3,091	5,526
Total Public Defender	12,376	8,853	9,995	10,359	41,583	11,242	9,731	10,505	7,253	38,731	8,676	7,260	7,167	23,103	37,606

Contract Attorney															
Case Type	FY 2019					FY 2020					FY 2021				Estimated Caseload
Case Type	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	TOTAL	
Traffic and Other Minor crimes	654	613	798	881	2,946	836	712	627	479	2,654	527	567	609	1,703	2,656
DWI	197	236	279	411	1,123	407	386	413	342	1,548	348	316	367	1,031	1,346
Drug Crimes, Property Crimes, and Status Offenses	1,925	1,993	2,526	2,121	8,565	2,035	1,894	2,476	2,035	8,440	2,198	2,019	2,192	6,409	8,514
Crimes against person (adult victim)	857	827	960	1,156	3,800	1,193	1,171	1,062	1,124	4,550	1,171	1,020	1,071	3,262	4,223
Child Porn Cases	3	2	2	6	13	6	2	5	3	16	3	1	2	6	13
Child Abuse (not CARD) / Child Sex Crimes (Sex crimes with a child victim)	138	149	155	175	617	190	163	160	143	656	180	144	133	457	629
Murder	17	20	22	33	92	29	28	17	24	98	45	28	35	108	108
Probation Violations	381	433	476	719	2,009	830	696	892	564	2,982	593	608	621	1,822	2,477
Total Contract Attorney	4,172	4,273	5,218	5,502	19,165	5,526	5,052	5,652	4,714	20,944	5,065	4,703	5,030	14,798	19,966

The New Mexico Project
Exhibit #1

New Mexico Public Defense Opened Cases Per Fiscal Year and Estimated Caseload

TOTAL ADULT CRIMINAL Case Type	FY 2019					FY 2020					FY 2021				Estimated Caseload
	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	TOTAL	
Traffic and Other Minor crimes	2,697	2,199	2,520	2,998	10,414	3,223	3,231	3,446	2,082	11,982	2,662	2,230	2,124	7,016	10,696
DWI	1,385	1,125	1,369	1,449	5,328	1,569	1,451	1,609	1,133	5,762	1,318	1,169	1,123	3,610	5,345
Drug Crimes, Property Crimes, and Status Offenses	6,268	5,065	5,886	5,453	22,672	5,484	4,394	5,035	3,760	18,673	4,201	3,642	4,018	11,861	19,347
Crimes against person (adult victim)	3,242	2,583	2,951	3,191	11,967	3,530	3,228	3,346	3,238	13,342	3,424	3,011	3,022	9,457	12,643
Child Porn Cases	11	9	9	16	45	25	17	14	9	65	12	14	10	36	53
Child Abuse (not CARD) / Child Sex Crimes (Sex crimes with a child victim)	391	328	356	398	1,473	374	315	309	255	1,253	314	278	257	849	1,300
Murder	31	36	40	49	156	63	51	38	43	195	69	40	50	159	185
Probation Violations	2,523	1,781	2,082	2,307	8,693	2,500	2,096	2,360	1,447	8,403	1,741	1,579	1,593	4,913	8,003
Total Adult Criminal	16,548	13,126	15,213	15,861	60,748	16,768	14,783	16,157	11,967	59,675	13,741	11,963	12,197	37,901	57,572

Juvenile															
TOTAL JUVENILE Case Type	FY 2019					FY 2020					FY 2021				Estimated Caseload
	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	TOTAL	
Juvenile Delinquency – In-home Placement					2,891					2,419				1,013	2,299
Juvenile Delinquency – Out-of-home Placement/Commitment					22					80				27	47
Youthful Offender Cases					101					65				70	86
Serious Youthful Offender Cases					-					-				-	-
Post-Disposition Cases (Extensions, Parole Revocations)					-					-				-	-
Total Juvenile					3,014					2,564				1,110	2,432

**The New Mexico Project
Exhibit #1**

New Mexico Public Defense Opened Cases Per Fiscal Year and Estimated Caseload

Appeals															
	FY 2019					FY 2020					FY 2021				Estimated Caseload
	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	Q4	TOTAL	Q1	Q2	Q3	TOTAL	
Public Defender	89	107	102	64	362	39	93	87	63	282	56	83	55	194	305
Contract Attorney	5	21	16	19	61	21	9	10	9	49	6	6	10	22	48
Total Appeals	94	128	118	83	423	60	102	97	72	331	62	89	65	216	353

Grand Totals											
	FY 2019				FY 2020				FY 2021		Estimated Caseload
	TOTAL				TOTAL				Q1-Q3	TOTAL	
GRAND TOTAL	64,185				62,570					39,227	60,357

Case information was derived from defenderData™ based on opened date, which differs from the annual reports, which are based on assigned date. In comparing the LOPD Strategic Plan and Annual Report FY2022 and the LOPD Strategic Plan FY2021 for the fiscal years ending June 30, 2020 and 2019, the data above is within 7% and 4%, respectively of total case counts, excluding appeals totals. The case counts presented above are less than LOPD reported figures in the referenced reports. We find these case counts to be reliable, but possibly conservative.

