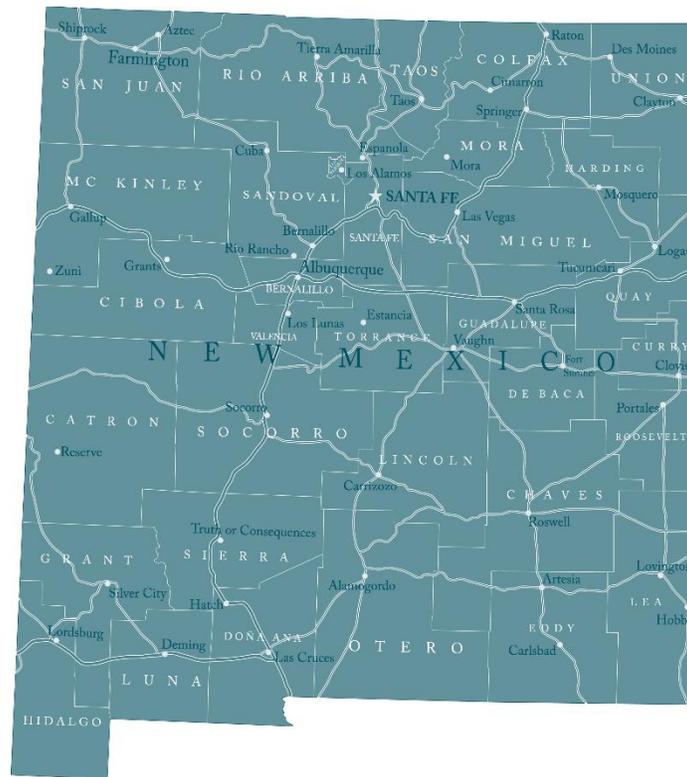


THE NEW MEXICO PROJECT

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



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This document is an excerpt from the full report **The New Mexico Project, An Analysis of the New Mexico Public Defense System and Attorney Workload Standards**, published in January 2022.

The full report can be found at

https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/

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.

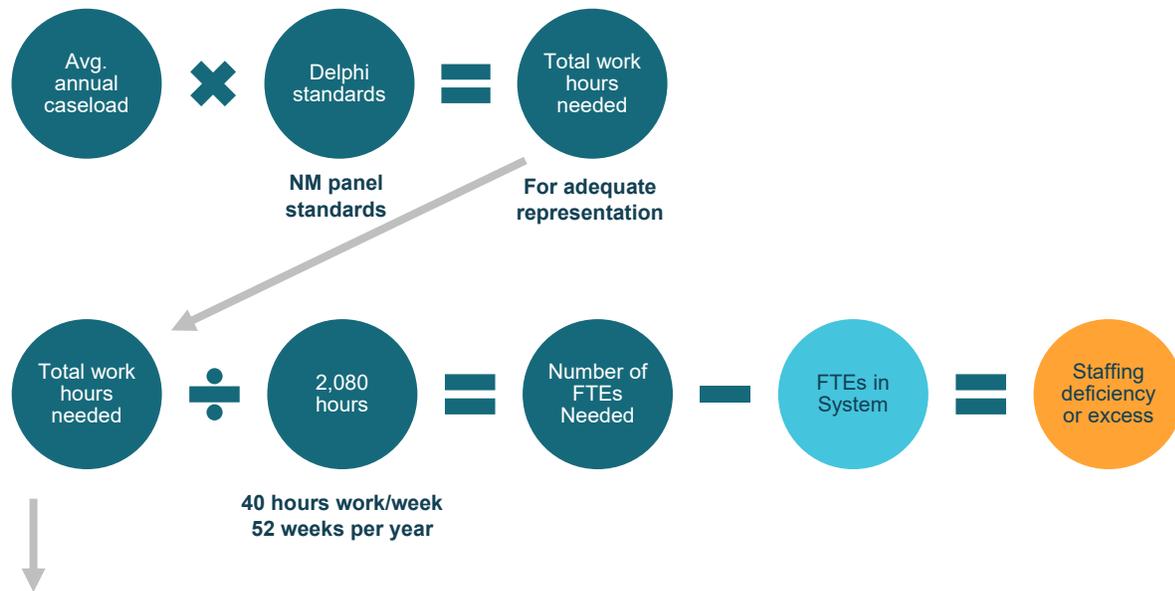
The report of the New Mexico Project provides a detailed analysis of New Mexico's current Adult Criminal, Juvenile and Appellate public defense caseload and staffing data. It is the product of more than two years of study and analysis. Additionally, the project used the Delphi method to arrive at standards 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.