Sources:

All data sourced from LOPD's case management system, Justice Works defenderData™, based on public defense cases opened from July 1, 2018 through March 31, 2021. Data differs slightly from LOPD LFC reports.

For the Juvenile data, total number of cases for the time period presented was sourced from Justice Works defenderData™ Case type information was pulled out from these totals based on the following:

- *Youthful Offender Cases*: Provided by the managing attorney of the Juvenile Division for LOPD, with data sourced from the Juvenile Probation Office. In Juvenile Court, the first point of contact for any case is the Juvenile Probation Office. They are notified anytime a case is going to Preliminary Hearing or the Grand Jury. At the arraignment the juvenile probation officer is present and provides preliminary information supporting whether they are recommending the client be held in custody or be released. Therefore, this data is considered reliable.

The New Mexico Project
Exhibit #2
Workload Analysis

ESTIMATED ANNUAL WORKLOAD

Adult Criminal

	[2]	[1]		[1]		[1]	
Case Type	Delphi Hours Per Case	Estimated Annual Public Defender Caseload	Public Defender Hours By Case Type	Estimated Annual Contract Attorney Caseload	Contract Attorney Hours By Case Type	Total Estimated Annual Caseload	Total Hours by Case Type
Traffic and Other Minor Crimes	7.60	8,040	61,104	2,656	20,186	10,696	81,290
DWI	21.70	3,999	86,778	1,346	29,208	5,345	115,986
Drug Crimes, Property Crimes, Status Offenses	32.53	10,833	352,397	8,514	276,960	19,347	629,357
Crimes Against Person (Adult Victim)	50.67	8,420	426,641	4,223	213,979	12,643	640,620
Child Pornography Cases	126.50	40	5,060	13	1,645	53	6,705
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	177.36	671	119,009	629	111,559	1,300	230,568
Murder (including CARD)	391.03	77	30,109	108	42,231	185	72,340
Probation Violations	5.17	5,526	28,569	2,477	12,806	8,003	41,375
Total Adult Criminal		37,606	1,109,667	19,966	708,574	57,572	1,818,241

Juvenile

	[3]			[1]		
Case Type	Delphi Hours Per Case	[4]	[4]	Total Estimated Annual Caseload	Total Hours by Case Type	
Juvenile Delinquency – In-home Placement	15.84			2,299	36,416	
Juvenile Delinquency – Out-of-home Placement/Commitment	36.61			47	1,721	
Youthful Offender Cases	101.15			86	8,699	
Serious Youthful Offender Cases	379.03			-	-	
Post-Disposition Cases (Extensions, Parole Revocations)	21.38			-	-	
Total Juvenile				2,432	46,836	
GRAND TOTAL				60,004	1,865,077	

[1] Based on the average opened cases per year for the respective case grouping and attorney type, if applicable (see Exhibit 1)

[2] Per the Adult Criminal Delphi Panel results (see Exhibit 4.1)

[3] Per the Juvenile Delphi Panel results (see Exhibit 4.2)

[4] Attorney type designation was not available for the Juvenile caseload (see Exhibit 1)

The New Mexico Project
Exhibit #3
Historical Full Time Equivalents

		Full Time Equivalent	
		Public Defender*	Contract Attorney
FY 2019	Q1	156	112
	Q2	164	116
	Q3	170	115
	Q4	165	116
FY 2020	Q1	171	112
	Q2	178	116
	Q3	176	111
	Q4	177	114
FY 2021	Q1	184	114
	Q2	184	115
	Q3	183	112

*Excludes appellate division

		Full Time Equivalent
		Public Defender - Appellate Division
FY 2019	Q2	14
	Q3	11
	Q4	13
FY 2020	Q1	15
	Q2	14
	Q3	13
	Q4	13

The New Mexico Project
Exhibit #4
Delphi Selection Panel Members

Adult Criminal Selection Panel
Judge Neil Candelaria
Tom Clark
Deb Lautenschlager
Gary Mitchell
Judge Margaret Strickland

Juvenile Selection Panel
Jason Rael
Stephen Stevers
Deb Varol

Appelate Selection Panel
Kim Chavez Cook
David Henderson
Todd Werthheim

The New Mexico Project

Exhibit #5.1

Analysis of the Delphi Survey Results – Adult Criminal

Traffic and Other Minor Crimes

	Frequency	Calculation
% Should Plea / Otherwise Resolve	84%	4.69
% Should Go To Trial	16%	2.91
Total:		7.60

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
<i>Pre-Indictment Work</i>	N/A	N/A	N/A	N/A	N/A	N/A
<i>Client Communication and Care</i>	1.00	100%	1.00	1.80	100%	1.80
<i>Discovery/Case Preparation</i>	1.00	100%	1.00	3.00	100%	3.00
<i>Attorney Investigation/Attorney Interviews</i>	1.00	63%	0.63	1.75	95%	1.66
<i>Experts</i>	5.00	2%	0.10	6.00	1%	0.06
<i>Legal Research, Motions Practice, Other Writing</i>	1.00	39%	0.39	1.60	75%	1.20
<i>Negotiations</i>	0.50	100%	0.50	0.75	90%	0.68
<i>Court Preparation</i>	0.70	100%	0.70	3.00	100%	3.00
<i>Court Time</i>	1.00	100%	1.00	6.00	100%	6.00
<i>Sentencing/Mitigation</i>	0.40	45%	0.18	0.80	70%	0.56
<i>Post Adjudication</i>	0.75	11%	0.08	1.00	25%	0.25
			5.58			18.21

DWI

	Frequency	Calculation
% Should Plea / Otherwise Resolve	74%	12.39
% Should Go To Trial	26%	9.31
Total:		21.70

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	1.25	15%	0.19	1.25	15%	0.19
<i>Client Communication and Care</i>	2.10	100%	2.10	3.30	100%	3.30
<i>Discovery/Case Preparation</i>	4.00	100%	4.00	6.00	100%	6.00
<i>Attorney Investigation/Attorney Interviews</i>	2.50	100%	2.50	3.00	100%	3.00
<i>Experts</i>	4.50	3%	0.14	7.00	5%	0.35
<i>Legal Research, Motions Practice, Other Writing</i>	2.30	75%	1.73	3.00	90%	2.70
<i>Negotiations</i>	0.75	100%	0.75	0.75	100%	0.75
<i>Court Preparation</i>	2.00	100%	2.00	6.00	100%	6.00
<i>Court Time</i>	2.00	100%	2.00	12.00	100%	12.00
<i>Sentencing/Mitigation</i>	0.90	68%	0.61	1.10	70%	0.77
<i>Post Adjudication</i>	0.80	90%	0.72	1.50	50%	0.75
			16.74			35.81

The New Mexico Project

Exhibit #5.1

Analysis of the Delphi Survey Results – Adult Criminal

Drug Crimes, Property Crimes, and Status Offenses

	Frequency	Calculation
% Should Plea / Otherwise Resolve	81%	21.13
% Should Go To Trial	19%	11.40
Total:		32.53

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	1.50	50%	0.75	2.00	50%	1.00
<i>Client Communication and Care</i>	3.00	100%	3.00	5.00	100%	5.00
<i>Discovery/Case Preparation</i>	4.50	100%	4.50	7.00	100%	7.00
<i>Attorney Investigation/Attorney Interviews</i>	3.50	100%	3.50	4.50	100%	4.50
<i>Experts</i>	5.00	8%	0.40	7.00	10%	0.70
<i>Legal Research, Motions Practice, Other Writing</i>	4.50	85%	3.83	5.00	100%	5.00
<i>Negotiations</i>	1.25	100%	1.25	1.25	100%	1.25
<i>Court Preparation</i>	3.50	100%	3.50	12.00	100%	12.00
<i>Court Time</i>	3.00	100%	3.00	20.00	100%	20.00
<i>Sentencing/Mitigation</i>	2.50	67%	1.68	3.00	80%	2.40
<i>Post Adjudication</i>	0.90	75%	0.68	2.25	50%	1.13
			26.09			59.98

Crimes Against Person (Adult Victim)

	Frequency	Calculation
% Should Plea / Otherwise Resolve	73%	23.58
% Should Go To Trial	27%	27.09
Total:		50.67