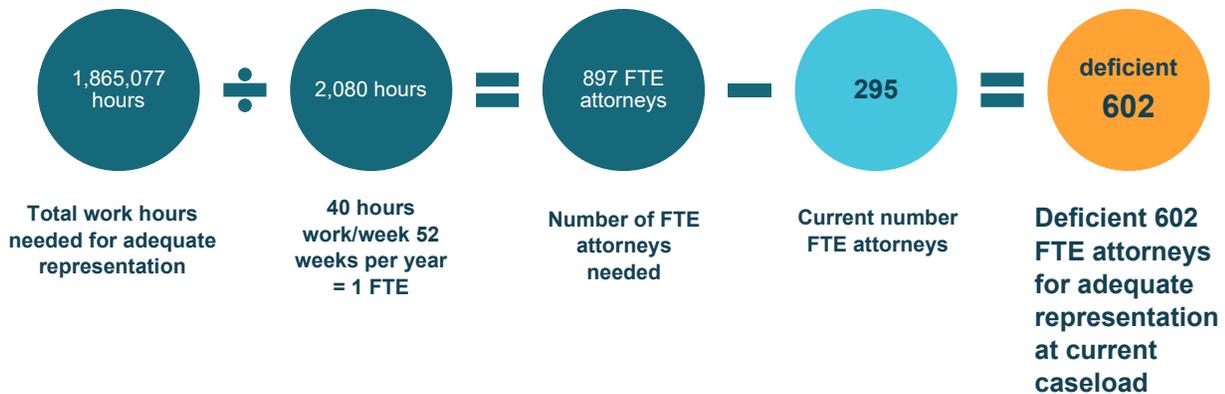
Delphi Panel Results – Adult Criminal	
Case Type	Hours Per Case
Traffic and Other Minor Crimes	7.60
DWI	21.70
Drug Crimes, Property Crimes, Status Offenses	32.53
Crimes Against Person (Adult Victim)	50.67
Child Pornography Cases	126.50
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography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



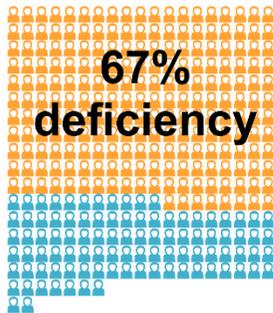
New Mexico:



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



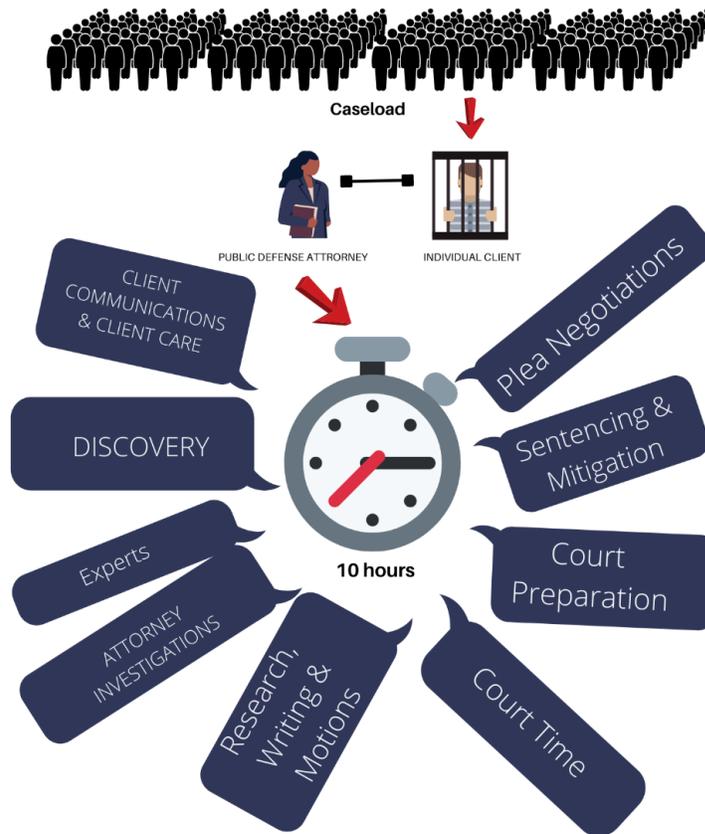
- A very conservative analysis shows that based on average annual caseload, the state needs an *additional* 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.
- In other words, with a consistent 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.