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	3.00	65%	1.95	3.00	65%	1.95
<i>Client Communication and Care</i>	6.00	100%	6.00	8.00	100%	8.00
<i>Discovery/Case Preparation</i>	5.00	100%	5.00	10.00	100%	10.00
<i>Attorney Investigation/Attorney Interviews</i>	5.00	100%	5.00	7.00	100%	7.00
<i>Experts</i>	7.00	5%	0.35	10.00	10%	1.00
<i>Legal Research, Motions Practice, Other Writing</i>	4.50	80%	3.60	8.00	100%	8.00
<i>Negotiations</i>	2.00	100%	2.00	2.00	100%	2.00
<i>Court Preparation</i>	3.00	100%	3.00	18.00	100%	18.00
<i>Court Time</i>	3.50	100%	3.50	40.00	100%	40.00
<i>Sentencing/Mitigation</i>	2.00	70%	1.40	3.00	80%	2.40
<i>Post Adjudication</i>	1.00	50%	0.50	4.00	50%	2.00
			32.30			100.35

The New Mexico Project

Exhibit #5.1

Analysis of the Delphi Survey Results – Adult Criminal

Child Pornography Cases

	Frequency	Calculation
% Should Plea / Otherwise Resolve	90%	113.85
% Should Go To Trial	10%	12.65
Total:		126.50

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	10.00	70%	7.00	10.00	70%	7.00
<i>Client Communication and Care</i>	25.00	100%	25.00	25.00	100%	25.00
<i>Discovery/Case Preparation</i>	20.00	100%	20.00	20.00	100%	20.00
<i>Attorney Investigation/Attorney Interviews</i>	18.00	100%	18.00	18.00	100%	18.00
<i>Experts</i>	12.00	65%	7.80	12.00	65%	7.80
<i>Legal Research, Motions Practice, Other Writing</i>	17.00	90%	15.30	17.00	90%	15.30
<i>Negotiations</i>	5.00	100%	5.00	5.00	100%	5.00
<i>Court Preparation</i>	10.00	100%	10.00	10.00	100%	10.00
<i>Court Time</i>	7.00	100%	7.00	7.00	100%	7.00
<i>Sentencing/Mitigation</i>	12.00	90%	10.80	12.00	90%	10.80
<i>Post Adjudication</i>	2.00	30%	0.60	2.00	30%	0.60
			126.50			126.50

Note: During the Round 3 session Child Pornography, the Panel determined that no distinction should be made based on resolution, because there should be no discernable difference in the workload.

Child Abuse / Child Sex Crimes

	Frequency	Calculation
% Should Plea / Otherwise Resolve	67%	84.57
% Should Go To Trial	33%	92.79
Total:		177.36

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	7.00	94%	6.58	7.00	94%	6.58
<i>Client Communication and Care</i>	15.00	100%	15.00	20.00	100%	20.00
<i>Discovery/Case Preparation</i>	30.00	100%	30.00	55.00	100%	55.00
<i>Attorney Investigation/Attorney Interviews</i>	30.00	100%	30.00	35.00	100%	35.00
<i>Experts</i>	10.00	50%	5.00	16.00	60%	9.60
<i>Legal Research, Motions Practice, Other Writing</i>	12.00	75%	9.00	24.00	100%	24.00
<i>Negotiations</i>	3.50	100%	3.50	3.50	100%	3.50
<i>Court Preparation</i>	10.00	100%	10.00	45.00	100%	45.00
<i>Court Time</i>	10.00	100%	10.00	50.00	100%	50.00
<i>Sentencing/Mitigation</i>	7.00	95%	6.65	10.00	100%	10.00
<i>Post Adjudication</i>	2.00	25%	0.50	30.00	75%	22.50
			126.23			281.18

The New Mexico Project

Exhibit #5.1

Analysis of the Delphi Survey Results – Adult Criminal

Murder (including CARD, Vehicular Homicide)

	Frequency	Calculation
% Should Plea / Otherwise Resolve	55%	159.50
% Should Go To Trial	45%	231.53
Total:		391.03

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Pre-Indictment Work</i>	15.00	100%	15.00	15.00	100%	15.00
<i>Client Communication and Care</i>	25.00	100%	25.00	40.00	100%	40.00
<i>Discovery/Case Preparation</i>	30.00	100%	30.00	50.00	100%	50.00
<i>Attorney Investigation/Attorney Interviews</i>	60.00	100%	60.00	70.00	100%	70.00
<i>Experts</i>	30.00	70%	21.00	40.00	75%	30.00
<i>Legal Research, Motions Practice, Other Writing</i>	40.00	100%	40.00	80.00	100%	80.00
<i>Negotiations</i>	8.00	100%	8.00	5.00	90%	4.50
<i>Court Preparation</i>	50.00	100%	50.00	80.00	100%	80.00
<i>Court Time</i>	20.00	100%	20.00	85.00	100%	85.00
<i>Sentencing/Mitigation</i>	20.00	100%	20.00	20.00	100%	20.00
<i>Post Adjudication</i>	5.00	20%	1.00	40.00	100%	40.00
			290.00			514.50

Probation Violations

	Frequency	Calculation
% Should Plea / Otherwise Resolve	88%	4.04
% Should Go To Trial	12%	1.13
Total:		5.17

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
<i>Client Communication and Care</i>	1.50	100%	1.50	1.50	100%	1.50
<i>Discovery/Case Preparation</i>	0.75	100%	0.75	1.50	100%	1.50
<i>Attorney Investigation/Attorney Interviews</i>	1.00	25%	0.25	1.50	75%	1.13
<i>Experts</i>	4.00	1%	0.02	4.00	1%	0.04
<i>Legal Research, Motions Practice, Other Writing</i>	1.50	20%	0.30	1.50	20%	0.30
<i>Negotiations</i>	0.50	95%	0.48	0.50	100%	0.50
<i>Court Preparation</i>	0.50	100%	0.50	1.50	100%	1.50
<i>Court Time</i>	0.50	100%	0.50	1.50	100%	1.50
<i>Sentencing/Mitigation</i>	0.50	40%	0.20	1.00	70%	0.70
<i>Post Adjudication</i>	0.50	20%	0.10	3.00	24%	0.72
			4.60			9.39

The New Mexico Project

Exhibit #5.2

Analysis of the Delphi Survey Results – Juvenile

Juvenile Delinquency – In-home placement

	Frequency	Calculation
% Should Plea / Otherwise Resolve	90%	11.64
% Should Go To Trial	10%	4.20
Total:		15.84

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
Client Communication	1.70	100%	1.70	4.00	100%	4.00
Parent/Guardian/Custodian Communication	0.90	93%	0.84	1.50	93%	1.40
Client Support Services	0.80	59%	0.47	1.25	59%	0.74
Discovery/Case Preparation	2.00	99%	1.98	6.50	100%	6.50
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	2.20	75%	1.65	4.00	99%	3.96
Experts	1.10	13%	0.14	3.50	20%	0.70
Legal Research, Motions Practice, Other Writing	2.00	60%	1.20	3.50	91%	3.19
Negotiations	1.00	98%	0.98	1.25	95%	1.19
Court Preparation	1.50	99%	1.49	5.00	100%	5.00
Court Time	1.50	95%	1.43	13.00	100%	13.00
Disposition	0.90	95%	0.86	1.75	99%	1.73
Post-Disposition	0.90	21%	0.19	1.25	50%	0.63
			12.93			42.04

Juvenile Delinquency – Out of home placement

	Frequency	Calculation
% Should Plea / Otherwise Resolve	60%	13.70
% Should Go To Trial	40%	22.91
Total:		36.61

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
Client Communication	3.00	100%	3.00	5.25	100%	5.25
Parent/Guardian/Custodian Communication	1.00	90%	0.90	1.75	90%	1.58
Client Support Services	2.00	82%	1.64	2.00	80%	1.60
Discovery/Case Preparation	2.75	100%	2.75	7.50	100%	7.50
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	2.60	99%	2.57	5.00	100%	5.00
Experts	1.75	30%	0.53	4.00	35%	1.40
Legal Research, Motions Practice, Other Writing	2.50	99%	2.48	4.25	100%	4.25
Negotiations	1.60	100%	1.60	1.90	100%	1.90
Court Preparation	2.50	100%	2.50	10.00	100%	10.00
Court Time	2.50	100%	2.50	14.00	100%	14.00
Disposition	1.75	99%	1.73	3.00	100%	3.00
Post-Disposition	1.25	50%	0.63	3.00	60%	1.80
			22.83			57.28

The New Mexico Project

Exhibit #5.2

Analysis of the Delphi Survey Results – Juvenile

Youthful Offender

	Frequency	Calculation
% Should Plea / Otherwise Resolve	61%	47.12
% Should Go To Trial	39%	54.03
Total:		101.15

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
Client Communication	8.25	100%	8.25	17.00	100%	17.00
Parent/Guardian/Custodian Communication	3.60	94%	3.38	4.30	95%	4.09
Client Support Services	5.00	95%	4.75	5.00	95%	4.75
Discovery/Case Preparation	15.00	100%	15.00	19.00	100%	19.00
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	10.00	100%	10.00	15.00	100%	15.00
Experts	4.00	80%	3.20	5.00	90%	4.50
Legal Research, Motions Practice, Other Writing	7.75	100%	7.75	12.00	100%	12.00
Negotiations	2.50	100%	2.50	3.00	100%	3.00
Court Preparation	10.00	100%	10.00	20.00	100%	20.00
Court Time	6.00	100%	6.00	30.00	100%	30.00
Disposition	5.00	100%	5.00	6.00	100%	6.00
Post-Disposition	2.40	59%	1.42	4.00	80%	3.20
			77.25			138.54

Serious Youthful Offender

	Frequency	Calculation
% Should Plea / Otherwise Resolve	60%	191.33
% Should Go To Trial	40%	187.70
Total:		379.03

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
Client Communication	30.00	100%	30.00	40.00	100%	40.00
Parent/Guardian/Custodian Communication	8.00	98%	7.84	12.00	98%	11.76
Client Support Services	20.00	100%	20.00	25.00	100%	25.00
Discovery/Case Preparation	60.00	100%	60.00	63.00	100%	63.00
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	80.00	100%	80.00	80.00	100%	80.00
Experts	20.00	100%	20.00	25.00	100%	25.00
Legal Research, Motions Practice, Other Writing	40.00	100%	40.00	60.00	100%	60.00
Negotiations	10.00	100%	10.00	12.00	100%	12.00
Court Preparation	12.00	100%	12.00	30.00	100%	30.00
Court Time	30.00	100%	30.00	90.00	100%	90.00
Disposition	8.00	100%	8.00	8.00	100%	8.00
Post-Disposition	1.75	60%	1.05	25.00	98%	24.50
			318.89			469.26

The New Mexico Project

Exhibit #5.2

Analysis of the Delphi Survey Results – Juvenile

Post-Disposition

	Frequency	Calculation
% Should Plea / Otherwise Resolve	29%	4.62
% Should Go To Trial	71%	16.76
Total:		21.38

	Plea / Resolve			Trial		
	Time	Frequency	Calculation	Time	Frequency	Calculation
Client Communication	2.25	100%	2.25	3.00	100%	3.00
Parent/Guardian/Custodian Communication	0.90	83%	0.75	1.30	87%	1.13
Client Support Services	1.50	74%	1.11	1.60	80%	1.28
Discovery/Case Preparation	2.50	100%	2.50	3.00	100%	3.00
Attorney Investigation/Attorney Interviews/Pre-trial Interviews	2.75	90%	2.48	3.00	100%	3.00
Experts	0.90	10%	0.09	1.25	15%	0.19
Legal Research, Motions Practice, Other Writing	1.00	30%	0.30	2.00	60%	1.20
Negotiations	1.25	100%	1.25	1.25	100%	1.25
Court Preparation	1.75	94%	1.65	3.50	100%	3.50
Court Time	2.00	100%	2.00	4.00	100%	4.00
Disposition	1.00	91%	0.91	1.25	95%	1.19
Post-Disposition	1.00	65%	0.65	1.25	70%	0.88
			15.94			23.61

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Exhibit #5.3

Analysis of the Delphi Survey Results – Appeals

Summary Calendar (Support/Opposition)

	Time	Frequency	Calculation
<i>Client Communication</i>	2.00	100%	2.00
<i>Pre-Briefing Preparation</i>	4.00	100%	4.00
<i>Record Review</i>	6.00	100%	6.00
<i>Initial Appellate Brief</i>	24.00	99%	23.76
<i>Subsequent Memo / Reply Brief</i>	4.00	7%	0.28
<i>Oral Argument</i>	NA	NA	NA
<i>Motion for Rehearing</i>	8.00	5%	0.40
<i>Post-Decision Practice</i>	1.75	32%	0.56
<i>Certiorari</i>	8.00	35%	2.80
Total:			39.80

General Calendar Ct. of Appeal – Record under 250 pages (up to 2 hours recorded)

	Time	Frequency	Calculation
<i>Client Communication</i>	2.00	100%	2.00
<i>Pre-Briefing Preparation</i>	2.50	95%	2.38
<i>Record Review</i>	12.50	100%	12.50
<i>Initial Appellate Brief</i>	36.00	100%	36.00
<i>Reply Brief</i>	22.00	90%	19.80
<i>Oral Argument</i>	40.00	5%	2.00
<i>Motion for Rehearing</i>	8.00	7%	0.56
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	15.00	92%	13.80
Total:			89.87

General Calendar Ct. of Appeal – Record 250-750 pages (2-6 hours recorded)

	Time	Frequency	Calculation
<i>Client Communication</i>	3.00	100%	3.00
<i>Pre-Briefing Preparation</i>	4.00	94%	3.76
<i>Record Review</i>	35.00	100%	35.00
<i>Initial Appellate Brief</i>	43.00	100%	43.00
<i>Reply Brief</i>	22.00	94%	20.68
<i>Oral Argument</i>	40.00	5%	2.00
<i>Motion for Rehearing</i>	10.00	7%	0.70
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	16.00	93%	14.88
Total:			123.85

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Exhibit #5.3

Analysis of the Delphi Survey Results – Appeals

General Calendar Ct. of Appeal – Record 750-1500 pages (6-12 hours recorded)

	Time	Frequency	Calculation
<i>Client Communication</i>	3.50	100%	3.50
<i>Pre-Briefing Preparation</i>	4.00	95%	3.80
<i>Record Review</i>	50.00	100%	50.00
<i>Initial Appellate Brief</i>	60.00	100%	60.00
<i>Reply Brief</i>	22.00	96%	21.12
<i>Oral Argument</i>	45.00	5%	2.25
<i>Motion for Rehearing</i>	12.00	7%	0.84
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	20.00	94%	18.80
Total:			161.14

General Calendar Ct. of Appeal – Record over 1500 pages (more than 12 hours recorded)

	Time	Frequency	Calculation
<i>Client Communication</i>	3.50	100%	3.50
<i>Pre-Briefing Preparation</i>	4.00	95%	3.80
<i>Record Review</i>	90.00	100%	90.00
<i>Initial Appellate Brief</i>	80.00	100%	80.00
<i>Reply Brief</i>	27.00	96%	25.92
<i>Oral Argument</i>	80.00	5%	4.00
<i>Motion for Rehearing</i>	14.00	7%	0.98
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	24.00	96%	23.04
Total:			232.07

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Exhibit #5.3

Analysis of the Delphi Survey Results – Appeals

Direct File in the Supreme Court (Murder 1 and Child Abuse Resulting in Death)

	Time	Frequency	Calculation
<i>Client Communication</i>	4.50	100%	4.50
<i>Pre-Briefing Preparation</i>	4.50	95%	4.28
<i>Record Review</i>	75.00	100%	75.00
<i>Initial Appellate Brief</i>	80.00	100%	80.00
<i>Reply Brief</i>	27.00	80%	21.60
<i>Oral Argument</i>	75.00	72%	54.00
<i>Motion for Rehearing</i>	16.00	7%	1.12
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	60.00	2%	1.20
Total:			242.53

Discretionary Review in Supreme Court (following General Calendar Review)

	Time	Frequency	Calculation
<i>Client Communication</i>	2.50	100%	2.50
<i>Pre-Briefing Preparation</i>	1.00	84%	0.84
<i>Record Review</i>	44.00	100%	44.00
<i>Initial Appellate Brief</i>	60.00	100%	60.00
<i>Reply Brief</i>	25.00	65%	16.25
<i>Oral Argument</i>	75.00	85%	63.75
<i>Motion for Rehearing</i>	20.00	10%	2.00
<i>Post-Decision Practice</i>	2.50	33%	0.83
<i>Certiorari</i>	60.00	2%	1.20
Total:			191.37

DATA LIMITATIONS AND ASSESSMENT OF DATA NEEDS

Based on the information gathered during the New Mexico Project, the following points summarize the current limitations of the data within the LOPD system, and suggestions for data improvements that would be beneficial to LOPD.

Timekeeping and Data Collection

LOPD engaged in tremendous efforts to put in place timekeeping for purposes of this study, with the intent of keeping timekeeping in place following the study. Compliance rates for timekeeping were inadequate to confidently rely on the data. To improve timekeeping compliance, LOPD should make it a regular part of onboarding, training, and review processes. Additionally, there are over 75 timekeeping categories. It may be beneficial to review timekeeping codes and simplify or combine codes to ensure that each type of lawyer – Adult Criminal, Juvenile, Appellate – needs only use a small number of codes to enter time. It may be useful to compare timekeeping codes to Case Tasks categories in this report.

Beyond timekeeping, there is critical information on each client and each case that should be gathered by every public defense organization. These data points include basic demographic data on the client, initial charge(s), pretrial release/detention decisions, motions filed, experts consulted, pleas offered, disposition, and sentencing. These data points are often best gathered through use of a standardized case opening and case closing form.⁸⁷ Use of a such form can help in efforts to simplify timekeeping by relocating critical, case-specific information gathering to forms that must be filled out only once, rather than ongoing timekeeping. For example, rather than have a timekeeping code specific for motions, the timekeeping code can be general, e.g. research/writing, and the case closing form can ask whether motions were filed and have check boxes for types of motions.

LOPD already uses case opening forms and requires some additional data input at case closing. These forms should be reviewed to ensure that they are comprehensive and yet easy to use. The forms should also be integrated into the defenderData™ system to permit key data to be aggregated.

⁸⁷ An example of these forms for both juvenile and adult criminal are included in Appendix G.

The New Mexico Project

Exhibit #6

Data Limitations and Assessment of Data Needs

Case opening and case closing forms should be specific to the case category – Adult Criminal, Juvenile, and Appeals. They should also be customized to gather jurisdiction-specific information that drives time. For example, juvenile defenders in New Mexico chose to differentiate delinquency cases by whether an out-of-home placement is ever sought, indicating that whether an out-of-home placement is proposed is an important data point in a delinquency case. However, such information cannot be ascertained from charging, court data or even timekeeping. Information on whether an out-of-home placement was sought should be collected on the case closing form.

Similarly, Youthful Offender and Serious Youthful Offender cases are difficult to track in the current system. Juvenile case closing forms in New Mexico are likely the best place to capture these data points.

In Appeals, cases were differentiated by record length, a data point not currently captured in the case management system, nor discernable from timekeeping. Appeals case opening or closing form in New Mexico should require the attorney to indicate record length.⁸⁸ Appeals closing forms may also be able to help track the path of a client's case by indicating which of the appellate processes were used throughout the life of the appeal: Summary Calendar, the General Calendar, Discretionary Review in the Supreme Court and/or Direct File in the Supreme Court.

Contract Attorney Data

LOPD's current data regarding contract attorney caseloads is severely limited. The vast majority of contract attorneys are paid by case and invoice LOPD for the case at the point of assignment. This is problematic in a number of ways. First, paying a flat fee by case means that attorneys are paid the same amount whether they spend five hours on a case or twenty-five hours on a case. This payment structure may incentivize attorneys to do as little work as possible on the case. While New Mexico's Supreme Court has, in the past, found the per case payment structure reasonable,⁸⁹ a number of other courts have found that they violate core principles of ethics and constitutional standards.⁹⁰ Second, paying such limited flat rates in advance, as opposed to hourly payments or payment during or at the conclusion of the case, hinders the ability of LOPD to monitor the services provided by contract attorneys to clients on an ongoing basis. Instead, timekeeping and data mechanisms applicable to LOPD employees should be used for contractors as well and their submission should be required for payment.

⁸⁸ While it is desirable to have record length recorded as early as possible, recording this information on a case opening form may not be feasible. Often, records are not available in full at the time the case is opened. Moreover, motions to add items to the record may change the length of the record during the pendency of a case.

⁸⁹ Kerr v. Parsons, 2016-NMSC-028, 378 P.3d 1 (NM 2016).

⁹⁰ See, e.g., State v. Smith, 681 P.2d 1384 (AZ 1984); see also Contracting for Indigent Defense Services: A Special Report (U.S. Dept of Justice 2000), available at <https://www.ojp.gov/pdffiles1/bja/181160.pdf>.

The New Mexico Project
Exhibit #6

Data Limitations and Assessment of Data Needs

When payment for work requires submission of timekeeping and relevant case data forms, oversight entities, like LOPD, can assure that all clients are receiving prompt contact from counsel, appropriate advocacy at critical stages, consultation with investigators and experts as relevant and fair and prompt dispositions. This type of system also enables a more robust review process from contract attorneys, closer to the type of reviews common for employed public defenders. In short, revising the payment system for contract attorneys and tying that payment system to improved data collection and oversight will ensure that of clients served by contract attorneys receive equal access to quality counsel.

LOPD currently pays contractors on an hourly basis in selected serious cases, including selected 1st degree homicide cases. LOPD has recently introduced a pilot program to expand the number of cases in which it is able to pay hourly. LOPD should consider implementation of hourly pay, with attendant timekeeping and reporting requirements, for all contract defense cases, which would require corresponding funding by the legislature.

To adequately control workloads and prevent conflicts in accordance with ethical obligations, oversight entities should also understand the contract attorneys' practice of law outside of the contract.⁹¹ The LOPD should require contract attorneys to report what portion of the contract attorney's workload is public defense cases vs. other work. Contract attorneys should report the percentage or amount of time spent on public defender contract case and those reported percentages should correspond to limits in case assignments. This reporting should be more detailed and exacting in jurisdictions where ongoing work in public defense cases is less monitored, as it provides the only means of monitoring the overall caseloads of contract attorneys.⁹² In the case of New Mexico, such information should be reported in detail until and unless the method of payment for public defense work by contract attorneys allows for more substantive oversight.

⁹¹ ABA Criminal Justice Standards, Providing Defense Services, Standard 5-3.3(b)(vii).

⁹² Contract attorneys could be asked to provide additional public information on private practice cases in which they have entered an appearance, e.g. quarterly reports on private practice case openings, including case numbers and case type/highest charge. Such information would permit LOPD to attempt to verify total caseload.